

1 ALTSHULER BERZON LLP
2 EVE CERVANTEZ (SBN 164709)
3 ecervantez@altshulerberzon.com
4 JONATHAN WEISSGLASS (SBN 185008)
5 jweissglass@altshulerberzon.com
6 DANIELLE E. LEONARD (SBN 218201)
7 dleonard@altshulerberzon.com
8 MEREDITH A. JOHNSON (SBN 291018)
9 mjohanson@altshulerberzon.com
10 TONY LOPRESTI (SBN 289269)
11 tlopresti@altshulerberzon.com
12 177 Post Street, Suite 300
13 San Francisco, CA 94108
14 Telephone: (415) 421-7151
15 Facsimile: (415) 362-8064

16 COHEN MILSTEIN SELLERS & TOLL PLLC
17 ANDREW N. FRIEDMAN (admitted *pro hac vice*)
18 afriedman@cohenmilstein.com
19 GEOFFREY GRABER (SBN 211547)
20 ggrabber@cohenmilstein.com
21 SALLY M. HANDMAKER (SBN 281186)
22 shandmaker@cohenmilstein.com
23 ERIC KAFKA (admitted *pro hac vice*)
24 ekafka@cohenmilstein.com
25 1100 New York Ave. NW
26 Suite 500, West Tower
27 Washington, DC 20005
28 Telephone: (202) 408-4600
Facsimile: (202) 408-4699

Co-Lead Plaintiffs' Counsel

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

In Re Anthem, Inc. Data Breach Litigation

Case No: 15-md-02617-LHK (NC)

**DECLARATION OF EVE H. CERVANTEZ IN
SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

1 I, Eve H. Cervantez, declare as follows:

2 1. I am a member in good standing of the California State Bar and the bar of this Court, a
3 partner at Altshuler Berzon, LLP, and Co-Lead Plaintiffs' Counsel in this multi-district litigation. I
4 have personal knowledge of the matters set forth herein, and could and would testify competently
5 thereto if called upon to do so. I submit this declaration in support of Plaintiffs' Motion for Preliminary
6 Approval of Class Action Settlement ("Motion").

7 2. I, along with my co-lead counsel, other members of Plaintiffs' Steering Committee, and
8 additional Plaintiffs' counsel who filed cases that have been consolidated in this MDL, have
9 represented Plaintiffs and putative class members for over two years. Collectively, Plaintiffs' Counsel
10 have devoted tens of thousands of hours to litigating this case. Plaintiffs' counsel filed four
11 consolidated class action complaints; litigated two motions to dismiss and 14 discovery motions;
12 reviewed 3.8 million pages of documents; deposed 18 percipient fact witnesses, 62 corporate designees,
13 and six defense experts; produced reports from four experts and defended their depositions; produced
14 105 plaintiffs for depositions and produced 29 of those plaintiffs' computers for forensic examinations;
15 exchanged interrogatories, RFA, and expert reports with Defendants; and fully briefed class
16 certification and related *Daubert* motions.

17 3. Due to the extensive discovery we undertook, along with briefing two motions to
18 dismiss and class certification, I, along with my co-lead counsel and other members of Plaintiffs'
19 Steering Committee, know the strengths and weakness of the class claims in this litigation. We have
20 worked extensively with experts to value those claims and to understand the business practice changes
21 necessary to protect class members' data in the future, and are well-equipped to negotiate a settlement
22 on behalf of the class. In addition, Plaintiffs' discovery and working with cybersecurity experts has
23 provided me, along with my co-lead counsel and other members of Plaintiffs' Steering Committee, with
24 a deep understanding of Anthem's highly complex IT systems, the numerous technical and
25 administrative controls involved in Anthem's data security system, and the deficiencies within that
26 system that Plaintiffs sought to remedy through this action.

27 4. I believe the proposed settlement is extremely beneficial for class members and a very
28 good deal for them. I respectfully recommend that the Court approve it.

Background

1
2 5. After surviving two motions to dismiss and engaging in the extensive discovery
3 described above, Plaintiffs filed a motion for class certification on March 10, 2017. Defendants filed
4 an opposition to class certification on April 14, 2017, and Plaintiffs filed a reply in support of their
5 motion on May 5, 2017.

6 6. While we were briefing class certification, we were also engaging in a series of
7 mediation sessions with Judge Layn R. Phillips (Ret.). After three full-day mediations over the course
8 of three months – on February 28, April 20, and May 22, 2017 – we still had not reached a deal. Judge
9 Phillips ultimately made a mediator’s proposal, which both sides accepted over Memorial Day
10 weekend. The parties then spent several weeks preparing the formal settlement agreement now before
11 the Court.

12 7. As set forth in our class certification motion, had the case not settled, Plaintiffs would
13 have sought both equitable and monetary remedies for class members. Plaintiffs would have asked the
14 Court to enter an injunction requiring Anthem to implement the security controls recommended by
15 Plaintiffs’ expert and maintain the security reforms that Anthem had already begun during this
16 litigation. Plaintiffs also would have sought extended credit monitoring that was more extensive than
17 the AllClear Services offered by Anthem, which, for example, only monitored one of the three major
18 credit bureaus for potential fraudulent activity. Among other theories, Plaintiffs would have sought
19 monetary remedies based on a “benefit of the bargain” theory that would have isolated the value of
20 adequate data security through a conjoint analysis. Because the parameters of the conjoint surveys
21 would have depended on the classes ultimately certified by the Court, Plaintiffs’ expert had not
22 completed his conjoint analysis prior to settlement.

23
24 8. Had the case not settled, Plaintiffs also would have sought remedies, including equitable
25 remedies, against The Blue Cross and Blue Shield Association (“BCBSA”) and 17 non-Anthem Blue
26 Cross Blue Shield companies. Following the public announcement of the Anthem data breach, the
27 BCBSA Membership Standards were amended to further define certain guidelines for the protection
28 and cybersecurity of personal information. For settlement purposes only, Plaintiffs determined that this

1 change sufficiently addressed their concerns.

2 **Proposed Settlement**

3 9. I believe that the proposed settlement is a favorable one for the class. By settling now,
4 the class is able to take advantage of remedies that, as a practical matter, will be unavailable or worth
5 substantially less by the time this case could be litigated to a final judgment. Our expert on identity
6 theft and fraud protection has explained that credit monitoring services are most critical in the first five
7 years after the Anthem data breach, and the two years of free credit monitoring provided by Anthem
8 have recently expired. Similarly, changes to Anthem's data security practices will be most effective the
9 sooner they are implemented. By providing class members with extended credit monitoring and
10 requiring enhanced data security now, the proposed settlement helps preserve the confidentiality of
11 class members' private information in ways that a later judgment could not, particularly if Anthem
12 exhausted its appeals. Additionally, by offering credit monitoring services as part of the Settlement
13 Agreement, we are able to purchase those services in bulk at a fraction of the retail cost that individual
14 Settlement Class Members would pay if they purchased similar services themselves.

15 10. I also believe that the proposed settlement is a favorable one for the class in light of the
16 risks of further litigation. I believe that Plaintiffs built a strong case for liability and that Plaintiffs had
17 a reasonably good chance of proving that Anthem's data security was inadequate. I also believe that if
18 Plaintiffs had established that central factual issue, Anthem would likely be found liable under at least
19 some of the liability theories and state laws that Plaintiffs pled in their operative complaint. However,
20 the liability case was not ironclad. Among other things, there is little directly analogous data breach
21 litigation precedent to rely on, and the path to a class-wide monetary judgment in a data breach case
22 remains untrodden.

23 11. I believe that Plaintiffs' damages theories stood a good chance of succeeding in some
24 form, as we had withstood vigorous legal challenges at the motion to dismiss stage, and supported our
25 theories with reports from highly qualified experts. The scope of damages would have depended in
26 large part on the scope of class certification, which had yet to be decided. The Benefit of the Bargain
27 theory depended upon the results of a conjoint study that could not be completed until after class
28 certification, and there was no guarantee that Plaintiffs would ultimately have found this type of

1 damage at all. And it is possible that both the Benefit of the Bargain theory and the Loss of Value of
2 PII theory could have yielded large numbers that would have been unpalatable to a jury. If applied
3 across all potential class members, Plaintiffs' most conservative measure (based on black-market rates
4 of at least \$4 per individual) would yield a figure of \$316 million or more, while the most expansive
5 measure (based on at least \$9 of monthly credit monitoring costs) would yield much higher numbers.
6 While the legal theory behind the larger numbers may be sound, it is untested, and, as a practical
7 matter, I, along with my co-lead counsel, recognize that taking such large numbers to a jury presents
8 substantial strategic risks.

9 12. Based on my knowledge of this case, and knowledge of the claims rate in other data
10 breach cases, I believe that the \$15 million allocated for out-of-pocket reimbursements will be more
11 than enough to accommodate all out-of-pocket claims.

12 **Class Notice**

13 13. Immediately following the parties' agreement in principle to settle this Action, Class
14 Counsel solicited confidential bids from seven entities to provide notice and administration services in
15 conjunction with the proposed settlement. The seven entities were given the material terms of the
16 settlement and asked to provide bids for the provision of postcard and e-mail notice, the creation of a
17 media plan to effect notice to those class members for whom no address or email address is known
18 (including via publication, internet and social media), and for claims administration.

19 14. After receipt of the seven bids, Class Counsel reviewed the bids. Although each of the
20 bids was very professional and would have provided the Class with a notice program that would
21 comport with Rule 23 of the Federal Rules of Civil Procedure, three of the bids were selected for
22 further review. In Plaintiffs' Counsel's estimation, these three bids offered the best combination of an
23 extensive notice/media program, claims administration and value to the Class.

24 15. Plaintiffs' Counsel subsequently further communicated on numerous occasions with the
25 three Notice Administrators to hone the details of the services to be provided as well as negotiate the
26 best price possible for the Class. These three entities submitted further bids as a result. While all three
27 offered superlative notice and administration programs, Class Counsel ultimately chose KCC LLC. It
28 is our belief that KCC's proposed notice and administration program will allow for the effective

1 dissemination of notice to the Settlement Class, efficient administration of Class claims, and will do so
2 in an economical manner.

3 16. Due to the large size of the class and the importance of encouraging class members to
4 sign up for the credit monitoring services offered by the Settlement, Plaintiffs expect the costs of notice
5 and settlement administration to be substantial—approximately \$23 million (with a large percentage of
6 this amount to cover the cost of postage on a postcard notice that will allow tear-off and return claims
7 for credit monitoring services). The postcard is designed to catch Class Members’ attention and alert
8 them to the settlement and available remedies. The postcard notice will also direct class members to
9 the Settlement Website, where more information – including a detailed long-form notice and other case
10 documents including the operative consolidated class action complaint and Settlement Agreement –
11 will be made available. This is a very effective way to alert class members to the existence of the
12 settlement and convey detailed information about the settlement approval process.

13 17. In addition to traditional forms of notice, the parties have agreed to an additional
14 innovative notice plan using internet media ads, which will involve 180 million impressions distributed
15 over Google Display Network and social media sites (Facebook, Instagram, LinkedIn, and Twitter) on
16 mobile and desktop devices. The digital media campaign will be actively monitored to continuously
17 post on sites that have proven successful at reaching class members throughout the course of the
18 campaign. The point of the internet campaign is not only to reach class members for whom the parties
19 lack addresses, but also to encourage class members who received postcard notice to file a claim for
20 credit monitoring services or alternative compensation, and out of pocket expenses incurred.

21 **Attorneys’ Fees and Costs**

22 18. Plaintiffs plan to seek no more than 33% of the Settlement Fund (\$37,950,000) for their
23 attorneys’ fees, which will amount to considerably less than 1.75 times Class Counsel’s reasonable
24 lodestar, already reduced in the exercise of billing judgment.

25 19. Plaintiffs have spent over \$2 million on the litigation to date. The Settlement
26 Agreement allows Plaintiffs to seek up to \$3 million in expense reimbursements, but the number
27 requested will be lower, reflecting only the actual costs incurred.

28

Exhibits

20. A true and correct copy of the fully executed Settlement of Class Action and exhibits is attached hereto as Exhibit A.

21. A true and correct copy of a Statement Regarding Exclusion of Settlement Class Members is attached hereto as Exhibit B.

22. A true and correct copy of “KCC Legal Notification Services,” setting forth the qualifications of the third-party Settlement Administrator, is attached hereto as Exhibit C.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 22nd day of June, 2017, at San Francisco, California.

/s/ Eve H. Cervantez
Eve H. Cervantez