

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

In re ITT EDUCATIONAL SERVICES, INC.
SECURITIES LITIGATION (INDIANA)

CASE NO. 1:14-cv-01599-TWP-DML

**ORDER PRELIMINARILY APPROVING
SETTLEMENT AND PROVIDING FOR
NOTICE OF PROPOSED SETTLEMENT**

WHEREAS, a putative class action is pending before the Court entitled *In re ITT EDUCATIONAL SERVICES, INC. SECURITIES LITIGATION (INDIANA)*, Civil Action No. 1:14-cv-01599-TWP-DML, United States District Court for the Southern District of Indiana (the “Litigation”);

WHEREAS, the Court has received the Stipulation of Settlement dated as of November 2, 2015 (the “Stipulation”)¹, which has been entered into by Plaintiffs, on behalf of themselves and all Members of the Settlement Class, and Defendants, and the Court has reviewed the Stipulation and the Exhibits annexed thereto;

WHEREAS, the Settling Parties having made application, pursuant to Federal Rule of Civil Procedure 23(e), for an order preliminarily approving the Settlement of this Litigation, in accordance with the Stipulation which sets forth the terms and conditions for a proposed Settlement of the Litigation and for dismissal of the Litigation with prejudice upon the terms and conditions set forth therein; and the Court having read and considered the Stipulation;

¹ For purposes of this Order, the Court adopts all defined terms as set forth in the Stipulation, and the capitalized terms used herein shall have the same meaning as in the Stipulation.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court does hereby preliminarily approve the Stipulation and the Settlement set forth therein, including all provisions therein and exhibits attached thereto, subject to further consideration at the Settlement Hearing described below.

2. The Court finds that: (a) the Stipulation resulted from arm's-length negotiations; and (b) the Stipulation is sufficiently fair, reasonable and adequate as to the Settlement Class to warrant providing notice of the Settlement to Settlement Class Members and to warrant holding a Settlement Hearing under Rule 23(e) of the Federal Rules of Civil Procedure.

3. The Settlement Hearing shall be held before this Court on March 10, 2016,² at 2:00 p.m., in the Birch Bayh Federal Building & U.S. Courthouse, 46 East Ohio Street, Courtroom 344, Indianapolis, Indiana 46204, for the purpose of determining, among other things: (i) whether the proposed Settlement of the Litigation, on the terms and conditions provided for in the Stipulation is fair, reasonable and adequate and in the best interests of the Settlement Class and should be finally approved by the Court; (ii) whether, for purposes of settlement only, the Settlement Class should be finally certified; whether Lead Plaintiff should be finally appointed as a representative for the Settlement Class; and whether Lead Counsel should be finally appointed as counsel for the Settlement Class; (iii) whether a Judgment, in the form attached as Exhibit B to the Stipulation should be entered herein, dismissing and releasing the Released Claims (as that term is defined in the Stipulation) with prejudice; (iv) whether the proposed Plan of Allocation should be approved; (v) whether to grant Lead Counsel's request of fees and expenses; (vi) whether the Court

² The Settling Parties have respectfully requested that the Court schedule the Settlement Hearing no earlier than 100 days after entry of this Order, preliminarily approving the Settlement, so that, among other things, they may comply with the notice provisions set forth in the Class Action Fairness Act, 28 U.S.C. § 1715(b).

should grant Plaintiffs' reimbursement of their reasonable costs and expenses (including lost wages) directly related to their representation of the Settlement Class; and (vii) to consider any other matters that may properly be brought before the Court in connection with the Settlement.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court preliminarily certifies, solely for the purposes of effectuating this Settlement, a Settlement Class consisting of all persons and/or entities who purchased or otherwise acquired the common stock of ITT Educational Services, Inc. ("ITT" or the "Company") (ticker symbol: ESI), purchased or otherwise acquired call options on ITT common stock, or wrote put options on ITT common stock, between February 26, 2013 and May 12, 2015, both dates inclusive (the "Settlement Class"). Excluded from the Settlement Class are Defendants, the officers and directors of ITT during the Settlement Class, members of their immediate families, and the legal representatives, heirs, successors or assigns of any of the foregoing and any entity in which a Defendant has or had a controlling interest during the Settlement Class Period. Also excluded from the Settlement Class is any person or entity that timely and validly requests exclusion from the Settlement Class, pursuant to and in accordance with the terms of this Order. There has been no prior notice to the Settlement Class of the certification of the Settlement Class in this Litigation or prior opportunity for any individual or entity to request to be excluded from being a Member of the Settlement Class.

5. With respect to the Settlement Class, the Court preliminarily finds, for purposes of effectuating this Settlement only, that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of the Lead Plaintiff are typical of the claims of the Settlement Class it represents; (d) Lead Plaintiff and Lead

Counsel have and will continue to fairly and adequately represent the interests of the Settlement Class; (e) the questions of law and fact common to the Settlement Class predominate over any questions affecting only individual Members of the Settlement Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

6. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of this Settlement only, Lead Plaintiff, is preliminarily appointed as a class representative for the Settlement Class and Glancy Prongay & Murray LLP, previously appointed Lead Counsel, is preliminarily appointed as counsel for the Settlement Class.

7. The Court approves, as to form and content, the Notice of Proposed Settlement of Class Action, Motion for Attorneys' Fees and Settlement Hearing (the "Notice"), the Proof of Claim and Release form (the "Proof of Claim"), and the Summary Notice ("Summary Notice") annexed respectively as Exhibits A-1, A-2 and A-3 to the Stipulation, and finds that the mailing and distribution of the Notice and publishing of the Summary Notice substantially in the manner and form set forth in this Order meet the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of Section 21D(a)(7) of the Securities Exchange Act of 1934, the Due Process clause of the U.S. Constitution, and any other applicable law, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all Persons entitled thereto.

8. Upon the entry of this Order, pending final determination by the Court as to whether the Settlement, as set forth in the Stipulation, is fair, reasonable, and adequate, and should be finally approved, and whether the Judgment dismissing the Litigation with prejudice, as set forth in Exhibit B to the Stipulation, should be approved, the Court orders a continuation of the stay of litigation in this Action first entered on July 14, 2015, and neither Plaintiffs nor any Settlement Class Member, either directly, representatively, or in any other capacity, shall assert, commence, or prosecute

against any of the Released Persons, any of the Released Claims in this Litigation, or in any other action or litigation in any court, arbitration or other tribunal, or in any other proceeding or forum. This injunction is necessary to protect and effectuate the Settlement, this Order, and the Court's flexibility and authority to effectuate the Settlement and to enter judgment when appropriate, and is ordered in aid of the Court's jurisdiction and to protect its judgments.

9. The Court appoints the firm Angeion Group (the "Claims Administrator") to supervise and administer the notice procedure, as well as the processing of claims as more fully set forth below:

a. Not later than twenty (20) business days after the date of this Order (the "Notice Date"), the Claims Administrator shall cause a copy of the Notice and the Proof of Claim, substantially in the forms annexed as Exhibits A-1 and A-2 to the Stipulation, respectively, to be mailed by first class mail to all of the potential Settlement Class Members who can be identified with reasonable effort;

b. Not later than ten (10) business days after the Notice Date, the Claims Administrator shall cause the Summary Notice, substantially in the form annexed as Exhibits A-3 to the Stipulation, to be published once in Investor's Business Daily, and on a different day shall cause the Summary Notice to be published once on *Business Wire*;

c. Not later than the Notice Date, the Claims Administrator shall cause copies of the Stipulation and its Exhibits, the Notice, the Summary Notice, and the Proof of Claim to be posted on the following website: www.ITTEducationSecuritiesLitigation-Indiana.com; and

d. Not later than seventy (70) days after the date of this Order, Plaintiffs' Lead Counsel shall cause to be served on Defendants' Counsel and filed with the Court proof, by affidavit or declaration, of such mailing, publishing and posting.

10. Nominees who purchased or otherwise acquired ITT Securities between February 26, 2013 and May 12, 2015, both dates inclusive, shall send the Notice and the Proof of Claim to all beneficial owners of such ITT Securities within fourteen (14) days after receipt thereof, or send a list of the names and addresses of such beneficial owners to the Claims Administrator within fourteen (14) days of receipt thereof, in which event the Claims Administrator shall promptly mail the Notice and the Proof of Claim to such beneficial owners. Lead Counsel shall, if requested, reimburse banks, brokerage houses, or other nominees solely for their reasonable out-of-pocket expenses incurred in providing the Notice to beneficial owners who are potential Members of the Settlement Class out of the Settlement Fund, which expenses would not have been incurred except for the sending of such Notice, subject to further order of this Court with respect to any dispute concerning such compensation.

11. Any Person falling within the definition of the Settlement Class may, upon request, be excluded from the Settlement Class. Any such Person must submit to the Claims Administrator a request for exclusion ("Request for Exclusion"), to be received no later than twenty-eight (28) days prior to the Settlement Hearing. A Request for Exclusion must state: (a) the name, address, and telephone number of the Person requesting exclusion; (b) each of the Person's purchases and sales of ITT Securities made during the Settlement Class Period, including the dates of purchase or sale, the number of shares/options purchased and/or sold, and the price paid or received per share for each such purchase or sale; and (c) a statement that the Person wishes to be excluded from the Settlement Class. All Requests for Exclusion must also be signed by the Person requesting exclusion. All

Persons who submit valid and timely Requests for Exclusion in the manner set forth in this Paragraph shall have no rights under the Settlement, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Settlement or the Judgment entered in this Litigation.

12. Any Person within the definition of the Settlement Class who does not timely and validly request exclusion from the Settlement Class shall be deemed to have waived his, her, or its right to be excluded from the Settlement Class and shall be bound by all determinations and judgments in the Litigation concerning the Settlement, whether favorable or unfavorable to the Settlement Class. All Members of the Settlement Class (all Persons who fall within the definition of the Settlement Class but do not submit a timely and valid Request for Exclusion in the manner stated in this Order) shall be bound by the Settlement and the Judgment, including, but not limited to, the release of the Released Claims provided for in the Settlement and the Judgment, if the Court approves the Settlement.

13. Settlement Class Members who wish to collect in the Settlement shall complete and submit Proof of Claim forms in accordance with the instructions contained therein. Unless the Court orders otherwise, all Proof of Claim forms must be postmarked no later than one hundred twenty (120) days from the date of this Order. Any Settlement Class Member who does not timely submit a Proof of Claim form within the time provided for shall be barred from sharing in the distribution of the proceeds of the Net Settlement Fund, unless otherwise ordered by the Court, but nonetheless will be bound by all of the terms of the Settlement, including the releases provided for therein, and shall be barred and enjoined from bringing any action, claim or other proceeding of any kind against any Released Person concerning any Released Claim, and shall be bound by any judgment or determination of the Court affecting the Settlement Class Members.

14. The Claims Administrator, subject to the supervision of Lead Counsel and the Court, will make administrative determinations concerning the acceptance and rejection of the Proof of Claim forms submitted. By submitting a Proof of Claim Form, a Member of the Settlement Class shall be deemed to have submitted to the jurisdiction of the Court with respect to the claim submitted, and the claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure.

15. Any Member of the Settlement Class may enter an appearance in the Litigation, at his, her or its own expense, individually or through counsel of his, her or its own choice. If they do not enter an appearance, Lead Counsel will represent them. If any Settlement Class Member chooses to hire an attorney at their own expense, that attorney must file a notice of appearance with the Court and serve it on Lead Counsel and Defendants' Counsel so that notice is received at least fourteen (14) days prior to the Settlement Hearing.

16. Any Member of the Settlement Class may appear at the Settlement Hearing and show cause, if he, she or it has any reason, why the proposed Settlement of the Litigation should or should not be approved as fair, reasonable and adequate, why a Judgment should or should not be entered thereon, why the Plan of Allocation should or should not be approved, why attorneys' fees and reimbursement of expenses should or should not be awarded to Lead Counsel, or why Plaintiffs should not be reimbursed their reasonable costs and expenses (including lost wages) directly related to their representation of the Settlement Class; provided, however, that no Settlement Class Member or any other Person shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, or, if approved, the Judgment to be entered thereon approving the same, or the order approving the Plan of Allocation, or the attorneys' fees and expenses to be awarded to Lead Counsel, or Plaintiffs' reimbursement of costs and expenses (including lost wages) directly

related to their representation of the Settlement Class, unless that Settlement Class Member has filed said objections, papers and briefs with the Clerk of the United States District Court for the Southern District of Indiana, no later than twenty-one (21) days prior to the Settlement Hearing and delivered copies of any such papers to counsel for the Settling Parties identified in the Notice, such that they are received on or before such date. Any objection must include: (a) the full name, address, and phone number of the objecting Settlement Class Member; (b) a list and documentation of all of the Settlement Class Member's transactions involving the ITT Securities included in the Settlement Class definition, including brokerage confirmation receipts or other competent documentary evidence of such transactions, including the amount and date of each purchase or sale and the price paid and/or received (including all income received thereon); (c) a written statement of all grounds for the objection accompanied by any legal support for the objection; (d) copies of any papers, briefs or other documents upon which the objection is based; (e) a list of all persons who will be called to testify in support of the objection; (f) a statement of whether the objector intends to appear at the Settlement Hearing; (g) a list of other cases in which the objector or the objector's counsel have appeared either as settlement objectors or as counsel for objectors in the preceding five years; and (h) the objector's signature, even if represented by counsel. Any Member of the Settlement Class who does not make his, her or its objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any such objection, unless otherwise ordered by the Court. By objecting to the Settlement, the Judgment, the Plan of Allocation, Lead Counsel's Fee and Expense Application, or otherwise requesting to be heard at the Settlement Hearing, an objector shall be deemed to have submitted to the jurisdiction of the Court with respect to that Person's objection or request to be heard and the subject matter of the Settlement, including,

but not limited to, enforcement of the terms of the Settlement (including, but not limited to, the release of the Released Claims provided for in the Settlement and the Judgment).

17. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Stipulation or further order(s) of the Court.

18. All papers in support of the Settlement, the Plan of Allocation, and the Fee and Expense Application, shall be filed and served not later than thirty-five (35) days prior to the Settlement Hearing. Any papers in further support of the Settlement, the Plan of Allocation, and the Fee and Expense Application, shall be filed and served no later than ten (10) days prior to the Settlement Hearing. If an objection is filed pursuant to Paragraph 16 above, any reply papers shall be filed no later than seven (7) days before the Settlement Hearing.

19. Neither Defendants nor any of the Released Persons shall have any responsibility for or liability with respect to the Plan of Allocation, any application for attorneys' fees or expenses submitted by Lead Counsel, or any application for Plaintiffs' reimbursement of costs and expenses (including lost wages) directly related to their representation of the Settlement Class, and such matters will be considered separately from the fairness, reasonableness and adequacy of the Settlement.

20. At or after the Settlement Hearing, the Court shall determine whether the Plan of Allocation proposed by Lead Counsel and any application for attorneys' fees or expenses by Lead Counsel or Plaintiffs shall be approved. Any further orders or proceedings solely regarding the Plan of Allocation or any application for attorneys' fees or expenses by Lead Counsel or Plaintiffs, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to

terminate the Settlement or in any way disturb or affect or delay the Settlement or the Judgment and the release of the Released Claims.

21. All reasonable expenses incurred in identifying and notifying Settlement Class Members, as well as administering the Settlement Fund, and paying Taxes and Tax expenses, shall be paid as set forth in the Stipulation. Unless otherwise provided in the Stipulation, there shall be no distribution of any portion of the Settlement Fund to any Settlement Class Member until a Plan of Allocation is finally approved and is affirmed on appeal or *certiorari* or is no longer subject to review by appeal of *certiorari* and the time for any petition for rehearing, appeal of review, whether by *certiorari* or otherwise, has expired. In the event the Settlement is not approved by the Court, or otherwise fails to become effective, neither the Plaintiffs nor Lead Counsel shall have any obligation to repay any amounts actually and properly disbursed from the Settlement Fund pursuant to this Paragraph. If the Settlement does not become Final or is terminated for any reason, within fifteen (15) business days of termination, the Settlement Fund shall be returned to Defendants pursuant to written instructions from Defendants' Counsel, together with any interest earned on the Settlement Fund, less any notice and administration costs actually incurred.

22. Defendants have denied, and continue to deny, any and all allegations of wrongdoing, fraud, fault, liability, or damage related to the claims asserted in the Action; affirm that they have acted properly and lawfully at all times; maintain that they had and have meritorious defenses to all claims alleged in the Action; and have represented that they entered into the Settlement solely in order to eliminate the burden, expense, and uncertainties of further litigation. Whether or not the Settlement is approved by the Court, none of this Order, the Stipulation, including its Exhibits, the fact and terms of the Settlement contained therein, or any act performed or document executed pursuant to or in furtherance thereof: (a) is or may be deemed to be or may be used as an admission

of, concession of, or evidence of, the truth or validity of any Released Claim, of any allegations or claims made in the Litigation, of any allegations or claims that could have been made in the Litigation, or of any allegation of wrongdoing, negligence, fault, or liability of Defendants or any other Released Persons; or (b) is or may be deemed to be or may be used as an admission of, concession of, or evidence of, the deficiency or infirmity of any defense that has been or could have been asserted in the Action or in any litigation; or (c) is or may be deemed to be or may be used as an admission of, concession of, or evidence of, any liability, negligence, fault, misrepresentation, omission, or wrongdoing as against any of Defendants or any Released Persons in any arbitration proceeding or other civil, criminal, or administrative action or proceeding in any court, administrative agency, or other tribunal; or (d) is or may be deemed to be or may be used as an admission of, or evidence that class certification is appropriate in this Action, except for purposes of this Settlement; or (e) is or may be deemed to be or may be used as an admission of, or evidence that the consideration to be paid under the Settlement represents the amount which could be or would have been recovered after trial in this Action; or (f) is or may be deemed to be or may be used as an admission of, or evidence that any damages potentially recoverable under the Complaint would have exceeded or would have been less than the Settlement Fund. Neither the Stipulation nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement shall be admissible in any proceeding for any purpose, except to enforce the terms of the Settlement; provided, however that if the Settlement is approved by the Court, the Released Persons may refer to or file the Stipulation and/or the Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any

other theory of claim preclusion or issue preclusion or similar defense or counterclaim under U.S. federal or state law or foreign law.

23. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation or the Effective Date does not occur, or in the event that the Settlement Fund, or any portion thereof, is returned to the Defendants, then this Order shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation. In such an event, the Settling Parties shall return to their positions as of July 14, 2015, the date this Action was stayed pending settlement discussions, without prejudice in any way.

24. Pending the Settlement Hearing, the Court stays all proceedings in the Litigation, other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation.

25. The Court reserves the right to adjourn the date of the Settlement Hearing without further notice to the Members of the Settlement Class, and retains jurisdiction to consider all further applications arising out of or connected with the Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by the Settling Parties, if appropriate, without further notice to the Settlement Class.

DATED: 11/4/2015



Hon. Tanya Walton Pratt, Judge
United States District Court
Southern District of Indiana