

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

*In re: CaptureRX Data Breach Litigation*

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

This Document Relates To:

All Actions

**PLAINTIFFS' MOTION AND MEMORANDUM OF LAW IN SUPPORT OF MOTION  
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT,  
PRELIMINARY CERTIFICATION, AND APPROVAL OF NOTICE PLAN**

## **TABLE OF CONTENTS**

	<b><u>PAGE(S)</u></b>
TABLE OF AUTHORITIES .....	<i>iii</i>
I. INTRODUCTION .....	1
II. PROCEDURAL BACKGROUND .....	3
A. Factual Background .....	3
B. Procedural Background.....	4
1. The Individual Cases.....	4
2. The Transfer Litigation .....	8
3. Settlement Negotiations .....	9
III. THE TERMS OF THE PROPOSED SETTLEMENT .....	10
A. Certification of the Settlement Class and California Settlement Subclass .....	10
B. Relief for the Settlement Class and California Settlement Subclass .....	10
C. Settlement Release .....	11
D. Attorneys’ Fees, Costs, and Service Awards .....	12
E. Notice Program and Claims Administration.....	13
IV. ARGUMENT .....	15
A. The Court Should Preliminarily Approve the Settlement.....	15
B. Legal Standard .....	15
C. The Proposed Settlement is Fair, Adequate, and Reasonable.....	18
1. Representative Plaintiffs and Settlement Class Counsel Have Adequately Represented the Settlement Class.....	19
2. The Settlement was the Result of Arms-length Negotiations and Without Fraud or Collusion .....	19
3. The Settlement is Favorable Given the Complexity, Expense, and Likely Duration of the Litigation .....	21

4. The State of Litigation and the Available Discovery.....	23
5. The Settlement Terms Represent a Highly Favorable Compromise that Appropriately Balances the Merits of Plaintiffs’ Claims and the Likelihood of Success with the Attendant Risks .....	24
6. Settlement Class Counsel and Representative Plaintiffs Believe that the Settlement is in the Settlement Class’s Best Interests.....	26
7. The Settlement Treats Settlement Class Members Equitably Relative to Each Other .....	27
D. The Court Should Preliminarily Certify the Settlement Class.....	28
1. The Settlement Class Meets the Requirements of Rule 23(a) of the Federal Rules of Civil Procedure.....	28
(a) <i>Numerosity</i> .....	29
(b) <i>Commonality</i> .....	29
(c) <i>Typicality</i> .....	30
(d) <i>Adequacy of Representation</i> .....	31
2. The Settlement Class Meets the Demands of Rule 23(b)(3).....	31
(a) <i>Common Legal and Factual Questions Predominate in This Litigation</i> .....	32
(b) <i>A Class Action is the Superior Means to Adjudicate Plaintiffs’ Claims</i> .....	33
3. The Court Should Approve the Proposed Notice Program.....	34
V. CONCLUSION.....	36

**TABLE OF AUTHORITIES**

<b><u>CASES</u></b>	<b><u>PAGE(S)</u></b>
<i>Ahmad v. Old Republic Nat. Title Ins. Co.</i> , 690 F.3d 698 (5th Cir. 2012) .....	32
<i>Al's Pals Pet Care v. Woodforest Nat'l Bank, NA</i> , No. H-17-3852, 2019 U.S. Dist. LEXIS 17652, 2019 WL 387409 (S.D. Tex. Jan. 30, 2019).....	17
<i>Amchem Prods. v. Windsor</i> , 521 U.S. 591, 620 (1997).....	28, 32
<i>Amgen Inc. v. Conn. Ret. Plans &amp; Tr. Funds</i> , 568 U.S. 455 (2013).....	32
<i>Assoc. for Disabled Am., Inc. v. Amoco Oil Co.</i> , 211 F.R.D. 457 (S.D. Fla. 2002).....	21
<i>Ayers v. Thompson</i> , 358 F.3d 356 (5th Cir. 2004) .....	21, 23, 24
<i>Carrera Aguillo v. Kemper Corp.</i> , No. 1:21-cv-01883 (N.D. Ill. Oct. 27, 2021) .....	27
<i>Cotton v. Hinton</i> , 559 F.2d 1326 (5th Cir. 1977) .....	18, 21
<i>Crutchfield v. Sewerage &amp; Water Bd. of New Orleans</i> , 829 F.3d 370 (5th Cir. 2016) .....	32
<i>DeHoyos v. Allstate Corp.</i> , 240 F.R.D. 292 (W.D. Tex. 2007) .....	24, 25, 27
<i>Eisen v. Carlisle &amp; Jacquelin</i> , 417 U.S. 156, 173 (1974).....	13, 34
<i>Fehlen v. Accellion, Inc.</i> , No. 21-cv-01353 (N.D. Cal.) .....	22
<i>Gen. Tel. Co. of the Northwest, Inc. v. EEOC</i> , 446 U.S. 318, 330 (1980).....	29
<i>Hays v. Eaton Grp. Attorneys, LLC</i> , No. 17-88-JWD-RLB, 2019 U.S. Dist. LEXIS 17029, 2019 WL 427331 (M.D. La. Feb. 4, 2019).....	17, 18
<i>In re Banner Health Data Breach Litigation</i> , No. 2:16-cv-02696-PHX (D. Az.).....	23

<i>In re Combustion, Inc.</i> , 968 F. Supp. 1116 (W.D. La. 1997).....	21, 25
<i>In re Corrugated Container Antitrust Litig.</i> , 659 F.2d 1322 (5th Cir. 1981) .....	24
<i>In re Deepwater Horizon</i> , 739 F.3d 790 (5th Cir. 2014) .....	17, 29, 31
<i>In re Dep't of Veterans Affs. (VA) Data Theft Litig.</i> , No. 1:06-MC-00506, 2007 WL 7621261 (D.D.C. Nov. 16, 2007) .....	27
<i>In re Google Buzz Priv. Litig.</i> , No. C 10-00672 JW, 2011 WL 7460099 (N.D. Cal. June 2, 2011).....	27
<i>In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.</i> , 851 F. Supp. 2d (S.D. Tex. 2012) .....	passim
<i>In re Oil Spill by Oil Rig Deepwater Horizon in Gulf of Mexico, on Apr. 20, 2010</i> , 910 F. Supp. 2d 891, 930-31 (E.D. La. 2012), aff'd sub nom .....	17
<i>In re Talbert</i> , 347 B.R. 804, 808-809 (E.D. La. 2005).....	29
<i>In re Yahoo! Inc. Customer Data Sec. Breach Litig.</i> , No. 16-MD-02752-LHK, 2020 WL 4212811 (N.D. Cal. July 22, 2020) .....	30, 33
<i>James v. City of Dallas</i> , 254 F.3d 551 (5th Cir. 2001) .....	30
<i>Jones v. Singing River Health Servs. Found.</i> , 865 F.3d 285 (5th Cir. 2017) .....	31
<i>Klein v. O'Neal, Inc.</i> , 705 F. Supp. 2d 632 (N.D. Tex. 2010) .....	passim
<i>Kostka v. Dickey's Barbeque Restaurants, Inc.</i> , No. 20-cv-3424 (N.D. Tex.).....	22
<i>Langbecker v. Elec. Data Sys. Corp.</i> , 476 F.3d 299 (5th Cir.2007) .....	30
<i>Liger v. New Orleans Hornets NBA Ltd. P'ship</i> , No. 05-1969, 2009 U.S. Dist. LEXIS 85733, 2009 WL 2856246 (E.D. La. Aug. 28, 2009)...	21
<i>M.D. ex rel. Stukenberg v. Perry</i> , 675 F.3d 832 (5th Cir. 2012) .....	29

<i>Manchaca v. Chater</i> , 927 F. Supp. 962, 967 (E.D. Tex. 1996) .....	19
<i>Mullen v. Treasure Chest Casino, LLC</i> , 186 F.3d 620 (5th Cir. 1999) .....	29, 34
<i>Odonnell v. Harris County</i> , No. H-16-1414, 2019 U.S. Dist. LEXIS 151159 (S.D. Tex. Sep. 5, 2019) .....	17, 28, 35
<i>Parker v. Anderson</i> , 667 F.2d 1204 (5th Cir. 1982) .....	24
<i>Pettway v. Am. Cast Iron Pipe Co.</i> , 576 F.2d 1157 (5th Cir. 1978) .....	18, 27
<i>Purdie v. Ace Cash Express, Inc.</i> , No. 301CV1754L, 2003 WL 22976611 (N.D. Tex. Dec. 11, 2003) .....	17
<i>Reed v. General Motors Corp.</i> , 703 F.2d 170, 172 (5th Cir. 1983) .....	passim
<i>San Antonio Hispanic Police Officers' Org., Inc. v. City of San Antonio</i> , 188 F.R.D. 433 (W.D. Tex. 1999) .....	24
<i>Sosna v. Iowa</i> , 419 U.S. 393 (1975) .....	31
<i>Stott v. Capital Fin. Servs., Inc.</i> , 277 F.R.D. 316 (N.D. Tex. 2011) .....	27
<i>Union Asset Mgmt. Holding A.G. v. Dell, Inc.</i> , 669 F.3d 632, 639 n.11 (5th Cir. 2012) .....	17
<i>Valley Drug Co. v. Geneva Pharms., Inc.</i> , 350 F.3d 1181 (11th Cir. 2003) .....	31
<i>Wal-Mart Stores, Inc. v. Dukes, et al</i> , 564 U.S. 338 (2011) .....	29

## **STATUTES**

28 U.S.C. § 1407 .....	8
California Confidentiality of Medical Information Act (“CMIA”), Cal. Civ. Code §§ 56, <i>et seq.</i> .....	4, 6, 7
California Consumer Records Act (“CCRA”), Cal. Civ. Code §§ 1798.82, <i>et seq.</i> .....	6

California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, <i>et seq.</i> .....	4, 6, 7
California’s Information Practices Act of 1977, Cal. Civ. Code §§ 1798, <i>et seq.</i> .....	4, 6, 7
Missouri Merchandising Practices Act, Mo. Rev. State. §407.010 <i>et seq.</i> .....	7

## **OTHER AUTHORITIES**

1 <i>Newberg on Class Actions</i> § 3.05, at 3–25 (3d ed. 1992).....	29
2 <i>McLaughlin on Class Actions</i> § 6:7 (15th ed. 2018) .....	16
<i>Manual for Complex Litigation</i> , § 21.632 .....	28
<i>Newberg on Class Actions</i> § 13:10 (5th ed.) .....	15
Treasury Regulation § 1.46B-1, <i>et seq.</i> .....	15

## **RULES**

Fed. R. Civ. P. 23 .....	17, 18, 29
Fed. R. Civ. P. 23(a) .....	29
Fed. R. Civ. P. 23(a)(1).....	29
Fed. R. Civ. P. 23(a)(3).....	30
Fed. R. Civ. P. 23(a)(4).....	31
Fed. R. Civ. P. 23(b)(3).....	32, 33
Fed. R. Civ. P. 23(b)(3)(B) .....	34
Fed. R. Civ. P. 23(b)(3)(C) .....	34
Fed. R. Civ. P. 23(c) .....	13
Fed. R. Civ. P. 23(c)(2)(B) .....	13, 15, 34, 35
Fed. R. Civ. P. 23(e) .....	13, 15, 28, 34
Fed. R. Civ. P. 23(e)(1).....	13
Fed. R. Civ. P. 23(e)(2).....	15, 16, 17, 28
Fed. R. Civ. P. 23(e)(2) Committee Notes to 2018 amendments .....	17

Fed. R. Civ. P. 23(e)(2)(A) .....	19
Fed. R. Civ. P. 23(e)(2)(B) .....	19, 21
Fed. R. Civ. P. 23(e)(2)(C)(i).....	23, 26
Fed. R. Civ. P. 23(e)(2)(D) .....	27
Fed. R. Civ. P. 23(e)(3).....	16



**I. INTRODUCTION**

Plaintiffs Daisy Trujillo, Mark Vereen, Michelle Rodgers, Echoe Camacho, on behalf of herself and her minor child, T.C., and Angelica Mendoza, on behalf of themselves and all other persons similarly situated (“Plaintiffs”), with the consent of Defendants NEC Networks, LLC d/b/a/ CaptureRx (“CaptureRx”) and Rite Aid Hdqtrs. Corp. (“Rite Aid”) (collectively, “Defendants”), respectfully request entry of an order granting preliminary approval of the class action settlement (the “Settlement”) set forth in the parties’ Class Settlement Agreement and Release (the “Settlement Agreement”), certifying a class, appointing Settlement Class Counsel, appointing Plaintiffs as Class Representatives for settlement purposes, providing for issuance of Notice to the Settlement Class, and scheduling a date for the Final Approval Hearing.

Plaintiffs’ claims arise from an alleged cyberattack on CaptureRx’s computer systems that took place in or about February 2021, and allegedly compromised the personally identifiable information (“PII”) and protected health information (“PHI”) of approximately 2,420,141 individuals who had provided their PII to CaptureRx’s customers in order to receive pharmacy prescription services (the “Data Incident”).

The proposed Settlement is the result of arm’s-length negotiations with the assistance of the Hon. Wayne Andersen (Ret.) of JAMS and provides substantial and meaningful relief to the Settlement Class. Notably, all Plaintiffs who filed claims in connection with the Data Incident (including those Plaintiffs who are not parties to this litigation and who filed in other venues) were invited to participate in the mediation, and the vast majority of Plaintiffs did, in fact, participate.

More importantly, this Settlement has the support of at least 7 of the 10 cases filed arising out of the Data Incident.<sup>1</sup> And, there is no known opposition to the Settlement at this time.

If approved, the Settlement will create a \$4,750,000 Settlement Fund and resolve all claims that Plaintiffs and the Settlement Class have against the Released Parties<sup>2</sup> arising from the Data Incident. Settlement Class Members who submit a valid claim will be entitled to a cash payment (\$25.00 and, for California residents, an additional \$75.00). The proposed Settlement is fair and well within the range of preliminary approval. See the Declaration of Gary M. Klinger attached hereto as **Exhibit 2** (“Klinger Decl.”). By settling now, the Settlement Class can take advantage of remedies that would be unavailable or worth substantially less by the time of a litigated final judgment. See the Declaration of Chris Hotchkiss, attached hereto as **Exhibit 3**. And that, of course, assumes Plaintiffs could certify their claims for class treatment and prevail on the merits

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<sup>1</sup> Those cases include *Trujillo v. NEC Networks, LLC*, No. 5:21-CV-00523-OLG (W.D. Tex.), *Vereen v. NEC Networks, LLC, et al.*, No. 5:21-CV-00536-OLG (W.D. Tex.), *Rodgers v. NEC Networks LLC*, No. 5:21-cv-00692-OLG-HJB (W.D. Tex.), *Biddle v. The University of Pittsburgh Medical Center, et al.*, No. 2:21-cv-00815-RJC (W.D. Pa.), *Camacho, et al. v. NEC Networks, LLC, et al.*, No. 5:21-cv-00979-OLG (W.D. Tex.), *Mendoza v. NEC Networks, LLC, et al.*, No. 5:21-cv-01232-OLG (W.D. Tex.), *D.W., et al. v. NEC Networks, LLC, et al.*, No. 4:21-cv-00363-SRB (W.D. Mo.).

<sup>2</sup> Capitalized terms shall have the same meaning as those assigned to them in the Class Settlement Agreement and Release (the “Settlement Agreement”), which is attached hereto as **Exhibit 1**. In the Settlement Agreement, Released Parties means CaptureRx and any of its customers who Class Members have, or potentially have, claims against 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. (“CHCC”); The University of Pittsburgh Medical Center; Camden-on-Gauley Medical Center, Inc.; Davis Health System, Inc.; Davis Memorial Hospital; and Broadus Hospital.

with respect to such claims, neither of which is certain.<sup>3</sup> Accordingly, Plaintiffs respectfully request that the Court preliminarily approve the Settlement.

## **II. PROCEDURAL BACKGROUND**

### **A. Factual Background**

CaptureRx is a specialty pharmacy benefits manager that provides prescription claims processing, patient assistance program administration, and public health service 340B drug program administration. *See* Consolidated Class Action Compl. (“Compl.”), ¶ 2, ECF No. 17.<sup>4</sup> CaptureRx provides these services for pharmacies and healthcare providers across the United States. *Id.* Plaintiffs provided their PII and PHI to Defendants in order to receive prescription services. *Id.*, ¶¶ 30-31. On or about February 6, 2021, unauthorized actors gained access to CaptureRx’s computer systems and accessed and acquired certain files containing the PII and PHI of the patients of CaptureRx’s customers, including the PII and PHI of Plaintiffs. *Id.*, ¶¶ 4, 23-24. CaptureRx discovered the Data Incident on February 11, 2021; determined by February 19, 2021 that certain files were accessed during the Data Incident; and determined by March 19, 2021 that these files contained the PII and PHI—specifically, first names, last names, dates of birth, and prescription information—of certain patients of CaptureRx’s customers. *Id.*, ¶¶ 4, 23-24, Ex. A. CaptureRx notified its affected customers of the Data Incident between March 30, 2021 and April

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<sup>3</sup> As to the non-CaptureRx defendants, Plaintiffs face also face risks if the litigation proceeds on the merits because those defendants contend Plaintiffs would need to prove those defendants are liable based on their decision to utilize CaptureRx’s services.

<sup>4</sup> All cites to “Compl.” are to the Consolidated Class Action Complaint filed by Plaintiffs Daisy Trujillo and Mark Vereen in *In Re: CaptureRx Data Breach Litigation*, Case No. 5:21-cv-00523-OLG (W.D. Tex.). Materially similar allegations are contained in the Complaints filed by Plaintiffs Rodgers, Camacho, Burch, and Mendoza, whose cases were consolidated into the above-captioned action. Unless otherwise specified, all cites to the record correspond with the docket entries in *In Re: CaptureRx Data Breach Litigation*, Case No. 5:21-cv-00523-OLG (W.D. Tex.).

7, 2021. *Id.* It was not until May 5, 2021 that CaptureRx began notifying the patients whose PII and PHI had been compromised, including Plaintiffs. *Id.*

Plaintiffs allege Defendants are responsible for the Data Incident because they failed to implement reasonable data/information security procedures and practices; warn Plaintiffs and Settlement Class Members of their data/inadequate information security practices; and avoid sharing the PII and PHI of Plaintiffs and Settlement Class Members without adequate safeguards. *Id.*, ¶¶ 8, 29, 34-53. Plaintiffs allege that, as a result of these failures, they and Settlement Class Members have suffered injuries, including: (i) the loss or diminishment in value of their PII and PHI; (ii) out-of-pocket mitigation expenses; (iii) time spent on mitigation efforts; and (iv) ongoing risk of identity theft and financial fraud. *Id.*, ¶ 9.

## **B. Procedural Background**

### **1. The Individual Cases**

On June 2, 2021, Plaintiff Daisy Trujillo filed a Class Action Complaint against Defendants CaptureRx and Rite Aid<sup>5</sup> in this Court, alleging causes of action for: (i) negligence; (ii) breach of implied contract; (iii) invasion of privacy; (iv) breach of confidence; (v) violation of the California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, *et seq.*; (vi) violation of the California Confidentiality of Medical Information Act (“CMIA”), Cal. Civ. Code §§ 56, *et seq.*; and (vii) violation of California’s Information Practices Act of 1977, Cal. Civ. Code §§ 1798, *et seq.*<sup>6</sup> See ECF No. 1.

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<sup>5</sup> The Trujillo Complaint named Rite Aid Corporation as a defendant; however, on July 20, 2021, the Court granted the parties’ stipulation to substitute Defendant Rite Aid Hdqtrs. Corp. for Rite Aid Corporation, *See* ECF No. 16.

<sup>6</sup> The Complaint asserted the common law claims on behalf of a nationwide class, and the California statutory claims on behalf of a California subclass.

On June 4, 2021, Plaintiff Mark Vereen filed a Class Action Complaint against Defendants CaptureRx and Midtown Health Center, Inc. (“Midtown”), also in this Court, alleging the same causes of action as the Trujillo Complaint. *See* Compl., ECF No. 1, *Vereen v. NEC Networks, LLC, et al.*, No. 5:21-CV-00536-OLG (W.D. Tex.). On June 30, 2021, Plaintiffs Trujillo and Vereen moved to consolidate their two actions, as well as any subsequently filed or transferred related actions, before this Court. *See* ECF No. 11. This Court thereafter consolidated the cases, ECF No. 13, and appointed Gary Klinger of Mason Lietz & Klinger LLP and M. Anderson Berry of the Arnold Law Firm as Interim Lead Counsel and Joe Kendall of Kendall Law Group, PLLC as Interim Local Counsel. ECF No. 14. Plaintiffs Trujillo and Vereen thereafter, on August 13, 2021, filed a Consolidated Class Action Complaint against Defendants CaptureRx and Rite Aid,<sup>7</sup> alleging causes of action for: (i) negligence; (ii) breach of implied contract; (iii) invasion of privacy; (iv) breach of confidence; (v) violation of the California UCL; and (vi) unjust enrichment.<sup>8</sup>

Plaintiff Michelle Rodgers filed a Class Action Complaint against CaptureRx on July 21, 2021, also in this Court, alleging causes of action for: (i) negligence; (ii) negligence *per se*; and (iii) declaratory judgment, on behalf of a nationwide class. *See* Compl., ECF No. 1, *Rodgers v. NEC Networks LLC*, No. 5:21-cv-00692-OLG-HJB (W.D. Tex.). This Court thereafter ordered that the *Rodgers* case be consolidated with the *Trujillo* and *Vereen* matters in *In Re: CaptureRx Data Breach Litigation*, Case No. 5:21-cv-00523-OLG (W.D. Tex.). *See* ECF No. 24.

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<sup>7</sup> Midtown was not named as a defendant in the Consolidated Class Action Complaint.

<sup>8</sup> As with the Trujillo Complaint, the Consolidated Class Action Complaint brought the common law claims on behalf of a nationwide class, and the California statutory claims on behalf of a California subclass.

Plaintiff Esther Burch filed a Class Action Complaint against Rite Aid on October 20, 2021, in the Los Angeles Superior Court, alleging causes of action for: (i) violation of the California CMIA; (ii) violation of the California UCL; and (iii) violation of the California Consumer Records Act (“CCRA”), Cal. Civ. Code §§ 1798.82, *et seq.*, on behalf of a California class. *See* Compl., ECF No. 1-2, *Burch v. Rite Aid Corp.*, No. 5:21-cv-01102-OLG (W.D. Tex.). Rite Aid removed the case to the Central District of California on November 1, 2021, and the parties stipulated to a transfer to the Western District of Texas, which occurred on November 10, 2021. *Id.* This Court thereafter ordered that the *Burch* case consolidated with the *Trujillo*, *Vereen*, and *Rodgers* matters in *In Re: CaptureRx Data Breach Litigation*, Case No. 5:21-cv-00523-OLG (W.D. Tex.). *See* ECF No. 29.

Plaintiff Echoe Camacho, on behalf of herself and her minor child, T.C., filed a Class Action Complaint against CaptureRx and Rite Aid on June 4, 2021, in the Eastern District of California, alleging causes of action for: (i) negligence; (ii) negligence *per se*; (iii) declaratory judgment; (iv) breach of confidence; (v) breach of express contract; (vi) breach of implied contract; (vii) intrusion upon seclusion; (viii) violation of California’s UCL; (ix) violation of the CCRA; and (x) violation of the California Consumer Privacy Act (“CCPA”), Cal. Civ. Code §§ 1798.100, *et seq.*<sup>9</sup> *See* Compl., ECF No. 1, *Camacho, et al. v. NEC Networks, LLC, et al.*, No. 5:21-cv-00979-OLG (W.D. Tex.). The parties stipulated to a transfer to the Western District of Texas, which occurred on October 13, 2021. *Id.* This Court thereafter ordered that the *Camacho* case be consolidated with the *Trujillo*, *Vereen*, *Rodgers*, and *Burch* matters in *In Re: CaptureRx Data Breach Litigation*, Case No. 5:21-cv-00523-OLG (W.D. Tex.). *See* ECF No. 31.

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<sup>9</sup> Camacho brought her common law claims and the UCL claim on behalf of a nationwide class and a nationwide minor subclass; she brought the CCRA and CCPA claims on behalf of a California subclass and a California minor subclass.

Plaintiff Angelica Mendoza brought a Class Action Complaint against CaptureRx, Rite Aid, and CHCC on August 10, 2021 in the Northern District of California, alleging causes of action for: (i) negligence; (ii) invasion of privacy; (iii) breach of confidence; (iv) violation of California's Information Practices Act of 1977; (v) violation of the CMIA; (vi) breach of implied contract; (vii) breach of the implied covenant of good faith and fair dealing; (viii) violation of the California UCL; and (ix) unjust enrichment.<sup>10</sup> See Compl., ECF No. 1, *Mendoza v. NEC Networks, LLC, et al.*, No. 5:21-cv-01232-OLG (W.D. Tex.). The parties stipulated to a transfer to the Western District of Texas, which occurred on December 14, 2021. *Id.* This Court thereafter ordered that the *Mendoza* case be consolidated with the *Trujillo, Vereen, Rodgers, Burch, and Camacho* matters in *In Re: CaptureRx Data Breach Litigation*, Case No. 5:21-cv-00523-OLG (W.D. Tex.). See ECF No. 34.

Plaintiff D.W. brought a Class Action Complaint against CaptureRx, and Walmart, Inc. on May 25, 2021 in the Western District of Missouri, alleging causes of action for (i) breach of implied contract; (ii) negligence; (iii) invasion of privacy by public disclosure of private facts; (iv) breach of fiduciary duty of confidentiality; (v) violations of the Missouri Merchandising Practices Act, Mo. Rev. State. §407.010 et seq.; (vi) negligent training and supervision; and, (vii) negligence *per se*. See Compl., ECF No. 1, *D.W., et al. v. NEC Networks, LLC, et al.*, No. 4:21-cv-00363-SRB (W.D. Mo.). The case filed in the Western District of Missouri is stayed pending resolution of the claims from the Texas Court.

Plaintiff Mark Biddle brought a Class Action Complaint against CaptureRx, the University of Pittsburgh Medical Center, and Charles J. Hilton, P.C. Attorney at Law on June 23, 2021 in the

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<sup>10</sup> Mendoza brought her common law claims on behalf of a nationwide class and her California statutory claims on behalf of a California subclass.

Western District of Pennsylvania, alleging causes of action for negligence, negligence *per se*, invasion of privacy, violation of the Pennsylvania Breach of Personal Information Notification Act, violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, and unjust enrichment. *See Compl.*, ECF No. 2, *Biddle v. The University of Pittsburgh Medical Center, et al.*, No. 2:21-cv-00815-RJC (W.D. Pa.). On December 9, 2021, Plaintiff Biddle filed a notice of settlement. *See* ECF No. 29.

## 2. The Transfer Litigation

During the pendency of the above-identified actions, a plaintiff in a related case in the Western District of Missouri<sup>11</sup> filed a motion under 28 U.S.C. § 1407 to centralize all litigation arising from the Data Incident in the Western District of Missouri. *See* Order Den. Transfer, ECF No. 73, *In Re: NEC Networks, LLC d/b/a CaptureRx Customer Data Security Breach Litig.*, MDL No. 3018 (JPML Dec. 8, 2021). Certain plaintiffs opposed the request, or supported centralization in venues other than the Western District of Missouri, and certain defendants advocated for transfer to various Districts. *Id.* The Judicial Panel on Multidistrict Litigation denied the motion to centralize the litigation, in large part because of the Settlement reached in the instant consolidated actions, holding that “[c]entralization at this time is premature and could delay a class-wide settlement with little or no benefit to the parties and putative class members.” *Id.* at 2. The Settlement that is the subject of this Motion for Preliminary Approval will resolve all of the claims in those related cases now pending in other Districts. Klinger Decl., ¶37.<sup>12</sup>

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<sup>11</sup> *D.W. v. Walmart Inc., et al.*, No. 4:21-cv-00363-SRB (W.D. Mo.).

<sup>12</sup> In addition to the *D.W.* case pending in the Western District of Missouri, Plaintiffs are aware of the following related actions pending in other federal district courts: *Bays v. Walmart, Inc., et al.*, 3:21-cv-460-RC (S.D. W. Va.); *Biddle v. The University of Pittsburgh Medical Center, et al.*, No. 2:21-cv-00815-RJC (W.D. Pa.); *Tignor v. Camden-on-Gauley Medical Center, Inc., et al.*, No. 2:21-cv-00018-TSK (N.D. W. Va.); and *Newman v. Davis Health System, Inc., et al.*, No. 2:21-



### 3. Settlement Negotiations

Before filing their respective Complaints, Plaintiffs' counsel investigated the potential claims against Defendants, interviewed potential plaintiffs, and gathered information about the Data Incident and its potential impact on consumers. Klinger Decl., ¶39. Before Defendants could respond to the Complaint, the centralization litigation discussed above was initiated, and counsel devoted resources to litigating the consolidation motion before the JPML while at the same time arranging a mediation session with CaptureRx. Klinger Decl., ¶40. The parties participated in a global mediation—where all counsel were invited to attend—on November 3, 2021, with the Hon. Wayne Andersen, a retired federal judge and experienced class action mediator, to explore whether a negotiated resolution was possible. *See* Klinger Decl., ¶41. In advance of the mediation, CaptureRx provided settlement discovery to Plaintiffs' counsel regarding the scope of the Data Incident, the number of class members, remedial efforts and the limited funds it has to resolve the many claims asserted against it. Klinger Decl., ¶42. The parties also exchanged lengthy mediation briefs in advance of the mediation. Klinger Decl., ¶43. The litigation did not resolve at the mediation session. However, Judge Andersen and counsel engaged in numerous follow-up telephonic efforts to resolve this matter, which ultimately resulted in the material terms of the Settlement. Klinger Decl., ¶44. The parties thereafter spent significant time negotiating the specific terms and language of the Settlement Agreement through numerous phone calls and email exchanges. Klinger Decl., ¶45. The Settlement Agreement is now before this Court for preliminary approval.

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cv-00019-TSK (N.D. W. Va.). Plaintiffs in these related actions are members of the proposed Settlement Class.

### **III. THE TERMS OF THE PROPOSED SETTLEMENT**

The Settlement fully and finally resolves the claims and disputes between the Settling Parties. The Settlement Agreement defines the Settlement Class, describes the Settling Parties' agreed-upon exchange of consideration, and proposes a plan for disseminating notice and administering claims for the Settlement Class Members. The following summarizes the terms of the Settlement Agreement.

#### **A. Certification of the Settlement Class and California Settlement Subclass**

Under the Settlement Agreement, the Settling Parties agree to certification of a nationwide Settlement Class for settlement purposes as follows: “[A]ll natural persons residing in the United States whose Personal Information was exposed to an unauthorized party as a result of the Data Incident.”<sup>13</sup> ¶ 1.32.<sup>14</sup> The “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.<sup>15</sup> ¶ 1.6.

#### **B. Relief for the Settlement Class and California Settlement Subclass**

The Settlement Agreement provides significant monetary relief. CaptureRx will establish a Settlement Fund of \$4,750,000.00. The Settlement Fund shall be the sole and exclusive source

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<sup>13</sup> Excluded from the Settlement Class is any judge presiding over this matter and any members of their first-degree relatives, judicial staff, the officers and directors of CaptureRx and its customers who were impacted by the Data Incident, Settlement Class Counsel and their first-degree relatives, and persons who timely and validly request exclusion from the Settlement Class.

<sup>14</sup> References to “¶ \_\_” refer to the corresponding paragraph or subparagraph of the Settlement Agreement.

<sup>15</sup> The California Settlement Subclass has the same exclusions as the nationwide Settlement Class.

of all Settlement Costs and Award payments to Settlement Class Members, Administrative Costs, Service Awards, and Attorneys' Fees and Expenses. ¶ 1.36.

Each Settlement Class Member who files a valid claim will be eligible for one cash payment. Every Settlement Class Member who attests that he or she was impacted by the Data Incident is eligible to receive Twenty-Five Dollars (\$25.00). ¶ 2.4. In addition to the cash payment, California Settlement Subclass Members will also be eligible for an additional benefit of Seventy-Five Dollars (\$75.00). ¶ 2.5. Each Class and Subclass member must attest that he or she was impacted by the Data Incident, and was a California resident at the time of the Data Incident, respectively. The Settlement Agreement provides for a pro rata increase or a pro rata reduction if the total dollar value of all Approved Claims is less than or exceeds the amount remaining in the Settlement Fund after the Claims Deadline has passed and after the Attorneys' Fees and Expenses Award, the Service Award, and Claims Administration costs have been paid in full out of the Settlement Fund. ¶ 2.6. Any remaining funds after distribution will be paid to a *cy pres* recipient to be agreed upon by the parties (and subject to court approval). ¶ 2.6.

CaptureRx will further develop, implement, and maintain a comprehensive information security program that is reasonably designed to protect the security, integrity, and confidentiality of Personal Information that CaptureRx collects or obtains from Patients (collectively, the "ISP"). The CaptureRx ISP shall be written and shall contain administrative, technical, and physical safeguards appropriate to: (i) the size and complexity of CaptureRx's operations; (ii) the nature and scope of CaptureRx's activities; and (iii) the sensitivity of the Personal Information that CaptureRx maintains. ¶ 2.7.

### **C. Settlement Release**

In consideration for the monetary, injunctive, and other relief afforded in the Settlement Agreement, upon the Effective Date, each Settlement Class Member, including Representative

Plaintiffs, whether or not they have received an Award, will be deemed to have forever fully, finally, completely, and unconditionally released, discharged, and acquitted CaptureRx and the Released Parties from any and all of the Released Claims, and will be deemed to have also released Unknown Claims.<sup>16</sup> ¶ 8.1

Upon entry of the Final Approval Order, each Settlement Class Member, including Representative Plaintiffs, shall be barred from initiating, asserting, or prosecuting against CaptureRx and any Released Parties any claims that are released by operation of the Class Settlement Agreement and the Final Approval Order. ¶ 8.2.

**D. Attorneys' Fees, Costs, and Service Awards**

Within the applicable time period set forth by the Court, Settlement Class Counsel will file a motion seeking reasonable attorneys' fees in an amount not to exceed one third (or \$1,583,333.33) of the Settlement Fund. ¶ 9.1. Settlement Class Counsel and other Representative Plaintiffs' Counsel will seek their reasonable costs and expenses from the Settlement Fund (not to exceed \$30,000.00). ¶ 9.1. Settlement Class Counsel will also request approval by the Court of a Service Award for each of the five Representative Plaintiffs in the amount of Two Thousand Dollars (\$2,000.00), for a total of Ten Thousand Dollars (\$10,000), to be paid solely from the Settlement Fund. ¶ 9.2. CaptureRx shall not be liable for any additional attorneys' fees and expenses of Settlement Class Counsel or the Representative Plaintiffs in the Litigation. ¶ 9.5.<sup>17</sup>

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<sup>16</sup> Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, including Representative Plaintiffs, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public, or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or any other forum (other than the participation in the Settlement Agreement) in which any of the Released Claims or Unknown Claims are asserted. ¶ 8.1.

<sup>17</sup> Moreover, "[n]o order of the Court or modification or reversal or appeal of any order of the Court concerning the amounts of the Attorneys' Fees and Expenses Award or the Service Award

**E. Notice Program and Claims Administration**

Pursuant to Federal Rules of Civil Procedure, Rule 23(e) (“Rule 23(e)”), this Court must “direct notice in a reasonable manner to all class members who would be bound” by the proposed settlement. Fed. R. Civ. P. 23(e)(1). Notice of a proposed settlement to class members must be the “best notice practicable,” Fed. R. Civ. P. 23(c)(2)(B), which means “individual notice to all members who can be identified through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Accordingly, the Settlement Agreement states that “[t]he Notice Program shall be subject to approval by the Court as meeting the requirements of Rule 23(c) of the Federal Rules of Civil Procedure” (¶ 4.3), and thus Plaintiffs request that the Court approve the terms summarized herein, and as fully detailed in the Settlement Agreement.

The Settlement Agreement proposes a notice and administration process that best ensures that all Settlement Class Members will be informed of the pending settlement and, if it is approved, will receive their payment for Approved Claims electronically or, if a Settlement Class Member cannot receive funds electronically, award checks shall be sent by U.S.P.S. mail. ¶ 7.7.

CaptureRx will provide the Claims Administrator with a list of Settlement Class Members in such format as requested by the Claims Administrator which will include, to the extent available, the name and physical mailing address of each Settlement Class Member, and, if known, their respective email addresses. ¶ 4.1. The Claims Administrator will send a Summary Notice on a postcard via First Class U.S. Mail, postage pre-paid, to Settlement Class Members, and will undertake reasonable efforts to confirm the address and to resend notice, for any Settlement Class Members for which the Claims Administrator receives returned mail from the U.S. Postal Service

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hereunder shall affect whether the Judgment is Final or constitute grounds for cancellation or termination of this Class Settlement Agreement.” ¶ 9.4.

indicating that the initial mailing was not delivered. ¶ 4.2(a). The Claims Administrator will establish a dedicated settlement website that includes the Settlement Agreement as well as other important Litigation documents. ¶ 4.2(b). A toll-free number with interactive voice response and FAQs shall also be made available to address Settlement Class Members' inquiries. ¶ 4.2(b). Prior to the Final Approval Hearing, Counsel for the Settling Parties will file with the Court an appropriate declaration from the Claims Administrator demonstrating compliance with the Court-approved Notice Program. ¶ 4.5.

The Settlement Agreement provides for opt-out procedures. *See* ¶ 5. Each Settlement Class Member wishing to exclude themselves from the Settlement Class must individually sign and timely mail a written Request for Exclusion to the address designated by the Claims Administrator. ¶ 5.1. The Settlement Agreement also provides for objection procedures. *See* ¶ 6. Each Settlement Class Member who does not file a timely Request for Exclusion may file with the Court a notice of intent to object to the Class Settlement Agreement. ¶ 6.1. The Notice shall advise Settlement Class Members of the deadline for submission of any objections. ¶ 6.2.

The Settlement Agreement requires the Claims Administrator to administer and calculate the Settlement Claims submitted by Settlement Class Members. ¶ 7.1. All Settlement Claims must be submitted on or before the Claims Deadline. *Id.* The Claims Administrator will determine whether: (1) the claimant is a Settlement Class Member and, if applicable, and California Settlement Subclass Member; and (2) that the claimant has provided all information required to complete the Claim Form by the Claims Deadline. ¶ 7.2. If, after review of the Settlement Claim and all documentation submitted by the claimant, the Claims Administrator determines that such a Settlement Claim is valid, then the Settlement Claim shall be paid within the specified time period. ¶ 7.4.

The Claims Administrator shall agree to hold the Settlement Funds in an interest-bearing Qualified Settlement Fund account, and administer the Settlement Fund, subject to the continuing jurisdiction of the Court and from the earliest possible date, as a qualified settlement fund as defined by Treasury Regulation § 1.46B-1, *et seq.* ¶ 7.6.

The proposed Notice Program complies with Rule 23 and due process because, among other things, it informs Settlement Class Members directly of: the nature of the action and the class issues of the Litigation; the essential terms of the Settlement, including the class definitions and claims asserted; the binding effect of a judgment if the Settlement Class Member does not opt-out; the process for objection and/or exclusion, including the time and method for objecting or requesting exclusion and that Settlement Class Members may make an appearance through counsel; the process for submitting a claim; and information regarding Plaintiffs' request for Service Awards. *See* Fed. R. Civ. P. 23(c)(2)(B).

#### **IV. ARGUMENT**

##### **A. The Court Should Preliminarily Approve the Settlement**

Before the Settlement can be approved, the Settlement Class Members who will be bound by its terms must be notified and given an opportunity to object or otherwise react to the proposed Settlement. Fed. R. Civ. P. 23(e). This notification process takes time and can be quite expensive, so it has become customary for courts to first conduct a preliminary fairness review. *See Newberg on Class Actions* § 13:10 (5th ed.). Here, preliminary approval of the Settlement is warranted for the reasons set forth below.

##### **B. Legal Standard**

Under the revised Rule 23(e), the question for preliminary approval is whether “the court will likely be able to . . . approve the proposal under Rule 23(e)(2),” which provision governs final approval. A proposed settlement “will be preliminarily approved unless there are obvious defects

in the notice or other technical flaws, or the settlement is outside the range of reasonableness or appears to be the product of collusion, rather than arms-length negotiation.” 2 *McLaughlin on Class Actions* § 6:7 (15th ed. 2018). The general standard for final approval of a proposed settlement of a class action under Rule 23(e)(2) remains whether it is “fair, reasonable and adequate.” To make that determination, Rule 23(e)(2) provides the following factors:

(2) ***Approval of the Proposal.*** If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it 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, taking into account:

(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); and

(D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

Common-law criteria preceded the Rule 23 factors. In *Reed v. General Motors Corp.*, 703 F.2d 170, 172 (5th Cir. 1983), the Fifth Circuit laid out six factors for courts to consider in determining the fairness, reasonableness, and adequacy of a proposed class settlement: (1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely



duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of the plaintiffs' success on the merits; (5) the range of possible recovery; and (6) the opinions of the class counsel, class representatives, and absent class members. *See Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 639 n.11 (5th Cir. 2012) (quoting *Reed*, 703 F.2d at 172).

“Because the Rule 23 and case-law factors overlap, courts in this circuit often combine them in analyzing class settlements.” *Odonnell v. Harris County*, No. H-16-1414, 2019 U.S. Dist. LEXIS 151159, at \*25-26 (S.D. Tex. Sep. 5, 2019) (citing *Hays v. Eaton Grp. Attorneys, LLC*, No. 17-88-JWD-RLB, 2019 U.S. Dist. LEXIS 17029, 2019 WL 427331, at \*9 (M.D. La. Feb. 4, 2019); *Al's Pals Pet Care v. Woodforest Nat'l Bank, NA*, No. H-17-3852, 2019 U.S. Dist. LEXIS 17652, 2019 WL 387409, at \*3 (S.D. Tex. Jan. 30, 2019)); *see also* Fed. R. Civ. P. 23(e)(2) Committee Notes to 2018 amendments (“The goal of this amendment [to Rule 23(e)(2)] is not to displace any [circuit case-law] factor, but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal.”).

“When considering [Rule 23(e)(2)] factors, the court should keep in mind the strong presumption in favor of finding a settlement fair.” *Purdie v. Ace Cash Express, Inc.*, No. 301CV1754L, 2003 WL 22976611, at \*4 (N.D. Tex. Dec. 11, 2003). *See also In re Deepwater Horizon*, 739 F.3d 790 (5th Cir. 2014); *In re Oil Spill by Oil Rig Deepwater Horizon in Gulf of Mexico, on Apr. 20, 2010*, 910 F. Supp. 2d 891, 930-31 (E.D. La. 2012), *aff'd* sub nom (“Because the public interest strongly favors the voluntary settlement of class actions, there is a strong presumption in favor of finding the settlement fair, reasonable, and adequate.”); *Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 650 (N.D. Tex. 2010) (There is a “strong presumption that an arms-

length class action settlement is fair—especially when doing so will result in significant economies of judicial resources”).

A “proposed settlement need not obtain the largest conceivable recovery for the class to be worthy of approval; it must simply be fair and adequate considering all the relevant circumstances.” *Klein*, 705 F. Supp. 2d at 649. Indeed, because “compromise is the essence of a settlement,” “the settlement need not accord the plaintiff class every benefit that might have been gained after full trial.” *Pettway v. Am. Cast Iron Pipe Co.*, 576 F.2d 1157, 1214 (5th Cir. 1978); *see also Cotton v. Hinton*, 559 F.2d 1326 (5th Cir. 1977) (“The trial court should not make a proponent of a proposed settlement justify each term of settlement against a hypothetical or speculative measure of what concessions might have been gained; inherent in compromise is a yielding of absolutes and an abandoning of highest hopes.”). Accordingly, “absent fraud, collusion, or the like, [courts] should be hesitant to substitute [their] own judgment for that of counsel.” *Klein*, 705 F. Supp. 2d at 649.

Moreover, “[w]here, as here, the motion is for preliminary, and not final, approval, the standards are less stringent.” *Hays*, 2019 WL 427331, at \*8 (M.D. La. Feb. 4, 2019) (citations and internal quotation marks omitted). “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.” *Id.* (citations omitted).

Here, the foregoing Rule 23 and *Reed* factors weigh in favor of preliminary approval, as there are no grounds to doubt the fairness of the settlement.

**C. The Proposed Settlement is Fair, Adequate, and Reasonable**

1. Representative Plaintiffs and Settlement Class Counsel Have Adequately Represented the Settlement Class

Representative Plaintiffs and Class Counsel have adequately represented the Settlement Class. Plaintiffs have no conflicts of interest with other Settlement Class Members, are subject to no unique defenses, and they and their counsel have vigorously prosecuted and continue to vigorously prosecute this case on behalf of the Settlement Class. *See* Klinger Decl., ¶51. Further, Settlement Class Counsel are experienced in the successful litigation and settlement of class action litigation, including data privacy cases. Klinger Decl., ¶52; *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d at 1055 (S.D. Tex. 2012) (adequacy satisfied where class counsel had “extensive experience representing consumers, and other plaintiff classes, in class-action litigation,” including “experience representing consumer classes in similar data-breach cases”). Settlement Class Counsel also conducted a thorough investigation of the facts both before and during the course of the Litigation. This investigation allowed Settlement Class Counsel to better understand the key factual issues at the core of the Litigation in negotiating the Settlement, *i.e.*, they had a “full understanding of the legal and factual issues surrounding this case.” *Manchaca v. Chater*, 927 F. Supp. 962, 967 (E.D. Tex. 1996).

Having completed a sufficient investigation and given the risks of no recovery at all, Settlement Class Counsel, together with Representative Plaintiffs, have settled this Litigation on a favorable basis to the Settlement Class without unduly prolonging it and without the expense and risk of a trial. Accordingly, Representative Plaintiffs and Settlement Class Counsel have adequately represented the Settlement Class, satisfying Rule 23(e)(2)(A).

2. The Settlement was the Result of Arms-length Negotiations and Without Fraud or Collusion

The Settlement should be approved under Rule 23(e)(2)(B) and the first *Reed* factor. As previously stated, before filing their respective Complaints, Settlement Class Counsel investigated

the potential claims against Defendants, interviewed potential plaintiffs, and gathered information about the Data Incident and its potential impact on consumers. Thus, Settlement Class Counsel's appreciation of the merits of this case prior to settlement allowed them to engage in vigorous, arms-length negotiations with CaptureRx. *See In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1064 (S.D. Tex. 2012) (approving settlement because "[t]he parties have shown that they possessed sufficient information to gauge the strengths and weaknesses of the claims and defenses" despite the fact that only informal discovery was taken and the case settled at an early stage).

The parties engaged in extensive arm's-length negotiations overseen by experienced mediator Hon. Wayne Andersen (Ret.) of JAMS. And those negotiations included plaintiffs in other lawsuits filed in connection with the Data Incident. In anticipation of the mediation, CaptureRx provided information to Settlement Class Counsel about the scope of the Data Incident, the number of class members, remedial efforts, and the limited resources of CaptureRx to resolve the numerous claims asserted against it. Klinger Decl., ¶42. The parties also exchanged lengthy mediation briefs in advance of the mediation. Klinger Decl., ¶43. The mediation before Judge Anderson did not result in a settlement. However, the Parties, with Judge Andersen's assistance, continued to negotiate after the mediation, which ultimately resulted to the parties agreeing to the material terms of the Settlement. Klinger Decl., ¶44. The parties thereafter spent significant time negotiating the specific terms and language of the Settlement Agreement through numerous phone calls and email exchanges. Klinger Decl., ¶45.

"The Court may presume that no fraud or collusion occurred between counsel, in the absence of any evidence to the contrary." *Klein*, 705 F. Supp. 2d at 651 (quoting *Liger v. New Orleans Hornets NBA Ltd. P'ship*, Civ. A. No. 05-1969, 2009 U.S. Dist. LEXIS 85733, 2009 WL

2856246, at \*3 (E.D. La. Aug. 28, 2009)). Here, not only is the Settlement the result of arm's-length negotiations as discussed above, but the matter of attorneys' fees was not discussed until after the class benefits were reached. Klinger Decl., ¶50; thus, there is no threat of fraud or collusion affecting the fairness of the settlement negotiations. *See In re Heartland Payment Sys., Inc.*, 851 F. Supp. 2d at 1064 (citing *In re Combustion, Inc.*, 968 F. Supp. 1116, 1127 (W.D. La. 1997) ("Further, testimony was presented that the matter of attorneys' fees was not negotiated in conjunction with the settlement agreements but left for separate determination by the Court.")).

Given the arm's-length negotiations that resulted in the proposed Settlement and that there is no evidence of fraud or collusion, the Settlement is fair, reasonable, and adequate under Rule 23(e)(2)(B) and the second *Reed* factor. *See* Fed. R. Civ. P. 23(e)(2)(B); *Reed*, 703 F.2d at 172.

3. The Settlement is Favorable Given the Complexity, Expense, and Likely Duration of the Litigation

There exists "an overriding public interest in favor of settlement, particularly in class actions that have the well-deserved reputation as being most complex." *Assoc. for Disabled Am., Inc. v. Amoco Oil Co.*, 211 F.R.D. 457, 466 (S.D. Fla. 2002) (citing *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977)). "When the prospect of ongoing litigation threatens to impose high costs of time and money on the parties, the reasonableness of approving a mutually-agreeable settlement is strengthened." *Klein*, 705 F. Supp. 2d at 651 (citing *Ayers v. Thompson*, 358 F.3d 356, 369 (5th Cir. 2004)). Although this case was settled only about six months after this Court ordered a consolidated complaint filed (ECF No. 13), and before dispositive motions, Defendants repeatedly denied their liability and planned to file motions to dismiss.

By negotiating a Settlement at this early stage of the litigation, the parties have ensured that Settlement Class Members will receive the substantial benefits described above while avoiding the risks and potential pitfalls of prolonged litigation. While confident in the strength of

their claims, Representative Plaintiffs and Settlement Class Counsel are also pragmatic and recognize the risks inherent in litigation of a complex Data Incident case. *See* Klinger Decl., ¶22.

The risks, expense, complexity, and likely duration of further litigation support preliminary approval of the Settlement. Klinger Decl., ¶23. Should the case proceed in litigation, Plaintiffs' claims could be dismissed or narrowed at the motion to dismiss stage, summary judgment, at trial, or on a subsequent appeal. Plaintiffs also face the risk that class certification could be denied or that key expert testimony could be excluded. *Id.* Defendants also contend Plaintiffs' damages models would be subject to challenge, as Defendants dispute whether Plaintiffs suffered any cognizable damages and whether any such damages are measurable on a classwide basis through a viable, common methodology. And then there are the claims against the non-CaptureRx defendants. Those defendants contend Plaintiffs would need to prove each is liable based on their decision to retain CaptureRx's services. While Plaintiffs disagree with Defendants' contentions, they recognize each risk, by itself, could impede the successful prosecution of these claims at trial and in an eventual appeal—which would result in zero recovery for the Class. *Id.* And even if Plaintiffs prevailed at trial, any recovery could be delayed for years by an appeal. It is also possible—in fact, likely—any non-negotiated outcome as to CaptureRx might never be recovered by Plaintiffs due to collectability issues. *See Exhibit 3.*

In contrast, the Settlement provides immediate and substantial benefits to approximately 2,420,141 Settlement Class Members—similar to the relief and benefits obtained in other data breach class actions—and on a much quicker timeline. For example, a recent proposed settlement in a data breach class action involving more than 3 million people settled for only \$2.3 million. *See Kostka v. Dickey's Barbeque Restaurants, Inc.*, Case No. 20-cv-3424, Dkt. 62 (N.D. Tex.); *see also, e.g., Fehlen v. Accellion, Inc.*, Case No. 21-cv-01353 (N.D. Cal.) (proposed settlement of

\$8.1 million for 9.2 million class members who had their Social Security Numbers compromised); Final Approval Order, *In re Banner Health Data Breach Litigation*, No. 2:16-cv-02696-PHX, ECF No. 198 (D. Az.) (up to \$6 million claims-made settlement after 3 years of litigation where breach compromised names, Social Security numbers, and PHI of approximately 2.9 million class members).

This case is settling in its early stages; if the Settlement is not approved, the parties will likely need to litigate through multiple dispositive motions, a motion for class certification, a potential motion to decertify the class, and multiple *Daubert* motions, among other things. Klinger Decl., ¶38. That process would likely take years to resolve and involve expensive expert discovery. Yet there is no guarantee lengthy litigation and expensive discovery would lead to greater benefits for Settlement Class Members. *Id.* Instead, there would be multiple inflection points at which the Settlement Class’s claims could be narrowed or dismissed. Moreover, the parties would bear the cost of this litigation if it continues. An early resolution, before both sides spend significant sums on litigation costs, is in the best interest of the Settlement Class. In short, “settling now avoids the risks and burdens of potentially protracted litigation.” *Ayers*, 358 F.3d at 369. Thus, the Settlement should be preliminarily approved under Rule 23(e)(2)(C)(i) and the second *Reed* factor. *See* Fed. R. Civ. P. 23(e)(2)(C)(i); *Reed*, 703 F.2d at 172.

#### 4. The State of Litigation and the Available Discovery

Under the third *Reed* factor, the key issue is whether “the parties and the district court possess ample information with which to evaluate the merits of the competing positions.” *In re Heartland Payment Sys., Inc.*, 851 F. Supp. 2d at 1064 (quoting *Ayers*, 358 F.3d at 369). “A settlement can be approved under this factor even if the parties have not conducted much formal discovery.” *Id.* (citations omitted). The “[s]ufficiency of information does not depend on the amount of formal discovery which has been taken because other sources of information may be

available to show the settlement may be approved even when little or no formal discovery has been completed.” *San Antonio Hispanic Police Officers’ Org., Inc. v. City of San Antonio*, 188 F.R.D. 433, 459 (W.D. Tex. 1999). “The Court should consider all information which has been available to all parties.” *DeHoyos*, 240 F.R.D. at 292.

Here, prior to mediation, CaptureRx shared with Settlement Class Counsel information about the scope of the Data Incident, the number of class members, remedial efforts, and the limited funds it has to resolve many claims asserted against it. Klinger Decl., ¶42. Drawing on their previous experience in similar data-breach class action litigation, Settlement Class Counsel were able to determine the Settlement’s adequacy in relation to the probability of success on the merits were this litigation to continue. Klinger Decl., ¶46. Because the parties “possess ample information with which to evaluate the merits of the competing positions,” *Ayers*, 358 F.3d at 369, this factor also favors preliminary approval of the proposed settlement. *See Reed*, 703 F.2d at 172.

5. The Settlement Terms Represent a Highly Favorable Compromise that Appropriately Balances the Merits of Plaintiffs’ Claims and the Likelihood of Success with the Attendant Risks

When evaluating a proposed class action settlement, “the most important factor is the [fourth *Reed* factor,] probability of plaintiffs’ success on the merits.” *Parker v. Anderson*, 667 F.2d 1204, 1209 (5th Cir. 1982). “[T]he Court must compare the terms of the settlement with the rewards the class would have been likely to receive following a successful trial.” *DeHoyos*, 240 F.R.D. at 287 (W.D. Tex. 2007) (citing *Reed*, 703 F.2d at 172 (5th Cir. 1983)). At the same time, a district court “must not try the case in the settlement hearings because the very purpose of the compromise is to avoid the delay and expense of such a trial.” *Reed*, 703 F.2d at 172 (internal quotation marks and alteration omitted). This factor favors approval of the settlement when the class’s likelihood of success on the merits is questionable. *See In re Corrugated Container Antitrust Litig.*, 659 F.2d 1322, 1326-27 (5th Cir. 1981) (affirming district court’s finding that this



factor favored approving the settlement when the class faced major obstacles in establishing proof of liability and damages); *DeHoyos*, 240 F.R.D. at 290 (“Because the laws of numerous states may be relevant to individual class member claims, plaintiffs would apparently face a further significant challenge to certifying the class outside the settlement context.”); *Combustion*, 968 F. Supp. at 1128 (“On the other hand, Plaintiffs will have very serious legal and evidentiary hurdles to meet in order to get their case to the jury.”).

Similarly, the fifth *Reed* factor—the range of possible recovery—concerns “whether the range of possible recovery or the benefit of the settlement to plaintiffs outweighs the risks of proceeding through litigation.” *DeHoyos*, 240 F.R.D. at 290-91. Both of these factors likewise weigh in favor of preliminary approval.

First, the terms of the Settlement approximate the rewards the Class likely would have received following a successful trial. Klinger Decl., ¶48. As described above, each Settlement Class Member who files a valid claim and attests that he or she was impacted by the Data Incident is eligible to receive \$25.00, subject to a *pro rata* increase or reduction. *See* Section III(B), *supra*. California Settlement Subclass Members who file a valid claim will be eligible for an additional benefit of \$75.00, subject to a potential *pro rata* increase or reduction. *Id.* These benefits represent a highly favorable compromise that balances the merits of Plaintiffs’ claims and the likelihood of succeeding at trial and on appeal with the attendant risks. Klinger Decl., ¶49. Though Representative Plaintiffs and Settlement Class Counsel are confident that they ultimately would have been able to prove their claims, they also understand that Plaintiffs’ claims could be dismissed or narrowed at the motion to dismiss stage, summary judgment, at trial, or on a subsequent appeal. *Id.* Plaintiffs also face the risk that class certification could be denied. *Id.* Further, even if this Court had certified a class and the litigation was resolved in Plaintiffs’ favor, the amount Plaintiffs and

the Class would have been awarded in damages, if any, is uncertain, as are the sources available to fund those allowed claims given CaptureRx's extremely limited resources. *See* Settlement Agreement at 3. Indeed, CaptureRx faces potential insolvency if this litigation moves forward. *Id.* There is limited insurance coverage, all of which is being used to fund a portion of the Settlement. *Id.* The remaining monies used to fund the Settlement are being borne personally by the owners of CaptureRx. *Id.*

The inherent uncertainty in litigation—even where, as here, Representative Plaintiffs are confident in their future success—presents a risk to Plaintiffs of expending time and money on this case with the possibility of no recovery at all for the Class. Klinger Decl., ¶22. Finally, even assuming success at trial and CaptureRx's ability to pay a judgment in favor of Plaintiffs, the case would likely continue with lengthy appeals. *Id.* The proposed Settlement avoids these uncertainties and provides the Settlement Class with immediate, meaningful, and certain monetary and injunctive relief. *Id.* Under the circumstances, Representative Plaintiffs and Settlement Class Counsel appropriately determined that the Settlement outweighs the risks of continued litigation. *Id.*

Accordingly, the Settlement should be preliminarily approved under Rule 23(e)(2)(C)(i) and the fourth and fifth *Reed* factors. *See* Fed. R. Civ. P. 23(e)(2)(C)(i); *Reed*, 703 F.2d at 172.

6. Settlement Class Counsel and Representative Plaintiffs Believe that the Settlement is in the Settlement Class's Best Interests

Finally, all Representative Plaintiffs and Settlement Class Counsel firmly believe that this Settlement is fair, reasonable, and adequate, and in the best interests of Settlement Class Members, which is an important consideration in any class settlement analysis. Klinger Decl., ¶24. “The Fifth Circuit has repeatedly stated that the opinion of class counsel should be accorded great weight” when “evaluating a proposed settlement.” *Klein*, 705 F. Supp. at 649 (citing *Pettway v. Am. Cast*

*Iron Pipe Co.*, 576 F.2d 1157, 1216 (5th Cir. 1978)); *DeHoyos*, 240 F.R.D. at 292 (“The endorsement of class counsel is entitled to deference.”). Here, Settlement Class Counsel are collectively highly experienced in class action litigation and were well positioned to evaluate the strengths and weaknesses of continued litigation, as well as the reasonableness of the Settlement. Klinger Decl., ¶52. They have collectively recovered hundreds of millions of dollars for class members in other litigation, including data breach cases. *See, e.g., Carrera Aguallo v. Kemper Corp.*, Case No. 1:21-cv-01883 (N.D. Ill. Oct. 27, 2021), Dkt. No. 43 (preliminarily approving settlement valued at more than \$17 million in data breach class action involving 6 million class members); *In re Dep’t of Veterans Affs. (VA) Data Theft Litig.*, No. 1:06-MC-00506, 2007 WL 7621261 (D.D.C. Nov. 16, 2007) (unlawful disclosure of PII of 28.5 million military veterans and active duty personnel; \$20 million settlement fund); *In re Google Buzz Priv. Litig.*, No. C 10-00672 JW, 2011 WL 7460099 (N.D. Cal. June 2, 2011) (\$10 million settlement fund in case arising from unauthorized disclosure of personal information). Accordingly, the sixth *Reed* factor further supports approval of the proposed Settlement. *See Reed*, 703 F.2d at 172; *see also Stott v. Capital Fin. Servs., Inc.*, 277 F.R.D. 316, 346 (N.D. Tex. 2011) (“As class counsel tends to be the most familiar with the intricacies of a class action lawsuit and settlement, ‘the trial court is entitled to rely upon the judgment of experienced counsel for the parties.’”).

7. The Settlement Treats Settlement Class Members Equitably Relative to Each Other

The final factor, Rule 23(e)(2)(D), looks at whether Settlement Class Members are treated equitably. *See Fed. R. Civ. P. 23(e)(2)(D)*. Here, the Settlement provides for a notice plan that is designed to reach as many Settlement Class Members as possible and provides Settlement Class Members with direct mail notice of the Settlement. *See Section III(E), supra*. It also informs Settlement Class Members of their right to object to, or opt out of, the Settlement. *Id.* Every

Settlement Class Member who submits a valid claim and who attest that he or she was impacted by the Data Incident is eligible to receive \$25.00, and each California Settlement Subclass Member is also eligible for an additional benefit of \$75.00. *Id.* All Settlement payments are subject to a potential *pro rata* increase or reduction. *Id.* Thus, the Settlement treats Settlement Class Members equitably relative to each other, satisfying Rule 23(e)(2)(D). *See* Fed. R. Civ. P. 23(e)(2)(D).

\* \* \*

Each factor identified under Rule 23(e)(2) and as required by the Fifth Circuit in *Reed* is satisfied. Given the litigation risks involved and the complexity of the underlying issues, the \$4,750,000.00 recovery is an excellent result. It could not have been achieved without full commitment by Representative Plaintiffs and Settlement Class Counsel. Representative Plaintiffs and Settlement Class Counsel respectfully submit that the Settlement is both fair and adequate and that it meets each of the Rule 23(e)(2) and *Reed* factors such that notice of the Settlement should be sent to the Settlement Class. *See Odonnell*, 2019 U.S. Dist. LEXIS 151159, at \*38-39 (S.D. Tex. Sep. 5, 2019) (preliminarily finding the proposed consent decree and settlement agreement terms were fair, reasonable and adequate under Rule 23(e) and the governing case all where “[a]ll of the Rule 23(e)(2) and *Reed* factors weigh[ed] in favor of preliminarily approving the proposed consent decree and settlement agreement.”).

**D. The Court Should Preliminarily Certify the Settlement Class**

1. The Settlement Class Meets the Requirements of Rule 23(a) of the Federal Rules of Civil Procedure

Before assessing the parties’ Settlement, the Court should first confirm that the underlying Settlement Class meets the requirements of Federal Rule of Civil Procedure 23 (“Rule 23”). *See Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997); *Manual for Complex Litigation*, § 21.632.

The prerequisites for class certification under Rule 23(a) are numerosity, commonality, typicality, and adequacy—each of which is satisfied here.

(a) *Numerosity*

Rule 23 first requires that the class be so numerous that joinder of all members is impracticable. Fed. R. Civ. P. 23(a)(1). There is no specific threshold that must be surpassed in order to satisfy the numerosity requirement; rather, the determination “requires examination of the specific facts of each case and imposes no absolute limitations.” *Gen. Tel. Co. of the Northwest, Inc. v. EEOC*, 446 U.S. 318, 330 (1980). That said, a showing that the class consists of more than forty members “should raise a presumption that joinder is impracticable.” *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 624 (5th Cir. 1999) (quoting 1 *Newberg on Class Actions* § 3.05, at 3–25 (3d ed. 1992)); see *In re Talbert*, 347 B.R. 804, 808-809 (E.D. La. 2005) (finding numerosity requirement met when class potentially consisted of 88 members).

Here, the numerosity requirement is easily met. The Settlement Class consists of approximately 2,420,141 members. See Compl. ¶ 88 & n.2.

(b) *Commonality*

Rule 23(a)(2)’s commonality requirement demands that “there are questions of law or fact common to the class.” *Wal-Mart Stores, Inc. v. Dukes, et al*, 564 U.S. 338, 368 (2011) (citing Fed. R. Civ. P. 23). “The principal requirement of [*Dukes*] is merely a single common contention that enables the class action ‘to generate common *answers* apt to drive the resolution of the litigation.’” *In re Deepwater Horizon*, 739 F.3d 790, 811 (5th Cir. 2014) (citing *M.D. ex rel. Stukenberg v. Perry*, 675 F.3d 832, 840 (5th Cir. 2012)). “These ‘common answers’ may indeed relate to the injurious effects experienced by the class members, but they may also relate to the defendant’s injurious conduct.” *Id.* Regardless, “a *single* common question will do.” *Id.* (citing *Dukes*, 564 U.S. at 359) (emphasis added) (alterations in original).

The commonality requirement is easily satisfied here. All Settlement Class Members' claims turn on whether Defendant's security environment was adequate to protect Settlement Class Members' PII and PHI. Thus, common questions include, *inter alia*, whether Defendants engaged in the wrongful conduct alleged; whether Settlement Class Members' PII and PHI was compromised in the Data Incident; whether Defendants owed a duty to Plaintiffs and Settlement Class Members; whether Defendants breached their duties; whether Defendants unreasonably delayed in notifying Plaintiffs and Settlement Class Members of the material facts of the Data Incident; and whether Defendants committed the common law and statutory violations alleged in the Consolidated Class Action Complaint. *See, e.g., In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1054 (S.D. Tex. 2012) ("The common factual question in this case is what actions Heartland took before, during, and after the data breach to safeguard the Consumer Plaintiffs' financial information."); *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-02752-LHK, 2020 WL 4212811, at \*3 (N.D. Cal. July 22, 2020) (common questions of whether defendant employed sufficient data security measures, knew of inadequacies, and timeliness of data breach disclosure satisfy commonality requirement).

(c) *Typicality*

Rule 23(a)(3) "requires that the named representatives' claims be typical of those of the class." *Langbecker v. Elec. Data Sys. Corp.*, 476 F.3d 299, 314 (5th Cir.2007). Here, Plaintiffs' claims are typical of Settlement Class Members' claims because they arise from the same course of alleged conduct and are premised on the same legal theory. Plaintiffs had PII that was stored on CaptureRx's systems and was compromised in the Data Incident, and so they suffered the same injury, were harmed by the same inadequate data security, and seek to assert the same underlying claims as the rest of the Settlement Class. *See James v. City of Dallas*, 254 F.3d 551, 571 (5th Cir. 2001) ("[T]he critical inquiry is whether the class representative's claims have the same essential

characteristics of those of the putative class. If the claims arise from a similar course of conduct and share the same legal theory, factual differences will not defeat typicality.”).

(d) *Adequacy of Representation*

The Court should also easily conclude that “the representative parties will fairly and adequately protect the interests of the class,” as required by Rule 23(a)(4). This requirement is satisfied when (i) there are no substantial conflicts of interest between the class representatives and the class; and (ii) the representatives and their attorneys will properly prosecute the case. *Sosna v. Iowa*, 419 U.S. 393, 403 (1975); *see also Jones v. Singing River Health Servs. Found.*, 865 F.3d 285, 294 (5th Cir. 2017). The existence of minor conflicts of interest between the plaintiffs and the class “alone will not defeat a party’s claim to class certification: the conflict must be a ‘fundamental’ one going to the specific issues in controversy.” *In re Deepwater Horizon*, 739 F.3d 790, 813 n.99 (5th Cir. 2014) (quoting *Valley Drug Co. v. Geneva Pharms., Inc.*, 350 F.3d 1181, 1189 (11th Cir. 2003)). Both prongs are satisfied here.

Plaintiffs adequately represent the Settlement Class, as they have no conflicts of interest with other Settlement Class Members, are subject to no unique defenses, and they and their counsel have and continue to vigorously prosecute this case on behalf of the Settlement Class. *See Klinger Decl.*, ¶51. Further, Class Counsel are experienced in the successful litigation and settlement of class action litigation, including data privacy cases. *See id.*; *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d at 1055 (adequacy satisfied where class counsel had “extensive experience representing consumers, and other plaintiff classes, in class-action litigation,” including “experience representing consumer classes in similar data-breach cases”).

2. The Settlement Class Meets the Demands of Rule 23(b)(3)

“In addition to satisfying Rule 23(a)’s prerequisites, parties seeking class certification must show that the action is maintainable under Rule 23(b)(1), (2), or (3).” *Amchem Prods.*, 521 U.S. at

614. Plaintiffs seek class certification under Rule 23(b)(3), which requires “that the 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.” Fed. R. Civ. P. 23(b)(3).

(a) *Common Legal and Factual Questions Predominate in This Litigation*

Common legal and factual questions predominate in this Litigation relating to the Data Incident and related allegations. The predominance inquiry under Rule 23(b)(3) tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation. *Ahmad v. Old Republic Nat. Title Ins. Co.*, 690 F.3d 698, 702 (5th Cir. 2012). Rule 23(b)(3), however, does not require a plaintiff seeking class certification to prove that each element of the claim is susceptible to classwide proof. *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 469 (2013). Rather, it does require that common questions predominate over any questions affecting only individual class members. *Id.* “A common question is one where the same evidence will suffice for each member to make a prima facie showing or the issue is susceptible to generalized, class-wide proof.” *Crutchfield v. Sewerage & Water Bd. of New Orleans*, 829 F.3d 370, 376 (5th Cir. 2016) (citations and quotations omitted).

Here, for settlement purposes, the central common questions predominate over any questions that may affect individual Settlement Class Members. The central common questions include whether CaptureRx owed a duty to Plaintiffs and Settlement Class Members, whether CaptureRx breached its duty, and whether CaptureRx unreasonably delayed in notifying Plaintiffs and Settlement Class Members of the material facts of the Data Incident. These issues are subject to “classwide proof” and “outweigh those issues that are subject to individualized proof.” “When one or more of the central issues in the action are common to the class and can be said to



predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members.” *Id.* (citations and quotations omitted). Courts have found similar settlement classes to meet the preponderance requirement in data breach cases. “Indeed, the focus on a defendant’s security measures in a data breach class action is the precise type of predominant question that makes class-wide adjudication worthwhile.” *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-02752-LHK, 2020 WL 4212811, at \*7 (N.D. Cal. July 22, 2020) (quotation marks omitted) (collecting cases). The Settlement Class and California Settlement Subclass meet the predominance requirement for settlement purposes, and certification will meet the objective of Rule 23(b)(3) to promote economy and efficiency of time, effort, and expense over separate suits.

*(b) A Class Action is the Superior Means to Adjudicate Plaintiffs’ Claims*

The Court should find that the class action is the superior means of adjudication under Rule 23(b)(3). Each of the Rule 23(b)(3) factors, below, weigh in favor of finding superiority:

- (A) the class members’ interests in individually controlling the prosecution or defense of separate actions;
- (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
- (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- (D) the likely difficulties in managing a class action.

All of these factors favor class treatment in this case. The value of each Settlement Class Members’ claim is relatively so much smaller than the cost it would even take to litigate individual actions. Thus, Settlement Class Members would not individually be able seek redress in this matter in an economically feasible manner. It is desirable to concentrate the litigation of the claims into

the present forum in view of the scale of the class under Rule 23(b)(3)(C). With approximately 2.4 million class members, a class action would be superior over individual adjudication. *See Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 627 (5th Cir. 1999) (comparing a class that would consist of hundreds, instead of millions, of members). As detailed above, this Litigation includes other consolidated actions initiated by other Settlement Class Members, which weighs in favor of class treatment under Rule 23(b)(3)(B).

### 3. The Court Should Approve the Proposed Notice Program

Rule 23(e) requires that the Court “direct notice in a reasonable manner to all class members who would be bound” by the proposed settlement. Fed. R. Civ. P. 23(e)(1). Notice of a proposed settlement to class members must be the “best notice practicable,” Fed. R. Civ. P. 23(c)(2)(B), which means “individual notice to all members who can be identified through reasonable effort.” *Eisen*, 417 U.S. at 173. The proposed Notice Program meets these requirements.

Here, the proposed Notice Program includes that CaptureRx will provide the Claims Administrator with a list of Settlement Class Members in such format as requested by the Claims Administrator which will include, to the extent available, the name and physical mailing address of each Settlement Class Member, and if known, their respective email addresses. ¶ 4.1. Within fourteen (14) days after receiving the Settlement Class list from CaptureRx, the Claims Administrator will send the Summary Notice on a postcard via First Class U.S. Mail, postage pre-paid, to Settlement Class Members. ¶ 4.2(a). Within twenty (20) days after sending such mail, the Claims Administrator will undertake reasonable efforts to confirm the address, and to resend notice, for any Settlement Class Members for which the Claims Administrator receives returned mail from the U.S. Postal Service indicating that the initial mailing was not delivered. ¶ 4.2(a). Within seven (7) days after receiving the Settlement Class list from CaptureRx, the Claims

Administrator will establish a dedicated settlement website that includes the Settlement Agreement, the Long Notice, and the Claim Form approved by the Court. ¶ 4.2(b). The Claims Administrator shall maintain and update the website throughout the Claims Period. ¶ 4.2(b). The Claims Administrator will also post on the settlement website copies of the motion for final approval of the Settlement and the motion for an Attorneys' Fees and Expenses Award and a Service Award. ¶ 4.2(b). A toll-free number with interactive voice response and FAQs shall also be made available to address Settlement Class Members' inquiries. ¶ 4.2(b).

Substantively, Rule 23(c)(2)(B) requires, and the Notice Program provides, information, written in easy-to-understand plain language, regarding: "(i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who request exclusions; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3)." Fed. R. Civ. P. 23(c)(2)(B). "There are no rigid rules to determine whether a settlement notice to the class satisfies constitutional or Rule 23(e) requirements." *ODonnell v. Harris Cty., Texas*, No. CV H-16-1414, 2019 WL 4224040, at \*26 (S.D. Tex. Sept. 5, 2019). Instead, a settlement notice need only satisfy the broad reasonableness standards imposed by due process. *Id.* (citations and quotation marks omitted).

The Notice defines the Settlement Class and California Settlement Subclass; explains all Settlement Class Members' rights, the scope and impact of Released Claims, and the applicable deadlines for submitting claims, objecting, and opting out; and describes in detail the monetary relief provided by the Settlement Agreement, including the procedures for allocating and distributing the Settlement Fund amongst the Settlement Class Members and California Settlement

Subclass Members, Plaintiffs, Settlement Class Counsel, and the Settlement Administrator. The Notice will also indicate the time and place of the Final Approval Hearing, and explain the methods for objecting to, or opting out of, the Settlement. It details the provisions for payment of Attorneys' Fees, Costs and Service Awards, and they provide contact information for Settlement Class Counsel. In light of the foregoing, the Notice Program has been designed to give the best notice practicable, is tailored to reach the Settlement Class Members, and ensures their due process rights are amply protected.

## **V. CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Court:

- (a) Stay all proceedings in the Litigation other than those related to approval of the Settlement Agreement;
- (b) Stay and/or enjoin, pending Final Approval of the Settlement Agreement, any actions brought by Settlement Class Members concerning the Released Claims;
- (c) Preliminarily certify the Settlement Class and the California Settlement Subclass for settlement purposes only;
- (d) Preliminarily approve the terms of the Settlement Agreement as fair, adequate, and reasonable;
- (e) Appoint Representative Plaintiffs as the Settlement Class representatives for settlement purposes only;
- (f) Appoint Settlement Class Counsel as counsel for the Settlement Class for settlement purposes only;
- (g) Approve the Notice Program, as set forth in the Settlement Agreement (§ 4) and set the dates for the Claims Deadline, Opt-Out Deadline, and Objection Deadline;

- (h) Approve the form and contents of a long form notice (“Long Notice”) to be posted on the settlement website substantially similar to the one attached to the Settlement Agreement as Exhibit B, and a Summary Notice to be sent via First Class Mail to Settlement Class Members (“Summary Notice”), substantially similar to the one attached to the Settlement Agreement as Exhibit C, which together shall include a fair summary of the Settling Parties’ respective litigation positions, the general terms of the Settlement set forth in the Settlement Agreement, instructions for how to object to or submit a Request for Exclusion from the Settlement, the process and instructions for filing a Claim Form, and the date, time and place of the Final Approval Hearing;
- (i) Approve a Claim Form substantially similar to that attached to the Settlement Agreement as Exhibit A;
- (j) Appoint a Claims Administrator; and
- (k) Schedule the Final Approval Hearing.

Date: February 11, 2022

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of February, 2022, I caused a true and correct copy of the foregoing document to be filed with the Clerk of the Court for the Western District of Texas via the Court's CM/ECF system, which will send notification of such filing to the counsel of record in the above-captioned matters.

Date: February 11, 2022

/s/ Gary M. Klinger

# **EXHIBIT 1**



**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

***IN RE: CAPTURERX DATA BREACH  
LITIGATION***

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

THIS DOCUMENT RELATES TO:

**ALL ACTIONS**

**CLASS SETTLEMENT AGREEMENT AND RELEASE**

This Class Settlement Agreement and Release (“Class Settlement Agreement”) is made and entered into by and among the following Settling Parties (as defined below): (i) Plaintiffs Daisy Trujillo, Mark Vereen, Michelle Rodgers, Echoe Camacho, on behalf of herself and her minor child, T.C., and Angelica Mendoza (“Representative Plaintiffs”), individually and on behalf of the Settlement Class (as defined below), by and through their counsel M. Anderson Berry of Clayeo C. Arnold and Gary M. Klinger of Mason Lietz & Klinger LLP (“Interim Class Counsel”); and (ii) NEC Networks, LLC d/b/a CaptureRx (“Defendant” or “CaptureRx”), by and through their counsel, Levi G. McCathern of McCathern Shokouhi Evans & Grinke PLLC, and Kevin M. O’Hagan of O’Hagan Meyer LLC. The Class Settlement Agreement is subject to Court approval and is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined below), upon and subject to the terms and conditions hereof.

This litigation arose from a cyberattack on the computer systems that process pharmacy transactions for CaptureRx’s customers (the “Data Incident”).

Plaintiffs, individually and on behalf of a putative class, filed an action against Defendant in the United States District Court for the Western District of Texas, San Antonio Division

captioned, *In re: CaptureRx Data Breach Litigation*, Case No. 5:21-cv-00523-OLG, alleging claims arising from the Data Incident.

On November 3, 2021, the Parties engaged in an all-day, arms-length mediation before the Hon. Wayne R. Andersen, a former United States District Judge, now retired, which ultimately resulted in a settlement in principle with Judge Andersen's able assistance.

Pursuant to the terms agreed to and set out below, this Class Settlement Agreement resolves all actions, proceedings, and claims against Defendant and the Released Parties that are asserted in, arise from, or relate to Plaintiffs' Consolidated Class Action Complaint ("CAC"), as well as all other actions by and on behalf of individuals or putative classes of patients arising from the matters referenced in that CAC.

**I. CLAIMS OF REPRESENTATIVE PLAINTIFFS AND BENEFITS OF THE CLASS SETTLEMENT**

Representative Plaintiffs believe the claims asserted in the Litigation, as set forth in the CAC, have merit. Representative Plaintiffs and Interim Class Counsel recognize and acknowledge, however, the expense and length of continued proceedings necessary to prosecute the Litigation against Defendant and the Released Parties through motion practice, trial, and potential appeals. They have also considered the uncertain outcome and risk of further litigation, particularly in an area which remains in a state of development, and thus a level of uncertainty, as well as the difficulties and delays inherent in such litigation. Interim Class Counsel are highly experienced in class action litigation, particularly in privacy litigation, and knowledgeable regarding the relevant claims, remedies, and defenses at issue generally in such litigation and in this Litigation. In addition, CaptureRx contends Plaintiffs will face difficulties in certifying a class, proving liability and causation (particularly with respect to CaptureRx's customers, who merely utilized CaptureRx's services), and establishing compensable damages on a classwide basis. While

Interim Class Counsel believe Plaintiffs would prevail on class certification and liability issues as to both CaptureRx and its customers, they nevertheless acknowledge the risks involved in litigation and believe Settlement is in the best interests of the class. They have determined that the settlement set forth in this Class Settlement Agreement is fair, reasonable, and adequate, and in the best interests of Plaintiffs and the Settlement Class. This is particularly true where, as here, Defendant CaptureRx has extremely limited resources and faces insolvency if this litigation moves forward, has limited insurance coverage (all of which is being used to fund a portion of the Settlement), and is contractually obligated to indemnify its customers (e.g., Walmart and others) against claims arising from the Data incident.<sup>1</sup> The remaining monies used to fund the Settlement are being borne personally by the owners of CaptureRx. As such, the Settling Parties believe this Settlement is in the best interests of the Class.

## **II. DENIAL OF WRONGDOING AND LIABILITY**

CaptureRx denies each and all of the claims and contentions alleged against it in the Litigation and believes its defenses have merit. CaptureRx denies all charges of wrongdoing or liability as alleged, or which could be alleged, in the Litigation. Nonetheless, CaptureRx has concluded that further conduct of the Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Class Settlement Agreement. CaptureRx also has considered the uncertainty and risks inherent in any litigation. CaptureRx has, therefore, determined it is desirable and beneficial that the Litigation be settled in the manner and upon the terms and conditions set forth in this Class Settlement Agreement.

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<sup>1</sup> CaptureRx will submit a declaration detailing its current financial condition and the financial challenges it faces should this litigation proceed.

### **III. TERMS OF THE SETTLEMENT**

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Representative Plaintiffs, individually and on behalf of the Settlement Class, and Defendant that, subject to the approval of the Court, the Litigation and the Released Claims shall be finally and fully compromised, settled, and released, and the Litigation shall be dismissed with prejudice as to the Settling Parties, the Settlement Class, and the Settlement Class Members, except those Settlement Class Members who timely opt-out of the Class Settlement Agreement, upon and subject to the terms and conditions of this Class Settlement Agreement, as follows:

#### **1. DEFINITIONS**

As used in this Class Settlement Agreement, the following terms have the meanings specified below:

**1.1** “Administrative Costs” means all costs and expenses associated with providing notice of the Class Settlement Agreement to the Settlement Class, Claims Administration, and otherwise administering and carrying out the terms of this Class Settlement Agreement.

**1.2** “Agreement” or “Class Settlement Agreement” means this Class Settlement Agreement and Release.

**1.3** “Approved Claims” means valid Settlement Claims approved by the Claims Administrator or found to be valid, as set forth below.

**1.4** “Attorneys’ Fees and Expenses Award” means such funds as may be awarded by the Court to Settlement Class Counsel to compensate Representative Plaintiffs’ Counsel fully and completely for their fees, costs, and expenses in connection with the Litigation.

**1.5** “Award” means the amount remitted by the Claims Administrator out of the Settlement Fund to Settlement Class Members, as provided in Paragraphs 2 and 7 of this Class

Settlement Agreement.

**1.6** “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 or about February 6, 2021. Excluded from the California Settlement Subclass is any judge presiding over this matter and any members of their first-degree relatives, judicial staff, the officers and directors of CaptureRx, California Settlement Subclass Counsel and their first-degree relatives, and persons who timely and validly request exclusion from the California Settlement Subclass.

**1.7** “CaptureRx” means Defendant NEC Networks, LLC d/b/a CaptureRx.

**1.8** “Claims Administration” means the processing of Settlement Claims received from Settlement Class Members and the processing of payment of Approved Claims by the Claims Administrator.

**1.9** “Claims Administrator” means Kroll Settlement Administration, a company experienced in administering class action claims generally and specifically those of the type provided for in this Litigation, as may be jointly agreed upon by the Settling Parties and approved by the Court.

**1.10** “Claims Deadline” means the deadline by which Settlement Class Members must submit any valid Settlement Claims. The Claims Deadline shall be set by the Court in the Preliminary Approval Order. The Settling Parties propose a Claims Deadline that is 90 days after the date that notice is provided to the Settlement Class.

**1.11** “Claim Form” means the claim form attached hereto as Exhibit A, or a claim form approved by the Court that is substantially similar to Exhibit A, that Settlement Class Members

must submit to be eligible for relief under the terms of the Class Settlement Agreement.

**1.12** “Claims Period” means the time for Settlement Class Members to submit Settlement Claims, running from the date of entry of the Preliminary Approval Order through the Claims Deadline, in no event less than 90 days.

**1.13** “Class Notice” means the notice of settlement that is contemplated by this Class Settlement Agreement, and which shall include the Long Notice and Summary Notice, substantially in the forms attached hereto as Exhibits B and C, respectively, as approved by the Court.

**1.14** “Data Incident” means the data incident that occurred on or about February 6, 2021 and that CaptureRx discovered and disclosed to potentially impacted Patients in 2021 as alleged in the various class action complaints filed by Plaintiffs, whereby unauthorized hackers gained access to files that contained certain information including Patients’ first names, last names, dates of birth, and prescription information.

**1.15** “Escrow Account” means a non-interest bearing checking account established at a financial institution other than Defendants’ into which monies are to be deposited as set forth by this Agreement.

**1.16** “Effective Date” means the date by which all of the events and conditions specified in Paragraphs 1.17 and 10 below for the Final Approval Order to become Final have occurred or have been met. The Effective Date shall not be altered in the event the Court declines to approve, in whole or in part, the Attorneys’ Fees and Expenses Award or the Service Award. Further, the Effective Date shall not be altered in the event that an appeal is filed with the sole issue(s) on appeal being the Attorneys’ Fees and Expenses Award and/or the Service Award.

**1.17** “Final” means the occurrence of all of the following events: (i) the settlement pursuant to this Class Settlement Agreement is approved by the Court; (ii) the Court has entered a Judgment (as that term is defined herein); and (iii) the time to appeal or seek permission to appeal from the Judgment has expired or, if appealed, the appeal has been dismissed in its entirety, or the Judgment has been affirmed in its entirety by the court of last resort to which such appeal may be taken, and such dismissal or affirmance has become no longer subject to further appeal or review. Notwithstanding the above, any order modifying or reversing any attorneys’ fees award or Service Award made in this case shall not affect whether the Judgment is “Final” as defined herein or any other aspect of the Judgment.

**1.18** “Final Approval Hearing” means the final hearing to be conducted by the Court in connection with the determination of the fairness, adequacy and reasonableness of this Class Settlement Agreement and the proposed settlement of the Litigation.

**1.19** “Final Approval Order” means the Court’s Final Approval Order, which, among other things, approves this Class Settlement Agreement and the settlement as fair, adequate, and reasonable, dismisses the Litigation with prejudice, and confirms the final certification of the Settlement Class.

**1.20** “Litigation” means *In re: CaptureRx Data Breach Litigation*, Case No. 5:21-cv-00523-OLG.

**1.21** “Objection Deadline” means 75 days after the date of entry of the Preliminary Approval Order or such other date set by the Court in the Preliminary Approval Order.

**1.22** “Opt-Out” means a Settlement Class Member (i) who timely submits a properly completed and executed Request for Exclusion; (ii) who does not rescind that Request for

Exclusion before the Opt-Out Deadline; and (iii) as to which there is not a successful challenge to the Request for Exclusion.

**1.23** “Opt-Out Deadline” means the date by which Settlement Class Members must mail or submit through the settlement website their Request for Exclusion in order for it to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes. The Opt-Out Deadline shall be 75 days after the date of entry of the Preliminary Approval Order or such other date set by the Court in the Preliminary Approval Order.

**1.24** “Patients” shall mean individuals who received pharmacy services from a pharmacy that used CaptureRx’s services.

**1.25** “Person” means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their respective spouses, heirs, affiliates, attorneys, predecessors, successors, representatives, or assignees.

**1.26** “Personal Information” means information that may have been exposed, compromised, or accessed during the Data Incident, including first names, last names, dates of birth, and prescription information.

**1.27** “Preliminary Approval Order” means the Court’s order granting, among other things, conditional certification of the Settlement Class, preliminary approval of this Class Settlement Agreement and the settlement, and approval of the form and method of Class Notice.

**1.28** “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.

**1.29** “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.

**1.30** “Representative Plaintiffs” mean Daisy Trujillo, Mark Vereen, Michelle Rodgers, Echoe Camacho, on behalf of herself and her minor child, T.C., and Angelica Mendoza

**1.31** “Request for Exclusion” means a fully completed and properly executed written

request that is timely delivered to the Claims Administrator by a Settlement Class Member under Paragraph 5 of this Class Settlement Agreement and is postmarked or submitted through the settlement website on or before the Opt-Out Deadline. For a Request for Exclusion to be properly completed and executed, subject to approval by the Court, it must: (a) state the Settlement Class Member's full name, address, and telephone number; (b) contain the Settlement Class Member's personal and original signature or the original signature of a person authorized by law to act on the Settlement Class Member's behalf with respect to a claim or right such as those asserted in the Litigation, such as a trustee, guardian or person acting under a power of attorney; and (c) state unequivocally the Settlement Class Member's intent to be excluded from the settlement. All Requests for Exclusion must be submitted individually in connection with a Settlement Class Member, *i.e.*, one request is required for every Settlement Class Member seeking exclusion.

**1.32** "Service Award" means such funds as may be awarded by the Court to the Representative Plaintiffs for their service as Representative Plaintiffs.

**1.33** "Settlement Class" means all natural persons residing in the United States whose Personal Information was exposed, compromised, or accessed by an unauthorized party as a result of the Data Incident. Excluded from the Settlement Class is any judge presiding over this matter and any members of their first-degree relatives, judicial staff, the officers and directors of CaptureRx and its customers who were impacted by the Data Incident, Settlement Class Counsel and their first-degree relatives, and persons who timely and validly request exclusion from the Settlement Class.

**1.34** "Settlement Class Counsel" means M. Anderson Berry of Clayeo C. Arnold, A Professional Law Corp.; and Gary Klinger of Mason Lietz & Klinger LLP.

**1.35** "Settlement Class Member(s)" means a member(s) of the Settlement Class.

**1.36** “Settlement Costs” means all costs of the settlement including the costs of carrying out the Notice Program, as set forth in Paragraph 4, Claims Administration, any Attorneys’ Fees and Expenses Award, any Service Award to Representative Plaintiffs and all other expenses or costs related to the settlement including the costs of serving notices under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and Award payments to the Settlement Class Members.

**1.37** “Settlement Fund” means \$4,750,000.00, which shall be the only amount paid by CaptureRx and the sole and exclusive source of all Settlement Costs and Award payments to Settlement Class Members, Administrative Costs, Service Awards, and Attorneys’ Fees and Expenses.

**1.38** “Settling Parties” means, collectively, CaptureRx and Representative Plaintiffs, individually and on behalf of the Settlement Class.

**1.39** “Unknown Claims” means any of the Released Claims that any Settlement Class Member, including the Representative Plaintiffs, does not know or suspect to exist in his or her favor at the time of the release of the Released Parties that, if known by him or her, might have affected his or her settlement with, and release of, the Released Parties, or might have affected his or her decision to participate in this Class Settlement Agreement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, the Representative Plaintiffs expressly shall have, and each of the other Settlement Class Members shall be deemed to have, and by operation of the Final Approval Order shall have, released any and all Released Claims, including Unknown Claims, and waived the provisions, rights, and benefits conferred by California Civil Code § 1542, and also any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

Settlement Class Members, including Representative Plaintiffs, may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Released Claims, but the Representative Plaintiffs expressly shall have, and each other Settlement Class Member shall be deemed to have, and by operation of the Final Approval Order shall have, upon the Effective Date, fully, finally, and forever settled and released any and all Released Claims, including Unknown Claims.

**1.40** All time periods described in terms of “days” shall be in calendar days unless otherwise expressly stated.

**2. SETTLEMENT CONSIDERATION**

**2.1** In consideration for the release contained in this Class Settlement Agreement, and as a direct result of the Litigation, and without admitting liability for any of the alleged acts or omissions alleged in the Litigation, and in the interests of minimizing the costs inherent in any litigation, CaptureRx will perform all the following:

**2.2** CaptureRx will pay the Settlement Fund to the Claims Administrator as follows: (a) within seven (7) days following entry of the Preliminary Approval Order, CaptureRx will advance the amounts necessary to pay for the Notice Program and settlement administration which amount shall be determined and requested by the Claims Administrator, and which advances will be credited against the Settlement Fund; and (b) CaptureRx will pay the balance of the Settlement Fund into the Escrow Account by or before the Funding Date. (The “Funding Date” means the date, which is no later than ten (10) days after the Effective Date). Additionally, within ninety

(90) days of the Effective Date, CaptureRx will implement the injunctive relief as described in Paragraph 2.7. Defendant shall also provide to Interim Class Counsel a declaration verifying that the injunctive relief has been implemented.

**2.3** Each Settlement Class Member who files a valid claim will be eligible for one cash payment.

**2.4** Every Settlement Class Member who attests that he or she was impacted by the Data Incident is eligible to receive Twenty-Five Dollars (\$25.00), subject to a potential *pro rata* reduction as detailed below, regardless of whether he or she experienced any identity theft as a result of the Data Incident.

**2.5** California Settlement Subclass Payment (due to California statutory claims): In addition to the cash payment referenced in paragraph 2.4 above, California Settlement Subclass Members will also be eligible for an additional benefit of Seventy-Five Dollars (\$75.00) per California Settlement Subclass Member, subject to a potential *pro rata* reduction as detailed below. To redeem this additional benefit, California Settlement Subclass Members must submit a Settlement Claim and attest that they were a California resident at the time of the Data Incident(s) about which they were notified by Defendant.

**2.6** *Pro Rata Increase/Reduction and Residual Funds*: If the total dollar value of all Approved Claims at the payment amounts set forth in ¶¶ 2.4 and 2.5 is less than the amount remaining in the Settlement Fund after the Claims Deadline has passed and after the Attorneys' Fees and Expenses Award, the Service Award, and Claims Administration costs have been paid in full out of the Settlement Fund, the payment amounts for all Approved Claims shall be increased *pro rata* among all Settlement Class Members and California Settlement Subclass Members who submitted Approved Claims. If the total dollar value of all Approved Claims at the payment

amounts set forth in ¶¶ 2.4 and 2.5 exceeds the amount remaining in the Settlement Fund after the Claims Deadline has passed and after the Attorneys' Fees and Expenses Award, the Service Award and Claims Administration costs have been paid in full out of the Settlement Fund, the payment amount for all Approved Claims shall be reduced *pro rata* among all Settlement Class Members and California Settlement Subclass Members who submitted Approved Claims. Any remaining funds after distribution will be paid to a *cy pres* recipient to be agreed upon by the parties (and subject to court approval).

**2.7** CaptureRx shall, within ninety (90) days of the Effective Date of this Agreement, if it has not already done so, further develop, implement, and maintain a comprehensive information security program that is reasonably designed to protect the security, integrity, and confidentiality of Personal Information that CaptureRx collects or obtains from Patients (collectively, the "ISP"). The CaptureRx ISP shall be written and shall contain administrative, technical, and physical safeguards appropriate to: (i) the size and complexity of CaptureRx's operations; (ii) the nature and scope of CaptureRx's activities; and (iii) the sensitivity of the Personal Information that CaptureRx maintains. CaptureRx may satisfy the requirement to implement and maintain the ISP through: (1) review, maintenance, and, as necessary, updating of an existing information security program or existing safeguards to ensure that the ISP is operating in a manner reasonably calculated to prevent unauthorized access to or unauthorized use of Personal Information; and (2) upgrading information safeguards as necessary to limit risks.

**2.8** Released Parties other than CaptureRx, including those who have been named as defendants in the Litigation, shall have no obligations under the Settlement, financial or otherwise, including but not limited to any obligation to fund the Settlement Fund or with respect to the implementation and maintenance of the CaptureRx ISP.

**3. PRELIMINARY SETTLEMENT APPROVAL AND FINAL APPROVAL**

**3.1** As soon as practicable after the execution of the Class Settlement Agreement, Settlement Class Counsel shall file a motion seeking entry of a Preliminary Approval Order. A proposed Preliminary Approval Order shall be submitted with the motion and shall be substantially in the form set forth in Exhibit D. The motion for Preliminary Approval shall request that the Court, *inter alia*:

- (a) Stay all proceedings in the Litigation other than those related to approval of the Class Settlement Agreement;
- (b) Stay and/or enjoin, pending Final Approval of the Class Settlement Agreement, any actions brought by Settlement Class Members concerning the Released Claims;
- (c) Preliminarily certify the Settlement Class and the California Settlement Subclass for settlement purposes only;
- (d) Preliminarily approve the terms of the Class Settlement Agreement as fair, adequate, and reasonable;
- (e) Appoint Representative Plaintiffs as the Settlement Class representatives for settlement purposes only;
- (f) Appoint Settlement Class Counsel as counsel for the Settlement Class for settlement purposes only;
- (g) Approve the notice program, as set forth in Paragraph 4 herein and set the dates for the Claims Deadline, Opt-Out Deadline, and Objection Deadline;
- (h) Approve the form and contents of a long form notice (“Long Notice”) to be posted on the settlement website substantially similar to the one attached hereto



as Exhibit B, and a Summary Notice to be sent via First Class Mail to Settlement Class Members (“Summary Notice”), substantially similar to the one attached hereto as Exhibit C, which together shall include a fair summary of the Settling Parties’ respective litigation positions, the general terms of the settlement set forth in the Class Settlement Agreement, instructions for how to object to or submit a Request for Exclusion from the settlement, the process and instructions for filing a Claim Form, and the date, time and place of the Final Approval Hearing;

- (i) Approve a Claim Form substantially similar to that attached hereto as Exhibit A;
- (j) Appoint a Claims Administrator; and
- (k) Schedule the Final Approval Hearing.

**3.2** CaptureRx will consent to the entry of the Preliminary Approval Order so long as it is substantially in the form attached to this Class Settlement Agreement as Exhibit D and is otherwise consistent with this Class Settlement Agreement.

**3.3** Settlement Class Counsel and CaptureRx shall request that the Court hold a Final Approval Hearing after notice is completed and at least 30 days after the Opt-Out Deadline and Objection Deadline, and grant Final Approval of the Class Settlement Agreement as set forth herein.

**3.4** The proposed Final Approval Order that shall be filed with the motion for final approval shall, among other things:

- (a) Determine the Class Settlement Agreement is fair, adequate, and reasonable;

- (b) Finally certify the Settlement Class and California Settlement Subclass for settlement purposes only;
- (c) Determine that the Notice Program satisfies due process requirements;
- (d) Dismiss all claims in the CAC with prejudice;
- (e) Bar and enjoin any Settlement Class Members who did not timely Opt-Out in accordance with the requirements of this Class Settlement Agreement from asserting any of the Released Claims; and
- (f) Release and forever discharge CaptureRx and the Released Parties from the Released Claims, as provided for in this Class Settlement Agreement.

**4. NOTICE PROGRAM**

**4.1** Within ten (10) days of entry of the Preliminary Approval Order, CaptureRx will provide the Claims Administrator with a list of Settlement Class Members in such format as requested by the Claims Administrator which will include, to the extent available, the name and physical mailing address of each Settlement Class Member, and if known, their respective email addresses. The Claims Administrator shall cause notice to be disseminated to the Settlement Class Members pursuant to the Preliminary Approval Order and the Notice Program as described below, and in compliance with all applicable laws, including, but not limited to, the Due Process clause of the United States Constitution and Federal Rule of Civil Procedure 23, and be effectuated pursuant to the provisions set forth below, the costs of which shall be a Settlement Cost. The Claims Administrator must maintain the list of Settlement Class Members in strict confidence and may not share the list with anyone other than CaptureRx.

**4.2** Class Notice shall be provided to the Settlement Class as follows:

- (a) Within fourteen (14) days after receiving the Settlement Class list from

CaptureRx, the Claims Administrator shall send the Summary Notice on a postcard via First Class U.S. Mail, postage pre-paid, to Settlement Class Members. Within twenty (20) days after sending such mail, the Claims Administrator shall undertake reasonable efforts to confirm the address, and to resend notice, for any Settlement Class Members for which the Claims Administrator receives returned mail from the U.S. Postal Service indicating that the initial mailing was not delivered.

- (b) Within seven (7) days after receiving the Settlement Class list from CaptureRx, the Claims Administrator shall establish a dedicated settlement website that includes this Class Settlement Agreement, the Long Notice, and the Claim Form approved by the Court. The Claims Administrator shall maintain and update the website throughout the Claims Period. The Claims Administrator will also post on the settlement website copies of the motion for final approval of the Class Settlement Agreement, and the motion for an Attorneys' Fees and Expenses Award and a Service Award. A toll-free number with interactive voice response and FAQs shall also be made available to address Settlement Class Members' inquiries. The settlement website shall not include any advertising and shall remain operational until thirty (30) days following the Effective Date, at which time the Claims Administrator shall terminate the settlement website and transfer ownership of the URL to CaptureRx.

**4.3** The Notice Program shall be subject to approval by the Court as meeting the requirements of Rule 23(c) of the Federal Rules of Civil Procedure.

**4.4** The Long Notice, Summary Notice, and Claim Form approved by the Court may be adjusted by the Claims Administrator in consultation and agreement with the Settling Parties as may be reasonable and necessary, so long as it is not inconsistent with such approval and does not materially alter the language approved by the Court.

**4.5** Prior to the Final Approval Hearing, Counsel for the Settling Parties shall cause to be filed with the Court an appropriate declaration from the Claims Administrator demonstrating compliance with the Court-approved Notice Program.

**5. OPT-OUT PROCEDURES**

**5.1** Each Settlement Class Member wishing to exclude themselves from the Settlement Class must individually sign and timely mail a written Request for Exclusion to the address designated by the Claims Administrator.

**5.2** To be effective, a Request for Exclusion must be postmarked no later than 75 days after the date of entry of the Preliminary Approval Order or such other date set by the Court in the Preliminary Approval Order.

**5.3** Within 7 days after the Opt-Out Deadline, the Claims Administrator shall provide the Settling Parties with a complete and final list of all Opt-Outs who have timely and validly excluded themselves from the Settlement Class and, upon request, copies of all completed Requests for Exclusions. Settlement Class Counsel may file these materials with the Court, with any Personal Information other than names and cities and states of residence redacted, no later than 7 days prior to the Final Approval Hearing.

**5.4** All persons who Opt-Out from the Settlement Class shall not receive any benefits of or be bound by the terms of this Class Settlement Agreement. All persons falling within the definition of the Settlement Class who do not Opt-Out shall be bound by the terms of this Class

Settlement Agreement and the Final Approval Order entered thereon.

**6. OBJECTION PROCEDURES**

**6.1** Each Settlement Class Member who does not file a timely Request for Exclusion may file with the Court a notice of intent to object to the Class Settlement Agreement. The Long Notice shall instruct Settlement Class Members who wish to object to the Agreement to send their written objections only to the Court. The Notice shall make clear that the Court can only approve or deny the Class Settlement Agreement and cannot change the terms. The Notice shall advise Settlement Class Members of the deadline for submission of any objections.

**6.2** All such notices of an intent to object to the Class Settlement Agreement must be written and must include all of the following: (i) the objector's full name, address, telephone number, and e-mail address (if any); (ii) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class; (iii) a statement as to whether the objection applies only to the Settlement Class Member, to a specific subset of the Settlement Class, or to the entire class; (iv) a clear and detailed written statement of the specific legal and factual bases for each and every objection, accompanied by any legal support for the objection the objector believes applicable; (v) the identity of any counsel representing the objector; (vi) a statement whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying that counsel; (vii) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objections and any documents to be presented or considered; and (viii) the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (if any).

**6.3** To be timely, written notice of an objection in the appropriate form must be filed or postmarked no later than the Objection Deadline.

**6.4** Except upon a showing of good cause, any Settlement Class Member who fails to substantially comply with the requirements in Paragraph 6 for objecting shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Class Settlement Agreement, and shall be bound by all the terms of the Class Settlement Agreement and by all proceedings, orders and judgments in the Litigation. The exclusive means for any challenge to the Class Settlement Agreement shall be through the provisions of Paragraph 6.

**7. CLAIMS ADMINISTRATION**

**7.1** The Claims Administrator shall administer and calculate the Settlement Claims submitted by Settlement Class Members. All Settlement Claims must be submitted on or before the Claims Deadline to be deemed timely. The determination by the Claims Administrator of the validity or invalidity of all Settlement Claims shall be binding. The Claims Administrator shall periodically provide Settlement Class Counsel and CaptureRx counsel with reports as to both settlement claims and distribution, and they shall have the right to obtain and review supporting documentation and challenge such reports if they believe them to be inaccurate or inadequate.

**7.2** For each settlement claim submitted and received, the Claims Administrator, in its sole discretion (to be reasonably exercised), will determine whether: (1) the claimant is a Settlement Class Member and, if applicable, and California Settlement Subclass Member; and (2) that the claimant has provided all information required to complete the Claim Form by the Claims Deadline, including but not limited to information required under Paragraph 2. The Claims Administrator may, at any time, request from the claimant, in writing, additional information as the Claims Administrator may reasonably require in order to adequately evaluate the settlement claim. All information provided to the Claims Administrator will be deemed confidential by the Claims Administrator.

**7.3** The Claims Administrator shall determine whether a claimant's Claim Form, along with supporting materials, are sufficient to support a claim. If the Claims Administrator should receive an incomplete Claim Form or a Claim Form with insufficient documentation to determine whether the claimant is a Settlement Class Member or, if applicable, a California Settlement Subclass member, the Claims Administrator shall request additional information and give the claimant twenty-one (21) days to cure any defect(s) before rejecting a settlement claim. The Claims Administrator shall make requests for additional information within twenty-one (21) days after the Claims Deadline. If a Settlement Class Member fails to correct all deficiencies within twenty-one (21) days from receiving a request for additional information, the Claims Administrator shall deny the claimant's settlement claim and the claimant will not be entitled to an Award.

**7.4** After receiving additional information, the Claims Administrator shall have thirty (30) days to accept or reject each settlement claim. If, after review of the settlement claim and all documentation submitted by the claimant, the Claims Administrator determines that such a settlement claim is valid, then the settlement claim shall be paid within the time period provided in this Paragraph. If the settlement claim remains invalid because the claimant does not provide the requested information needed to complete the Claim Form and evaluate the settlement claim, then the Claims Administrator may reject the settlement claim without any further action apart from providing a notice of rejection of the settlement claim.

**7.5** No Person shall have any claim against the Claims Administrator, CaptureRx and the Released Parties, or their counsel, Settlement Class Counsel, and/or the Representative Plaintiffs based on distribution of Awards to Settlement Class Members or to the *cy pres* recipient referenced in this Agreement, if applicable.

**7.6** The Claims Administrator shall agree to hold the Settlement Funds in an interest-

bearing Qualified Settlement Fund account, and administer the Settlement Fund, subject to the continuing jurisdiction of the Court and from the earliest possible date, as a qualified settlement fund as defined by Treasury Regulation § 1.46B-1, *et seq.* The Claims Administrator shall pay any taxes owed by the Settlement Fund out of the Settlement Fund. Except for funding the Settlement Fund, CaptureRx shall not have any other financial obligation under the Class Settlement Agreement. In addition, under no circumstances will CaptureRx have any liability for taxes or tax expenses under this Class Settlement Agreement.

**7.7** The Claims Administrator will send funds electronically (in an electronic payment format recommended by the Claims Administrator, such as PayPal or Venmo, and agreed-upon by the parties) for Approved Claims within the later of thirty (30) days after the Effective Date or thirty (30) days after all disputed claims have been resolved. No distributions will be made without authorization from the parties. If a Settlement Class Member cannot receive funds electronically, award checks shall be sent by U.S.P.S. mail. Award checks (electronic and paper) shall be valid for a period of 180 days from issuance, and shall state, in words or substance that the check must be cashed within 180 days, after which time it will become void. In the event a settlement check becomes void, the Settlement Class Member to whom that settlement check was made payable will forfeit the right to payment and will not be entitled to have the check reissued or to any further distribution from the Settlement Fund or to any further recourse against the Released Parties, and the Agreement and Release will in all other respects be fully enforceable against the Settlement Class Member. No later than 190 days from the issuance of the Award checks, the Claims Administrator shall take all steps necessary to stop payment on any Award checks that remain uncashed.

**7.8** If there is any balance remaining in the Settlement Fund ninety (90) days after the



Claims Administrator completes the process for stopping payment on any Award checks that remain uncashed, the Settling Parties will return to the Court seeking direction as to the disposition of these funds, including the selection of a *cy pres* recipient to be approved by the Court. The funds distributed pursuant to the *cy pres* provision set forth in this Paragraph shall not be considered unclaimed property under the laws of Texas or any other state.

**7.9** All Settlement Class Members who fail to timely submit a valid settlement claim hereunder within the time frames set forth herein, or such other period as may be ordered by the Court or otherwise allowed, shall be forever barred from receiving an Award pursuant to this Agreement, but will in all other respects be subject to, and bound by, the provisions of this Agreement, the Releases contained herein and the Final Approval Order.

**8. RELEASES**

**8.1** Upon the Effective Date, each Settlement Class Member, including Representative Plaintiffs, whether or not they have received an Award, will be deemed by operation of this Class Settlement Agreement and by operation of the Final Approval Order to have forever fully, finally, completely, and unconditionally released, discharged, and acquitted CaptureRx and the Released Parties from any and all of the Released Claims, and will be deemed to have also released Unknown Claims. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, including Representative Plaintiffs, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public, or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or any other forum (other than the participation in the Agreement as provided herein) in which any of the Released Claims or Unknown Claims are asserted.

**8.2** Upon entry of the Final Approval Order, each Settlement Class Member, including

Representative Plaintiffs, shall be barred from initiating, asserting, or prosecuting against CaptureRx and any Released Parties any claims that are released by operation of the Class Settlement Agreement and the Final Approval Order.

**9. SETTLEMENT CLASS COUNSEL'S ATTORNEYS' FEES AND EXPENSES AWARD;  
REPRESENTATIVE PLAINTIFFS' SERVICE AWARD**

**9.1** Settlement Class Counsel may file a motion seeking reasonable attorneys' fees in an amount not to exceed 33 percent (or \$1,583,333.33) of the Settlement Fund. In addition, Class Counsel may seek their reasonable costs and expenses from the Settlement Fund (not to exceed \$30,000.00). The entirety of the Attorneys' Fees and Expenses Award shall be payable solely from the Settlement Fund.

**9.2** Settlement Class Counsel will also request from the Court a Service Award for each Representative Plaintiff in the amount of Two Thousand Dollars (\$2,000.00), to be paid solely from the Settlement Fund. CaptureRx will not object to Representative Plaintiffs' request for a Service Award payment, unless Representative Plaintiffs' request exceeds the terms outlined in this Agreement.

**9.3** Within seven (7) days after the Effective Date, the Claims Administrator shall pay any Attorneys' Fees and Expenses Award and Service Award from the Settlement Fund to a law firm designated by Settlement Class Counsel.

**9.4** No order of the Court or modification or reversal or appeal of any order of the Court concerning the amounts of the Attorneys' Fees and Expenses Award or the Service Award hereunder shall affect whether the Judgment is Final or constitute grounds for cancellation or termination of this Class Settlement Agreement.

**9.5** CaptureRx shall not be liable for any additional attorneys' fees and expenses of Settlement Class Counsel or the Representative Plaintiffs in the Litigation.

**10. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION**

**10.1** CaptureRx's willingness to settle this Litigation on a class-action basis and to agree to the accompanying certification of the Settlement Class is dependent on achieving finality in this Litigation and the desire to avoid the expense of this and other litigation, unless otherwise expressly provided for in this Class Settlement Agreement. Consequently, CaptureRx has the right to terminate this Class Settlement Agreement, declare it null and void, and have no further obligations under this Class Settlement Agreement to the Representative Plaintiffs, the Settlement Class, the California Settlement Subclass, or Settlement Class Counsel, unless each of the following conditions occur:

- (a) The Court has entered a Preliminary Approval Order;
- (b) The Court enters a Final Approval Order; and
- (c) The Effective Date has occurred.

**10.2** If all of the conditions in Paragraph 10.1 are not fully satisfied and the Effective Date does not occur, this Class Settlement Agreement shall, without notice, be automatically terminated unless Settlement Class Counsel and CaptureRx counsel mutually agree in writing to proceed with the Class Settlement Agreement.

**10.3** In the event that the Class Settlement Agreement is not approved by the Court or the Class Settlement Agreement is terminated in accordance with its terms: (a) the Settling Parties shall be restored to their respective positions in the Litigation and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Settling Party or litigant, which extension shall be subject to the decision of the Court; and (b) the terms and provisions of the Class Settlement Agreement shall have no further force and effect with respect to the Settling Parties and shall not be used in the Litigation or in any other proceeding for

any purpose, and any judgment or order entered by the Court in accordance with the terms of the Class Settlement Agreement, including certification of the Settlement Class for settlement purposes only, shall be treated as vacated, *nunc pro tunc*. Notwithstanding any statement in this Class Settlement Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order reducing the amount of any Attorneys' Fees and Expenses Award to Settlement Class Counsel shall constitute grounds for cancellation or termination of the Class Settlement Agreement.

**10.4** For the avoidance of doubt, CaptureRx conditionally agrees and consents to certification of the Settlement Class for settlement purposes only, and within the context of the Class Settlement Agreement only. If the Class Settlement Agreement, for any reason, is not fully approved or is otherwise terminated, CaptureRx reserves its right to assert any and all objections and defenses to certification of a class, and neither the Class Settlement Agreement nor any Order or other action relating to the Class Settlement Agreement shall be offered by any Person as evidence or in support of a motion to certify a class for a purpose other than settlement.

**11. DISMISSAL OF THE ACTION**

**11.1** Representative Plaintiffs, on behalf of themselves and the Settlement Class Members, consent to the dismissal of this Litigation with prejudice upon the Court's final approval of this Class Settlement Agreement.

**12. MISCELLANEOUS PROVISIONS**

**12.1** The Settling Parties and their counsel acknowledge that it is their intent to consummate this Class Settlement Agreement and agree to undertake their best efforts to effectuate and implement all terms and conditions of this Class Settlement Agreement, including taking all

steps and efforts contemplated by this Class Settlement Agreement, and any other steps and efforts which may become necessary by order of the Court or otherwise.

**12.2** The Parties intend this Class Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Litigation and with regard to the Released Parties. The Class Settlement Agreement compromises claims that are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties each agree that the settlement was negotiated in good faith by the Settling Parties and reflects a settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum that the Litigation was brought or defended in bad faith or without a reasonable basis.

**12.3** Neither the Class Settlement Agreement nor any act performed or document executed pursuant to or in furtherance of the Class Settlement Agreement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim or of any wrongdoing or liability of any of the Released Parties; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Parties, in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Any of the Released Parties may file the Class Settlement Agreement in any action that may be brought against them or any of them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

**12.4** The Class Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest. Amendments and modifications may be made without additional notice to the Settlement Class Members unless such notice is required by the Court.

**12.5** The Class Settlement Agreement contains the entire agreement between the Settling Parties and supersedes all prior agreements or understandings between them. The terms of the Class Settlement Agreement shall be construed as if drafted jointly by all Settling Parties to this Class Settlement Agreement. The terms of the Class Settlement Agreement shall be binding upon each of the Settling Parties to this Class Settlement Agreement, their agents, attorneys, employees, successors and assigns, and upon all other Persons or entities claiming any interest in the subject matter hereof, including any Settlement Class Member.

**12.6** CaptureRx shall not be liable for any additional attorneys' fees and expenses of any Settlement Class Members' counsel, including any potential objectors or counsel representing a Settlement Class Member individually, other than what is expressly provided for in this Class Settlement Agreement. Settlement Class Counsel agree to hold CaptureRx harmless from any claim regarding the division of any Attorneys' Fees and Expenses Award to Settlement Class Counsel, and any claim that the term "Settlement Class Counsel" fails to include any counsel, Person, or firm who claims that they are entitled to a share of any attorneys' fees awarded to Settlement Class Counsel in this lawsuit.

**12.7** The Class Settlement Agreement shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of Texas, and the rights and obligations of the parties to the Class Settlement Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Texas without

giving effect to that State's choice of law principles.

**12.8** The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Class Settlement Agreement and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Class Settlement Agreement that cannot be resolved by negotiation and agreement by counsel for the Settling Parties. The Court shall retain jurisdiction with respect to the administration, consummation, and enforcement of the Class Settlement Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Class Settlement Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Claims Administrator. As part of its agreement to render services in connection with this Settlement, the Claims Administrator shall consent to the jurisdiction of the Court for this purpose.

**12.9** The individuals signing this Class Settlement Agreement on behalf of CaptureRx represent that they are fully authorized by CaptureRx to enter into, and to execute, this Class Settlement Agreement on its behalf. Settlement Class Counsel represent that they are fully authorized to conduct settlement negotiations with counsel for CaptureRx on behalf of Representative Plaintiffs, and to enter into, and to execute, this Class Settlement Agreement on behalf of the Settlement Class, subject to Court approval pursuant to Fed. R. Civ. P. 23(e).

**12.10** None of the Settling Parties to this Class Settlement Agreement shall be considered to be the primary drafter of this Class Settlement Agreement or any provision hereof for the purpose of any rule of interpretation or construction that might cause any provision to be construed against the drafter.

**12.11** The Settling Parties agree that this Class Settlement Agreement, and the Final Order following from the Class Settlement Agreement, will not prejudice in any way the Settling Parties'

right to raise any of the arguments that the Settling Parties made in this case in any future litigation.

**12.12** In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, this Class Settlement Agreement shall continue in full force and effect without said provision to the extent CaptureRx does not exercise its right to terminate under Paragraph 10.

**12.13** If applicable, within thirty (30) days after Award payments are funded, Settlement Class Counsel shall destroy all confidential, non-public information obtained in connection with the Litigation and Class Settlement Agreement, and certify the same.

**12.14** All notices or formal communications under this Class Settlement Agreement shall be in writing and shall be given (i) by hand delivery; (ii) by registered or certified mail, return receipt requested, postage pre-paid; or (iii) by overnight courier to counsel for the Settling Party to whom notice is directed at the following addresses, and also send a copy by electronic mail:

For the Representative Plaintiffs and the Settlement Class:

M. Anderson Berry  
Clayeo C. Arnold  
A Professional Law Corp.  
865 Howe Avenue  
Sacramento, CA 95825

and

Gary M. Klinger  
Mason Lietz & Klinger LLP  
227 W. Monroe St., Suite 2100  
Chicago, IL 20016  
For CaptureRx:

Levi G. McCathern  
McCathern Shokouhi Evans & Grinke, PLLC  
3710 Rawlins, Suite 1600  
Dallas, TX 75219

Kevin M. O'Hagan



James W. Davidson  
Shane M. Bradwell  
O'Hagan Meyer  
One E. Wacker Dr., Suite 3400  
Chicago, IL 60601

Counsel may designate a change of the person to receive written notice or a change of address, from time to time, by giving written notice to all Settling Parties in the manner described in this Paragraph.

**12.15** Settlement Class Counsel, CaptureRx, and CaptureRx's counsel may execute this Class Settlement Agreement in counterparts, and the execution of counterparts shall have the same effect as if all Settling Parties had signed the same instrument. Facsimile and scanned signatures shall be considered as valid signatures as of the date signed. This Class Settlement Agreement shall not be deemed executed until signed by all Settlement Class Counsel, and by counsel for and representative(s) of CaptureRx.

IN WITNESS WHEREOF, the Settling Parties hereto have caused the Agreement to be executed on their behalf by their duly authorized counsel of record, all as of the day set forth below:

***[SIGNATURES ON NEXT PAGE]***

Dated: 02 / 08 / 2022, 2022



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Daisy Trujillo, Plaintiff

Dated: \_\_\_\_\_, 2022

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Mark Vereen,  
Representative Plaintiff

Dated: \_\_\_\_\_, 2022

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Michelle Rodgers,  
Representative Plaintiff

Dated: \_\_\_\_\_, 2022

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Echoe Camacho, on behalf of herself and her  
minor child, T.C.,  
Representative Plaintiff

Dated: \_\_\_\_\_, 2022

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Angelica Mendoza,  
Representative Plaintiff

Dated: \_\_\_\_\_, 2022

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Daisy Trujillo, Plaintiff

Dated: Feb 4, 2022 \_\_\_\_\_, 2022

Mark Vereen  
Mark Vereen (Feb 4, 2022 18:26 CST)

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Mark Vereen,  
Representative Plaintiff

Dated: \_\_\_\_\_, 2022

---

Michelle Rodgers,  
Representative Plaintiff

Dated: \_\_\_\_\_, 2022

---

Echoe Camacho, on behalf of herself and her  
minor child, T.C.,  
Representative Plaintiff

Dated: \_\_\_\_\_, 2022

---

Angelica Mendoza,  
Representative Plaintiff

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Daisy Trujillo, Plaintiff

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Mark Vereen,  
Representative Plaintiff

Dated: Feb 9, 2022  
\_\_\_\_\_, 2022

Michelle Rodgers  
Michelle Rodgers (Feb 9, 2022 05:53 CST)  
\_\_\_\_\_  
Michelle Rodgers,  
Representative Plaintiff

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Echoe Camacho, on behalf of herself and her  
minor child, T.C.,  
Representative Plaintiff

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Angelica Mendoza,  
Representative Plaintiff

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Daisy Trujillo, Plaintiff


Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Mark Vereen,  
Representative Plaintiff

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Michelle Rodgers,  
Representative Plaintiff

Dated: February 8, 2022

  
\_\_\_\_\_  
Echoe Camacho, on behalf of herself and her  
minor child, T.C.,  
Representative Plaintiff

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Angelica Mendoza,  
Representative Plaintiff

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Daisy Trujillo, Plaintiff

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Mark Vereen,  
Representative Plaintiff

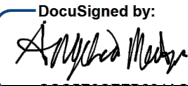
Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Michelle Rodgers,  
Representative Plaintiff

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Echoe Camacho, on behalf of herself and her  
minor child, T.C.,  
Representative Plaintiff

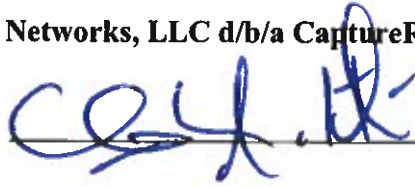
Dated: 02/10/2022, 2022

DocuSigned by:  
  
\_\_\_\_\_  
Angelica Mendoza,  
Representative Plaintiff

Dated: Feb 10<sup>th</sup>, 2022

NEC Networks, LLC d/b/a CaptureRx

By:

A handwritten signature in blue ink, appearing to be "Cory H.", written over a horizontal line.

Title:

The handwritten word "CEO" in blue ink, written over a horizontal line.

**EXHIBIT A**  
*to*  
*Settlement Agreement*



CaptureRx Settlement Administrator  
 c/o [Claims Admin]  
 P.O. Box XXXX  
 [City, State Zip]

**Your Claim Form Must Be Submitted On or  
 Before MONTH DD, 2022**

## ***In re: CaptureRx Data Breach Litigation***

United States District Court for the Western District of Texas (Case No. 5:21-cv-00523-OLG)

### **Claim Form**

**SAVE TIME BY SUBMITTING YOUR CLAIM ONLINE AT [WWW.XXXXXX.COM](http://WWW.XXXXXX.COM)**

#### **GENERAL CLAIM FORM INFORMATION**

You should complete and submit a claim online or this form by mail if you received a notice from NEC Networks, LLC d/b/a CaptureRx ("CaptureRx") that your first name, last name, date of birth and prescription information was compromised in a data incident on February 6, 2021.

The settlement notice describes your legal rights and options. Please visit the official settlement administration website, [www.xxxxxx.com](http://www.xxxxxx.com), or call 1-844-XXX-XXXX for more information.

If you wish to submit a claim for a settlement payment, please provide the information requested below. You must submit your claim online by **MONTH DD, 2022**, or complete and mail this Claim Form to the Claims Administrator, postmarked by **MONTH DD, 2022**.

#### **TO SUBMIT A CLAIM FOR PAYMENT:**

1. Complete all sections of this Claim Form.
2. Sign the Claim Form.
3. Submit the completed Claim Form to the Claims Administrator by **Month DD, 2022**.

This Claim Form should only be used if a claim is being mailed and is not being filed online. You may go to [www.xxxxxx.com](http://www.xxxxxx.com) to submit your claim online, or you may submit this Claim Form by mail to the address at the top of this form. Note that postage to send the Claim Form by mail is not pre-paid.

#### **1. CLASS MEMBER INFORMATION.**

<small>*First Name</small>	<small>Middle Initial</small>
<small>*Last Name</small>	<small>Suffix</small>
<small>*Mailing Address: Street Address/P.O. Box (include Apartment/Suite/Floor Number)</small>	
<small>*City</small>	<small>*State</small>
<small>*Current Email Address</small>	
<small>Current Phone Number (Optional)</small>	<small>*Settlement Claim ID</small>

**\*Settlement Claim ID:** Your Settlement Claim ID can be found on the postcard or Email Notice you received informing you about this Settlement. If you need additional help locating this ID, please contact the Settlement Administrator at 1(844) XXX-XXXX.

## **2. PAYMENT ELIGIBILITY INFORMATION.**

Please review the notice and sections 2.3 through 2.8 of the Settlement Agreement (available at [www.xxxxxx.com](http://www.xxxxxx.com)) for more information on who is eligible for a payment.

Please provide as much information as you can to help us figure out if you are entitled to a settlement payment.

**PLEASE PROVIDE THE INFORMATION LISTED BELOW:**

Settlement Class Members who file a valid claim will be eligible for \$25, plus an additional \$75 if the Settlement Class Member resided in California at the time of receiving notice from CaptureRx regarding the Data Incident. Settlement Class Members will receive only one payment.

### **Settlement Class Payment**

☐ I attest that CaptureRx notified me that my first name, last name, date of birth and prescription information was compromised during the Data Incident that took place on February 6, 2021.

**Note:** Every Settlement Class Member who attests that that they received a notice from CaptureRx that their informationw was involved in the Data Incident is eligible to receive \$25.00, regardless of whether they experienced any fraud or any identity theft as a result of the Data Incident. The \$25.00 award is subject to a pro rata reduction or a pro rata increase, depending upon how many claims are filed.

### **California Subclass Payment**

In addition to the above benefits, California Settlement Subclass Members will also be eligible for an additional benefit of \$75 per California Settlement Subclass Members, subject to a potential pro rata reduction or pro rata increase, depending upon how many claims are filed.

To redeem this \$75 benefit, California Settlement Subclass Members must submit a Settlement Claim and attest by checking the box below that they were a California resident at the time they received notice from CaptureRx of the Data Incident.

☐ I attest that I was a California resident at the time CaptureRx notified me of the Data Incident (between May and July 2021).

## **3. SIGN AND DATE YOUR CLAIM FORM.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

Please keep a copy of your completed Claim Form for your records.

Mail your completed Claim Form to the Settlement Administrator or submit your claim online at [www.SettlementWebsite.com](http://www.SettlementWebsite.com).

It is your responsibility to notify the Settlement Administrator of any changes to your contact information after you submit your claim. You can update your contact information at [www.SettlementWebiste.com](http://www.SettlementWebiste.com).

**EXHIBIT B**  
*to*  
*Settlement Agreement*

**NOTICE OF CLASS ACTION SETTLEMENT**

WESTERN DISTRICT OF TEXAS  
*In re: CaptureRx Data Breach Litigation,*  
Case No. 5:21-cv-00523-OLG

**If you received a notice from NEC Networks, LLC d/b/a/ CaptureRx (“CaptureRx”) in 2021, stating that your first name, last name, date of birth and prescription information was exposed on or about February 6, 2021 in a data breach that targeted CaptureRx and the pharmacies it services, you may be eligible for benefits from a data breach class action settlement.**

*A court authorized this notice. This is not a solicitation from a lawyer.*

- A settlement (the “Settlement”) has been proposed with CaptureRx in lawsuits asserting claims against CaptureRx and certain of its pharmacy customers relating to a data security incident that occurred on or around February 6, 2021, arising from a third-party criminal cyberattack (the “Data Incident”). CaptureRx and the other defendants deny all of the claims. The Settlement does not establish who is correct and is not an admission of fault, but rather is a compromise to end the lawsuit.
- The Settlement includes, subject to certain limitations, all people residing in the United States whose PII and PHI (a) Defendant stored and/or shared in CaptureRx’s electronic files and (b) was exposed to an unauthorized party as a result of the Data Incident (the “Settlement Class”).
- The Settlement makes members of the Settlement Class who submit valid claims eligible to receive cash payment(s) if their information was exposed in the Data Incident.

Settlement Class Payment: Every Settlement Class Member who attests that CaptureRx notified them that they were impacted by the Data Incident is eligible to receive Twenty-Five Dollars (\$25.00), regardless of whether or not they experienced any identity theft as a result of the Data Incident. This payment is subject to a potential *pro rata* reduction or increase as detailed below.

California Settlement Subclass Payment: In addition to the Settlement Class Payment, California Settlement Subclass Members will also be eligible for an additional benefit of Seventy-Five Dollars \$75 each, subject to a potential *pro rata* reduction or increase as detailed below. To redeem this additional benefit, California Settlement Subclass Members must submit a Settlement Claim and attest that they were a California resident at the time CaptureRx notified them of the Data Incident in approximately May 2021.

**Your legal rights are affected even if you do nothing. Read this Notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
<b>Submit a Claim</b>	This is the only way to get benefits under this Settlement.
<b>Ask to be Excluded</b>	Get no benefits. This is the only option that allows you to bring your own lawsuit against CaptureRx and/or its pharmacy customers related to the Data Incident.
<b>Object</b>	Write to the Court about why you do not think the Settlement is fair, reasonable, or adequate.
<b>Go to the Hearing</b>	Ask to speak in Court about the fairness of the Settlement.
<b>Do Nothing</b>	Get no benefits from the Settlement. Give up rights to submit a claim for the Settlement benefits or to bring a different lawsuit against CaptureRx and/or its pharmacy customers related to the Data Incident.

- These rights and options – **and the deadlines to exercise them** – are explained in this notice.
- The Court in charge of this case still has to decide whether to grant final approval of the Settlement. No cash payments will be made until after the Court grants final approval of the Settlement and all appeals, if any, are resolved.

## BASIC INFORMATION

### 1. Why is there a Notice?

The Court authorized this notice because you have a right to know about the Settlement and all of your options before the Court decides whether to give “final approval” to the Settlement. This notice explains the nature of the lawsuit that is the subject of the Settlement, the general terms of the Settlement, and your legal rights and options.

Judge Orlando L. Garcia of the United States District Court for the Western District of Texas is overseeing this case known as *In re CaptureRx Data Breach Litigation*, Case No. 5:21-cv-00523-OLG. The people who brought the lawsuit are called the Plaintiffs. The companies being sued, CaptureRx and certain of its pharmacy customers, are called the Defendants.

### 2. What is this lawsuit about?

The lawsuit claims that Defendants were responsible for the Data Incident and asserts claims such as: negligence, invasion of privacy, and violations of the California Confidentiality of Medical Information Act.

Defendants deny these claims and say they did not do anything wrong. No court or other judicial entity has made any judgment or other determination that Defendants have any liability on these claims or did anything wrong.

### 3. Why is this lawsuit a class action?

In a class action, one or more people called class representatives or representative plaintiffs sue on behalf of all people who have similar claims. Together, all of these people are called a class and the individuals are called class members. One court resolves the issues for all class members, except for those who exclude themselves from the class.

### 4. Why is there a Settlement?

The Court has not decided in favor of the Plaintiffs or Defendants. Instead, both sides agreed to the Settlement. The Settlement avoids the costs and risks of a trial and related appeals, while providing benefits to members of the Settlement Class (“Settlement Class Members”). The “Settlement Class Representatives” appointed to represent the Settlement Class, and the attorneys for the Settlement Class (“Settlement Class Counsel,” see Question 18) think the Settlement is best for all Settlement Class Members.

## WHO IS IN THE SETTLEMENT?

### 5. How do I know if I am part of the Settlement?

You are affected by the Settlement and potentially a member of the Settlement Class if you resided in the United States and your first name, last name, date of birth and prescription information was exposed to an unauthorized party as a result of the Data Incident. CaptureRx sent notices to those affected by the Data Incident in 2021.

Only Settlement Class Members are eligible to receive benefits under the Settlement. Specifically excluded from the Settlement Class are CaptureRx and its pharmacy customers that were affected by the Data Incident and their officers and directors, any judges presiding over this case and their judicial staff and immediate family members, Settlement Class Counsel and their first-degree relatives, and persons who timely and validly request exclusion from the Settlement Class.

**6. What if I am not sure whether I am included in the Settlement Class?**

If you are not sure whether you are included in the Settlement Class, you may call [REDACTED] with questions. You may also write with questions to [REDACTED].

**THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY**

**7. What does the Settlement provide?**

The Settlement provides that CaptureRx will fund the following payments, up to a total of \$4,750,000.00: (a) a \$25.00 cash payment to each Settlement Class Member who files a valid claim; (b) an additional \$75.00 cash payment to each California Settlement Subclass Member who files a valid claim; (c) any attorneys' fees and expenses awarded by the court (see Question 19); (d) any service award to the Representative Plaintiffs awarded by the court; and (e) notice and claims administration costs. The payments to the Settlement Class and the California Settlement Subclass are subject to *pro rata* reduction, or may be increased on a *pro rata*, depending upon the number of claims filed. If there are funds remaining after these payments, the residual amount will not be returned to CaptureRx but will be paid to a charitable recipient.

**8. How do I get a benefit?**

To receive any benefit under the Settlement, you must complete and submit a claim for that benefit (a "Claim"). Every Claim must be made on a form ("Claim Form") available at [www.XXXXXXX.com](http://www.XXXXXXX.com) or by calling 1-877-XXX-XXXX. Read the instructions carefully, fill out the Claim Form, and submit it according to the instructions on the Claim Form.

**10. How will claims be decided?**

The Claims Administrator will decide whether and to what extent any Claim made on each Claim Form is valid. The Claims Administrator may require additional information. If you do not provide the additional information in a timely manner, the Claim will be considered invalid and will not be paid.

**11. When will I get my payment?**

The Court will hold a hearing on [DATE] to decide whether to approve the Settlement. If the Court approves the Settlement, there may be appeals from that decision and resolving them can take time, perhaps more than a year. It also takes time for all the Claim Forms to be processed. Please be patient.

**WHAT DO DEFENDANTS GET?**

**12. What am I giving up as part of the Settlement?**

If the Settlement becomes final and you do not exclude yourself from the Settlement, you will be a Settlement Class Member and you will give up your right to sue Defendants and other persons ("Released Parties") as to all claims ("Released Claims") arising out of or relating to the Data Incident. This release is described in the Class Settlement Agreement, which is available at [www.XXXXXXX.com](http://www.XXXXXXX.com). If you have any questions you can talk to the law firms listed in Question 18 for free, or you can talk to your own lawyer.

**EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you do not want to be part of this Settlement, but you want to keep the right to sue Defendants about the legal issues in this case, then you must take steps to exclude yourself from the Settlement Class. This is sometimes referred to as "opting out" of the Settlement Class.

**13. If I exclude myself, can I get a payment from this Settlement?**

No. If you exclude yourself you will not be entitled to receive any benefits from the Settlement, but you will not be bound by any judgment in this case.

**14. If I do not exclude myself, can I sue Defendants for the same thing later?**

No. Unless you exclude yourself, you give up any right to sue Defendants (and any other Released Persons) for the claims that this Settlement resolves. You must exclude yourself from the Settlement Class to start your own lawsuit or to be part of any different lawsuit relating to the claims in this case. If you exclude yourself, do not submit a Claim Form to ask for any benefit under the Settlement.

If you are requesting exclusion because you want to bring your own lawsuit based on the matters alleged in this class action, you may want to consult an attorney, at your expense, and discuss whether any individual claim that you may wish to pursue would be time-barred by the applicable statutes of limitations or repose.

**15. How do I exclude myself from the Settlement?**

To exclude yourself, send a letter that says you want to be excluded from the Settlement in *In re CaptureRx Data Breach Litigation*, Case No. 5:21-cv-00523-OLG (W.D. Tex.). You can use the exclusion form available at [www.XXXXXXX.com](http://www.XXXXXXX.com). You must mail your exclusion request postmarked by **\_\_\_\_, 2022**, to:

**CaptureRx Data Breach Settlement Exclusions**  
PO Box \_\_\_\_\_

**OBJECTING TO THE SETTLEMENT****16. How do I tell the Court that I do not like the Settlement?**

You can tell the Court that you do not agree with the Settlement or some part of it by objecting to the Settlement. The Court will consider your views in its decision whether to approve the Settlement. To object, you must mail your notice of intent to **object to the Clerk of the Court**, Class Counsel and Defendants' Counsel, at the mailing addresses listed below, postmarked by **no later** than the objection deadline, **\_\_\_\_\_**:

<b>Court</b>	<b>Defendants' Counsel</b>
Clerk of the Court U.S. District Clerk's Office 655 E. Cesar E. Chavez Blvd., Room G65 San Antonio, Texas 78206	Kevin M. O'Hagan O'Hagan Meyer LLC One E. Wacker Dr., Suite 3400 Chicago, IL 60601
<b>Class Counsel</b>	
M. Anderson Berry Clayeo C. Arnold, A Professional Law Corp. 865 Howe Avenue Sacramento, CA 95825	Gary Klinger Mason Lietz & Klinger LLP 227 W. Monroe St., Suite 2100 Chicago, IL 20016

Your objection must state: (1) the name of the Litigation: *In re: CaptureRx Data Breach Litigation*, Case No. 5:21-cv-00523-OLG (W.D. Tex.); (2) your name, address, telephone number, and email address (if any); (3) information identifying you as a Settlement Class Member, including proof that you are a member of the Settlement Class (4) a statement as to whether your objection applies only to yourself, to a specific subset of the Settlement Class, or to the entire Settlement Class; (5) a clear and detailed written statement of the specific legal and factual bases for each of your objections, accompanied by any legal support for the objection(s) you believe applicable; (6) the identity of any counsel representing you; (7) a statement whether you intend to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying that counsel; (8) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objections and any documents to be presented or considered; and (9) your signature and the signature of your duly authorized attorney or other duly authorized representative (if any).

#### **17. What is the difference between objecting and asking to be excluded?**

Objecting is telling the Court that you do not like the Settlement and why you do not think it should be approved. You can object only if you are a member of the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class and do not want to receive any payment from the Settlement. If you exclude yourself, you have no basis to object because you are no longer a member of the Settlement Class and the case no longer affects you. If you submit both a valid objection and a valid request to be excluded, you will be deemed to have only submitted the request to be excluded.

### **THE LAWYERS REPRESENTING YOU**

#### **18. Do I have a lawyer in this case?**

Yes. The Court appointed M. Anderson Berry and Gary M. Klinger as Interim Class Counsel to represent the Class in settlement negotiations. If you want to be represented by your own lawyer, you may hire one at your own expense.

#### **19. How will the lawyers be paid?**

Class Counsel will ask the Court for an award for attorneys' fees of up to \$1,583,333.33, plus costs and expenses of up to \$30,000.00. CaptureRx has agreed to pay any award of attorneys' fees and expenses up to those amounts, to the extent approved by the Court. Any such award would compensate Class Counsel for investigating the facts, litigating the case, and negotiating the Settlement, and will be the only payment to them for their efforts in achieving this Settlement and for their risk in undertaking this representation on a wholly contingent basis.

Class Counsel will also ask the Court for a service award of up to \$2,000.00 each for Representative Plaintiffs Daisy Trujillo, Mark Vereen, and Michelle Rodgers.

Any award for attorneys' fees, costs and expenses for Class Counsel and of service awards to the Representative Plaintiffs must be approved by the Court. The Court may award less than the amounts requested. Class Counsel will file their motion papers in support of final approval of the Settlement and their application for attorneys' fees, costs and expenses, and service awards no later than **[DATE]** and they will be posted on the settlement website.

### **THE COURT'S FINAL APPROVAL HEARING**

#### **20. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Approval Hearing at **[TIME]** on **[DATE]**, at the San Antonio U.S. District Courthouse, 655 E. Cesar E. Chaves Blvd., San Antonio, TX 78206. At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are timely and valid objections, the Court will



consider them and will listen to people who have asked to speak at the hearing if they have properly made such a request. The Court will also rule on the request for an award of attorneys' fees and reasonable costs and expenses, as well as the request for service awards for the Representative Plaintiffs. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take. The Court may move the hearing to a different date or time without additional notice to the Settlement Class, so Class Counsel recommend checking [www.XXXXXXX.com](http://www.XXXXXXX.com) or calling 1-877-XXX-XXXX.

#### 21. Do I have to attend the hearing?

No. Class Counsel will present the Class Settlement Agreement to the Court. You or your own lawyer are welcome to attend, at your expense, but you are not required to do so. If you send an objection, you do not have to come to the Court to discuss it. As long as you filed your notice of intent to object containing your objection on time with the Court and mailed it according to the instructions provided in Question 16, the Court will consider it.

#### 22. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must file a notice of intent to object according to the instructions in Question 16, including all the information required. Your objection must be **mailed** to the Clerk of the Court, Class Counsel and Defendants' Counsel, postmarked no later than **[DATE]** (See Question 16.).

### IF YOU DO NOTHING

#### 23. What happens if I do nothing?

If you do nothing you will not get any money from this Settlement and, if the Settlement is granted final approval and the judgment becomes final, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against CaptureRx and the other Released Parties based on any of the Released Claims.

### GETTING MORE INFORMATION

#### 24. How do I get more information?

This Notice summarizes the proposed Settlement. More details are in the Class Settlement Agreement itself. A copy of the Class Settlement Agreement is available at [www.XXXXXXX.com](http://www.XXXXXXX.com). You may also call the Settlement Administrator with questions or to request a Claim Form at 1-877-XXX-XXXX.

**EXHIBIT C**  
*to*  
*Settlement Agreement*

**What does the settlement provide?** The Settlement provides that CaptureRx will fund the following payments, up to a total of \$4,750,000.00: (a) a \$25.00 cash payment to each Settlement Class Member who files a valid claim; (b) an additional \$75.00 cash payment to each California Settlement Subclass Member who files a valid claim; (c) any attorneys' fees and expenses awarded by the court; (d) any service award to the Representative Plaintiffs awarded by the court; and (e) notice and claims administration costs. The payments to the Settlement Class and the California Settlement Subclass are subject to *pro rata* reduction, or may be increased on a *pro rata* basis, depending upon the number of claims filed. If there are funds remaining after these payments, the residual amount will not be returned to CaptureRx but will be paid to a charitable recipient.

**How can I get a payment?** A detailed notice and Claim Form package contains everything you need. Just visit the website below to get one. To qualify for a payment, you must send in a complete and valid Claim Form, which can be submitted electronically or by mail. Claim Forms must be submitted electronically or, if mailed, postmarked by **Month 00, 2022**.

**What are your options.** If you do not want to be legally bound by the Settlement you must exclude yourself by **Month 00, 2022**. You may object to the Settlement by **Month 00, 2022**. The detailed Notice available on the website explains how to exclude yourself or object. The Court will hold a hearing in this case on **Month 00, 2022**, to consider whether to approve the Settlement. At the hearing, the Court will also consider a request by the lawyers representing all Settlement Class Members for attorneys' fees, costs, and expenses for investigating the facts, litigating the case, and negotiating the Settlement, as well as for service awards to the Settlement Class Representatives for their time participating in the case. You may ask to appear at the hearing, but you do not have to.

Class Counsel will file an application for fees, expenses, and service awards no later than **Month 00, 2022**. The application will be available on the Settlement Website or you can request a copy by contacting the Settlement Administrator.

Case 5:21-cv-00523-OLG Document 41-1 Filed 02/11/22 Page 53 of 63

If you received a notice from NEC Networks, LLC d/b/a/ CaptureRx ("CaptureRx") in approximately 2021 stating that your first name, last name, date of birth and prescription information was exposed on or about February 6, 2021 in a data breach that targeted CaptureRx and the pharmacies it services, you may be eligible for benefits from a data breach class action settlement.

A Settlement has been proposed with CaptureRx and certain of its pharmacy customers in lawsuits asserting claims against them relating to a data security incident that occurred on or about February 6, 2021 arising from a third-party cyberattack that compromised the first names, last names, dates of birth and prescription information of some pharmacy clients (the "Data Incident"). CaptureRx and the other defendants deny all of the claims. The Settlement does not establish who is correct and is not, and is not an admission of fault, but rather is a compromise to end the lawsuit.

You are affected by the Settlement and potentially a member of the Settlement Class if you received a notice from CaptureRx in 2021 that your first name, last name, date of birth and prescription information was compromised in the Data Incident and you live in the United States or in U.S. territories. You received this notice because records indicate you may be a Settlement Class Member.

Visit [www.XXXXXX.com](http://www.XXXXXX.com) or call 1-(XXX)-XXX-XXXX for more information.

## CaptureRx Data Breach Settlement

c/o Settlement Administrator

P.O. Box XXXX

[CITY, STATE ZIP]

## ELECTRONIC SERVICE REQUESTED

[CLAIM ID]

[FIRST NAME] [LAST NAME]

[ADDRESS]

[ADDRESS]

[CITY] [STATE] [ZIP]



Postal Service: Do Not Mark or Cover Barcode

**EXHIBIT D**  
*to*  
*Settlement Agreement*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

***IN RE: CAPTURERX DATA BREACH  
LITIGATION***

THIS DOCUMENT RELATES TO:

**ALL ACTIONS**

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

Assigned for All Purposes to:  
Judge Orlando L. Garcia

**CLASS ACTION**

[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT AGREEMENT  
AND CONDITIONALLY CERTIFYING  
SETTLEMENT CLASS FOR SETTLEMENT  
PURPOSES ONLY

Complaint Filed: 08/13/21  
Trial Date: Not Yet Set

**DEMAND FOR JURY TRIAL**

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT AGREEMENT AND CONDITIONALLY  
CERTIFYING SETTLEMENT CLASS FOR SETTLEMENT PURPOSES ONLY**

WHEREAS, Plaintiff Daisy Trujillo filed the first action consolidated in the above styled action on June 2, 2021;

WHEREAS, Plaintiff Mark Vereen filed the second action consolidated in the above styled action on June 4, 2021;

WHEREAS, Plaintiffs Trujillo and Vereen moved this Court to consolidate their two actions as well as any subsequently filed or transferred related actions on June 30, 2021.

WHEREAS, Plaintiffs Trujillo and Vereen thereafter, on August 13, 2021 filed a Consolidated Class Action Complaint against Defendants CaptureRx and RiteAid.

WHEREAS, Plaintiff Michelle Rodgers filed the third action consolidated in the above styled action on July 21, 2021.

WHEREAS, Plaintiff Echoe Camacho, on behalf of herself and her minor child, T.C., filed the fifth action consolidated in the above styled action on June 4, 2021 in the Eastern District of California and the parties stipulated to a transfer to this Court on October 13, 2021.

WHEREAS, Plaintiff Angelica Mendoza filed the sixth action consolidated in the above styled action on August 10, 2021 in the Northern District of California and the parties stipulated to a transfer to this Court on December 14, 2021.

WHEREAS, 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, (“Named Plaintiffs”), individually and on behalf of themselves and the proposed Settlement Class (defined below), and Defendant CaptureRx (“Defendant”) (collectively, the “Settling Parties”), have entered into a Settlement Agreement (the “Settlement”) resolving the Action, subject to Court approval;

WHEREAS, the Action was settled as a result of arm’s-length negotiations, investigation and informal discovery sufficient to permit counsel and the Court to act knowingly, and counsel are experienced in similar litigation; and

WHEREAS, Named Plaintiffs, the Proposed Class Representatives, have moved the Court for entry of an order preliminarily approving the Settlement, conditionally certifying the Settlement Class for settlement purposes only, and approving the form and method of notice upon the terms and conditions set forth in the Settlement, together with all exhibits thereto.

WHEREAS, the Court having considered the Settlement, together with all exhibits thereto and records in this case, and the arguments of counsel and for good cause appearing, hereby orders as follows:

**I. CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS**

1. Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement Agreement and Conditionally Certifying Settlement Class for Settlement Purposes Only is GRANTED. The terms defined in the Settlement shall have the same meaning in this Order.

2. Having made the finding set forth below, the Court conditionally certifies the following Nationwide Settlement Class and California Settlement Subclass (collectively, the "Settlement Class") for settlement purposes only:

The Nationwide Settlement Class: All natural persons residing in the United States whose Personal Information was exposed to an unauthorized party as a result of the Data Incident.

The California Settlement Subclass: 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.

3. Excluded from the Settlement Class are the Court, the officers and directors of Defendant, persons who have been separately represented by an attorney and entered into a separate settlement agreement in connection with the Data Breach, and persons who timely and validly request exclusion.

4. For settlement purposes only, with respect to the Settlement Class, the Court preliminary finds the prerequisites for a class action pursuant to Federal Rule 23 have been met, in that: (a) the Settlement Class is so numerous that joinder of all individual Settlement Class members in a single proceeding is impracticable; (b) questions of law and fact



common to all Settlement Class members predominate over any potential individual questions; (c) the claims of the Named Plaintiffs are typical of the claims of the Settlement Class; (d) Named Plaintiffs and proposed Class Counsel will fairly and adequately represent the interests of the Settlement Class; and (e) a class action is the superior method to fairly and efficiently adjudicate this controversy.

5. The Court hereby appoints Named 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 the Class Representatives for the Settlement Class.

6. The Court hereby appoints M. Anderson Berry of Clayeo C. Arnold, A Professional Law Corp.; and Gary M. Klinger of Mason, Lietz & Klinger, LLP as Class Counsel.

## **II. PRELIMINARY APPROVAL**

7. The terms of the Settlement, including its proposed releases, are preliminarily approved as within the range of fair, reasonable, and adequate, and are sufficient to warrant providing notice of the Settlement to the Settlement Class in accordance with the Notice Program, and are subject to further and final consideration at the Final Approval Hearing provided for below. In making this determination, the Court considered the fact that the Settlement is the product of arm's-length negotiations conducted by experienced and knowledgeable counsel, the current posture of the Action, the benefits of the Settlement to the Settlement Class, and the risk and benefits of continuing litigation to the Settling Parties and the Settlement Class.

8. As provided for in the Settlement, if the Court does not grant final approval of the Settlement or if the Settlement is terminated or cancelled in accordance with its terms, then the Settlement, and the conditional certification of the Settlement Class for settlement purposes only provided for herein, will be vacated and the Action shall proceed as though the Settlement Class

had never been conditionally certified for settlement purposes only, with no admission of liability or merit as to any issue, and no prejudice or impact as to any party's position on the issue of class certification or any other issue in the case, including Defendants' right to move to compel arbitration.

### **III. NOTICE OF THE SETTLEMENT TO THE SETTLEMENT CLASS**

9. The Court appoints Kroll Settlement Administration as the Settlement Administrator. The responsibilities of the Settlement Administrator are set forth in the Settlement Agreement.

10. The Court has considered the Notice provisions of the Settlement, (the "Notice Program"), and the Long Notice and Summary Notice, attached as Exhibits B and C, respectively, of the Settlement. The Court finds that the direct mailing of Notice in the manner set forth in the Notice Program is the best notice practicable under the circumstances, constitutes due and sufficient notice of the Settlement and this Order to all persons entitled thereto, and is in full compliance with applicable law and due process. The Court approves as to form and content the Notices attached as Exhibits B and C to the Settlement. The Court orders the Settlement Administrator to commence the Notice Program following entry of this Order in accordance with the terms of the Settlement.

11. The Court approves as to form and content the Claim Form attached as Exhibit A to the Settlement.

12. Settlement Class Members who qualify for and wish to submit a Claim Form under the Settlement shall do so in accordance with the requirements and procedures of the Settlement and the Claim Form under which they are entitled to seek relief. The Claims deadline is 90 days after the date that notice is provided to the Settlement Class. All Settlement Class Members who

fail to submit a claim in accordance with the requirements and procedures of the Settlement and respective Claim Form shall be forever barred from receiving any such benefit but will in all other respects be subject to and bound by the provisions of the Settlement and the releases contained therein.

#### **IV. REQUESTS FOR EXCLUSION FROM THE SETTLEMENT CLASS**

13. Each person wishing to opt out of the Settlement Class must sign and timely mail written notice of such intent to the designated address established by the Settlement Administrator. The written notice must clearly manifest an intent to be excluded from the Settlement Class. To be effective, written notice must be postmarked no later than 75 days after the date of entry of this Order.

14. Persons who submit valid and timely notices of their intent to be excluded from the Settlement Class shall neither receive any benefits of nor be bound by the terms of the Settlement.

15. Persons falling within the definition of the Settlement Class who do not timely and validly request to be excluded from the Settlement Class shall be bound by the terms of the Settlement, including its releases, and all orders entered by the Court in connection therewith.

#### **V. OBJECTIONS**

1.1 Each Settlement Class Member desiring to object to the settlement must submit a timely written notice of his or her objection. Such notice must include: (i) the objector's full name, address, telephone number, and e-mail address (if any); (ii) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class; (iii) a statement as to whether the objection applies only to the Settlement Class Member, to a specific subset of the Settlement Class, or to the entire class; (iv) a clear and detailed written statement of the specific legal and factual bases for each and every objection, accompanied by any

legal support for the objection the objector believes applicable; (v) the identity of any counsel representing the objector; (vi) a statement whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying that counsel; (vii) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objections and any documents to be presented or considered; and (viii) the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (if any).

16. To be timely, written notice of an objection in appropriate form must be filed or mailed on or before 75 days after the date of entry of this Order with the Clerk of the United States District Court for the Western District of Texas, San Antonio Division, at the address where filings are accepted by the Clerk and, additionally, served concurrently therewith upon: (a) M. Anderson Berry, Clayeo C. Arnold, a Professional Law Corp., 865 Howe Avenue, Sacramento, CA 95825, (b) Gary M. Klinger, Mason Lietz & Klinger LLP, 5101 Wisconsin Avenue NW, Suite 305, Washington DC 20016, (c) Levi G. McCathern, McCathern Shokouhi Evans & Grinke, PLLC, 3710 Rawlins, Suite 1600, Dallas TX, 75219, and (d) Kevin M. O'Hagan, O'Hagan Meyer LLC, One E. Wacker Dr., Suite 3400, Chicago, IL, 60601.

17. Unless otherwise ordered by the Court upon a showing of good cause, any Settlement Class Member who does not timely object in the manner prescribed above shall be deemed to have waived all such objections and shall forever be foreclosed from making any objection to the fairness, adequacy, or reasonableness of the Settlement, including its releases, the Order and Judgment approving the Settlement, and Class Counsels' motion for award of attorneys' fees, costs, and expenses, and Named Plaintiff's service award.

## **VI. THE FINAL FAIRNESS HEARING**

18. The Court will hold a Final Approval Hearing on [InsertHearingDate], at [InsertHearingTime] a.m., at the United States Courthouse, San Antonio Division, 262 West Nueva Street, Room 1-400, San Antonio, Texas 78207, to consider: (a) whether certification of the Settlement Class for settlement purposes only should be confirmed; (b) whether the Settlement should be approved as fair, reasonable, adequate and in the best interests of the Settlement Class; (c) the application by Class Counsel for an award of attorneys' fees, costs and expenses as provided for under the Settlement; (d) the application for a Named Plaintiffs service award as provided for under the Settlement; (e) whether the Release of Released Claims as set forth in the Settlement should be provided; (f) whether the Court should enter the [Proposed] Final Order and Judgment; and (g) ruling upon such other matters as the Court may deem just and appropriate. The Final Approval Hearing may, from time to time and without further notice to Settlement Class Members be continued or adjourned by order of the Court.

19. No later than 90 days after Preliminary Approval, the Named Plaintiffs shall file their Motion for Final Approval of Class Action Settlement Agreement and for Award of Attorney's Fees, Costs, and Expenses, and Representative Plaintiffs Service Award. No later than 14 days prior to the Last Day to Object or Opt Out, Named Plaintiffs shall file their Reply Brief in Support of Motion for Final Approval of Class Action Settlement Agreement and for Award of Attorneys' Fees, Costs, and Expenses, and Named Plaintiffs Service Award, including as needed to respond to any valid and timely objections.

20. The related time periods for events preceding the Final Approval Hearing are as follows:

<b>Event</b>	<b>Timing</b>
CaptureRx provides the Claims Administrator with a list of Settlement Class Members	10 Days after Preliminary Approval
Class Notice will be mailed to the Settlement Class	24 Days after Preliminary Approval
Last Day to Object or Opt Out	75 Days after the Preliminary Approval
Opening Papers in Support of Final Approval	90 Days after Preliminary Approval
Final Approval Hearing	105 Days after Preliminary Approval, or shortly thereafter

21. The existing stay of the Action shall remain in effect pending the Court's ruling on preliminary approval. Any action brought by a Settlement Class Member concerning a Released Claim shall be stayed pending final approval of the Settlement.

#### **VI. OTHER PROVISIONS**

22. Settlement Class Members are preliminarily enjoined from bringing any new alleged class actions asserting any Released Claims or maintaining any existing action to assert any Released Claims.

**IT IS SO ORDERED.**

By: \_\_\_\_\_  
HON. ORLANDO L. GARCIA  
UNITED STATES DISTRICT JUDGE

# **EXHIBIT 2**

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

*In re: CaptureRX Data Breach Litigation*

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

This Document Relates To:

All Actions

**DECLARATION OF GARY M. KLINGER  
IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION  
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT,  
PRELIMINARY CERTIFICATION, AND APPROVAL OF NOTICE PLAN**

I, Gary M. Klinger, being competent to testify, make the following declaration:

1. I am currently a partner of the law firm Mason Lietz & Klinger LLP ("MLK"), which was founded in March 2020. I am one of the lead attorneys for Plaintiffs and seek appointment as Class Counsel for the proposed Settlement Class. I submit this declaration in support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, Preliminary Certification, and Approval of Notice Plan. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.

**MLK'S EXPERIENCE**

2. The attorneys seeking to be named Settlement Class Counsel in this matter—MLK and The Arnold Law Firm—have extensive experience in class action litigation generally and data breach class actions.

3. MLK Attorneys have served as Lead Counsel, Co-Counsel or Class Counsel on dozens of class actions ranging from defective construction materials, (i.e. defective radiant



heating systems, siding, shingles, and windows), to misrepresented and recalled products (e.g., dog food, prenatal vitamins), and environmental incidents (the Exxon Valdez, BP Oil Spill).<sup>1</sup>

4. These cases include: *Hill's Pet Food MDL*,<sup>2</sup> where MLK currently serves as court-appointed Co-Lead Counsel, *Cox v. Shell Oil Co.*, No. 18844, 1995 WL 775363 (Ch. Ct. Tenn., July 31, 1995) (defective polybutylene pipe; \$950 million settlement); *Hobbie v. RCR Holdings, II, LLC*, No. 10-113, MDL No. 2047 (E.D. La. filed April 20, 2010) (354 unit condominium built with Chinese Drywall; settlement for complete remediation at cost of \$300 million); *Adams v. Fed. Materials*, No. 5:05-CV-90-R, 2006 WL 3772065 (W.D. Ky. Dec. 19, 2006) (350 owners of commercial and residential property whose structures were built with defective concrete; \$10.1 million settlement); *In re MI Windows & Doors Inc. Prod. Liab. Litig.*, No. 2:12-MN-00001-DCN, MDL No. 2333, 2015 WL 4487734 (D.S.C. July 23, 2015) (defective windows; claims made settlement for over 1 million homes); *In re Synthetic Stucco Litig.*, No. 5:96-CV-287-BR(2), 2004 WL 2881131 (E.D.N.C. May 11, 2004) (settlements with four EIFS Manufacturers for North Carolina homeowners valued at more than \$50 million); *Posey v. Dryvit Sys., Inc.*, No. 17,715-IV, 2002 WL 34249530 (Tenn. Cir. Ct. Oct. 1, 2002) (Co-Lead Counsel; national class action settlement provided cash and repairs to more than 7,000 claimants); *Galanti v. Goodyear Tire & Rubber Co.*, No. 03CV00209, 2004 WL 6033527 (D.N.J. Nov. 17, 2004) (Class counsel; defective radiant heating systems; \$330 million settlement); and *In re Zurn Pex Prod. Liab. Litig.*, No. 08-MDL-1958, 2013 WL 716088 (D. Minn. Feb. 27, 2013) (Plaintiffs' Executive Committee; +\$20 million claims made settlement).

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<sup>1</sup> A copy of MLK's Firm Resume is attached hereto as Exhibit A.

<sup>2</sup> *In re Hill's Pet Nutrition, Inc. Dog Food Prods. Liab. Litig.*, MDL No. 2887, No. 2:19-md-02887 (D. Kan. Filed June 6, 2019).

5. With respect to privacy cases, MLK is presently litigating more than fifty cases across the country involving violations of the TCPA, privacy violations, data breaches, and ransomware attacks.

6. MLK also serves as Court-appointed Liaison Counsel in *In re U.S. Off. of Pers. Mgmt. Data Security Breach Litig.*, 266 F. Supp. 3d 1 (D.D.C. 2017).

7. Attorneys at MLK were also Co-Lead Counsel in *In re Dep't of Veterans Aff. (VA) Data Theft Litig.*, No. 1:06-MC-00506, 2007 WL 7621261 (D.D.C. Nov. 16, 2007) (unlawful disclosure of PPI of 28.5 million military veterans and active-duty personnel; \$20 million settlement fund) and court-appointed Lead Counsel in *In re Google Buzz Privacy Litig.*, No. C 10-00672 JW, 2011 WL 7460099 (N.D. Cal. June 2, 2011) (\$10 million settlement fund in case arising for unauthorized disclosure or personal information).

8. It is noteworthy that just in the time since Mason Lietz & Klinger's inception on March 14, 2020, I (either individually, or as a member of my firm) have been appointed class counsel in a number of data breach or data privacy cases, including, but not limited to, the following:

- a. *Baksh v. Ivy Rehab Network, Inc.*, Case No. 7:20-cv-01845-CS (S.D. N.Y.) (class counsel in a data breach class action settlement; final approval granted);
- b. *In re: GE/CBPS Data Breach Litigation*, 1:2020-cv-02903, Doc. 35 (S.D.N.Y.) (appointed co-lead counsel in nationwide class action);
- c. *Mowery et al. v. Saint Francis Healthcare System*, Case No. 1:20-cv-00013-SRC (E.D. Mo.) (appointed class counsel; final approval granted);
- d. *Chatelain et al. v. C, L and W PLLC d/b/a Affordacare Urgent Care Clinics*, Case No. 50742-A (42nd District Court for Taylor County, Texas) (appointed class counsel; settlement valued at over \$7 million; final approval granted);
- e. *Jackson-Battle v. Navicent Health, Inc.*, Civil Action No. 2020-CV-072287 (Superior Court of Bibb County, Georgia) (Mr. Lietz appointed class counsel in data breach case involving 360,000 patients; final approval granted);

- f. *Bailey v. Grays Harbor County Public Hospital District et al.*, Case No. 20-2-00217-14 (Grays Harbor County Superior Court, State of Washington) (appointed class counsel in hospital data breach class action involving approximately 88,000 people; final approval granted);
  - g. *Nelson, et al. v. Idaho Central Credit Union*, No. CV03-20-00831 (Bannock County, Idaho) (Mr. Klinger appointed co-lead counsel in data breach class action involving 17,000 class members; granted final approval of settlement valued at \$3.3 million)
  - h. *In Re: Canon U.S.A. Data Breach Litigation*, Master File No. 1:20-cv-06239-AMD-SJB (E.D.N.Y.) (Mr. Klinger appointed co-lead counsel);
  - i. *Richardson v. Overlake Hospital Medical Center et al.*, Case No. 20-2-07460-8 SEA (King County Superior Court, State of Washington (Mr. Lietz, Mr. Klinger, and Ms. Perry appointed class counsel in data breach case; final approval granted);
  - j. *Kenney et al. v. Centerstone of America, Inc. et al.*, Case No. 3:20-cv-01007-EJR (M.D. Tenn.) (Mr. Klinger appointed co-lead class counsel; final approval granted August 9, 2021);
  - k. *Klemm et al. v. Maryland Health Enterprises, Inc. D/B/A Lorien Health Services*, C-03-CV-20-002899 (Circuit Court for Baltimore County, Maryland) (appointed Settlement Class Counsel, preliminary approval granted);
  - l. *Martinez et al. v. NCH Healthcare System, Inc.*, Case No. 2020-CA-000996 (Circuit Court of the Twentieth Judicial Circuit in and for Collier County, Florida) (final approval granted);
  - m. *Suren et al. v. DSV Solutions, LLC*, Case No. 2021CH000037 (Circuit Court for the Eighteenth Judicial Circuit of DuPage County, Illinois) (Mr. Klinger appointed Settlement Class Counsel, final approval granted September 27, 2021);
  - n. *Aguallo et al v. Kemper Corporation et al.*, Case No. 1:21-cv-01883 (N.D. Ill.) (Mr. Klinger appointed Settlement Class Counsel, preliminary approval granted of \$17.1 million class settlement).
9. Throughout my legal career, I, Gary M. Klinger, have personally resolved dozens of class action cases involving consumer and privacy statutes in state and federal courts across the country.

10. I have been appointed by state and federal courts to act as Class Counsel for millions of consumers and recovered hundreds of millions of dollars for consumers throughout the country. Presently, I am lead or co-lead counsel in more than thirty (30) active class action lawsuits pending in state and federal courts across the country.

11. Indeed, I recently obtained preliminary approval of a classwide settlement for a major data breach class action involving more than six million consumers. *See Carrera Aguallo v. Kemper Corp.*, Case No. 1:21-cv-01883 (N.D. Ill. Oct. 27, 2021) (where I, as appointed co-lead counsel, obtained preliminary approval of a \$17.6 million settlement to resolve similar data breach class claims against Kemper Corporation in a case involving more than 6 million class members).

12. I presently serve as one of two Court-appointed Lead Counsel in the data breach case *In re Canon U.S.A. Data Breach Litig.*, No. 1:20-cv-06239-AMD-SJB (S.D.N.Y. filed Dec. 23, 2020).

13. I was also appointed Co-Lead Counsel in the data breach case of *In re: Herff Jones Data Breach Litigation*, Master File No. 1:21-cv-1329-TWP-DLP (S.D. Ind.), which involves more than one million class members and has settled on a class-wide basis.

14. I was also recently as appointed co-lead counsel to represent more than 3 million class members in another major data breach class action in the Seventh Circuit. *See In re Arthur J. Gallagher Data Breach Litigation*, No. 1:21-cv-04056 (N.D. Ill.).

15. On July 19, 2021, I was appointed by the Court in this matter to serve as co-lead counsel in this consolidated data breach litigation. *See* ECF No. 014.

16. I have successfully litigated privacy class actions through class certification. In *Karpilovsky v. All Web Leads, Inc.*, No. 17 C 1307, 2018 WL 3108884, at \*1 (N.D. Ill. June 25,

2018), I certified, over objection, a nationwide privacy class action involving more than one million class members. *Id.*

17. In a recent nationwide privacy class settlement hearing in the U.S. District Court for the Northern District of California, Judge Richard Seeborg personally commended me and co-counsel for “quite a substantial recovery for class members.” See Exhibit B. Judge Seeborg further stated he could not recall any class action case where “the amounts going to each class member were as substantial” as that obtained by Mr. Klinger (and his co-counsel). *Id.*

18. In addition to concentrating my practice on class action litigation involving consumer, privacy, and product liability matters, I also make substantial efforts to stay apprised of the current law on these issues. In recent years, I have attended various legal training seminars and conferences such as the dri™ conference for Class Actions, The Consumer Rights Litigation Conference and Class Action Symposium, as well as attended various seminars offered by Strafford on class action issues.

19. I am also a member of the International Association of Privacy Professionals and a Certified Information Privacy Professional (CIPP/US).

20. I graduated from the University of Illinois at Urbana-Champaign in 2007 (B.A. Economics), and from the University of Illinois College of Law in 2010 (J.D., cum laude). While at the U of I College of Law, I was a member of, and ultimately appointed as the Executive Editor for, the Illinois Business Law Journal. My published work includes: The U.S. Financial Crisis: Is Legislative Action the Right Approach? Ill. Bus. L. J. (Mar. 2, 2009).

21. I became licensed to practice law in the State of Illinois in 2010, and am a member of the Trial Bar for the Northern District of Illinois as well as the U.S. Bankruptcy Court for the Northern District of Illinois. Additionally, I am admitted to practice in federal courts across the

country, including, but not limited to, the U.S. District Courts for the District of Colorado, the Central District of Illinois, the Northern District of Illinois, Northern District of Indiana, Southern District of Indiana, Eastern District of Michigan, and the Eastern District of Texas.

22. My years of experience representing individuals in complex class actions—including data breach actions—contributed to an awareness of Plaintiffs’ settlement leverage, as well as the needs of Plaintiffs and the proposed Settlement Class. I believe that our clients would ultimately prevail in the litigation on a class-wide basis. However, I am also aware that a successful outcome is uncertain and would be achieved, if at all, only after prolonged, arduous litigation of this complex Data Incident case, with the attendant risk of drawn-out appeals. The inherent uncertainty in litigation presents a risk to Plaintiffs of expending time and money on this case with the possibility of no recovery at all for the Class.

23. The risks, expense, complexity, and likely duration of further litigation support preliminary approval of the Settlement.

24. I believe that the Settlement is fair, reasonable, and adequate, and provides substantial benefits for Plaintiffs and Settlement Class Members. I and Settlement Class Counsel firmly believe that this Settlement is in the best interests of Settlement Class Members.

### **RELEVANT BACKGROUND**

#### The Consolidated Actions

25. Shortly after the Data Incident in February 2021, Plaintiff Daisy Trujillo filed a Class Action Complaint against Defendants CaptureRx and Rite Aid<sup>3</sup> in this Court. ECF No. 1.

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<sup>3</sup> The Trujillo Complaint named Rite Aid Corporation as a defendant; however, on July 20, 2021, the Court granted the parties’ stipulation to substitute Defendant Rite Aid Hdqtrs. Corp. for Rite Aid Corporation, *See* ECF No. 16.

26. On June 4, 2021, Plaintiff Mark Vereen filed a Class Action Complaint against Defendants CaptureRx and Midtown Health Center, Inc. (“Midtown”), also in this Court, *See* Compl., ECF No. 1, *Vereen v. NEC Networks, LLC, et al.*, No. 5:21-CV-00536-OLG (W.D. Tex.).

27. On June 30, 2021, Plaintiffs Trujillo and Vereen moved to consolidate their two actions, as well as any subsequently filed or transferred related actions, before this Court. *See* ECF No. 11.

28. On June 4, 2021, Plaintiff Mark Vereen filed a Class Action Complaint against Defendants CaptureRx and Midtown Health Center, Inc. (“Midtown”), also in this Court, alleging the same causes of action as the Trujillo Complaint. *See* Compl., ECF No. 1, *Vereen v. NEC Networks, LLC, et al.*, No. 5:21-CV-00536-OLG (W.D. Tex.).

29. On June 30, 2021, Plaintiffs Trujillo and Vereen moved to consolidate their two actions, as well as any subsequently filed or transferred related actions, before this Court. *See* ECF No. 11.

30. On July 21, 2021, Plaintiff Michelle Rodgers filed a Class Action Complaint against CaptureRx. *See* Compl., ECF No. 1, *Rodgers v. NEC Networks LLC*, No. 5:21-cv-00692-OLG-HJB (W.D. Tex.). This Court thereafter ordered that the *Rodgers* case be consolidated with *In Re: CaptureRx Data Breach Litigation*, Case No. 5:21-cv-00523-OLG (W.D. Tex.). *See* ECF No. 24.

31. On October 20, 2021, Plaintiff Esther Burch filed a Class Action Complaint against Rite Aid in the Los Angeles Superior Court. *See* Compl., ECF No. 1-2, *Burch v. Rite Aid Corp.*, No. 5:21-cv-01102-OLG (W.D. Tex.). The parties stipulated to a transfer to the Western District of Texas, which occurred on November 10, 2021. *Id.* This Court thereafter ordered that the *Burch*

case consolidated with *In Re: CaptureRx Data Breach Litigation*, Case No. 5:21-cv-00523-OLG (W.D. Tex.). *See* ECF No. 29.

32. On June 4, 2021, Plaintiff Echoe Camacho, on behalf of herself and her minor child, T.C., filed a Class Action Complaint in the Eastern District of California. *See* Compl., ECF No. 1, *Camacho, et al. v. NEC Networks, LLC, et al.*, No. 5:21-cv-00979-OLG (W.D. Tex.). The parties stipulated to a transfer to the Western District of Texas, which occurred on October 13, 2021. *Id.* This Court thereafter ordered that the *Camacho* case be consolidated with *In Re: CaptureRx Data Breach Litigation*, Case No. 5:21-cv-00523-OLG (W.D. Tex.). *See* ECF No. 31.

33. On August 10, 2021, Plaintiff Angelica Mendoza brought a Class Action Complaint against CaptureRx, Rite Aid, and CHCC in the Northern District of California. *See* Compl., ECF No. 1, *Mendoza v. NEC Networks, LLC, et al.*, No. 5:21-cv-01232-OLG (W.D. Tex.). The parties stipulated to a transfer to the Western District of Texas, which occurred on December 14, 2021. *Id.* This Court thereafter ordered that the Mendoza case be consolidated with *In Re: CaptureRx Data Breach Litigation*, Case No. 5:21-cv-00523-OLG (W.D. Tex.). *See* ECF No. 34.

34. Plaintiff D.W. brought a Class Action Complaint against CaptureRx, and Walmart, Inc. on May 25, 2021 in the Western District of Missouri, alleging causes of action for (i) breach of implied contract; (ii) negligence; (iii) invasion of privacy by public disclosure of private facts; (iv) breach of fiduciary duty of confidentiality; (v) violations of the Missouri Merchandising Practices Act, Mo. Rev. State. §407.010 et seq.; (vi) negligent training and supervision; and, (vii) negligence *per se*. *See* Compl., ECF No. 1, *D.W., et al. v. NEC Networks, LLC, et al.*, No. 4:21-cv-00363-SRB (W.D. Mo.). The case filed in the Western District of Missouri is stayed pending resolution of the claims from the Texas Court.



35. Plaintiff Mark Biddle brought a Class Action Complaint against CaptureRx, the University of Pittsburgh Medical Center, and Charles J. Hilton, P.C. Attorney at Law on June 23, 2021 in the Western District of Pennsylvania, alleging causes of action for negligence, negligence *per se*, invasion of privacy, violation of the Pennsylvania Breach of Personal Information Notification Act, violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, and unjust enrichment. *See Compl.*, ECF No. 2, *Biddle v. The University of Pittsburgh Medical Center, et al.*, No. 2:21-cv-00815-RJC (W.D. Pa.). On December 9, 2021, Plaintiff Biddle filed a notice of settlement. *See* ECF No. 29.

36. During the pendency of the above-identified actions, a plaintiff in a related case in the Western District of Missouri filed a motion under 28 U.S.C. § 1407 to centralize all litigation in the Western District of Missouri. *See* Order Den. Transfer, ECF No. 73, *In Re: NEC Networks, LLC d/b/a CaptureRx Customer Data Security Breach Litig.*, MDL No. 3018 (JPML Dec. 8, 2021). The Judicial Panel on Multidistrict Litigation denied the motion to centralize the litigation, holding that “[c]entralization at this time is premature and could delay a class-wide settlement with little or no benefit to the parties and putative class members.” *Id.* at 2.

37. The Settlement that is the subject of the Motion for Preliminary Approval pending in this Court will resolve all of the claims in the related cases now pending in other Districts.

38. This case is settling in its early stages; if the Settlement is not approved, the parties will likely need to litigate through multiple dispositive motions and a motion for class certification.

#### The Settlement Negotiations

39. Before filing their respective Complaints, MLK, as well as other Plaintiffs’ counsel, investigated the potential claims against Defendants, interviewed potential plaintiffs, and gathered information about the Data Incident and its potential impact on consumers.

40. Before Defendants could respond to the Complaint(s), the centralization litigation discussed above was initiated, and counsel devoted resources to litigating the consolidation motion before the JPML while at the same time arranging a mediation session with CaptureRx.

41. The parties participated in a global mediation—where all counsel were invited to attend—on November 3, 2021, with the Hon. Wayne Andersen, a retired federal judge and experienced class action mediator, to explore whether a negotiated resolution was possible.

42. In advance of the mediation, CaptureRx provided settlement discovery to Plaintiffs' counsel regarding the scope of the Data Incident, the number of class members, remedial efforts and the limited funds it has to resolve the many claims asserted against it.

43. The parties also exchanged lengthy mediation briefs in advance of the mediation.

44. The litigation did not resolve at the global mediation session. However, Judge Andersen and counsel engaged in numerous follow-up telephonic efforts to resolve this matter, which ultimately resulted in the material terms of the Settlement.

45. The parties thereafter spent significant time negotiating the specific terms and language of the Settlement Agreement through numerous phone calls and email exchanges.

46. Co-counsel and I were able to draw on our previous experiences in similar data-breach class action litigation to weigh the Settlement's adequacy in relation to the probability of success on the merits if the litigation were to continue.

47. The resulting negotiated Settlement Agreement is now before this Court for preliminary approval.

The Proposed Settlement

48. The terms of the Settlement approximate the rewards the Class likely would have received following a successful trial. The proposed Settlement is fair and well within the range of preliminary approval.

49. The benefits Class will receive if the Settlement is approved represent a highly favorable compromise that balances the merits of Plaintiffs' claims and the likelihood of succeeding at trial and on appeal with the attendant risks.

50. The matter of attorneys' fees was not negotiated in conjunction with the Settlement Agreement, but left for a separate determination by the Court.

51. Representative Plaintiffs and Class Counsel have adequately represented the Settlement Class. Plaintiffs have no conflicts of interest with other Settlement Class Members, are subject to no unique defenses, and they and their counsel have vigorously prosecuted and continue to vigorously prosecute this case on behalf of the Settlement Class.

52. Further, Settlement Class Counsel are experienced in the successful litigation and settlement of class action litigation, including data privacy cases, as described above. Our firm and the other Settlement Class Counsel are collectively highly experienced in class action litigation and were well positioned to evaluate the strengths and weaknesses of continued litigation, as well as the reasonableness of the Settlement.

\* \* \* \* \*

I declare under penalty of perjury of the laws of the State of Illinois and the United States that the foregoing is true and correct, and that this declaration was executed in Chicago, Illinois. on this 11th day of February 2022.

/s/ Gary M. Klinger

Gary M. Klinger

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*Attorney for Plaintiffs and the Class*

# **EXHIBIT A**



## FIRM RESUME

With offices in Washington, D.C., and Chicago, Illinois, Mason Lietz & Klinger LLP is dedicated to representing plaintiffs in class actions, mass torts and individual actions in courts throughout the United States.

### **ATTORNEY PROFILES**

#### **Gary E. Mason Managing Partner**

Gary is a nationally recognized leader of the class action bar. Focusing on consumer class actions and mass torts, Gary has recovered more than \$1.5 billion in the 30 years he has represented plaintiffs.

With his broad experience, Gary is nationally known for representing consumers in class actions involving a wide range of defective products, including Chinese drywall, fire retardant plywood, polybutylene pipe, high-temperature plastic venting, hardboard siding, pharmaceutical products, consumer electronics and automobiles.

Gary has served in leadership positions in many consumer class actions in State and Federal Courts nationwide as well as in Multi-District Litigation. Gary writes and speaks frequently on topics related to class action litigation. He was the 2012-2013 Co-Chair of the Class Action Litigation group for the American Association for Justice. He has repeatedly been named as a Washington, DC Superlawyer for Class Actions.

Gary also serves as Executive Director and President of the Board of Directors of The Bethesda Blues and Jazz Foundation.

Gary graduated magna cum laude, Phi Beta Kappa, from Brown University in 1984 and earned his law degree from Duke University Law School. He then clerked for the Honorable Andrew J. Kleinfeld, U.S. District Court Judge, in Anchorage, Alaska. Gary is admitted to practice law in Washington, D.C, New York and Maryland. He is a member of the Bar of the United States Supreme Court and numerous federal Courts of Appeals and District Courts across the country.

#### **David Lietz Partner**

David Lietz's practice concentrates in the areas of complex civil litigation, consumer class actions, and mass torts in federal and state courts nationwide. His class action experience includes a wide range of subject matters, including violations of federal consumer protection laws (such as the FDCPA and TCPA), violations of state consumer protection law, defective products, wage abuse, and data privacy. Mass tort experience includes pharmaceutical litigation.

David also has decades of experience as a trial lawyer, representing plaintiffs in complex actions involving wrongful death and critical injury. Through both trials and settlement, he has recovered millions and millions of dollars for the victims of commercial trucking accidents,

MLK Firm Resume  
Page 3 of 9

commercial airplane crashes, bus crashes, manufacturing and power plant explosions and fires, and construction related injuries and deaths.

David's practice includes appellate work, having briefed and argued multiple cases before federal appellate courts, including *Home Depot v. Jackson* at the Fourth Circuit. David then served as part of the winning brief-writing and oral advocacy team for *Home Depot v. Jackson* at the United States Supreme Court.

David holds an AV rating from the Martindale-Hubbell Law Directory, an honor he has held since 1998. He is listed in the Bar Register of Preeminent Lawyers, Washington D.C. & Baltimore's Top Rated Lawyers, 2012 - 2015 edition, and has a Martindale-Hubbell Client Distinction Award.

Outside of the law, David served for 12 years on the Board of Regents of his alma mater, Luther College, and was appointed Regent Emeritus in 2017. He was a member of the Luther College Presidential Search Committee, and received the Luther College Distinguished Service Award in 2018.

David received his undergraduate degree in Political Science from Luther College in 1988, where he graduated with honors. He received his J.D. from the Georgetown University Law Center in 1991. He is admitted to practice law in the District of Columbia, and is admitted to practice before a number of federal district and appellate courts.

### **Gary M. Klinger** **Partner**

Gary is a natural competitor and relishes the challenge of being a litigator. He is a tenacious and dedicated advocate of his client's interests and welcomes every opportunity to help them prevail in complex, high-stakes litigation.

Gary represents clients in class actions involving wide-ranging theories of liability including consumer fraud, breach of contract, privacy violations, conspiracy, violation of the antitrust laws, and other torts. He has been appointed as class counsel to millions of consumers across the country. Gary has recovered tens of millions of dollars for consumers in class action settlements.

Prior to forming Mason Lietz & Klinger LLP, Gary was an attorney at one of the premier litigation firms in Chicago where he focused on class action litigation. Gary has successfully represented clients from pre-litigation disputes through trials and appeals in federal and state jurisdictions throughout the country.

Gary is a graduate of the University of Illinois where he received both his undergraduate and law degrees. He is licensed to practice in Illinois and numerous federal district courts across the country.



**Danielle L. Perry**  
**Partner**

Danielle's primary focus is in protecting employee and consumer rights through class action lawsuits.

Danielle graduated from the University of California, Berkeley in 2010 with a Bachelor of Arts in Peace and Conflict Studies. During her undergraduate studies, she managed and rowed for the university's Lightweight Crew Team and also spent a year in Budapest, Hungary, where she interned with the Helsinki Committee, an international human rights organization. Danielle went on to attend Loyola Law School, where she was on the Board of the Public Interest Law Foundation and headed efforts to promote alternative dispute resolution, including founding a club structured to inform students of developments in mediation and working at The Center for Conflict Resolution.

During law school, she held an externship as a law clerk for the Honorable Victoria Chaney of the California Court of Appeals, worked with the Labor Division of the Los Angeles Office of the City Attorney, and was a Board Member for the Public Interest Law Foundation.

Prior to joining Mason Lietz & Klinger, Danielle practiced at a plaintiffs' class action firm in Los Angeles, where she worked as an advocate for victims of wage theft—employees who were being deprived of pay and not provided with legally required meal and rest periods. Danielle spent much of her time working on lawsuits brought to recover lost wages and penalties for banking, manufacturing, retail, property management, and trucking industry employees.

Danielle is a member of the American Association for Justice and regularly volunteers as an advising attorney at the Employment Justice Center.

**NOTABLE CLASS ACTION CASES LITIGATED BY MLK ATTORNEYS**

**Antitrust**

*In re: TFT-LCD (Flat Panel) Antitrust Litigation*, No. 3:07-cv-01827, MDL No. 1827 (N.D. Cal.) (combined settlement totaling nearly \$1.1 billion in suit alleging the illegal formation of an international cartel to restrict competition in the LCD panel market) (2012).

**Appliances**

*Ersler, et. al v. Toshiba America et. al*, No. 07- 2304 (D.N.J.) (settlement of claims arising from allegedly defective television lamps) (2009).

*Maytag Neptune Washing Machines* (class action settlement for owners of Maytag Neptune washing machines).

*Stalcup, et al. v. Thomson, Inc.* (Ill. Cir. Ct.) (\$100 million class settlement of claims that certain GE, PROSCAN and RCA televisions may have been susceptible to temporary loss of audio when receiving broadcast data packages that were longer than reasonably anticipated or specified) (2004).

*Hurkes Harris Design Associates, Inc., et al. v. Fujitsu Computer Prods. of Am., Inc.* (settlement provides \$42.5 million to pay claims of all consumers and other end users who bought certain Fujitsu Desktop 3.5” IDE hard disk drives) (2003).

*Turner v. General Electric Company*, No. 2:05-cv-00186 (M.D. Fla.) (national settlement of claims arising from allegedly defective refrigerators) (2006).

### **Automobiles**

*In re General Motors Corp. Speedometer Prods. Liability Litig.*, MDL 1896 (W.D. Wash.) (national settlement for repairs and reimbursement of repair costs incurred in connection with defective speedometers) (2007).

*Baugh v. The Goodyear Tire & Rubber Company* (class settlement of claims that Goodyear sold defective tires that are prone to tread separation when operated at highway speeds; Goodyear agreed to provide a combination of both monetary and non-monetary consideration to the Settlement Class in the form of an Enhanced Warranty Program and Rebate Program) (2002).

*Lubitz v. Daimler Chrysler Corp.*, No. L-4883-04 (Bergen Cty. Super. Ct, NJ 2006) (national settlement for repairs and reimbursement of repair costs incurred in connection with defective brake system; creation of \$12 million fund; 7th largest judgment or settlement in New Jersey) (2007).

*Berman et al. v. General Motors LLC*, Case No. 2:18-cv-14371 (S.D. Fla.) (Co-Lead Counsel; national settlement for repairs and reimbursement of repair costs incurred in connection with Chevrolet Equinox excessive oil consumption).

### **Civil Rights**

*In re Black Farmers Discrimination Litigation*, Case No. 1:08-mc-00511 (D.D.C.) (\$1.25 billion settlement fund for black farmers who alleged U.S. Department of Agriculture discriminated against them by denying farm loans) (2013).

*Bruce, et. al. v. County of Rensselaer et. al.*, Case No. 02-cv-0847 (N.D.N.Y.) (class settlement of claims that corrections officers and others employed at the Rensselaer County Jail (NY) engaged in the practice of illegally strip searching all individuals charged with only misdemeanors or minor offenses) (2004).

### **Commercial**

MLK Firm Resume  
Page 6 of 9

*In re: Outer Banks Power Outage Litigation*, 4:17-cv-141 (E.D.N.C) (Co-Lead Counsel; \$10.35 million settlement for residents, businesses, and vacationers on Hatteras and Ocracoke Islands who were impacted by a 9-day power outage) (2018)

### **Construction Materials**

*Cordes et al v. IPEX, Inc.*, No. 08-cv-02220-CMA-BNB (D. Colo.) (class action arising out of defective brass fittings; court-appointed member of Plaintiffs' Steering Committee) (2011).

*Elliott et al v. KB Home North Carolina Inc. et al* 08-cv-21190 (N.C. Super. Ct. Wake County) (Lead Counsel; class action settlement for those whose homes were constructed without a weather-resistant barrier)(2017)

*In re: Pella Corporation Architect and Designer Series Windows Marketing, Sales Practices and Products Liability Litigation*, MDL No. 2514 (D.S.C.)(class action arising from allegedly defective windows; Court-appointed Co-Lead Counsel).

*In re MI Windows and Doors, Inc., Products Liability Litigation*, MDL No. 2333 (D.S.C) (National class action settlement for homeowners who purchased defective windows; Court-appointed Co-Lead Counsel).

*In re: Atlas Roofing Corporation Chalet Shingle Products Liability Litig.*, MDL No. 2495 (N.D. Ga.) (class action arising from allegedly defective shingles; Court-appointed Co-Lead Counsel).

*Helmer et al. v. Goodyear Tire & Rubber Co.*, No. 12-cv-00685-RBJ (D. Colo. 2012) (class action arising from allegedly defective radiant heating systems; Colorado class certified, 2014 WL 3353264, July 9, 2014)).

*In re: Zurn Pex Plumbing Products Liability Litigation*, No. 08-md-01958, MDL No. 1958 (D. Minn.) (class action arising from allegedly plumbing systems; member of Executive Committee; settlement) (2012).

*Hobbie, et al. v. RCR Holdings II, LLC, et al.*, No. 10-1113 , MDL No. 2047 (E.D. La.) (\$30 million settlement for remediation of 364 unit residential high-rise constructed with Chinese drywall) (2012).

*In re: Chinese Manufactured Drywall Products Liability Litigation*, No. 2:09-md-02047, MDL No. 2047 (E.D. La.) (litigation arising out of defective drywall) (appointed Co-Chair, Insurance Committee) (2012).

*Galanti v. Goodyear Tire & Rubber Co.*, No. 03-209 (D.N.J. 2003) (national settlement and creation of \$330 million fund for payment to owners of homes with defective radiant heating systems) (2003).

MLK Firm Resume  
Page 7 of 9

*In re Synthetic Stucco Litig.*, Civ. Action No. 5:96-CV-287-BR(2) (E.D.N.C.) (member of Plaintiffs' Steering Committee; settlements with four EIFS Manufacturers for North Carolina homeowners valued at more than \$50 million).

*In re Synthetic Stucco (EIFS) Prods. Liability Litig.*, MDL No. 1132 (E.D.N.C.) (represented over 100 individuals homeowners in lawsuits against homebuilders and EIFS manufacturers).

*Posey, et al. v. Dryvit Systems, Inc.*, Case No. 17,715-IV (Tenn. Cir. Ct) (Co-Lead Counsel; national class action settlement provided cash and repairs to more than 7,000 claimants) (2002).

*Sutton, et al. v. The Federal Materials Company, Inc., et al*, No. 07-CI-00007 (Ky. Cir. Ct) (Co-Lead Counsel; \$10.1 million class settlement for owners of residential and commercial properties constructed with defective concrete).

*Staton v. IMI South, et al.* (Ky. Cir. Ct.) ((Co-Lead Counsel; class settlement for approximately \$30 million for repair and purchase of houses built with defective concrete).

*In re Elk Cross Timbers Decking Marketing, Sales Practices and Products Liability Litigation*, No. 15-cv-0018, MDL No. 2577 (D.N.J.) (Lead Counsel; national settlement to homeowners who purchased defective GAF decking and railings).

*Bridget Smith v. Floor and Decor Outlets of America, Inc.*, No. 1:15-cv-4316 (N.D. Ga.) (Co-Lead Counsel; National class action settlement for homeowners who purchased unsafe laminate wood flooring).

*In re Lumber Liquidators Chinese-Manufactured Flooring Products Marketing, Sales Practices and Products Liability Litigation* MDL No. 1:15-md-2627 (E.D.Va.) (Formaldehyde case; \$36 million national class action settlement for member who purchased a certain type of laminate flooring).

*In re Lumber Liquidators Chinese-Manufactured Laminate Flooring Durability Marketing, Sales Practices Litigation* MDL No. 1:16-md-2743 (E.D.Va.) (Co-Lead Counsel; Durability case; \$36 million national class action settlement for member who purchased a certain type of laminate flooring).

*In re Windsor Wood Clad Window Products Liability Litigation* MDL No. 2:16-md-02688 (E.D. Wis.) (National class action settlement for homeowners who purchased defective windows; Court-appointed Lead Counsel).

*In re Allura Fiber Cement Siding Products Liability Litigation* MDL No. 2:19-md-02886 (D.S.C.) (class action arising from allegedly defective cement board siding; Court-appointed Lead Counsel).

### **Environmental**

*Nnadili, et al. v. Chevron U.S.A., Inc.*, No. 02-cv-1620 (D.D.C.) (\$6.2 million settlement for owners and residents of 200 properties located above underground plume of petroleum from former Chevron gas station) (2008).

*In re Swanson Creek Oil Spill Litigation*, No. 00-1429 (D. Md.) (Lead Counsel; \$2.25 million settlement of litigation arising from largest oil spill in history of State of Maryland) (2001).

### **Fair Labor Standards Act/Wage and Hour**

*Craig v. Rite Aid Corporation*, Civil No. 08-2317 (M.D. Pa.) (FLSA collective action and class action settled for \$20.9 million) (2013).

*Stillman v. Staples, Inc.*, Civil No. 07-849 (D.N.J. 2009) (FLSA collective action, plaintiffs' trial verdict for \$2.5 million; national settlement approved for \$42 million) (2010).

*Lew v. Pizza Hut of Maryland, Inc.*, Civil No. CBB-09-CV-3162 (D. Md.) (FLSA collective action, statewide settlement for managers-in-training and assistant managers, providing recompense of 100% of lost wages) (2011).

### **Food and Drug Misrepresentation**

*Smid et al. v. Nutranext, LLC*, No. 20L0190 (St. Clair Ctuy., Ill., 2020) (\$6.7 million settlement)

*In re Hill's Pet Nutrition, Inc. Dog Food Prods. Liab. Litg.*, MDL No. 2887, No. 2:19-md-02887 (D. Kan. filed June 6, 2019) (Court-appointed Co-Lead Counsel)

### **Financial**

*Roberts v. Fleet Bank (R.I.), N.A.*, Civil Action No. 00-6142 (E. D. Pa. 2003) (\$4 million dollar settlement on claims that Fleet changed the interest rate on consumers' credit cards which had been advertised as "fixed.").

*Penobscot Indian Nation et al v United States Department of Housing and Urban Development*, N. 07-1282 (PLF) (D.D.C. 2008) (represented charitable organization which successfully challenged regulation barring certain kinds of down-payment assistance; Court held that HUD's promulgation of rule violated the Administrative Procedure Act),

### **Insurance**

*Young, et al. v. Nationwide Mut. Ins. Co, et al.*, No. 11-5015 (E.D. Ky. 2014) (series of class actions against multiple insurance companies arising from unlawful collection of local taxes on premium payments; class certified and affirmed on appeal, 693 F.3d 532 (6th Cir., 2012); settlements with all defendants for 100% refund of taxes collected).

MLK Firm Resume  
Page 9 of 9

*Nichols v. Progressive Direct Insurance Co., et al.*, No. 2:06cv146 (E.D. Ky. 2012) (Class Counsel; class action arising from unlawful taxation of insurance premiums; statewide settlement with Safe Auto Insurance Company and creation of \$2 million Settlement Fund; statewide settlement with Hartford Insurance Company and tax refunds of \$1.75 million )

### **Privacy/Data Breach**

*In Re: U.S. Office of Personnel Management Data Security Breach Litigation*, No. 15-1393 (ABJ), MDL No. 2664 (D.D.C.) (court appointed interim Liaison Counsel).

*In re Google Buzz Privacy Litigation*, No. 5:10-cv-00672 (N.D. Cal. 2010) (court-appointed Lead Class Counsel; \$8.5 million cy pres settlement).

*In re: Dept. of Veterans Affairs (VA) Data Theft Litig.*, No. 1:2006-cv-00506, MDL 1796 (D.D.C. 2009) (Co-Lead counsel representing veterans whose privacy rights had been compromised by the theft of an external hard drive containing personal information of approximately 26.6 million veterans and their spouses; creation of a \$20 million fund for affected veterans and a cy pres award for two non-profit organizations).

*In re: Adobe Systems Inc. Privacy Litigation*, No. 5:13-cv-05226 (N.D. Cal. 2015) (settlement requiring enhanced cyber security measures and audits).

# **EXHIBIT 3**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

***IN RE: CAPTURERX DATA BREACH  
LITIGATION***

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

THIS DOCUMENT RELATES TO:  
**ALL ACTIONS**

**DECLARATION OF CHRIS HOTCHKISS**

1. My name is CHRIS HOTCHKISS. I am competent to make a declaration, am over the age of 18 years of age, and have personal knowledge of the facts set out herein.

2. I am the CEO of NEC Networks d/b/a CaptureRx (“CaptureRx”). I have served in that position since 2021.

3. CaptureRx is not a large national or multinational company and has limited resources.

4. CaptureRx has a wasting insurance policy related to this case. The insurer is making a substantial contribution to the settlement but based on its policy limits – the amount covered is less than half of the total settlement.

5. CaptureRx faces demands for indemnity from numerous customers, that were also named as Defendants in the class action cases, that have and continue to put severe financial strain on the company.

6. CaptureRx’s owners are funding part of the settlement with their own money.

7. If the subject class action litigation does not settle, CaptureRx will strongly consider filing for bankruptcy.



I declare under penalty of perjury pursuant to the laws of the State of Texas that the foregoing is true and correct.

Executed on the 10 day of February (month) 2022 (year).

Chris Hutchings (Printed Name)

 (Signature)