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

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

15 Plaintiffs,

16 vs.

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

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

~~PROPOSED~~ ORDER GRANTING
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT

Date: October 15, 2020

Time: 10:00 a.m.

Courtroom: 4 – 17th Floor

Judge: Hon. Vince Chhabria

Plaintiffs have filed a Motion for Preliminary Approval of the class action settlement reached with the chapter 7 Trustee for the Bankruptcy Estate of ITT Educational Services, *et al.*, Deborah J. Caruso (“Trustee”), a hearing on which was held on October 15, 2020. The Court’s scrutiny of the proposed Settlement has been as rigorous at the preliminary stage as it will be at the final approval stage. *See Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1036-37 (N.D. Cal. 2016). In accordance with that level of scrutiny, the Court has carefully considered the Settlement Agreement, all the filings related to the Settlement, including the Approval Order of the Bankruptcy Court, the arguments of counsel, and the record in this case. The Court hereby gives its preliminary approval of the Settlement; finds that the Settlement and Settlement Agreement are sufficiently fair, reasonable and adequate to allow dissemination of notice of the Settlement to the Settlement Class, including the Priority Subclass and the Unsecured Subclass, in accordance with the Settlement Agreement and this Order; and schedules a Final Approval Hearing to determine whether the proposed Settlement is fair, adequate and reasonable.

IT IS HEREBY ORDERED THAT:

I. PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

1. All defined terms contained herein shall have the same meanings as set forth in the Class Action Settlement Agreement executed by the Settling Parties and filed with this Court (the “Settlement Agreement”).

2. The Court finds that the requirement of Rules 23(a)(1)-(4), 23(b), 23(c)(4), and 23(e) of the Federal Rules of Civil Procedure have been satisfied for purposes of preliminary approval of the Class Action Settlement and the Settlement Agreement, such that notices of the Class Action Settlement and the Settlement Agreement should be directed to the Priority Subclass members and Unsecured Subclass members and a Final Approval Hearing should be set.

3. The Class Action Settlement and the Settlement Agreement are preliminarily approved by the Court.

II. FINDINGS REGARDING THE SETTLEMENT CLASS AND SUBCLASSES

4. The Settlement Class is defined as “All individuals who were at any time employed by ITT as adjunct instructors in California from January 12, 2012 through September 16, 2016.”

1 5. The Settlement Class consists of two Subclasses.

2 a. Priority Subclass consists of “each member of the Settlement Class employed by ITT as
3 an adjunct instructor in California at any time from March 20, 2016 through September
4 16, 2016.”

5 b. Unsecured Subclass consists of “each member of the Settlement Class employed by ITT
6 as an adjunct instructor in California at any time from January 12, 2012 through March
7 19, 2016.”

8 6. Pursuant to Fed. R. Civ. P. 23(a) and (b)(3), the Court certifies, for settlement purposes
9 only, the Settlement Class and the Subclasses.

10 7. The Court finds, for settlement purposes only, that the Action may be maintained as a
11 class action on behalf of the Settlement Class because:

12 a. Numerosity: Based on ITT’s records there are approximately 1,154 individuals who are
13 members of the Settlement Class, approximately 564 of whom are members of the Priority Subclass,
14 and approximately 1,136 of whom are members of the Unsecured Subclass. This satisfies the Rule
15 23(e)(1) numerosity requirement.

16 b. Commonality: The threshold for commonality under Rule 23(a)(2) is not high and a
17 single common issue will suffice. Plaintiffs allege, among other things, that the members of the
18 Settlement Class were paid on a piece-rate basis and ITT was therefore required under the California
19 Labor Code but failed to pay them separately and hourly for nonproductive time and rest break time.
20 Plaintiffs also alleged that, even if their fixed per course compensation is not considered a piece rate,
21 the members of the Settlement Class are also non-exempt as they earned less than the salary basis test
22 required for an employee to be exempt in California. *See* IWC Wage Order No. 4-2001, § 1. As a
23 result, ITT was required under the California Labor Code to pay them for all hours worked and to
24 provide them with off-duty rest breaks, which it also failed to do. Plaintiffs allege this creates a
25 uniform right to relief for all members of the Settlement Class.

26 c. Typicality: Named Plaintiffs’ claims are typical of the claims of the Settlement Class
27 members and satisfy Rule 23(a)(3).

28 d. Adequacy: There are no conflicts of interest between the Class Representatives and
Settlement Class members and Class Representatives have retained competent counsel and bankruptcy

1 co-counsel to represent the Settlement Class. Class Counsel regularly engages in complex litigation
 2 similar to the present case and have dedicated substantial resources to the prosecution of this matter.
 3 The adequacy requirement is satisfied.

4 e. Predominance and Superiority: there is predominance and superiority. A class action is
 5 superior to other available methods for the fair and efficient adjudication of this controversy. The
 6 common legal and factual issues listed in the preliminary approval papers all predominate over other
 7 issues. Resolution of the common question constitutes a significant part of Plaintiffs' and Settlement
 8 Class members' claims.

9 8. The Court appoints as class representatives, for settlement purposes only, named
 10 Plaintiffs Sean Miner, Shawna Admire, and David Heumann. The Court finds, for settlement purposes
 11 only, that the named Plaintiffs will adequately represent the Settlement Class.

12 9. Pursuant to Federal Rule of Civil Procedure 23(g), and for settlement purposes only, the
 13 Court designates as Class Counsel the law firm of HammondLaw, P.C. The Court preliminarily finds
 14 that, based on the work Class Counsel has done identifying, investigating, and prosecuting the claims
 15 in this Action; Class Counsel's experience in handling class actions and claims of the type asserted in
 16 this Action; and the resources Class Counsel has and will commit to representing the Class, that Class
 17 Counsel have represented and will represent the interests of the Settlement Class fairly and adequately.

18 **III. FINDINGS REGARDING THE CLASS ACTION SETTLEMENT AND THE** 19 **SETTLEMENT AGREEMENT**

20 10. Plaintiffs have provided sufficient information, including the Motion for Preliminary
 21 Approval and related submissions and presentations, "to allow the district court to carefully evaluate
 22 the strength of the claims, the risks of litigating those claims all the way through, and the value of the
 23 relief each class member will receive from the settlement." *Cotter*, 193 F. Supp. 3d at 1036-37. The
 24 proposed Class Action Settlement and the Settlement Agreement were reached between Plaintiffs and
 25 the Trustee for the Defendant ITT's bankruptcy estate. The Settlement provides a substantial benefit
 26 for the Priority Subclass, the members of which have a priority claim pursuant to section 507(a)(4) of
 27 the Bankruptcy Code for their unpaid wages incurred during the six-month period preceding the ITT's
 28 filing for bankruptcy. The Settlement also provides a substantial benefit in the form of an allowed

1 claim for the Unsecured Subclass, whose claims do not have priority in bankruptcy. The Settlement is
2 the product of intensive, thorough, serious, informed, and non-collusive negotiations assisted by the
3 Hon. Steven Rhodes (Ret.); has no obvious deficiencies; does not improperly grant preferential
4 treatment to the Class Representatives, or segments of the Subclasses; and is fair, reasonable, and
5 adequate. Accordingly, the Court has taken the Rule 23(e)(2) factors and applicable precedent into
6 account in finding that it will likely be able to approve the proposed Class Action Settlement and the
7 Settlement Agreement as fair, reasonable, and adequate.

8 **IV. NOTICE TO THE SETTLEMENT CLASS, INCLUDING PRIORITY SUBCLASS AND**
9 **UNSECURED SUBCLASS AND OPT OUT AND OBJECTION PROCEDURES**

10 11. The Court appoints Simpluris, Inc. as the Settlement Administrator, which shall
11 administer the Settlement in accordance with the terms and conditions of this Order and the Settlement
12 Agreement.

13 12. The Court finds that the proposed Class Notice (Exhibit 4 to the Settlement
14 Agreement) and the proposed plan of distribution of the Class Notice meets the requirement of Federal
15 Rule of Civil Procedure 23(c)(2)(B), and hereby directs the Settlement Administrator to proceed with
16 the notice distribution in accordance with the terms of the Settlement Agreement.

17 13. Any Settlement Class members who wish to opt out from the Settlement Agreement
18 must do so within 60 days following the date on which the Settlement Administrator first mails the
19 Class Notice and in accordance with the terms of the Settlement Agreement.

20 14. Any Settlement Class members who wish to object to the Settlement Agreement must
21 do so within 60 days following the date on which the Settlement Administrator first mails the Class
22 Notice and in accordance with the terms of the Settlement Agreement.

23 15. The Court finds that the Notice plan, including the form, content, and method of
24 dissemination of the Class Notices to the Settlement Class, including the Priority Subclass and the
25 Unsecured Subclass, as described in the Settlement Agreement, is the best practicable notice, is
26 reasonably calculated under the circumstances to apprise the Settlement Class members of the
27 pendency of the lawsuits and the Settlement and of their right to object to or exclude themselves from
28 the proposed Settlement. The Court finds that it is reasonable and constitutes due, adequate, and

1 sufficient notice to all persons entitled to receive notice, and meets all applicable requirements of
 2 Federal Rules of Civil Procedure 23 and due process.

3 16. The Court approves the procedures set forth in the Settlement Agreement and the
 4 notices of Settlement of Class Action for exclusion from and objections to the Settlement.

5 **V. FINAL APPROVAL HEARING**

6 17. The Court directs a hearing be scheduled on February 18, 2021 at 10:00 a.m.
 7 (the “Final Approval Hearing”) to assist the Court in determining whether the Settlement is fair, reasonable
 8 and adequate; whether the claims asserted in this California Class Action and the Adversary
 9 Proceeding should be dismissed with prejudice; whether Class Counsel’s application of fees and
 10 expenses from the Allowed Priority Claim, including fees and expenses of bankruptcy co-counsel,
 11 should be approved; whether Class Counsel’s request for service awards to the Class Representatives
 12 from the Allowed Priority Claim should be approved; and whether the payment of penalties pursuant
 13 to PAGA to the LWDA from the Allowed Priority Claim should be approved. Plaintiff shall file a
 14 motion for final approval of the Settlement no later than 14 days before the Final Approval Hearing.

15 18. Plaintiffs may file motions for attorneys’ fees, costs, and class representative service
 16 awards from the Allowed Priority Claim. Such motions shall be filed no later than 14 days before the
 17 deadline for objecting to the settlement.

18 19. If the Settlement is not finally approved, including approval of the California District
 19 Court Settlement Components as defined in the Settlement Agreement, is terminated under its terms, or
 20 if the Settlement Effective Date does not occur, then the Parties will return to status quo ante as of the
 21 date of the Settlement Agreement, as if no Agreement had been negotiated or executed. The Parties
 22 shall be deemed to have preserved all of their rights and defenses of any kind that they may have had
 23 against each other and any other person.

24 20. The Court directs that the following deadlines are established by this Preliminary
 25 Approval Order:

- 26 a. Notice Date: 30 days of this Preliminary Approval Order
- 27 b. Opt-out Deadline: 60 days after the Notice Date
- 28 c. Objection Deadline: 60 days after the Notice Date

d. Final Approval Hearing: February 18, 2021 at 10:00 a.m.

IT IS SO ORDERED.

Dated: October 15, 2020



HON. VINCE CHHABRIA
UNITED STATES DISTRICT COURT