

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:)
)
ITT EDUCATIONAL SERVICES, INC., *et al.*,¹) Case No. 16-07207-JMC-7A
)
Debtors.) Jointly Administered

**NOTICE OF TRUSTEE’S MOTION TO
COMPROMISE AND SETTLE ADVERSARY PROCEEDING NO. 17-50101**

PLEASE TAKE NOTICE that on May 7, 2019, Deborah J. Caruso, the chapter 7 trustee in this case (the “Trustee”), filed the *Trustee’s Motion To Compromise and Settle Adversary Proceeding No. 17-50101* (the “Motion”) [Doc 3391]. The Motion requests entry of an order, pursuant to 11 U.S.C. §§ 105(a) and 363 and Rule 9019 of the Federal Rules of Bankruptcy Procedure, approving the terms of a proposed settlement by and between the Trustee, not individually but solely in her capacity as Chapter 7 trustee for, and acting for and on behalf of, the Debtors, and each of the Debtors’ respective bankruptcy estates, on the one hand, and Student CU Connect CUSO, LLC, The Rochdale Group, Inc., Elements Financial Federal Credit Union (formerly known as Eli Lilly Federal Credit Union), Bellco Credit Union, Credit Union of America, Directions Credit Union, Veridian Credit Union, Workers Credit Union and CommunityAmerica Credit Union, on the other hand, which settlement is embodied in a certain settlement agreement, a copy of which is attached to the Motion (the “Settlement Agreement”).² A copy of the Motion, which includes the Settlement Agreement, may be accessed through the case website at: <https://omnimgt.com/ITT>, and through the website maintained by class counsel for the Student Class at: <https://predatorystudentlending.org/cases/itt/>.

The Settlement Agreement generally provides as follows:

- a. The Settlement Agreement will not become effective until all of the following conditions precedent have occurred: (i) all of the Parties have executed the Settlement Agreement; (ii) the Trustee and the CUSO Parties have agreed upon the language of the Motion, and the Motion has been served and filed in accordance with the Bankruptcy Code, Rules, S.D.Ind. B-2002-1(c) and the Case Management Procedures, including: (I) by serving the Motion on the Core Group, the Request for Notice List, and the Appearance List (all as defined in the Case Management Procedures), (II) by serving this notice on all CUSO Borrowers, all Students who have opted out of the Student Class, and all creditors who have filed claims in the Bankruptcy Case, with the exception of those claims that have been

¹ The debtors in these cases, along with the last four digits of their respective federal tax identification numbers, are ITT Educational Services, Inc. [1311]; ESI Service Corp. [2117]; and Daniel Webster College, Inc. [5980] (the “Debtors”).

² Capitalized terms used but not otherwise defined herein shall have the meanings used in the Settlement Agreement.

disallowed as of the date of service of the Motion, (III) by serving the Motion on the Legal Services Center of Harvard Law School and Jenner & Block LLP, as class counsel for the Student Class, and (IV) by posting this notice on the Rust Omni website for the Bankruptcy Case (<https://omnimgt.com/ITT>) and the website maintained by class counsel for the Student Class (<https://predatorystudentlending.org/cases/itt/>); (iii) the Bankruptcy Court has entered an order approving the Settlement Agreement substantially in the form of the proposed order, which order has become final and not appealable; and (iv) the CUSO's understandings with certain governmental entities, as referenced in the Settlement Agreement, have become effective, and the CUSO Parties have received releases, acceptable to the CUSO Parties, from those governmental entities.

- b. Within 5 days after the Effective Date of the Settlement Agreement, the Trustee and the CUSO will deliver a joint letter to Chase that, among other things, directs Chase to pay **\$7,521,625.00** from the Collateral Account to the Trustee; to pay the balance of the funds in the Collateral Account to the CUSO; and, thereafter, to close the Collateral Account.
- c. Within 5 days after the Effective Date, the Trustee will file with the Bankruptcy Court a joint stipulation dismissing the Adversary Proceeding with prejudice.
- d. The CUSO will have an allowed general unsecured claim in the amount of \$127,844,857 (which constitutes a 15% reduction of the amount claimed by the CUSO, as adjusted) against each of the Debtors in the Bankruptcy Case, which claim will not be subject to challenge or objection and will receive treatment *pari passu* with all other allowed general unsecured claims.
- e. The Trustee will not attempt, directly or indirectly, to service, to enforce or to collect the Loans, and irrevocably delegates to the CUSO, and waives and relinquishes, any right, authority or power, if any, she may have with respect to the Loans and the servicing and collection of the Loans. The Trustee acknowledges that the CUSO has the full right, authority and power to discontinue the collection of all outstanding Loans and to direct the Credit Report Deletions, and consents to the CUSO doing so.
- f. Except for the rights, claims, duties and obligations created by the Settlement Agreement, the Trustee, in her capacity as defined above and also including without limitation on behalf of each of the Debtors, and the Debtors' professionals, agents, affiliates and creditors (*e.g.*, the Students) (the "Debtor-Releasing Parties"), releases and discharges the CUSO Parties and their respective professionals, agents and affiliates, from any and all manner of actual, potential or alleged claims, litigations, actions, causes of action, defenses, rights of setoff, demands, suits, arbitrations, debts, obligations, damages (compensatory, punitive or otherwise), liabilities, losses, costs, expenses, attorneys' fees, controversies, accounts and liens of every kind or nature whatsoever, whether asserted or unasserted, known or unknown, suspected or unsuspected, fixed or contingent,

statutory, common law, in contract, tort or otherwise, secured or unsecured, accrued or unaccrued, direct, derivative, or brought in any other capacity, that the Debtor-Releasing Parties ever had, may now or may hereafter have, arising from the beginning of time to the Effective Date, against any or all of the released parties that arise out of, relate to or are in connection with the Disputes.

- g. Except for the rights, claims duties and obligations created by the Settlement Agreement, and except for the CUSO's rights as set forth in (d) above, the CUSO Parties, on behalf of themselves and their respective professionals, agents and affiliates, release and discharge the Trustee, the Debtors, and the Debtors' professionals, agents, affiliates and creditors (*e.g.*, the Students), from any and all manner of actual, potential or alleged claims, litigations, actions, causes of action, defenses, rights of setoff, demands, suits, arbitrations, debts, obligations, damages (compensatory, punitive or otherwise), liabilities, losses, costs, expenses, attorneys' fees, controversies, accounts and liens of every kind or nature whatsoever, whether asserted or unasserted, known or unknown, suspected or unsuspected, fixed or contingent, statutory, common law, in contract, tort or otherwise, secured or unsecured, accrued or unaccrued, direct, derivative, or brought in any other capacity, that the releasing parties ever had, may now or may hereafter have, arising from the beginning of time to the Effective Date, against any or all of the released parties that arise out of, relate to or are in connection with the Disputes.
- h. The Trustee will take all reasonable steps to secure from the Bankruptcy Court a final and non-appealable order permanently enjoining all Debtor-Releasing Parties from (i) commencing, conducting or continuing, directly or indirectly, any litigation, suit, arbitration, action or other proceeding against any of the CUSO Parties arising out of, relating to or in connection with the Loans or the Program, and (ii) enforcing (including without limitation by setoff, subrogation or recoupment), levying, attaching, collecting or otherwise recovering, directly or indirectly, any judgment, award, decree or order against any of the CUSO Parties that arises out of, relates to or is in connection with the Loans or the Program.

NOTICE IS GIVEN that, pursuant to the *Order Establishing Certain Notice, Case Management and Administrative Procedures and Approve Proposed Form 309D* (the "Case Management Procedures") [**Doc 220**], any objection to the Motion must be in writing and filed with the Bankruptcy Clerk by no later than **4:00 p.m.** (prevailing Eastern time) on **June 5, 2019**. Those not required or not permitted to file electronically must deliver any objection by U.S. mail, courier, overnight/express mail or in person at:

116 U.S. Courthouse
46 East Ohio Street
Indianapolis, IN 46204

The objecting party must also serve a copy of the written objection upon the Trustee's counsel, at Counsel for Trustee Deborah J. Caruso, Rubin & Levin, P.C., 135 N. Pennsylvania Street, Suite

1400, Indianapolis, IN 46204. **If an objection is NOT timely filed, the requested relief may be granted without a hearing.**

NOTICE IS FURTHER GIVEN that in the event an objection to the Motion is timely filed, a hearing will be conducted on **June 12, 2019** at **1:30 p.m.** (prevailing Eastern time), in Room 325 of the United States Courthouse, 46 East Ohio Street, Indianapolis, IN 46204.

Dated: May 7, 2019
Indianapolis, Indiana

Respectfully submitted,

/s/ Jeff J. Marwil
Jeff J. Marwil (admitted *pro hac vice*)
PROSKAUER ROSE LLP
70 West Madison, Suite 3800
Chicago, Illinois 60602-4342
Telephone: (312) 962-3550
Facsimile: (312) 962-3551

/s/ Deborah J. Caruso
Deborah J. Caruso (Atty. No. 4273-49)
John C. Hoard (Atty. No. 8024-49)
James E. Rossow Jr. (Atty. No. 21063-29)
Meredith R. Theisen (Atty. No. 28804-49)
RUBIN & LEVIN, P.C.
135 N. Pennsylvania Street, Suite 1400
Indianapolis, Indiana 46204
Telephone: (317) 634-0300
Facsimile: (317) 263-9411

–and–

Timothy Q. Karcher (admitted *pro hac vice*)
Steven H. Holinstat
PROSKAUER ROSE LLP
Eleven Times Square
New York, New York 10036
Telephone: (212) 969-3000
Facsimile: (212) 969-2900

Co-counsel to the Trustee

Co-counsel to the Trustee