

**IN THE CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE FOR THE
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE**

JOSIAH AREND, and BREANNA AREND,)	
individually, and on behalf of all others)	
similarly situated,)	
)	
<i>Plaintiffs,</i>)	
)	Case No. 23C303
v.)	
)	
NEWCOURSE COMMUNICATIONS, INC.)	
-and-)	
FIRST UNITED BANK AND TRUST CO.)	
)	
<i>Defendants.</i>)	

**ORDER GRANTING UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF CLASS SETTLEMENT AGREEMENT**

This matter came before the Court on Plaintiffs Josiah Arend’s and Breanna Arend’s (“Plaintiffs” or “Class Representatives”) Unopposed Motion for Preliminary Approval of Class Settlement and Integrated Memorandum of Law in Support (“Motion”). Plaintiffs, individually, and on behalf of the proposed Settlement Class, and Defendants Newcourse Communications, Inc. (“Newcourse”) and First United Bank and Trust Co. (“First United Bank”) (“Defendants,” and together with Plaintiffs, the “Parties”) have entered into a Settlement Agreement (the “Settlement”) that settles the above-captioned litigation.

Newcourse is a commercial printing company who provides services to financial institutions, including First United Bank. On or about August 2022, Newcourse discovered that it was the victim of a cyber-attack in which cybercriminals unauthorizedly hacked and gained access to its computer network between April 27, 2022, and May 3, 2022. Newcourse investigated the incident and determined that, through this attack, the cybercriminals accessed or acquired documents containing the personal information of certain individuals, including customers of First

United Bank and other Newcourse clients (the “Data Breach” or “Breach”). Newcourse thus provided written notice to individuals whose information may have been affected by the Data Breach in or about October 2022, explaining the incident and that the potentially compromised personal information may have included full names, addresses, loan account numbers, details included in 1098 mortgage statement, and Social Security numbers.

Plaintiffs each received a notice letter from Newcourse confirming that their personal information may have been affected by the Data Breach. After receiving notice of the Data Breach, Plaintiffs filed this lawsuit against Defendants, individually, and on behalf of all others similarly situated, the proposed Class, alleging a variety of claims arising from the Data Breach. The Class Action Complaint asserted claims for 1) negligence; 2) negligence *per se*; 3) invasion of privacy – intrusion upon seclusion; 4) breach of implied contract; 5) third-party beneficiary; and 6) unjust enrichment.

Having reviewed the Settlement Agreement, including the exhibits attached thereto, and all prior proceedings herein, and for good cause shown, it is hereby ORDERED pursuant to Tennessee Rules of Civil Procedure 23.05 *et seq.* that Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement is **GRANTED** as set forth herein.¹

1. **Class Certification for Settlement Purposes Only.** For settlement purposes only, the Court conditionally certifies the Settlement Class in this matter under Tennessee Rules of Civil Procedure 23.01, 23.02, defined as follows:

All individuals whose Social Security numbers were compromised by the Data Breach and who were mailed notification of the Data Breach by or on behalf of Newcourse on or about October 31, 2022; and all individuals whose Social Security numbers were not compromised by the Data Breach but who were mailed notification of the Data Breach by or on behalf of Newcourse or First United Bank

¹ Unless otherwise indicated, capitalized terms used in this [Proposed] Preliminary Approval Order Granting Unopposed Motion for Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”) have the same meaning as in the Settlement Agreement.

and who have asserted a claim against Newcourse and/or First United Bank on or before the date of this Agreement for alleged misuse of their personal information resulting in harm because of the Data Breach.

Excluded from the Settlement Class are:

(a) any judge or magistrate presiding over this action and members of their families; (b) Defendants, Defendants' subsidiaries, parents, successors, predecessors, affiliated entities, and any entity in which Defendants or its parent has a controlling interest, and their current or former officers and directors; (c) persons who properly execute and file a timely request for exclusion from the Class; (d) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (e) Plaintiffs' counsel and Defendants' counsel; and (f) the legal representatives, successors, and assigns of any such excluded person.

The Court conditionally finds, for settlement purposes only, that: (1) the Settlement Class is so numerous that joinder of all members is impracticable, (2) there are questions of law or facts common to the Settlement Class, (3) the claims or defenses of the Class Representatives are typical of the claims or defenses of the Settlement Class, (4) the Class Representatives and Settlement Class Counsel will fairly and adequately assert and protect the interests of the Settlement Class under the criteria set forth in the Tennessee Rules of Civil Procedure, and a class action provides a fair and efficient method of adjudication of the controversy.

2. **Class Representatives and Settlement Class Counsel.**

Josiah Arend and Breanna Arend are hereby designated and appointed as the Class Representatives. The Court provisionally finds that the Class Representatives are similarly situated to absent Settlement Class Members and therefore typical of the Class and that they will be adequate Class Representative.

The Court finds that the following counsel is experienced and adequate counsel and is hereby provisionally designated as Settlement Class Counsel: Stranch Jennings & Garvey PLLC and Cohen & Malad, LLP.

3. **Preliminary Settlement Approval.** Upon preliminary review, the Court concludes and finds that the proposed Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Classes to warrant providing Notice of the Settlement to the Settlement Class and accordingly the proposed Settlement is preliminarily approved.

4. **Jurisdiction.** The Court concludes that it has subject matter jurisdiction and personal jurisdiction over the Parties before it for the purposes of the Settlement. Additionally, venue is proper in this Court.

5. **Final Approval Hearing.** A Final Approval Hearing shall be held on _____, 2024 at _____ o'clock [a.m./p.m.] at Metro Courthouse 1 Public Square, Nashville, Tennessee 37201 to determine, among other things, whether: (a) this matter should be finally certified as a class action; (b) the Settlement Agreement between the Parties should be finally approved; (c) the Settlement and Settlement Agreement should be finally approved as fair, reasonable, adequate, and in the best interests of the Settlement Class; (d) the action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (e) Settlement Class Members (except those who have timely and valid requests for exclusion from the Settlement) should be bound by the releases set forth in the Settlement Agreement; (f) Plaintiffs' Motion for Attorneys' Fees, Costs, Expenses, and Service Awards should be granted; (g) Stranch, Jennings & Garvey PLLC and Cohen & Malad, LLP should be finally appointed as Settlement Class Counsel; and (h) Josiah Arend and Breanna Arend should be finally appointed as Class Representative.

Plaintiffs' Motion for Final Approval of the Class Action Settlement shall be filed with the Court fourteen (14) days before the date of the final approval hearing, and Plaintiffs' Motion for Attorneys' Fees, Costs, Expenses, and Service Award to Class Representatives shall be filed with

the Court at least fourteen (14) Days prior to the deadline for Settlement Class Members to opt-out of or object to the Settlement.

6. **Administration.** The Court appoints Kroll Settlement Administration, LLC (“Kroll”), as the Settlement Administrator, with responsibility for the Notice Program and Claims Administration and to fulfill the duties of the Settlement Administrator set forth in the Settlement Agreement. Notice and Claims Administration Costs, including, but not limited to, the Settlement Administrator’s fees, as well as the costs associated with the provision of notice to the Settlement Class Members and administration of the Settlement, shall be paid by Defendants.

7. **Notice to the Class.** The proposed Notice Program set forth in the Settlement Agreement, including the Postcard Notice and the Long Notice, which are attached to the Settlement Agreement as **Exhibits B and C**, respectively, satisfy the requirements of the Tennessee Rules of Civil Procedure, the United States Constitution, the Tennessee Constitution, and due process, and other applicable laws, and constitute reasonable notice of the commencement of the action, provide a fair recital of the subject matter and proposed terms of the Settlement, provide Settlement Class Members with details regarding how to request exclusion from or to object to the Settlement Agreement, and are hereby approved. Non-material modifications to these exhibits may be made without a further order of the Court. The Settlement Administrator and Defendants are directed to carry out the Notice Program in conformance with the Settlement Agreement.

Within thirty (30) days of Preliminary Approval (“Notice Date”), the Settlement Administrator shall send the Notice to all Settlement Class Members, with the Postcard Notice sent by U.S. mail, and the Long Notice posted on the Settlement Website.

8. **Findings and Conclusions Concerning Notice.** The Court finds that the form, content, and method of giving notice to the Settlement Class as described in this Preliminary Approval Order and the Settlement Agreement (including the exhibits thereto) constitutes reasonable notice of the commencement of the action to the Settlement Class pursuant to Tennessee Rules of Civil Procedure, the United States Constitution, the Tennessee Constitution, due process, and other applicable laws. Specifically, the Notices themselves are clear and straightforward. They define the Settlement Class; clearly describe the options available to class members and the deadlines for taking action; describe the essential terms of the Settlement, including a description of the subject matter and the proposed terms of the Settlement, including a summary of the monetary or other benefits the class would receive; disclose the requested Service Award for the Class Representatives, as well as the amount that Settlement Class Counsel intends to seek in fees, costs, and expenses; describe procedures for making claims, objections, and requesting exclusion; provide information that will enable Settlement Class Members to calculate their individual recovery; describe the date, time, and place of the Final Fairness Hearing; and prominently display the address and phone number of Settlement Class Counsel and the Settlement Administrator for Settlement Class Members to make further inquiry about the Settlement. Finally, direct mailing via U.S. mail, combined with publishing on the Settlement Website, is designed to be the best reasonable notice of the commencement of the action to reach the Settlement Class Members under the circumstances.

9. **Exclusion from Class.** Any Settlement Class Member who wishes to be excluded from the Settlement Class must personally sign, and timely submit, complete, and mail a request for exclusion (“Opt-Out Request”) to the Settlement Administrator at the address in the Notice. To be effective, an Opt-Out Request must be postmarked *no later than the final date of the Opt-Out*

Period, which is the forty-five (45)-Day period beginning upon the Notice Date.

For the Opt-Out Request to be valid, it must include the individual's name, address, and telephone number, and must clearly manifest a Person's intent to be excluded from the Settlement Class.

All Settlement Class Members who submit timely, valid Opt-Out Requests, shall receive no benefits or compensation under the Settlement Agreement, shall gain no rights from the Settlement Agreement, shall not be bound by the Settlement Agreement, and shall have no right to object to the Settlement or proposed Settlement Agreement or to participate at the Final Approval Hearing. An Opt-Out Request or other request for exclusion that does not fully comply with the requirements for requesting exclusion from the Settlement Class or that is not timely submitted or postmarked, or that is sent to an address other than that set forth in the Notice, will be invalid, and the person submitting such request will be treated as a Settlement Class Member and will be bound by the Settlement Agreement, including the Release contained therein, and any judgment entered thereon.

10. **Objections.** A Settlement Class Member who complies with the requirements of the Settlement Agreement may object to the Settlement and to Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Award for the Class Representative.

No Settlement Class Member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any Settlement Class Member shall be filed with the Court, unless a written objection is sent to the Court ***by the Objection Deadline, which is no later than forty-five (45) Days after the Notice Date***, as set forth in the Settlement Agreement and as specified in the Notice and must also include all of the information set forth in Paragraph 53 of the Settlement Agreement, which is as follows: (i) the name of the proceedings; (ii) the Settlement Class

Member's full name, current mailing address, and telephone number; (iii) a statement of the specific grounds for the objection, as well as any documents supporting the objection; (iv) a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (v) the identity of any attorneys representing the objector; (vi) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; and (vii) the signature of the Settlement Class Member or the Settlement Class Member's attorney. To be timely, written notice of an objection in the appropriate form must be filed with the Clerk of the Court and contain the case name and docket number, by no later than the Objection Date, and served concurrently therewith upon Plaintiffs' Counsel, J. Gerard Stranch, IV and Andrew Mize of Stranch, Jennings & Garvey, PLLC, and Lynn A. Toops and Amina A. Thomas of Cohen & Malad, LLP, and Defendants' Counsel, Freeman Mathis & Gary, LLP and Baker, Donelson, Bearman, Caldwell & Berkowitz, PC.

Any Settlement Class Member who fails to comply in full with the requirements for objecting in the Settlement Agreement, the Notice, and any Court orders will forever waive and forfeit any and all rights he or she may have to raise any objection to the Settlement Agreement, will not be permitted to object to the approval of the Settlement at the Final Approval Hearing, will be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means, and will be bound by the Settlement Agreement and by all proceedings, orders, and judgments in the Lawsuit.

11. **Claims Process and Settlement Administration.** Class Representatives and Defendants have created a process for assessing and determining the validity and value of claims and a payment methodology to Settlement Class Members who submit a timely, valid Claim Form, a copy of which is attached to the Settlement Agreement as Exhibit A. The Court preliminarily

approves the plan for remuneration described in the Settlement Agreement and directs that the Settlement Administrator effectuate the distribution of Settlement consideration according to the terms of the Settlement Agreement, should the Settlement be finally approved.

Settlement Class Members who qualify for and wish to submit a Claim Form shall do so in accordance with the requirements and procedures specified in the Notice and the Claim Form. If the Final Order and Judgment is entered, all Settlement Class Members who qualify for any benefit under the Settlement, but fail to submit a claim in accordance with the requirements and procedures specified in the Notice and the Claim Form, shall be forever barred from receiving any such benefit, but will in all other respects be subject to and bound by the provisions in the Settlement Agreement, the Release included in that Settlement Agreement, and the Final Order and Judgment.

12. **Termination of Settlement.** This Preliminary Approval Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing as of the date of the execution of the Settlement Agreement, if the Settlement is not finally approved by the Court or is terminated in accordance with the Settlement Agreement. In such event, the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court's orders, including this Preliminary Approval Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

13. **Use of Order.** This Preliminary Approval Order shall be of no force or effect if a Final Order and Judgment is not entered or there is no Effective Date and shall not be construed or used as an admission, concession, or declaration by or against Defendants of any fault, wrongdoing, breach, liability, or the certifiability of any class. Nor shall this Preliminary Approval

Order be construed or used as an admission, concession, or declaration by or against the Class Representatives or any other Settlement Class Member that his or her claim lacks merit or that the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claim he, she, or it may have in this Lawsuit or in any other lawsuit.

14. **Stay of Proceedings.** Except as necessary to effectuate this Preliminary Approval Order, all proceedings and deadlines in this matter are stayed and suspended pending the Final Approval Hearing and issuance of the Final Order and Judgment, or until such further order of this Court. Further, any actions brought by Settlement Class Members concerning the Released Claims are hereby enjoined and stayed pending the Final Approval Hearing and issuance of the Final Order and Judgment, or until such further order of this Court.

15. **Continuance of Hearing.** The Court reserves the right to adjourn or continue the Final Approval Hearing and related deadlines without further written notice to the Settlement Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the Settlement Website maintained by the Settlement Administrator.

16. **Summary of Deadlines.** The preliminarily approved Settlement shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement Agreement and this Preliminary Approval Order include, but are not limited to:

EVENT	DATE
Settlement Class List	21 Days after Preliminary Approval, SA ¶ 50
Notice Date	30 Days after Preliminary Approval, SA ¶ 50
Deadline for Plaintiffs to File Motion for Attorneys' Fees, Costs, Expenses, and Service Award	14 Days Prior to Opt-Out and Objection Deadlines, SA ¶ 70
Deadline for Settlement Class Members to Opt-Out, or Object to Settlement Agreement	45 Days after Notice Deadline, SA ¶¶ 52, 53

Deadline for Class Members to Submit Claim Forms (Electronically or Postmarked by Mail)	90 Days after Notice Deadline, SA ¶ 5
Deadline for Plaintiffs to File Motion for Final Approval of Settlement	14 Days Prior to Final Approval Hearing

IT IS SO ORDERED this ____ day of _____, 2024.

THE HONORABLE DAVID BRILEY, JUDGE,
CIRCUIT COURT OF DAVIDSON COUNTY

APPROVED FOR ENTRY BY:

/s/ J. Gerard Stranch, IV
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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of April, 2024 a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system and/or U.S. Mail to:

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/s/ J. Gerard Stranch, IV
J. Gerard Stranch, IV



Case Title: AREND V NEWCOURSE COMMUNICATIONS INC

Case Number: 23C303

Type: ORDER- GENERAL

The foregoing is hereby ORDERED, ADJUDGED
AND DECREED:

Judge C. David Briley, First Circuit