

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA (SAN FRANCISCO)

**SEAN MINER, DAVID HEUMANN, and  
SHAWNA ADMIRE**, individually and on behalf  
of all others similarly situated,

Plaintiffs,

vs.

**ITT EDUCATIONAL SERVICES, INC.**, a  
Delaware corporation,

Defendant.

Case No.: 3:16-cv-04827-VC

**REVISED [~~PROPOSED~~] ORDER  
GRANTING PLAINTIFFS' MOTIONS FOR  
FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT AND FOR ATTORNEYS'  
FEES, COSTS, AND SERVICE AWARDS**

Complaint Filed: July 20, 2016

1 Plaintiffs' Motion for Final Approval of Class Action Settlement and Motion for Attorneys'  
 2 Fees and Costs, and Service Awards for Class Representatives, came on for hearing on March 18, 2021  
 3 at 2:00 p.m. in Courtroom 4 of the above captioned court, the Honorable Vincent Chhabria presiding.  
 4 HammondLaw, P.C. appeared on behalf of Plaintiffs Sean Miner, David Heumann, and Shawna  
 5 Admire ("Plaintiffs") and Rubin & Levin appeared on behalf of the chapter 7 Trustee for the  
 6 Bankruptcy Estate of ITT Educational Services, *et al.*, Deborah J. Caruso ("Trustee").

7 Plaintiffs and the Trustee have submitted their Settlement, which this Court preliminarily  
 8 approved by its order entered on October 15, 2020 (ECF No. 69). In accordance with the preliminary  
 9 approval order, members of both Subclasses have been given notice of the terms of the Settlement and  
 10 the opportunity to object to it or to exclude themselves from its provisions.

11 Having received and considered the Settlement, the supporting papers filed by the parties, and  
 12 the evidence and argument received by the Court at the hearing on the motion for preliminary approval  
 13 on October 15, 2020 and the hearing on the motion for final approval on March 18, 2021, the Court  
 14 grants final approval of the Settlement, and HEREBY ORDERS and MAKES DETERMINATIONS as  
 15 follows:

16 1. The Settlement Agreement between Plaintiffs and the Trustee dated August 19, 2020 is  
 17 hereby finally approved.

18 2. The Court finds that the proposed Settlement is "fair, reasonable, and adequate" based  
 19 on the value of the claims in this case, the fact that Defendant ITT is no longer an operating entity and  
 20 filed for chapter 7 bankruptcy on September 16, 2016, the fact that only claims for unpaid wages  
 21 incurred during the six-month period preceding the filing of the bankruptcy petition have priority under  
 22 section 507(a)(4) of the Bankruptcy Code, the monetary value of the proposed Settlement and the risks  
 23 that the Plaintiffs would face in proceeding with the pending litigation. The Settlement was arrived at  
 24 after sufficient investigation and discovery, assisted by an experienced mediator (a retired bankruptcy  
 25 judge). It appears that the settlement negotiations were at arm's length.

26 3. The Court finds that the approved notice plan has been fully implemented. Pursuant to  
 27 the Court's Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement  
 28 (ECF No. 69) (hereinafter referred to as the "Order Granting Preliminary Approval"), Notices of Class

1 Action Settlement (hereinafter referred to individually, as a “Notice” and collectively, as the “Notices”)  
2 were disseminated in accordance with the procedure described in the Settlement Agreement, and were  
3 published on the Settlement Administrator’s website at <https://ittcaadjunctsettlement.com>

4 4. The Court finds that *no* Settlement Class Member has objected to the Settlement  
5 and only one (1) Settlement Class Member has requested exclusion from the Settlement.

6 5. The Court hereby GRANTS FINAL APPROVAL of the terms and conditions contained  
7 in the Settlement Agreement as to the Settlement Class. The Court finds that the terms of the  
8 Settlement are within the range of approval, pursuant to Federal Rule of Civil Procedure 23 and  
9 applicable law.

10 6. The Court has already found that: (1) the Allowed Priority Claim amount is  
11 fair and reasonable to the Priority Subclass when balanced against the probable outcome of further  
12 litigation relating to class certification, liability and damages issues, and potential appeals; (2) the  
13 Allowed Unsecured Claim amount is fair and reasonable to the Unsecured Subclass when balanced  
14 against the probable outcome of further litigation relating to class certification, liability and damages  
15 issues, and potential appeals; (3) significant informal discovery, investigation, research, and litigation  
16 have been conducted such that counsel for Plaintiffs and counsel for the Trustee at this time are able to  
17 reasonably evaluate their respective positions; (4) settlement at this time will avoid substantial costs,  
18 delay, and risks that would be presented by the further prosecution of the litigation; and (5) the  
19 proposed Settlement has been reached as the result of intensive, serious, and non-collusive negotiations  
20 between Plaintiffs and the Trustee. Accordingly, the Court finds that the Settlement Agreement was  
21 entered into in good faith.

22 7. The Court hereby makes final its earlier conditional certification of the Settlement  
23 Class in accordance with the Settlement for the purposes of this Settlement only. The Settlement Class  
24 is defined as “All individuals who were at any time employed by ITT as adjunct instructors in  
25 California from January 12, 2012 through September 16, 2016.” The Settlement Class consists of two  
26 Subclasses: (a) a Priority Subclass consisting of “each member of the Settlement Class employed by  
27 ITT as an adjunct instructor in California at any time from March 20, 2016 through September 16,  
28 2016” (b) an Unsecured Subclass consisting of “each member of the Settlement Class employed by

1 ITT as an adjunct instructor in California at any time from January 12, 2012 through March 19, 2016.”

2 8. The Court hereby confirms its final approval of the terms and conditions contained in  
3 the Settlement Agreement as to the Settlement Class as set forth in its October 15, 2020 Order  
4 Granting Preliminary Approval. (Dkt. No. 69.) The Court has already found that the terms of the  
5 Settlement are within the range of possible approval.

6 9. The Court hereby confirms the appointment of Simpluris, Inc. as Settlement  
7 Administrator for the purpose of the Settlement, and approves its reasonable administration costs of  
8 \$13,000 to be paid out of distributions made on account of the Allowed Priority Claim and of up to  
9 \$10,332.52 to be paid out of distributions, if any, made on account of the Allowed Unsecured Claim.

10 10. Within 14 days after the check cashing deadline for the distribution on the account of  
11 the Allowed Priority Claim, Class Counsel will provide the Court with a report detailing the amounts  
12 of uncashed checks, and an estimate of the payment amounts and administration cost associated with  
13 making a second distribution to Priority Subclass Members who cashed their initial checks. Class  
14 Counsel will also submit a proposed order directing either a second distribution or for amounts of  
15 uncashed checks to go to the cy pres recipient. Within 14 days after the check cashing deadline for the  
16 distribution(s) on the account of the Unsecured Claim, Class Counsel will provide the Court with a  
17 report detailing the amounts of uncashed checks, and an estimate of the payment amounts and  
18 administration cost associated with making a second distribution to Unsecured Subclass Members who  
19 cashed their initial checks. Class Counsel will also submit a proposed order directing either a second  
20 distribution or for amounts of uncashed checks to go to the cy pres recipient.

21 11. The court finally appoints HammondLaw, P.C. as Counsel for the Settlement Class, and  
22 Plaintiffs as Class Representatives for the Settlement Class.

23 12. The Court finds that the approved Class Notices (originally submitted to the Court at  
24 Dkt. No. 67-3 at pp. 44-53) constituted the best notice practicable under the circumstances and are in  
25 full compliance with the applicable laws and the requirements of due process. The Court further finds  
26 that the Class Notices fully and accurately informed the members of the Priority Subclass and  
27 Unsecured Subclass of all material elements of the proposed Settlement, of their right to be excluded  
28 from the Settlement, and an opportunity to object to the Settlement. The Court also finds that all of the

1 notices required by the Class Action Fairness Act, 28 U.S.C. § 1715, have been given. (Dkt. No. 67-1,  
2 ¶ 119). A full opportunity has been afforded to the Settlement Class members to participate in this  
3 hearing and all Settlement Class members and other persons wishing to be heard have been heard.  
4 Accordingly, the Court determines that 1,154 Settlement Class members, excepting one (1) class  
5 member who timely and properly executed a request for exclusion, are bound by this final Order.

6 13. No later than 21 days after the Trustee's distribution to be made on account of the  
7 Allowed Priority Claim, Counsel for the Settlement Class shall file Post-Distribution Accounting  
8 consisting of the following: the total settlement fund of the Allowed Priority Claim, the total number of  
9 settlement Priority Subclass members, the total number of settlement Priority Subclass members sent  
10 notices not returned as undeliverable, the number and percentage of opt-outs, the number and  
11 percentage of objections, the date on which distribution was made, including the date of a second  
12 distribution, if any, from uncashed checks, the number of settlement Priority Subclass members who  
13 were sent payments, the total amount paid to Priority Subclass members including as part of a second  
14 distribution, if any, from uncashed checks, the average and median recovery per Priority Subclass  
15 member, the largest and smallest amounts paid to the Priority Subclass members, the method of notice  
16 and of payment, the number and value of checks cashed, the number and value of checks not cashed,  
17 the amounts distributed to the cy pres recipient, total administration costs, total amount of attorneys'  
18 fees and costs, attorneys' fees as a percentage of the settlement fund on the Allowed Priority Claim,  
19 and the lodestar multiplier.

20 14. No later than 21 days after the Trustee's distribution(s) (if there is more than one  
21 distribution) that may be made on account of the Allowed Unsecured Claim, if any, Counsel for the  
22 Settlement Class shall file Post-Distribution Accounting consisting of the same information provided in  
23 the previous paragraph with respect to the Allowed Unsecured Claim and Unsecured Subclass  
24 members.

25 15. The Court finally approves Class Counsel's request for attorneys' fees of one-third of  
26 the Allowed Priority Claim, for a total of \$173,333.33 in fees, to be paid out of the distribution made  
27 on account of the Allowed Priority Claim. 5% of these attorneys' fees, in the amount of \$17,333.33,  
28 shall be held back until after the Post-Distribution Accounting on the Trustee's distribution on the

1 Allowed Priority Claim has been filed. Class Counsel shall submit a proposed Order at the time of the  
2 Post-Distribution Accounting approving final accounting and release of attorney fee hold-back to Class  
3 Counsel. The Court also finally approves Class Counsel's request for attorneys' fees of one-third of the  
4 distributions, if any, made on account of the Allowed Unsecured Claim, to be paid out distributions  
5 made, if any, on account of the Allowed Unsecured Claim. 5% of these attorneys' fees shall be held  
6 back until after the Post-Distribution Accounting on the Trustee's distribution on the Allowed  
7 Unsecured Claim has been filed. Class Counsel shall submit a proposed Order at the time of the  
8 second Post-Distribution Accounting approving final accounting and release of attorney fee hold-back  
9 to Class Counsel. The requested fee amounts are justified under the common fund doctrine, the range  
10 of awards ordered in this District and Circuit, the excellent results obtained, substantial risk borne by  
11 Class Counsel in litigating this matter, particular in light of the bankruptcy proceedings, the high  
12 degree of skill and quality of work performed, financial burden imposed by the contingency basis of  
13 Class Counsel' representation of Plaintiffs and the Settlement Class, and additional work required of  
14 them to bring this Settlement to conclusion. The Court finds the fees award further supported by the  
15 lodestar crosscheck, whereby it finds that HammondLaw, P.C.'s hourly rates and the hourly rates of  
16 bankruptcy co-counsel, Cole Schotz, P.C., are reasonable and the estimated hours expended are  
17 reasonable. In fact, Class Counsel's total fees are more than \$486,712. Thus, the Court applies a  
18 substantial negative multiplier to Class Counsel's lodestar in issuing this fee award.

19 16. The Court finally approves Class Counsel's request for costs in the amount of  
20 \$19,908 to be paid out of the distribution to be made on account of the Allowed Priority Claim. The  
21 Court finally approves Class Counsel's request for actual out-of-pocket costs of up to \$1,500 to be paid  
22 out of distributions, if any, that may be made on account of the Allowed Unsecured Claim.

23 17. The Court finally approves service awards of \$5,000 for each of the three named  
24 Plaintiffs and Class Representatives Sean Miner, David Heumann, and Shawna Admire to be paid out  
25 of the distribution to be made on account of the Allowed Priority Claim. The Court also finally  
26 approves service awards of \$5,000 for each of three named Plaintiffs and Class Representatives Sean  
27 Miner, David Heumann, and Shawna Admire from the Allowed Unsecured Claim to be paid out of  
28 distributions, if any, that may be made on account of the Allowed Unsecured Claim. The Court finds

that these awards are fair and reasonable for the work these individuals provided to the Settlement Class.

18. The Court finally approves and authorizes payment pursuant to California Private Attorneys General Act (“PAGA”) of \$20,000, to be paid out of the distribution to be made on account of the Allowed Priority Claim, representing payment of the PAGA penalties, with \$15,000 to be paid to the California Labor and Workforce Development Agency as its 75% share of the PAGA penalties, and the remaining 25% (\$5,000) to be paid to the Priority Subclass as part of the Allowed Priority Claim distribution.

19. Accordingly, GOOD CAUSE APPEARING, the Court hereby APPROVES the following implementation schedule:

|                                                                                                                                                                                                                                          |                                                                      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------|
| Trustee shall deposit into the Qualified Settlement Fund \$520,000 for the Allowed Priority Claim (10 days after the Settlement Effective Date as defined in the Settlement Agreement)                                                   | May 6, 2021                                                          |
| Settlement Administrator shall distribute the Allowed Priority Claim amount in accordance with the Settlement Agreement as soon as reasonably practicable                                                                                | May 20, 2021                                                         |
| Class Counsel shall report to the Court the amounts of uncashed checks and the cost associated with making a second distribution to the Priority Subclass Members                                                                        | November 30, 2021                                                    |
| Settlement Administrator shall complete a second distribution of uncashed checks or remit amounts of uncashed checks to the <i>cy pres</i> , as the Court shall order                                                                    | As soon as reasonably practicable and following entry of Court order |
| Trustee shall deposit, in the normal course of the Trustee’s administration of the Estate of ITT, into the Qualified Settlement Fund, the amount of the distribution, if any, that may be made on account of the Allowed Unsecured Claim | TBD                                                                  |
| Settlement Administrator shall distribute the amount of the distribution that was made on account of the Allowed Unsecured Claim, if any, in accordance with the Settlement Agreement as                                                 | TBD                                                                  |

|    |                                                           |                                                 |
|----|-----------------------------------------------------------|-------------------------------------------------|
| 1  | soon as reasonably practicable                            |                                                 |
| 2  | Class Counsel shall report to the Court the               | Within 14 days of the check cashing deadline    |
| 3  | amounts of uncashed checks and the cost                   |                                                 |
| 4  | associated with making a second distribution to           |                                                 |
| 5  | the Unsecured Subclass Members                            |                                                 |
| 6  | Settlement Administrator shall complete a                 | As soon as reasonably practicable and following |
| 7  | second distribution of uncashed checks or remit           | entry of Court order                            |
| 8  | amounts of uncashed checks to the <i>cy pres</i> , as     |                                                 |
| 9  | the Court shall order                                     |                                                 |
| 10 | Uncashed checks from the Allowed Unsecured                | TBD                                             |
| 11 | Claim sent to <i>cy pres</i> (6 months after mailing, or, |                                                 |
| 12 | in the event of a second distribution, 60 days            |                                                 |
| 13 | after second mailing)                                     |                                                 |

20. The Court hereby enters a final order in this case in accordance with the terms of the Settlement Agreement, Order Granting Preliminary Approval, and this Order.

21. There is no just reason for delay and this Order shall constitute a final, appealable order.

22. Plaintiffs and the Trustee shall bear their own costs and attorneys' fees, except as otherwise expressly provided for in the Settlement Agreement.

**IT IS SO ORDERED.**

Dated: \_\_\_\_ March 19, 2021 \_\_\_\_

  
 HON. VINCE CHHABRIA  
 UNITED STATES DISTRICT COURT