

June 23, 2022  
CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

BY: \_\_\_\_\_ **JU**  
DEPUTY

*In re: CaptureRX Data Breach Litigation*

Master File No. 5:21-CV-00523-OLG

This Document Relates To:

All Actions

**FINAL APPROVAL ORDER AND JUDGMENT**

On March 3, 2022, this Court entered an order granting preliminary approval (the “Preliminary Approval Order”) (Doc. 42) of the settlement (the “Settlement”) between Plaintiffs Daisy Trujillo, Mark Vereen, Michelle Rodgers, Echoe Camacho, on behalf of herself and her minor child, T.C., and Angelica Mendoza (“Plaintiffs”), on their own behalf and on behalf of the Settlement Class (as defined below), and Defendants NEC Networks, LLC d/b/a/ CaptureRx (“CaptureRx”) and Rite Aid Hdqtrs. Corp. (“Rite Aid”) (collectively “Defendants”), as memorialized in the Settlement Agreement, which is Exhibit 1 (Doc. 41-1) to Plaintiffs’ Motion and Memorandum for Preliminary Approval of Class Action Settlement and Certification of Settlement Class.<sup>1</sup>

On March 28, 2022, pursuant to the notice requirements set forth in the Settlement Agreement and in the Preliminary Approval Order, the Settlement Class was notified of the terms of the proposed Settlement Agreement, of the right of Settlement Class Members to opt-out, and

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<sup>1</sup>The capitalized terms used in this Final Approval Order and Judgment shall have the same meanings as defined in the Settlement Agreement except as may otherwise be indicated.

the right of Settlement Class Members to object to the Settlement Agreement and to be heard at a final approval hearing.

On June 23, 2022, the Court held a final approval hearing to determine, *inter alia*: (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate for the release of the claims contemplated by the Settlement Agreement; and (2) whether judgment should be entered dismissing this action with prejudice. Prior to the final approval hearing, Class Counsel filed with the Court the settlement administrator's declaration of compliance with the provisions of the Settlement Agreement and Preliminary Approval Order relating to notice as required by the Preliminary Approval Order. Therefore, the Court is satisfied that Settlement Class Members were properly notified of their right to appear at the final approval hearing in support of or in opposition to the proposed Settlement Agreement, the award of attorneys' fees and costs to Class Counsel, and the payment of service awards to the Plaintiffs.

Having given an opportunity to be heard to all requesting persons in accordance with the Preliminary Approval Order, having heard the presentation of Class Counsel and counsel for Defendants, having reviewed all of the submissions presented with respect to the proposed Settlement Agreement, having determined that the Settlement Agreement is fair, adequate, and reasonable, having considered the application made by Class Counsel for attorneys' fees and costs and expenses and the application for service awards to the Plaintiffs, and having reviewed the materials in support thereof, and good cause appearing:

**IT IS HEREBY ORDERED THAT:**

1. The Court has jurisdiction over the subject matter of this action and over all claims raised therein and all Parties thereto, including the Class.

2. The Settlement Agreement was entered into in good faith following arm's length negotiations and is non-collusive.

3. The Settlement Agreement is, in all respects, fair, reasonable, and adequate, is in the best interests of the Settlement Class, and is therefore approved. The Court finds that the Parties faced significant risks, expenses, delays, and uncertainties, including as to the outcome, including on appeal, of continued litigation of this complex matter, which further supports the Court's finding that the Settlement Agreement is fair, reasonable, adequate and in the best interests of the Settlement Class. The Court finds that the uncertainties of continued litigation in both the trial and appellate courts, as well as the expense associated with it, weigh in favor of approval of the settlement reflected in the Settlement Agreement.

4. This Court grants final approval to the Settlement Agreement, including but not limited to, the releases in the Settlement Agreement, including all Released Claims, and the plans for implementation and distribution of the settlement benefits. The Court finds that the Settlement Agreement is in all respects fair, reasonable, and in the best interest of the Class. Therefore, all Settlement Class Members are bound by this Final Approval Order and Judgment approving the Settlement Agreement.

5. The Parties shall effectuate the Settlement Agreement in accordance with its terms. The Settlement Agreement and every term and provision thereof shall be deemed incorporated herein as if explicitly set forth herein and shall have the full force of an Order of this Court.

#### **OBJECTIONS AND OPT-OUTS**

6. Three objections were filed by Settlement Class Members. The Court finds that the limited number of objections filed counsels in favor of Settlement Agreement approval.

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

8. A list of those 231 Class Members who have timely and validly elected to opt out of the Settlement Agreement and the Settlement Class (the “Opt-Out Members”), and who therefore are not bound by the Settlement Agreement and this Final Approval Order and Judgment has been submitted to the Court in the Declaration of Kroll Administration Group (“Kroll”), filed in advance of the final approval hearing. That list is attached as Exhibit A to this Order. The Opt-Out Members listed in Exhibit A are not bound by the Settlement Agreement and this Final Approval Order and Judgment and shall not be entitled to any of the benefits afforded to the Settlement Class Members under the Settlement Agreement.

#### **CLASS CERTIFICATION**

9. For purposes of the Settlement Agreement and this Final Approval Order and Judgment only, the Court hereby finally certifies the following class and subclass pursuant to Federal Rule of Civil Procedure 23(b)(3) and (e) (the “Class”):

“Settlement Class” means all natural persons residing in the United States whose Personal Information was exposed to an unauthorized party as a result of the Data Incident.

“California Settlement Subclass” means all natural persons residing in the State of California at the time of the Data Incident whose Personal Information (a) Defendant stored and/or shared in its electronic files and (b) was exposed to an unauthorized party as a result of the data breach announced between March 30 and April 7, 2021 and that occurred on February 6, 2021.

The “Settlement Class” and “California Settlement Subclass” specifically exclude those members of the Class: (i) who timely and validly requested exclusion from the Settlement Class; and (ii) any other person found by a court of competent jurisdiction to be guilty under criminal law of

initiating, causing, aiding or abetting the criminal activity or occurrence of the Security Incident or who pleads nolo contendere to any such charge.

10. The Court readopts and incorporates herein by reference its preliminary conclusions as to the satisfaction of Federal Rule of Civil Procedure 23(a) and (b)(3) set forth in the Preliminary Approval Order and notes again that because this certification of the Class is in connection with the Settlement Agreement rather than litigation, the Court need not address any issues of manageability that may be presented by certification of the class proposed in the Settlement Agreement.

11. The Court grants final approval to the appointment of Plaintiffs Daisy Trujillo, Mark Vereen, Michelle Rodgers, Mark Biddle, Donald Woodrome, Echoe Camacho, on behalf of herself and her minor child, T.C., and Angelica Mendoza as Class Representatives. The Court concludes that the Plaintiffs have fairly and adequately represented the Settlement Class and will continue to do so.

12. The Court grants final approval to the appointment of Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman PLLC and M. Anderson Berry of Clayco C. Arnold, PLC as Class Counsel. The Court concludes that Class Counsel has adequately represented the Class and will continue to do so.

#### **NOTICE TO THE CLASS**

13. The Court finds that the Notice Program, set forth in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order, was the best notice practicable under the circumstances, was reasonably calculated to provide and did provide due and sufficient notice to the Class of the pendency of the Action, certification of the Class for settlement purposes only, the existence and terms of the Settlement Agreement, and their right to object and to appear at the final approval hearing or to exclude themselves from the Settlement Agreement, and satisfied the

requirements of the Federal Rules of Civil Procedure, the United States Constitution, and other applicable law.

14. The Court finds that Defendants have fully complied with the notice requirements of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

**AWARD OF ATTORNEYS' FEES AND SERVICE AWARDS**

15. The Court has considered Class Counsels' Motion for service awards and for attorneys' fees and costs, and expenses. The Court awards Class Counsel the sum of \$ 1,583,333.33 as an award of attorneys' fees and \$18,829.79 as an award of costs and expenses to be paid in accordance with the Settlement Agreement, and the Court finds this amount of fees and costs to be fair and reasonable. The allocation of attorneys' fees and expenses among counsel shall be left to the sole discretion of court-appointed Class Counsel (Gary M. Klinger and M. Anderson Berry).

16. The Court grants Class Counsel's request for service awards to the Plaintiffs and awards \$ 2,000 to each of the Class Representatives. The Court finds that this payment is justified by their service to the Class. This payment shall be paid in accordance with the Settlement Agreement.

**OTHER PROVISIONS**

17. The Parties to the Settlement Agreement shall carry out their respective obligations thereunder.

18. Within the time period set forth in the Settlement Agreement, the benefits provided for in the Settlement Agreement shall be made available to the various Settlement Class Members submitting valid Claim Forms, on Approved Claims, pursuant to the terms and conditions of the Settlement Agreement.

19. Pursuant to the Settlement Agreement, Plaintiffs and the Settlement Class Members release claims against Defendants and all Released Parties. “Released Claims” are defined in the Settlement Agreement, as follows:

“Released Claims” means any and all claims, causes of action of every kind and description, liabilities, rights, demands, suits, matters, obligations, and damages (including consequential damages, losses or costs, liquidated damages, statutory damages, punitive damages, attorneys’ fees and costs), whether known or unknown (including Unknown Claims) and whether in law or in equity, that the Settlement Class Members had, have, or may have against CaptureRx and/or the Released Parties that result from, arise out of, are based upon, or relate to the Data Incident. For the avoidance of doubt, Released Claims include, without limitation, all claims asserted or that could have been asserted in *Bays v. Walmart Inc. et al.*, Case No. 3:21-CV-00460 (S.D. W.Va.), *D.W. v. NEC Networks, LLC d/b/a CaptureRx*, Case No. 4:21-cv-00363-SRB (W.D. Mo.), *Vereen v. NEC Networks, LLC d/b/a CaptureRx*, Case No. 5:21-cv-00536 (W.D. Tx.), *Trujillo v. NEC Networks, LLC d/b/a CaptureRx*, Case No. 5:21-cv-00523 (W.D. Tx.), *Camacho v. NEC Networks, LLC d/b/a CaptureRx*, Case No. 5:21-cv-00979 (W.D. Tx.), *Mendoza v. NEC Networks, LLC d/b/a CaptureRx*, Case No. 5:21-cv-01232 (W.D. Tx.), *Biddle v. NEC Networks, LLC d/b/a CaptureRx*, Case No. 2:21-cv-00815 (W.D. Pa.), *Tignor v. NEC Networks, LLC d/b/a CaptureRx*, Case No. 2:21-cv-00018 (N.D.W. Va.), *Newman v. NEC Networks, LLC d/b/a CaptureRx*, Case No. 2:21-cv-00019 (N.D. W.Va.), *Rodgers v. NEC Networks, LLC d/b/a CaptureRx*, Case No. 5:21-cv-00692 (W.D. Tx.), *Burch v. NEC Networks, LLC d/b/a CaptureRx*, Case No. SA-21-cv-01102 (W.D. Tx.), the CAC, the Litigation, or any other suit or pleading in any other court or forum arising out of, based upon, or related to the Data Security Incident, including without limitations, any claims (including common law and statutory claims), actions, causes of action, demands, damages, penalties, losses, or remedies relating to, based upon, resulting from, or arising out of (1) the alleged theft, exposure, or disclosure of Settlement Class Members’ Personal Information as a result of the Data Security Incident; (2) the maintenance and storage of Settlement Class Members’ Personal Information as it relates to the Data Security Incident; (3) CaptureRx’s information security policies and practices relating to the Data Security Incident; and/or (4) CaptureRx’s notice of the Data Incident to Settlement Class Members. Released Claims” does not include the right of any Settlement Class Member or any of the Released Parties to enforce the terms of the Class Settlement Agreement and shall not include any claims of Settlement Class Members who have timely excluded themselves from the Settlement Class.



20. Pursuant to the Settlement Agreement, Plaintiffs and the Settlement Class

Members release claims against Defendants and all Released Parties, as defined in the Settlement Agreement, as follows:

“Released Parties” means CaptureRx and any of its customers who Class Members have claims against it or potentially have claims against it related to the Data Incident which includes, but is not limited to the following persons or entities: Walmart Inc., Wal-Mart Stores, Inc., Wal-Mart Stores East, LP, Midtown Health Center, Inc., Rite Aid Hdqtrs. Corp., its parent Rite Aid Corporation, Community Health Centers of the Central Coast, Inc., The University of Pittsburgh Medical Center, Camden-on-Gauley Medical Center, Inc., Davis Health System, Inc., Davis Memorial Hospital, and Broaddus Hospital and each of their past or present owners, parents, subsidiaries, divisions, and related or affiliated entities of any nature whatsoever, whether direct or indirect, as well as CaptureRx and these entities’ respective predecessors, successors, directors, officers, shareholders, employees, servants, representatives, principals, agents, advisors, consultants, vendors, partners, contractors, attorneys, insurers, reinsurers, subrogees, and includes, without limitation, any Person related to any such entities who is, was or could have been named as a defendant in the Litigation, other than any third-party Person who is found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads nolo contendere to any such charge.

21. The Court hereby dismisses the Complaint and all claims therein on the merits and with prejudice, without fees or costs to any Party except as provided in this Final Approval Order and Judgment.

22. If the Settlement Agreement is terminated pursuant to Paragraph 10.2 or Paragraph 10.4 of the Settlement Agreement, this Final Approval Order and Judgment and the Preliminary Approval Order shall be deemed vacated and shall have no force and effect whatsoever; the Settlement Agreement shall be considered null and void; all of the Parties’ obligations under the Settlement Agreement, the Preliminary Approval Order, and this Final Approval Order and Judgment shall cease to be of any force and effect and the Parties shall return to the status quo ante in the Action as if the Parties had not entered into the Settlement Agreement. In such an event, the Parties shall be restored to their respective positions in the Action as if the Settlement



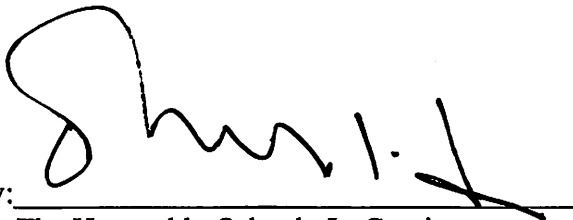
Agreement had never been entered into (and without prejudice to any of the Parties' respective positions on the issue of class certification or any other issue).

23. Pursuant to the All Writs Act, 28 U.S.C. § 1651, this Court shall retain the authority to issue any order necessary to protect its jurisdiction from any action, whether in state or federal court.

24. Without affecting the finality of this Final Approval Order and Judgment, the Court will retain jurisdiction over the subject matter and the Parties with respect to the interpretation and implementation of the Settlement Agreement for all purposes.

**ENTERED:**

DATED: 6. 23., 2022.

By:   
The Honorable Orlando L. Garcia  
Chief United States District Judge

# **EXHIBIT A**

<b>First Name</b>	<b>Last Name</b>	<b>State</b>
DAVID	PARE	ME
GINNIE	SPENCER	NY
BILLIE	FINLEY	AR
SUZANNE	PREMNY	CT
MAUREEN	BONNELL	NY
CHAZ	COLAGROSS	OH
PHILLIP	WHITE	AR
ALBERTA	ARBUCKLE	WA
MATTHEW	BEAVER	PA
DONNA	NELSON	ID
IRINA	SLOBOD	NY
ROBERT	PAPPANO	ME
KIMBERLY	ANDERSON	CA
TOMMY	NESTOR	WV
CARL	BUEHRING	PA
JERMAINE	SMITH	PA
NICOLE	CHOATE	OR
TEENA	BOWMAN	CA
SYLVIA	WARE	OH
NINA	RICCERI	CA
JOSEPH	MADISON	OH
EVELYN L	SHARP	KY
DENISE	SHERMAN	OR
JUDITH	SCHRAG	KS
ELLIOTT	KREIM	OH
DARCELL	WALTERS	VA
ABBY	NESTOR	WV
JAMES	SCHRAG	KS
GARY	LARSON	WA
CYNTHIA	BALZER	MI
AZARIA	COONEY	IN
STEPHEN	MAPES	WV
KATHLEEN	DURBIN	TX
SANDRA	MULLINS	OR
KAREN	HAZELTON	PA
KENNETH	PAINTER	VA
PRIMROSE	TRUESDELL	OR
KAYLA	CRAIG	WA
ANTHION	MARTIN	OH
RICHARD	RADLEY	VT
KEVIN	ESPINOZA	OH
DARRYL	LLOYD	OH
LARISSA	MILLER	WA
ELIZABETH	GRASS	IL
JERRY	NEAL	MI
FRANCES	CRAWFORD	NC
EDWARD	PERRINE	PA
WILLIAM	OSBURN	OR
CAROLYN	CARPENTER	WV
DAVID	DALTON	CA
RENAE	BEAVER	PA

KEANU	FORTMILLER	CO
SAMUEL	HOWELL	WA
ROSEMARIE	ROCK	OH
THERESA	HANAWAY	MI
JOHN	FERJANEC	NY
NIVEDITA	RAJAH	CA
CHARLES	MURRAY	MI
RICHARD	HOBBS	OR
RANDY	WINRIGHT	MI
SUSAN	LOHLER	WA
ELDON	BAKER	WA
WILLIAM	PERKINS	MD
ZEFF-BRADEN	MORGAN	KY
CATHERINE	SPEAKS	VA
LORI	POESCHEL	WI
DAYTON	CARRIVEAU	MI
DEAN	PUTZ	WI
EDNA	LIGHT	MI
MELANIE	LABERGE	MI
TOMMY	RAMSEY	WV
LISA	PERRY	MI
JUDY	CAPP	KY
SARAH	SEEGER	NY
JOYCE MARCUM	HILTIBIDAL	WV
MARRIKA	ZACARIAS	OR
DEBORAH	LOWE	WA
GABRIELLA	MADISON	OH
AVA	ANDERSON	GA
MILANKA	GROSELJ	OH
FOSTER	HOBBS	OR
PAIGE	MADISON	OH
AUSTIN	HERRERA	CA
ANN	JUTRAS	VT
GINNIE	HILL	NY
PATRICIA	STARKS	IN
JUDITH	WILLIAMS	PA
FRANCES	BOAL	PA
HARRY	GREENLAW	ME
CELESTE	DAY	OR
GOVERNOR	GREGORY	NH
ELIZABETH	VILLALOBOS	WA
ROBIN	DEROSE	CA
THELMA	KLEIN	WA
RODRIGO	LOPEZ	OH
MELANIE	AUBUCHON	ME
ROGER	MERRICK	NY
JESSIE	BARNETT	OH
SHARON	KANE	OH
KRISTY A	ADAMS	MO
CHERYL	MARTIN	MI
TAMMY	MASON	NY
SHU	LIU	OH

BRANDON	BLACKMORE	WA
MICHELE	CARLUCCI	MI
ANITA	HAGEN	WA
SUSAN	FARMER	MA
SANDRA	QUARTERMAN	GA
RADAMES	HERNANDEZ	OH
JEFFREY E	STEFFEN	PA
CAROL	GREIG	PA
BUFFIE J	LOCKE	NY
PATRICIA	SPEIDEL	OH
CYNTHIA	WAKEMAN	WA
CLEO	BAKER	WA
LOUISE	STARKE	WV
VEDA	NOKES	AR
DAVID	CLAYTON	IN
BRENT	EHLERS	OH
JA'SHAWN	HUNTER	NC
BARRON	GOULD	WA
LAURA	LAFAILLE	VT
CARROL	SMITH	MI
REBECCA	WALKER	MS
DEBORA	GOFF	PA
FAROOQ	KARIM	WA
RACHAEL	PAPPANO	ME
CHERYL	HARDEN	AR
MONICA	HOBBY	GA
TANIA	EAGLESON	KS
RENAE	BEAVER	PA
GWEN	DONOVAN	VT
MICHAEL	LOGAN	CA
EMRYS D	HOBBS	OR
WAYNE	WEIDERMAN	WA
NORMAN	ROBERTS	TN
ERNESTINE	RUSSELL	PA
ASHLEE	DIAZ	OH
MICHAEL	DENISON	MI
MICHELLE	KIM	NY
REBECCA	LEWALLEN	TN
VERONICA	COX	IL
DESIRAE	BROUARD	NE
BRAD	HILL	CA
CATHERINE	NEAL	MI
HOPE	SMITH	OH
MITCHELL	HOLT	OH
PAULINE	MCINTIRE	NC
JOSEPH	MADISON	OH
KARLEE	BLEVINS	AR
JAMES	NORDELL	TN
BEVERLY	GIPSON	AR
ADRIENNE	REITNAUER	NY
RHONDA	KOLLMANN	IL
JAXSON	MENDEZ	NY

AMELIA	VILLENA	NY
SHERIE	MORSE	WA
CANDY	FERRY	WA
ROSALIE	JONES	NY
HUGH	GREIG	PA
ART	GARCIA	CA
NICOLE	KOROSKI	OH
GEORGIA	ROBERTS	NY
CHRISTINE	FALCONE	NH
GEORGIA	FREEMAN	OR
JUNE	DUNFEE	ID
BRIAN	MCCAFFERTY	ME
ERIN	WRIGHT	OH
MARK	CHOW	WA
DEBRA A	EHLERS	OH
CHANDLER	HENDRIX	GA
SUSAN	ROMAN	PA
PAUL	RIMMER	WV
MARY	NORDELL	TN
NINA	EDER	TN
LANIA	REESE	NY
ANNETTE	HOUSEHOLDER	CA
MARY	MADISON	OH
JOHN	DOWNES	MI
CYNTHIA	FISHER	MI
NADENE	WESTPHALL	WA
BRANDY	ROBINETT	AR
SEBASTIAN G	HOBBS	OR
DONNA	RAMSEY	WV
KATHERINE	WAHL	OR
AVIS	BURDA	MI
NANCY	GARCIA	CA
ELIZA	BIVINS	GA
IVETTE	PEREZ	NY
CALEB	ROYCE	NH
JADE	WOJTOWICZ	MI
YVONNE	DOWNES	MI
RACHEL	GOODWIN	AR
DAVID R	GOODFELLOW	WV
LOLA	PHIFER	OH
CHARLES	MIRIANI	MI
CHERYL	LLOYD	OH
FRANCES	LAZOS	NM
LINDA	AMOS	WV
CORLYNN	PARKER	PA
PATRICIA	HERRIN	AR
HSIN	LIU	OH
HUNTER M	DEEM	IN
STEPHANIE	PAINTER	VA
PATRICK	CARRIVEAU	MI
JOSHUA	HEATH	FL
GAYLA	CHURCH	WA

JENNIFER D	HOBBS	OR
DORIS	GARRETT	OH
MICHELE	FORTE	OH
JENNIFER	COUNTS	AR
SANDRA	PAPPANO	ME
CHARLENE	PHAN	CA
MEGHAN	ANDERSON	WA
GARY	BLEVINS	AR
AMY	NESTOR	WV
JADE	DAVIDSON	OH
JONATHAN	WALKER	WV
ELIZABETH	FRITZ	CA
WILLIAM	STACY	NH
DEBORAH	PRATHER	KS
DAVID	SWIDERSKI	MI
BETTY	CARNEY	WV
KRISTINA	PASTORIZA	NH
DOREEN	GRILLOT	WV
KATELYN	FOERDERER	NY
ABRIELLE	RIOJAS	TX
JOY	CARRIVEAU	MI
JANET	MAMULA	PA
ILLIANA	FARMAKIS	OH
DONNIE	SANDERS	WA