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 FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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I. INTRODUCTION

On or about May 15, 2024, Defendant Summit National Bank ("Defendant" or "Summit") discovered suspicious activity within one of its email accounts, and the ensuing investigation revealed that an unauthorized actor unlawfully accessed its computer network and systems (the "Data Incident"). Plaintiff Brian Purnell ("Plaintiff" or "Class Representative") 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 No. 1.

On December 9, 2024, Summit filed a Motion to Dismiss Plaintiff's Complaint (ECF Nos. 12, 13), which Plaintiff opposed on December 23, 2024. ECF No. 21. The Parties jointly moved to stay case deadlines prior to the Court's ruling on the motion to dismiss. ECF No. 25. After fully briefing a Motion to Dismiss and recognizing the risks and costs of ongoing litigation, Plaintiff and Defendant agreed it was prudent to attempt to revolve this matter through early settlement discussions. On January 27, 2025, the Court granted the motion to stay. ECF No. 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.

II. INCORPORATION BY REFERENCE

In the interest of efficiency, for factual and procedural background on this case, Plaintiff refers the Court to and hereby incorporates his Unopposed Motion for Preliminary Approval of Class Action Settlement filed on September 29, 2025 (ECF No. 36), the Memorandum in Support (ECF No. 37), and the accompanying exhibits, including the proposed Settlement Agreement, filed in conjunction therewith.

III. SUMMARY OF SETTLEMENT

The settlement negotiated on behalf of the Class provides for a $400,000 non-reversionary Settlement Fund and a process through which Settlement Class Members can easily submit claims for substantial settlement benefits. The settlement provides for relief for the approximately 10,725 0members of the Settlement 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.**

Settlement Agreement ("S.A."), ¶ 46, ECF 36-1. The Settlement Class specifically excludes: (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 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 has affirmed 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.

IV. PRELIMINARY APPROVAL AND THE FAIRNESS PROCESS

On September 29, 2025, Plaintiff moved the Court to grant preliminary approval of the proposed Settlement, to approve the proposed notice plan as the best notice practicable under the circumstances, and to schedule a Final Approval Hearing. *See* Pl.'s Unopposed Mot. for Preliminary Approval of Class Action, ECF Nos. 36, 37. On October 20, 2025, the Court entered an order preliminarily approving the Settlement and conditionally certifying a Class. *See* Preliminary Approval Order, ECF No. 38. In doing so, the Court found that the Settlement Agreement was "fair, reasonable, and adequate" and the Notices "set forth in the Settlement

Agreement satisfy the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure and provide the best notice practicable under the circumstances." *Id.* at ¶¶ 3, 11.

The Court-approved notice plan has now been executed and nothing has changed to alter the Court's initial assessment that the Settlement is fair, reasonable, and adequate. Under that plan, Defendant provided Atticus with data records that contained names and addresses for 10,849 individuals residing in the United States who were sent a notice by Defendant informing them of the Data Incident Summit discovered in May 2024. Atticus Decl., ¶ 5. Atticus reviewed the data and ultimately removed 124 records—122 duplicate records that matched on name and address and two (2) records with addresses outside of the United States. *Id.* The final Settlement Class List included 10,725 unique Class Members. *Id.*

Atticus mailed a written notice via U.S. First Class Mail to all 10,725 Class Members for whom valid mailing addresses were known. *Id.*, ¶ 7. For those Postcard Notices that were returned without forwarding addresses, Atticus attempted to locate a current mailing address and remailed notices to updated addresses. *Id.* at ¶ 8. In total, Atticus provided proper, successful notice to 9,873 Settlement Class Members or 92.01% of the Settlement Class. *Id.*

In addition, Atticus set up the Settlement Website (www.SNBDataSettlement.com) containing, among other things, copies of the Long Form Notice, Claim Form, Settlement Agreement, the Court's Preliminary Approval Order, and other settlement documents. *Id.* at ¶¶ 9-10. The Settlement Website also included a case timeline, which specified important dates and deadlines for the Settlement, including the deadlines for Class Members to submit claims, file objections and submit requests for exclusion and the date and time of the Final Approval Hearing. *Id.* Atticus also established a toll-free hotline and email address, which received six calls and thirteen emails inquires between the Settlement Administrator and Class Members. *Id.* at ¶ 11.

Class Members were given the opportunity to submit a claim online at the Settlement Website, or if they preferred, to submit a physical claim form for filing via mail.

As of April 6, 2026, of the 9,873 Class Members who received direct notice of the proposed settlement, zero of the Class Members requested to be excluded. Coates Final Approval Decl., ¶ 4; Atticus Decl., ¶ 12. There are also no objections to the Settlement. Coates Final Approval Decl., ¶ 4; Atticus Decl., ¶ 12. Furthermore, this case includes a 6.2% claims rate (665 claims filed out of the total 10,725 Class Members) which is a reasonable claims rate for a data breach class action settlement and indicates that the Class strongly favors the Settlement. Coates Final Approval Decl., ¶ 5; *see also* Atticus Decl. ¶ 14.

Pursuant to the Preliminary Approval process, Plaintiff submitted his Motion for Attorneys' Fees, Expenses and Class Representative Service Award on January 6, 2026 ("Plaintiff's Fee Motion"). ECF No. 40. Through that Motion, Plaintiff seeks $133,333.33 in fees (one third of the Settlement Fund), costs of $2,506.44, and a services award of $4,000 to the Class Representative. *Id.*

V. LEGAL STANDARD

Plaintiff brings this motion pursuant to Federal Rule of Civil Procedure Rule 23(e), under which a class action may not be settled without approval of the Court. In determining whether to finally approve a class action settlement, courts must first determine that the settlement class, as defined by the parties, is certifiable under the standards of Rule 23(a) and (b). This Court has considered and granted preliminary approval of class certification. ECF 38. For the same reasons described in Plaintiff's Unopposed Motion for Preliminary Approval of Settlement (ECF 36) and

Memorandum in Support (ECF 37), this Court should certify the class for purposes of final approval of the settlement.

Approval of a proposed settlement is within the sound discretion of the Court. *Rutter & Wilbanks Corp. v. Shell Oil Co*., 314 F.3d 1180, 1187 (10th Cir. 2002). The Court must determine whether the settlement is "fair, reasonable, and adequate." *Gradie v. C.R. England, Inc.*, No. 2:16-CV-768, 2020 WL 6827783, at *9 (D. Utah Nov. 20, 2020) (quoting Rule 23(e)(2)). To reach that conclusion, the court must consider 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). In determining whether the relief provided is adequate, Courts must consider: "(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3)." Fed. R. Civ. P. 23(e)(2)(C)(i)-(iv).

In the Tenth Circuit, approval of a class action must also satisfy the factors set forth in *Jones v. Nuclear Pharmacy, Inc*., 741 F.2d 322, 324 (10th Cir. 1984) (the "*Jones* Factors"). The factors that must be addressed under Jones to evaluate whether a class action settlement is fair and reasonable under Rule 23 includes: "(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 and their counsel that the settlement is fair and reasonable." *Id*.

VI. ARGUMENT

Here, the Settlement Agreement is fair, reasonable, and adequate under both the Rule 23 criteria and the Tenth Circuit *Jones* factors and should be finally approved.

A. Whether the Settlement Was Fairly and Honestly Negotiated

The negotiations in this matter occurred at arm's length. *See* Coates Final Approval Decl., ¶ 1. "District courts within the Tenth Circuit have found settlements to be fairly and honestly negotiated where parties have vigorously advocated their positions and where a settlement was reached through arms-length negotiations." *Lawrence v. First Fin. Inv. Fund V, LLC*, No. 2:19-CV-174, 2021 WL 3809083, at *4 (D. Utah Aug. 26, 2021). This deference reflects the understanding that vigorous negotiations between seasoned counsel protect against collusion and advance the fairness consideration of Rule 23(e).

Before entering into settlement discussions on behalf of class members, counsel should have sufficient information to make an informed decision. Such is the case here. By the time the Settlement in principle was reached, Plaintiff and Plaintiff's Counsel were well informed of the strengths and weaknesses of the Action. *See* Coates Final Approval Decl. ¶ 11. Indeed, the Settlement was achieved only after: a thorough pre-complaint investigation that culminated in the preparation of a detailed complaint; the consideration of relevant informal discovery; the preparation of a detailed analysis of the strengths and weaknesses of the Parties' claims and defenses both on the merits and as to class certification; numerous discussions with Plaintiff concerning possible settlement terms and potential improvements to offers made by Defendant;

and intense settlement negotiations that included an exchange of information between the Parties about the Data Incident, potential damages, and the input of Plaintiff. *Id*.

B. Whether There Are Serious Questions of Law and Fact Placing the Outcome of Litigation in Doubt

Plaintiff believes his claims are viable and that have and the Class have a reasonably good chance of proving that Summit's data security was inadequate and that, if they establish that central fact, Defendant is likely to be found liable under at least some of the liability theories and claims Plaintiff pleaded in his Complaint.

While Plaintiff believes in the strong claims, his success is not guaranteed. In contrast, the value achieved through the Settlement Agreement is guaranteed, where the chances of prevailing on the merits are uncertain—especially where serious questions of law and fact exist, which is common in data security incident litigation. This field of litigation is evolving; there is no guarantee of the ultimate result. *See Gordon v. Chipotle Mexican Grill, Inc*., No. 17-cv-1415, 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019) ("Data breach cases . . . are particularly risky, expensive, and complex."). This case involves a proposed class of 10,725 individuals (each of whom may need to establish cognizable harm and causation) and a complicated and technical factual background. Defendant has already asserted and will assert a number of potentially case-dispositive defenses, further increasing Plaintiff's risk of further litigation.

Although nearly all class actions involve a high level of risk, expense, and complexity, this is a particularly complex class case. Data security incident cases always run the risk of standing being an issue or having class-wide certification issues. *See, e.g., In re U.S. Office of Pers. Mgmt. Data Sec. Breach Litig*., 266 F. Supp. 3d 1, 19 (D.D.C. 2017) ("*In re OPM*") ("The Court is not persuaded that the factual allegations in the complaints are sufficient to establish . . . standing."), *reversed in part*, 928 F.3d 42 (D.C. Cir. June 21, 2019) (holding that plaintiff had standing to bring

a data breach lawsuit). Moreover, these cases can take years to litigate to final resolution. Settlement in the same *In re OPM* litigation was announced in June 2022, after five full years of litigation. In contrast, this Settlement offers immediate relief to nearly 11,000 Class Members without the need for lengthy litigation.

Maintaining class action status through trial is another significant risk. Only a few data breach cases have actually gone to contested class certification. *See, e.g. Smith v. Triad of Ala., LLC*, No. 1:14-CV-324, 2017 WL 1044692, at *16 (M.D. Ala. Mar. 17, 2017). Even where class certification is granted, maintaining certification is not assured, as evidenced by the Marriott data privacy litigation where classes were certified, decertified, and certified again. *See In re Marriott Int'l Customer Data Sec. Breach Litig.*, 341 F.R.D. 128 (D. Md. 2022); *In re Marriott Int'l Customer Data Sec. Breach Litig.*, 78 F.4th 677, 680 (4th Cir. 2023); *In re Marriott Int'l Customer Data Sec. Breach Litig*., No. 19-MD-2879, 2023 WL 8247865, at *1 (D. Md. Nov. 29, 2023). And even though class certification was recently affirmed in part by the Eleventh Circuit in the high-profile *In re Brinker* case, the court remanded the case to clarify the predominance finding. *See Green-Cooper v. Brinker Int'l, Inc*., 73 F.4th 883 (11th Cir. 2023). Here, Defendant will likely oppose certification if the case proceeds. Class certification through trial is never a settled issue and is always a risk for Plaintiff and the Class.

C. The Value of an Immediate Recovery Outweighs the Possibility of Future Relief

In light of the risks and uncertainties presented by data incident litigation, the value of the Settlement favors approval. The Settlement provides for a non-reversionary common fund of $400,000. The Settlement makes significant relief available to Settlement Class Members. Each Class Member is eligible for *pro rata* payments of an originally estimated to be $175, and each can claim up to $5,000 in reimbursements for unreimbursed and extraordinary losses. S.A. ¶ 60-

61. All Class Members could file a claim for three years of three-bureau credit monitoring and identity theft protection services. *Id.* ¶ 61(iii). The benefit can be stacked with any claim for Out-of-Pocket Losses and/or Pro Rata Cash Payment. *Id*. The *pro rata* cash payment amount is now estimated to be over $330 per Class Member who submitted a valid claim. Atticus Decl., ¶ 18.

In addition to the two forms of cash compensation and credit monitoring made available under this Settlement, 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.

These are substantial benefits conferred to Settlement Class Members. On a per-Class-Member basis, this $400,000 settlement provides a recovery of over $36 for each of the 10,725 Class Members who were sent direct notice of this Settlement. Because the settlement amount here is similar to (and exceeds) other settlements reached and approved in similar data breach cases, this factor reflects that the Settlement is fair. *See, e.g., Winstead v. ComplyRight, Inc.,* No. 1:18-cv-4990 (N.D. Ill.) ($3,025,000 common fund for 665,689 persons, equaling $4.54 per class member); *Fernandez v. 90 Degree Benefits*, No. 2:22-cv-799 (E.D. Wis.) ($990,000 common fund for 185,461 persons, equaling $5.33 per class member); *Bingaman v. Avem Health Partners, Inc*., No. CIV-23-130 (W.D. Okla.) ($1,450,000 common fund for 271,303 persons, equaling $5.34 per class member). In light of the difficulties and expenses Class Members would face pursuing individual claims, and the likelihood that they might be unaware of their claims, this Settlement Amount is appropriate. See *id*. Accordingly, this factor favors approval.

D. The Judgment of the Parties and Their Counsel that Settlement is Fair and Reasonable

The benefits available here compare favorably to what Class Members could recover if successful at trial and provide meaningful benefits to the Class in light of the uncertainties presented by continued litigation and trial. In the experience of Plaintiff's counsel, who have litigated hundreds of data breach cases, spoken to victims of other data breaches, and have reviewed claims data from other settlements, the relief provided by this Settlement should be considered an outstanding result. Additionally, the monetary benefits provided by the Settlement compare favorably with those of other settlements in data incident class actions that have been approved by other courts. Coates Final Approval Decl., ¶¶ 3-4.

Moreover, the reaction of the Settlement Class to this Settlement is overwhelmingly positive. Out of a total of 10,725 to whom notice was mailed, no Class Members requested exclusion and there were no objections. Atticus Decl., ¶ 12. As of April 7, 2026, the administrator received 665 valid claim submissions. *Id*. ¶ 17. This amounts to a claims rate of over 6.2%, a rate that is consistent with other finally approved data breach settlements. *See* Coates Final Approval Decl., ¶ 4.

E. The Notice Program Preliminarily Approved by the Court Was the Best Notice Practicable Under the Circumstances, and Was Successful

In class actions certified under Federal Rule of Civil Procedure 23(b)(3), notice must meet the requirements of Rule 23(c)(2). The latter rule requires that notice to the class be the "best notice that is practicable under the circumstances." Rule 23(c)(2). There is no statutory or due-process requirement that all class members receive actual notice by mail or other means; rather, "individual notice must be provided to those class members who are identifiable through reasonable effort." Here, the notice program satisfies the structures of Rule 23 and due process and should be approved

by the Court. *Elna Sefcovic, LLC v. TEP Rocky Mountain, LLC*, 807 F. App'x 752, 764 (10th Cir.), *cert. denied sub nom.*, *Gonzalez v. Elna Sefcovic, LLC*, 141 S. Ct. 851 (2020) ("All that the notice must do is 'fairly apprise . . . prospective members of the class of the terms of the proposed settlement' so that class members may come to their own conclusions about whether the settlement serves their interests.") (internal citations omitted).

Class Counsel worked closely with the Settlement Administrator to develop and implement the notice program preliminarily approved by the Court. Coates Final Approval Decl. ¶ 5. Based upon the statistics provided by Atticus, the notice program reached approximately 92.01% of Class Members. Atticus Decl., ¶ 8. A notice reaching at least 70% of the class is often cited as meeting the requirements of Rule 23(c)(2)(B) and due process. Fed. Jud. Ctr., *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*, 3 (2010), www.fjc.gov/sites/default/files/2012/NotCheck.pdf; *see also Shy v. Navistar Int'l Corp.*, No. 3:92-CV-333, 2022 WL 2125574, at *5 (S.D. Ohio June 13, 2022). The notice program provided Class Members with a clear and concise statement of their rights under Rule 23(c)(2)(B). The notices directed Class Members to the Settlement Website, https://www.snbdatasettlement.com, and a toll-free number for additional information regarding how they could opt out of or object to the Settlement. Atticus Decl., ¶¶ 9-11.

F. Plaintiff's Fee Motion Should be Granted

For the reasons stated in Plaintiff's separate Motion and Application for Attorneys' Fees, Expenses, and Class Representative Service Awards, Plaintiff's fee motion should be granted. Doc. 40.

VII. CONCLUSION

Because the proposed Settlement is fair, adequate, and reasonable, Plaintiff Brain Purnell respectfully request that the Court grant final approval of class action settlement, including awarding Service Awards in the amount of $4,000 to the Class Representative, $133,333.33 in reasonable attorneys' fees, and $2,506.44 in litigation expenses, and enter the proposed Order attached as **Exhibit 3**.

Dated: April 7, 2026

Respectfully submitted,

/s/ Terence R. Coates

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CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2026, 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