

**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE  
30TH JUDICIAL DISTRICT, MEMPHIS**

IN RE JERNIGAN CAPITAL, INC.,  
SHAREHOLDER LITIGATION

Lead Case No. CH-20-1472-II

CLASS ACTION

This Document Relates To:

ALL ACTIONS.

**Entered**  
AUG 22 2024

**ORDER OF PRELIMINARY APPROVAL OF M.B. \_\_\_\_\_  
SETTLEMENT AND FOR NOTICE AND SCHEDULING**

Lead Plaintiffs Louis Lane, Mary Pat Forkin Arthur, and Sherry Grosse (“Plaintiffs”),<sup>1</sup> on the one hand, and John A. Good, Mark O. Decker, James Dondero, Howard A. Silver, Harry J. Thie, and Rebecca Owen (collectively, the “Individual Defendants”) and Jernigan Capital, Inc. (“Jernigan” and, together with the Individual Defendants, “Defendants”), on the other hand (with Plaintiffs and Defendants collectively referred to herein as the “Settling Parties”), having applied to the Chancery Court for Tennessee for the Thirtieth Judicial District in Memphis for an order approving the proposed Settlement of the above-captioned action (the “Action”) and determining certain matters in connection with the proposed Settlement as to all Defendants and for dismissal of the Action with prejudice on the merits as to Defendants, in accordance with the terms and conditions of the Stipulation and Agreement of Compromise, Settlement, and Release entered into by the Settling Parties and dated August 12, 2024 (the “Stipulation”); the Stipulation contemplating final certification by the Court of the Settlement Class (as defined below), solely for the purposes of settlement; the Court having read and considered the Stipulation and accompanying documents; and all Settling Parties having consented to the entry of this Order of Preliminary Approval and for Notice and Scheduling (the “Order”).

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<sup>1</sup> Lead (and named) Plaintiff Patrick Forkin passed away during the pendency of this action.

**IT IS HEREBY ORDERED this 22nd day of August, 2024, that:**

1. Except for terms defined herein, the Court adopts and incorporates the definitions in the Stipulation for purposes of this Order.

2. The Court preliminarily approves the Stipulation, including all exhibits thereto, and the Settlement set forth therein, and preliminarily finds that the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class to warrant notice to the Settlement Class Members and to schedule a final fairness hearing (“Settlement Hearing”), at which time the Court will hear any objections (subject to the procedures described below) and consider whether to enter an Order and Final Judgment approving the Settlement.

3. For settlement purposes only, the Action shall be preliminarily certified pursuant to Tenn. R. Civ. P. 23.04, and maintained as an opt-out class action, with the class defined as all record holders and beneficial owners of Jernigan common stock, who held such share(s) at any time between August 3, 2020 (the date of the signing of the merger agreement whereby Jernigan would be acquired by affiliates of NexPoint Advisors, L.P. (“NexPoint”)), and November 6, 2020 (the effective time of the closing of the merger), including any and all of their respective successors in interest, trustees, executors, administrators, heirs, assigns or transferees (the “Settlement Class”). Excluded from the Settlement Class are: (i) Defendants; (ii) members of the immediate families of each Individual Defendant; (iii) Jernigan’s and NexPoint’s subsidiaries and affiliates (provided that, for the avoidance of doubt, such subsidiaries and affiliates do not include any Jernigan-sponsored retirement and/or pension plans); (iv) any entity in which any Defendant has a controlling interest; (v) the legal representatives, heirs, successors, administrators, executors, and assigns of each Defendant; and (vi) any Person or entity who properly excludes themselves by filing a valid and timely request for exclusion (collectively the “Excluded Stockholders”).

4. For settlement purposes only, Plaintiffs are hereby certified as the Settlement Class representatives, and Plaintiffs's Counsel, Monteverde & Associates PC and Kahn Swick & Foti, LLC, are appointed as Co-Class Counsel for the Settlement Class, and Stranch, Jennings & Garvey PLLC as Liaison Counsel for the Settlement Class.

5. The Settlement Hearing shall be held on **December 13, 2024**, at 10:30 a.m. Central Time at the Chancery Court for the State of Tennessee for the Thirtieth Judicial District in Memphis, Shelby County Courthouse, via ZOOM with remote link: <https://www.zoomgov.com/j/16020156999?pwd=aitzNDBDOWFLb08xWHRsZDA4RkNOdz09> (Meeting ID: 160 2015 6999 / Passcode: Bike) to determine: (a) whether the Court should grant final approval of the proposed Settlement on the terms and conditions provided for in the Stipulation as fair, reasonable, and adequate and in the best interests of the Settlement Class Members; (b) whether the Settlement Class should be finally certified for purposes of Settlement, and whether the designation of Plaintiffs as Class representatives and Plaintiffs' Counsel as Co-Class Counsel and Liaison Counsel, respectively, should be made final; (c) whether the Court should approve the Plan of Allocation of the Settlement as fair, reasonable, and adequate, and in the best interests of the Settlement Class; (d) whether the Court should enter an Order and Final Judgment dismissing the Action on the merits and with prejudice as to the Defendants, and effectuating the releases described in the Stipulation; (e) whether the Court should grant the application for the Fee and Expense Award; and (f) such other matters as may properly come before the Court.

6. The Court reserves the right to approve the Settlement at or after the Settlement Hearing with such modification(s) as may be consented to by the Settling Parties to the Stipulation and without further notice to the Settlement Class.

7. The Court approves, in form and content, the Notice of Pendency and Proposed Settlement of Class Action (“Notice”), substantially in the form attached as Exhibit A-1 to the Stipulation, the Proof of Claim and Release form (“Proof of Claim and Release”), substantially in the form attached as Exhibit A-2 to the Stipulation, the Summary Notice, substantially in the form attached as Exhibit A-3 to the Stipulation, and the Postcard Notice, substantially in the form attached hereto as Exhibit A-4 to the Stipulation, and finds that the distribution of the Notice, Proof of Claim and Release, Summary Notice and Postcard Notice, as set forth in paragraphs 8-9 below, will fully satisfy the requirements of Tennessee law and other applicable law, and is the best notice practicable, and shall constitute due and sufficient notice of the Settlement and the Settlement Hearing and all other matters referred to in the Notice, Postcard Notice, and Summary Notice. The date and time of the Settlement Hearing shall be included in the Postcard Notice, Notice, and Summary Notice before they are mailed or published, respectively. All fees, costs, and expenses incurred in notifying Settlement Class Members shall be paid from the Fund and in no event shall any of the Defendants or Released Defendants’ Persons bear any responsibility for such fees, costs, or expenses. All Settlement Class Members (except Excluded Stockholders) shall be bound by all determinations and judgments in the Litigation concerning the Settlement, including, but not limited to, the releases provided for therein, whether favorable or unfavorable to the Settlement Class, regardless of whether such Persons seek or obtain by any means, including, without limitation, by submitting a Proof of Claim and Release or any similar document, any distribution from the Fund or the Net Settlement Fund.

8. The Claims Administrator shall make reasonable efforts to identify all Settlement Class Members, and not later than **September 13, 2024** (a date twenty-one (21) calendar days after the Court signs and enters this Order) (the “Notice Date”), the Claims Administrator shall cause the Postcard Notice, substantially in the form annexed to the Stipulation, to be mailed by First-Class Mail to all

Settlement Class Members who can be identified with reasonable effort. Contemporaneously with the mailing of the Postcard Notice, the Claims Administrator shall cause the Notice and Proof of Claim, substantially in the forms attached to the Stipulation, to be posted on the Settlement website at [www.rg2claims.com](http://www.rg2claims.com), from which copies of the documents can be downloaded.

9. Not later than **September 23, 2024** (a date ten (10) calendar days after the Notice Date), Plaintiffs' Counsel shall cause the Summary Notice to be published via *PRNewswire*.

10. Not later than **November 29, 2024** (a date ten (10) business days prior to the Settlement Hearing), Plaintiffs' Counsel shall file with the Court proof, by affidavit or declaration, of such distribution of the Postcard Notice, Notice, Proof of Claim and Release, and Summary Notice.

11. Nominees who held, purchased, or acquired Jernigan common stock for the benefit of another Person during the Settlement Class Period shall be requested to send the Postcard Notice to such beneficial owners of Jernigan common stock within fifteen (15) calendar days after receipt thereof, or, send a list of the names and addresses of such beneficial owners to the Claims Administrator within fifteen (15) calendar days of receipt thereof, in which event the Claims Administrator shall promptly mail the Postcard Notice to such beneficial owners.

12. Settlement Class Members who wish to participate in the Settlement shall complete and submit the Proof of Claim and Release in accordance with the instructions contained therein. Unless the Court orders otherwise, all Proofs of Claim and Releases must be postmarked or submitted electronically no later than **January 11, 2025** (a date one hundred and twenty (120) calendar days from the Notice Date). Any Settlement Class Member who fails to submit a Proof of Claim and Release within the time provided, or whose Proof of Claim and Release is otherwise not approved, shall in all other respects be bound by all of the terms of the Stipulation and the Settlement, including the terms of the Order and Final Judgment and the releases provided for therein, and will be barred

from asserting any Plaintiffs' Released Claims against any of the Defendants or Released Defendants' Persons. Notwithstanding the foregoing, Plaintiffs' Counsel shall have the discretion (but not the obligation) to accept late-submitted claims for processing by the Claims Administrator so long as distribution of the Net Settlement Fund is not materially delayed thereby. No person shall have any claim against Plaintiffs, Plaintiffs' Counsel, or the Claims Administrator by reason of the decision to exercise or not exercise such discretion.

13. The Proof of Claim and Release submitted by each Settlement Class Member must, unless otherwise ordered by the Court: (i) be properly completed, signed and submitted in a timely manner in accordance with the provisions of this paragraph; (ii) be accompanied by adequate supporting documentation for the transactions reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation or declaration deemed adequate by Plaintiff's Counsel or the Claims Administrator; (iii) include in the Proof of Claim and Release a certification of current authority to act on behalf of the Settlement Class Member if the person executing the Proof of Claim and Release is acting in a representative capacity; (iv) be complete and contain no material deletions or modifications of any of the printed matter contained therein; and (v) be signed under penalty of perjury.

14. By submitting a Proof of Claim and Release, a Settlement Class Member will be deemed to have submitted to the jurisdiction of this Court with respect to the Settlement Class Member's claim, including, but not limited to, all releases provided for in the Stipulation and in the Order and Final Judgment.

15. Any Settlement Class Member may enter an appearance in the Litigation, at his, her, or its own expense, individually or through counsel of their own choice. If they do not enter an appearance, they will be represented by Plaintiffs' Counsel and Liaison Counsel.

16. Any Person falling within the definition of the Settlement Class may, upon request, be excluded or "opt-out" from the Settlement Class. Any such Person must submit to the Claims Administrator a request for exclusion ("Request for Exclusion"), by First-Class Mail such that it is received no later than **November 22, 2024** (a date twenty-one (21) calendar days before the Settlement Hearing). A Request for Exclusion must be signed and state: (a) the name, address, and telephone number of the Person requesting exclusion; (b) the number of shares of Jernigan common stock held, purchased, acquired, or sold during the Settlement Class Period and the dates held during the Settlement Class Period; and (c) that the Person wishes to be excluded from the Settlement Class. All Persons who submit valid and timely Requests for Exclusion in the manner set forth in this paragraph shall have no rights under the Stipulation, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Stipulation or any Order and Final Judgment.

17. Plaintiffs' Counsel shall cause to be provided to Defendants' Counsel copies of all Requests for Exclusion and a list of all Settlement Class Members who have requested exclusion, and any written revocation of Requests for Exclusion; as expeditiously as possible and in any event no later than three (3) business days after receipt.

18. Any Settlement Class Member may appear and object if he, she, or it has any reason why the proposed Settlement should not be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class, or why a judgment should not be entered thereon, why the Plan of Allocation should not be approved, why the requested Fee and Expense Award should not be awarded to Plaintiffs or Plaintiffs' Counsel; provided, however, that no Settlement Class Member or any other

Person shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, or, if approved, the Order and Final Judgment to be entered thereon approving the same, or the order approving the Plan of Allocation, any Fee and Expense Award to be awarded to Plaintiffs and Plaintiffs' Counsel, unless written objections and copies of any papers and briefs are received via mail and in electronic format by Monteverde & Associates PC, Juan E. Monteverde, The Empire State Building, 350 Fifth Avenue, Suite 4740, New York, NY 10118, Email: [jmonteverde@monteverdelaw.com](mailto:jmonteverde@monteverdelaw.com); Kahn Swick & Foti, LLC, Michael J. Palestina, 1100 Poydras Street, Suite 960, New Orleans, LA 70163, Email: [michael.palestina@ksfcounsel.com](mailto:michael.palestina@ksfcounsel.com); and Winston & Strawn LLP, Matthew L. DiRisio, 200 Park Avenue, New York, NY 10166-4193, Email: [mdirisio@winston.com](mailto:mdirisio@winston.com), no later than **November 22, 2024** (a date twenty-one (21) calendar days before the Settlement Hearing) and said objections, papers, and briefs are filed with the Clerk of Court of the Chancery Court for the State of Tennessee for the Thirtieth Judicial District in Memphis located at the Shelby County Courthouse, 140 Adams Ave., Memphis, Tennessee 38103, no later than **November 29, 2024** (a date fourteen (14) days before the Settlement Hearing). Any such objection must: (a) indicate the objector's name, address, and telephone number; (b) specify the reason(s) for the objection; (c) identify the date(s), price(s), and number(s) of shares of Jernigan common stock held, purchased, acquired, or sold during the Settlement Class Period by the objector; (d) provide documents demonstrating such holding(s), purchase(s), acquisition(s) and/or sale(s); and (e) be signed by the objector. Any Settlement Class Member who does not make his, her, or its objection in the manner provided for herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement as incorporated in the Stipulation, to the Plan of Allocation, or to the Fee and Expense Award, unless otherwise ordered by the Court. Attendance at the Settlement Hearing is not necessary.



However, Persons wishing to be heard orally in opposition to the approval of the Settlement, the Plan of Allocation, and/or the application for a Fee and Expense Award are required to indicate in their written objection their intention to appear at the Settlement Hearing. Settlement Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval of the Settlement.

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

20. All papers in support of the Settlement, Plan of Allocation, and application for the Fee and Expense Award shall be filed and served no later than **November 8, 2024** (a date thirty-five (35) calendar days prior to the Settlement Hearing) and any reply papers shall be filed and served no later than **December 6, 2024** (a date seven (7) calendar days prior to the Settlement Hearing).

21. Defendants and Released Defendants' Persons shall have no responsibility for the Plan of Allocation or any application for a Fee and Expense Award by Plaintiffs and Plaintiffs' Counsel, and such matters will be considered separately from whether the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class.

22. At or after the Settlement Hearing, the Court shall determine whether the Plan of Allocation and the Fee and Expense Award should be approved.

23. All reasonable expenses incurred in identifying and notifying Settlement Class Members as well as administering the Fund shall be paid as set forth in the Stipulation. In the event the Court does not approve the Settlement, or it otherwise fails to become effective, neither Plaintiffs, Plaintiffs' Counsel, nor Liason Counsel, shall have any obligation to repay any such amounts actually and properly incurred or disbursed pursuant to paragraph 54 of the Stipulation.

24. Neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations, discussions, proceedings connected with it, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement may be construed as an admission, concession, or presumption by or against any of the Defendants or Released Defendants' Persons of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing of any kind; or as a waiver by any of the Settling Parties of any arguments, defenses, or claims he, she, or it may have in the event the Stipulation is terminated; or offered or received in evidence, or otherwise used by any person in the Action, or in any other action or proceeding, whether civil, criminal, or administrative, in any court, administrative agency, or other tribunal, except in connection with any proceeding to enforce the terms of the Stipulation and Settlement.

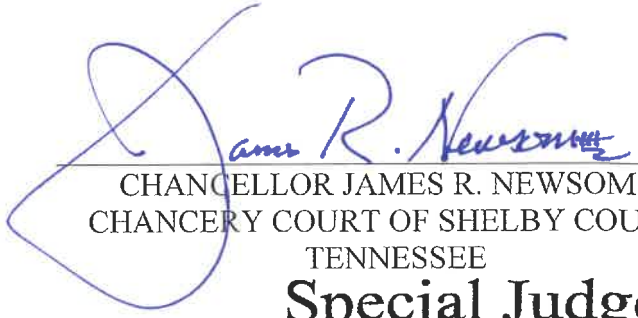
25. All proceedings in the Action, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and suspended until further order of the Court. Pending final determination of whether the Settlement should be approved, Plaintiffs and all Settlement Class Members are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action asserting any Plaintiffs' Released Claims, either directly, representatively, derivatively or in any other capacity, against any of the Defendants or any of the Released Defendants' Persons.

26. If the Settlement (including any amendment or modification thereto made with the consent of the Settling Parties as provided for in the Stipulation) is not approved by the Court or shall not become effective for any reason whatsoever in accordance with the terms and conditions set forth in the Stipulation, the Settlement, and temporary Settlement Class certification herein, and any actions taken or to be taken in connection therewith (including this Order and any judgment entered herein), shall be terminated and shall become void and of no further force and effect, except for the obligation

of the Company to pay for any Notice and Administration Costs provided for by this Order. In that event, neither the Stipulation, nor any provision contained in the Stipulation, nor any action undertaken pursuant thereto, nor the negotiation thereof by any party shall be deemed an admission or received as evidence in this or any other action or proceeding.

27. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to Settlement Class Members.

DATED: August 22, 2024



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CHANCELLOR JAMES R. NEWSOM III  
CHANCERY COURT OF SHELBY COUNTY  
TENNESSEE  
**Special Judge**

## CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing *Order of Preliminary Approval of Settlement and for Notice and Scheduling* has been served via U.S. Mail, hand-delivery and/or electronic mail on the 22<sup>nd</sup> day of August 2024, on the following:

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