

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) Adv. Proceeding No. 16-50296
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.)

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

DATE: March 11, 2022

TO: All individuals who were employed by ITT Educational Services, Inc. (“**ITT**”):

- o Who (i) worked at or reported to one of ITT’s facilities, (ii) 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 on or about September 6, 2016, (iii) are “affected employees” within the meaning of 29 U.S.C. § 2101(a)(5), and (iv) have not filed a timely request to opt-out of the class (the “**WARN Class**”); and/or
- o Who (i) were “employees” of ITT within California as defined in Cal. Labor Code § 1400(h), (ii) 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 on or about September 6, 2016, and (iii) 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**.”

**YOU MAY BE ELIGIBLE TO RECEIVE A SETTLEMENT PAYMENT.
PLEASE READ THIS NOTICE CAREFULLY.**

NO ACTION NEEDS TO BE TAKEN TO BE ELIGIBLE TO RECEIVE MONEY UNDER THE SETTLEMENT: If you are a member of the Settlement Class (as defined above) and received this Notice, you are automatically included in the Settlement and do not need to take any further action to receive a payment if you are an Affected Site Class Member (as defined below). However, receipt of this Notice does not mean you are an Affected Site Class Member that is entitled to a payment.

I. INTRODUCTION

This “NOTICE OF PROPOSED CLASS ACTION SETTLEMENT” (“**Notice**”) is to inform you that a settlement has been reached of claims asserted by the Settlement Class alleging ITT violated federal law and California state law by terminating employees without cause, as part of, or as the foreseeable result of mass layoffs or plant closings ordered by ITT on or about September 6, 2016 and within 30 days of that date, without providing 60 days advance written notice of the terminations, as required by the Worker Adjustment and Retraining Notification Act (“**WARN Act**”), 29 U.S.C. § 2101 *et seq.*, and the California Labor Code § 1400 *et seq.* (“**CAL WARN Act**”).

On September 16, 2016, ITT, together with its affiliates ESI Service Corp. and Daniel Webster College, Inc. (collectively with ITT, the “**Affiliated Debtors**”), each filed voluntary petitions for relief under chapter 7 of title 11 of the United States Code (“**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division (“**Bankruptcy Court**”), which cases were ordered jointly administered under Case No. 16-07207 (“**Bankruptcy Case**”). Deborah J. Caruso (“**Trustee**”) is the duly appointed, qualified and acting chapter 7 trustee of the Affiliated Debtors’ bankruptcy estates (individually, an “**Estate**” and collectively, the “**Estates**”).

On September 16, 2016, Allen Federman, Joanna Castro, and Christopher Bowerman on behalf of themselves and all others similarly situated (the “**Plaintiffs**”) initiated an adversary proceeding by filing their *Class Action Adversary Proceeding Complaint for Violation of*

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].

WARN Act 29 U.S.C. § 2101, et seq. and California Labor Code §§ 1400, et seq. in Adversary Proceeding No. 16-50296 (“**Class Action**”) in the Bankruptcy Court.

The Bankruptcy Court has entered a preliminary approval order (the “**Preliminary Approval Order**”) granting preliminary approval of the Settlement (as defined below) and ordered this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

II. DESCRIPTION OF THE LAWSUIT

The Class Action Complaint alleges ITT violated the WARN Act and CAL WARN Act by failing to provide members of the Settlement Class 60 days advance written notice of their terminations or to pay them wages, salary, commissions, bonuses, accrued vacation, holiday, and personal time off for 60 days following their terminations, and failing to make pension and 401(k) contributions and provide benefits under applicable employee benefit plans, COBRA, and ERISA for 60 days following their terminations.

As noted in the introduction, ITT filed a chapter 7 bankruptcy, which means ITT ceased operations, and the Trustee was appointed to manage the liquidation of ITT’s property and resolution of claims so that any remaining funds could pay for the expenses of administering the Bankruptcy Case and provide a distribution to claimants and creditors pursuant to priorities established by the Bankruptcy Code. The Trustee is the trustee for ITT’s property available to pay the expenses of administration and creditor claims. As the chapter 7 trustee for ITT’s Estate, the Trustee was substituted as the named defendant in the Class Action on May 30, 2019. In the Class Action, the Trustee strongly denied liability for all of the Plaintiffs’ claims and raised numerous defenses to the Class Action Complaint.

On June 8, 2020, the Bankruptcy Court entered in the Class Action its *Order Certifying a Class and Subclass and Granting Related Relief* (the “**Class Certification Order**”), certifying the Settlement Class (as defined above). Pursuant to the Class Certification Order, the Court also appointed Raisner Roupinian LLP as Class Counsel for the Settlement Class and appointed Allen Federman, Joanna Castro, and Christopher Bowerman as class representatives of the Settlement Class (the “**Class Representatives**”).

Pursuant to certain orders entered by the Bankruptcy Court in the Class Action and stipulations between the Plaintiffs and the Trustee, at most, 25 former ITT sites have the potential to be subject to the WARN Act and/or the CAL WARN Act. Accordingly, only employees who worked at or reported to these 25 former ITT sites have potentially viable claims under the WARN Act and/or the CAL WARN Act. All other former ITT sites were not large enough to be subject to the WARN Act and/or CAL WARN Act, and the WARN Act and/or CAL WARN Act claims of the employees who worked at or reported to these sites are therefore barred as a matter of law.

On November 2, 2021, the Plaintiffs and the Trustee participated in a mediation and reached a settlement to resolve all of the claims in the Class Action, subject to approval of the Bankruptcy Court and the fulfillment of certain conditions (“**Settlement**”). A full and complete copy of the Settlement can be found on the case website at <https://omniagentsolutions.com/ITT>.

As part of the Settlement, the Plaintiffs and Trustee have agreed that only those members of the Settlement Class who worked at or reported to the 25 remaining sites will share in the distribution from ITT’s Estate on account of the Settlement (the “**Affected Site Class Members**”). All other members of the Settlement Class did not work at or report to former ITT sites large enough to be subject to the WARN Act and/or the CAL WARN Act (the “**Non-Affected Site Class Members**”) and, accordingly, will not share in the distribution from ITT’s Estate on account of the Settlement (i.e., Non-Affected Site Class Members are not entitled to any payment). **To determine whether you are an Affected Site Class Member, please refer to the attached Share Form.**

No determination has been made by the Bankruptcy Court regarding whether the Plaintiffs’ claims asserted in the Class Action have merit, and if not for the Settlement, the Plaintiffs would still have to prove their claims at a trial on a class-wide basis. However, to avoid additional expense, inconvenience, and risks of continued litigation, and in light of ITT’s chapter 7 bankruptcy filing, the Plaintiffs and the Trustee have concluded that it is in their respective best interests and the interests of the Settlement Class and ITT’s Estate to settle the Class Action and the claims in the Bankruptcy Case on the terms summarized in this Notice. After litigating the matter for several years and significant exchanges of information, the Settlement was reached after arms-length non-collusive negotiations between the Plaintiffs and the Trustee. In these negotiations, both sides recognized the substantial risk that the Bankruptcy Court may decide against them at trial, and determined the Settlement is a fair, reasonable and adequate way to resolve the disputed claims.

The Class Representatives and Class Counsel support this Settlement, finding it fair, adequate, reasonable, and in the best interest of the Settlement Class. Among the reasons for support are the defenses to liability potentially available to ITT (and the Trustee), the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation. On February 16, 2022, following preliminary approval of the Settlement by the Bankruptcy Court, the Bankruptcy Court directed that this Notice be sent to you by Class Counsel because ITT’s records indicate that you worked at or reported to one of ITT’s facilities and were terminated from employment on or about September 6, 2016, or within 30 days of that date.

III. TERMS OF THE 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 \$10,000,000.00 on an “all-in” non-reversionary basis, which shall be inclusive of all attorneys’ fees, expenses, service awards, all costs of administration, and the employees’ share of payroll taxes (the “**Allowed Priority Claim**”).

The amount of the Allowed Priority Claim distributable to each Affected Site Class Member shall be determined after first deducting certain amounts provided for in the Settlement from the Allowed Priority Claim and shall not exceed a gross amount of \$12,850.00 per Affected Site Class Member. The deductions include the award of attorney’s fees to Class Counsel not to exceed 1/3 of the Allowed Priority Claim net of costs and out-of-pocket expenses to Class Counsel capped at \$60,000 and service awards to Class Representatives in the amount of \$25,000 each and \$10,000 each to Contributing Members, Amanda Mendez and Sandra Delevante, as set forth in the motion filed by Class Counsel in the Adversary Proceeding on February 14, 2022, a copy of which may be obtained on the case website at <https://cases.omniagentsolutions.com/ITT> or from Class Counsel. After first deducting the amounts set forth in the Settlement from the Allowed Priority Claim, distributions to Affected Site Class Members shall be made on a pro rata basis, based upon each such Affected Site Class Member’s average monthly gross wages or salary, and any benefits under any employee benefit plan during the 60 day WARN period capped at the gross amount of \$12,850.00 per Affected Site Class Member (the “**Back Pay**”). The term “pro rata” as used in the Settlement means the quotient of each individual Affected Site Class Member’s Back Pay amount over the aggregate Back Pay for all Affected Site Class Members (such amount being each Affected Site Class Member’s “**Pro Rata Share**”). Class Counsel shall be solely responsible for calculating each Affected Site Class Member’s Pro Rata Share based on ITT’s records. To the extent the Trustee has pending litigation against an Affected Site Class Member, no distribution shall be made until resolution of such litigation.

If the Bankruptcy Court enters a Final Approval Order (as defined below) approving the Settlement, all members of the Settlement Class, including both the Affected Site Class Members and Non-Affected Site Class Members, for and on behalf of themselves and their respective heirs, executors, trustees, guardians, administrators, representatives, agents, predecessors, successors, and assigns (collectively, the “**Releasing Parties**”), will release and discharge the Trustee, as Trustee and in her individual capacity, all professionals engaged by the Trustee on her behalf and on behalf of the Affiliated Debtors, the Affiliated Debtors, the Estates and all of their current and former affiliates, subsidiaries, predecessors, successors, insurers, shareholders and their respective officers, directors, shareholders, agents, employees, partners, members, accountants, attorneys, representatives and other agents (collectively, the “**Released Parties**”), from any and all claims and rights of any kind including demands, debts, liabilities, obligations, back pay, wages, ERISA or Non-ERISA benefits, severance, liens, actions and causes of action, costs, expenses, attorneys’ fees and damages of whatever kind or nature, at law, in equity and otherwise, whether known or unknown, asserted or unasserted, anticipated, suspected or disclosed, that the Releasing Parties have or may have against the Released Parties arising out of or related to the facts alleged in the Adversary Proceeding or WARN² laws (collectively, “**Released Claims**”).

The “**Settlement Effective Date**,” or the date the Settlement shall become “final,” shall mean the date on which all of the following conditions have been met or, if applicable, have been waived: (i) the Bankruptcy Court’s Preliminary Approval Order shall have become a Final Order; (ii) the Bankruptcy Court has approved in a Final Order the Settlement, without material modification, under Bankruptcy Rules 7023 and Rule 9019 (the “**Final Approval Order**”); (iii) the Trustee shall have given notice in accordance with 28 U.S.C. § 1715 (notice to certain state and federal officials); (iv) the Plaintiffs have voluntarily dismissed the Adversary Proceeding, with prejudice; and (v) certain related prepetition district actions shall have been terminated or voluntarily dismissed, with prejudice. “**Final Order**” means an order that is no longer subject to appeal.

In the event the Bankruptcy Court **does** enter the Final Approval Order and all other conditions of the Settlement are satisfied, the Settlement shall be effective as to all members of the Settlement Class, including but not limited to, Non-Affected Site Class Members. In the event the Bankruptcy Court **does not** enter the Final Approval Order or any other conditions to the occurrence of the Settlement Effective Date are not met, the Settlement shall be of no further force and effect and the Parties will resume litigation of the Class Action.

IV. WHAT ARE YOUR OPTIONS?

Unless you are an Opt Out (as defined below), you are automatically included as a member of the Settlement Class, but will only be eligible to receive a settlement payment if you are an Affected Site Class Member. Affected Site Class Members do not have to take any further action to be eligible to receive their Pro Rata Share as specified in the Settlement. All members of the Settlement Class are bound by the Release and shall be deemed to waive all Released Claims (other than those claims to be paid under the terms of the Settlement) and no person, including Affected Site Class Members, shall be entitled to any further distribution thereon. It is your responsibility to ensure that Class Counsel has your current address on file, or you may not receive important information or a settlement payment, if entitled to one. **The estimated amount of your settlement payment if you do nothing and if you are an Affected Site Class Member entitled to one, is included on the attached Share Form.**

² “**WARN**” for purposes of this Notice and the 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.

Pursuant to the Class Certification Order, Class Counsel caused to be mailed on July 13, 2020 the *Notice of Class Action and Exclusion Form* (the “**Opt Out Notice**”) to members of the Settlement Class. As provided in the Opt Out Notice, any member of the Settlement Class wishing to be excluded from the Settlement Class had until August 12, 2020 to do so, by sending to Class Counsel a completed exclusion form. A total of 64 former ITT employees timely submitted to Class Counsel a completed exclusion form (the “**Opt Outs**”). The Opt Outs are not Parties to the Settlement or members of the Settlement Class. There will be no further opportunity for members of the Settlement Class to opt out, and if the Settlement is approved by the Bankruptcy Court, the Settlement shall be effective as to all Settlement Class members.

Settlement Class members have the right to object to the terms of the Settlement. However, if the Bankruptcy Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the proposed Settlement, including Class Counsel’s request for attorneys’ fees, expenses and service awards, or any portion of the Settlement, you must mail a written objection, and supporting papers, if any, to Class Counsel at the following address: **Jack A. Raisner, René S. Roupinian, RAISNER ROUPINIAN LLP, 270 Madison Avenue, Suite 1801, New York, NY 10016.**

Written objections should include your full name, the case name and number, each specific reason in support of your objection, and **must be postmarked no later than April 11, 2022** for your objection to be considered. **A SETTLEMENT CLASS MEMBER WHO DESIRES TO OBJECT, BUT WHO FAILS TO COMPLY WITH THE TIME AND OBJECTION PROCEDURES SET FORTH HEREIN, SHALL BE DEEMED TO HAVE NOT OBJECTED TO THE SETTLEMENT, WHICH MEANS THEY WILL BE BOUND BY THE RELEASE, ALL OTHER TERMS AND CONDITIONS OF THE SETTLEMENT AND THE FINAL APPROVAL ORDER, WILL BE DEEMED TO PARTICIPATE IN THE SETTLEMENT AND SHALL BECOME A PARTICIPANT IN THE SETTLEMENT.** Any member of the Settlement Class who submits an objection remains eligible to receive monetary compensation from the Settlement to the extent provided for in the Settlement.

If you choose to object to the Settlement, you must also appear at the Final Approval Hearing scheduled for **April 27, 2022, at 1:30 p.m. (prevailing Eastern time)** in Room 325 of the United States Courthouse, 46 East Ohio Street, Indianapolis, IN 46204. Members of the Settlement Class who wish to appear at the Final Approval Hearing by telephone should call **1-888-273-3658, passcode 6349352#**; provided however, telephone participants should be mindful of the Bankruptcy Court’s guidelines for telephonic participation found on the Bankruptcy Court’s website at the following link: <https://www.insb.uscourts.gov/sites/insb/files/Guidelines-for-Telephonic-Participation.pdf>. The date and time of the Final Approval Hearing may change without notice to the Settlement Class. Check the case website at <https://cases.omniagentsolutions.com/ITT> or the case docket via PACER at <https://pacer.uscourts.gov/> to confirm the date has not been changed. You will need to register for a PACER account in order to access the case docket. You may then enter the case information under the “Search for a Case” link to view the Bankruptcy Court’s docket.

You have the right to appear either in person or through your own attorney at this hearing. Objections not previously filed in writing in a timely manner as described above may not be considered by the Bankruptcy Court. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Bankruptcy Court and serve counsel for all parties on or before **April 20, 2022**. All objections or other correspondence must state the name and number of the case. The Bankruptcy Court will only require substantial compliance with the requirements for submitting an objection. The requirement to submit a written objection may be excused upon a showing of good cause.

An Affected Site Class Member may dispute the calculation of his or her Pro Rata Share by submitting information to Class Counsel no later than **April 11, 2022**. ITT’s records will be presumed determinative, unless the Affected Site Class Member produces documents or other information which conflict with ITT’s records. **DOCUMENTATION SENT TO CLASS COUNSEL AND/OR THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.**

V. UPDATE YOUR CHANGE OF ADDRESS

If you move after receiving this Notice or if it was misaddressed, please complete the Change of Address portion of the Share Form and mail it to the Class Counsel at the address below as soon as possible. **THIS IS IMPORTANT SO THAT FUTURE NOTICES AND/OR THE SETTLEMENT PAYMENT REACH YOU.**

VI. IF THE SETTLEMENT IS NOT APPROVED

If the Settlement is not approved by the Bankruptcy Court, or if any other conditions are not satisfied, the Settlement will be voided, no money will be paid, and the case will return to litigation. If that happens, there is no assurance that any decision at trial or subsequent appeal would be in favor of members of the Settlement Class.

VII. QUESTIONS OR COMMENTS?

PLEASE DO NOT CALL OR CONTACT THE BANKRUPTCY COURT. If you have any questions about the Settlement, you may contact Class Counsel at: (212) 221-1747 or by e-mail at rr@raisnerroupinian.com. The pleadings and other records in this litigation, including the Settlement Agreement may be obtained on the case website at <https://cases.omniagentsolutions.com/ITT> or on the PACER website in the manner described above.