

**IN THE CIRCUIT COURT FOR THE STATE OF TENNESSEE
20th JUDICIAL DISTRICT, DAVIDSON COUNTY**

JOSIAH AREND and BREANNA AREND,)
on behalf of themselves, individually, and on)
behalf of all others similarly situated,)
)
Plaintiffs,) Class Action
)
v.) Case No. 23C303
)
NEWCOURSE COMMUNICATIONS INC. and)
FIRST UNITED BANK & TRUST CO.,)
)
Defendants.)

[PROPOSED] ORDER GRANTING PLAINTIFFS’ UNOPPOSED MOTION FOR FINAL APPROVAL

Before the Court is Plaintiffs’ Unopposed Motion for Final Approval of the Class Settlement (“Motion for Final Approval”). Plaintiffs request that the Court enter an Order and Judgment Granting Final Approval of the Class Action Settlement (“Final order and Judgment”) involving Plaintiffs Josiah Arend and Breanna Arend (“Plaintiffs” or “Class Representatives”) and Defendants Newcourse Communications, Inc. and First United Bank and Trust Co. (“Defendants”, and together with Plaintiffs, the “Parties”), as fair, reasonable, adequate, and in the best interests of the Settlement Class.

Having reviewed and considered the Settlement Agreement and Plaintiffs’ Unopposed Motion for Final Approval, and having conducted a Final Approval Hearing, the Court, pursuant to Tennessee Rules of Civil Procedure 23.01 *et seq.*, makes the findings and grants the relief set forth below. In so doing, the Court approves the Settlement upon the terms and conditions set forth in this Final Order and Judgment.

THE COURT not being required to conduct a trial on the merits of the case or to determine with certainty the factual legal issues in dispute when determining whether to approve a proposed

class action settlement; and

THE COURT being required under Tennessee Rules of Civil Procedure 23.01 *et seq.* to make the findings and conclusions hereinafter set forth for the limited purpose of determining whether the Settlement should be approved as being fair, reasonable, adequate, and in the best interests of the Settlement Class; and

THE COURT having considered all the documents filed in support of the Settlement, and having fully considered all matters raised, all exhibits and affidavits filed, all evidence received at the Final Approval Hearing, all other papers and documents comprising the records herein, and all oral arguments presented to the Court;

IT IS ORDERED on this ___ day of _____, 2024 that:

1. The Settlement involves allegations in Plaintiffs' Class Action Complaint that Defendants failed to safeguard and protect the personally identifiable information ("PII") of persons about whom it collected such PII, and that this alleged failure caused injuries to Plaintiffs and the Settlement Class.

2. The Settlement does not constitute an admission of liability by Defendants, and the Court expressly does not make any finding of liability or wrongdoing by Defendants.

3. Unless otherwise noted, words spelled in this Final Order and Judgment with initial capital letters have the same meaning as set forth in the Settlement Agreement, except as otherwise indicated.

4. On April 26, 2024, after consideration of Plaintiffs' Unopposed Motion for Preliminary Approval, the Court entered an Order Granting Preliminary Approval of the Class Action Settlement ("Preliminary Approval Order"), which among other things: (a) approved the Notice to the Settlement Class, including approval of the form and manner of Notice under the

Notice Program set forth in the Settlement Agreement; (b) conditionally certified a Settlement Class; (c) provisionally appointed Plaintiffs as the Class Representatives; (d) provisionally appointed the law firms of Stranch, Jennings & Garvey PLLC and Cohen & Malad, LLP as Class Counsel; (e) preliminarily approved the Settlement Agreement and the Settlement as fair, reasonable, adequate, and in the best interest of the Settlement Class; (f) set deadlines and procedures for Settlement Class Members to opt out of, or object to, the Settlement; (g) approved and appointed Kroll Settlement Administration, LLC, as the Settlement Administrator; and (h) set the date for the Final Approval Hearing.

5. In the Preliminary Approval Order, the Court conditionally certified the Settlement Class in this matter 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 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 finally certifies the Settlement Class, as defined above and in the Preliminary Approval Order.

6. The Court, having reviewed the terms of the Settlement Agreement submitted by

the Parties, grants final approval of the Settlement Agreement and Settlement. The Court finds that the Settlement is fair, reasonable, adequate, and in the best interest of the Settlement Class.

7. The terms of the Settlement Agreement are fair, reasonable, and adequate and are hereby approved, adopted, and incorporated by the Court. The Parties, their respective attorneys, and the Settlement Administrator are hereby directed to consummate the Settlement in accordance with this Final Order and Judgment and the terms of the Settlement Agreement.

8. Notice of the Final Approval hearing, the proposed motion for attorneys' fees, cost, and expenses, and Service Awards have been provided to the Settlement Class Members as directed by this Court's Orders, and an affidavit or declaration of the Settlement Administrator's compliance with the Notice Program has been filed with the Court.

9. The Court finds that such Notice, as therein ordered, constitutes reasonable notice of the commencement of the action as directed by the Court and meets all applicable requirements of law pursuant to the Tennessee Rules of Civil Procedure and due process under the U.S. and Tennessee Constitutions.

10. The deadline for Settlement Class Members to object to, or opt out of, the Settlement has passed.

11. No objections were filed by Settlement Class Members. The Court has considered all objections and finds the objections do not counsel against Settlement Agreement approval, and the objections are hereby overruled in all respects.

12. All Settlement Class Members who have not objected to the Settlement Agreement in the manner provided in the Settlement Agreement are deemed to have waived any objections by appeal, collateral attack, or otherwise.

13. As of the final date of the opt-out period, one putative Settlement Class Members

has submitted valid opt-out requests to be excluded from the Settlement. The names of those persons are set forth in the Settlement Administrator's declaration filed with Plaintiff's motion. That person is not bound by this Final Order and Judgment, as set forth in the Settlement Agreement.

14. The Court has considered all the documents filed in support of the Settlement, and has fully considered all matters raised, all exhibits and affidavits filed, all evidence received at the Final Approval Hearing, all other papers comprising the record herein, and all oral arguments presented to the Court.

15. Pursuant to the Settlement Agreement, Defendants and the Settlement Administrator shall implement the Settlement in the manner and timeframe as set forth therein.

16. The Court appoints Plaintiffs Josiah Arend and Breanna Arend as Class Representatives.

17. The Court appoints the law firms of Stranch, Jennings & Garvey PLLC and Cohen & Malad, LLP as Settlement Class Counsel.

18. Pursuant to the Settlement Agreement, Plaintiffs and the Settlement Class Members release all claims against Defendants, as defined in the Settlement Agreement. Released Claims shall not include the right of any Settlement Class Member, Plaintiffs' counsel, Settlement Class Counsel, or any of the Releasees to enforce the terms of the Settlement contained in the Settlement Agreement and shall not include the claims of the person who opted out.

19. On the Effective Date, the Parties and each and every Settlement Class Member shall be bound by the Settlement Agreement and shall have recourse only to the benefits, rights, and remedies thereunder. No other action, demand, suit, arbitration, or other claim may be pursued against Defendants, or any other Releasee, with respect to the Released Claims.

20. On the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, including Plaintiffs, shall be permanently barred and enjoined from commencing, prosecuting, pursuing, or participating in—either directly or indirectly or representatively, as a member of, or on behalf of the general public or in any other capacity—any recovery in any action in this or any other forum (other than participation in the Settlement as provided in the Settlement Agreement) in which any of the Released Claims is asserted.

21. On the Effective Date and in consideration of the promises and covenants set forth in the Settlement Agreement, (i) Plaintiffs and each Settlement Class Member, and each of their respective spouses and children with claims on behalf of the Settlement Class Member, executors, representatives, guardians, wards, heirs, estates, successors, predecessors, next friends, co-borrowers, co-obligors, co-debtors, legal representatives, attorneys, agents, and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf (including the government in the capacity as *parens patriae* or on behalf of creditors or estates of the releasors), and each of them (collectively and individually, the “Releasors”), and (ii) Settlement Class Counsel and each of their past and present law firms, partners, or other employers, employees, agents, representatives, successors, or assigns will be deemed to have, and by operation of this Final Order and Judgment shall have, fully, finally, completely, and forever released and discharged the Releasees from the Released Claims. The release set forth in the preceding sentence (the “Release”) shall be included as part of any judgment, so that all Released Claims shall be barred by principles of res judicata, collateral estoppel, and claim and issue preclusion.

22. Without in any way limiting the scope of the Release, the Release covers, without limitation, any and all claims for attorneys’ fees, costs, and expenses incurred by Settlement Class Counsel or any other counsel representing Plaintiffs or Settlement Class Members, or any of them,

in connection with or related in any manner to the action, the Settlement, the administration of such Settlement and/or the Released Claims—except with respect to Plaintiffs’ application for fees, expenses, and service awards filed on June 26, 2024—as well as any and all claims for the Service Awards to Plaintiffs.

23. Subject to Court approval, as of the Effective Date, all Settlement Class Members shall be bound by the Settlement Agreement and the Release and all their claims shall be dismissed with prejudice and released, irrespective of whether they received actual notice of the action or the Settlement.

24. Upon the Effective Date, Defendants shall be deemed to have, and by operation of the Final Judgment and Order shall have, fully, finally, and forever released, relinquished, and discharged, Plaintiffs, each and all of the Settlement Class Members, Class Counsel and Plaintiffs’ Counsel, of all claims, including Unknown Claims, based upon or arising out of the institution, prosecution, assertion, settlement, or resolution of the Action or the Released Claims, except for enforcement of the Settlement Agreement. Any other claims or defenses Defendants may have against such Persons including, without limitation, any claims based upon or arising out of any employment, retail, banking, debtor-creditor, contractual, or other business relationship with such Persons that are not based upon or do not arise out of the institution, prosecution, assertion, settlement, or resolution of the Action or the Released Claims are specifically preserved and shall not be affected by the preceding sentence.

25. As of the Effective Date, the Releasees are deemed, by operation of entry of the Final Order and Judgment, to have fully released and forever discharged each other of and from any claims they may have against each other arising from the claims asserted in the action, including any claims arising out of the investigation, defense, or Settlement of the action.

26. The matter is hereby dismissed with prejudice and without costs, except that the Court reserves jurisdiction over the consummation and enforcement of the Settlement.

27. This Final Order and Judgment resolves all claims against all parties in the action and is a final order. No just reasons exist to delay the entry of final judgment in this matter, and the Clerk is directed to file this Final Order and Judgment as the final judgment in this matter.

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

THE HONORABLE DAVID BRILEY, JUDGE
CIRCUIT COURT OF DAVIDSON COUNTY

Dated: September 27, 2024

Respectfully submitted and Approved For
Entry by,

/s/ J. Gerard Stranch, IV

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CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of September 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
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Case Title: AREND V NEWCOURSE COMMUNICATIONS INC
Case Number: 23C303
Type: FINAL ORDER

The foregoing is hereby ORDERED, ADJUDGED
AND DECREED:

Judge C. David Briley, First Circuit