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Superior Court of California  
County of Los Angeles

JUN 06 2016

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By: Stephanie Amador, Deputy  
Stephanie Amador

7 *Attorneys for Plaintiffs*

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

10 COORDINATION PROCEEDING  
11 SPECIAL TITLE [RULE 3.550]

Judicial Council Coordination  
Proceeding No.: 4805

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

**CLASS ACTION**

**DECLARATION OF JERRY FLANAGAN  
IN SUPPORT OF APPLICATION FOR  
FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT, AWARD OF  
ATTORNEYS' FEES, PAYMENTS TO  
CLASS REPRESENTATIVES, AND  
REIMBURSEMENT OF EXPENSES**

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

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

Honorable Elihu M. Berle

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- Exhibit 5: [Proposed] Final Approval Order<sup>1</sup>
- Exhibit 6: Declaration of Ann Haan Related to the Class Notice (Rust Consulting, Inc.)
- Exhibit 7: Declaration of Laura Antonini in Support of Attorneys’ Fees
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<sup>1</sup> The [Proposed] Final Approval Order attached as Exhibit 5 refers to the fact that zero (0) putative Class Members opted out of the Settlement. Because the deadline for this filing falls before the July 5, 2016 opt-out deadline, opt-out requests may be submitted after this filing. If any putative Class Members submit opt-out requests, Class Counsel will submit an amended [Proposed] Final Approval Order, with a list of opt-outs attached as an exhibit thereto.

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Exhibit 9: Declaration of Michael J. Bidart in Support of Attorneys' Fees  
Exhibit 10: Declaration of Scott C. Glovsky in Support of Attorneys' Fees  
Exhibit 11: Declaration of Ralph G. Martinez in Support of Attorneys' Fees  
Exhibit 12: Summary of Lodestar and Expenses  
Exhibit 13: Declaration of Richard M. Pearl in Support of Attorneys' Fees  
Exhibit 14: Declarations of Class Representatives

1 I, JERRY FLANAGAN, declare as follows:

2 **I. INTRODUCTION**

3 1. I am an attorney admitted to practice in California, Litigation Director for  
4 Consumer Watchdog, and one of the attorneys of record for the named Plaintiffs and the proposed  
5 Class (collectively referred to as “Plaintiffs” or “Settlement Class Members”) in the above-  
6 captioned action (the “Action”).<sup>2</sup> I have personal knowledge of the matters set forth in this  
7 Declaration, which is filed in support of (i) Plaintiffs’ Application for Final Approval of Class  
8 Action Settlement, and (ii) Class Counsel’s Application for Payment of Attorneys’ Fees,  
9 Payments to Class Representatives, and Reimbursement of Expenses. A copy of the Class  
10 Settlement Agreement and Release effective March 18, 2016 (the “Settlement” or “Settlement  
11 Agreement”) is attached hereto as **Exhibit 1**. Consumer Watchdog attorneys have actively  
12 participated in all aspects of this litigation, and I was one of the principal negotiators of the  
13 Settlement. I am familiar with the facts set forth in this Declaration. If called to testify, I could  
14 and would competently testify to the following facts.

15 2. The proposed Settlement of this Action is a tremendous benefit to the Class  
16 because the relief is specifically tailored to address the underlying issues in the litigation and  
17 because the relief will be provided to the Settlement Class on an expedited basis.

18 3. The relief is not only within the range, but likely far exceeds what Plaintiffs could  
19 have obtained at trial. It is on this basis, and for the reasons set forth below and in the  
20 accompanying memoranda, that Plaintiffs and their counsel seek approval of the Settlement and  
21 an award of attorneys’ fees, payments to class representatives, and reimbursement of expenses in  
22 an amount agreed to by the Parties after all the significant benefits of this Settlement for Class  
23 Members were agreed to in principle.

24 4. Plaintiffs filed the Lawsuits to remedy alleged misrepresentations regarding  
25 Anthem’s Affordable Care Act (“ACA”) provider networks in 2014. The terms of the Settlement  
26 are tailored to address these concerns. As detailed in Section III(F) of the Settlement Agreement

27 \_\_\_\_\_  
28 <sup>2</sup> Unless otherwise specified, all defined terms in this Declaration have the same meaning as the  
meaning described in the Settlement Agreement, and those terms are incorporated here by this  
reference.

1 and below, Anthem has agreed to compensate impacted Settlement Class Members by both a  
2 direct payment in the form of a check with no claims process required, and two secondary claims  
3 processes allowing Class Members to recover additional Out-of-Pocket Expenses that Anthem is  
4 not aware of.<sup>3</sup> The principle of the financial component of the settlement is that Class Members  
5 will have the opportunity to recover 100% of their Out-of-Pocket Expenses. Under the  
6 Settlement, Anthem will mail checks, with no claims process required, to affected Settlement  
7 Class Members in the aggregate of Fourteen Million, Nine Hundred Fifty-Nine Thousand, Four  
8 Hundred Thirty-Five Dollars and Zero Cents (\$14,959,435.00) (the “Settlement Funds”). (The  
9 proposed attorneys’ fee will not reduce the level of recovery for Settlement Class Members.<sup>4</sup>) The  
10 Settlement Funds represent the sum of: (i) \$12,037,599, which is 70% of the estimated billed  
11 charges incurred by members of EPO ACA Health Plans for treatment with Out-of-Network EPO  
12 Professionals<sup>5</sup>; and, (ii) \$2,921,836, which is 50% of the estimated billed charges incurred by  
13 members of PPO ACA Health Plans for treatment with Out-of-Network PPO Professionals<sup>6</sup>. As  
14 noted in our papers supporting preliminary approval, and Paragraph 29 below, these  
15 reimbursement percentages are designed to approximate and likely will exceed Settlement Class  
16 Members’ actual Out-of-Pocket Expenses. (Flanagan Decl. ISO Preliminary Approval, ¶ 12, Feb.  
17 19, 2016.)

18 5. In addition to the direct payment with no claims process requirement, Settlement  
19 Class Members are provided the opportunity to participate in two claims processes. First, if the  
20 amount reflected in the direct payment check does not fully compensate affected Settlement Class

21 \_\_\_\_\_  
22 <sup>3</sup> Although Anthem is aware of some of the out-of-network services *provided* to Settlement Class  
23 Members, Anthem does not have records reflecting how much Settlement Class Members  
24 actually *paid* for those services.

25 <sup>4</sup> As Plaintiffs’ Counsel noted at the Preliminary Approval hearing, the proposed attorneys’ fees  
26 and incentive awards for the class representatives are *in addition to* the Settlement Funds to be  
27 provided to Class Members. Therefore, the full \$14,959,435.00 will be provided to Class  
28 Members.

<sup>5</sup> “Out-of-Network EPO Professionals” means medical professionals who were out-of-network at  
the time that a Settlement Class Member who was enrolled in an Exclusive Provider Organization  
 (“EPO”) ACA plan received medical services from those medical professionals during the Class  
 Period. (Settlement Agreement, § (II)(L).)

<sup>6</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).)

1 Members for their Out-of-Pocket Expenses, Settlement Class Members may submit a claim for  
2 any additional Out-of-Pocket Expenses. Furthermore, any Settlement Class Members may submit  
3 a claim for medical services rendered by an Out-of-Network EPO or Out-of-Network PPO  
4 Professional that was not previously submitted to Anthem, and therefore for which Anthem has  
5 no record.

6 6. In general, under the Settlement all Settlement Class Members—including those  
7 who do not automatically receive a direct payment check—who received health care services  
8 rendered by out-of-network medical professionals that, but for the professional’s out-of-network  
9 status, would otherwise have been covered as in-network, will have the opportunity to recover  
10 100% of their Out-of-Pocket Expenses.

11 7. Moreover, there will be no reversion of Settlement Funds to Anthem; any  
12 Settlements Funds not distributed will be paid to the *cy pres* recipient chosen by the Parties: St.  
13 Jude Children’s Research Hospital.

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

21 9. This Settlement is the culmination of protracted negotiations that were non-  
22 collusive and overseen by a well-respected mediator—Justice Edward A. Panelli (ret.) of  
23 JAMS—with significant experience in the healthcare and class action fields. The Settlement was  
24 entered into by Class Counsel who are intimately familiar with the factual and legal issues raised  
25 by the Lawsuits and who are experienced practitioners in class actions, particularly in complex  
26 healthcare litigation. (Exs. 7-11.)

27 10. Anthem has also agreed to pay, as approved by the Court, reasonable attorneys’  
28 fees, including reimbursement of expenses, to Plaintiffs’ Counsel in an amount not to exceed

1 \$3,950,000, and incentive awards in the amount of \$5,000 to each of the ten Plaintiffs. The  
2 proposed attorneys' fees and incentive awards are *in addition to* the Settlement Funds to be  
3 provided to Class Members. Therefore, the full \$14,959,435.00 will be provided to Class  
4 Members. The proposed incentive awards for the class representative are reasonable.

5 11. The attorneys' fee and expense provisions and incentive awards were negotiated  
6 after the material substantive terms of the Settlement had been agreed to in principle. These  
7 amounts were ultimately agreed upon based on the recommendation of the mediator, Justice  
8 Edward A. Panelli. The amount of attorneys' fees requested reflects the work of Plaintiffs'  
9 Counsel to prosecute and successfully resolve this litigation. Plaintiffs' Counsel have agreed to,  
10 and received client consent for, the following division of attorneys' fees in this Action based on  
11 the requested \$3,950,000 in total attorneys' fees, minus expenses: 22.8% to Consumer Watchdog,  
12 22.8% to Shernoff Bidart Echeverria Bentley LLP, 22.8% to the Law Offices Of Scott C.  
13 Glovsky, APC, 22.8% to the Arns Law Firm, and 8.8% to Martinez Law Office, Inc. *All clients*  
14 *have given written approval of the fee sharing agreement.* (See Class Counsel Declarations  
15 Confirming Client Approval of Fee Sharing, Mar. 25, 2016; *Mark v. Spencer* (2008) 166  
16 Cal.App.4th 219; Cal. Rules of Professional Conduct, § 2-200; Cal. Rules of Court, rule  
17 3.769(b).)

18 12. As set forth herein, Class Counsel have, among other things, (i) performed an  
19 extensive investigation of the underlying facts alleged in the Lawsuits; (ii) served discovery  
20 requests on Anthem; (iii) received and reviewed large volumes of information from Anthem in  
21 response to informal document requests; (iv) took six depositions of Anthem representatives; and,  
22 (v) engaged in intense settlement negotiations and mediation with counsel for Anthem for more  
23 than a year in an effort to resolve the litigation.

24 **II. BACKGROUND OF LITIGATION AND HISTORY OF SETTLEMENT**  
25 **NEGOTIATIONS**

26 13. Before and after the Lawsuits were filed, Plaintiffs' Counsel conducted an  
27 extensive investigation into the underlying factual and legal subject matter of this Action. This  
28 investigation included interviews with Class Members and review of thousands of pages of

1 information, including documents from the Department of Managed Health Care and the  
2 California insurance exchange, Covered California, in response to three Public Records Act  
3 requests. This investigation also included formal discovery propounded on Anthem and informal  
4 discovery provided during the mediation process as described below.

5 14. On June 20, 2014, Plaintiff Samantha Berryessa Cowart, individually and on  
6 behalf of a putative class, filed a Complaint captioned *Cowart v. Blue Cross of California d/b/a*  
7 *Anthem Blue Cross*, Los Angeles County Superior Court Case No.: BC549438, alleging, *inter*  
8 *alia*, that Defendant improperly marketed, sold and implemented health plans under the  
9 Affordable Care Act (“ACA”) (the “Cowart Action”). In the *Cowart* Action, Plaintiff alleges  
10 claims for (a) breach of the implied covenant of good faith and fair dealing; (b) breach of  
11 contract; (c) violation of California’s Unfair Competition Law; and (d) declaratory relief.

12 15. On July 2, 2014, Plaintiff Lesley Noble, individually and on behalf of a putative  
13 class, filed a Complaint captioned *Noble v. Blue Cross of California d/b/a Anthem Blue Cross*,  
14 Monterey County Superior Court Case No.: M128428, alleging, *inter alia*, that Defendant  
15 improperly marketed, sold and implemented health plans under the ACA (the “Noble Action”).  
16 In the Noble Action, Plaintiff Noble alleges claims for (a) violation of California’s Consumer  
17 Legal Remedies Act; (b) violation of California’s Unfair Competition Law; (c) violation of  
18 California’s False Advertising Law; (d) breach of contract; and (e) breach of the implied covenant  
19 of good faith and fair dealing.

20 16. On July 8, 2014, Plaintiffs Betsy Felser, Patricia Griffin, Felicia Moghadam,  
21 Steven Moore, Josh Worth, and Deborah Nitasaka, individually and on behalf of a putative class,  
22 filed a Complaint captioned *Felser, et al. v. Blue Cross of California d/b/a Anthem Blue Cross*,  
23 Los Angeles County Superior Court Case No.: BC550739, alleging, *inter alia*, that Defendant  
24 improperly marketed, sold and implemented health plans under the ACA (the “Felser Action”).  
25 In the Felser Action, Plaintiffs allege claims for (a) fraud (intentional misrepresentation); (b)  
26 fraud (concealment); (c) violation of California’s Unfair Competition Law; (d) violation of  
27 California’s False Advertising Law; (e) violation of California’s Consumer Legal Remedies Act;  
28 and (f) declaratory relief.



1           17.     On July 17, 2014, Plaintiffs J. Christian Conrad and Mendy Lynn Conrad,  
2 individually and on behalf of a putative class, filed a Complaint captioned *Conrad v. Blue Cross*  
3 *of California d/b/a Anthem Blue Cross*, Orange County Superior Court Case No.: 30-2014-  
4 00734564-CU-IC-CXC, alleging, *inter alia*, that Defendant improperly marketed, sold and  
5 implemented health plans under the ACA (the “Conrad Action”). In the Conrad Action, Plaintiffs  
6 allege claims for (a) breach of the implied covenant of good faith and fair dealing; (b) violation of  
7 California’s Unfair Competition Law; and (c) declaratory relief.

8           18.     On February 5, 2015, the Lawsuits were ordered coordinated and assigned to the  
9 Honorable Elihu M. Berle, Los Angeles County Superior Court, Judicial Council Coordination  
10 Proceeding No. 4805.

11           19.     The Parties held an initial in-person mediation session presided over by Justice  
12 Panelli of JAMS on August 29, 2014. Three additional in-person mediations presided over by  
13 Justice Panelli were held on February 4, 2015, April 29, 2015, and August 5, 2015. At the  
14 mediations, the Parties outlined the specifics of the case for the Mediator, advocated their  
15 positions, discussed the terms of a fair and appropriate settlement, and exchanged numerous  
16 proposals and counter-proposals.

17           20.     In addition to the four in-person mediation sessions, Justice Panelli continued to be  
18 involved in telephonic mediation and “shuttle diplomacy” between the Parties. The Parties had  
19 on-going discussions among counsel throughout the negotiation process. Following numerous  
20 telephone calls among counsel, hundreds of emails, and multiple rounds of negotiations regarding  
21 possible terms of settlement, the essential substantive terms were agreed to on August 5, 2015.  
22 After agreeing to the substantive terms, counsel for Anthem and Plaintiffs’ Counsel continued  
23 negotiations regarding the draft of the Settlement Agreement. The negotiations were likewise  
24 protracted, raised several additional issues requiring further negotiations, and lasted an additional  
25 six months.

26           **III.     DISCOVERY**

27           21.     The Settlement was entered into by Plaintiffs’ Counsel who are intimately familiar  
28 with the factual and legal issues raised by the Lawsuits and who are experienced practitioners in

1 class actions, particularly in complex healthcare litigation. Plaintiffs participated in and reviewed  
2 formal and informal discovery produced by Anthem during the settlement process as well as  
3 obtained and reviewed publicly available information regarding Anthem’s provider networks.  
4 Plaintiffs’ Counsel conducted an extensive investigation before and during the litigation of the  
5 legal and factual underpinnings of the claims, including research of relevant case law and  
6 conducted interviews of numerous Class Members impacted by the challenged practices. At the  
7 request of Plaintiffs’ Counsel, Anthem informally produced information regarding Anthem’s  
8 provider networks as well as 1,500 pages of information reflecting corrective actions that Anthem  
9 began to undertake following the filing of the Lawsuits regarding the marketing and sale of ACA  
10 Health Plans. As part of this process, Anthem personnel participated in six in-person depositions  
11 under oath. Additionally, Anthem provided Plaintiffs’ Counsel’s expert actuary a detailed claims  
12 accounting, including the Declaration of Steve McGaughey, and participated in a telephonic  
13 conference with Plaintiffs’ Counsel’s expert actuary regarding that accounting. (See Exhibit R to  
14 the Flanagan Decl. ISO Preliminary Approval.)

15         22. In addition to the formal and informal discovery summarized above, Consumer  
16 Watchdog attorneys received and reviewed several thousand pages of documents regarding  
17 Anthem’s ACA provider networks in response to a Public Records Act (“PRA”) request to the  
18 Department of Managed Health Care. Consumer Watchdog attorneys also reviewed hundreds of  
19 pages of Anthem premium rate increase filings that contain enrollment, provider network, and  
20 coverage data. Furthermore, Consumer Watchdog attorneys submitted two PRA requests to the  
21 California insurance exchange, Covered California, and received and reviewed over 1,700 pages  
22 of documents regarding Anthem’s provider networks, pricing of those networks, and geographic-  
23 spread of those networks.

24         23. The formal and informal discovery and PRA documents allowed Plaintiffs’  
25 Counsel to complete a thorough analysis of the underlying issues in the litigation and to  
26 determine the best manner in which to resolve the Action, including: (i) appropriate “process  
27 enhancements” necessary to protect consumers in the future, a description of which is attached as  
28 Exhibit 8 to the Settlement Agreement; and, (ii) appropriate reimbursements to Settlement Class

1 Members, in the form of a check with no claims process required, as well as two secondary  
2 claims procedures to ensure Class Members may recover 100% of their Out-of-Pocket Expenses.  
3 These provisions are presented in detail in Section (III)(F) of the Settlement Agreement. Thus,  
4 when the Parties agreed to the terms of this Settlement, which is now presented for final approval,  
5 Plaintiffs' Counsel had conducted their own independent investigation and requested, received,  
6 and analyzed information produced by Anthem.

#### 7 **IV. PRELIMINARY APPROVAL OF THE SETTLEMENT**

8 24. On February 19, 2016, the Parties submitted the Settlement to the Court for  
9 preliminary approval. On March 15, 2016, a hearing was held on preliminary approval of the  
10 proposed settlement. The Parties entered into a revised Settlement Agreement effective March  
11 18, 2016 in response to the Court's comments at the March 15, 2016 hearing. (**Ex. 1** hereto.) The  
12 Parties attended a subsequent preliminary approval hearing on March 29, 2016. The Parties  
13 submitted revised documents and additional support to the Court in response to the Court's  
14 directions at the March 29, 2016 hearing. (See, e.g., **Ex. 2** hereto.)

15 25. The Court held another preliminary approval hearing on April 5, 2016. On April 5,  
16 2016, the Court issued an Order granting preliminary approval of the proposed Settlement  
17 Agreement (**Ex. 3** hereto).

18 26. In reviewing and preparing the notice documents to go out for mailing, the Parties  
19 agreed to make non-substantive edits to the notice documents in the interest of utmost clarity. The  
20 Parties submitted a Stipulation and [Proposed] Order RE Amended Notice Documents to the  
21 Court on April 26, 2016, attaching the revised notice documents for approval. (**Ex. 4** hereto.) On  
22 May 3, 2016, the Court signed an Order approving the Amended Notice Documents. (*Ibid.*)

#### 23 **V. TERMS OF THE SETTLEMENT AGREEMENT**

##### 24 **A. Settlement Class**

25 27. The Settlement Agreement provides that the Settlement Class includes any and all  
26 individuals who were issued ACA Health Plans by Defendant in the State of California for the  
27 year 2014.

1           **B. Consideration to Class**

2           28. In general, under the Settlement all Settlement Class Members who received  
3 healthcare services rendered by out-of-network medical professionals, as defined in the  
4 Settlement, that, but for the professional’s out-of-network status, would otherwise have been  
5 covered as in-network health care services, will have the opportunity to recover 100% of their  
6 Out-of-Pocket Expenses.<sup>7</sup>

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

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).)

<sup>8</sup> See footnote 3, *supra*.

1 Approval.)

2 30. The Settlement Funds will be distributed in the form of settlement checks mailed  
3 to the Settlement Class Members.<sup>9</sup> *Settlement Class Members do not need to file a claim to*  
4 *receive reimbursement; a reimbursement check will be mailed directly to each affected Settlement*  
5 *Class Member who does not opt-out of the settlement.* Notably, the \$14,959,435.00 in checks  
6 being mailed to Settlement Class Members does not include the estimated recovery for each Class  
7 Member that will be submitting a claim through the Settlement.

8 31. If the amount of the reimbursement check does not fully reimburse a Settlement  
9 Class Member's Out-of-Pocket Expenses, the Settlement Class Member may submit a claim  
10 substantiating the amount of payment made that exceeds the individual settlement amount. These  
11 additional payments will be fully reimbursed by Anthem from an uncapped fund. A claims  
12 process is required because Anthem is unaware of any additional amount Settlement Class  
13 Members might have paid to an out-of-network professional provider as defined in the  
14 Settlement. Following final approval of the Settlement, Settlement Class Members will be  
15 provided a form titled "Class Action Claim Form for Out-of-Pocket Expenses in Excess of  
16 Settlement Payment," (substantially in the form of Ex. B-5 to the Joint Supplement Memorandum  
17 in Support of Joint Motion for Entry of Order Preliminarily Approving Settlement and  
18 Dissemination of Class Notice, April 1, 2016, attached as **Ex. 2** hereto), which will clearly  
19 explain what the Settlement Class Member must submit to the Settlement Administrator in order  
20 to recover for those claims. Any disputes as to the adequacy of the claims or related documentary  
21 support for these claims will be resolved by Justice Panelli according to the procedures described  
22 in the Settlement.

23 32. Finally, any Settlement Class Member who has a claim for medical services  
24 rendered by an Out-of-Network EPO or Out-of-Network PPO Professional that was not  
25 previously submitted to Anthem, and therefore for which Anthem has no record, will be able to  
26 submit such claim(s), which will be processed as in-network with the settlement payments being

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

1 paid out of an uncapped fund. A claims-made process is appropriate and necessary here because  
2 Anthem does not have records of or information as to claims that were never submitted to it and  
3 thus cannot calculate the amount of the settlement payment. Following final approval of the  
4 Settlement, Settlement Class Members will be provided a form titled “Class Action Claim Form  
5 for Reimbursement of Qualified Out-of-Pocket Expenses for Previously Unsubmitted Claims for  
6 Out-of-Network Professional Services” (substantially in the form of Ex. B-4 to the Joint  
7 Supplemental Memorandum in Support of Joint Motion for Entry of Order Preliminarily  
8 Approving Settlement and Dissemination of Class Notice, April 1, 2016, attached as **Ex. 2**  
9 hereto), which will clearly explain what the Settlement Class Member must submit to the  
10 Settlement Administrator in order to recover for those claims. Any disputes as to the adequacy of  
11 the claims or related documentary support for these claims will be resolved by Justice Panelli  
12 according to the procedures described in the Settlement.

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

21 **C. Release and Discharge of Claims**

22 34. The Settlement Agreement provides that, as of the Settlement Effective Date,  
23 Plaintiffs and the Settlement Class Members will fully release any and all known and unknown  
24 claims for relief, causes of action, suits, rights of action, or demands, at law or in equity, whether  
25 sounding in contract, tort, equity, or any violation of law or regulation, including, without  
26 limitation, claims for injunctive or other equitable relief, damages, debts, indemnity, contribution,  
27 or for costs, expenses and attorney’s fees, that were or could have been brought in the Lawsuits  
28 relating to the marketing and/or sale of ACA Health Plans, including issues relating to the

1 accuracy of provider directories. (Settlement Agreement, § II(Q).) The Settlement does not  
2 include a release of claims under section 1542 of the California Civil Code.

3 **D. Attorneys' Fees and Expenses**

4 35. As noted above and described in more detail in Plaintiffs' Memorandum of Points  
5 and Authorities in Support of Application for an Order Approving Attorneys' Fees, Payments to  
6 Class Representatives, and Reimbursement of Expenses filed contemporaneously herewith, the  
7 Settlement Agreement provides that, as an integrated term of this settlement, Anthem agrees to  
8 pay, as approved by the Court, reasonable attorneys' fees, including reimbursement of expenses,  
9 to Plaintiffs' Counsel in an amount not to exceed \$3,950,000. Plaintiffs' Counsel agreed that they  
10 will not seek attorneys' fees, expenses, or any other form of compensation from the Released  
11 Parties that exceed this amount. Such amounts shall be paid to Plaintiffs' Counsel within 30  
12 business days after the Settlement Effective Date. The negotiation of an agreement to the  
13 foregoing attorneys' fees and costs did not occur until after the substantive terms of the  
14 Settlement had been negotiated and agreed to in principle. Moreover, as noted above, the  
15 agreement on the amount of fees and expenses was based upon the Mediator's recommendation.  
16 The proposed attorneys' fees and incentive awards are *in addition to* the Settlement Funds to be  
17 provided to Class Members. Therefore, the full \$14,959,435.00 in direct payments to Settlement  
18 Class Members with no claims process required will be provided to Class Members. Furthermore,  
19 100% of all Out-of-Pocket Expenses reflected in valid and timely claims filed by Settlement  
20 Class Members in the dual claims processes described above will be paid in full from an  
21 uncapped fund.

22 36. Plaintiffs' Counsel have agreed to, and received client consent for, the following  
23 division of attorneys' fees in this Action based on the requested \$3,950,000 in total attorneys'  
24 fees and expenses: 22.8% to Consumer Watchdog, 22.8% to Shernoff Bidart Echeverria Bentley  
25 LLP, 22.8% to the Law Offices of Scott C. Glovsky, APC, 22.8% to the Arns Law Firm, and  
26 8.8% to Martinez Law Office, Inc. *All clients have given written approval of the fee sharing*  
27 *agreement.* (see Class Counsel Declarations Confirming Client Approval of Fee Sharing, Mar. 25,  
28 2016; *Mark v. Spencer* (2008) 166 Cal.App.4th 219; Cal. Rules of Professional Conduct, § 2-200;

1 Cal. Rules of Court, rule 3.769(b).)

2 **E. Incentive Awards**

3 37. The Settlement Agreement provides that Anthem will not oppose Plaintiffs’  
4 Counsel’s request that the Court approve an additional payment to each of the ten Plaintiffs as  
5 incentive awards in the amount of \$5,000 each. All incentive award payments shall be paid to  
6 Plaintiffs no later than 30 business days after the Settlement Effective Date. The proposed  
7 incentive awards for Plaintiffs are reasonable. Each Plaintiff has submitted a declaration, attached  
8 hereto as **Exhibit 14**, stating that he or she has devoted more than 50 hours assisting Class  
9 Counsel resolve the Action. Moreover, the proposed incentive awards to Plaintiffs will not be  
10 deducted from the Settlement Funds to be provided to Class Members.

11 **F. Payment of Costs of Notice and Settlement Administration**

12 38. Under the Settlement, Anthem shall pay all costs associated with disseminating the  
13 Settlement Notice, the Settlement Administrator, settlement website, the toll-free number, and all  
14 associated expenses, including the neutral for adjudication of disputes about the timeliness and/or  
15 validity of a claim submitted pursuant to sections III(F)(2)(e)-(f) and III(F)(3)(b) of the  
16 Settlement Agreement.

17 **VI. THE NOTICE PLAN**

18 39. As provided for in the Preliminary Approval Order, Notice was designed to and  
19 did inform Settlement Class Members of the existence of the Action, the Settlement, and the  
20 information needed to make informed decisions about their participation in the Settlement.

21 40. Pursuant to the Preliminary Approval Order, the mailed notice, substantially in the  
22 form of Exhibit B to May 3, 2015 Order RE Amended Notice Documents (the “Summary  
23 Settlement Notice”) (see **Ex. 4** hereto) was mailed by Rust Consulting, Inc., the Court-appointed  
24 Settlement Administrator, by first class mail on or around May 5, 2016, to each of the 712,059  
25 Settlement Class Member’s last known address as reflected in the records of Anthem Blue Cross  
26 and as updated by the Settlement Administrator. (Declaration of Ann Haan of Rust Consulting  
27 Inc. (“Haan Dec.”), ¶ 5, attached as **Ex. 6** hereto.) As part of the preparation for mailing, Rust  
28 Consulting ran 712,059 records with a mailing address through the National Change of Address



1 database (NCOA) and received updated addresses for 66,754 records. (*Ibid.*) The addresses for  
2 the 66,754 records were updated prior to mailing on May 5, 2016. As of May 26, 2016, 27,844  
3 Summary Notices had been returned as undeliverable. (*Ibid.*) Rust Consulting will run an address  
4 search (skiptrace), update any addresses accordingly, and re-mail Summary Settlement Notices to  
5 those updated addresses. (*Id.*, ¶ 6.) Pursuant to the Court’s Preliminary Approval Order, Rust  
6 Consulting will provide an updated report on Class Notice by August 1, 2016. (*Ibid.*)

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

21 42. Regarding the content of the Notices, the “notice given to the class must fairly  
22 apprise the class members of the terms of the proposed compromise and of the options open to  
23 dissenting class members.” (*Trotsky v. Los Angeles Fed. Sav. & Loan Ass’n*, (1975) 48  
24 Cal.App.3d 134, 151-52.) Pursuant to California Rules of Court, rule 3.766(d), the notice must  
25 include a brief explanation of the case, a statement that the court will exclude members from the  
26 class if the member so requests, a procedure for the member to follow in requesting exclusion  
27 from the class, a statement that the judgment will bind all members who do not request exclusion,  
28 and a statement that any member who does not request exclusion may enter an appearance

1 through counsel. (See Cal. Rules of Court, rule 3.766(d).) Similarly, pursuant to California  
2 Rules of Court, rule 3.679(f), the notice must provide an explanation of the proposed settlement  
3 and procedures for class members to follow in order to file written objections and procedures, if  
4 any, to follow in order to appear at the settlement hearing. The Notices provided all the required  
5 information.

## 6 **VII. VALUATION OF THE SETTLEMENT**

7 43. As set forth above, detailed settlement negotiations began on August 29, 2014 and  
8 involved intense negotiations for more than a year. The process was overseen by a well-respected  
9 mediator. The best interests of the Settlement Class remained Plaintiffs' Counsel's paramount  
10 consideration throughout the entire course of settlement discussions. Plaintiffs' Counsel worked  
11 tirelessly to obtain the best relief possible, tailored to the issues raised in litigation, in an  
12 expedited manner.

13 44. The Parties have been represented by experienced class action and healthcare  
14 litigators who view this Settlement favorably. (See **Exs. 7-11** attached hereto.) The arms'-length  
15 nature of the negotiations and the participation of experienced counsel strongly support the  
16 conclusion that a presumption of fairness should attach here.

17 45. The deadline for opting out and objecting to the Settlement is on July 5, 2016,  
18 which is after the date of this filing. At this time, *zero (0) Class Members out of a Settlement*  
19 *Class that includes approximately 700,000 members have elected to opt-out of the Settlement and*  
20 *none have filed any objections.* (Haan Dec., ¶ 11.) Furthermore, since the mailing of the  
21 Summary Settlement Notice, I have spoken to several Class Members regarding the Settlement  
22 and I have discussed similar contacts that Plaintiffs' Counsel has had with Class Members with  
23 the staff person who engaged in those conversations. Class Members welcomed the Settlement  
24 and had only minor questions regarding the Settlement and key dates.

25 46. Under the Settlement, each Settlement Class Member shall be entitled to receive  
26 the benefits set forth above and described in detail in Section III(F) of the Settlement Agreement.  
27 The Plaintiffs filed the Lawsuits to remedy alleged misrepresentations regarding Anthem's ACA  
28 provider networks. The terms of the Settlement are tailored to address these concerns. The relief

1 is not only within the range of what Plaintiffs could have obtained at trial, but likely exceeds what  
2 Plaintiffs could have obtained at trial, and is of significantly more value to the Class because it  
3 will be received by Settlement Class Members sooner than could have been accomplished without  
4 a settlement. Furthermore, a settlement now avoids the risk of recovering nothing in the future if  
5 the matter were fully litigated. Indeed, absent a settlement, Settlement Class Members faced risks  
6 of non-recovery or recovery that comes too late. Even under the best-case analysis of Plaintiffs’  
7 Counsel, there could be long delays before a single Settlement Class Member would receive  
8 recovery. Under the Settlement in this case, Settlement Class Members will receive relief on an  
9 expedited basis and without the risks and delays of ongoing litigation. As such, this recovery is  
10 even more favorable than what the Class could have hoped to recover even if successful at every  
11 stage of the litigation, which, including appeals, could extend for the next several years.

12 **A. Risks of Establishing Liability and the Risk of Maintaining Class Action Status**  
13 **Through Trial**

14 47. Anthem has denied any wrongdoing or liability to Plaintiffs or members of the  
15 Settlement Class. A trial on the merits would require resolution of numerous highly complex  
16 issues of law and fact, which would be heavily contested by Anthem during trial. For Plaintiffs,  
17 there are substantial obstacles to overcome in order to establish Defendant’s liability and the  
18 extent of damages at trial. The contracts governing the Plaintiffs’ plans with Anthem include a  
19 mandatory arbitration agreement. Should litigation have proceeded, Anthem might have moved  
20 to compel arbitration of all claims. This posed a significant risk to continued litigation. Further,  
21 while Anthem had indicated it would file both a demurrer and a motion to strike should litigation  
22 proceed, such motions were never filed nor ruled on, thus the adequacy of the claims has never  
23 truly been tested. Although Plaintiffs believe that they could have overcome the obstacles  
24 presented, there are risks in litigation and particularly in complex litigation such as this. The  
25 difficulties inherent in this complex Action can cause delays that can eliminate the opportunity  
26 for timely and meaningful recovery by Settlement Class Members. These, and the other  
27 considerations noted above, posed a substantial risk in the litigation.

28 48. Additionally, the Settlement Class has been preliminarily certified for settlement

1 purposes only. (See Preliminary Approval Order, ¶ 2.) However, if this case were to proceed to  
2 trial, Anthem would undoubtedly contest class certification. Plaintiffs therefore face the risk that  
3 a motion for class certification would be denied. Even if Plaintiffs' motion for class certification  
4 was granted, class certification orders are conditional in nature and may be changed, modified, or  
5 reversed at any time up until final judgment.

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

7 49. The Settlement provides a very significant recovery for the Settlement Class,  
8 obviating the need for lengthy, uncertain and an expensive trial and possible appeals. Significant  
9 additional work would be necessary if the case were to proceed to trial. A trial on the merits  
10 would entail considerable expense, including numerous experts, pre-trial motions, thousands  
11 more hours of attorney time; given the right to appeal, a trial would not necessarily end the  
12 litigation. Therefore, even if the Class succeeded at every stage of the litigation, including trial  
13 and appeals, recovery would be substantially delayed by years. Thus, even if Plaintiffs had  
14 ultimately prevailed, they would not have been able to provide the timely benefits obtained  
15 through the negotiation of this Settlement. By contrast, the proposed Settlement ensures a timely  
16 relief, thereby maximizing the value of the Class' claims against Defendant.

17 **C. Experience and Views of Counsel**

18 50. The Class has been represented by counsel with years of experience in litigating  
19 class and healthcare actions and who have entered into numerous class settlements that have been  
20 approved by courts throughout California. (See **Exs. 7-11.**)

21 **VIII. ATTORNEYS' FEES AND EXPENSES**

22 51. Each Class Counsel and paralegal who worked on this matter has provided their  
23 lodestar and expenses from inception of the case to the present indicating how much time was  
24 spent on the Lawsuits.<sup>10</sup> Through May 25, 2016, Class Counsel's total lodestar is \$2,878,688.70  
25 and expenses are \$53,183.16. Class Counsel used May 25, 2016 as the cut-off date for their hours  
26 expended in order to build in enough time to prepare this filing, due June 6, 2016, with the  
27

28 <sup>10</sup> Declarations containing each law firm's lodestar and expenses are attached hereto as **Exhibits 7-11**. A summary of lodestar and expenses is attached as **Exhibit 12**.

1 requisite lodestar and expense figures. Class Counsel anticipates expending significant additional  
2 hours on the case between the date of this filing and the August 12, 2016 Fairness hearing, in  
3 order to review and respond to any objections that may be filed (objections are due July 5, 2016;  
4 responses are due August 1, 2016), review materials provided by Rust Consulting (class action  
5 administrator's report is due August 1, 2016), respond to Class Member inquiries, prepare any  
6 additional briefing requested by the Court, and prepare for the Fairness hearing. The overall hours  
7 expended were reasonable based on the exigencies of the case, the amount of information  
8 produced and obtained by Class Counsel that needed to be reviewed, the legal and factual issues  
9 that needed to be addressed, and the protracted nature of the parties' negotiations over a  
10 comprehensive settlement. In addition, the rates used by counsel have been approved by courts  
11 both in this state and nationwide and/or are comparable to the prevailing rate in their respective  
12 legal communities for providing comparable professional legal services, rendered by counsel in  
13 similar cases. (See Declaration of Richard Pearl, attached as **Ex. 13** hereto, ¶¶ 8-12.) Class  
14 Counsel have spent substantial time litigating the case (5,171.87 hours) and advanced all costs,  
15 without payment or reimbursement to date.

16 52. Anthem has agreed to pay attorneys' fees and expenses of no more than  
17 \$3,950,000. *The attorneys' fees and expenses will not reduce the level of recovery for Settlement*  
18 *Class Members.* After much negotiation, the \$3,950,000 for fees and expenses was ultimately  
19 agreed to based upon the recommendation of the mediator, Justice Panelli.

20 53. Class Counsel's request for \$3,950,000 is reasonable under either the percentage-  
21 of-the-fund or the lodestar method. Under a percentage-of-the-fund settlement, attorneys' fees  
22 are awarded as a percentage of the "common fund" available to pay all awards and costs under  
23 the settlement including payments to class members and attorneys' fees. Courts have found that  
24 attorneys' fees of 25% or more of the common fund are reasonable. For example, the California  
25 Supreme Court in *Sanders v. City of Los Angeles*, (1970) 3 Cal.3d 252, held that a lower court  
26 properly awarded attorneys' fees that were 25% of the common fund. Here, if there had been a  
27 common fund to compensate both Settlement Class Members and pay attorneys' fees, the fund  
28 would equal more than \$18.91 million (\$14,959,435.00 in recovery to Settlement Class Members

1 + \$3,950,000 in attorneys' fees and expenses). As a percentage of that hypothetical "common  
2 fund," the attorneys' fees award is approximately 21%, which is reasonable under California law  
3 give the complexities of the Action. Moreover, Anthem will pay claims submitted under the  
4 Settlement *out of an uncapped fund*. That amount is unknown at this time, but the hypothetical  
5 "common fund" might be larger than \$18.91 million.

6 54. Under the lodestar method, a lodestar figure is calculated by multiplying the  
7 reasonable hours expended by a reasonable hourly rate. The lodestar is the basic fee for  
8 comparable legal services in the community and may be adjusted, using a multiplier, including by  
9 the following factors: (1) the novelty and difficulty of the questions involved; (2) the skill  
10 displayed in presenting them; (3) the contingent nature of the fee award; and (4) the public policy  
11 effectuated by the settlement. Considering these factors, the multiplier being requested here is a  
12 modest 1.35, which is below the range of multipliers found to be standard by California courts.

13 55. The issues asserted in the Lawsuits were novel and complex, requiring the  
14 expertise of counsel experienced in handling class action and particularly healthcare litigation,  
15 including issues regarding "narrow" provider networks under the ACA (aka "Obamacare"). The  
16 Settlement required extensive knowledge of the underlying issues and analysis of the most  
17 effective way to reach resolution that benefited the Class. However, the significant relief achieved  
18 by the Settlement is the clearest reflection of Class Counsel's skill and expertise.

19 56. The quality of opposing counsel is also relevant to the evaluation of class  
20 representation. Here, Anthem is represented vigorously by experienced and able counsel from  
21 prominent firms with ample resources.

22 57. Class Counsel undertook this Action on an entirely contingent fee basis, assuming  
23 a substantial risk when they devoted a significant amount of time and incurred substantial  
24 expenses in prosecuting this Action without any assurance of being compensated for their efforts.  
25 The risk of no recovery in complex class action cases of this type is real. There are many class  
26 actions in which counsel expend hundreds of hours, incur substantial expenses and yet receive no  
27 remuneration despite their diligence and expertise.

28 58. In spite of these risks, Class Counsel take on cases such as this on a contingency

1 basis so that clients can obtain qualified representation and obtain results such as those achieved  
2 here. Indeed, here, the contingent nature of this representation was extremely important to obtain  
3 qualified representation, since Plaintiffs did not have the funds to litigate this type of case in  
4 terms of up-front expenses, let alone pay for the fees incurred. Thus, if the Lawsuits would have  
5 been lost, Class Counsel would have gone unpaid.

6 59. As further evidence of this risk, counsel collectively incurred \$53,183.16 in  
7 litigation-related expenses. (See **Exs. 7-11.**) These expenses reflect the costs of prosecuting this  
8 litigation, including, among other things, Court filing fees and E-service fees, Court reporter and  
9 transcription fees, expert fees, postage and courier fees, telephonic conferences, and research  
10 materials. These expenses were critical to Class Counsel's success in achieving the Settlement  
11 and were reasonable and appropriately incurred.

12 60. Accordingly, the risks of non-payment in this case weigh heavily in favor of  
13 approving the award of attorneys' fees and a multiplier of 1.35 and \$53,183.16 in expenses.

14 **IX. INCENTIVE AWARDS FOR NAMED PLAINTIFFS**

15 61. Class Counsel respectfully requests that the Court approve the payment of an  
16 incentive award of \$5,000 to each of the ten Plaintiffs for their services as the representatives of  
17 the Settlement Class in this Action. (See Declarations of Class Representatives, **Ex. 14** hereto.)  
18 Anthem has agreed that each of the ten named Plaintiffs will receive an incentive award of  
19 \$5,000. (Settlement Agreement, § III(L).) *The incentive awards will not reduce the level of*  
20 *recovery for Settlement Class Members.*

21 62. The Plaintiffs were enrolled in Anthem health plans affected by the alleged  
22 inaccuracies in Anthem's provider network directory and other alleged misrepresentations. The  
23 Plaintiffs actively and effectively fulfilled their obligations as representatives of the Settlement  
24 Class, each expending significant time in responding to requests for information, helping to  
25 investigate the facts of the case, bringing issues to Plaintiffs' Counsel attention, and consulting  
26 with Plaintiffs' Counsel regarding the terms of the Settlement. The requested awards for Class  
27 Representatives were not conditioned on whether Plaintiffs supported the Settlement as they were  
28 negotiated after all material Settlement terms benefitting the Settlement Class Members had been

1 agreed to in principle. The Plaintiffs have complied with all reasonable demands and provided  
2 assistance to counsel in the prosecution of this Action.

3 63. Furthermore, the proposed incentive awards are reasonably proportionate to the  
4 sums other Settlement Class Members will receive under the Settlement. (See *Munoz v. BCI*  
5 *Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412 [holding that class  
6 representative enhancements that are proportionate to what other class members will receive are  
7 not objectionable]; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 299  
8 [granting an incentive award of \$50,000 to the class representative].) Here, under the terms of the  
9 Settlement, individual Settlement Class Members who were enrolled in an EPO plan may receive  
10 up to an estimated \$52,500.00, and who were enrolled in a PPO plan may receive up to an  
11 estimated \$21,250.00, in checks sent as direct payments with no claims process required;  
12 additionally, they will have the opportunity to claim-in for additional Out-of-Pocket Expenses.

13 **X. CONCLUSION**

14 64. In view of the significant relief offered in the Settlement Agreement, the risks of  
15 establishing liability and maintaining class action status, the complexity, expense and likely  
16 duration of the Action, the experience and expertise of counsel, and the reaction of the Settlement  
17 Class, it is respectfully requested that the Court grant final approval of the Settlement, certify the  
18 requested class for settlement purposes, award Class Counsel a total of \$3,950,000 in attorneys'  
19 fees and expenses, and grant incentive awards to Plaintiffs in the amount of \$5,000 each.

20 I declare under penalty of perjury under the laws of the State of California that the  
21 foregoing is true and correct.

22 Executed this 6<sup>th</sup> day of June, 2016 in Santa Monica, California.

23  
24   
\_\_\_\_\_  
25 Jerry Flanagan  
26 Consumer Watchdog  
27  
28