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9  
10 **IN THE SUPERIOR COURT OF CALIFORNIA**  
11 **IN AND FOR THE COUNTY OF LOS ANGELES**

12 COORDINATION PROCEEDING  
SPECIAL TITLE [RULE 3.550]

13 **ANTHEM BLUE CROSS**  
14 **AFFORDABLE CARE ACT CASES**

Judicial Council Coordination  
Proceeding No.: 4805

15 **CLASS ACTION**

16 **MEMORANDUM OF POINTS AND**  
17 **AUTHORITIES IN SUPPORT OF**  
18 **APPLICATION FOR FINAL APPROVAL**  
19 **OF CLASS ACTION SETTLEMENT**

20 Final Approval Hearing Scheduled Per April  
5, 2016 Preliminary Approval Order:

21 Hearing Date: August 12, 2016  
22 Time: 9:00 a.m.  
23 Courtroom: Department 323

24 Honorable Elihu M. Berle

**CONFORMED COPY**  
**ORIGINAL FILED**  
Superior Court of California  
County of Los Angeles

JUN 08 2016

Sherri R. Carter, Executive Officer/Clerk  
By: Stephanie Amador, Deputy  
Stephanie Amador

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1 Plaintiffs<sup>1</sup> respectfully submit this Memorandum of Point and Authorities in Support of  
2 their Application for Final Approval of the Settlement Agreement and Release effective March  
3 18, 2016 (the “Settlement” or “Settlement Agreement”) with Defendant Blue Cross of California,  
4 dba Anthem Blue Cross (“Anthem”).<sup>2</sup>

5 **I. INTRODUCTION**

6 On April 5, 2016, the Court issued an Order, *inter alia*, preliminarily approving the  
7 Settlement Agreement, preliminarily certifying a settlement class, approving the form and content  
8 of the notice, and approving notice procedures (“Preliminary Approval Order”).<sup>3</sup> Now, Plaintiffs  
9 request that the Court enter a final judgment approving the Settlement Agreement and certifying  
10 the Settlement Class.

11 There can be no doubt that the Settlement is fair, reasonable and adequate and should be  
12 approved. The Settlement is the culmination of protracted negotiations that were non-collusive  
13 and overseen by a well-respected mediator experienced in the healthcare field. (Declaration of  
14 Jerry Flanagan in Support of Application for Final Approval of Class Action Settlement, Award  
15 of Attorneys’ Fees, Payments to Class Representatives, and Reimbursement of Expenses  
16 (“Flanagan Dec.”), ¶¶ 9, 13-20.) Plaintiffs’ Counsel worked diligently to ensure that the Class  
17 received the best relief possible, tailored to the issues raised in litigation, in an expedited manner.  
18 (*Ibid.*) *At the time of this filing, zero (0) Class Members have opted out of the Settlement; zero (0)*  
19 *Class Members have filed objections.* (Declaration of Ann Haan [of Rust Consulting, Inc.]  
20 Related to Class Notice (“Haan Dec.”), attached to the Flanagan Dec. as Exhibit 6, ¶¶ 11-12.)

21 In the coordinated action, Plaintiffs alleged that Anthem engaged in misrepresentations of  
22 its physician and hospital (“provider”) network resulting in increased out-of-pocket costs for  
23 individuals who were issued Affordable Care Act (“ACA”) Health Plans by Defendant in the  
24 State of California for the year 2014 (“Settlement Class Members”). (Flanagan Dec., ¶¶ 4, 14-

25 \_\_\_\_\_  
26 <sup>1</sup> Unless otherwise stated herein, all capitalized terms shall have the same meanings as set forth in  
27 the Settlement Agreement, effective March 18, 2016. Counsel for Plaintiffs and the Settlement  
28 Class are referred to herein as “Plaintiffs’ Counsel” or “Class Counsel”.

<sup>2</sup> The Settlement Agreement is attached as Exhibit 1 to the Flanagan Dec. filed concurrently with  
this memorandum.

<sup>3</sup> The Court’s April 5, 2016 Preliminary Approval Order is attached as Exhibit 3 to the Flanagan  
Dec. filed concurrently with this memorandum.

1 17.) The principle of the financial component of the Settlement is that Class Members will have  
2 the opportunity to recover 100% of their Out-of-Pocket Expenses. Under the Settlement, Anthem  
3 will mail checks, with no claims process required, to affected Settlement Class Members, in the  
4 aggregate, Fourteen Million, Nine Hundred Fifty-Nine Thousand, Four Hundred Thirty-Five  
5 Dollars and Zero Cents (\$14,959,435.00) (the “Settlement Funds”). (Flanagan Dec., ¶¶ 4-6, 29.)  
6 The Settlement Funds represent the sum of: (i) \$12,037,599, which is 70% of the estimated billed  
7 charges incurred by members of EPO ACA Health Plans for treatment with Out-of-Network EPO  
8 Professionals<sup>4</sup>; and, (ii) \$2,921,836, which is 50% of the estimated billed charges incurred by  
9 members of PPO ACA Health Plans for treatment with Out-of-Network PPO Professionals<sup>5</sup>.  
10 (*Ibid.*) This payment approximates and likely exceeds Settlement Class Members’ actual Out-of-  
11 Pocket Expenses. Additionally, all Class Members will have an opportunity to recover 100% of  
12 their Out-of-Pocket Expenses for out-of-network treatments and services for which Anthem does  
13 not have a record<sup>6</sup> through two claims processes. (*Id.*, ¶¶ 5-6, 28-32.)

14 The Agreement also provides that Anthem will undertake appropriate process  
15 enhancements necessary to protect consumers in the future by improving member, provider, and  
16 broker understanding about ACA-compliant plans, access to in-network providers, and accuracy  
17 of provider lists. (Flanagan Dec., ¶¶ 8, 33.) In particular, going forward, Anthem will treat a  
18 provider as in-network for billing purposes if a provider is listed in-network on Anthem’s  
19 Provider Directory and a member relies on that network status when seeking medical services.  
20 (*Ibid.*)

21 The relief is not only within the range of what Plaintiffs could have obtained at trial, but  
22 likely exceeds what Plaintiffs could have obtained at trial, and is of significantly more value to

23 \_\_\_\_\_  
24 <sup>4</sup> “Out-of-Network EPO Professionals” means medical professionals who were out-of-network at  
25 the time that a Settlement Class Member who was enrolled in an Exclusive Provider Organization  
26 (“EPO”) ACA plan received medical services from those medical professionals during the Class  
27 Period. (Settlement Agreement, § (II)(L).)

28 <sup>5</sup> “Out-of-Network PPO Professionals” means medical professionals who were listed as in-  
network in any Anthem ACA Preferred Provider Organization (“PPO”) plan but who were not  
participating in-network at the time medical services were provided during the Class Period.  
(Settlement Agreement, § (II)(M).)

<sup>6</sup> Although Anthem is aware of some of the out-of-network services *provided* to Settlement Class  
Members, Anthem does not have records reflecting how much Settlement Class Members  
actually *paid* for those services.

1 Settlement Class Members because it will be received by Settlement Class Members sooner than  
2 could have been accomplished without a settlement. (Flanagan Dec., ¶¶ 3, 46.)

3 Anthem has also agreed to pay, as approved by the Court, reasonable attorneys' fees,  
4 including reimbursement of expenses, to Plaintiffs' Counsel in an amount not to exceed  
5 \$3,950,000 and an incentive award in the amount of \$5,000 to each of the ten Plaintiffs. *These*  
6 *amounts will not reduce the level of recovery for Settlement Class Members.* Therefore, the full  
7 \$14,959,435.00 will be provided to Class Members as well as the full amount of all valid claims  
8 submitted by Settlement Class Members. (Flanagan Dec., fn. 3, ¶¶ 4, 10, 35.) The fee and  
9 expense provisions were negotiated after the material substantive terms of the Settlement had  
10 been agreed to in principle and were ultimately agreed to based on the mediator's  
11 recommendation. (*Id.*, ¶ 11.)

12 It is on this basis and the facts set forth in detail in the accompanying Flanagan Dec., as  
13 well as the favorable reaction of the members of the Class, that Plaintiffs request that this  
14 settlement be finally approved.

15 **A. Background Facts and Settlement Negotiations**

16 The Flanagan Dec. filed contemporaneously with this memorandum provides a more  
17 detailed background on the litigation. (Flanagan Dec., ¶¶ 13-26.)

18 The Plaintiffs in this coordinated action filed their respective class action complaints  
19 between June 20, 2014 and July 17, 2014. (Flanagan Decl., ¶¶ 14-17; see Flanagan Decl. ISO  
20 Preliminary Approval, Feb. 19, 2015 ("Preliminary Approval Flanagan Decl."), Exs. B-E.) The  
21 Lawsuits collectively allege ten causes of action challenging Anthem's conduct as unlawful,  
22 unfair, and fraudulent in violation of California Business and Professions Code sections 17200, et  
23 seq. and 17500, et seq.; violation of the Consumers Legal Remedies Act, California Civil Code  
24 section 1750, et seq.; breach of the individual health service plan contracts entered into between  
25 Class Members and Anthem; breach of the implied covenant of good faith and fair dealing; fraud  
26 by intentional misrepresentation; and, fraud by concealment. (*Ibid.*) The Lawsuits seek to recover  
27 damages and restitution, an order enjoining Anthem's alleged continued unlawful, unfair, and  
28 fraudulent conduct, and a declaratory judgment. (*Ibid.*)

1           On February 5, 2015, the Lawsuits were ordered coordinated and assigned to the  
2 Honorable Elihu M. Berle, Los Angeles County Superior Court, Judicial Council Coordination  
3 Proceeding No. 4805. (Flanagan Dec., ¶ 18.)

4           The Parties discussed possible settlement of the matter and held an initial mediation  
5 session presided over by Justice Edward A. Panelli (ret.) of Judicial Arbitration and Mediation  
6 Services (“JAMS”) on August 29, 2014. (Flanagan Dec., ¶ 19.) Three additional mediations  
7 presided over by Justice Panelli were held on February 4, 2015, April 29, 2015, and August 5,  
8 2015. (*Ibid.*)

9           Negotiations regarding a potential settlement were thorough, protracted, and exhaustive.  
10 For more than one year after the first mediation with Justice Panelli, the Parties worked actively  
11 to resolve this case. (Flanagan Dec., ¶¶ 9, 19-20.) In addition to the four in-person mediation  
12 sessions, Justice Panelli continued to be involved in telephonic mediation and “shuttle  
13 diplomacy” between the Parties. (*Id.*, ¶ 20.) The Parties had on-going discussions among counsel  
14 throughout the negotiation process. (*Ibid.*) Following numerous telephone calls among counsel,  
15 hundreds of emails, and multiple rounds of negotiations regarding possible terms of settlement,  
16 the essential substantive terms were agreed to on August 5, 2015. (*Ibid.*) After agreeing to the  
17 substantive terms, counsel for Anthem and Plaintiffs’ Counsel continued negotiations regarding  
18 the draft of the Settlement Agreement. (*Ibid.*) The negotiations were likewise protracted, raised  
19 several additional issues requiring further negotiations, and lasted an additional six months.  
20 (*Ibid.*)

21           The Settlement was entered into by Plaintiffs’ Counsel who are intimately familiar with  
22 the factual and legal issues raised by the Lawsuits and who are experienced practitioners in class  
23 actions, particularly in complex health care litigation. (Flanagan Dec., ¶ 21.) Plaintiffs’ Counsel  
24 conducted an extensive investigation before and during the litigation of the legal and factual  
25 underpinnings of the claims, including research of relevant case law and conducted interviews of  
26 numerous Class Members impacted by the challenged practices. (*Id.*, ¶¶ 21-23.) At the request of  
27 Plaintiffs’ Counsel, Anthem informally produced information regarding Anthem’s provider  
28 networks as well as 1,500 pages of information reflecting corrective actions that Anthem began to



1 undertake following the filing of the Lawsuits regarding the marketing and sale of ACA Health  
2 Plans. (*Id.*, ¶ 21.) As part of this process, Anthem personnel participated in six in-person  
3 depositions under oath. (*Ibid.*) Additionally, Anthem provided Plaintiffs a detailed claims  
4 accounting, including the Declaration of Steve McGaughey, and Plaintiffs’ expert actuary  
5 reviewed the claims data and confirmed the accuracy of Anthem’s methodology. (*Ibid.*; see  
6 Exhibits R and S to the Flanagan Decl. ISO Preliminary Approval.)

7 In addition to the informal discovery summarized above, Consumer Watchdog attorneys  
8 received and reviewed several thousand pages of documents regarding Anthem’s ACA provider  
9 networks in response to a Public Records Act (“PRA”) request to the Department of Managed  
10 Health Care. (Flanagan Dec., ¶ 22.) Consumer Watchdog attorneys also reviewed hundreds of  
11 pages of Anthem premium rate increase filings that contain enrollment, provider network, and  
12 coverage data. (*Ibid.*) Furthermore, Consumer Watchdog attorneys submitted two PRA requests  
13 to the California insurance exchange, Covered California, and received and reviewed over 1,700  
14 pages of documents regarding Anthem’s provider networks, pricing of those networks, and  
15 geographic-spread of those networks. (*Ibid.*)

16 The informal discovery and PRA documents allowed Plaintiffs’ Counsel to complete a  
17 thorough analysis of the underlying issues in the litigation and to determine the best manner in  
18 which to resolve the Lawsuits, including: (i) appropriate “process enhancements” necessary to  
19 protect consumers in the future, a description of which is attached as Exhibit 8 to the Settlement  
20 Agreement; and, (ii) appropriate reimbursements to Settlement Class Members, in the form of a  
21 check with no claims process required, as well as two secondary claims procedures to ensure  
22 Class Members may recover 100% of their Out-of-Pocket Expenses. (Flanagan Dec., ¶ 23.) These  
23 provisions are presented in detail in Section (III)(F) of the Settlement Agreement. (*Ibid.*) Thus,  
24 when the Parties agreed to the terms of this Settlement, which is now presented for final approval,  
25 Plaintiffs’ Counsel had conducted their own independent investigation and requested, received,  
26 and analyzed information produced by Anthem. (*Ibid.*)

27 On February 19, 2016, the Parties submitted the Settlement to the Court for preliminary  
28 approval. (Flanagan Dec., ¶ 24.) On March 15, 2016, a hearing was held on preliminary approval

1 of the proposed settlement. (*Ibid.*) The Parties entered into a revised Settlement Agreement  
2 effective March 18, 2016 in response to the Court’s comments at the March 15, 2016 hearing.  
3 (*Ibid.*; *id.*, Ex. 1) The Parties attended a subsequent preliminary approval hearing on March 29,  
4 2016. The Parties submitted revised documents and additional support to the Court in response to  
5 the Court’s directions at the March 29, 2016 hearing. (*Ibid.*; *id.*, Ex. 2.)

6 The Court held another preliminary approval hearing on April 5, 2016. (Flanagan Dec., ¶  
7 25.) On April 5, 2016, the Court issued an Order granting preliminary approval of the proposed  
8 Settlement Agreement. (*Ibid.*; *id.*, Ex. 3.) In reviewing and preparing the notice documents to go  
9 out for mailing, the Parties agreed to make non-substantive edits to the notice documents in the  
10 interest of utmost clarity. The Parties submitted a Stipulation and [Proposed] Order RE Amended  
11 Notice Documents to the Court on April 26, 2016, attaching the revised notice documents for  
12 approval. (*Id.*, ¶ 26, Ex. 4.) On May 3, 2016, the Court signed an Order approving the Amended  
13 Notice Documents. (*Id.*, Ex. 4.)

## 14 **II. TERMS OF SETTLEMENT AGREEMENT**

### 15 **A. Settlement Class**

16 The Settlement Agreement provides that the Settlement Class includes any and all  
17 individuals who were issued ACA Health Plans by Defendant in the State of California for the  
18 year 2014. (Flanagan Dec., ¶ 27.)

### 19 **B. Consideration to Class Members**

20 In general, under the Settlement all Settlement Class Members who received health care  
21 services rendered by out-of-network medical professionals, as defined in the Settlement, that, but  
22 for the professional’s out-of-network status, would otherwise have been covered as in-network  
23 health care services, will have the opportunity to recover 100% of their Out-of-Pocket Expenses.<sup>7</sup>  
24 (Flanagan Dec., ¶ 28.)

25  
26  
27 <sup>7</sup> “Out-of-Pocket Expense” is defined as the difference between what the Settlement Class  
28 Member actually paid and what they would have paid had the medical expenses been processed  
as in-network under the terms of the Settlement Class Member’s applicable Evidence of Coverage  
and which are not subject to any other limitation or exclusion. (Settlement Agreement, (II)(N).)

1                   **1. Direct Payments to Settlement Class Members with No Claims Process**  
2                   **Required**

3                   First, all Settlement Class Members who received health care services rendered by Out-of-  
4 Network EPO Professionals or Out-of-Network PPO Professionals for which Anthem has record  
5 will receive payment, *with no claims process required*, equal to the percentages of the “billed”  
6 charges as set out below. (Flanagan Dec., ¶ 29.) This payment approximates and likely exceeds  
7 Settlement Class Members’ actual Out-of-Pocket Expenses.<sup>8</sup> In the aggregate, Anthem will pay  
8 impacted affected Settlement Class Members Fourteen Million, Nine Hundred Fifty-Nine  
9 Thousand, Four Hundred Thirty Five Dollars and Zero Cents (\$14,959,435.00) (the “Settlement  
10 Funds”). (*Ibid.*) The Settlement Funds represent the sum of: (i) \$12,037,599, which represents  
11 70% of the billed charges incurred by members of EPO plans for treatment with Out-of-Network  
12 EPO Professionals; and, (ii) \$2,921,836, which is 50% of the billed charges incurred by members  
13 of PPO plans for treatment with Out-of-Network PPO Professionals. (*Ibid.*) Notably, EPO health  
14 plans provide no coverage for treatment with out-of-network professionals. (*Ibid.*) In contrast,  
15 PPO health plans provide some coverage for treatment with out-of-network professionals.  
16 Accordingly, the Settlement percentage agreed to by the Parties is higher for EPO members than  
17 it is for PPO members. (*Ibid.*) As summarized below and detailed in the Settlement Agreement,  
18 all Settlement Class Members will also have the opportunity to submit claims for any additional  
19 Out-of-Pocket Expenses. (*Ibid.*) Anthem provided Plaintiffs a detailed claims accounting,  
20 including the Declaration of Steve McGaughey, and Plaintiffs’ expert actuary reviewed the claims  
21 data and confirmed the accuracy of Anthem’s methodology. (*Ibid.*; see Exhibits R and S to the  
22 Flanagan Decl. ISO Preliminary Approval.)

23                   The Settlement Funds will be distributed in the form of settlement checks mailed to the  
24 Settlement Class Members.<sup>9</sup> (Flanagan Dec., ¶ 30.) *Settlement Class Members do not need to file*  
25 *a claim to receive reimbursement; a reimbursement check will be mailed directly to each affected*  
26 *Settlement Class Member who does not opt-out of the settlement.* (*Ibid.*) Notably, the

27 \_\_\_\_\_  
<sup>8</sup> See footnote 6, *supra*.

28 <sup>9</sup> Anthem communicates with its customers via direct mail concerning modifications to their health plans.

1 \$14,959,435.00 in checks being mailed to Settlement Class Members does not include the  
2 estimated recovery for each Class Member that will be submitting a claim through the Settlement.  
3 (*Ibid.*)

## 4 **2. Claims Process for Out-of-Pocket Damages Exceeding Settlement** 5 **Payment**

6 If the amount of the reimbursement check does not fully reimburse a Settlement Class  
7 Member's Out-of-Pocket Expenses, the Settlement Class Member may submit a claim  
8 substantiating the amount of payment made that exceeds the individual settlement amount.  
9 (Flanagan Dec., ¶ 31.) These additional payments will be fully reimbursed by Anthem from an  
10 uncapped fund. A claims process is required because Anthem is unaware of any additional  
11 amount Settlement Class Members might have paid to an out-of-network professional provider, as  
12 defined in the Settlement. (*Ibid.*) Following final approval of the Settlement, Settlement Class  
13 Members will be provided a form titled "Class Action Claim Form for Out-of-Pocket Expenses in  
14 Excess of Settlement Payment" (substantially in the form attached to Flanagan Dec., Ex. 2, Ex. B-  
15 5), which will clearly explain what the Settlement Class Member must submit to the Settlement  
16 Administrator in order to recover for those claims. (*Ibid.*) Any disputes as to the adequacy of the  
17 claims or related documentary support for these claims will be resolved by Justice Panelli  
18 according to the procedures described in the Settlement. (*Ibid.*)

## 19 **3. Claims Process for Previously Unsubmitted Claims**

20 Finally, any Settlement Class Member who has a claim for medical services rendered by  
21 an Out-of-Network EPO or Out-of-Network PPO Professional that was not previously submitted  
22 to Anthem, and therefore for which Anthem has no record, will be able to submit such claim(s)  
23 under the Settlement, which will be processed as in-network with the settlement payments being  
24 paid out of an uncapped fund. (Flanagan Dec., ¶ 32.) A claims-made process is appropriate and  
25 necessary here because Anthem does not have records of or information as to claims that were  
26 never submitted to it and thus cannot calculate the amount of the settlement payment. (*Ibid.*)  
27 Following final approval of the Settlement, Settlement Class Members will be provided a form  
28 titled "Class Action Claim Form for Reimbursement of Qualified Out-of-Pocket Expenses for

1 Previously Unsubmitted Claims for Out-of-Network Professional Services” (substantially in the  
2 form attached to Flanagan Dec., Ex. 2, Ex. B-4), which will clearly explain what the Settlement  
3 Class Member must submit to the Settlement Administrator in order to recover for those claims.  
4 (*Ibid.*) Any disputes as to the adequacy of the claims or related documentary support for these  
5 claims will be resolved by Justice Panelli according to the procedures described in the Settlement.  
6 (*Ibid.*)

#### 7 **4. Process Enhancements**

8 Anthem also agrees to implement a series of enhancements regarding their marketing, sale  
9 and implementation of ACA Health Plans, including measures to improve member, provider, and  
10 broker understanding about ACA Plans, access to in-network providers, and accuracy of provider  
11 lists. (Flanagan Dec., ¶ 33.) In particular, going forward, Anthem will treat a provider as in-  
12 network for billing purposes if a provider is listed in-network on Anthem’s Provider Directory  
13 and a member relies on that network status when seeking medical services. (*Ibid.*) These process  
14 enhancements will save consumers a significant amount of money in the future. (*Ibid.*)

#### 15 **C. Cy Pres Award**

16 For putative class members who opt out of the settlement, for class members who do not  
17 cash their settlement checks within 120 days of the date Anthem mails such checks, and for those  
18 class members for whom the Settlement Administrator is unable to obtain a valid address, any  
19 Settlement Funds payable to those class members will be distributed to the *cy pres* recipient, St.  
20 Jude Children’s Research Hospital. (Settlement Agreement, §§ III(F)(1)(d)-(e), III(F)(2)(b),  
21 III(F)(3)(b), III(I).)

22 In no circumstance will any of the Settlement Funds be retained by, or revert to, Anthem.  
23 (Flanagan Dec., ¶ 7.) A *cy pres* award is justified here under California law. Plaintiffs’ Counsel  
24 have previously submitted briefing on this issue and incorporate those arguments by reference.  
25 (Memorandum of Points and Authorities In Support of Joint Motion for Order Preliminarily  
26 Approving Settlement (“Preliminary Approval Brief”), Feb. 19, 2016, pp. 10-11; Declaration of  
27 Ari Dybnis Regarding Proposed *Cy Pres* Recipient in Support of Joint Motion for Entry of Order  
28 Preliminarily Approving Settlement and Directing Dissemination of Class Notice, Feb. 26, 2016;

1 *Nachshin v. AOL* (9th Cir. 2011) 663 F.3d 1034, 1038-1041; *Dennis v. Kellogg Co.* (9th Cir.  
2 2012) 697 F.3d 858, 865.)

3 **D. Release and Discharge of Claims**

4 The Settlement Agreement provides that, as of the Settlement Effective Date, Plaintiffs  
5 and the Settlement Class Members will fully release any and all known and unknown claims for  
6 relief, causes of action, suits, rights of action, or demands, at law or in equity, whether sounding  
7 in contract, tort, equity, or any violation of law or regulation, including, without limitation, claims  
8 for injunctive or other equitable relief, damages, debts, indemnity, contribution, or for costs,  
9 expenses and attorney's fees, that were or could have been brought in the Lawsuits relating to the  
10 marketing and/or sale of ACA Health Plans, including issues relating to the accuracy of provider  
11 directories. (Flanagan Dec., ¶ 34; Settlement Agreement, § II(Q).) The Settlement does not  
12 include a release of claims under section 1542 of the California Civil Code. (Flanagan Dec., ¶  
13 34.)

14 **E. Attorneys' Fees and Expenses**

15 As described in more detail in Plaintiffs' Application for Attorneys' Fees and  
16 Reimbursement of Expenses, filed contemporaneously herewith, the Settlement Agreement  
17 provides that, as an integrated term of this settlement, Anthem agrees to pay, as approved by the  
18 Court, reasonable attorneys' fees, including reimbursement of expenses, to Plaintiffs' Counsel not  
19 to exceed \$3,950,000. (Flanagan Dec., ¶ 35.) Such amounts shall be paid to Plaintiffs' Counsel  
20 within 30 business days after the Settlement Effective Date. (*Ibid.*) The Parties' negotiation of  
21 and agreement to the foregoing attorneys' fees and costs did not occur until after the substantive  
22 terms of the Agreement had been negotiated and agreed to in principle. (*Ibid.*) As Plaintiffs'  
23 Counsel noted at the Preliminary Approval hearing, the proposed attorneys' fees and incentive  
24 awards are *in addition to* the Settlement Funds to be provided to Class Members. (*Ibid.*)  
25 Therefore, the full \$14,959,435.00 in direct payments to Settlement Class Members with no  
26 claims process required will be provided to Class Members. (*Ibid.*) Furthermore, 100% of all  
27 Out-of-Pocket Expenses reflected in valid and timely claims filed by Settlement Class Members  
28 in the dual claims processes described above will be paid in full from an uncapped fund. (*Ibid.*)

1 Plaintiffs' Counsel have agreed to, and received client consent for, the following division  
2 of attorneys' fees in this Action based on the requested \$3,950,000 in total attorneys' fees and  
3 expenses: 22.8% to Consumer Watchdog, 22.8% to Shernoff Bidart Echeverria Bentley LLP,  
4 22.8% to the Law Offices of Scott C. Glovsky, APC, 22.8% to the Arns Law Firm, and 8.8% to  
5 Martinez Law Office, Inc. *All clients have given written approval of the fee sharing agreement.*  
6 *(See Mark v. Spencer (2008) 166 Cal.App.4th 219; Cal. Rules of Professional Conduct § 2-200;*  
7 *Cal. Rules of Court, rule 3.769(b); Flanagan Dec., ¶¶ 11, 36; Class Counsel Declarations*  
8 *Confirming Client Approval of Fee Sharing, Mar. 25, 2016.)*

9 **F. Payments To Class Representatives**

10 Anthem has agreed not to oppose Plaintiffs' Counsel's request that the Court approve an  
11 additional payment to each of the ten Plaintiffs as incentive awards in the amount of \$5,000 each.  
12 All incentive award payments shall be paid to Plaintiffs no later than 30 business days after the  
13 Settlement Effective Date. (Flanagan Dec., ¶ 37.) Each Plaintiff has submitted a declaration  
14 stating that he or she has devoted more than 50 hours assisting Class Counsel resolve the Action.  
15 *(Ibid.; Id., Ex. 14.)* The incentive awards to Plaintiffs are reasonable. *(See Clark v. Am.*  
16 *Residential Servs. LLC (2009) 175 Cal.App.4th 785, 806-07 (holding that specificity of the time*  
17 *and efforts expended by a Class representative is a critical factor in determining reasonableness of*  
18 *class representative enhancements); Flanagan Dec., ¶ 37.)* Moreover, the proposed incentive  
19 awards to Plaintiffs will not be deducted from the Settlement Funds to be provided to Class  
20 Members. (Flanagan Dec., ¶ 37.)

21 **G. Payment of Costs of Notice and Settlement Administration**

22 Under the Settlement, Anthem shall pay all costs associated with disseminating the  
23 Settlement Notice, the Settlement Administrator, settlement website, the toll-free number, and all  
24 associated expenses, including the neutral for adjudication of disputes about the timeliness and/or  
25 validity of a claim submitted pursuant to sections III(F)(2)(e)-(f) and III(F)(3)(b) of the  
26 Settlement Agreement. (Flanagan Dec., ¶ 38; Joint Supplemental Memorandum in Support of  
27 Joint Motion for Entry of Order Preliminarily Approving Settlement and Dissemination of Class  
28 Notice, § 6, Mar. 18, 2016; Settlement Agreement, § III(D)(5).)

1 **III. THE SETTLEMENT SHOULD BE APPROVED**

2 **A. The Settlement is Entitled to a Presumption of Fairness**

3 Where a settlement is reached through arms'-length bargaining, where investigation is  
4 sufficient to allow counsel and the Court to act intelligently, where counsel is experienced in  
5 similar litigation, and where the Class supports the settlement, the settlement is presumed to be  
6 fair. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.) Such a presumption is  
7 properly invoked here. As set forth in detail above and in the Flanagan Dec., the Parties engaged  
8 in extensive negotiations over the Settlement lasting over a year. (Flanagan Dec., ¶¶ 9-12, 19-  
9 20.) The process was overseen by a mediator well-versed in this area of the law. (*Id.*, ¶¶ 9, 19-  
10 20.) As detailed in the Flanagan Dec. and below (see § III.A.4., *infra*), the Parties have been  
11 represented by experienced class action and healthcare litigators who view this settlement  
12 favorably. (See Flanagan Dec., ¶ 44, Exs. 7-11.) The best interests of the Settlement Class  
13 remained Plaintiffs' Counsel's paramount consideration throughout the entire course of  
14 settlement discussions. (*Id.*, ¶ 43.) *Furthermore, of the approximately 700,000 Class Members*  
15 *zero (0) have opted-out at the time of this filing.* (See Haan Dec., ¶ 11.) *No Class Members have*  
16 *objected to the Settlement at the time of this filing.* (*Id.*, ¶ 12.) The Settlement Agreement  
17 therefore meets this Court's presumption of fairness.

18 **B. The Proposed Settlement is Fair, Reasonable, and Adequate**

19 Rule 3.769 of the California Rules of Court provides the framework for approval of class  
20 action settlements. Rule 3.769(a) states that a class action settlement "requires the approval of the  
21 court after hearing." Rule 3.769(g) states that "[b]efore final approval, the court must conduct an  
22 inquiry into the fairness of the proposed settlement."

23 The settlement of disputed claims is highly favored by California courts. (*Stambaugh v.*  
24 *Super. Ct.* (1976) 62 Cal.App.3d 231, 236.) In fact, there is a particularly strong judicial policy  
25 favoring settlement of class litigation. (*Bell v. Am. Title Ins. Co.* (1991) 226 Cal.App.3d 1589,  
26 1607-08.) In granting final approval of a class action settlement, the Court's inquiry is to  
27 determine that the settlement was not the product of fraud or collusion and is fair, adequate, and  
28 reasonable. (See *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800.)



1 In *Dunk*, the Court of Appeal, as courts have done in many other cases, endorsed the trial  
2 court’s examination of the following factors in determining whether a class action settlement is  
3 fair, reasonable, and adequate: (1) the amount offered in the settlement; (2) the risks involved in  
4 continued litigation; (3) the risk of maintaining class action status through trial; (3) the  
5 complexity, expense, and duration of litigation; (4) the experience and views of counsel; (5) the  
6 reaction of the class members to the proposed settlement; and (6) the stage of proceedings at  
7 which the settlement was achieved. (*Dunk, supra*, 48 Cal.App.4th at 1801.) These factors are  
8 discussed below.

9 **1. The Relief Offered in the Settlement**

10 In determining when a settlement is fair, adequate, and reasonable, the “most important  
11 factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered  
12 in settlement.” (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.) Here,  
13 each Settlement Class Member is entitled to receive the benefits described above and in the  
14 Flanagan Dec., and detailed in Section III(F) of the Settlement Agreement, including 100% of  
15 their Out-of-Pocket Expenses. The Settlement is a “fair, adequate, and reasonable” compromise  
16 because:

- 17 • All class members can recover 100% reimbursement of Out-of-Pocket Expenses. More  
18 specifically, Defendant agrees to pay Settlement Class Members, in the aggregate, an  
19 estimated \$14,959,435. The Settlement Funds represent the sum of: (i) \$12,037,599,  
20 which is 70% of the estimated billed charges incurred by members of EPO ACA Health  
21 Plans for treatment with Out-of-Network EPO Professionals; and, (ii) \$2,921,836, which  
22 is 50% of the estimated billed charges incurred by members of PPO ACA Health Plans for  
23 treatment with Out-of-Network PPO Professionals. Additionally, all Class Members will  
24 have an opportunity to recover Out-of-Pocket Expenses for which Anthem does not have a  
25 record through a two claims processes.
- 26 • Class Members and all Californians will benefit from Anthem’s process enhancements to  
27 protect consumers in the future. Anthem has agreed to undertake measures to improve:  
28 member, provider, and broker understanding about ACA-compliant plans, access to in-  
network providers, and accuracy of provider lists. In particular, going forward, Anthem  
will treat a provider as in-network for billing purposes if a provider is listed in-network on  
Anthem’s Provider Directory and a member relies on that network status when seeking  
medical services.

The relief is not only within the range, but likely far exceeds, what Plaintiffs could have  
obtained at trial given the nature of underlying issues. The Plaintiffs filed the Lawsuits to remedy

1 alleged misrepresentations regarding Anthem's ACA provider networks. This Settlement is  
2 designed to ensure the underlying issues are resolved, provides significant relief for the  
3 Settlement Class Members, and ensures they receive the benefits of that relief immediately.  
4 (Flanagan Dec., ¶¶ 2, 28-32.)

5 **2. Risks of Establishing Liability and the Risk of Maintaining Class**  
6 **Action Status through Trial**

7 Absent a settlement, Settlement Class Members faced risks of non-recovery. Even under  
8 the best-case analysis of Plaintiffs' Counsel, there could be long delays before a single Settlement  
9 Class Member would receive recovery. As such, this recovery is even more favorable than what  
10 the Class could have hoped to recover even if successful at every stage of the litigation, which,  
11 including appeals, could extend for the next several years. (See Flanagan Dec., ¶ 46.)

12 This factor weighs in favor of the approval of the proposed Settlement. Anthem has  
13 denied any wrongdoing or liability to Plaintiffs or members of the Settlement Class. A trial on  
14 the merits would require resolution of numerous complex issues of law and fact that would be  
15 heavily contested by Anthem during trial. The contracts governing the Plaintiffs' plans with  
16 Anthem include a mandatory arbitration agreement. Should litigation have proceeded, Anthem  
17 might have moved to compel arbitration of all claims. This posed a significant risk to continued  
18 litigation. Further, while Anthem had indicated it would file both a demurrer and a motion to  
19 strike should litigation proceed, such motions were never filed nor ruled on, thus the adequacy of  
20 the claims has never truly been tested. Although Plaintiffs believe they would overcome the  
21 obstacles presented, there are risks in litigation and particularly in complex litigation such as this.  
22 The difficulties inherent in this complex Action can cause delays that can eliminate the  
23 opportunity for timely and meaningful recovery by Settlement Class Members. These  
24 considerations posed a substantial risk in the litigation. (See Flanagan Dec., ¶ 47.)

25 Additionally, the Settlement Class has been preliminarily certified for settlement purposes  
26 only. (See Preliminary Approval Order, ¶¶ 2-3, attached as Exhibit 3 to the Flanagan Dec.)  
27 However, if this case were to proceed to trial, Anthem would undoubtedly contest class  
28 certification. Plaintiffs therefore face the risk that a motion for class certification would be

1 denied. Even if Plaintiffs' motion for class certification was granted, class certification orders are  
2 conditional in nature and may be changed, modified, or reversed at any time up until final  
3 judgment. (See Flanagan Dec., ¶ 48; Cal. Rules of Court, rule 3.764; *Linder v. Thrifty Oil Co.*  
4 (2000) 23 Cal.4th 429, 438; *Occidental Land, Inc. v. Super. Ct.* (1976) 18 Cal.3d 355, 360;  
5 *Weinstat v. Dentsply Intern. Inc.* (2010) 180 Cal.App.4th 1213, 1226.)

### 6 **3. Complexity, Expense and Likely Duration of the Litigation**

7 Unless the proposed Settlement is clearly inadequate on its face, its approval by the Court  
8 is preferable to the continuation of lengthy and expensive litigation. (*Wershba, supra*, 91  
9 Cal.App.4th at 247-48.) The relief available to Settlement Class Members is a significant  
10 recovery, which obviates the need for lengthy, uncertain and expensive trial and appeals.  
11 Significant additional work would be necessary if the case were to proceed to trial. A trial on the  
12 merits would entail considerable expense, including numerous experts, pre-trial motions,  
13 thousands more hours of attorney time and given the right to appeal, trial would not necessarily  
14 end the litigation. Therefore, even if the Class succeeded at every stage of the litigation,  
15 including trial and appeals, recovery would be substantially delayed by years by the time the  
16 entire process was completed. By contrast, the proposed Settlement ensures a timely relief,  
17 thereby maximizing the value of the Class' claims against Defendant. (See Flanagan Dec., ¶ 49.)

### 18 **4. Experience and Views of Counsel**

19 When the counsel recommending approval of the Settlement are competent and  
20 experienced, significant weight may be given to their opinion. (*In re Bluetooth Headset Products*  
21 *Liability Litigation* (9th Cir. 2011) 654 F.3d 935, 946; see also *Weinberger v. Kendrick* (2d Cir.  
22 1982) 698 F.2d 61, 75-76, cert. denied, 464 U.S. 818 (1983) [according great weight to opinion of  
23 experienced and competent counsel in favor of approval of settlement].) The Class has been  
24 represented by counsel with years of experience in litigating class and healthcare actions and who  
25 have entered into numerous class settlements that have been approved by courts throughout  
26 California. (See Flanagan Dec., ¶ 50, Exs. 7-11.)

### 27 **5. Reaction from the Class**

28 That zero (0) requests for exclusions and zero (0) objections have been filed at the time of

1 this filing compares favorably to other cases where settlements have been approved and should be  
2 taken as an indication of significant support for the Settlement Agreement among Settlement  
3 Class Members. (See *Natural Gas Anti-Trust Cases, I, II, III & IV*, Nos. 4221, 4228, 4224, 4226  
4 (Cal. Super. Ct. Dec. 11, 2006) WL 5377849 at \*2, citing *Stoetzner v. U.S. Steel Corp.* (3d. Cir.  
5 1990) 897 F.2d 115, 118-19 [“When relatively few class members object to or exclude  
6 themselves from a class action settlement, courts interpret that response as evidence that the  
7 settlement warrants final approval”]; *7-Eleven Owners for Fair Franchising v. Southland Corp.*  
8 (2000) 85 Cal.App.4th 1135, 1152-53 [court found the response of class members  
9 “overwhelmingly positive” where a “mere 80 [out] of the 5,454 national class members elected to  
10 opt out”].) Class Members who have contacted Class Counsel welcomed the Settlement and had  
11 only minor questions regarding the Settlement and key dates. (Flanagan Dec., ¶ 45.)

#### 12 **6. The Stage of the Proceedings at which Settlement was Achieved**

13 The Lawsuits were settled after more than one year of extensive negotiations regarding a  
14 potential settlement were thorough, protracted, and exhaustive. (See Flanagan Dec., ¶¶ 12-20.)

#### 15 **IV. THE NOTICE PLAN COMPLIED WITH THIS COURT’S PRELIMINARY** 16 **APPROVAL ORDER AND APPLICABLE LEGAL STANDARDS**

17 The purpose of class notice is to provide class members with sufficient information to  
18 decide whether to accept the benefits of the proposed settlement, object, or opt out. (See *In re*  
19 *Vitamin Cases* (2003) 107 Cal.App.4th 820, 828.) The Notice here fully comports with the case  
20 law and California Rule of Court, rule 3.766, which includes, *inter alia*, requirements for content  
21 of class notice (rule 3.766(d)) and manner of giving notice (rule 3.766(e)). Notice of the Court’s  
22 final judgment will be given to the Class by posting the final judgment on the settlement website  
23 consistent with California Rule of Court, rule 3.771(b).

#### 24 **A. Notices**

25 Pursuant to the Preliminary Approval Order, the mailed notice, substantially in the form of  
26 Exhibit B to the May 3, 2015 Order RE Amended Notice Documents (the “Summary Settlement  
27 Notice”) was mailed by Rust Consulting, Inc., the Court-appointed Settlement Administrator, by  
28 first class mail on or around May 5, 2016, to each of the 712,059 Settlement Class Member’s last

1 known address as reflected in the records of Anthem Blue Cross and as updated by the Settlement  
2 Administrator. (Haan Dec., ¶ 5.) As part of the preparation for mailing, Rust Consulting ran  
3 712,059 records with a mailing address through the National Change of Address database  
4 (NCOA) and received updated addresses for 66,754 records. (*Ibid.*) The addresses for the 66,754  
5 records were updated prior to mailing on May 5, 2016. As of May 26, 2016, 27,844 Summary  
6 Notices had been returned as undeliverable. (*Ibid.*) Rust Consulting will run an address search  
7 (skiptrace), update any addresses accordingly, and re-mail Summary Settlement Notices to those  
8 updated addresses. (*Id.*, ¶ 6.) Pursuant to the Court’s Preliminary Approval Order, Rust  
9 Consulting will provide an updated report on Class Notice by August 1, 2016. (*Ibid.*; Flanagan  
10 Dec., ¶ 40.)

11 The Summary Settlement Notice referred Settlement Class Members to the settlement  
12 website ([www.FelserAnthemBlueCrossACASettlement.com](http://www.FelserAnthemBlueCrossACASettlement.com)) created by the Settlement  
13 Administrator for purposes of obtaining detailed information relating to the terms of the  
14 Settlement, and including relevant deadlines and the date of this hearing. (Haan Dec., ¶¶ 4(e),  
15 10.) Also pursuant to the Preliminary Approval Order, the Full Settlement Notice, substantially  
16 in the form of Exhibit B to the May 3, 2015 Order RE Amended Notice Documents (the Full  
17 Settlement Notice and the Summary Settlement Notice are sometimes jointly referred to as the  
18 “Notices”), was made available to the public in English and Spanish on the settlement website.  
19 (*Id.*, ¶ 4(e).) The Summary Settlement Notice provided a toll-free-number to allow Settlement  
20 Class Members to call to request a mailed copy of the Full Settlement Notice and directed  
21 Settlement Class Members to the settlement website. (*Id.*, ¶ 4(d).) The settlement website also  
22 provides the toll-free telephone support line number in English and Spanish, the mailing address  
23 for the Settlement Administrator, contact information for Class Counsel, answers to “Commonly  
24 Asked Questions”, and court-imposed deadlines. (*Id.* at ¶¶ 4(e), 10; Flanagan Dec., ¶ 41.)

25 **B. The Notice Plan Meets the Requirements of Applicable Law and Applicable**  
26 **California Rules of Court**

27 The standard in this Court for a notice program is to ensure the “notice has a reasonable  
28 chance of reaching a substantial percentage of the class members.” (*Wershba, supra*, 91

1 Cal.App.4th at 230.) In this case, as stated above, notice was mailed directly to 712,059  
2 Settlement Class Members. (See Haan Dec., ¶ 5.)

3 The summary mailed notice, the settlement website, and toll-free telephone support line  
4 provided the most reasonable chance of reaching all of the members of the Settlement Class and  
5 satisfies applicable legal requirements as well as applicable California Rules of Court. (See  
6 *Chavez v. Netflix* (2008) 162 Cal.App.4th 43, 58; Cal. Rules of Court, rule 3.769(f) [“the court  
7 may order a means of notice reasonably calculated to apprise the class members of the pendency  
8 of the action ...”].) Regarding the content of the notice, the “notice given to the class must fairly  
9 apprise the class members of the terms of the proposed compromise and of the options open to  
10 dissenting class members.” (*Trotsky v. Los Angeles Fed. Sav. & Loan Ass’n* (1975) 48  
11 Cal.App.3d 134, 151-52; Cal. Rules of Court, rule 3.766(d); see Cal. Rules of Court, rule  
12 3.679(f).) The Notices provided all the required information. (Flanagan Dec., ¶ 42.)

13 **V. THE COURT SHOULD ALSO FINALLY APPROVE CERTIFICATION OF THE**  
14 **SETTLEMENT CLASS**

15 Two requirements must be met in order to certify a settlement class: “(1) there must be  
16 an ascertainable class; and (2) there must be a well defined community of interest[s] in the  
17 questions of law and fact involved affecting the parties to be represented.” (*Daar v. Yellow Cab*  
18 *Co.* (1967) 67 Cal.2d 695, 704, internal citations omitted.) Community of interest includes three  
19 factors: “(1) predominant common questions of law or fact; (2) class representatives with claims  
20 or defenses typical of the class; and (3) class representatives who can adequately represent the  
21 class.” (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 470.)

22 **A. The Class is Ascertainable and Numerous**

23 “Ascertainability goes to the heart of the question of class certification, which requires a  
24 class definition that is ‘precise, objective and presently ascertainable.’” (*Global Minerals &*  
25 *Metals Corp. v. Super. Ct.* (2003) 113 Cal.App.4th 836, 858, citing *In re Copper Antitrust Litig.*  
26 (2000) 196 F.R.D. 348, 353.) The definition of the Settlement Class, as detailed in the Settlement  
27 Agreement, is precise, objective and clearly defined. (Settlement Agreement (II)(G).)  
28 Furthermore, Anthem has the names and addresses of all Settlement Class Members and each of

1 them has received notice by first class mail. (Haan Dec., ¶ 5.) This mailing, based on Anthem’s  
2 records, demonstrates that the members of the Settlement Class have been identified and located.  
3 (See *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1334 [“[c]lass members are  
4 ‘ascertainable’ where they may be readily identified without unreasonable expense or time by  
5 reference to official records.”].) Additionally, the Settlement Class is comprised of  
6 approximately 700,000 people. (Haan Dec., ¶ 5.) Classes of 40 or more are sufficiently  
7 numerous. (See *Ikonen v. Hartz Mountain Corp.* (S.D. Cal. 1988) 122 F.R.D. 258, 262.) The  
8 numerosity requirement is therefore also satisfied. (Flanagan Preliminary Approval Dec., ¶  
9 16(a).)

10 **B. Common Questions of Law or Fact Predominate**

11 A class may be certified when common questions of law and fact predominate over  
12 individualized questions. (*San Jose v. Super. Ct.* (1974) 12 Cal.3d 447, 460.) Although common  
13 questions of law or fact must predominate, the law does not require plaintiffs to prove the  
14 complete absence of individual issues. (*Daar, supra*, 67 Cal.2d at 709.) Here, common questions  
15 of fact and law predominate over individual issues in terms of the propriety of the alleged  
16 inaccuracies in Anthem’s provider networks and other alleged misrepresentations. The primary  
17 factual issues underlying these questions are also common to all of the Settlement Class  
18 Members. (Flanagan Preliminary Approval Dec., ¶ 16(c).)

19 **C. Plaintiffs’ Claims are Typical**

20 The typicality requirement is met when the claims of the representative plaintiffs arise  
21 from the same course of conduct that gives rise to the claims of the other class members, and  
22 where the claims are based upon a similarity of legal theories. (*Thompson v. Automobile Club of*  
23 *Southern California* (2013) 217 Cal.App.4th 719, 732-733.) Here, the named Plaintiffs were  
24 affected by Anthem’s conduct in the same way that other Settlement Class Members were  
25 affected. Plaintiffs were all enrolled in Anthem health plans affected by the alleged inaccuracies  
26 in Anthem’s provider network directory and other alleged misrepresentations. (See Flanagan  
27 Dec., ¶ 4, 14-17.) Plaintiffs’ claims are typical of all Settlement Class Members’ claims.  
28 (Preliminary Approval Dec., ¶ 17(b)-(c).)

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**D. Plaintiffs Adequately Represented the Class**

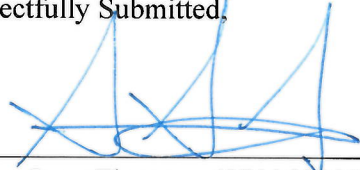
The adequacy of representation is met when plaintiffs are represented by counsel qualified to conduct the pending litigation and when plaintiffs' interests are not antagonistic to the class. (See *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.) The Arns Law Firm, attorneys for Consumer Watchdog, Law Offices of Scott C. Glovsky APC, Martinez Law Office, Inc., and Shernoff Bidart Echeverria Bentley LLP serving as Class Counsel in this litigation have effectively and vigorously prosecuted this action. (See *Kagan v. Gibraltar Sav. & Loan Assn.* (1984) 35 Cal.3d 582, 596.) As evidenced in the Declarations of Plaintiffs and Class Counsel (Flanagan Dec., Exs. 7-11; 14), the Plaintiffs actively and effectively fulfilled their obligations as representatives of the Settlement Class. They were diligent in prosecuting the case and have spent time helping to investigate the facts of the case and consulted with Class Counsel regarding the terms of the Settlement. Furthermore, Plaintiffs have no interests antagonistic to those of absent class members. Plaintiffs have suffered the same common alleged wrong as the Settlement Class Members and their interests are strongly aligned, if not identical, to those of the Settlement Class. (Flanagan Preliminary Approval Dec., ¶ 17(d).)

**VI. CONCLUSION**

Based on the foregoing, Plaintiffs respectfully request the Court finally approve this Settlement and certify the Settlement Class.

DATED: June 6, 2016

Respectfully Submitted,

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