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
	)	
ALLEN FEDERMAN, JOANNA CASTRO and CHRISTOPHER BOWERMAN on behalf of themselves and all others similarly situated,	)	Adv. Proceeding No. 16-50296
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
DEBORAH J. CARUSO, AS THE CHAPTER 7 TRUSTEE FOR THE BANKRUPTCY ESTATE OF ITT EDUCATIONAL SERVICES, INC.,	)	
	)	
Defendant.	)	

PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS AND INCENTIVE AWARDS TO CLASS REPRESENTATIVES AND CONTRIBUTING CLASS MEMBERS

Plaintiffs Allen Federman, Joanna Castro and Christopher Bowerman, on behalf of themselves and all others similarly situated ("Plaintiffs"), by their counsel, hereby move the Court for entry of an Order awarding Class Counsel attorney's fees and costs in connection with the prosecution and successful resolution of this action, and incentive awards to each of the three Class Representatives in recognition of their valuable service to the Class (the "Motion). Additionally, Plaintiffs request that the Court grant incentive awards to two class members,

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

Amanda Mendez and Sandra Delevante, for their significant contributions on behalf of the Class in this action.

In support of the Motion, Plaintiffs state that Plaintiffs' Counsel are entitled to the award of attorneys' fees and reimbursement of expenses in the amounts requested as a result of having created a substantial monetary fund for the benefit of the Class. In further support of this motion, Plaintiffs rely upon the record in this Action, the Settlement Agreement filed on January 24, 2022 as Exhibit 1 to the Joint Motion to Compromise and Settle Claims of WARN Act Class Action Pursuant to F.R.B.P. 9019 and 7023 (Bankr. Dkt 4563_2), the accompanying memorandum of law submitted in support of the Motion, Declaration of René S. Roupinian, Declaration of Allen Federman, Declaration of Joanna Castro, Declaration of Christopher Bowerman, Declaration of Amanda Mendez, and Declaration of Sandra Delevante.

WHEREFORE, Plaintiffs respectfully request that the Court enter an Order granting their Motion for Award of Attorneys' Fees and Costs and Incentive Awards to Class Representatives and Contributing Class Members.

Dated: February 11, 2022

Respectfully submitted,

/s/ Jack A. Raisner

Jack A. Raisner
René S. Roupinian
RAISNER ROUPINIAN LLP
270 Madison Avenue, Ste. 1801
New York, NY 10016
Telephone/Fax: (212) 221-1747
jar@raisnerroupinian.com
rsr@raisnerroupinian.com

-and-

Anthony R. Jost
RILEY BENNETT EGLOFF LLP
141 East Washington St., 4th Floor
Indianapolis, IN 46204

Telephone: (317) 636-8000
Facsimile: (317) 636-8027
Email: TJost@RBELAW.com

Counsel for Plaintiffs and the Class

CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2022, a copy of the foregoing *Plaintiffs'* Motion for *Award of Attorneys' Fees and Costs and Incentive Awards to Class Representatives and Contributing Class Members* was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

Joshua W. Casselman jcasselman@rubin-levin.net, angie@rubin-levin.net;atty_jcasselman@bluestylus.com
James E Rossow jim@rubin-levin.net, ATTY_JER@trustesolutions.com;mralph@rubin-levin.net
U.S. Trustee ustpregion10.in.ecf@usdoj.gov

I further certify that on February 11, 2022, a copy of the foregoing *Plaintiffs'* Motion for Award of Attorneys' Fees and Costs and Service Awards to Class Representatives and Contributing Class Members was sent via first-class U.S. Mail, postage prepaid and properly addressed to the following:

None.

/s/ Jack A. Raisner
Jack A. Raisner

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
	)	
ALLEN FEDERMAN, JOANNA CASTRO and CHRISTOPHER BOWERMAN on behalf of themselves and all others similarly situated,	)	Adv. Proceeding No. 16-50296
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
DEBORAH J. CARUSO, AS THE CHAPTER 7 TRUSTEE FOR THE BANKRUPTCY ESTATE OF ITT EDUCATIONAL SERVICES, INC.,	)	
	)	
Defendant.	)	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS AND INCENTIVE AWARDS TO CLASS REPRESENTATIVES AND CONTRIBUTING CLASS MEMBERS

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

I. INTRODUCTION

When this matter was filed in 2016, a national university, ITT Educational Corp. and its affiliates ("Defendants," "ITT" or "Debtors"), had recently shuttered in a high-publicity bankruptcy, leaving thousands of employees without jobs and thousands of students without a school. Class Counsel expected that the litigation could be protracted and even if Plaintiffs won on the merits, there may be insufficient funds for recovery against the Debtors' estates. After successfully obtaining appointment as interim class counsel over several other law firms that had filed actions for similar claims, Class Counsel went on to represent thousands of Class Members in this case, eventually reaching a settlement with the Chapter 7 Trustee. The instant motion, in accord with *Class Action Settlement and Release Agreement* (the "Class Action Settlement" or "Settlement") filed in connection with the *Joint Motion to Compromise and Settle Claims of WARN Act Class Action Pursuant to F.R.B.P. Rule 9019 and 7023* (Bankr. Case No. 16-07207-JMC-7A, Doc. 4563), seeks the Court's approval of attorneys' fees and costs, and incentive awards to the Class Representatives and Contributing Class Members. In support of the requested relief, Class Counsel submits the record in this case, the Declaration of Jack A. Raisner (Exh. A), Declaration of Allen Federman (Exh. B), Declaration of Joanna Castro (Exh. C), Declaration of Christopher Bowerman (Exh. D), Declaration of Amanda Mendez (Exh. E), and Declaration of Sandra Delevante (Exh. F) and states as follows:

II. BACKGROUND

1. On September 16, 2016 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code. The Trustee was appointed interim trustee in each of the Debtors' bankruptcy cases on the Petition Date pursuant to section 701(a)(1) of the Bankruptcy Code. The Trustee became the case trustee in each of the Debtors'

bankruptcy cases following the conclusion of the first meeting of creditors on November 1, 2016, pursuant to section 702(d) of the Bankruptcy Code.

2. On October 4, 2016, the Court entered its *Order Granting Motion for Joint Administration of Chapter 7 Cases* [Doc. 221-222], directing the Debtors' bankruptcy cases to be jointly administered for procedural purposes only in Case No. 16-07207 (the "Bankruptcy Case").

3. Prior to the Petition Date, ITT was a public, for-profit corporation engaged in the business of providing post-secondary degree programs in approximately thirty-nine states and through on-line services. ESI and DWC are subsidiaries of ITT. ITT had at least fourteen (14) campuses located in California.

A. WARN Claims Asserted Against ITT.

4. On September 16, 2016, the Plaintiffs filed their *Class Action Adversary Proceeding Complaint for Violation of WARN Act 29 U.S.C. § 2101, et seq. and California Labor Code §§ 1400, et seq.* (the "Complaint") [AP Doc 1] in Adversary Proceeding No. 16-50296 (the "Adversary Proceeding"). The Complaint named ITT as the sole defendant.

5. On January 30, 2017, the Plaintiffs filed in each of the Debtors' bankruptcy cases (Case Nos. 16-07207, 16-07208, and 16-07209), class proofs of claim, Claim Nos. 2610, 550, and 451, which included as an attachment a copy of the Complaint filed in the Adversary Proceeding (the "Class POC"). Pursuant to the Class POC, the Plaintiffs asserted a priority claim pursuant to section 507(a)(4) of the Bankruptcy Code in the aggregate amount of $10,000,000.00 and no prepetition general unsecured claim. The Plaintiffs thereafter withdrew their Class POC against DWC on June 17, 2021.

6. On September 20, 2016, Dennis Artis, Donna A. Lindsay, and Patricia Marshall, on their own behalf and on behalf of a putative class of others similarly situated (the "Putative Artis Class"), filed a *Class Action Adversary Proceeding Complaint for (1) Violation of the WARN Act 29 U.S.C. § 2101, et seq. and (2) State Wage Payment Laws* [AP Doc 1] in an action entitled *Artis, et al. v. ITT Educational Services, Inc.* in Adversary Proceeding No. 16-50298. Prior to the Petition Date, the Putative Artis Class filed the same class claims against ITT on September 7, 2016, in the United States District Court for the District of Delaware, Case No. 16-cv-00790. On December 28, 2020, the Putative Artis Class filed notice of voluntary dismissal and the district court case was closed. In addition, on September 20, 2016, the Putative Artis Class filed a class proof of claim in this Court based on ITT's alleged violations of the WARN Act and State Wage Payment Laws (the "Artis POC").

7. On September 23, 2016, Christina M. Long, on her own behalf and on behalf of a putative class of others similarly situated (the "Putative Long Class"), filed a class proof of claim based on ITT's alleged violations of the WARN Act (the "Long POC"). Attached to the Long POC is the *Class Action Complaint* [Doc 1] filed prior to the Petition Date by the Putative Long Class on September 7, 2016, in the United States District Court, Southern District of Indiana, Case No. 1:16-cv-02399, in an action entitled *Long et al. v. ITT Educational Services, Inc.* On March 31, 2017, the *Long et al. v. ITT Educational Services, Inc.* action was referred to this Court and the district court case was administratively closed.

8. On September 7, 2016, Ruby Blackwell, individually and on behalf of all others similarly situated, filed a *Class Action Complaint and Demand for Jury Trial* against ITT and Doe Defendants 1-10, in the United States District Court, Central District of Illinois, Springfield Division, Case No. 3:16-cv-03249-SEM-TSH, alleging violations of the WARN Act (the

"Putative Blackwell Class"). On February 12, 2020, with the consent of plaintiff Ruby Blackwell, the United States District Court dismissed and closed the Putative Blackwell Class action.

9. On September 22, 2016, Randy Mosele, individually and on behalf of others similarly situated, filed a *Class Action Complaint* against ITT, in the United States District Court, Eastern District of Louisiana, Case No. 2:16-cv-14883-KDE, alleging violations of the WARN Act (the "Putative Mosele Class").

10. On February 23, 2017, the New York State Department of Labor filed a proof of claim (Claim No. 2978) against ITT alleging violations of the New York State WARN Act (the "NYS DOL POC").

11. On January 20, 2017, the Court entered an order appointing Outten & Golden LLP as interim class counsel to represent all of the putative WARN claimants in this case, including all those with federal and/or state law WARN[2] claims. (Bankr. Case No. 16-07207-JMC-7A, Doc. 981).

12. On May 1, 2019, the Court entered its *Order Granting Joint Motion Between Deborah J. Caruso, Chapter 7 Trustee of ITT Educational Services, Inc., and Putative Class Representatives Allen Federman, Joanna Castro and Steven Ryan et al to (1) Proceed with WARN Act Claims and its State Law Analogues in a Single Adversary Proceeding and (2) Dismiss All Other Proceedings and Contested Matters Involving the Same Claims* (the "Single Adversary Order") [Doc 3364]. Pursuant to the Single Adversary Order, all WARN claims were

[2] "WARN" for purposes of this motion and the Class Action Settlement refers generally to the federal Worker Adjustment and Retraining Notification Act (29 U.S.C. § 2101, *et seq.*) and any and all state WARN laws similar to the federal WARN Act.

required to be litigated in the Adversary Proceeding brought by the Plaintiffs. Accordingly, the adversary proceeding initiated by the Putative Artis Class was dismissed, the Artis POC was withdrawn, and the Long POC was withdrawn.

B. The Adversary Proceeding.

13. On May 30, 2019, the Trustee was substituted as the named defendant in the Adversary Proceeding. On August 14, 2019, the Plaintiffs filed in the Adversary Proceeding their *First Amended Class Action Adversary Proceeding Complaint for Violation of WARN Act 29 U.S.C. § 2101, et seq. and California Labor Code §§ 1400, et seq.* [AP Doc 36]. It substituted Plaintiff Christopher Bowerman for Plaintiff Steve Ryan. On September 4, 2019, the Trustee filed *Trustee's Answer an Affirmative and Additional Defenses to Plaintiffs' First Amended Class Action Adversary Proceeding Complaint for Violation of WARN Act 29 U.S.C. § 2101, et seq. and California Labor Code §§ 1400, et seq.* [AP Doc 37], wherein the Trustee denied many of the Plaintiffs' allegations and raised numerous defenses.

14. On January 6, 2020, counsel for the Plaintiffs filed their *Notice of Change of Law Firm Affiliation* [AP Doc 44], pursuant to which they advised they were no longer affiliated with Outten & Golden LLP and were now affiliated with Raisner Roupinian LLP.

15. On June 8, 2020, the Court entered its *Order Certifying a Class and Subclass and Granting Related Relief* (the "Class Certification Order") [AP Doc 54] in the Adversary Proceeding. The Class Certification Order certified the following class and subclass of claimants:

> **WARN Class:** Plaintiffs and other similarly situated employees of ITT Educational Services, Inc. (i) who worked at or reported to one of ITT Educational Services, Inc.'s facilities, (ii) who were terminated from employment on or about September 6, 2016, or within 30 days of that date, as a result of a mass layoff or plant closing ordered by ITT Educational Services, inc. on or about September 6, 2016, (iii) who are "affected

employees" within the meaning of 29 U.S.C. § 2101(a)(5), and (iv) who have not filed a timely request to opt-out of the class (the "WARN Class").

California WARN Sub-Class: All persons who were "employees" of ITT Educational Services, Inc. within California as defined in Cal. Labor Code § 1400(h), (i) who were terminated without cause on or about September 6, 2016, or within 30 days of that date, as a result of mass layoffs and/or terminations ordered by ITT Educational Services, Inc. o or about September 6, 2016 and (ii) who have not filed a timely request to opt-out of the class (the "WARN Subclass").

The WARN Class and the WARN Subclass are collectively referred to herein as the "Settlement Class." Pursuant to the Class Certification Order, the Court also appointed Raisner Roupinian LLP as Class Counsel for all WARN claimants ("Class Counsel") and appointed the Class Representatives as class representatives for all WARN claimants.

16. Following the Court's Order granting Class Certification, the parties spent several months exchanging information to determine the makeup of the Class. On October 21, 2020, the Court entered its *Order Establishing Former ITT Sites That Are Not WARN or California WARN Covered Based on Headcount and Without Considering Potential Exclusions* (the "Excluded Sites Order") [AP Doc 58] in the Adversary Proceeding, granting the Parties' *Joint Motion to Establish Former ITT Sites That Are Not WARN or California WARN Covered Based on Headcount and Without Considering Potential Exclusions* (the "Excluded Sites Motion") [AP Doc 57]. Pursuant to the Excluded Sites Order, the Court held that the WARN claims of all WARN Class and WARN Subclass members, except those listed on Exhibits 1 and 2 of the Excluded Sites Motion, were precluded as a matter of law because they did not work at or report to former ITT sites that employed enough employees to be WARN covered.

17. On May 24, 2021, the Court entered its *Order Establishing Additional Former ITT Sites That Are Not Federal WARN or California WARN Covered* (the "Additional Excluded Sites Order") [AP Doc 67] in the Adversary Proceeding, granting the Parties' *Joint Motion to*

Establish Additional Former ITT Sites That Are Not Federal WARN or California WARN Covered (the "Additional Excluded Sites Motion") [AP Doc 64]. Pursuant to the Additional Excluded Sites Order, the Court held that the WARN claims of all WARN Class and WARN Subclass members, except those listed on Exhibit 1 of the Additional Excluded Sites Motion, were precluded as a matter of law because they did not work at or report to former ITT sites that employed enough employees to be WARN covered.

18. After the Court's entry of the Excluded Sites Order and the Additional Excluded Sites Order, at most, 27 former ITT sites had the potential to be WARN covered and only the employees who worked at or reported to these sites had potentially viable WARN claims. All other former ITT sites were not large enough to be WARN covered and thus the WARN claims of the employees who worked at or reported to these sites were barred as a matter of law. The 27 potentially covered sites included the following:

> Fort Lauderdale (68), Lake Mary (23), Mobile (112), Philadelphia (152), Portland (33), Torrance (38), Richardson (96), Clovis (61), Springfield (35), Corona (133), Tampa (40), Lathrop (93), Norfolk (58), Oxnard (79), Houston North (25), San Dimas (41), Houston South (45), Rancho Cordova (37), Jacksonville (67), Headquarters (610), Online (211), Orange (47), National City (39), San Bernardino (31), Sylmar (42), Troy (20), and Baton Rouge (108).

19. Thereafter, the Parties reached an agreement that ITT's former Troy (20) and Baton Rouge (108) sites did not employ enough employees to be WARN covered and the claims of the former employees who worked at or reported to these sites were precluded as a matter of law. This reduced the number of potential WARN covered sites to 25. The employee rosters of Settlement Class members at these remaining 25 sites are attached as Exhibit 1 to the Class Action Settlement.

20. Pursuant to the Court's *Order Granting Trustee's Motion to Refer Adversary Proceeding to Mediation* [AP Doc 25], the Parties selected the Honorable David H. Coar (Ret.), a panelist with Judicial Arbitration and Mediation Services, Inc. (JAMS), as mediator. [*Notice of Selection of Mediator*, AP Doc 28.] On November 2, 2021, Judge Coar conducted a mediation at which the Parties reached a settlement in principle, subject to the necessary Court approvals, as set forth in the Class Action Settlement.

21. Under the terms of the Class Action Settlement, the Trustee has agreed to the allowance of a claim, pursuant to sections 507(a)(4) and (5) of the Bankruptcy Code, in favor of the Affected Site Class Members in the amount of $10,000,000 on an "all-in" non-reversionary basis, which shall be inclusive of all attorneys' fees, expenses, incentive awards, all costs of administration, and the employees' share of payroll taxes (the "Allowed Priority Claim") (Doc. 4563_2).

III. AUTHORITY

A. The Seventh Circuit Awards Attorneys' Fees as a Percentage of the Common Fund.

22. Under the "common-fund" doctrine, class counsel that obtains a settlement or judgment creating a commonly held fund for the benefit of the class is entitled to a reasonable fee drawn from that fund, calculated as a percentage of the fund. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (fee awards in common fund cases should be a percentage of the recovered fund); *Gaskill v. Gordon*, 160 F.3d 361, 365 (7th Cir. 1998) ("it is commonplace to award the lawyers for the class a percentage of the fund, in recognition of the fact that most suits for damages in this country are handled on the plaintiffs side on a contingent-fee basis."). A common fund recovery spreads the costs and risk of litigation among those who might benefit. *See, Gaskill v. Gordon*, 942 F. Supp. 382, 385 (N.D. Ill. 1996) ("[t]he purpose of allowing fees to

be paid from a common fund is to spread the costs of litigation proportionately among the class members benefitted by the lawsuit.").

23. In the Seventh Circuit, the percentage-of-recovery approach is not only permitted, but also the preferred approach to determining attorneys' fees. *Hale v. State Farm Mutual Automobile Insurance Company,* No. 12-0660-DRH, 2018 WL 6571138, at *8 (S.D. Ill. Dec. 13, 2018) ("the percentage method is employed by "the vast majority of courts in the Seventh Circuit"), *citing Beesley v. Int'l Paper Co.*, No. 3:06-CV-703-DRH-CJP, 2014 WL 375432, at *2 (S.D. Ill. Jan. 31, 2014); *Will v. General Dynamics*, No. 06-cv-698-GPM, 2010 WL 4818174, at *2 (S.D. Ill. Nov. 22, 2010) ("The Seventh Circuit Court of Appeals uses a percentage basis rather than a lodestar or other basis when determining a reasonable fee"). In this case, Plaintiffs and Class Counsel undertook litigation that, upon the Court's approval of the Settlement, will result in a significant benefit for all Settlement Class members. A common fund fee award is therefore appropriate in this case.

B. "Synthroid I" Factors

24. Based on the Seventh Circuit's clear directives, this Court's task is to determine what Plaintiffs and their Counsel would have negotiated as the fee prior to commencement of this litigation ("ex ante"), had they been in a position to do so, at the "market rate." In *Synthroid I*, the Court discussed factors the Court may examine in determining the applicable market rate. These are: (1) the risk of nonpayment; (2) the quality of performance by class counsel; (3) the amount of work necessary to resolve the litigation; and (4) the stakes in the case. *In re Synthroid Mktg. Litig. ("Synthroid I")*, 264 F.3d 712, 721 (7th Cir. 2001). In addition, the Court may also consider the results achieved when compared with similar cases. *Taubenfeld v. AON Corp*., 415 F.3d 597, 599-600 (7th Cir. 2005).

25. To grant a fee petition in a class action settlement, the Seventh Circuit requires the district court simply to determine whether the fee requested is within the range of fees that would have been agreed to at the outset of the litigation in an arm's length negotiation in light of the risk of nonpayment and the normal rate of compensation in the market at the time. *See Synthroid Mktg. Litig.*, 264 F.3d at 718. In common fund cases, "the measure of what is reasonable [as an attorney fee] is what an attorney would receive from a paying client in a similar case." *Montgomery v. Aetna Plywood, Inc*., 231 F.3d 399, 408 (7th Cir. 2000). The Court should therefore "ascertain the appropriate rate for cases of similar difficulty and risk, and of similarly limited potential recovery." *Kirchoff v. Flynn*, 786 F.2d 320, 326 (7th Cir. 1986). Here, a contingent fee is appropriate in this case because it was negotiated at arms-length at the outset of the litigation, and the one-third contingency amount is reasonable given the quality of legal services provided and risk assumed by Class Counsel.

26. Class Counsel agreed to pursue the claims in this case on a contingency fee basis of one-third, as well as advancing costs of litigation. This is customary in the Seventh Circuit. *Florin v. Nationsbank of Georgia, N.A.,* 34 F.3d 560, 566 (7th Cir.1994)(The percentage method is employed by "the vast majority of courts in the Seventh Circuit (like other Circuits)," rather than the lodestar method); *Beesley*, 2014 WL 375432, at *2 ("When determining a reasonable fee, the Seventh Circuit Court of Appeals uses the percentage basis rather than a lodestar or other basis."); *Hale*, 2018 WL 6606079, at *10 ("Courts within the Seventh Circuit, and elsewhere, regularly award percentages of 33.33% or higher to counsel in class action litigation."); *Gaskill*, 160 F.3d at 362 (noting that typical contingency fees are between 33% and 40%) (citation omitted); *Kolinek v. Walgreen Co*., 311 F.R.D. 483, 500 (N.D. Ill. 2015) (recognizing that "courts in this circuit regularly allow attorneys to recoup one-third of the first $10 million of the

class action settlement fund" and rejecting request by objecting class members to utilize the lodestar approach).

27. Where the market for legal services in a class action is only for contingency fee agreements, and there is a substantial risk of nonpayment for the attorneys, "the normal rate of compensation in the market at the time" is a contingent fee in the amount of one-third (1/3) of the common fund recovered." *In re Ready-Mixed Concrete Antitrust Litig*., No. 05-0979, 2010 WL 328291, at *3 (S.D. Ind. Aug. 17, 2010) (awarding 33.3% of common fund), *citing Sutton v. Bernard,* 504 F.3d 688, 692 (7th Cir.2007); *Hale,* 2018 WL 6606079, at *13 (awarding attorneys' fees of one-third of $250 million common fund).

28. The Seventh Circuit itself has specifically noted that the typical contingent fee is between 33 and 40 percent. Awards of 33.3% and more are common in this District. *See, e. g., Campbell v. Advantage Sales & Mktg. LLC*, No. 09-01430, 2012 WL 1424417, at *2 (S.D. Ind. Apr. 24, 2012) (awarding one-third of recovery as attorneys' fees); *Heekin v. Anthem Inc.,* No. 1:05–cv–01908–TWP–TAB, 2012 WL 5878032, at *2 (S.D. Ind. Nov. 20, 2012) (awarding attorneys' fees of 33.33% of $90 million common fund and overruling objection calling for sliding scale approach); *Harzewski v. Guidant Corp*., No. 05-1009, Doc. 193 (S.D. Ind. Sept. 10, 2010) (awarding 38% of the common fund). *See also, Martin v. Caterpillar Inc.,* No. 07-CV-1009, 2010 WL 11614985, at *2 (C.D. Ill. Sept. 10, 2010) (awarding one third of $16.5 million common fund); *Gaskill*, 160 F.3d at 362 (38% contingency fee award in $20 million settlement); *Young v. Cnty. of Cook*, No. 06-CV-552, 2017 WL 4164238, at *6 (N.D. Ill. Sept. 20, 2017) (awarding 33.33% of $52 million common fund and overruling objections calling for sliding scale approach); *Spano v. Boeing Co*., No. 06-cv-743-NJR-DGW, 2016 WL 3791123, at *2 (S.D. Ill. Mar. 31, 2016) (awarding one third of $57 million common fund); *In re Dairy Farmers*

of Am., Inc., 80 F.Supp.3d 838, 845-47 (N.D. Ill. 2015) (awarding one third of $46 million common fund); *Standard Iron Works v. ArcelorMittal, No.* 08CV-5214, 2014 WL 7781572, at *1 (N.D. Ill. Oct. 22, 2014) ("The Court finds that a 33% fee [of $163.9 million common fund] comports with the prevailing market rate for legal services of similar quality in similar cases."); *City of Greenville v. Syngenta Crop Prof., Inc*., 904 F. Supp. 2d 902, 908-09 (S.D. Ill. 2012) (awarding one-third of $105 million settlement plus roughly $8.5 million in costs and noting that "[w]here the market for legal services in a class action is only for contingency fee agreements, and there is a substantial risk of nonpayment for the attorneys, the normal rate of compensation in the market is 33.33% of the common fund recovered.").

29. A lodestar cross-check is not required in this Circuit. *Heekin v. Anthem Inc.,* 2012 WL 5878032, at *2 (In the Seventh Circuit, "consideration of a lodestar check is not an issue of required methodology"), *citing Williams,* 658 F.3d at 636. *George v. Kraft Foods Global, Inc*., No. 08-3799, slip op. at 5 (N.D. Ill. June 26, 2012) ("The use of a lodestar cross-check has fallen into disfavor"). Thus, the Court could properly end its analysis at this point and award attorneys' fees as a percentage of the gross recovery of one third of the common fund. *Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 636 (7th Cir. 2011) ("consideration of a lodestar check is not an issue of required methodology").

30. An additional reason to approve the contingency agreement here is that not only does a percentage-of-recovery fee emulate the marketplace, but it has the additional effect of conserving judicial resources. Percentage fees are simple to calculate, are not subject to manipulation, and do not require the Court to "second-guess" each and every decision made by counsel in the course of a complex case. *Gaskill*, 942 F. Supp. at 386 (noting that the percentage method saves the Court's time by not requiring review of time records and provides an "effective

way of determining whether the hours expended were reasonable"), *aff'd,* 160 F.3d 361 (7th Cir. 1998).

31. Here, the Plaintiffs and Class Counsel negotiated at arm's length a contract for legal services on a one-third contingency basis, an amount that is supported by Seventh Circuit law. As set forth in the Declaration of Jack A. Raisner ("Decl. of J. Raisner", Ex. A), Class Counsel has litigated all its WARN cases on a contingency basis of approximately one-third of the potential recovery and has been awarded that percentage in every case in which a WARN class settlement was approved. *Dubkinski v. Sentry Insurance Mutual Company*, 2015 WL 13640103, at *3 (N.D. Ind. May 28, 2015) ("Class Counsel has shown the Court that they have routinely been awarded a contingent 33 1/3% of a Settlement Fund, and that their standard contracts, including the contract in this case with the Plaintiff, routinely provide for a contingent 33 1/3% fee."). For the Court's reference, Class Counsel's lodestar through February 9, 2022 is $1,492,126.00, which represents 2488 hours of time. (Decl. of J. Raisner, ¶ 28).

32. By accepting this case on a contingency basis, Class Counsel took on the risk of non-payment, a risk which was very real. The Debtors are bankrupt entities, a fact that increases exponentially the risk of non-payment. As a gating issue, fierce opposition has been mounted against an employee's right to even file a WARN lawsuit in bankruptcy. This issue has been the subject of appeals in Class Counsel's practice, including the U.S. Circuit Court of Appeals for the Fifth Circuit. *Teta v. TWL Corp., et al.*, 712 F.3d 886 (5th Cir. 2013). Moreover, the priority level treatment under the Bankruptcy Code, of any awarded WARN damages, is itself a complex matter. To resolve it in one case, Class Counsel had to receive a grant of certiorari and prevail in the U.S. Supreme Court. *Czyzewski v. Jevic Holding Corp*., 137 S.Ct. 973, 197 L.Ed.2d 398 (2017). WARN cases in bankruptcy proceedings thus present a formidable thicket of

confounding legal and factual issues that must be navigated, given the complexity of the nexus of laws.

33. Bankruptcy WARN litigation also adds an array of "political" concerns not often found in District Court litigation. In bankruptcy, where there are many creditors seeking the same limited funds, the non-defendant opponents to the WARN claims are numerous. They are all parties of interest with the right to object. Here, Plaintiffs and Class Counsel had to know how to confront and navigate this additional variable. Finally, Plaintiffs' ability to overcome these obstacles would have come to naught, had the estate proved to be asset-less.

34. Class Counsel took a significant risk in litigating this case. There is great uncertainty in the law governing WARN Act litigation, especially in bankruptcy. There are just a few substantive court decisions interpreting the California mini-WARN Act (where many Class Members reside and worked). (Decl. of J. Raisner, ¶ 12).

35. Even if Plaintiffs won at trial, it was virtually certain that trial would have been followed by post-trial motions as well as an appeal to the Seventh Circuit and the possibility of a petition for a writ of certiorari with a bankruptcy estate whose assets are dwindling each year. Given the ever-evolving legal and political landscape, an appeal posed a significant risk. (Decl. of J. Raisner, ¶ 13).

36. While litigation outcomes are unknown in every litigation, and the risk of a zero outcome is always present, there is greater risk in bankruptcy. Here, there was risk of a Pyrrhic victory because the bankruptcy estate may not have sufficient funds to pay creditors anything. (Decl. of J. Raisner, ¶ 13). Ironically, even if it would have had sufficient funds at the outset, the estate's expenditure of defense costs in the WARN litigation would have dissipated its assets and turned it into the proverbial "melting ice cube." The reality is that Debtors' estate had limited

funds to pay unsecured creditors, and Debtors asserted several defenses which posed a risk of the Class receiving nothing. The harder Plaintiffs sought to establish their meritorious claims, the greater they increased their risk of receiving nothing for the Class. (Decl. of J. Raisner, ¶¶ 13-14). In other words, Plaintiffs or Debtors could have prevailed in motion practice, at trial or on appeal, resulting in no relief for Class Members.

37. This action presents numerous novel legal issues that could preclude Plaintiffs from certifying a class, prevailing on liability, or recovering monetary damages. For these reasons, the risks of litigation were real, and Class Counsels' willingness to take on this case weighs in favor of granting the request for attorneys' fees.

38. The requested percentage of one-third is appropriate given the quality of the legal services provided. Here, the results were strong. The settlement will result in a $10 million common fund to be distributed on a pro rata basis to class members. Class Counsel's estimates of the maximum potential damages in this case was over $18 million. The settlement represents a recovery of more than 50%, which is significant given that Debtors are bankrupt. (Decl. of J. Raisner, ¶ 24).

39. Based on the results of this resolution, Class Counsel submits that its performance had to be of high quality in order to achieve the settlement. Class Counsel had to first obtain the Court's appointment as interim class counsel over several other plaintiffs' firms. It did so by showing to the Court's satisfaction that it was the best able to represent the putative class. The Class and Class Counsel had the capacity and the willingness to risk the expense of a lengthy battle in bankruptcy court that could have, potentially, resulted in no recovery. It is appropriate to compensate that risk with a commensurate award, so that firms will be appropriately incentivized

to take on risk to pursue cases that, if brought one-by-one, would be overly burdensome for the Court system, promoting the purpose of class litigation under Federal Rule 23.

40. The work necessary to resolve this litigation was substantial and spanned more than five years. WARN Act cases are complex. There are many threshold coverage issues. In this case, there are two WARN laws at bar with differing standards, the federal WARN Act and California's state WARN Act. Debtors asserted that ITT's campuses were not covered by the federal WARN Act, which requires sites to have at least 50 full-time employees. Part-time adjunct instructors comprised the lion's share of each of ITT's campuses, and the vast majority of the sites had fewer than 100 employees in all. Critically, ITT did not keep track of the hours that adjunct instructors worked outside of the classroom, where they generally taught between 3-7 hours per week. It was ostensibly impossible to determine whether Debtors were correct, without taking a deep dive into the number of hours each of these thousands of adjuncts worked. Class Counsel spent many hours analyzing documentary data, interviewing former employees, and had numerous discussions with the Class Representatives and Contributing Class Members to investigate these issues. (Decl. of J. Raisner, ¶¶ 7-11) (Decl. of Amanda Mendez, ¶¶ 8-10). (Decl. of S. Delevante, ¶ 7). The secondary issue affected the California sites, namely, whether they qualified under the California WARN Act as a "covered establishment," an issue that has never been clearly explained by a court. Many of the California campuses in this cases were thus on the "bubble" and would slide in or out of coverage based on this issue (Decl. of J. Raisner, ¶ 12).

41. Class Counsel, in advocating on behalf of the Plaintiffs and Class, had to draw on their knowledge and skills obtained over 30 years prosecuting WARN claims in bankruptcy and district courts. (Decl. of J. Raisner, ¶ 3). There are fewer than a handful of law firms in the

country that have litigated more than a dozen WARN cases, and only two, other than Class Counsel, that have litigated nearly 200. None have obtained more reported court decisions than Class Counsel. The skilled advocacy Class Counsel utilized in resolving this complex case – with a minimum of discovery-heavy litigation – is, therefore, uncommon. It provided value by safeguarding due process and assets for creditors. Class Counsel submit that their skill and experience conferred efficiencies and benefits to the Class, and to the bankruptcy estate and stakeholders. (Decl. of J. Raisner, ¶¶ 3, 14, 16, 22).

42. The stakes in this case were high. The potential class numbered in the thousands of former employees of Debtors, all of whom lost their jobs when ITT shuttered and filed for bankruptcy. Had Class Counsel litigated this case ineffectively, those thousands of former employees would have been left with little to no recourse of any relief from the Bankruptcy Court. As detailed in the Declaration of Jack A. Raisner, Class Counsel faced five significant hurdles to a successful outcome. (Decl. of J. Raisner, ¶¶ 6-13). First, the Debtors asserted the WARN Act affirmative defense of "unforeseeable business circumstances" because of the Department of Education's edict in August 2016 that barred ITT from enrolling more students. If credited, that defense would foreclose any recovery. (Decl. of J. Raisner, ¶ 6). Second, Debtors asserted that nearly all of ITT's campuses were not covered by the federal WARN Act, which requires at least 50 full-time employees at a site. ITT's campuses were largely made up of part-time adjunct instructors, and the vast majority of the sites had fewer than 100 employees in all. Critically, ITT did not keep track of the hours that adjunct instructors worked outside of the classroom, so delving into this issue required skill, time, and efficiency in order to preserve resources of Class Counsel and Debtors. (Decl. of J. Raisner, ¶¶ 7-8). Third, in order to include adjuncts as eligible in WARN's campus coverage headcount, Plaintiffs had to prove that those

adjuncts worked 20 or more hours per week, and six months out of the 12 months preceding the layoffs, either by combing through ITT's archived systems to uncover a document, database or other evidentiary source, or by interviewing hundreds of adjuncts and other knowledgeable persons. (Decl. of J. Raisner, ¶ 9). Fourth, Plaintiffs needed to show at the outset that the federal WARN Act campuses were covered by having 50 or more full-time employees who suffered a job loss. This criteria required Class Counsel to determine whether the September job losses could be aggregated with a layoff that occurred in July 2016, a few months before ITT's shuttering. In short, the litigation now involved two layoffs, not just one, and entailed a whole new set of document and deposition discovery - virtually a second lawsuit within a lawsuit. Moreover, an issue of whether California campuses would be covered under the California WARN Act was an open issue that has never been resolved by a court and brought additional uncertainty into this case. (Decl. of J. Raisner, ¶¶ 11-12). Fifth, all of Class Counsel's efforts may ultimately be for naught, as Debtors are Chapter 7 debtors with limited resources, thus the likelihood of recovery after potentially years of discovery, litigation and appeals was very real. (Decl. of J. Raisner, ¶ 13).

43. A final indicator of quality is the clients' satisfaction with the outcome. Plaintiffs are satisfied with the quality of the legal services rendered by Class Counsel, and that they support a fee award equal to one-third of the common fund. (Decl. of A. Federman, ¶ 9)(Decl. of J. Castro, ¶ 9), (Decl. of C. Bowerman, ¶ 9).

44. For all the foregoing reasons, the Court should award attorneys' fees of one-third of the common fund.

C. Approval of Costs

45. Reimbursement of reasonable costs and expenses to counsel who create a common fund is both necessary and routine. Fed. R. Civ. P. 23(h). The expenses that may be reimbursed from the common fund are not limited to those taxed in a judgment against an opponent, but instead, encompass "all reasonable expenses." *In re Ready-Mixed Concrete Antitrust Litig.*, No. 05-00979, 2010 WL 3282591, at *3 (S.D. Ind. Aug. 17, 2010) (approving request for reimbursement of "expenses that are customarily charged to clients in the market for legal services," which "are normally recovered from a settlement fund net of attorneys' fees"); *Heekin v. Anthem Inc.,* 2012 WL 5878032, at *5.

46. Class Counsel has advanced the amount of $50,054.95 in unreimbursed expenses to date. (Decl. of J. Raisner, ¶ 30). The amount advanced is reasonable because Class Counsel proceeded on a contingent-fee basis with a high risk of no recovery. Class Counsel had a strong interest to not incur excessive expenses. *Beesley*, 2014 WL 375432, at *3 ("Class Counsel incurred these expenses over the course of over seven years. Further, the fact that Class Counsel does not seek interest as compensation for the time value of money or costs associated with advancing these expenses to the Class makes this fee request all the more reasonable.")

47. Here, the costs are largely attributable to ordinary and necessary costs, such as retention of local counsel, filing fees, costs incurred in connection with legal research, and mediation costs. See *In re Cont'l Sec. Litig*., 962 F.2d 566, 570 (7th Cir. 1992) (finding error in district court's decision not to reimburse class counsel for LEXIS and Westlaw expenses). As described in the Raisner Declaration, Class Counsel expects to spend additional resources in connection with disbursing the settlement, including searching for Class Members who have relocated since their employment with ITT.

48. The Court should, therefore, award Class Counsel's litigation costs in an amount not to exceed $60,000.

D. Incentive Awards to Class Representatives and Contributing Class Members

49. A named plaintiff is an essential ingredient of any class action. *Edwards v. Key 2 Recovery Inc.,* No. 1:18-cv-03170-RLY-DLP, 2020 WL 4005080, at *10 (S.D.Ind. Feb. 28, 2020). Therefore, an incentive award is appropriate if it is necessary to induce an individual to participate in the suit. *Id.* In deciding whether an incentive award is proper and, if so, in what amount, "relevant factors include the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation." *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998).

50. At the conclusion of a successful class action case, it is common for courts, exercising their discretion, to award special compensation to the class representatives in recognition of the time and effort they have invested for the benefit of the class, which usually includes providing information to counsel, reviewing and approving pleadings, assisting with discovery, preparing for and/or attending a deposition, and participating in settlement discussions. See *Williams v. Rohm & Haas Pension Plan*, No. 04-0078, 2010 WL 4723725, at *2 (S.D. Ind. Nov. 12, 2010) ("Because a named plaintiff plays a significant role in a class action, an incentive award is appropriate as a means of inducing that individual to participate in the expanded litigation on behalf of himself and others."). Such awards to class representatives generally are paid out of the common fund recovery, and that is what Plaintiffs suggest here.

51. The Settlement Agreement provides for incentive awards of $25,000.00 each to the three Class Representatives, Allen Federman, Joanna Castro, and Christopher Bowerman for

their significant work representing a class of thousands of their former co-workers. Additionally, Contributing Class Members Amanda Mendez and Sandra Delevante devoted significant time assisting in the litigation. (Decl. of Jack A. Raisner, ¶¶ 16-20) (Decl. of Amanda Mendez, 7-9) (Decl. of S. Delevante, ¶ 7). Accordingly, Class Counsel asks that they be awarded $10,000.00 each for their service on behalf of the Class.

52. Awards of $25,000 for a named plaintiff award are within the ranges that have been approved in class action settlements in the Seventh Circuit. *See, e.g., Cook v. Niedert*, 142 F.3d at 1016 (upholding incentive award of $25,000 to class representative); *Hale v. State Farm Mut. Auto. Ins*. Co., No. 12-cv-660-DRH, 2018 WL 6606079, at *15 (S.D. Ill. Dec. 16, 2018) (awarding $25,000 incentive awards to each of three class representatives); *Will v. General Dynamics*, No. 06-CV-698-GPM, 2010 WL 4818174, at *4 (S.D. Ill. Nov. 22, 2010) (awarding $25,000 to each of the three named plaintiffs); *Nolte v. Cigna Corp*., No. 07-2046, Doc. 413 at 9 (C.D. Ill. Oct. 15, 2013) (awarding $25,000 to each of five named plaintiffs); *Cook v. McCarron*, No. 92-CV-7042, 1997 WL 47448, at *19 (N.D. Ill. 1997) (approving $25,000 incentive award).

53. The Class Representatives have earned the proposed incentive awards. They retained Class Counsel to commence this action at a point when they had just been terminated from their employment with Debtors. Plaintiffs agreed to file a federal lawsuit in a highly publicized bankruptcy that is searchable on the internet and may become known to prospective employers when evaluating the person. Plaintiffs agreed to initiate the class action as named Plaintiffs at a point when their futures were uncertain and employment prospects potentially dimmed by suing their former employer.

54. Plaintiffs performed important services for the benefit of the Class in commencing the litigation and assisting Class Counsel in preparing for mediation which resulted

in resolution. They expended time and effort to assist with the preparation of the Complaint, the application for appointment as interim class counsel, the declarations in support of the motion for class certification and spent significant time speaking to Class Counsel to prepare for mediation. Plaintiffs assisted with informal discovery and provided counsel with relevant documents in their possession. (Decl. of Jack A. Raisner, ¶ 21) (Decl. of A. Federman, ¶ 7) (Decl. of C. Bowerman, ¶ 7) (Decl. of J. Castro, ¶ 7). This case consumed over five years of the Plaintiffs' time. The Class Representatives diligently worked with counsel to develop their claims as this case was initially filed along with several other plaintiffs who filed competing class actions. The Class Representatives assisted their counsel to obtain appointment as interim class counsel at the outset.

55. Class Representative Christopher Bowerman's assistance in this case was critical because he was the sole adjunct instructor among the Plaintiffs and Contributing Class Members. (Decl. of Jack. Raisner, ¶ 20). Not only did he represent all the adjuncts globally, but his campus also turned out to be one of the vast majority that did not meet the WARN threshold based on Class Counsel's investigation. Mr. Bowerman presented his views and suggestions always with an eye towards the fate of the thousands of employees who, like himself, would have to be reconciled to the loss of their claims. Class Representatives Allen Federman and Joanna Castro were also indispensable. (Decl. of J. Raisner, ¶ 21). Mr. Federman was able to represent the Indianapolis administrative sites and Ms. Castro, the few large California campuses. As fact witness, they were important resources in providing information about the July 2016 layoff of campus recruiters. They supplemented Class Counsel's many interviews with administrative officers in the field and in Indianapolis. *Id.*

56. Contributing Class Members Amanda Mendez and Sandra Delevante also assisted in the litigation of this case. Even though they were not Class Representatives, both spent significant time speaking with Class Counsel to provide information regarding the issues in dispute, including the single site of employment, part-time and full-time distinction for certain employees, and the makeup of the class. They participated in the all-day mediation that resulted in this settlement. (Decl. of J. Raisner, ¶¶ 16-20) (Decl. of A. Federman, ¶ 10) (Decl. of C. Bowerman, ¶ 10) (Decl. of J. Castro, ¶ 10) (Decl. of A. Mendez, ¶¶ 7-9) (Decl. of S. Delevante, ¶ 7). Their willingness to assist in this matter and to volunteer their time greatly contributed to the settlement that will benefit the class.

57. In consideration of their efforts and time spent, which took them away from their job searches and other personal commitments, and the benefits they conferred to the Class, an incentive award of $25,000 to each Class Representative and $10,000 to each Contributing Class Member is a fair and reasonable amount.

58. In light of their efforts in bringing this action, their assistance in the bankruptcy and district court litigation, and the limited funds in Defendant's bankruptcy estate, the requested incentive award of $25,000 to each Class Representative and $10,000 to each Contributing Class Member is reasonable and justified.

CONCLUSION

59. For all the reasons stated herein, Class Counsel respectfully requests that the Court enter an Order granting the Motion for Award of Attorneys' Fees and Costs and Incentive Awards to Class Representatives and Contributing Class Members.

Dated: February 11, 2022

Respectfully submitted,

/s/ Jack A. Raisner

Jack A. Raisner
René S. Roupinian
RAISNER ROUPINIAN LLP
270 Madison Avenue, Ste. 1801
New York, NY 10016
Telephone/Fax: (212) 221-1747
jar@raisnerroupinian.com
rsr@raisnerroupinian.com

-and-

Anthony R. Jost
RILEY BENNETT EGLOFF LLP
141 East Washington St., 4th Floor
Indianapolis, IN 46204
Telephone: (317) 636-8000
Facsimile: (317) 636-8027
Email: TJost@RBELAW.com

Counsel for Plaintiffs and the Class

EXHIBIT A

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
	)	
ALLEN FEDERMAN, JOANNA CASTRO and CHRISTOPHER BOWERMAN on behalf of themselves and all others similarly situated,	)	Adv. Proceeding No. 16-50296
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
DEBORAH J. CARUSO, AS THE CHAPTER 7 TRUSTEE FOR THE BANKRUPTCY ESTATE OF ITT EDUCATIONAL SERVICES, INC.,	)	
	)	
Defendant.	)	

DECLARATION OF JACK A. RAISNER IN SUPPORT OF PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS AND INCENTIVE AWARDS TO CLASS REPRESENTATIVES AND CONTRIBUTING CLASS MEMBERS

Jack A. Raisner hereby declares the following under penalty of perjury:

1. I am a partner at Raisner Roupinian LLP, and I actively litigate cases on behalf of employees under the WARN Act.

2. This declaration is submitted in support of the Plaintiffs' Motion for award of attorneys' fees and costs, and for incentive awards to the three class representatives and two contributing class members.

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

3. I incorporate by reference the prior declarations submitted in support of *Plaintiffs' Motion Pursuant to Fed.R. Bankr.P. 7023(g) for Appointment of Interim Class Counsel and Related Relief* (Doc. 12_3) and *Plaintiffs' Motion for Class Certification* (Doc. 33_7) detailing the qualifications of Class Counsel. To summarize, Raisner Roupinian LLP is a law firm dedicated to representing employees affected by mass layoffs and shutdowns[2]. The four attorneys at Raisner Roupinian LLP, who have litigated WARN cases for more than 30 years (combined) in district and bankruptcy courts, have brought the breadth of their knowledge and experience to this case, including an assessment of the reality of litigating against a bankruptcy debtor or trustee defendant. Together, we have served as class counsel in more than 150 WARN class actions, representing tens of thousands of employees.

4. The federal and California WARN Acts are complex statutes. Their scopes are narrowed by fact-intensive qualifications and defenses. Recoveries are limited to circumstances that oft-times are imprecise. In this knotty case, the stakes were unusually high. ITT terminated close to 8,000 employees at once without notice, giving rise to potential WARN Act claims amounting to many tens of millions of dollars. Yet, Debtors asserted there was no liability and that, at most, only one of its over 140 academic campuses was covered by the federal WARN Act. The clash in the legal sphere spilled into the pragmatics. On the one hand, the Class deserved to have their claims prosecuted vigorously until proved otherwise, especially given their magnitude. On the other hand, the Chapter 7 estate had a duty to conserve its resources and resist spending millions of dollars on the e-discovery, consultants, experts, and litigators to rid

[2] Prior to Raisner Roupinian LLP, René Roupinian and I were partners and co-chairs of the WARN Practice Group at Outten & Golden LLP. On January 20, 2017, the Court entered an order appointing Outten & Golden LLP as interim class counsel. (Bankr. Case No. 16-07207-JMC-7A, Doc. 981). In January 2020, we formed the firm of Raisner Roupinian LLP and filed a *Notice of Change of Law Firm Affiliation* [Doc. 44], pursuant to which we advised the Court that we were no longer affiliated with Outten & Golden LLP and are now affiliated with Raisner Roupinian LLP.

the guesswork from a fair reconciliation. The Class, too, shared an interest in avoiding a Pyrrhic victory.

5. Given the lose-lose scenario both sides faced, Class Counsel drove the case by utilizing its knowledge of WARN and experience in distressed defendant litigation. It developed an evidence-based legal foundation built upon the class members' own knowledge and documents, together with Debtors' basic employee database and teaching schedules. The idea was to slice the knot and obtain a level of due process and clarity that big-ticket litigation affords, but without the expense. Over a span of five years, Class Counsel relied on the industriousness of its own staff and dozens - and at times hundreds - of class members, while Debtors avoided steep litigation costs. During this period, the Class and Class Counsel bore the ever-present risk of receiving nothing for their efforts.

6. Five particularly difficult challenges threatened any class recovery. First, Debtors asserted the WARN Act affirmative defense of "unforeseeable business circumstances." If credited, it would foreclose any recovery. Debtors asserted that what unforeseeably caused the September 6, 2016 mass layoff was the death-knell edict of the U.S. Department of Education. It had been issued just two weeks earlier on August 25th. The edict prohibited ITT from enrolling any more students. Debtors argued that the edict came as a complete surprise because nothing in the DOE's statements and actions presaged it. The effect of this defense was to force Plaintiffs to show that, to the contrary, the DOE's announcement on August 25th was probable. That would necessitate the examination of thousands of pages of documents and perhaps dozens of witnesses to discern whether the announcement was merely possible or probable. Such litigation often takes years of discovery and motion practice and, often, appeals. Until those steps were exhausted, Plaintiffs would be under a constant threat that its efforts were for naught.

7. Second, Debtors asserted that ITT's campuses were not covered by the federal WARN Act. The Act covers only sites which have at least 50 full-time employees. Part-time adjunct instructors comprised the lion's share of each of ITT's campuses, and the vast majority of the sites had fewer than 100 employees in all. Thus, Debtors could argue that only one academic campus was covered, out of the more than 140. Critically, ITT did not keep track of the hours that adjunct instructors worked outside of the classroom, where they generally taught between 3-7 hours per week. It was ostensibly impossible to determine whether Debtors were correct, without taking a deep dive into the number of hours each of these thousands of adjuncts worked.

8. That person-by-person litigation threatened to throttle the estate financially, on the one hand, and Plaintiffs' bid for class treatment, on the other. To count adjuncts as eligible in WARN's campus coverage headcount - they had to have worked 20 or more hours per week, and six months out of the 12 months preceding the layoffs. Plaintiffs had to ultimately prove that the out-of-class hours were substantial. But Plaintiffs had to prove that there existed at each campus a significant number of adjuncts whose out-of-class workload was many times larger than their recorded teaching hours. Moreover, to obtain and maintain class certification, Plaintiffs needed to comb through Debtors' archived systems to uncover a document, database or other evidentiary source that would reveal these missing hours in "one fell swoop" i.e., a common body of evidence to show those out-of-class hours. Otherwise, Debtors argued, that to evince these hours required that each adjunct be queried under cross examination in separate hearings. Even if this could be done, Plaintiffs could not be confident of achieving a positive outcome in this case, given no one could know for sure what the evidence, once amassed would ultimately say.

9. Third, the only certainty regarding the adjuncts' hours was that to seek them through Debtors' stored electronic data would require IT engineers to determine what still existed in ITT's digital systems and applications. Then an extraction process would have to be developed that would then require assembling the data on an accessible platform for review. That would entail more consultants, technicians, and service providers. The expenses and fees for dealing with the data would be enormous. But it would be just the start, for more consultants and experts would be needed to "crunch" the data to determine whether it "says" anything that would be probative - and then to interpret what it "says." Certainly, Plaintiffs would not know whether the expense might be justified until the final outcome. Meanwhile, the estate argued that Plaintiffs should shoulder the entire expense because a Chapter 7 estate should not bear such crushing expenditures.

10. Fourth, even if Plaintiffs would be able to prove some campuses might be covered by the WARN Act, any recovery stood to be undermined by two further issues.

11. While Plaintiffs needed to show at the outset that the federal WARN Act campuses were covered by having 50 or more full-time employees, Plaintiffs also had to show that ultimately 50 or more such employees suffered a job loss from each campus. This second criteria upended many - if not most of the campuses that met the first criteria. Plaintiffs argued that the September job losses could be aggregated under the WARN Act with a layoff of campus recruiters that occurred in July 2016, a few months before ITT's shuttering. Together they generated sufficient job losses to meet the 50-employee quota. In short, the litigation now involved two layoffs, not just one. It entailed a whole new set of document and deposition discovery - virtually a second lawsuit within a lawsuit. This complex hybrid issue of fact and law would certainly require motion practice, if not appeals, with added uncertainty and cost.

12. Moreover, a secondary issue also bedeviled the California campuses. The California WARN Act's key jurisdiction issue - the requisite size of a "covered establishment" - has been the subject or warring interpretations among lawyers, but it has never been resolved by a court. Many of the California campuses here were on the "bubble" and would slide in or out of coverage based on this issue. The parties were on a path to move this Court to make a first-impression determination of the meaning of the California WARN Act with the points of authority or reference so scarce, it might call for the State's highest court to opine. Here, again, the Class and Class Counsel were put at risk - without any assurance of success.

13. Fifth, and finally, were Debtors a well-healed corporate defendant, or even a financed Chapter 11 estate, the costs and risks of protracted litigation might have been economically feasible. But few if any Chapter 7 debtors can be expected to finance years of complex defensive litigation, no less pay a judgment at the end of such cost litigation, that justified the expense and effort.

14. Given the mountains of expense and risk that stood unrecoverable against the Chapter 7 estate, Class Counsel had to devise an alternative method to get at the truth, uphold due process, and preserve the estate. To do that, it had to rely not on the ordinary levers of litigation, but on its own leg work, its understanding of the WARN Act, and extraordinary efforts of the Class Representatives and many class members.

15. Class Counsel had to "crunch" Debtors' data set of 10,000 employees into a readily usable, efficient data base. Class counsel regularly communicated with the hundreds of ITT employees who had personally retained Class Counsel, to begin amassing a library of documents and knowledge that would replicate years of formal, adversarial paper and deposition discovery.

16. Class Counsel interviewed approximately 25 of its retained clients who were ITT academic deans or campus directors. Class Counsel developed questionnaires and surveys for this cadre of deans. The task was crosschecked and elucidated the key documents that Debtors were able to produce - the master list of employees and two years of teaching schedules.

17. This was an arduous task. The group of deans pored over the thousands of pages of teaching schedules of all the instructors over a one-year period to verify the information and spur recollections of the adjuncts they hired, evaluated, and supervised. Class Counsel composed lists of dozens of activities and tasks required of adjuncts. Sandra Delevante, the dean of the Springfield, Virginia campus, and Amanda Mendez of the Owings Mills, Maryland campus were among the most experienced witnesses, conversant in ITT's institution-wide practices, and responsive. They rose to the task of providing extensive information and materials with no assurance that their campuses would qualify or that they might be rewarded for their efforts. Over time it became clear that Ms. Delevante's campus might be one of the few to be potentially covered, while Ms. Mendez's campus would not. Thus, they represented the two groups of campuses - those with and those without judiciable claims. They nevertheless continued to seek the best outcome possible for the Class under the law.

18. Class Counsel was able to obtain representative documentation of ITT's campus-wide approach to instructional management from dean Amanda Mendez. She trained and managed adjuncts at two campuses, and so possessed examples of the relevant electronic and paper documentation of ITT's processes, applications and systems used to orient, train, monitor, rehire, and reward (or discipline) adjuncts, including instructional aids, syllabi, policies, manuals, videos of training sessions, evaluation forms, and other materials. Together, these represented the near totality of the official and unofficial tasks that ITT's adjuncts performed.

19. Amanda Mendez and Sandra Delevante explained in detail how these systems and processes were utilized at their campus - and how managing deans and ITT's centralized systems incentivized, cajoled, and rated adjuncts into being more productive. Ms. Mendez attested to the common bodies of evidence that revealed how many hours adjuncts did, in fact, work in completing the task required of them, which supported Plaintiffs' successful motion on class certification.

20. Class Counsel conferred with Deans Delevante and/or Mendez with respect to virtually every material issue, factual issue, and strategic decision made in the litigation. Class Counsel also regularly cross-checked its understanding and findings with Plaintiff Class Representative Christopher Bowerman. His input was critical because he was the sole adjunct instructor among the Plaintiffs, Contributing Class Members, and brain trust. Not only did he represent all the adjuncts globally, but his campus also turned out to be one of the vast majority that did not meet the WARN threshold based on Class Counsel's investigation. Thus, he personally represented the thousands of employees who would reasonably demand that Class Counsel leave no stone unturned in advocating for WARN coverage however faint the hope. Mr. Bowerman presented his views and suggestions always with an eye towards the fate of the thousands of employees who, like himself, would have to be reconciled to the loss of their claims. He was a steady-handed guide relied on by Class Counsel.

21. Plaintiff-Class Representatives Federman and Castro were also indispensable. Without them, the Class would not have had a foothold in the few sites potentially able to survive the headcount defenses (but not the unforeseeable circumstances defense). Mr. Federman was able to represent the Indianapolis administrative sites and Ms. Castro, the few large California campuses. As fact witnesses, they were important resources in connection with

the July 2016 layoff of campus recruiters (see paragraph 11, above). From their vantage point as administrators, both in the large campus and in headquarters, they were able to elucidate the state of affairs at ITT when this layoff occurred, by describing its purposes, how it occurred, and how it affected operations. They supplemented Class Counsel's many interviews with administrative officers in the field and in Indianapolis. They also kept abreast of all the significant developments in the case, as well as contributing declarations and responding to discovery.

22. In these ways, Class Counsel mined the energies and knowledge of the Class Representatives, Contributing Class Members, and dozens of other deans, campus directors and class members. This produced a body of evidence which enabled decisive but painful, decisions to be made, without taxing the resources of the Debtors or the Court. It gave Class Counsel the basis on which to bring the expectations of roughly 70% of the class members' claims, whose claims would be negated, into accord with the law and facts without compromising due process. This conferred a savings on the estate. And it also eliminated the inestimable risk of recovery for the qualifying class members, who like Class Counsel could have come away empty-handed.

23. The parties' mediation resulted in their reaching a settlement that will result in a common fund of $10 million that will be distributed on a pro rata basis to over 2,600 class members.

24. As a result of discovery, the maximum damages for the eligible class members were approximately $18 million. The settlement amount of $10 million represents more than 50% of their maximum WARN damages.

25. Class Counsel seeks one-third of the common fund, net of expenses and incentive payments to the Class Representative and Contributing Members. In over 150 WARN actions, we have never been denied an application for attorneys' fees of one-third of the common fund.

Class Counsel in this matter took a significant risk of non-payment by continuing to litigate. *Martin v. Caterpillar Inc.*, 07-CV-1009, 2010 WL 11614985, at *5 (C.D. Ill. Sept. 10, 2010). Class Counsel "had no sure source of compensation for their services." *Lambrecht v. Taurel*, 1:08-CV-68-WTL-TAB, 2010 WL 2985946, at *3 (S.D. Ind. June 8, 2010), *report and recommendation adopted,* 1:08-CV-68-WTL-TAB, 2010 WL 2985943 (S.D. Ind. July 27, 2010), citing *Florin v. Nationsbank of Georgia, N.A.,*34 F.3d 560, 565 (7th Cir.1994)(approving a fee multiplier in a non-class case). It was "far from certain that Plaintiffs would have prevailed on the merits when that controlling precedent is taken into account" (*Martin v. Caterpillar Inc.,* at *5), and any "retroactive calculation of the probability of success as measured at the beginning of the litigation would reveal the real possibility that the attorney will not receive any fee." Cook v. *Niedert,* 142 F.3d 1004, 1013 (7th Cir.1988).

26. The following is a partial list of WARN Act cases, in district and bankruptcy courts, in which I, as Class Counsel, have been awarded attorney's fees of approximately one-third of the common fund:

- *Callahan v. Taylor Bean & Whitaker Mortgage Corp.,* Adv. Proc. No.09-00439 (Bankr. M.D. Fla.)(awarding attorneys' fees of 33⅓% of settlement of $15 million);
- *Karaniewsky v. US Investigative Services LLC*, Case No. 15-50204 (Bankr.D.Del.) [Doc. 77] (awarding attorneys' fees of one-third of settlement of approximately $10.5 million);
- *Jackson v. Qimonda*, Adv. Proc. No. 09-50192 (MFW) (Bank.Del) [Doc. 80] (awarding attorneys' fees of 33 1/3% of settlement of more than $10 million);
- *Rasheed v. American Home Mortgage Corp.,* Adv. Proc.No. 07-51688 (Bankr. D. Del.)[Doc. 108](awarding attorneys' fees of 33⅓% of the settlement fund of $6.5 million);
- *Thomay, et al. v. Klausner Lumber One LLC, et al.,* Adv. Proc. No. 20-50602 (KBO) (Bank.D.Del) [Doc. 73] (awarding attorneys' fees of one-third of $1.4 million settlement);
- *Binford et al v. First Magnus Capital, Inc.,* Adv. Proc. No. 08 -01494 (Bankr. D. Ariz.) (awarding attorneys' fees of 33⅓% of $2.6 million settlement and $2.9 million contingent proceeds);
- *Curry v. Caritas Health Care Inc.,* Adv. Proc. No. 09-40901 (Bankr. S.D.N.Y) (awarding attorneys' fees of 33⅓% of settlement of approximately $2.6 million);

- *Miller v. Columbus Steel Casting Co.*, Adv. Proc. No. 16-50997 (CSS) (Bankr.D.Del. Sept. 27, 2017) [Doc. 69](awarding attorneys' fees of 33⅓% of settlement of $2.1 million);
- *Etzelberger v. FAH Holdings, Inc.,* Case No. 13-13087-BLS (Bankr. D. Del.) [Doc. 2386, 2394] (awarding attorneys' fees of 33⅓% of settlement of approximately $1.8 million);
- *Bridges v. Continental AFA Dispensing Co.,* Adv. Proc. No. 08-45921 (Bankr. E.D. Mo.) (awarding attorneys' fees of 33⅓% of $1.5 million);
- *Updike v. Kitty Hawk Cargo, Inc*., Adv. Proc. No. 07-04179 (Bankr. N.D. Tex.) (awarding attorneys' fees of 33⅓% of $1.4 million);
- *Wojciechowski v. ClearEdge Power, Inc.,* Adv. Proc. No. 14-04152 (CN) (Bankr.N.D.Cal.) (awarding attorneys' fees of 33⅓% of settlement of $1.3 million WARN settlement);
- *Capizzi, et al. v. AWTR Liquidation, Inc. f/k/a Rhythm and Hues, Inc.*, Adv. Proc. No. 2: 13-ap-01463-NB (Bankr.C.D.Cal. 2013) (awarding attorneys' fees of 33⅓% in WARN settlement of $1 million);
- *Mochnal v. EOS Airlines, Inc.,* Adv. Proc. No. 08-08279 (Bankr. S.D.N.Y.) (awarding attorneys' fees of 33⅓% of settlement of approximately $1.7 million);
- *Iannacone v. Fortunoff Holdings Inc.*, Adv. Proc. No. 09-22581 (Bankr. S.D.N.Y.) (awarding attorneys' fees of 33⅓% of settlement of approximately $1.3 million);
- *Jones v. Alliance Bancorp*, Adv. Proc. No. 07-51799 [Doc. No. 112] (Bankr. D. Del. 2007)(awarding attorneys' fees of 33 1/3% of settlement of $1 million);
- *Aguiar v. Quaker Fabric Corporation,* Adv. Proc. No. 07-51716 (Bankr. D. Del.) [Doc. 46](awarding attorneys' fees of 33⅓% of $1 million).
- *Guippone v. BH S & B Holdings, LLC*, Case No. 09-01029 (S.D.N.Y.) (awarding attorneys' fees of 33⅓% of settlement of approximately $900,000);
- *Reynolds v. Corinthian Colleges, Inc.,* Case No. 15-50309 (JTD) (Bankr.D.Del)[Doc. 75] (awarding attorneys' fees of 33⅓% of settlement of approximately $900,000);
- *Primavera v. Crowne Architectural Corp.*, Adv. Proc. No. 17-1272 (SML) (Bankr D.N.J.) [Doc. 49](awarding attorneys' fees of 33⅓% of settlement of approximately $900,000);
- *Schuman v. The Connaught Group, Ltd*., Adv. Proc. No. 12-01051 (Bankr. S.D.N.Y.) (awarding attorneys' fees of 33⅓% of settlement of approximately $675,000);
- *Turner et al. v. Klausner Lumber Two, LLC,* Case No. 20-11518 (KBO) [Doc. 986] (awarding attorneys' fees of one-third of settlement of approximately $540,000)*;*
- *In re Colortree,* Case No. 19-34739 (KLP) (E.D.Va.) (awarding attorneys' fees of one-third of settlement of $500,000);
- *Phillips, et al. v. Munchery, Inc.*, Case No. 19-cv-00469-JSC (N.D.Cal.) (awarding attorney's fees of one-third of $400,000 settlement);
- *Matzen v. Corwood Laboratories, Inc.*, Adv. Proc. No. 10-08003 (Bankr. E.D.N.Y.) (awarding attorneys' fees of 33⅓% of settlement of approximately $500,000);
- *Hiergersell v. Level Solar*, Adv. Proc. No. 18-1012 (MKV) (Bankr. S.D.N.Y.) (awarding attorneys' fees of 33⅓% of settlement of approximately $400,000);
- *Johnson v. First NLC Financial Services, LLC,* Adv. Proc. No. 08-01130 (Bankr. S.D. Fla.) (awarding attorneys' fees of 33⅓% of $400,000).

27. The following is a partial list of WARN Act cases in which I served as class counsel and the class representatives were granted incentive awards commensurate with the proposed award here:

- *Thomay, et al. v. Klausner Lumber One LLC, et al.,* Adv. Proc. No. 20-50602 (KBO) (Bank.D.Del) [Doc. 73] ($20,000 incentive award in $1.4 million settlement);
- *Etzelberger v. FAH Holdings, Inc.,* Case No. 13-13087-BLS (Bankr. D. Del.) [Doc. 2386, 2394] ($20,000 incentive award to class representative in a $1.8 million settlement);
- *Kohlstadt v. Solyndra*, *LLC*., Adv. Proc. No. 11-53155 (MFW) (Bankr. D. Del. Oct. 16, 2012) [Doc. 51] ($20,000 combined incentive award to two class representatives in $3.5 million settlement);
- *Conn v. Dewey & Lebeouf LLP*, Adv. Proc. No. 12-01672 (MG) (Bankr. S.D.N.Y. Aug. 20, 2014) [Doc. 57] (incentive award of $15,000.00 for class representative in $4.5 settlement of 350 members);
- *Jones v. Alliance Bancorp*, Adv. Proc. No. 07-51799 (Bankr. D. Del. 2007) [Doc.112] ($15,000.00 incentive award to class representative in $1 million settlement);
- *Aguiar v. Quaker Fabric Corporation,* Adv. Proc. No. 07-51716 (Bankr. D. Del. 2007) [Doc. 46] (incentive award of $15,000.00 in $1 million settlement for class of 900 members);
- *Mochnal v. Eos Airlines, Inc.,* Adv. Proc. No. 08-08279 (Bankr. S.D.N.Y. 2008) [Doc. 46] (incentive award of $15,000.00 in $1.7 million settlement);
- *Zaikowski v. Dowling College*, Adv. Proc. No. 16-8187 (REG) (Bankr.E.D.N.Y.) [Doc. 35] ($11,500 incentive award in $1.3 million settlement);
- *Turner et al. v. Klausner Lumber Two, LLC,* Case No. 20-11518 (KBO) [Doc. 986] ($10,000 incentive award in $540,000 settlement)*;*
- *Martz-Gomez v. Anna's Linens, Inc.*, Adv. Proc. No. 15-13008-TA [Doc. 2914] (Bankr.C.D.Cal) ($10,000 incentive award to class representative in a $1.2 million settlement);
- *Miller v. Columbus Steel Casting Co.*, Adv. Proc. No. 16-50997 (CSS) (Bankr.D.Del. Sept. 27, 2017)[Doc. 69] ($10,000 incentive award to class representative on behalf of a certified class of 666 for $2.1 million);
- *Austen v. Archway Cookies*, Adv. Proc. No. 08-51530 (CSS) (Bankr. D. Del. Apr. 18, 2012) [Doc. 73] ($10,000 incentive award to two class representatives in $4 million settlement);
- *Capizzi et al v. AWTR Liquidation, Inc.*, Adv. Proc. No. 2:13-ap-01209-NB (Bankr. C.D. Cal. Dec. 13, 2013) [Doc. 89] ($10,000 incentive award to each of two class representatives in WARN Act settlement of $1 million);
- *Guippone v. BH S & B Holdings, LLC*, Case No. 09-cv-01029-CM (S.D.N.Y. Sept. 23, 2016) [Doc. 22] ($10,000 incentive award to class representative in WARN Act settlement of $900,000 for a class of about 300 members);
- *Bridges v. Continental AFA Dispensing Co.*, Adv. Proc. No. 08-45921 (KSS) (Bankr. E.D. Mo. Aug. 14, 2009) [Doc. 108] ($10,000 incentive award to class representative

in a class settlement of $1.5 million for approximately 325 employees);

28. As of February 9, 2022, Class Counsel has expended 2488 hours litigating this action, representing $1,492,126, based on Class Counsel's current billing rates.

29. Class Counsel estimates that it will spend more than 200 additional hours of time preparing for and attending the preliminary and final hearing, preparing the pro rata calculations, overseeing the individualized settlement notices, responding to Class Members' inquiries regarding the status of the settlement and their settlement checks, and overseeing the settlement administrator's distribution of the settlement checks to Class Members. Based on our experience, many Class Members have re-located since ITT shutdown in 2016 and may not receive all the correspondence regarding the settlement. We, along with the settlement administrator, expect to spend many hours searching for Class Members, communicating with them to explain the terms of the settlement, obtaining change of addresses, and re-issuing checks. The Notice of Settlement that will be sent to each Class Member will contain his or her specific estimated settlement amount, which will be labor intensive and subject to scrutiny. For these reasons, the final lodestar and cost amounts are expected to be higher than that reported here.

30. The total expenses accrued through today's date in prosecution of this action is $50,054.95. All these expenses were reasonable and necessary and in furtherance of the litigation and ultimate settlement of this matter. We advanced costs in this litigation when it began over five years ago. The risk of non-payment that existed, had Plaintiffs lost at trial and appeal, and the possibility that the Chapter 7 estate's resources be depleted even if Plaintiffs prevailed, directed us to incur only those costs and expenses that were necessary to litigate this case.

31. Class Counsel litigates cases large and small in which they ultimately come away empty-handed. Class Counsel's fee of one-third of the common fund often falls well below its lodestar and expenses due to the financial state of its bankrupt defendants. While a tremendous amount of time and energy is associated with the lodestar method, the percentage fee method incentivizes Class Counsel to cultivate efficiencies by simplifying the litigation process. This maximizes creditor recoveries by avoiding wasteful litigation that dissipates estate assets. When Class Counsel's one-third award exceeds its lodestar, the amount often reflects the value that Class Counsel has added to the estate and its stakeholders. *See Harman v. Lyphomed, Inc.,* 945 F.2d 969, 976 (7th Cir.1991) ("Multipliers anywhere between one and four have been approved.") (Citation omitted). Such is the case here.

32. Compared to the size of the outcome to the Class, the requested awards to the Class Representatives and Contributing Members, for their service, and the one-third fee and expenses for Class Counsel are reasonable.

33. In view of the foregoing, including the memorandum of law and supporting exhibits thereto, I ask the court to grant the Motion and award Class Counsel's attorneys' fees and costs, and the incentive awards to the three Class Representatives and two Contributing Class Members.

DATED: February 11, 2022

Respectfully submitted,

By: /s/ Jack A. Raisner
JACK A. RAISNER

EXHIBIT B

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
	)	
ALLEN FEDERMAN, JOANNA CASTRO and CHRISTOPHER BOWERMAN on behalf of themselves and all others similarly situated,	)	Adv. Proceeding No. 16-50296
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
DEBORAH J. CARUSO, AS THE CHAPTER 7 TRUSTEE FOR THE BANKRUPTCY ESTATE OF ITT EDUCATIONAL SERVICES, INC.,	)	
	)	
Defendant.	)	

DECLARATION OF ALLEN FEDERMAN IN SUPPORT OF PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS AND INCENTIVE AWARDS TO CLASS REPRESENTATIVES AND CONTRIBUTING CLASS MEMBERS

Allen Federman hereby declares the following under penalty of perjury:

1. This declaration is made in support of the Motion for award of attorneys' fees and costs, and for incentive awards to the representatives and contributing class members. I make this declaration based on my own personal knowledge and, if called upon to do so, could and would testify competently thereto.

2. I am over the age of 18 years.

3. I am one of the named Plaintiffs and Court-appointed Class Representatives in the

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

above-captioned adversary proceeding case.

4. I retained Class Counsel in September 2016 to represent me in a potential class action WARN lawsuit against my former employer, ITT Educational Corp., as the closing of all campuses and facilities caught student and employee alike completely by surprise. A lot of people lost their jobs that day.

5. At the time I retained counsel, I agreed to a one-third contingency fee agreement. Class Counsel also agreed to advance the costs of the litigation until the case was resolved.

6. When I retained Class Counsel to initiate this lawsuit on behalf of myself and the class, I understood that the case might generate unwelcomed publicity for myself and that it would require a substantial investment of my time. I nonetheless decided to lend my name to this case, and to assist Class Counsel however I could during the litigation, because I felt that my claims against ITT had substantial merit and that filing them as a class action could provide meaningful relief to a lot of other people out there like me, former employees of ITT who lost their jobs. As a class representative in this case, my goal at all times has been to act in the best interest of the Class, and I believe that I have done just that.

7. Specifically, both before and after the filing of the Action, I devoted substantial time and effort to:

(a) Retaining Class Counsel and providing them important information concerning ITT's operations prior to its bankruptcy filing;

(b) Thoroughly reviewing and authorizing the filing of the complaint and later pleadings;

(c) Gathering account statements and other important account-related documents, and providing such materials to Class Counsel for use in the Action;

(d) Representing the Indianapolis administrative sites and providing information to Class Counsel regarding the July 2016 layoff of campus recruiters. As a former business analyst at ITT, I was able to describe to Class Counsel the state of affairs of ITT when the July 2016 layoffs occurred. I also provided Class Counsel with information to assist in their interviews with administrative officers in the field and from the Indianapolis sites;

(e) Staying in regular communication with Class Counsel during the course of the litigation regarding case strategy, developments, discovery, class certification and mediation;

(f) Participating in an all-day mediation in October 2021;

(g) Analyzing potential settlement proposals, thoroughly reviewing the Settlement Agreement, and finally executing the Settlement Agreement on behalf of the Settlement Class.

8. Given the risks associated with continued litigation and the significant recovery provided by the Settlement, I believe that the Settlement is fair, reasonable, and adequate and in the best interest of the Class. I strongly support it.

9. Although I am informed that the ultimate determination of the Class Counsel's Request for attorneys' fees and costs rests within the Court, I believe that Class Counsel's Motion for an award of attorneys' fees in the amount of one-third of the settlement amount is fair and reasonable. Had Class Counsel not agreed to represent me in this case, I do not believe that I nor any other member of the Class would have seen such a substantial recovery of our damages.

10. I further understand that the Court may also grant my request for incentive awards to the Class Representatives and Contributing Members in the amount of $25,000 each to the Class Representatives, and $10,000 each to the Contributing Members. I believe that the requested awards are fair, reasonable, and appropriate in light of the contributions that my fellow Class Representatives and Contributing Members, all of whom are former colleagues, made in

this Action.

11. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: 2/10/2022

DocuSigned by:
Allen Federman
E09525D7190A43C...

Allen Federman

EXHIBIT C

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In re: ITT EDUCATIONAL SERVICES, INC. Debtor.[1]	Chapter 7 Bankr. Case No. 16-07207-JMC-7A Jointly Administered
ALLEN FEDERMAN, JOANNA CASTRO and CHRISTOPHER BOWERMAN, on behalf of themselves and all others similarly situated, Plaintiffs, v. DEBORAH J. CARUSO, AS THE CHAPTER 7 TRUSTEE FOR THE BANKRUPTCY ESTATE OF ITT EDUCATIONAL SERVICES, INC., Defendant.	**Adv. Pro. No. 16-50296**

DECLARATION OF JOANNA CASTRO IN SUPPORT OF PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS AND INCENTIVE AWARDS TO CLASS REPRESENTATIVES AND CONTRIBUTING CLASS MEMBERS

I, Joanna Castro, hereby declare the following under penalty of perjury:

1. This declaration is made in support of the Motion for award of attorneys' fees and costs, and for incentive awards to the representatives and contributing class members. I make this declaration based on my own personal knowledge and, if called upon to do so, could and would testify competently thereto.

2. I am over 18 years of age.

[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].

3. I am one of the named Plaintiffs and Court-appointed Class Representatives in the above-captioned adversary proceeding case. I make the representations herein based upon my personal knowledge.

4. I retained Class Counsel in September 2016 to represent me in a potential class action lawsuit against my former employer, ITT Educational Corp. At the time I retained counsel, I agreed to a one-third contingency fee agreement. Class Counsel also agreed to advance the costs of the litigation until the case was resolved.

5. When I retained Class Counsel to initiate this lawsuit on behalf of myself and the class, I understood that the case might generate unwelcomed publicity for myself and that it would require a substantial investment of my time. I nonetheless decided to lend my name to this case, and to assist Class Counsel however I could during the litigation, because I felt that my claims against ITT had substantial merit and that filing them as a class action could provide meaningful relief to a lot of other people out there like me, former employees of ITT who lost their jobs.

6. As a Class Representative in this case, my goal at all times has been to act in the best interest of the Class, and I believe that I have done just that.

7. Specifically, both before and after the filing of the Action, I devoted substantial time and effort to:

(a) Retaining Class Counsel and providing them important information concerning ITT's operations prior to its bankruptcy filing;

(b) Thoroughly reviewing and authorizing the filing of the complaint and later pleadings;

(c) Gathering account statements and other important account-related documents, and

providing such materials to Class Counsel for use in the Action;

(d) Providing Class Counsel with information to assist in their interviews with other Class Members, particularly regarding the headcount issue at the large California campuses. As a former financial aid coordinator at ITT, I also provided information regarding the July 2016 layoff of campus recruiters, specifically describing the purpose of those layoffs, how they were carried out, and how it affected operations in the following months;

(e) Staying in regular communication with Class Counsel during the course of the litigation regarding case strategy, developments, discovery, class certification and mediation;

(f) Participating in an all-day mediation in October 2021;

(g) Analyzing potential settlement proposals, thoroughly reviewing the Settlement Agreement, and finally executing the Settlement Agreement on behalf of the Settlement Class.

8. Given the risks associated with continued litigation and the significant recovery provided by the Settlement, I believe that the Settlement is fair, reasonable, and adequate and in the best interest of the Class. I strongly support it.

9. Although I am informed that the ultimate determination of the Class Counsel's Request for attorneys' fees and costs rests within the Court, I believe that Class Counsel's Motion for an award of attorneys' fees in the amount of one-third of the settlement amount is fair and reasonable. Had Class Counsel not agreed to represent me in this case, I do not believe that I nor any other member of the Class would have seen such a substantial recovery of our damages.

10. I further understand that the Court may also grant my request for incentive awards to the Class Representatives and Contributing Members in the amount of $25,000 each to the Class Representatives, and $10,000 each to the Contributing Members. I believe that the requested awards are fair, reasonable, and appropriate considering the contributions that my

fellow Class Representatives and Contributing Members, all of whom are former colleagues, made in this Action.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 2/10/2022

DocuSigned by:
Joanna Castro
3F7490227CF64DF...

Joanna Castro

EXHIBIT D

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In re: ITT EDUCATIONAL SERVICES, INC. Debtor.[1]	Chapter 7 Bankr. Case No. 16-07207-JMC-7A Jointly Administered
ALLEN FEDERMAN, JOANNA CASTRO and CHRISTOPHER BOWERMAN on behalf of themselves and all others similarly situated, Plaintiffs, v. DEBORAH J. CARUSO, AS THE CHAPTER 7 TRUSTEE FOR THE BANKRUPTCY ESTATE OF ITT EDUCATIONAL SERVICES, INC., Defendant.	**Adv. Pro. No. 16-50296**

DECLARATION OF CHRISTOPHER BOWERMAN
IN SUPPORT OF PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS AND INCENTIVE AWARDS TO CLASS REPRESENTATIVES AND CONTRIBUTING CLASS MEMBERS

I, Christopher Bowerman, hereby declare the following under penalty of perjury:

1. This declaration is made in support of the Motion for award of attorneys' fees and costs, and for incentive awards to the representatives and contributing class members. I make this declaration based on my own personal knowledge and, if called upon to do so, could and would testify competently thereto.

2. I am over 18 years of age.

[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].

3. I am one of the named Plaintiffs and Court-appointed Class Representatives in the above-captioned adversary proceeding case. I make the representations herein based upon my personal knowledge.

4. I retained Class Counsel to represent me in a potential class action lawsuit against my former employer, ITT Educational Corp. At the time I retained counsel, I agreed to a one-third contingency fee agreement. Class Counsel also agreed to advance the costs of the litigation until the case was resolved.

5. When I retained Class Counsel to initiate this lawsuit on behalf of myself and the class, I understood that the case might generate unwelcomed publicity for myself and that it would require a substantial investment of my time. I nonetheless decided to lend my name to this case, and to assist Class Counsel however I could during the litigation, because I felt that my claims against ITT had substantial merit and that filing them as a class action could provide meaningful relief to a lot of other people out there like me, former employees of ITT who lost their jobs.

6. As a Class Representative in this case, my goal at all times has been to act in the best interest of the Class, and I believe that I have done just that.

7. Specifically, both before and after the filing of the Action, I devoted substantial time and effort to:

(a) Retaining Class Counsel and providing them important information concerning ITT's operations prior to its bankruptcy filing;

(b) Thoroughly reviewing and authorizing the filing of the complaint and later pleadings;

(c) Gathering account statements and other important account-related documents, and

providing such materials to Class Counsel for use in the Action;

(d) Communicating with Class Counsel regarding the issue of adjunct instructor tasks. I was the sole adjunct instructor among the Class Representatives and Contributing Class Members and tried to represent all the adjunct instructors in providing information to Class Counsel. Even though the campus where I worked turned out to be one of vast majority of campuses that did not meet the WARN threshold based on Class Counsel's investigation, I sought to represent the thousands of employees who might have a chance at being included in the Class;

(e) Staying in regular communication with Class Counsel during the course of the litigation regarding case strategy, developments, discovery, class certification and mediation;

(f) Participating in an all-day mediation in October 2021;

(g) Analyzing potential settlement proposals, thoroughly reviewing the Settlement Agreement, and finally executing the Settlement Agreement on behalf of the Settlement Class.

8. Given the risks associated with continued litigation and the significant recovery provided by the Settlement, I believe that the Settlement is fair, reasonable, and adequate and in the best interest of the Class. I strongly support it.

9. Although I am informed that the ultimate determination of the Class Counsel's Request for attorneys' fees and costs rests within the Court, I believe that Class Counsel's Motion for an award of attorneys' fees in the amount of one-third of the settlement amount is fair and reasonable. Had Class Counsel not agreed to represent me in this case, I do not believe that I nor any other member of the Class would have seen such a substantial recovery of our damages.

10. I further understand that the Court may also grant my request for incentive awards to the Class Representatives and Contributing Members in the amount of $25,000 each to the

Class Representatives, and $10,000 each to the Contributing Members. I believe the requested awards are fair, reasonable and appropriate in light of the contributions that my fellow Class Representatives and Contributing Members, all of whom are former colleagues, made in this Action.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 2/10/2022

DocuSigned by:
Christopher Bowerman
28676D4EE60A490...

Christopher Bowerman

EXHIBIT E

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
	)	
ALLEN FEDERMAN, JOANNA CASTRO and CHRISTOPHER BOWERMAN on behalf of themselves and all others similarly situated,	)	Adv. Proceeding No. 16-50296
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
DEBORAH J. CARUSO, AS THE CHAPTER 7 TRUSTEE FOR THE BANKRUPTCY ESTATE OF ITT EDUCATIONAL SERVICES, INC.,	)	
	)	
Defendant.	)	

DECLARATION OF AMANDA MENDEZ IN SUPPORT OF PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS AND INCENTIVE AWARDS TO CLASS REPRESENTATIVES AND CONTRIBUTING CLASS MEMBERS

Amanda Mendez hereby declares the following under penalty of perjury:

1. This declaration is made in support of the Motion for award of attorneys' fees and costs, and for incentive awards to the representatives and contributing class members. I make this declaration based on my own personal knowledge and, if called upon to do so, could and would testify competently thereto.

2. I am over 18 years of age.

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

3. I hold a B.S. degree in Criminal Justice, and an M.A. degree in Forensic Psychology. I am currently employed as a Forensic Scientist with the District of Columbia Department of Forensic Science.

4. I was employed by ITT from approximately June 2010 to September 6, 2016.

5. At the time I was terminated from ITT, I was the Associate Dean of General Studies at the Owen Springs, Maryland campus.

6. I retained Class Counsel in September 2016 to represent me in a potential class action lawsuit against my former employer, ITT Educational Corp. At the time I retained counsel, I agreed to a one-third contingency fee agreement. Class Counsel also agreed to advance the costs of the litigation until the case was resolved.

7. Although I am not a Class Representative, I wanted to help the Class as much as I could to obtain a favorable outcome in this case. I communicated numerous times with Class Counsel to discuss the structure and operations with ITT.

8. The following is a list of documents that I provided to Class Counsel in connection with the litigation of this case:

Adjunct Manual	07/11/2019
Adjunct Quick Guide	07/11/2029
Resident Faculty Handbook	07/11/2019
Retention Articles	07/11/2019
Faculty Development Plan	07/11/2019
Mid-Quarter Advising Form	07/11/2019
General Studies E-Campus Course Requirements	07/11/2019
Faculty Data Sheet	07/11/2019
FDP Template	07/11/2019
S3 Records for 46 instructors (Springfield Campus):	07/11/2019
S3 Action Plan	07/11/2019
S3 Action Report	07/11/2019
Meeting Agenda-May 25, 2016	07/11/2019

Instructor Guides for the following classes: GS2745, AP2530, AP2630, CJ2670, Controversial Issues in Law Enforcement, CJ312, CJ1470, CJ243, Criminalistics of Computer Forensics, CJ1210, EN1320, EN1420, EN3220, ES2555, CJ2570, LE 1430, SP2750, GS1145, CJ253, CJ1110, Forensics and Crime Scene Investigation, Essentials of Security, CJ439, MA3410, PH2530, TB332, CJ151, PY2750, CJ1310, SS3150, SC4730, SP3450, CJ436, CJ335,	07/11/2019
Inservice Videos (2) 2016	07/20/2019
New Instructor Video: Adding Assignments to Gradebook	
New Instructor Video: Attendance	07/20/2019
New Instructor Video: Categorizing Gradebook	07/20/2019
New Instructor Video: Computer Login	07/20/2019
New Instructor Video: Employee Email	07/20/2019
New Instructor Video: Finalizing Grades	07/20/2019
New Instructor Video: Gradebook Login	07/20/2019
New Instructor Video: Gradebook Options	07/20/2019
New Instructor Video: Grade Reports	07/20/2019
New Instructor Video: S3 Absentee Entries	07/20/2019
New Instructor Video: S3 Access	07/20/2019
New Instructor Video: S3 Advising Entries	07/20/2019
New Instructor Video: S3 Main Menu	07/20/2019
New Instructor Video: Gradebook Set Up	07/20/2019
Test Packets for the following classes: CO2520, MA3410, SP3450	08/02/2019
ITT Declaration	08/04/2019, 08/06/2019
Instructor Guide: AP2530	01/09/2020

9. I also devoted substantial time and effort to the following tasks:

(a) Retaining Class Counsel and providing them important information concerning ITT's operations prior to its bankruptcy filing;

(b) Gathering account statements and other important account-related documents, and providing such materials to Class Counsel for use in the Action;

(c) Staying in regular communication with Class Counsel during the course of the

litigation regarding case strategy, developments, discovery, class certification and mediation;

(d) Responding to Class Counsel's questionnaires and surveys for deans of various campuses, including providing a list of employees and teaching schedules of instructors at my campus. I reviewed thousands of pages of teaching schedules of all the instructors over a one-year period to verify the information and spur recollections of the adjuncts that ITT hired, evaluated, and supervised. I provided Class Counsel with information and materials to determine whether my campus would qualify under the WARN Act, with no assurance that my campus would qualify or that I and the employees who worked at my campus would share in any recovery for the Class. Over time, it became apparent that the campus where I worked would not qualify as a covered site. Nevertheless, I endeavored to help the Class reach the best possible outcome for the largest possible number of Class Members;

(e) Providing Class Counsel with documentation of ITT's campus-wide approach to instructional management. I had trained and managed adjuncts at two campuses, and so possessed examples of the relevant electronic and paper documentation of ITT's processes, applications and systems used to orient, train, monitor, rehire, and reward (or discipline) adjuncts, including instructional aids, syllabi, policies, manuals, videos of training sessions, evaluation forms, and other materials. I explained to Class Counsel in detail how these systems and processes were utilized at their campus - and how managing deans, and ITT's centralized systems were used to incentivize adjunct instructors into being more productive. I provided information to help Class Counsel determine in reality how many hours adjuncts did, in fact, work to complete tasks required of them;

(f) Discussing with Class Counsel important issues so that they and the Class Representatives could make strategic decisions in the litigation; and

(g) Participating in an all-day mediation in October 2021.

10. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on 2/9/2022

DocuSigned by:
Amanda Mendez
905DC172F49E458...

Amanda Mendez

EXHIBIT F

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
	)	
ALLEN FEDERMAN, JOANNA CASTRO and CHRISTOPHER BOWERMAN on behalf of themselves and all others similarly situated,	)	Adv. Proceeding No. 16-50296
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
DEBORAH J. CARUSO, AS THE CHAPTER 7 TRUSTEE FOR THE BANKRUPTCY ESTATE OF ITT EDUCATIONAL SERVICES, INC.,	)	
	)	
Defendant.	)	

DECLARATION OF SANDRA DELEVANTE IN SUPPORT OF PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS AND INCENTIVE AWARDS TO CLASS REPRESENTATIVES AND CONTRIBUTING CLASS MEMBERS

Sandra Delevante hereby declares the following under penalty of perjury:

1. This declaration is made in support of the Motion for award of attorneys' fees and costs, and for incentive awards to the representatives and contributing class members. I make this declaration based on my own personal knowledge and, if called upon to do so, could and would testify competently thereto.

2. I am over 18 years of age.

3. I am a class member in the above-captioned adversary proceeding case.

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

4. At the time of my termination from my former employer, ITT Educational Corp, I was the dean of the Springfield, Virginia campus.

5. After my termination, I retained Class Counsel to represent me in a potential class action lawsuit against ITT. At the time I retained counsel, I agreed to a one-third contingency fee agreement. Class Counsel also agreed to advance the costs of the litigation until the case was resolved.

6. Although I am not a Class Representative, I wanted to help the Class as much as I could to obtain a favorable outcome in this case.

7. I communicated numerous times with Class Counsel to discuss the structure and operations with ITT and devoted substantial time and effort to the following tasks:

(a) Retaining Class Counsel and providing them important and substantive information concerning ITT's operations prior to its bankruptcy filing;

(b) Gathering account statements and other important account-related documents, and providing such materials to Class Counsel for use in the Action;

(c) Responding to all Class Counsel requests for ITT documentation and information and staying in regular communication with Class Counsel during the course of the litigation regarding case strategy, developments, discovery, class certification and mediation;

(d) Responding to Class Counsel's questionnaires and surveys for deans of various campuses, including providing a list of employees and teaching schedules of instructors at my campus. I reviewed thousands of pages of teaching schedules of all the instructors over a one-year period to verify the information and spur recollections of the adjuncts that ITT hired, evaluated, and supervised. I provided Class Counsel with information and materials to determine whether my campus would qualify under the WARN Act, with no assurance that my

campus would qualify or that I and the employees who worked at my campus would share in any recovery for the Class. I endeavored to help the Class reach the best possible outcome for the largest possible number of Class Members;

(e) Providing Class Counsel with documentation of ITT's campus-wide approach to instructional management, to assist in the issue of evaluating the actual time worked by adjuncts, including provision of ITT Instructor Tasks document that helped to secure class certification under the WARN ACT. I explained in detail how these systems and processes were utilized at the campuses - and how managing deans, and ITT's centralized systems incentivized, cajoled, and rated adjuncts into being more productive;

(f) I discussed with Class Counsel important issues so that they and the Class Representatives could make strategic decisions in the litigation; and

(g) I participated in an all-day mediation in October 2021.

8. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on February 9, 2022

Sandi

Sandra Delevante