

**IN THE UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF KENTUCKY**

IN RE:

DAVID E. BRODY,

Plaintiff

vs.

UPSTART NETWORK, INC.

Defendant

Case No. 25-03044

Chapter 13

Case No. 22-31713

**ORDER: (1) CONDITIONALLY CERTIFYING SETTLEMENT CLASS; (2)  
PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT; (3) APPROVING  
NOTICE PLAN; AND (4) SETTING FINAL APPROVAL HEARING**

This matter came before the Court on Claimant’s Motion for Preliminary Approval of the proposed class action settlement (the “**Settlement**”) in the case entitled In re David E. Brody, United States Bankruptcy Court for the Western District of Kentucky, Case No. 25-03044 (the “**Action**”). The Settlement arises out of the Complaint filed on September 24, 2025 by David E. Brody (“**Claimant**”), individually and on behalf of all others similarly situated, against Defendant, Upstart Network, Inc. (“**Defendant**” and, together with Claimant, the “**Parties**”). Based on this Court’s review of the Parties’ Settlement Agreement (the “**Agreement**”), Claimant’s Motion for Preliminary Approval of Settlement, and the arguments of counsel, THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:

1. **Settlement Terms**. Unless otherwise defined herein, all terms in this Order shall have the meanings ascribed to them in the Agreement.
2. **Jurisdiction**. The Court has jurisdiction over the subject matter of the Action, the Parties, and all Persons within the Settlement Class.

3. Scope of Settlement. The Agreement resolves all claims alleged in this Action as well as all claims alleged in the Amended Complaint filed in the United States Bankruptcy Court for the Eastern District of Kentucky on September 24, 2025 in In re Stephens, 3:23-AP-3001 (the “**ED Action**”), subject to approval of the Agreement in the ED Action.

4. Preliminary Approval of Proposed Agreement. The Court has conducted a preliminary evaluation of the Settlement as set forth in the Agreement, and preliminarily finds that the terms of the Agreement are fair, reasonable and adequate to the Class Members, and should be approved by the Court. In addition, based upon representations made by the attorneys representing the Parties which the Court finds to be credible, together with the Court’s discussions with the attorneys regarding the settlement and the Court’s review of the Agreement, the Court finds that the Agreement has been negotiated in good faith at arm’s length between experienced attorneys familiar with the legal and factual issues of this case. The Court also finds that, with respect to the forms of notice of the material terms of the Settlement to Persons within the Settlement Class for their consideration (Ex. C to the Agreement), that notice is appropriate and warranted. Therefore, the Court grants preliminary approval of the Agreement, subject to further consideration at the Final Approval Hearing described below, and, subject to approval in ED Action, directs the Parties to perform and satisfy the terms and conditions of the Agreement that are thereby triggered.

5. Class Certification for Settlement Purposes Only. The Court, pursuant to Federal Rule of Civil Procedure 23, which is made applicable to this proceeding pursuant to Federal Rule of Bankruptcy Procedure 7023, conditionally certifies, for purposes of this Settlement only, the following Settlement Class:

All individuals who (a) filed a Chapter 7 or Chapter 13 bankruptcy petition in the Western District of Kentucky; (b) had a loan originated through and/or serviced by

Defendant; and (c) were sent one or more post-filing Communications between January 1, 2018 and December 31, 2024 from Defendant more than five days after their bankruptcy petition was filed and while their bankruptcy petition remained pending.

Excluded from the Settlement Class are all persons who have executed a release of the rights claimed in either of the Actions; all Upstart's officers and directors during the relevant time period as well as members of their immediate families, and their legal representatives, heirs, successors or assigns; and any judge to whom this action is or has been assigned and any member of his or her immediate family.

The Court preliminarily appoints Robert R. Sparks of Strauss Troy Co. LPA, Matthew Sanning, and John Simms of Atkinson, Simms & Kermode PLLC as Class Counsel pursuant to Federal Rule of Civil Procedure 23.

The Court preliminarily appoints Claimants to act as class representatives of the Settlement Class pursuant to Federal Rule of Civil Procedure 23.

6. Preliminary Findings. In connection with this conditional certification, the Court makes the following preliminary findings for settlement purposes only:

- (a) The Settlement Class appears to be so numerous that joinder of all members is impracticable;
  - (b) There appear to be questions of law or fact common to the Settlement Class for purposes of determining whether the Settlement should be approved;
  - (c) Claimant's claims appear to be typical of the claims of the Class Members being resolved through the Settlement;
  - (d) Claimant appears to be capable of fairly and adequately protecting the interests of all members of the Settlement Class in connection with the Settlement;
- and

(e) For purposes of determining whether the Agreement is fair, reasonable and adequate, common questions of law or fact appear to predominate over any questions affecting only individual members of the Settlement Class; accordingly, the Settlement Class appears to be superior to other available methods for the fair and efficient settlement of the claims of the Settlement Class.

7. Final Approval Hearing set for February 3, 2026 at 11:00 AM (Eastern Time) in the United States Bankruptcy Court, Courtroom #2, 5th Fl. (7th St. Elevators), 601 West Broadway, Louisville, KY 40202. This Court will hold a Final Approval Hearing on the fairness, adequacy and reasonableness of the Agreement and to determine whether: (a) final approval of the Settlement embodied in the Agreement should be granted; and (b) Class Counsel's application for attorneys' fees and expenses, and incentive awards to Claimant, should be granted, and in what amount. No later than January 19, 2026, which is fifteen (15) days prior to the Final Approval Hearing, papers in support of final approval of the Settlement and response to any written objections must be filed. Attendance at the Final Approval Hearing is not mandatory and Class Members need not appear or take any other action to indicate their approval of the Agreement. The Court may change the day of the Final Approval Hearing without further notice to the Class Member.

8. Settlement Administrator. American Legal Claim Services, LLC (Settlement Administrator"), is hereby appointed as the Settlement Administrator and shall perform all the duties of the Settlement Administrator as set forth in the Agreement and this Order. All reasonable expenses incurred in identifying and notifying the Settlement Class Members, and administering and distributing the settlement funds, shall be paid for as set forth in the Agreement.

9. Settlement Website. No later than 30 days following entry of an order preliminarily approving this Settlement, the Settlement Administrator shall cause the Settlement Agreement and Preliminary Approval Orders to be published on a website located at UNIClassAction.com (the “**Website**”). This Website shall remain operational until 60 days after the Effective Date.

10. Class Notice. The Court approves the proposed plan for giving notice to the Settlement Class directly using e-mail and United States Postal Service, as more fully described in Claimant’s Motion for Preliminary Approval and the Agreement (“**Notice Plan**”). The Notice Plan, in form, method and content, complies with the requirements of Federal Rule of Civil Procedure 23 and all other rules of Court applicable to such Notice, and with due process, and constitutes the best notice practicable under the circumstances, and shall constitute sufficient notice to all persons entitled thereto. The Court approves, as to form and content, the Class Notice attached as Exhibit C to the Agreement. The Court hereby directs the Parties and the Settlement Administrator to complete all aspects of the Notice Plan no later than thirty (30) days following entry of this Order, or the next business day thereafter if that day is on a weekend or holiday (“**Notice Deadline**”). The Settlement Administrator shall commence all aspects of the Notice Plan in accordance with the Agreement and this Order, and will file with the Court by no later than ten (10) days after the Opt-Out Deadline, proof that notice was provided in accordance with the Agreement and this Order.

11. Opt-Out and Objection Deadline. Persons within the Settlement Class who wish to either object to the Settlement or request to opt-out from the Settlement Class must do so by forty-five (45) calendar days after the Notice Deadline. Persons within the Settlement Class may

not both object and opt-out. If a Person both requests to opt-out and objects, the request to opt-out will control.

12. Opt-Out from the Settlement Class. To request to opt-out from the Settlement Class, a Person within the Settlement Class must follow the directions in the Class Notice (as confirmed on the Website), and send a compliant request to the Settlement Administrator at the address designated in the Class Notice that is postmarked on or before the Opt-Out Deadline. Opt-out requests must: (1) include the person's name, address, phone number, and either all of their Upstart account number(s) or all of their bankruptcy case number(s); and (2) state that the person wishes to be excluded from the Settlement Class and understands that he or she will receive no money from the settlement. No opt-out request will be valid unless all of the foregoing information is included. No Person within the Settlement Class, or any person acting on behalf of or in concert or participation with that Person within the Settlement Class, may request to opt-out any other Person from the Settlement Class. The Settlement Administrator will retain a copy of all opt-out requests. Not later than ten (10) days after the Opt-Out Deadline, the Settlement Administrator will file a declaration that lists all of the opt-out requests received. Prior to the declaration being filed, either Party may file a motion to seal consistent with the Court's procedures, after which the Settlement Administrator may file the declaration using the "Sealed Document – Requires Prior Court Order" event. The Court will consider a request to file the declaration under seal following receipt of a motion to seal.

13. Binding Effect. All Persons who submit valid and timely requests for exclusion shall have no rights under the Settlement Agreement, shall not share in the distribution of the settlement funds, and shall not be bound by the final judgment entered in the litigation. All

Settlement Class Members will be bound by all determinations and judgments concerning the Settlement.

14. Objections to the Settlement. Any member of the Settlement Class who has not requested exclusion may object to the fairness, reasonableness or adequacy of the Agreement. To object, Settlement Class Members must follow the directions below and in the Class Notice and notify the Court, Class Counsel and Defendant's Counsel, in a signed and dated written statement indicating their intent to object to the settlement. The written statement must be filed with the Court and served on Class Counsel and Defendant's Counsel no later than the Opt-Out and Objection Deadline. Settlement Class Members must mail the objection by the Opt-Out and Objection Deadline to each of the following: (i) Class Counsel – Robert R. Sparks, Strauss Troy Co., LPA, The Federal Reserve Building, 150 East Fourth Street, Cincinnati, Ohio 45202-4018; and (ii) Defendant's Counsel – Joseph Apatov, McGlinchey Stafford, 101 NE 3rd Avenue, Suite 1810, Ft. Lauderdale, FL 33301. The written objection must include: the case caption of this lawsuit; the objector's full name, address, telephone number, and all of their Upstart account number(s) or all of their bankruptcy case number(s), as well as the name of all counsel who represent and/or represented the objector in connection with the objection; an explanation of each objection being made; a description of the facts and/or legal authorities underlying each objection; a statement of whether the objector(s) and/or his or her counsel intends to appear at the Final Approval Hearing; a list of witnesses whom the objector(s) may call to testify during the applicable Final Approval Hearing; a list of exhibits which the objector(s) may offer during the applicable Final Approval Hearing, including copies of all of the exhibits, and be signed by the objector. The Court will not consider an objection unless the objection includes all of the foregoing information. Any Settlement Class Member who fails to comply with this paragraph

will not be permitted to object to the Settlement at the Final Approval Hearing, will be foreclosed from seeking any review of the Settlement by appeal or other means, will be deemed to have waived his, her or its objections, and will be forever barred from making any objections in the Action or any other related action or proceeding. All Settlement Class Members will be bound by all determinations and judgments in the Action, whether favorable or unfavorable to the Settlement Class.

15. Objections by Trustees. All payments to the Settlement Class Members pursuant to this settlement, including the return of retained post-petition payments, shall be paid to the Settlement Class Members absent timely objection from any trustee asserting an interest in the funds. In the event a trustee objects to payment of funds to any Settlement Class Member, the check shall be made payable to both the Settlement Class Member and the trustee jointly and delivered to the trustee, after which any dispute concerning entitlement to the funds shall take place between the Settlement Class Member and the trustee in the individual Settlement Class Member's bankruptcy action. The trustees of this Court have received notice of this settlement and must assert any objections and/or claims to the funds within forty-five (45) days of this Order or any such claim is released.

16. Redaction. Prior to an objection being filed, the following information shall be redacted: any social security number, street address, telephone number and last name except first letter of last name in order to protect the objector's privacy. The objector's first name and city, state and zip code, as well as the objection, will not be redacted.

17. Stay of Other Proceedings. Pending the final approval of the proposed Settlement, all non-settlement related proceedings in this Action are stayed. Further, pending the final approval of the proposed Settlement, Claimants and all Persons within the Settlement Class

are hereby stayed and enjoined from commencing, pursuing, maintaining, enforcing or prosecuting, either directly or indirectly, any Released Claims in any judicial, administrative, arbitral or other forum, against any of the Released Parties. Such injunction will remain in force until the Court enters the Final Approval Order or until such time as the Parties notify the Court that the Settlement has been terminated. Nothing herein will prevent any Person in the Settlement Class, or any person actually or purportedly acting on behalf of any such person(s), from taking any actions to stay or dismiss any Released Claim(s). This injunction is necessary to protect and effectuate the Agreement, this Preliminary Approval Order, and the Court's flexibility and authority to effectuate the Agreement and to enter judgment when appropriate, and is ordered in aid of this Court's jurisdiction and to protect its judgments. This injunction does not apply to any Person who properly requests exclusion from the Settlement in the manner set forth herein.

18. Failure to Finally Approve Settlement. If for any reason whatsoever this Settlement is not finalized or the Settlement as detailed in the Agreement is not finally approved by the Court or if the Bankruptcy Judge for the Eastern District of Kentucky in Stephens, et al v. Upstart Network, Inc., Case No. 3:23-AP-3001 does not finally approve the Settlement, the certification of the Settlement Class shall be void and the Parties and the Action will return to the status quo as it existed prior to the Agreement, and no doctrine of waiver, estoppel or preclusion will be asserted in the Action or in any other proceeding in relation to this Settlement. No agreements, documents or statements made by or entered into by any Party in connection with the Settlement may be used by Claimants, any Person in the proposed Settlement Class, Defendant or any other person to establish liability, any defense and/or any of the elements of class certification, whether in the Action or in any other proceeding. In the event that the

Settlement is not approved, or is terminated, canceled or fails to become effective for any reason, the money remaining in the Settlement Fund and Additional Fund (including accrued interest), less expenses and taxes incurred or due and owing and payable from the Settlement Fund and/or Additional Fund in accordance with the Agreement, shall be returned to Defendant within fifteen (15) days of the event that causes the Agreement to not become effective.

19. No Admission of Liability. The Agreement and any and all negotiations, documents, and discussions associated with it, will not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, regulation or principle of common law or equity, or of any liability or wrongdoing by Defendant, or the truth of any of the claims. Evidence relating to the Agreement will not be discoverable or used, directly or indirectly, in any way, whether in the Action or in any other action or proceeding, except for purposes of demonstrating, describing, implementing or enforcing the terms and conditions of the Agreement, this Order and the Final Approval Order.

20. Reasonable Procedures to Effectuate the Settlement. Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Agreement, including making, without further approval of the Court, minor changes to the form or content of the Class Notice and other exhibits that they jointly agree are reasonable and necessary. The Court reserves the right to approve the Agreement with such modifications, if any, as may be agreed to by the Parties without further notice to persons within the Settlement Class. The Court also reserves the right to adjourn, continue or otherwise change the date of the Final Approval Hearing without further notice to the Class Members, and retains jurisdiction to consider all further applications arising out of or connected with the Agreement.

21. Conditional Approval. This Order is conditioned upon the Settlement being approved in the ED Action. That approval was granted on October 16, 2025 (Doc. #96). Upon receiving notice by either or all of the Parties that preliminary approval of the Settlement was revoked, rescinded, vacated, or materially amended (for purposes of this clause, a change to the final approval hearing date is not a material amendment) in the ED Action, this Order is vacated and, upon request of the Parties, this Court will hold a hearing within sixty (60) days to determine whether this Order or a similar Order should be re-entered. Until that time, this Action will remain stayed.

IT IS SO ORDERED.

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