

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

**TRUSTEE’S MOTION FOR ENTRY OF AN ORDER (A) APPROVING
SETTLEMENT BY AND BETWEEN ITT AND THE U.S. SECURITIES
AND EXCHANGE COMMISSION, AND (B) GRANTING RELATED RELIEF**

Deborah J. Caruso, the chapter 7 trustee (the “Trustee”) in the above-captioned cases of ITT Educational Services, Inc. (“ITT”), *et al.* (collectively, the “Debtors”), by counsel, respectfully submits this motion (the “Motion”) for entry of an order, substantially in the form attached hereto as **Exhibit A**, (a) approving the terms of a settlement (the “Settlement”) by and between ITT and the U.S. Securities and Exchange Commission (the “SEC”), which Settlement is embodied in that certain “Consent” and Final Judgment, copies of which are attached as **Exhibit 1** to **Exhibit A** hereto, and (b) granting related relief.² In support of the Motion, the Trustee respectfully avers as follows:

Jurisdiction

1. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334.
2. This is a core proceeding within the meaning of 28 U.S.C. §157 (b)(2).
3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

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].

² The Motion and relief requested thereby were noted by counsel to the Trustee and discussed with the Court most recently at the May 18, 2017 omnibus hearing.

4. The statutory bases for the relief requested herein are sections 363(b)(1) of title 11 of the United States Code (the “Bankruptcy Code”) and rule 9019(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

Background

5. 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.

6. On October 4, 2016, the Court entered its *Order Granting Motion for Joint Administration of Chapter 7 Cases* [Docs 221-222], directing the Debtors’ bankruptcy cases to be jointly administered for procedural purposes only.

7. Prior to the Petition Date, the Debtors as a whole were engaged in the for-profit enterprise of providing postsecondary degree programs in 137 campus locations in thirty-nine states and through online services.

8. ITT was a publicly-held company that, as of June 30, 2016, employed over 8,000 employees. ITT offered master, bachelor, and associate degree programs to approximately 40,000 students at its campus locations and online programs to students located in all fifty states and the District of Columbia. All of ITT’s campus locations were authorized by applicable education authorities of the states in which they operated and were accredited by an accrediting commission recognized at the time by the U.S. Department of Education.

9. Webster College was founded in 1965 in Nashua, New Hampshire, as the New England Aeronautical Institute (the “NEAI”). In 1978, the NEAI was merged with its junior-college division to form Webster College, a private institution with a focus on business education.

10. On May 12, 2015, the SEC filed a civil enforcement action against ITT and certain of its officers in the United States District Court for the Southern District of Indiana (the “District Court”), styled as *United States Securities and Exchange Commission v. ITT Educational Services, Inc., et al.*, 1:15-cv-00758 (the “SEC Action”). The SEC Action involves ITT’s disclosures regarding its private education loan programs, and asserts claims under sections 10(b), 13(a) and 13(b)(2) of the Securities Exchange Act of 1934 and rules 10b-5, 12b-20, 13a-1, 13a-11 and 13a-13 promulgated thereunder, as well as Section 17(a) of the Securities Act of 1933. The SEC Action seeks:

- declaratory relief that ITT and its co-defendants committed the securities violations alleged in the complaint;
- injunctive relief permanently restraining ITT and its co-defendants from violating the federal securities laws;
- an order that ITT’s co-defendants be permanently prohibited from acting as an officer or director of any public company;
- disgorgement, with pre- and post-judgment interest;
- civil money penalties, with post-judgment interest; and
- disgorgement of ITT’s co-defendants’ bonuses, incentive-based and equity-based compensation, and/or profits realized from their sale of ITT stock.

11. On July 17, 2015, ITT filed an answer to the complaint in the SEC Action, and prior to Court’s issuance of the Section 105 Injunction (as defined herein) and mutually-agreed extension thereof, the parties were in the process of discovery.

12. On September 6, 2016, ITT announced that it would permanently discontinue academic operations. ITT also announced that it had eliminated the positions of the overwhelming majority of its more than 8,000 employees.

13. On October 10, 2016, the Trustee filed a complaint against, among others, the SEC, seeking to stay the SEC Action. The Trustee and the SEC agreed to stay the SEC Action with respect to ITT [Adv. Proc. 16-50318, Docs 33, 90, 112, and 114] (the “Section 105 Injunction”) while the parties worked towards a settlement of the SEC Action against ITT.

14. On December 14, 2016, the Trustee and the SEC entered into the Settlement, conditioned upon approval by (i) the SEC and (ii) this Court, which fully resolves the SEC Action with respect to ITT.

15. The Settlement is comprised of two parts. The first is a “Consent,” which provides the Trustee’s consent to enter into the settlement. And the second is a “Final Judgment,” which will be submitted to the District Court if and when this court approves the terms of the Settlement and authorizes the Trustee to enter into the Consent. The Consent specifically provides that the “Trustee’s agreement to enter the Consent, and the accompanying Final Judgment, shall only be effective upon entry of an order of the United States Bankruptcy Court for the Southern District of Indiana with jurisdiction over the Bankruptcy Cases authorizing the Trustee to enter into, and be bound by, the Consent.”

16. Under the terms of the Settlement, among other things, all claims against ITT for disgorgement and civil penalties are dismissed with prejudice, providing significant benefit to the Debtors’ estates and their economic stakeholders. Moreover, while under the Settlement “ITT” is restrained from taking certain actions (including actions that might violate certain securities laws), the Trustee is not enjoined and, in any event, is in the process of liquidating the Debtors’ estates and their assets, including ITT, and therefore, any injunction would not have a material impact on the estates. More importantly, the Trustee is not ITT, and there is no concern (or risk) that the

Trustee's liquidation of the estates would violate any security laws. For this reason, the Trustee is comfortable with the terms of the Settlement.

17. In addition, the Consent and Final Judgment provide that, "except as specifically set forth herein, nothing herein shall be or be deemed to be an admission, waiver or release of any claim, right, remedy, cause of action or defense of any type or nature whatsoever of ITT against third parties (collectively, "Claims"), and no third party, including any creditor in the Bankruptcy Cases, may use or rely on this consent to effect an estoppel, waiver, defense, or release of any Claims." This language preserves any and all claims and defenses the Trustee may have with respect to third parties.

18. The decretal paragraphs of the Final Judgment provide, in relevant part, as follows:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant ITT is permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds only the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) ITT's former officers, agents, servants and employees; and (b) other persons that were in active

concert or participation with ITT or with anyone described in (a) prior to the Petition Date.

It Is Hereby FURTHER Ordered, Adjudged, And Decreed that Defendant ITT is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds only the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) ITT's former officers, agents, servants and employees; and (b) other persons that were in active concert or participation with ITT or with anyone described in (a) prior to the Petition Date.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant ITT is permanently restrained and enjoined from violating Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11, and 13a-13 promulgated thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13] by filing materially false and misleading reports with the SEC that make untrue statements of material fact or omit to state material facts necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

IT IS FURTHER ORDERED, Adjudged, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds only the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) ITT's former officers, agents, servants and employees; and (b) other persons that were in active

concert or participation with ITT or with anyone described in (a) prior to the Petition Date.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78(m)(b)(2)] by failing to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the company's transactions and dispositions of its assets or failing to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and any other criteria applicable to such statements.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds only the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) ITT's former officers, agents, servants and employees; and (b) other persons that were in active concert or participation with ITT or with anyone described in (a) prior to the Petition Date.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that any claims for disgorgement or civil penalties are dismissed with prejudice.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment and the Bankruptcy Court shall retain jurisdiction to hear and determine all Claims (as defined below) against ITT, and the Trustee's entry into the Consent, and this Judgment shall only be effective upon, Bankruptcy Court approval of the Trustee's entry into the Consent.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, except as specifically set forth herein, nothing in this order or the Consent shall be or be deemed to be an admission, waiver, or release of any claim, right, remedy, cause of action or defense of any type or nature whatsoever of ITT against third parties (collectively, "Claims"), and no third party, including any creditor in the Bankruptcy Cases, may use or rely on this Order to effect an estoppel, waiver, defense, or release of any Claims.

19. Under the terms of the Settlement and the Trustee's negotiations with the SEC staff, the Trustee agreed this motion would only be filed once the SEC approved the Settlement, which it has done. The Trustee understands that this Settlement will become effective once the Final Judgment is filed with, and entered by, the District Court, and that will only happen after the Bankruptcy Court authorizes the Trustee to enter into the Settlement.

Basis for Relief

20. A court may authorize a trustee to enter into a settlement so long as it is a sound exercise of the trustee's business judgment. *See* 11 U.S.C. § 363(b); *In re UAL Corp.*, 443 F.3d 565, 571 (7th Cir. 2006) (use under section 363 of the Bankruptcy Code must "[make] good business sense"); *In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991) (section 363 sale involves exercise of fiduciary duties and requires an "articulated business justification"); *see also In re Olde Prairie Block Owners, LLC*, 448 B.R. 482, 492 (Bankr. N.D. Ill. 2011) (same). Moreover, when applying the "business judgment" standard to a use of estate property under section 363, a trustee's judgment is "entitled to great judicial deference as long as a sound business reason is given." *See In re Efoora, Inc.*, 472 B.R. 481, 488 (Bankr. N.D. Ill. 2012).

21. Similarly, Bankruptcy Rule 9019(a) permits a bankruptcy court to approve a trustee's "compromise or settlement" after notice and a hearing, if such settlement is "fair and equitable . . . and in the best interests of the bankruptcy estate." *Depoister v. Mary M. Holloway Found.*, 36 F.3d 582, 586 (7th Cir. 1994); *see also In re Energy Co-op., Inc.*, 886 F.2d 921, 927 (7th Cir. 1989) ("The benchmark for determining the propriety of a bankruptcy settlement is whether the settlement is in the best interests of the estate."); *In re Smith*, No. 02-16450-JKC-7A, 2008 WL 4276171, at *2 (Bankr. S.D. Ind. Sept. 10, 2008) (same). Settlements should be approved unless "the settlement 'falls below the lowest point in the range of reasonableness.'" *In re Commercial Loan Corp.*, 316 B.R. 690, 698 (Bankr. N.D. Ill. 2004) (quoting *Energy Co-op.*, 886

F.2d at 929); *In re Doctors Hosp. of Hyde Park, Inc.*, 474 F.3d 421, 426 (7th Cir. 2007); *see also In re Artra Grp., Inc.*, 300 B.R. 699, 702 (Bankr. N.D. Ill. 2003). Settlements and compromises are favored in bankruptcy because they expedite case administration and reduce unnecessary administrative costs. *Fogel v. Zell*, 221 F.3d 955, 960 (7th Cir. 2000). In determining whether a compromise is in the best interests of the estate, the Court must compare “the settlement’s terms with the litigation’s probable costs and probable benefits.” *In re Am. Reserve Corp.*, 841 F.2d 159, 161 (7th Cir. 1987); *see also Doctors Hosp.*, 474 F.3d at 426 (“Among the factors the court considers are the litigation’s probability of success, complexity, expense, inconvenience, and delay, including the possibility that disapproving the settlement will cause wasting of assets.”) (internal quotation marks and citations omitted); *Commercial Loan*, 316 B.R. at 697 (holding that relevant factors a bankruptcy court should consider in approving a settlement include “the litigation’s probability of success, its complexity, and its ‘attendant expense, inconvenience and delay’” (quoting *Am. Reserve Corp.*, 841 F.2d at 161)).

22. Here, the Trustee believes entry into the Settlement (including entering into the Consent and not opposing entry of the Final Judgment) is in the best interest of the Debtors’ estates and represents a sound exercise of her business judgment. The various disputes between ITT and the SEC are complex, and the outcome is uncertain. Prior to the Petition Date, the disputes already proved to be costly and time-consuming to all parties, and costs associated with the SEC Action will continue if left unresolved.

23. Importantly, pursuant to the Settlement, no payments will be made, nor additional costs incurred, by the Debtors. Moreover, while ITT is restrained from violating certain securities laws under the Settlement (and restrained from engaging in other conduct), ITT (and the other Debtors) are being liquidated and their assets will be distributed to their stakeholders. Therefore,

violation of such laws is not likely and the injunction will have no effect on the Trustee's conduct or operations. Accordingly, the Settlement represents one of the best possible resolutions of the SEC Action for the Debtors' estates, and any additional financial burden with respect thereto would only serve to diminish the recoveries of their stakeholders.

24. For the foregoing reasons, the Trustee has determined, in the exercise of her sound business judgment, that the Settlement is fair, equitable, in the best interest of the Debtors' estates, and well within the range of reasonableness for approval under Bankruptcy Rule 9019(a). Accordingly, the Trustee respectfully submits that the Court should approve the Settlement.

Notice

25. Pursuant to the Notice, Case Management and Administrative Procedures (the "Case Management Procedures") approved by this Court on October 4, 2016 [Doc 220], the Trustee will serve a copy of the Motion on the following (as defined in the Case Management Procedures): (a) the Core Group; (b) the Request for Notice List; (c) the Appearance List; and (d) the SEC.

NOTICE IS GIVEN, that pursuant to the Case Management Procedures, any objection to this motion must be in writing and filed with the Bankruptcy Clerk by no later than 4:00 p.m. on June 21, 2017. Those not required or not permitted to file electronically must deliver any objection by U.S. mail, courier overnight/express mail or in person at:

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

The objecting party must also serve a copy of the written objection upon the Trustee's counsel, at Counsel for Trustee Deborah J. Caruso, Rubin & Levin, P.C., 135 N. Pennsylvania Street, Suite 1400, Indianapolis, IN 46204. **If an objection is NOT timely filed, the requested relief may be granted without a hearing.**

NOTICE IS FURTHER GIVEN that in the event of an objection to this motion is timely filed, a hearing on this motion and such objection will be conducted on June 28, 2017 at 1:30 p.m. (prevailing Eastern time), in Room 325 of the United States Courthouse, 46 East Ohio Street, Indianapolis, IN 46204.

WHEREFORE, the Trustee respectfully requests entry of an order, substantially in the form attached hereto as **Exhibit A**, (a) granting the Motion, (b) approving the Settlement, and (c) granting such other relief as is just and proper.

Dated: June 7, 2017
Indianapolis, Indiana

Respectfully submitted,

/s/ Jeff. J. Marwil

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CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2017, a copy of the foregoing *Trustee's Motion for Entry of an Order (A) Approving Settlement by and Between ITT and the U.S. Securities and Exchange Commission, and (B) Granting Related Relief* was filed electronically. Pursuant to Section IV.C.3(a) of the Case Management Procedures, 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.

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I further certify that on June 7, 2017, pursuant to Section IV.C.3(c) of the Case Management Procedures, a copy of the foregoing *Trustee's Motion for Entry of an Order (A) Approving Settlement by and Between ITT and the U.S. Securities and Exchange Commission, and (B) Granting Related Relief* was emailed to the following:

Arlington ISD/Richardson ISD: Eboney Cobb at ecobb@pbfc.com
 CEC Red Run, LLC: Alan M. Grochal at agrochal@tydingslaw.com
 SWRE Deal V Building, LLC: Paul Weiser at pweiser@buchalter.com
 Tarrant County/Dallas County: Elizabeth Weller at dallas.bankruptcy@publicans.com
 Northwest Natural Gas Company: Ashlee Minty at Ashlee.Minty@nwnatural.com
 Solar Drive Business, LLC: Chris W. Halling at challing@hallingmeza.com
 Market-Turk Company: Jordan A. Lavinsky at jlavinsky@hansonbridgett.com
 Taxing Authority for Harris County, Texas: John P. Dillman at houston_bankruptcy@lgbs.com

Texas Comptroller of Public Accounts: Rachel Obaldo at rachel.obaldo@oag.texas.gov
Clear Creek Independent School District: Carl O. Sandin at csandin@pbfc.com
Synchrony Bank: Recovery Management Systems Corporation at claims@recoverycorp.com
Bexar County: Don Stecker at sanantonio.bankruptcy@publicans.com
SWRE Deal V Building, LLC: Nancy K. Swift at nswift@buchalter.com
TN Dept. of Revenue: Michael Willey at michael.willey@ag.tn.gov
Florida Department of Education: Benman D. Szeto at benman.szeto@fldoe.org
Last Second Media, Inc.: T. Todd Egland at tegland@beldenblaine.com
Hung Duong: Kevin Schwin at kevin@schwinlaw.com
Travis County: Kay D. Brock at kay.brock@traviscountytexas.gov
Able Building Maintenance: Scott D. Fink at bronationalecf@weltman.com
Marathon Ventures, LLC: Daniel M. Karger at kargerlaw@gmail.com
Oklahoma County Treasurer: Tammy Jones at tammy.jones@oklahomacounty.org
JM Partners LLC: John Marshall at jmarshall@jmpartnersllc.com

/s/ Deborah J. Caruso

Deborah J. Caruso

Exhibit A

[Proposed Order]

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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

**ORDER (A) APPROVING SETTLEMENT
BY AND BETWEEN ITT AND THE U.S. SECURITIES AND
EXCHANGE COMMISSION, AND (B) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² [Doc ____] of Deborah J. Caruso, the chapter 7 trustee in the above-captioned cases (the “Trustee”), for entry of an order (a) approving the Settlement, a copy of which is attached hereto as **Exhibit 1**, by and between ITT and the SEC, and (b) granting

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].

² Capitalized terms used but not defined herein have the meanings given to them in the Motion.

related relief, all as more fully set forth in the Motion, and after due deliberation, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Settlement is approved.
3. The Trustee is authorized to enter into the Consent and cause the Debtors to perform under the terms of the Settlement, including taking acts to permit the Final Judgment to be entered.
4. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order will be immediately effective and enforceable upon its entry.
5. This Court shall retain jurisdiction to interpret, implement and enforce the terms of this order.

###

Exhibit 1

[Consent and Final Judgment]

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

**UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,**

Plaintiff,

v.

**ITT EDUCATIONAL SERVICES, INC.,
KEVIN M. MODANY, and
DANIEL M. FITZPATRICK**

Defendants.

Case No. 1:15-cv-00758-JMS-MJD

CONSENT

1. Deborah J. Caruso, the duly appointed Chapter 7 trustee of Defendant ITT Educational Services, Inc. ("ITT") and its debtor affiliates in Bankruptcy Case No. 16-07207-JMC-7A, which is pending in the Bankruptcy Court for the Southern District of Indiana (the "Bankruptcy Cases"), hereby acknowledges, solely for the purposes of entering into this Consent, service of the complaint in this action upon ITT and the Court's jurisdiction over ITT and over the subject matter of this action.

2. Without admitting or denying the allegations of the complaint (except as to personal and subject matter jurisdiction over ITT, which is admitted), the Trustee, on behalf of the Defendant ITT, hereby consents to the entry of the final Judgment in the form attached hereto (the "Final Judgment") and incorporated by reference herein, which, among other things:

(a) permanently restrains and enjoins ITT from violation of Section 17(a) of the Securities Act of 1933 [15 U.S.C. § 77q(a)], Sections 10(b), 13(a), and 13(b)(2) of the Securities Exchange Act of 1934 [15 U.S.C. §§ 78j(b), 78m(a), and 78(m)(b)(2)], and Rules 10b-

5, 12b-20, 13a-1, 13a-11, and 13a-13 promulgated thereunder [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13]; and

(b) dismisses with prejudice all claims against ITT for disgorgement and civil penalties.

3. The Trustee agrees that this Court will not make findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, or otherwise.

4. The Trustee withdraws ITT's request for a jury trial and agrees not to appeal the entry of the Final Judgment in the form annexed hereto.

5. The Trustee enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce the Trustee to enter into this Consent.

6. This Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

7. The enforcement of the Final Judgment will not be opposed on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and Trustee hereby waives any objection based thereon.

8. Entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute due notice to the Trustee of the terms and conditions of the Final Judgment.

9. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against ITT in this civil proceeding. Trustee acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the

Commission with regard to any criminal liability of ITT that may have arisen or may arise from the facts underlying this action or immunity of ITT from any such criminal liability.

10. ITT understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings," and "a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies the allegations." As part of ITT's agreement to comply with the terms of Section 202.5(e), ITT: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis, and (ii) will not make or permit to be made any public statement to the effect that ITT does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations, without also stating that Defendant does not deny the allegations. Nothing in this paragraph affects Defendant's or Trustee's (i) testimonial obligations; (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party, or (iii) right to assert that ITT neither admits nor denies the allegations in the Complaint (except as to personal and subject matter jurisdiction over ITT, which is admitted). Moreover, as neither the Trustee nor ITT has admitted nor denied the allegations in the Complaint (except as to personal and subject matter jurisdiction over ITT, which is admitted), this Consent and the Final Judgment shall have no preclusive, *res judicata*, or collateral estoppel effect with respect to any claim, litigation, dispute, or cause of action to which the Commission is not a party.

11. The Trustee agrees not to assert any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by ITT to defend against this action. For these purposes, the Trustee agrees that ITT is not the prevailing party in this action since the parties have reached a good faith settlement.

12. The Commission may present the Final Judgment to the Court for signature and entry without further notice, provided there are no amendments, modifications, or changes of any nature to the form of Final Judgment without the prior written notice to and consent of the Trustee.

13. This Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment and claims brought in this action. The Bankruptcy Court (as defined in the Final Judgment) retains jurisdiction over the Bankruptcy Cases and any and all other Claims (defined below) asserted against ITT and its affiliated debtors.

14. Except as specifically set forth herein, nothing herein shall be or be deemed to be an admission, waiver or release of any claim, right, remedy, cause of action or defense of any type or nature whatsoever of ITT against third parties (collectively, "Claims"), and no third party, including any creditor in the Bankruptcy Cases, may use or rely on this consent to effect an estoppel, waiver, defense, or release of any Claims.

15. The Trustee's agreement to enter this Consent, and the accompanying Final Judgment, shall only be effective upon entry of an order of the United States Bankruptcy Court

for the Southern District of Indiana with jurisdiction over the Bankruptcy Cases authorizing the Trustee to enter into, and be bound by, this Consent.

By: 
Deborah J. Caruso

Bankruptcy Trustee for
Defendant ITT Educational Services, Inc.

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

**UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,**

Plaintiff,

v.

**ITT EDUCATIONAL SERVICES, INC.,
KEVIN M. MODANY, and
DANIEL M. FITZPATRICK**

Defendants.

Case No. 1:15-cv-00758-JMS-MJD

FINAL JUDGMENT AS TO DEFENDANT ITT EDUCATIONAL SERVICES, INC.

The Securities and Exchange Commission having filed a Complaint against ITT Educational Services, Inc. (“ITT”) in the United States District Court for the Southern District of Indiana (the “District Court”), and ITT and its debtor affiliates subsequently having commenced voluntary proceedings pursuant to chapter 7 of title 11 of the United States Code (the “Bankruptcy Cases”), in the United States Bankruptcy Court for the Southern District of Indiana (the “Bankruptcy Court”) on September 16, 2016 (the “Petition Date”), the Bankruptcy Cases having been procedurally consolidated under Bankruptcy Case No. 16-07207-JMC-7A, and Deborah J. Caruso having been appointed as Chapter 7 Trustee (the “Trustee”) for ITT and its affiliated debtors in the Bankruptcy Cases, the Trustee having admitted the Court’s jurisdiction over ITT and the subject matter of this action, ITT neither admitting nor denying the allegations set forth in the Complaint, other than those factual allegations necessary to establish this Court’s jurisdiction, and the Trustee having thereafter determined to enter into the Consent attached hereto as Exhibit A:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant ITT is permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the “Securities Act”) [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds only the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) ITT’s former officers, agents, servants and employees; and (b) other persons that were in active concert or participation with ITT or with anyone described in (a) prior to the Petition Date.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant ITT is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of

interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds only the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) ITT's former officers, agents, servants and employees; and (b) other persons that were in active concert or participation with ITT or with anyone described in (a) prior to the Petition Date.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant ITT is permanently restrained and enjoined from violating Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11, and 13a-13 promulgated thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13] by filing materially false and misleading reports with the SEC that make untrue statements of material fact or omit to state material facts necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds only the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) ITT's former officers, agents, servants and employees; and (b) other persons that were in active concert or participation with ITT or with anyone described in (a) prior to the Petition Date.

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78(m)(b)(2)] by failing to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the company's transactions and dispositions of its assets or failing to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and any other criteria applicable to such statements.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds only the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) ITT's former officers, agents, servants and employees; and (b) other persons that were in active concert or participation with ITT or with anyone described in (a) prior to the Petition Date.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that any claims for disgorgement or civil penalties are dismissed with prejudice.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment and the Bankruptcy Court shall retain jurisdiction to hear and determine all Claims (as defined below) against ITT, and the Trustee's entry into the Consent, and this Judgment shall only be effective upon, Bankruptcy Court approval of the Trustee's entry into the Consent.

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, except as specifically set forth herein, nothing in this order or the Consent shall be or be deemed to be an admission, waiver, or release of any claim, right, remedy, cause of action or defense of any type or nature whatsoever of ITT against third parties (collectively, "Claims"), and no third party, including any creditor in the Bankruptcy Cases, may use or rely on this Order to effect an estoppel, waiver, defense, or release of any Claims.

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, there being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: _____, _____

UNITED STATES DISTRICT JUDGE