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

COORDINATION PROCEEDING
 SPECIAL TITLE [RULE 3.550]

Judicial Council Coordination
 Proceeding No.: 4805

**ANTHEM BLUE CROSS
 AFFORDABLE CARE ACT CASES**

CLASS ACTION

**DECLARATION OF JERRY FLANAGAN
 IN SUPPORT OF JOINT MOTION FOR
 ENTRY OF ORDER PRELIMINARILY
 APPROVING SETTLEMENT AND
 DIRECTING DISSEMINATION OF CLASS
 NOTICE**

Date of Prel. Approval Hrg: March 15, 2016
 Time: 11:00 a.m.

Judge: Hon. Elihu M. Berle
 Dept.: 323

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Exhibits to the Declaration of Jerry Flanagan

- A. Settlement Agreement
- B. *Cowart* Class Action Complaint
- C. *Noble* Class Action Complaint
- D. *Felser* Class Action Complaint
- E. *Conrad* Class Action Complaint
- F. Declaration of Plaintiff Cowart
- G. Declaration of Plaintiff Noble
- H. Declaration of Plaintiff Felser
- I. Declaration of Plaintiff Griffin
- J. Declaration of Plaintiff Moghadam
- K. Declaration of Plaintiff Moore
- L. Declaration of Plaintiff Worth
- M. Declaration of Plaintiff Nitasaka
- N. Declaration of Plaintiff Conrad, Christian
- O. Declaration of Plaintiff Conrad, Mendy
- P. Plaintiffs' Counsel's firm resumes
- Q. Proposed Schedule for Post-Preliminary Approval Events
- R. Declaration of Steve McGaughey
- S. Declaration of Michael Brown

1 I, JERRY FLANAGAN, declare as follows:

2 1. I am an attorney admitted to practice in California, Litigation Director for
3 Consumer Watchdog, and one of the attorneys of record for the named plaintiffs (“Plaintiffs”)
4 and the proposed Class (collectively referred to as “Settlement Class Members”) in the above-
5 captioned coordinated action (the “Action”).¹

6 2. I have personal knowledge of the matters set forth in this Declaration, which is
7 filed in support of the Parties’ Joint Motion for Entry of Order Preliminarily Approving
8 Settlement and Directing Dissemination of Class Notice. I was one of the primary negotiators of
9 the terms of this Settlement. If called to testify, I could and would competently testify to the
10 following facts.

11 3. Consumer Watchdog is a non-profit, tax-exempt consumer research, education,
12 litigation, and advocacy organization. Established in 1985, Consumer Watchdog utilizes a
13 combination of litigation, advocacy and public education to effectuate its mission. The staff of
14 Consumer Watchdog includes some of the nation’s foremost consumer advocates and experts on
15 consumer matters.

16 4. Consumer Watchdog’s legal staff advocates on behalf of consumers before
17 regulatory agencies, the legislature, and the courts. Over the course of three decades, Consumer
18 Watchdog attorneys have represented consumers in numerous class actions, civil lawsuits, and
19 administrative complaints challenging unfair business practices by insurers and large
20 corporations. A particular focus of that litigation has been to challenge the illegal and unfair
21 business practices of health insurance companies, health care providers, health maintenance
22 organizations, and property-casualty insurance companies.

23 5. Attached as Exhibit A to this Declaration is a true and correct copy of the
24 Settlement Agreement and Release (“Settlement Agreement” or “Settlement”) that has been

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26 ¹ Unless otherwise specified, all defined terms in this Declaration have the same meaning
27 as the meaning described in the Settlement Agreement, and those terms are incorporated here by
28 this reference.

1 approved and executed by the Parties and their counsel.

2 6. The Settlement presented here resolves four class action lawsuits (collectively, the
3 “Lawsuits”):

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

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

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

5 ➤ On July 17, 2014, Plaintiffs J. Christian Conrad and Mendy Lynn Conrad, individually
6 and on behalf of a putative class, filed a Complaint captioned *Conrad v. Blue Cross of*
7 *California d/b/a Anthem Blue Cross*, Orange County Superior Court Case No.: 30-2014-
8 00734564-CU-IC-CXC, alleging, *inter alia*, that defendant improperly marketed, sold
9 and implemented health plans under the ACA (the “*Conrad Action*”). In the *Conrad*
10 *Action*, Plaintiffs allege claims for (a) breach of the implied covenant of good faith and
11 fair dealing; (b) violation of California’s Unfair Competition Law; and (c) declaratory
12 relief. Attached as Exhibit E to this Declaration is a true and correct copy of the *Conrad*
13 complaint.

14 7. On February 5, 2015, the Lawsuits were ordered coordinated and assigned to the
15 Honorable Elihu M. Berle, Los Angeles County Superior Court, Judicial Council Coordination
16 Proceeding No. 4805.

17 8. This Settlement is the culmination of protracted negotiations that were non-
18 collusive and overseen by a well-respected mediator—Justice Edward A. Panelli (ret.) of
19 JAMS—with significant experience in the health care and class action fields. Justice Panelli was
20 fully versed in the issues and the strategic posture of the litigation and is an extremely
21 experienced mediator, particularly in complex class action litigation and health care law issues.
22 The Parties held an initial mediation session presided over by Justice Panelli on August 29, 2014.
23 Three additional mediations presided over by Justice Panelli were held on February 4, 2015,
24 April 29, 2015, and August 5, 2015. At the mediations, the Parties outlined the specifics of the
25 case for the Mediator, advocated their positions, discussed the terms of a fair and appropriate
26 settlement, and exchanged numerous proposals and counter-proposals.

27 9. In addition to the four in-person mediation sessions, Justice Panelli continued to
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1 be involved in telephonic mediation and “shuttle diplomacy” between the Parties. The Parties
2 had on-going discussions among counsel throughout the negotiation process. Following
3 numerous telephone calls among counsel, hundreds of emails, and multiple rounds of
4 negotiations regarding possible terms of settlement, the essential substantive terms were agreed
5 to on August 5, 2015. After agreeing to the substantive terms, counsel for Anthem and
6 Plaintiffs’ Counsel continued negotiations regarding the draft of the Settlement Agreement. The
7 negotiations were likewise protracted, raised several additional issues requiring further
8 negotiations, and lasted an additional six months. Moreover, the Settlement was entered into by
9 Plaintiffs’ Counsel who are intimately familiar with the factual and legal issues raised by the
10 Lawsuits and who are experienced practitioners in class actions, particularly in complex health
11 care litigation.

12 10. Plaintiffs’ Counsel has diligently participated in and reviewed formal and
13 informal discovery produced by Anthem during the settlement process as well as obtained and
14 reviewed publicly available information regarding Anthem’s provider networks:¹

- 15 ➤ Plaintiffs’ Counsel conducted an extensive investigation before and during the litigation
16 of the legal and factual underpinnings of the claims, including research of relevant case
17 law and conducted interviews of numerous Class Members impacted by the challenged
18 practices.
- 19 ➤ At the request of Plaintiffs’ Counsel, Anthem informally produced information regarding
20 Anthem’s provider networks as well as 1,500 pages of information reflecting corrective
21 actions that Anthem began to undertake following the filing of the Lawsuits regarding the
22 marketing and sale of ACA Health Plans.
- 23 ➤ As part of this process, Anthem personnel participated in six in-person depositions under
24 oath.
- 25 ➤ Additionally, Anthem provided Plaintiffs’ Counsel’s expert actuary a detailed claims

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27 ¹ The Parties entered into a stipulated confidentiality agreement and protective order on
28 November 10, 2015, which this Court entered on November 17, 2015.

1 accounting, including the Declaration of Steve McGaughey attached as Exhibit R to this
2 Declaration, and participated in a telephonic conference with Plaintiffs' expert actuary
3 regarding that accounting.

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

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

25 12. Under this Settlement each Settlement Class Member shall be entitled to receive
26 the benefits described in Section (III)(F) of the Settlement Agreement. In general, all Settlement
27 Class Members who received health care services rendered by out-of-network professionals in
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1 2014 that, but for the professional’s out-of-network status, would otherwise have been covered
2 as in-network health care services under the terms of the Settlement Class Member’s applicable
3 Evidence of Coverage, will receive payment, with no claims process required, equal to an
4 agreed-upon portion of the “billed charges.” Notably, except for emergency medical treatment,
5 EPO members had no plan benefits for treatment with Out-of-Network EPO Professionals. By
6 contrast, PPO members had some benefits for treatment with Out-of-Network PPO
7 Professionals. In other words, because Anthem has already paid a portion of the cost for PPO
8 members’ out-of-network medical services when initially processed, the PPO members’ Out-of-
9 Pocket Expenses are not as large as those of EPO members. Accordingly, the settlement
10 percentages agreed to by the Parties is higher for EPO members (70%) than it is for PPO
11 members (50%). These reimbursement percentages are designed to approximate and likely will
12 exceed Settlement Class Members’ actual Out-of-Pocket Expenses.² For example, uninsured
13 consumers, who like EPO members visiting out-of-network providers must pay for medical
14 treatments on their own, can often negotiate discounts of 30-50% off a provider’s billed charges.
15 In a PPO health plan, after a member’s deductible is met, the health plan will contribute part of
16 the cost of the medical service, while the consumer is required to pay the additional amount.
17 Therefore, by reimbursing Settlement Class Members 50% of the billed charges for out-of-
18 network PPO services, this initial payment, paid by check with no claims process required,
19 approximates and likely will exceed Settlement Class Members’ actual Out-of-Pocket Expenses.
20 The settlement percentages for PPO claims are also reasonable in light of the fact that had the
21 Lawsuits been litigated, Plaintiffs would likely have had to refute the argument that some Class
22 Members went out of network knowingly. However, if any Settlement Class Member suffered
23 any additional financial losses, they may submit a claim and seek reimbursement for that
24 additional expense. There is no cap on the fund to pay valid claims so that all Class Members

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26 ² Although Anthem is aware of some of the out-of-network services *rendered* to Settlement Class
27 Members, Anthem does not have records reflecting how much Settlement Class Members
28 actually *paid* for those services.

1 can receive 100% reimbursement of Out-of-Pocket Expenses. The Settlement Agreement also
2 details the notice program, opt out rights, and other provisions essential to this settlement.

3 13. The Plaintiffs filed the Lawsuits to remedy alleged misrepresentations regarding
4 Anthem's ACA provider networks. The terms of the Settlement—providing both (i) prospective
5 protections to help ensure that consumers do not face similar unexpected Out-of-Pocket
6 Expenses in the future; and, (ii) provisions providing 100% reimbursement of Settlement Class
7 Members' Out of Pocket Expenses—are specifically tailored to address these concerns. The
8 relief is well within the range of what Plaintiffs could have obtained at trial and is of
9 significantly more value to Class Members because it will be received by Settlement Class
10 Members sooner than could have been accomplished without a settlement. Furthermore, a
11 settlement now avoids the risk of recovering nothing in the future if the matter were fully
12 litigated.

13 14. Indeed, absent a settlement, Settlement Class Members faced risks of non-
14 recovery or recovery that comes too late. At all times Anthem has denied each and all of the
15 claims alleged in this case and has asserted and continues to assert many defenses. The contracts
16 governing the Plaintiffs' plans with Anthem include a mandatory arbitration agreement. Should
17 litigation have proceeded, Anthem would have moved to compel arbitration of all claims. This
18 posed a significant risk to continued litigation. Further, while Anthem had indicated it would file
19 both a demurrer and a motion to strike should litigation proceed, such motions were never filed
20 nor ruled on, thus the adequacy of the claims has never truly been tested. Even under Plaintiffs'
21 Counsel's best-case analysis, there could be long delays before a single Settlement Class
22 Member would receive recovery. Under the Settlement in this case, Settlement Class Members
23 will receive relief on an expedited basis and without the risks and delays of ongoing litigation.
24 In addition, the proposed class notice program fully advises Settlement Class Members regarding
25 all their alternatives, so that they can make an informed choice either to accept the settlement or
26 to opt-out to pursue their own claims. Class notice describes in detail the settlement
27 consideration, scope of the release, relative positions of the Parties, timing of the settlement, and
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1 provided, the Settlement Administrator shall run an address search (skiptrace) against the Lexis-
2 Nexis address database, or comparable database, and re-send Settlement Notices to any updated
3 addresses obtained.

4 17. Certification of the Settlement Class for settlement purposes is proper and
5 provides substantial benefits to both the Parties and the Court based on the following facts:

6 a. The class is sufficiently numerous. Settlement Class Counsel have
7 confirmed that there are approximately 500,000 Anthem customers who fall within the
8 Settlement Class definition.

9 b. Named Plaintiffs were enrolled in Anthem health plans affected by the
10 alleged inaccuracies in Anthem's provider network directory and other alleged
11 misrepresentations. Named Plaintiffs have paid all the premiums charged to them during the
12 relevant time period, and thus they have standing to pursue such claims and their claims are
13 typical of other Settlement Class Members.

14 c. Common questions of fact and law predominate over individual issues in
15 terms of the propriety of the alleged inaccuracies in Anthem's provider networks and other
16 alleged misrepresentations. The primary factual issues underlying these questions are also
17 common to all of the Settlement Class Members.

18 d. Named Plaintiffs do not have any irreconcilable conflicts of interest with
19 those of the absent Settlement Class Members, since they have the same basic claims as those of
20 the Settlement Class Members and their claims arise from the same core set of operative facts.
21 Named Plaintiffs have been diligent in prosecuting this case, and have spent time helping to
22 investigate the facts of this case and bringing this matter to our attention, consulting with
23 Plaintiffs' Counsel regarding Settlement terms, approving the Settlement, and otherwise keeping
24 apprised of the case developments. Attached as Exhibits F-O are the declarations of the ten
25 named Plaintiffs, which describe their involvement in the case. Plaintiffs' Counsel have
26 substantial experience in consumer class action and health care litigation, as shown by the firm
27 resumes submitted as Exhibit P to this Declaration, and have adequately represented the class

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1 herein, while attempting to avoid any potential conflicts of interest and always putting the
2 Settlement Class Members' interest at the forefront of this litigation.

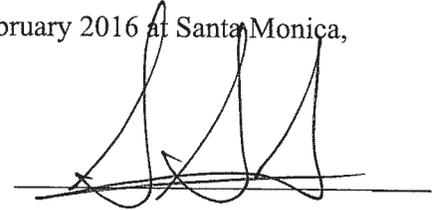
3 e. Due to the size and complexity of the claims, few persons would have an
4 interest in individually prosecuting separate actions. There is a desire by all Parties to maintain
5 and resolve this action in a single forum generally and in this forum in particular. Based on the
6 Settlement, there are no difficulties likely to be encountered in the management of this Action,
7 nor any superior method of proceeding on a group-wide basis. Thus, certification of the
8 Settlement Class for settlement purposes provides substantial benefits to both the Parties and the
9 Court.

10 18. As a result, the requirements for certification of the Settlement Class for
11 settlement purposes—numerosity, typicality, predominant questions of law and fact, adequacy of
12 both the representative named Plaintiffs and Plaintiffs' Counsel, manageability, and superiority
13 of proceeding on a class-wide basis as compared to other group-wide methods for adjudication of
14 this controversy—are all satisfied in this Action, making certification of the Settlement Class for
15 settlement purposes appropriate.

16 19. As an additional term of the Settlement Agreement, Anthem has agreed to pay
17 attorneys' fees and expenses of no more than \$3,950,000 and that each of the ten named
18 Plaintiffs will receive an incentive award of \$5,000 pending approval by the Court. These
19 amounts will not reduce the level of recovery for Settlement Class Members, as they are in
20 addition to the settlement funds that will be provided to Settlement Class Members. After much
21 negotiation, the \$4,000,000 for attorneys' fees and expenses and payments to Class
22 Representatives was ultimately agreed to based upon the recommendation of the mediator,
23 Justice Edward A. Panelli of JAMS. Fee negotiations took place with the direct involvement of
24 Justice Panelli. To ensure there was no potential conflict between the negotiations over the
25 principal terms of the Settlement and any fee negotiations, the fee and expenses were agreed to
26 after the material terms of the Settlement had been agreed to in principle, and the fees and
27 expenses reasonably reflect the work of Plaintiffs' Counsel to prosecute and successfully resolve

1 the Lawsuits. We will provide additional information regarding the attorney's fees requested in
2 this Action as part of the motion for final approval.

3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct. Executed this 19 day of February 2016 at Santa Monica,
5 California.

A handwritten signature in black ink, appearing to read 'Jerry Flanagan', is written over a horizontal line. The signature is stylized and somewhat cursive.

8 Jerry Flanagan

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