

**UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING**

BRIAN PURNELL, *individually and
on behalf of all others similarly situated*,

Plaintiff,

vs.

SUMMIT NATIONAL BANK,

Defendant.

Case No. 2:24-cv-00190-KHR

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

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I. INTRODUCTION

The proposed Settlement consists of a \$400,000 non-reversionary common fund to resolve Plaintiff and Settlement Class Members's claims arising from a data incident experienced by Defendant Summit National Bank ("Defendant" or "Summit") between May 13 and May 16, 2024 (the "Data Incident")¹ involving the personally identifiable information ("PII") of 10,912 of Summit's current and former customers, specifically: names, addresses, Social Security numbers, and financial account information. *See* Decl. of Terence R. Coates in Support of Plaintiff's Unopposed Motion for Preliminary Approval ("Coates Decl.") filed as **Exhibit 2**, ¶ 4. After months of arms' length negotiations, the Parties have reached a settlement that is fair, adequate, and reasonable. The Settlement permits Settlement Class Members to easily claim for (1) compensation of Out-of-Pocket Losses up to \$5,000; (2) a \$175 Pro Rata Cash Payment; and (3) three years of Credit and Identity Theft Monitoring. S.A. ¶ 61.

Under Fed. R. Civ. P. 23(e), Plaintiff moves for an order certifying the Class for settlement purposes, preliminarily approving the proposed settlement agreement, and approving the content and manner of the proposed notice process. Plaintiff respectfully requests that the Court preliminarily approve the Settlement Agreement as fair, reasonable, and adequate; preliminarily certify the proposed Class; approve the proposed plan for disseminating the notices as the best notice practicable; appoint Plaintiff as Class Representative and Terence R. Coates, Jonathan T. Deters, and Gary M. Klinger as Class Counsel; and, schedule a date for a final approval hearing.

II. CASE SUMMARY

A. The Data Incident

On or about May 15, 2024, Summit discovered suspicious activity within one of its email

¹ The Settlement Agreement ("S.A.") is attached as **Exhibit 1**. Capitalized terms shall have the same meaning as assigned to them in the Settlement Agreement.

accounts. S.A. ¶ 1. Its ensuing investigation revealed that an unauthorized actor unlawfully accessed its systems between May 13 and May 16, 2024. *Id.* On August 16, 2024, Summit began notifying Plaintiff and Settlement Class Members about the Data Incident. *Id.*

B. Procedural History

Plaintiff filed his Class Action Complaint against Summit on September 23, 2024, asserting claims for negligence, negligence *per se*, breach of implied contract, and unjust enrichment. ECF 1. On December 9, 2024, Summit filed a Motion to Dismiss Plaintiff's Complaint (ECF 12, 13), which Plaintiff opposed on December 23, 2024. ECF 21. The Parties jointly moved to stay case deadlines prior to the Court's ruling on the motion to dismiss. ECF 25. The Parties believed the action could be resolved through early settlement discussions. On January 27, 2025, the Court granted the motion to stay. ECF 26. During the negotiation process, the Parties engaged in informal discovery, exchanging information and evaluating the relevant facts, law, and defenses and claims of each Party. For several months, the Parties engaged in good faith negotiations, ultimately reaching the terms of the settlement on August 6, 2025.

III. SUMMARY OF SETTLEMENT

A. Settlement Benefits

The Settlement negotiated on behalf of the Class provides for a \$400,000 non-reversionary Settlement Fund and a claims process through which Class Members can easily submit claims for benefits. The Settlement provides for relief for the Class defined as follows:

All individuals residing in the United States who were sent a notice by Summit informing them of the Data Incident Summit discovered in May 2024.

S.A. ¶ 46. Excluded from the Settlement Class are: (1) the judges presiding over this Action, and members of their direct families; (2) the Defendant, their subsidiaries, parent companies,

successors, predecessors, and any entity in which the Defendant or their parents have a controlling interest, and their current or former officers and directors; and (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline. *Id.* The 10,912 Settlement Class Members may elect to receive three benefits under the Settlement:

Compensation for Out-of-Pocket Losses: Class Members may submit claims for compensation up to \$5,000, for unreimbursed ordinary and/or extraordinary economic losses incurred as a result of the Data Incident, including, without limitation, unreimbursed losses relating to fraud or identity theft; professional fees including attorneys' fees, accountants' fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges. *Id.* ¶ 61(i). Settlement Class Members must submit documentation supporting their claims, including receipts or other documentation not "self-prepared." *Id.* Class Members may receive compensation for both Out-of-Pocket Losses and Pro Rata Cash Payments, subject to a combined cap of \$5,000. *Id.*

Pro Rata Cash Payment: Class Members may submit claims for a Pro Rata Cash Payment estimated at \$175. *Id.* ¶ 60(ii). To receive this benefit, Settlement Class Members must submit a valid claim form, but no documentation is required. *Id.* The amount of the Cash Payments will be increased or decreased on a *pro rata* basis, depending upon the number of valid claims filed and the amount of funds available for these payments. *Id.*

Credit and Identity Theft Monitoring: All Class Members may file a claim for three (3) years of three-bureau credit monitoring and identity theft protection services. *Id.* ¶ 61(iii). The benefit may be stacked with any claim for Out-of-Pocket Losses and/or Pro Rata Cash Payment. *Id.*

Additionally, Summit has confirmed that it has made certain changes to its information security and affirm the implementation of additional security measures to Class Counsel. Costs associated with these security-related measures will be paid by Defendant separate and apart from the Settlement Fund.

B. Notice and Claims Process

The Parties have agreed to use Atticus Administration, LLC as the Settlement Administrator in this case. S.A. ¶ 45. The cost of notice and claims administration is estimated to be approximately \$41,300. *See* Declaration of Chris Longley in Connection with Preliminary Approval of Class Action Settlement (“Atticus Decl.”), ¶ 12 (attached as **Exhibit 3**)

1. Notice

The agreed-upon notice plan calls for direct and individual Notice in the form of summary postcards, to be provided to Class Members via U.S. mail. S.A. ¶ 76. The Settlement Administrator will also establish and maintain a dedicated Settlement Website throughout the claim period, with the forms of Short Notice, Long Notice, and Claim Form approved by the Court, as well as the Settlement Agreement, and contact information for Class Counsel and Defendant’s Counsel. *Id.* ¶ 51. The details of the Notice Program are set out more fully in the Settlement Agreement, and the forms of notice attached thereto as Exhibits B and C.

2. Claims

The timing of the claims process is structured to ensure that all Class Members have adequate time to review the terms of the Settlement Agreement, make a claim, or decide whether they would like to opt-out or object. Class Members will have 90 days from the Notice Deadline to submit their Claim Form to the Settlement Administrator, either electronically or by mail, and 60 days to object or opt-out. S.A. at 21. The Claim Form, attached to the Settlement Agreement

as Exhibit A, is written in plain language to facilitate Class Members' ease in completing it. To submit a claim for a Pro Rata Cash Payment or for Credit and Identity Theft Monitoring, Class Members need only confirm and attest to the best of their knowledge or belief that they are Class Members. For Out-of-Pocket Losses, Class Members must submit documentation showing that they incurred losses fairly traceable to the Data Incident, that those losses were not otherwise reimbursed, and attest that the claim is true and correct to the best of his or her knowledge or belief. The Settlement Administrator is given the authority to assess the validity of claims. S.A. ¶¶ 62-65.

3. Requests for Exclusion and Objections

Any Class Member who wishes to exclude themselves from or object to the Settlement shall have until 60 days after the Notice Date to do so. S.A. ¶¶ 78-79. Each Class Member wishing to exclude themselves from the Settlement Class must sign and mail a written Request for Exclusion that includes: the name of the proceeding, the individual's full name, current address, personal signature, and the words "Request for Exclusion," a comparable statement that the individual does not wish to participate in the Settlement, or some other clear manifestation of the intent to opt-out of the Settlement in the written communication. *Id.* ¶ 78. Any Settlement Class Member who files an opt out will be excluded from the Settlement Class and not obtain any benefit hereunder and not offer any release to the Released Parties. *Id.*

Class Members shall have until 60 days after the Notice Date to object to the Agreement. *Id.* at 21. Class Members shall do so by submitting written objections to the Court. *Id.* ¶ 79. A written objection must include (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 and a description of whether the objection applies only to the Settlement Class Member, a subset of the Settlement Class, or the

entire Settlement Class; (iv) the identity of any attorneys representing the objector (if any); (v) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; (vi) a description and/or copies of evidence that may be introduced at fairness hearing; (vii) a list of proceedings in which the Settlement Class Member has submitted an objection during the past five years; and (viii) the signature of the Settlement Class Member or the Settlement Class Member's attorney.

C. Plaintiff's Service Award, Attorneys' Fees and Expenses

The Settlement Agreement calls for a reasonable Service Award to the Class Representative in the amount of \$4,000, subject to Court approval, to be paid solely from the Settlement Fund. S.A. ¶¶ 44, 93. Additionally, Class Counsel may file a motion seeking reasonable attorneys' fees in an amount not to exceed one third of the Settlement (or \$133,333.33) and reasonable costs and expenses not to exceed \$15,000, to be paid from the Settlement Fund. *Id.* ¶ 95. Class Counsel will submit a separate motion seeking attorneys' fees, costs, and Plaintiff's service award before Settlement Class Members' deadline to exclude themselves from or object to the Settlement Agreement. *Id.*

IV. LEGAL AUTHORITY

Federal Rule of Civil Procedure 23(e) requires that any compromise of claims brought on a class basis be subject to judicial review and approval. *See Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1187 (10th Cir. 2002) (approval of proposed settlement within the sound discretion of the Court). Approval of a class action settlement takes place in two stages. First, the court preliminarily certifies a settlement class, preliminarily approves the settlement agreement, and directs notice to be given to the class. *Ross v. Convergent Outsourcing, Inc.*, 323 F.R.D. 656, 659 (D. Colo. 2018). "The purpose of the preliminary approval process is to determine whether

there is any reason not to notify the class members of the proposed settlement and to proceed with a [final] fairness hearing.” *Lucas v. Kmart Corp.*, 234 F.R.D. 688, 693 (D. Colo. 2006). Second, the court holds a final approval hearing at which it will address the fairness, reasonableness, or adequacy of the settlement terms and grant final approval of the settlement. Fed. R. Civ. P. 23(e)(2).

“To approve a proposed settlement, a court must determine whether the settlement is ‘fair, reasonable, and adequate.’” *Ziegler v. Dale*, No. 18-CV-71, 2021 WL 8999336, *3 (D. Wyo. Oct. 22, 2021). “If the proposed settlement discloses no reason to doubt its fairness, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, does not grant excessive compensation to attorneys, and appears to fall within the range of possible approval, the court should grant preliminary approval.” *In re Pool Prods. Distrib. Market Antitrust Litig.*, 310 F.R.D. 300, 314-315 (E.D. La. 2015). “[T]he standard that governs the preliminary approval inquiry is less demanding than the standard that applies at the final approval stage.” *Nakkhumpun v. Taylor*, No. 12-cv-01038, 2015 WL 6689399, at *3 (D. Colo. Nov. 3, 2015). Here, Plaintiff seeks preliminary approval—an initial evaluation of the fairness of the proposed Settlement. There is a strong presumption in favor of finding Settlement Agreements fair, adequate and reasonable – especially when the settlement of a class action is the result of arms’ length negotiations between experienced counsel following the exchange of discovery. *Lucas*, 234 F.R.D. at 693; *see, e.g. Wal-Mart Stores, Inc. v. Visa USA, Inc.*, 396 F.3d 96, 116 (2d. Cir. 2005), *cert. denied sub nom., Leonardo’s Pizza by the Slice, Inc. v. Wal-Mart Stores, Inc.*, 544 U.S. 1044 (2005) (similar).

Preliminary approval is appropriate “where the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious-deficiencies, does not

improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval.” *Rhodes*, 308 F.R.D. at 666 (internal citation omitted). Because the proposed Settlement falls within the range of possible approval, this Court should grant Plaintiff’s motion and allow notice to be provided to the class.

V. LEGAL DISCUSSION

A. The Court Should Certify the Proposed Class for Settlement Purposes

Plaintiff seeks to certify a Settlement Class consisting of “All individuals residing in the United States who were sent a notice by Summit informing them of the Data Incident Summit discovered in May 2024.” S.A. ¶ 46. Under Rule 23, a class action may be maintained where the movants demonstrate (1) the class is so numerous that joinder is impracticable; (2) the class has common questions of law or fact; (3) the representatives’ claims are typical of the class claims; and (4) the representatives will fairly and adequately protect class interests. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 362 (2011) (citing Rule 23(a)). Under Rule 23(b)(3), a class may be maintained where “questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.”

Because this evaluation of certification is limited to the context of settlement, the court’s evaluation is somewhat different than in a case that has not yet settled. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997). Class actions, including data breach cases—are regularly certified for settlement on a national basis. *See, e.g., In re Equifax, Inc. Customer Data Security Breach Litig.*, No. 1:17-md-2800, 2020 WL 256132 (N.D. Ga. 2020); *In re Brinker Data Incident Litig.*, No. 3:18-CV-686, 2021 WL 1405508, at *14 (M.D. Fla. Apr. 14, 2021). This case is no different.

1. *The Settlement Class is so numerous that joinder is impracticable*

Numerosity requires that “the class [be] so numerous that joinder of all members is impractical.” Fed. R. Civ. P. 23(a)(1). Here, the Class clearly surpasses the threshold required to establish numerosity, as the proposed Class includes approximately 10,912 individuals whose PII was potentially compromised by the Data Incident.

2. *Questions of law and fact are common to the Settlement Class*

Commonality requires that Plaintiff demonstrates “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). The requirement is satisfied where the plaintiff asserts claims that “depend upon a common contention.” *Dukes*, 564 U.S. at 350. Commonality can be satisfied by an “instance of the defendant's injurious conduct, even when the resulting injurious effects—the damages—are diverse.” *Soseeah v. Sentry Ins.*, No. CIV 12-01091, 2016 WL 7435792 (D.N.M. 2016) (internal citation omitted). Here, common issues exist between Plaintiff and Class Members, including: (1) whether Summit failed to implement and maintain reasonable security procedures and practices appropriate to the nature and scope of information compromised in the Data Incident; (2) whether Summit’s data security systems prior to and during the Data Incident complied with applicable data security laws and regulations; and (3) whether Summit’s conduct rose to the level of negligence. These questions are central to the litigation, generate common answers, and can be addressed on a class-wide basis.

3. *Plaintiff’s claims and defenses are typical of the Settlement Class*

Under Rule 23(a)(3), the typicality requirement is satisfied where “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” Here, Plaintiff’s and Class Members’ claims stem from the same attack on Summit’s system and the cybersecurity protocols that Summit had in place to protect Plaintiff’s and Class Members’ PII. Thus, the

typicality requirement is satisfied.

4. *Plaintiff and his counsel will provide fair and adequate representation for the Settlement Class*

“The adequate representation requirement of Rule 23(a)(4) concerns both the competence of the class representative’s counsel and the representative’s willingness and ability to control the litigation and to protect the interests of the class as a whole.” *Pliego v. Los Arcos Mexican Restaurants, Inc.*, 313 F.R.D. 117, 126 (D. Colo. 2016) (internal citation omitted). Plaintiff’s interests are aligned with the Class because he seeks relief for injuries arising out of the same Data Incident. The Settlement provides for identical relief for all Class Members, and was reached following vigorous pursuit by experienced Counsel after arm’s length negotiations. Proposed Class Counsel are more than adequate to represent the Settlement Class as they are routinely court-approved to represent similar classes in data privacy class actions across the United States. Coates Decl. ¶¶ 2-3. Thus, Rule 23(a) is satisfied.

5. *Certification is also appropriate because common issues predominate over individualized ones, and class treatment is superior*

Rule 23(b)(3) finds class certification proper when “questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” This inquiry is two-fold. First, “[i]n order to ‘predominate,’ the Court must find that questions of law or fact common to class members predominate over any questions affecting only individual members. *Pliego*, 313 F.R.D. at 126 (citing Fed. R. Civ. P. 23(b)(3)). Here, predominating questions include whether Summit had a duty to exercise reasonable care in safeguarding and storing Plaintiff and Class Members’ PII, and whether it breached that duty. These common questions predominate over any individualized issues.

Second, the resolution of tens of thousands of claims in one action is far superior to

litigation via individual lawsuits. Class certification—and resolution—guarantee an increase in judicial efficiency over the alternative of individually litigating tens of thousands of individual data breach cases arising out of the *same* data incident. Accordingly, the requirements of Rule 23(b)(3) are met and the Class should be certified for settlement purposes.

B. The Settlement Terms are Fair, Adequate, and Reasonable

On preliminary approval, and prior to commencing notice, the Court must determine that it will “likely” be able to grant final approval of the Settlement under Rule 23(e)(2). To grant final approval, the court must consider whether the proposed settlement is “fair, reasonable, and adequate after considering whether: (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm’s length; (C) the relief provided for the class is adequate . . . ; and (D) the proposal treats class members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(A)-(D).

Approval of a class action settlement is within the Court’s discretion. *Jones v. Nuclear Pharmacy, Inc.*, 741 F.2d 322, 324 (10th Cir. 1984). The *Jones* factors to evaluate whether a class action settlement is fair and reasonable under Rule 23 include: “(1) whether the proposed settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and, (4) the judgment of the parties that the settlement is fair and reasonable.” *Id.* Because the Settlement is fair, reasonable, and adequate under both Rule 23 and the *Jones* factors, this Court should grant preliminary approval and allow notice to issue to the Class.

1. Whether the settlement was fairly and honestly negotiated

The negotiations in this matter occurred at arms’ length. Coates Decl. ¶¶ 4-5. Settlements

negotiated by experienced counsel that result from arm's length negotiations are presumed to be fair, adequate, and reasonable. *Lucas*, 234 F.R.D. at 693.

2. *Whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt*

The value achieved through the Settlement is guaranteed, where chances of prevailing on the merits are uncertain. Data breach litigation is evolving; there is no guarantee of the ultimate result. *See Gordon v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415, 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019) (“Data breach cases . . . are particularly risky, expensive, and complex.”). While Plaintiff strongly believes in the merits of his case, he also understands that Defendant asserts potentially case-dispositive defenses. Class certification is another hurdle that would have to be met—and one that been denied in certain other data breach cases while approved in others. *Compare In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21 (D. Me. 2013) with *Savidge v. Pharm-Save, Inc.*, 727 F. Supp. 3d 661 (W.D. Ky. 2024) (certifying contested class of employees whose Social Security numbers were stolen in data breach).

3. *Whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation*

The Settlement guarantees Settlement Class Members real relief and value for harms as well as protections from potential future fall-out from the Data Incident. The \$400,000 Settlement Fund compares favorably to terms approved by courts in other, similar data breach cases. *See Coates Decl.* ¶ 6.

4. *The judgment of the Parties and their Counsel that the settlement is fair and reasonable*

The judgment of the Parties and their Counsel supports preliminary approval. In negotiating the Settlement, Plaintiff's Counsel relied upon published reports documenting data breach and identity theft costs, their own experience, Plaintiff's experiences as a result of the Data

Incident, and reported settlements in similar class actions. Coates Decl. ¶ 4. The monetary benefits offered to Settlement Class Members are more than fair and reasonable considering similar settlements and compare favorably to what Settlement Class Members could recover if successful at trial. Coates Decl. ¶ 6. The Settlement does not provide any undue preferential treatment to Plaintiff or any segments of the Class. Fed. R. Civ. P. 23(e)(2)(D). The benefits available to Settlement Class Members allows them to obtain relief based upon the specific types of damages they incurred and treats every claimant equally relative to each other. Plaintiff intends to apply for a Service Award for serving as the Class Representative. Such awards “are fairly typical in class action cases” and are intended to compensate class representatives for participating in the litigation. *See Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009). Plaintiff was not promised a Service Award, nor did he condition his representation on the expectation of a Service Award. Coates Decl. ¶ 19.

C. The Proposed Settlement Administrator Will Provide Adequate Notice

Rule 23(e)(1) requires the Court to “direct reasonable notice to all class members[.]” The parties must provide “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). The best practicable notice is that which “is reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

The Notice Program is designed to meet all the criteria set forth by Rule 23. The Settlement provides for direct and individual notice to each Class Member. Not only will Class Members receive notice via U.S. mail, but all versions of the settlement notice will be available to Class

Members on the Settlement Website, along with relevant filings. Accordingly, the Notice process and the Settlement Administrator, Atticus, should be preliminarily approved.

D. Class Counsel’s Attorneys’ Fees and Expenses Request is Reasonable

Class Counsel’s request for one-third of the \$400,000 in attorneys’ fees is reasonable compared to similar data breach class action settlement within the Tenth Circuit. *See, e.g.,* Order Granting Final Approval of Class Action Settlement, *Jones v. P2ES Holdings, LLC*, No. 23-cv-408 (D. Colo. Apr. 16, 2024), ECF No. 44 (awarding attorneys’ fees of one-third of the \$1,250,000 common fund in a data breach class action); *see also* Order Granting Class Counsel’s Mot. for Attys’ Fees, *Droegemueller v. Petroleum Dev. Corp.*, Nos. 07-cv-1362, 07-cv-2508, 2009 WL 961539 (D. Colo. Apr. 7, 2009) (awarding 33.33%); *Farley v. Fam. Dollar Stores, Inc.*, No. 12-cv-00325, 2014 WL 5488897 (D. Colo. Oct. 30, 2014) (awarding 33% attorneys’ fees). Accordingly, the Court should preliminarily approve the Settlement.

E. Mr. Purnell’s Service Award Request is Reasonable.

Courts in the Tenth Circuit “regularly give incentive awards to compensate named plaintiffs for the work they perform—their time and effort invested in the case.” *Chieftain Royalty Co. v. Enervest Energy Institutional Fund XIII-A, LP*, 888 F.3d 455, 468 (10th Cir. 2017). Service Awards are an “efficient and productive way to encourage members of a class to become class representatives, and to reward the efforts they make on behalf of the class.” *Luken Fam. Ltd. P’ship, LLLP v. Ultra Res., Inc.*, No. 09-cv-01543, 2010 WL 5387559, at *6 (D. Colo. Dec. 22, 2010). For his efforts on the case, Plaintiff seeks a Service Award in the amount of \$4,000 each. S.A. ¶ 93. Plaintiff has been actively engaged in this action, generally stayed informed about this litigation, reviewed, and approved the settlement demand and final settlement amount and

Settlement Agreement, and spent substantial time and effort protecting the Class's interests. Coates Decl. ¶ 19.

VI. CONCLUSION

Plaintiff has negotiated a fair, adequate, and reasonable settlement that provides Settlement Class Members ample monetary relief and is well within the range of reasonable results, and an initial assessment of factors required to be considered on final approval favors approval. For these and the above reasons, Plaintiff respectfully requests this Court certify the Settlement Class for settlement purposes and grant this Motion for Preliminary Approval of Class Action Settlement. A Proposed Order Granting Preliminary Approval of Class Action Settlement is attached as **Exhibit 4**.

Dated: September 29, 2025

Respectfully submitted,

/s/ Terence R. Coates

Terence R. Coates (*pro hac vice*)

Jonathan T. Deters (*pro hac vice*)

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CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2025, the foregoing document was served upon counsel of record for all parties by filing it with the Court's ECF system, in accordance with Fed. R. Civ. P. 5(b)(2)(E).

/s/ Terence R. Coates

Terence R. Coates