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19 **UNITED STATES DISTRICT COURT**
20 **NORTHERN DISTRICT OF CALIFORNIA**
21 **SAN JOSE DIVISION**

22 **IN RE ANTHEM, INC. DATA BREACH**
LITIGATION

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

SUPPLEMENTAL BRIEF IN SUPPORT OF
MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT

Date: August 17, 2017
Time: 1:30 p.m.
Judge: Lucy H. Koh
Crtrm: 8, 8th Floor

1 **I. INTRODUCTION**

2 At the Court’s suggestion, the Parties have amended the proposed Settlement Agreement and
 3 Release to clarify the identity of the persons and entities being released, and made minor corrections to
 4 the proposed Notices, Claims Forms, and [Proposed] Preliminary Approval Order.¹ The Amendment to
 5 Settlement Agreement and Release (“Amendment”), including the revised Notices, Claims Forms, and
 6 [Proposed] Order, is attached as Exhibit A to the Supplemental Declaration of Eve H. Cervantez In
 7 Support of Motion for Preliminary Approval of Class Action Settlement (“Supplemental Cervantez
 8 Declaration”). Redlines comparing the revised proposed Notices and Claims Forms with those
 9 originally submitted are Exhibit B to the Supplemental Cervantez Declaration.

10 Plaintiffs respectfully request that the Court grant Plaintiffs’ motion for preliminary approval of
 11 the class action settlement, as amended (hereinafter “Settlement Agreement” or “Agreement”) for all the
 12 reasons set forth in our original brief and below, because the proposed settlement is fair, reasonable, and
 13 adequate, and provides an excellent result for the Settlement Class.

14 **II. ARGUMENT**

15 **A. The Amendment Clarifies the Persons and Entities to be Released.**

16 The Amendment clarifies the persons and entities as to whom the Released Claims are released,
 17 by adding language to Section 13.1 after “every other person or entity,” as follows:

18 As of the Effective Date, all Settlement Class Representatives and all Settlement Class Members
 19 absolutely and unconditionally release and discharge any and all Released Claims against each
 20 and every Defendant, their current, former, and future Affiliates, Parents and Subsidiaries, and
 21 every other person or entity, [**new language begins here**] including but not limited to
 22 Defendants’ customers; any company that provided information technology, information security
 23 auditing, or information security support to Defendants; any person or entity that provided data
 24 to Defendants that was implicated in the Data Breach; any insurance brokers; the Settlement
 25 Class Representatives and Settlement Class Members’ employers, health plans, and plan
 26 fiduciaries; HITRUST; AllClear ID, Inc.; Mandiant, Inc.; Fire Eye, Inc.; R.R. Donnelley & Sons
 27 Company; IBM; Optiv Security Inc.; Microsoft; the Centers for Medicare & Medicaid Services;
 28 and any state or federal health insurance exchange. Provided, however, that the Settlement Class
 Representatives and Settlement Class Members are not releasing (a) the cyber attackers who
 committed the criminal acts involved in the Data Breach, and (b) any person or entity that
 intentionally misuses the Personal Information stolen in the Data Breach for unlawful purposes.

¹ All capitalized words have the meaning set forth in the Settlement Agreement and Release.

1
2 Thus, the Amendment explains that Settlement Class Members are *not* releasing the Released
3 Claims (claims “related to or arising from any of the facts alleged in any of the Actions,” Settlement
4 Agreement section 1.32) with respect to either the original cyber attackers who stole Class Members’
5 personal information from Anthem (“the Stolen PII”), or with respect to any other person or entity who
6 intentionally misuses Class Members’ Stolen PII for unlawful purposes.

7 The Amendment also includes an exemplar list of the persons and entities who, in addition to
8 Defendants, are being released. This exemplar list will help Settlement Class Members understand that
9 they are releasing more than just the Defendants in exchange for the substantial benefits the Settlement
10 confers. The Court should preliminarily approve the amended class action settlement, which narrows
11 and clarifies the release.

12 **B. The Notices and Claims Forms Are Revised.**

13 The parties have revised the Notices to reflect the changes to the release language described
14 above. At the Court’s suggestion, and also based on the Parties’ own review to make sure that the
15 Notices are clear and understandable, the Parties have made the following changes to the Notices and
16 Claim Forms, which are attached to the Amendment (Suppl. Cervantez Decl. Ex. A) as Exhibits 10-12.
17 Redlines reflecting the changes are attached as Exhibit B to the Supplemental Cervantez Declaration, as
18 follows:

19 **Postcard Notice** (Amendment, Exhibit 10(a); Exhibit B-10(a)): (1) Explained the eligibility
20 requirements for obtaining Alternative Compensation rather than Credit Monitoring Services; (2)
21 Separated out the amount that may be requested for attorneys’ fees from the amount that may be
22 requested for litigation expenses.

23 **Long Form Notice** (Amendment, Exhibit 10(b); Exhibit B-10(b)): (1) Emphasized that Class
24 Members should read the “entire” Notice carefully; (2) Clarified the deadline for filing a claim for Out-
25 of-Pocket-Costs (which is pegged to the Final Approval date, a date that the Parties will not know when
26 Notice is sent); (3) Explained that Class Members who opt out are not entitled to benefits under the
27 Settlement; (4) Clarified that even Settlement Class Members who “do nothing” can still access Fraud
28

1 Resolution Services; (5) Clarified how the payment amount for Alternative Compensation will be
2 calculated; (6) Clarified instructions for filing claims for Credit Monitoring Services or Alternative
3 Compensation; (7) Clarified that the Settlement Fund is being used to pay for Fraud Resolution Services.

4 **Email Notice** (Amendment, Exhibit 10(c); Exhibit B-10(c)): Clarified requirements for
5 obtaining Alternative Compensation; (2) Clarified that the Notice is only a summary.

6 **Publication Notice** (Amendment, Exhibit 10(d); Exhibit B-10(d)): (1) Clarified requirements for
7 obtaining Alternative Compensation; (2) Clarified that the Notice is only a summary.

8 **Claim Form for Credit Monitoring Services or Alternative Compensation** (Amendment,
9 Exhibit 11, Exhibit B-11): Clarified that the mailed Postcard Notice can be used only to request Credit
10 Monitoring Services, and cannot be used to request Alternative Compensation.

11 **Claim Form for Out-of-Pocket Costs** (Amendment, Exhibit 12): (1) Clarified deadlines for
12 submission of claims for Out-of-Pocket Costs; (2) Clarified requirements for obtaining Alternative
13 Compensation; (3) Clarified documentation requirements.

14 **C. The [Proposed] Preliminary Approval Order Has Been Clarified.**

15 Due to the delay in obtaining preliminary approval and finalizing the text of the proposed
16 Notices and Claims Forms, which affects when the Settlement Administrator can begin printing and
17 sending out Notices, and due to the length of time needed to mail 50 million postcards, the Parties
18 propose that the schedule be continued one week from what was originally proposed, as reflected in the
19 Revised [Proposed] Order Granting Motion for Preliminary Approval of Class Action Settlement
20 (Exhibit 9 to the Amendment).

21 The [Proposed] Order has also been clarified to accurately reflect the Settlement Agreement and
22 proposed Notices, and to conserve judicial economy, by requiring that objections be sent to both the
23 Court *and* to the Settlement Administrator. As originally drafted, the Order could have been read to
24 require that objections be sent only to the Court, which could have required the Court to file, serve, or
25 otherwise notify the Parties of any objections.

1 Respectfully submitted,

2 **ALTSHULER BERZON LLP**

3 Dated: August 24, 2017

By: */s/ Eve Cervantez*

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