



1 Harvey Rosenfield (SBN: 123082)
 harvey@consumerwatchdog.org
 2 Jerry Flanagan (SBN: 271272)
 jerry@consumerwatchdog.org
 3 Laura Antonini (SBN: 271658)
 laura@consumerwatchdog.org
 4 **CONSUMER WATCHDOG**
 2701 Ocean Park Blvd., Suite 112
 5 Santa Monica, CA 90405
 Tel: (310) 392-0522
 6 Fax: (310) 392-8874

7 *Attorneys for Plaintiffs*

8 [ADDITIONAL COUNSEL LISTED ON SIGNATURE PAGE]
 9
 10
 11
 12

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

15 COORDINATION PROCEEDING
 16 SPECIAL TITLE [RULE 3.550]

Judicial Council Coordination
 Proceeding No.: 4805

17 **ANTHEM BLUE CROSS**
 18 **AFFORDABLE CARE ACT CASES**

CLASS ACTION

**MEMORANDUM OF POINTS AND
 AUTHORITIES 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

26 _____

27
 28

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. Introduction.....1

II. Statement of Facts.....3

A. Plaintiffs’ Claims and Allegations3

B. The Parties’ Hard Fought and Thorough Litigation and Mediation Proceedings4

C. Terms of the Proposed Settlement Agreement.....6

 1. Direct Payments to Settlement Class Members with No Claims Process Required.....6

 2. Claims Process for Out-of-Pocket Damages Exceeding Settlement Payment.....7

 3. Claims Process for Previously Unsubmitted Claims7

 4. Process Enhancements8

 5. Class Notice9

 6. *Cy Pres*.....10

 7. Class Release11

 8. Attorneys’ Fees, Incentive Awards, And Settlement Administration Costs.....11

D. Estimated Trial Recovery.....12

E. Risks and Uncertainties of Litigation Recovery.....13

III. Argument.....13

A. Standards Governing Preliminary Settlement Approval.....13

B. The Proposed Settlement Meets the Standards for Preliminary Approval.....15

 1. The Parties Engaged in Hard Fought Litigation and Resolved the Case Through Mediation
 Conducted at Arm’s Length.....16

 2. Class Counsel Is Experienced and Knowledgeable and Find This Settlement in the Best
 Interest of the Class.....17

 3. The Settlement Agreement Provides Substantial Benefits to the Class.....17

 4. The Proposed Notice Program, Request For Exclusion Procedures, and the Objection
 Protocol Satisfy Due Process and the California Rules of Court.....18

C. The Proposed Class Should Be Certified For Settlement Purposes19

D. Dates for the Preliminary Approval Order21

IV. Conclusion21

TABLE OF AUTHORITIES

CASES

1

2

3 *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135 18

4 *Allen v. Pacific Bell*, (9th Cir. 2003) 348 F.3d 1113 13

5 *Chavez v. Netflix* (2008) 162 Cal.App.4th 43 13, 15, 19

6 *Daniels v. Centennial Group, Inc.* (1992) 16 Cal.App.4th 467 20

7 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 13, 14, 15, 16

8 *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15 16

9 *Grunin v. Int’l House of Pancakes* (8th Cir. 1975) 513 F.2d 114..... 21

10 *In re BankAmerica Corp. Secs. Litig.* (E.D. Mo. 2002) 210 F.R.D. 694..... 21

11 *In re M.L. Stern Overtime Litig.*, 2009 U.S. Dist. WL 995864 14

12 *In re Microsoft IV Cases* (2006) 135 Cal.App.4th 706..... 11, 15

13 *In re Salomon Inc. Sec. Litig.* 1994 U.S. Dist. WL 265917..... 17

14 *In re Tableware Antitr. Litig.* (N.D. Cal. 2007) 484 F.Supp.2d 1078 15

15 *In re Vitamin Cases* (2003) 107 Cal.App.4th 820 13, 18

16 *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442 14

17 *Miller v. Republic Nat’l Life Ins. Co.* (5th Cir. 1977) 559 F.2d 426 21

18 *Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615 14

19 *Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462..... 2

20 *State of California v. Levis Strauss & Co.* (1986) 41 Cal.3d 460..... 10

21 *Trotsky v. Los Angeles Fed. Sav. & Loan Ass’n* (1975) 48 Cal.App.3d 134..... 18

22 *United Founders Life Ins. Co. v. Consumers Nat’l Life Ins. Co.* (7th Cir. 1971) 447 F.2d 647..... 21

23 *Vasquez v. Superior Court* (1971) 4 Cal.3d 800..... 13

24 *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213 12

25 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224..... 12, 13, 15, 19, 20

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STATUTES

Cal. Civ. Code § 1750.....13
Cal. Civ. Code § 17812, 19, 20
Cal. Code Civ. Proc. § 38220
Cal. Code Civ. Proc. § 38411
California Rules of Court, rule 3.766.....19
California Rules of Court, rule 3.769.....1, 2, 14, 19
Public Law 111-148, 124 Stat. 119 (2010).....3

OTHER AUTHORITIES

Manual for Complex Litigation, Fourth §13.14 (Fed. Jud. Ctr. 2004)14
Newberg on Class Actions (3d ed. 1992) § 11.4115
Walters, “*Best Notice Practicable*” in the *Twenty-First Century*, 2003 UCLA J.L. Tech 4.....19

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION

After an exhaustive fifteen months of extensive negotiations and exchange of information overseen by Justice Edward A. Panelli (Ret.) of JAMS, the Parties reached an agreement on the principle terms of a settlement allowing Settlement Class Members to recover 100% of their Out-of-Pocket Expenses.¹ (Declaration of Jerry Flanagan, (“Flanagan Decl.”), ¶¶ 6-12). Additionally, the Parties negotiated specific “process enhancements” to ensure that all Californians are able to access accurate in-network physician and hospital (“provider”) lists and are protected from unplanned out-of-network expenses in the future. (*Id.*, ¶ 11.) Subsequently, counsel for the Parties have engaged in drafting and revision of the settlement papers and these moving papers. All Party representatives from the following cases in this coordinated action have signed the settlement papers:

- *Cowart v. Blue Cross of California d/b/a Anthem Blue Cross*, Los Angeles County Superior Court Case No.: BC549438;
- *Noble v. Blue Cross of California d/b/a Anthem Blue Cross*, Monterey County Superior Court Case No.: M128428;
- *Felser, et al. v. Blue Cross of California d/b/a Anthem Blue Cross*, Los Angeles County Superior Court Case No.: BC550739;
- *Conrad v. Blue Cross of California d/b/a Anthem Blue Cross*, Orange County Superior Court Case No.: 30-2014-00734564-CU-IC-CXC.

(Collectively, “the Lawsuits”; see Flanagan Decl., ¶ 6. See *id.* Exs. B-E for class action complaints filed in *Cowart*, *Noble*, *Felser*, and *Conrad* (collectively, “Complaints”).)

As Plaintiffs and Defendant Blue Cross of California d/b/a Anthem Blue Cross (“Anthem” or “Defendant”) both join in this request, they jointly submit this Joint Motion for Order Preliminarily Approving Settlement and Directing Dissemination of Class Notice pursuant to California Rules of Court, rule 3.769(c).

¹ Unless otherwise specified, all defined terms in this Memorandum and the Declaration of Jerry Flanagan have the same meaning as the meaning described in the Settlement Agreement (Flanagan Decl., Ex. A), and those terms are incorporated here by this reference.

1 As detailed below, good cause exists to grant this Joint Motion and enter the proposed
2 Preliminary Approval Order that is submitted with this Joint Motion (“Preliminary Approval
3 Order”). The proposed settlement meets the criteria for granting both preliminary and final
4 settlement approval, as it is well within the range of what would ultimately be approved as fair,
5 reasonable, and adequate and was negotiated at arms’ length by experienced counsel with the
6 assistance of Justice Edward A. Panelli (ret.), who is a well-respected mediator in the class action
7 and health care litigation fields.

8 Under California Civil Code section 1781(f) (which courts generally look to for guidance as
9 to the procedures applicable to consumer class actions)² and California Rules of Court, rule
10 3.769(c), the settlement described in the Class Settlement Agreement and Release dated February
11 19, 2016 (“Settlement Agreement” or “Settlement”) attached as Exhibit A to the Flanagan Decl., is
12 subject to this Court’s approval after a preliminary and final approval hearing and notice to the
13 proposed Settlement Class. The Parties request that the Court take the first step in this process by
14 entering the proposed Preliminary Approval Order and approving the form of notice to be sent to
15 the Settlement Class. The proposed Preliminary Approval Order directs dissemination of class
16 notice to approximately 500,000 current and former Anthem enrollees and accomplishes the
17 following:

- 18 a) preliminarily approves Plaintiffs’ proposed settlement with Defendant;
- 19 b) certifies a class for settlement purposes and approves the form and program of class
20 notice described in the Settlement Agreement; and
- 21 c) schedules various deadlines (set forth in the Preliminary Approval Order and
22 Flanagan Decl., Ex. Q) leading up to a hearing before the Court to determine
23 whether the proposed settlement should be finally approved and judgment entered
24 under Cal. Rules of Court, rule 3.769(g).

25
26
27 _____
28 ² See *Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 468, fn. 7.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II. STATEMENT OF FACTS

A. Plaintiffs' Claims and Allegations

Plaintiffs were members of Anthem health plans for the year 2014 that were issued to individuals and families pursuant to the new requirements of the Patient Protection and Affordable Care Act of 2010, Public Law 111-148, 124 Stat. 119 (2010) ("ACA"). In this coordinated action, Plaintiffs alleged that Defendant engaged in misrepresentations of its physician and hospital ("provider") network resulting in increased out-of-pocket costs for Settlement Class Members. (See Flanagan Decl., Exs. B-E.)

Anthem offered its new ACA-compliant plans to consumers during the designated enrollment period between October 1, 2013 and March 31, 2014 ("2014 Open Enrollment Period"). During the 2014 Open Enrollment Period, Anthem offered both Preferred Provider Organization ("PPO") and Exclusive Provider Organization ("EPO") plans.³ All Plaintiffs are or were members of either a PPO or EPO plan purchased from Anthem on or after October 1, 2013.

Plaintiffs allege that, compared with its pre-ACA plans, Anthem's ACA-compliant plans offered for sale during the 2014 Open Enrollment Period provided access to significantly smaller provider networks. The crux of the Lawsuits is an allegation that Anthem misrepresented that specific providers were available under the ACA-compliant health service plans when they were not, and concealed and failed to disclose the differences between the provider network available under the new ACA-compliant health service plans and the pre-ACA Anthem provider network. Settlement Class Members who received services from out-of-network medical professionals were responsible for paying more than they would have had to pay had the medical service been processed as in-network. Additionally, many consumers who enrolled in Anthem's EPO plans received health plan enrollment cards ("ID cards") that incorrectly represented the subject plans were PPO plans.

³ Both PPO and EPO plans allow members to obtain care from in-network providers at a reduced cost. PPO plans also provide some coverage for care received from out-of-network providers, but PPO plan members must contribute more out-of-pocket when receiving care from an out-of-network provider. (Flanagan Decl., ¶ 12). EPO plans do not provide any coverage for out-of-network, non-emergency, services. (*Ibid.*)

1 Anthem denies Plaintiffs' claims and allegations in their entirety.

2 **B. The Parties' Hard Fought and Thorough Litigation and Mediation Proceedings**

3 The Plaintiffs in this coordinated action filed their respective class action complaints
4 between June 20, 2014 and July 17, 2014. (Flanagan Decl., Exs. B-E.) The Lawsuits collectively
5 allege ten causes of action challenging Anthem's conduct as unlawful, unfair, and fraudulent in
6 violation of California Business and Professions Code sections 17200, et seq. and 17500, et seq.;
7 violation of the Consumers Legal Remedies Act, California Civil Code section 1750, et seq.;
8 breach of the individual health service plan contracts entered into between Class Members and
9 Anthem; breach of the implied covenant of good faith and fair dealing; fraud by intentional
10 misrepresentation; and, fraud by concealment. (Flanagan Decl., ¶ 6.)⁴ The Lawsuits seek to recover
11 damages and restitution, an order enjoining Anthem's alleged continued unlawful, unfair, and
12 fraudulent conduct, and a declaratory judgment. (*Ibid.*)

13 The proposed settlement was agreed upon after exhaustive exchange of information,
14 extensive, contentious, arm's-length negotiations between counsel for the Parties, overseen by
15 Justice Edward A. Panelli (ret.) of JAMS, and following a thorough analysis by Plaintiffs' Counsel
16 of the claims and potential recovery. (Flanagan Decl., ¶¶ 8-11.) Plaintiffs' Counsel engaged in four
17 formal mediations with Defendant, with a view toward achieving substantial benefits for the Class
18 while avoiding the cost, delay and uncertainty of further litigation, trial, and appellate review. The
19 Parties held an initial mediation session presided over by Justice Panelli on August 29, 2014. Three
20 additional mediations presided over by Justice Panelli were held on February 4, 2015, April 29,
21 2015, and August 5, 2015. All four mediations were held in-person in Los Angeles, California.
22 (Flanagan Decl., ¶ 8.)

23 At the mediations, the Parties outlined the specifics of the case for Justice Panelli, advocated
24 their positions, discussed the terms of a fair and appropriate settlement, and exchanged numerous
25 proposals and counter-proposals. (*Ibid.*) Between formal mediation sessions, Justice Panelli

26 _____
27 ⁴ On or about February 5, 2015, all of the Lawsuits were ordered coordinated and assigned to the
28 Honorable Elihu M. Berle, Los Angeles County Superior Court, Judicial Council Coordination
Proceeding No. 4805. (Flanagan Decl., ¶ 7.)

1 continued to be involved in telephonic mediation and “shuttle diplomacy” between the Parties
2 throughout the negotiation process. (*Id.*, ¶ 9.) The Parties engaged in on-going discussions among
3 counsel throughout the negotiation process. Following numerous telephone calls among counsel,
4 hundreds of emails, and multiple rounds of negotiations regarding possible terms of settlement, the
5 essential substantive terms were agreed to on August 5, 2015. (*Ibid.*)

6 The Parties engaged in substantial investigation and formal and informal discovery both
7 before and during settlement negotiations. (Flanagan Decl., ¶¶ 10-11.) At the request of Plaintiffs’
8 Counsel, Anthem informally produced information regarding Anthem’s provider networks as well
9 as information reflecting corrective actions that Anthem began to undertake following the filing of
10 the Lawsuits regarding their marketing, sale, and implementation of ACA-compliant health plans.
11 (*Id.*, ¶ 10.) As part of this process, Anthem personnel participated in six in-person depositions under
12 oath. (*Ibid.*) Additionally, Anthem provided Plaintiffs’ Counsel with a declaration from Anthem
13 personnel, attached as Exhibit R to the Flanagan Decl., explaining the Out-of-Pocket Expenses, and
14 participated in a telephonic conference with Plaintiffs’ expert regarding that accounting. (*Ibid.*)
15 Additionally, Plaintiffs’ Counsel received documents regarding Anthem’s ACA-compliant health
16 plan provider networks in response to a Public Records Act (“PRA”) requests to the Department of
17 Managed Health, which oversees Anthem’s health plans, and two PRA requests to the Covered
18 California insurance exchange. (*Ibid.*) In addition, Plaintiffs’ Counsel also reviewed hundreds of
19 pages of Anthem premium rate increase filings that contain enrollment, network and coverage data,
20 which are publicly available. (*Ibid.*)

21 The formal and informal discovery, analysis of data and screen shots from the Anthem
22 websites and provider directories, financial data reflecting out-of-pocket expenses, and PRA
23 documents allowed Plaintiffs’ Counsel to complete a thorough analysis of the underlying issues in
24 the litigation and to determine the best manner in which to resolve the Lawsuits, including: (i)
25 appropriate “process enhancements” necessary to protect consumers in the future, a list of which is
26 attached as Exhibit 8 to the Settlement Agreement; and, (ii) appropriate reimbursements to
27 Settlement Class Members, *in the form of a check with no claims process required*, as well as
28 secondary claims procedures to compensate Settlement Class Members for other out-of-pocket

1 expenses including those for which Anthem has no records. (*Id.*, ¶ 11.) These provisions are
2 presented in detail in Section (III)(F) of the Settlement Agreement. Thus, when the Parties agreed
3 to the terms of the settlement, which is now presented for preliminary approval, Plaintiffs’ Counsel
4 had conducted their own independent investigation and requested, received and analyzed
5 information produced by Anthem and state regulators. (*Ibid.*)

6 After agreeing to the substantive terms, counsel for Anthem and Plaintiffs’ Counsel
7 continued negotiations regarding the draft of the Settlement Agreement. The negotiations were
8 likewise protracted, raised several additional issues requiring further negotiations and lasted an
9 additional six months. On February 19, 2016, the Parties signed a final agreement. (*Id.*, Ex. A.)

10 **C. Terms of the Proposed Settlement Agreement**

11 The Parties have agreed on a fair and just settlement resolving the case on behalf of the
12 following class (“Settlement Class Members”):

13 Any and all individuals who were issued ACA Health Plans by Defendant in the
14 State of California for the year 2014.

15 (Flanagan Decl., Ex. A, ¶ (II)(U).)

16 In general, under the Settlement all Settlement Class Members who received health care
17 services rendered by out-of-network medical professionals that, but for the professional’s out-of-
18 network status, would otherwise have been covered as in-network health care services, will have the
19 opportunity to recover 100% of their Out-of-Pocket Expenses.⁵ (Flanagan Decl., Ex. A, ¶¶ (II)(N),
20 (III)(F).)

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

22 First, all Settlement Class Members who received health care services rendered by out-of-
23 network professionals for which Anthem has record will receive payment, *with no claims process*
24 *required*, equal to the percentages of the “billed” charges as set out below. (Flanagan Decl., Ex. A,
25 ¶ (III)(F); Flanagan Decl., ¶ 12.) This payment approximates Settlement Class Members’ actual

26 ⁵ “Out of Pocket Expense” is defined as the difference between what the Settlement Class Member
27 actually paid and what they would have paid had the medical expenses been processed as in-
28 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. (Flanagan Decl., Ex. A, ¶¶ (II)(N).)

1 out-of-pocket expenses. (Flanagan Decl., ¶ 12.)⁶ In the aggregate, Anthem will pay impacted
2 affected Settlement Class Members Fourteen Million, Nine Hundred Fifty Nine Thousand, Four
3 Hundred Thirty Five Dollars and Zero Cents (\$14,959,435.00) (the “Settlement Funds”) (*Id.*, Ex. A,
4 ¶ (III)(F)(1)(a).) The Settlement Funds represent the sum of: (i) \$12,037,599, which represents
5 70% of the billed charges incurred by members of EPO plans for treatment with Out-of-Network
6 EPO Professionals; and, (ii) \$2,921,836, which is 50% of the billed charges incurred by members of
7 PPO plans for treatment with Out-of-Network PPO Professionals. (Flanagan Decl., Ex. A, ¶
8 (III)(F)(1)(a).) Notably, EPO health plans provide no coverage for treatment with out-of-network
9 professionals. In contrast, PPO health plans provide some coverage for treatment with out-of-
10 network professionals. Accordingly, the Settlement percentage agreed to by the Parties is higher
11 for EPO members than it is for PPO members. (Flanagan Decl., ¶ 12.) As summarized below and
12 detailed in the Settlement Agreement, all Settlement Class Members will also have the opportunity
13 to submit claims for any additional out-of-pocket expenses. Anthem provided Plaintiffs a detailed
14 claims accounting, including the Declaration of Steve McGaughey attached as Exhibit R to
15 Flanagan Decl. (Flanagan Dec., ¶ 10.) Plaintiffs’ expert actuary reviewed the claims data and
16 confirmed the accuracy of Anthem’s methodology. (Flanagan Decl., Ex. S.)

17 The Settlement Funds will be distributed in the form of settlement checks mailed to the
18 Settlement Class Members. (Flanagan Decl., Ex. A, ¶ (III)(F)(1)(b).)⁷ *Settlement Class Members*
19 *do not need to file a claim to receive reimbursement; a reimbursement check will be sent directly to*
20 *each affected Settlement Class Member who does not opt-out of the settlement.* (Flanagan Decl., Ex.
21 A, ¶ (III)(F)(1).)

22 2. Claims Process for Out-of-Pocket Damages Exceeding Settlement Payment

23 If the amount of the reimbursement check described in section II.C(1), *supra*, does not fully
24 reimburse a Settlement Class Member’s out-of-pocket expenses, the Settlement Class Member may
25 submit a claim substantiating the amount of payment made that exceeds the individual settlement

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

⁷ Anthem communicates with its customers via direct mail concerning modifications to their health
plans. (Flanagan Decl., ¶ 15.)

1 amount. (Flanagan Decl., Ex. A, ¶ (III)(F)(3).) These additional payments will be fully reimbursed
2 by Anthem from an uncapped fund. (Flanagan Decl., Ex. A, ¶ (III)(F).) A claims process is
3 required because Anthem is unaware of any additional amount Settlement Class Members might
4 have paid to an out-of-network provider. Following final approval of the settlement, Settlement
5 Class Members will be provided a form titled “Claim Form for Out-of-Pocket Expenses in Excess
6 of Settlement Funds,” which will clearly explain what the Settlement Class Member must submit to
7 the Settlement Administrator in order to recover for those claims. (Flanagan Decl., Ex. A, Ex. 7.)
8 Any disputes as to the adequacy of the claims or related documentary support for these claims will
9 be resolved by Justice Panelli according to the procedures described in the Settlement. (*Id.*, ¶
10 (III)(F)(3)(b)-(e.)

11 3. Claims Process for Previously Unsubmitted Claims

12 Finally, any Settlement Class Member who has a claim for medical services rendered by an
13 Out-of-Network EPO or Out-of-Network PPO Professional that was never submitted to Anthem,
14 and therefore for which Anthem has no record, will be able to submit such claim(s), which will be
15 processed as in-network with the settlement payments being paid out of an uncapped fund.
16 (Flanagan Decl., Ex. A, ¶ (III)(F)(2).) A claims-made process is appropriate and necessary here
17 because Anthem does not have records of or information as to claims that were never submitted to
18 it and thus cannot calculate the amount of the settlement payment. Included with the Summary
19 Settlement Notice will be a “Claim Form for Previously Unsubmitted Out-of-Network Claims,”
20 which will clearly explain what the Settlement Class Member must submit to the Settlement
21 Administrator in order to recover for those claims. (Settlement Agreement, Ex. 5.) Any disputes as
22 to the adequacy of the claims or related documentary support for these claims will be resolved by
23 Justice Panelli according to the procedures described in the Settlement. (*Id.*, ¶ (III)(F)(2)(b)-(f).)

24 4. Process Enhancements

25 Settlement Class Members who have not been financially impacted will not receive a
26 settlement check. (Flanagan Decl., Ex. A, ¶ (III)(F)(1)(c).) However, these Settlement Class
27 Members will receive the benefit of the Process Enhancements provided for in the Settlement,
28 which are detailed in Exhibit 8 to the Settlement. (*Id.*, ¶ (III)(F)(5).) Generally, these Process

1 Enhancements include:

- 2 ➤ Outreach campaigns to members, providers, and agents to fully explain the ACA plans
3 and network issues, including sending letters and newsletters and establishing a member
4 hotline and microsite for member assistance;
- 5 ➤ Increasing the size of the ACA provider network;
- 6 ➤ Various measures designed to improve the accuracy of the provider directory, including
7 call campaigns to providers, reviewing extract data from a third-party network data
8 vendor to ensure consistency and clarify any inconsistencies with internal data;
- 9 ➤ Website modifications designed to more clearly call attention to certain disclaimers and
10 warnings regarding selecting the correct provider network and generally streamline the
11 search tool;
- 12 ➤ Provisions guaranteeing that if providers are inaccurately listed as “in-network” in the
13 provider directories in the future, consumers who rely on those directories will be billed at
14 in-network rates;
- 15 ➤ Provisions requiring ID cards to be mailed to consumers within 5 days of enrolling in an
16 Anthem health plan;
- 17 ➤ Changes to ID cards ensuring that EPO health plans do not include a “PPO” label.

18 5. Class Notice

19 To ensure active participation by Settlement Class Members, the Summary Settlement
20 Notice, attached as Exhibit 3 to the Settlement Agreement, will be mailed directly to each
21 Settlement Class Member, directing them to the settlement website to review the Full Settlement
22 Notice in English and Spanish. (Flanagan Decl., Ex. A, ¶ (III)(D)(1)-(5).) For those Settlement
23 Class Members who cannot access the Full Settlement Notice in such a manner, the Summary
24 Settlement Notice will provide a toll-free number that Settlement Class Members can call to request
25 a mailed copy of the Full Settlement Notice. (Flanagan Decl. ¶ 15; Ex. A, ¶ (III)(D)(3).)
26 Settlement Class Members will also be able to call this toll-free number for general information, in
27 English and Spanish, about the settlement. (*Ibid.*) The settlement website will contain the
28 Settlement Agreement and exhibits, the operative complaints in the Lawsuits, a list of relevant

1 deadlines and orders, and advise Settlement Class Members of how to learn more about the
2 settlement and how to participate in the benefits provided by the settlement. (Flanagan Decl., ¶ 15;
3 Ex. A, ¶ (III)(D)(2)-(3).) The Parties will work together in good faith to agree on the content of the
4 website as well as the voice prompt recordings and scripts used by Defendant for the toll-free
5 number. If there is disagreement about the website content or substance or format of the voice
6 prompt recordings or scripts, Justice Panelli will resolve such disputes. (Flanagan Decl., Ex. A, ¶
7 (III)(D)(2)-(3).)

8 To ensure individual notice is provided to all reasonably identifiable Settlement Class
9 Members, prior to mailing the Summary Settlement Notice the Settlement Administrator shall
10 update the last known addresses reflected in Anthem's records for Settlement Class Members by
11 comparing them to the National Change of Address system. (Flanagan Decl. ¶ 16; Ex. A, ¶
12 (III)(D)(1).) If any Summary Settlement Notices are returned as undeliverable with forwarding
13 addresses provided, the Settlement Administrator shall re-send Summary Settlement Notices to the
14 forwarding addresses. (*Ibid.*) For any Summary Settlement Notices returned undeliverable without
15 forwarding addresses provided, the Settlement Administrator shall run an address search (skiptrace)
16 against the Lexis-Nexis address database, or comparable database, and re-send Settlement Notices
17 to any updated addresses obtained. (*Ibid.*)

18 6. Cy Pres

19 If, after 120 days of the initial disbursement of settlement checks, any settlement checks are
20 not cashed, the Settlement Administrator shall distribute the remaining funds to the *cy pres*
21 recipient chosen by the Parties. (Flanagan Decl., Ex. A, ¶¶ (III)(F)(1)(d)-(e); (III)(F)(2)(b); ¶
22 (III)(F)(3)(b).) The Parties have chosen St. Jude Children's Research Hospital as the *cy pres*
23 recipient. (*Id.*, ¶ (III)(F)(1)(e).) *In no circumstance will any of the Settlement Funds be retained by,*
24 *or revert to, Anthem.* (*Id.*, ¶ (III)(F)(1)(e).)

25 A *cy pres* award is justified here under California law. First, settlement checks described in
26 section III.C (1), *supra*, will be mailed directly to Settlement Class Members and *no claims process*
27 *is required*, thus increasing the likelihood that the majority of settlement funds will be provided to
28 Settlement Class Members. Therefore, the Settlement is designed to place settlement funds directly

1 in the hands of Settlement Class Members, and the distribution of settlement funds to the *cy pres*
2 recipient is intended as “the next best use,” rather than primary use. (*State of California v. Levis*
3 *Strauss & Co.* (1986) 41 Cal.3d 460, 472, Cal. Code Civ. Pro. § 384(a).) Second, the Agreement
4 and class notice fully apprise Class Members of the *cy pres* award, which is intended to prevent the
5 reversion of settlement funds to Anthem. (*In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706,
6 721). Third, the *cy pres* award to St. Jude Children’s Research Hospital is appropriately related to
7 fulfilling the purposes of the underlying causes of action because St. Jude Children’s Research
8 Hospital is dedicated to providing access for medical treatments to all children. (*Id.* at 724-730.)

9 7. Class Release

10 The scope of the release provision is appropriate as it is limited to those claims arising out
11 of claims asserted in the Lawsuits. (Flanagan Decl., Ex. A, ¶¶ (III)(N), (II)(Q) [defining “Released
12 Claims” as those, whether known or unknown, that were or could have been brought in the
13 Lawsuits relating to the marketing and/or sale of ACA Health Plans, including issues relating to the
14 accuracy of provider directories.]) Therefore, the release is appropriate because it is tethered to the
15 allegations in the Lawsuits.

16 Defendant believes the Section 1542 release is reasonable for several reasons. In the
17 proposed settlement, Anthem offers substantial monetary and other consideration to the Settlement
18 Class. It has done so, in part, to purchase complete peace regarding the issues at hand. Inclusion of
19 the Section 1542 waiver is an important component for Anthem to secure finality on these issues.
20 Importantly, the Section 1542 waiver is limited to “Released Claims.” Accordingly, the waiver is
21 narrowly drawn.

22 8. Attorneys’ Fees, Incentive Awards, and Settlement Administration Costs

23 In addition to the above consideration, as an additional term of the Settlement and subject
24 to Court approval, attorneys for Plaintiffs and the Settlement Class will receive attorneys’ fees and
25 expenses in connection with their efforts to resolve these claims successfully. Such fees and
26 expenses will not exceed \$3,950,000.00. (Flanagan Decl., ¶ 19; Ex. A, ¶ (III)(L)(1).) Each of the
27 class representatives will receive, subject to Court approval, \$5,000 incentive awards for their
28

1 efforts expended to litigate and settle these claims successfully. (Flanagan Decl., Ex. A, ¶ (III)(M);
2 Exs. F-O.) The fees and expenses were agreed to after the other material terms of the settlement
3 had been agreed to in principle, and reflect the work of Plaintiffs’ Counsel to prosecute and resolve
4 successfully this litigation. (Flanagan Decl., ¶ 19.)

5 In return for the above consideration, if final settlement approval is granted, a judgment will
6 be entered approving this settlement. This Court will retain continuing jurisdiction to enforce the
7 Settlement and all members of the Settlement Class will release and be barred from thereafter
8 pursuing claims arising from the claims asserted in this action.

9 Plaintiffs believe this settlement is well within the range of approval, because it is tailored to
10 address the concerns raised by this litigation. (Flanagan Decl., ¶ 13; see also, *Wershba v. Apple*
11 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 250 [“a settlement need not obtain 100 percent of the
12 damages sought in order to be fair and reasonable”].)

13 **D. Estimated Trial Recovery**

14 In determining whether the settlement fair, adequate and reasonable, “The most important
15 factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in
16 settlement.” (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.) Here, the
17 settlement is a “fair, adequate, and reasonable” compromise because Plaintiffs will have *the*
18 *opportunity to receive 100% of their out-of-pocket expenses* resulting from the provider network
19 misrepresentations and Anthem enrollees will be protected from experiencing unexpected expenses
20 from any inaccuracies in Anthem’s provider lists in the future. Given the nature of the class claims,
21 the case would be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and
22 appeals) are also likely to prolong the litigation as well as any recovery by the Settlement Class
23 Members. Even if a class is certified, there is always a risk of decertification. (See *Weinstat v.*
24 *Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 [“Our Supreme Court has recognized that
25 trial courts should retain some flexibility in conducting class actions, which means, under suitable
26 circumstances, entertaining successive motions on certification if the court subsequently discovers
27 that the propriety of a class action is not appropriate”].)

1 *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 817-821.) California cases establishing guidelines
2 for preliminary approval also have referred to decisions of the Federal courts to guide the analysis
3 of California state courts and to fill in the gaps on specific procedural issues. (*Dunk, supra*, 48
4 Cal.App.4th at 1801, fn. 7.)

5 Settlements of disputed claims, particularly class actions, are favored by the courts.
6 (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625, *cert. denied* (1983)
7 459 U.S. 1217 [“voluntary conciliation and settlement are the preferred means of dispute
8 resolution.”].) This Court should review a settlement with the goal of protecting the interests of the
9 other members of the class when it considers any request by the Parties representing the class to
10 settle a class action. (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442.) This Court has broad
11 discretion to determine if a class action settlement is fair, reasonable and adequate. (*Dunk, supra*,
12 48 Cal.App.4th at 1801.)

13 Preliminary approval is the first of a two-step process required to resolve a class action. (*In*
14 *re M.L. Stern Overtime Litig.* 2009 U.S. Dist. WL 995864, *3.) A class action settlement may be
15 approved after both a preliminary and final approval hearing. (Cal. Rules of Court, rule 3.769(a),
16 (c) and (g).) The court preliminarily reviews the settlement to determine whether it is sufficient to
17 warrant notice to the Class. (*Manual for Complex Litigation*, Fourth §13.14 at 173 (Fed. Jud. Ctr.
18 2004) (“MCL 4th”).) This initial assessment is generally made on the basis of information already
19 known to the Court that may be supplemented by briefs, motions, and an informal presentation
20 from the settling parties, if requested. The MCL 4th defines the court’s duty in this regard as
21 follows:

22 The judge must make a preliminary determination on the *fairness, reasonableness,*
23 *and adequacy of the settlement terms* and must direct the preparation of notice of
the certification, proposed settlement, and date of the final fairness hearing. . . .

24 * * *

25 Once the judge is satisfied as to the certifiability of the class and the results of the
26 initial inquiry into the fairness, reasonableness, and adequacy of the settlement,
notice of a formal Rule 23(e) fairness hearing is given to the class members.

27 (MCL 4th §21.632-633 at 321, emphasis added.)

28 The Court at the preliminary approval juncture “will simply consider whether the settlement

1 is within the range of possible approval, such that there ‘is any reason to notify the class members
2 of the proposed settlement and to proceed with a fairness hearing.’” (*In re M.L. Stern Overtime*
3 *Litig.*, 2009 U.S. Dist. WL 995864 at *3.) If a proposed settlement appears to be the product of
4 serious, informed, non-collusive negotiations overseen in part by a well-respected mediator; has no
5 obvious deficiencies; and does not improperly grant preferential treatment to class representatives
6 or segments of the class and falls within the range of possible approval, then preliminary approval
7 is appropriate. (*In re Tableware Antitr. Litig.* (N.D. Cal. 2007) 484 F.Supp.2d 1078, 1079.)
8 There is a presumption that a proposed settlement is fair and reasonable when it is the result of
9 arms’-length negotiations. (*Chavez, supra*, 162 Cal.App.4th at 56; *Newberg on Class Actions* (3d
10 ed. 1992) § 11.41 at 11-88.) As the court stated in *Dunk*, “[s]o long as the record . . . is adequate to
11 reach an intelligent and objective opinion of the probability of success should the claim be litigated
12 and form an educated estimate of the complexity, expense and likely duration of such litigation . . .
13 and all other factors relevant to a full and fair assessment of the wisdom of the proposed
14 compromise, it is sufficient.” (*Dunk, supra*, 48 Cal.App.4th at 1802, citations omitted.) Preliminary
15 approval of a class action settlement permits notice of a hearing on final settlement approval to be
16 given to the members of the proposed Settlement Class, at which time the court reviews the merits
17 of the settlement. (*In re M.L. Stern Overtime Litig.*, 2009 U.S. Dist. WL 995864 at *3.)

18 **B. The Proposed Settlement Meets the Standards for Preliminary Approval**

19 “In the context of a settlement agreement, the test is not the maximum amount plaintiffs
20 might have obtained at trial on the complaint, but rather whether the settlement is reasonable under
21 all of the circumstances.” (*Wershba, supra*, 91 Cal.App.4th at 250, citations omitted.) Plaintiffs
22 believe that the Parties’ settlement is in the best interest of the Class because Settlement Class
23 Members are best served by immediate relief and the settlement avoids the risk of recovering
24 nothing in the future if the matter were fully litigated. (Flanagan Decl., ¶¶ 13-14.)

25 This settlement is designed to ensure the underlying issues are resolved, and obtain
26 significant relief for the Settlement Class Members on an expedited basis. (*Ibid.*) In addition, the
27 proposed class notice program fully advises Settlement Class Members regarding all their
28 alternatives, so that they can make an informed choice either to accept the settlement or to opt out to

1 pursue their own claims. (Flanagan Decl., ¶ 14.)

2 If the Court finds that the Settlement is the product of hard fought arm’s-length negotiations
3 conducted by experienced counsel knowledgeable in complex class litigation, the Settlement will
4 enjoy a presumption of fairness. (See *In re Microsoft IV Cases* (2006) 135 Cal.App.4th 706, 723;
5 *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18 (court accorded “considerable
6 weight” to settlement being reached after hard fought negotiations by experienced counsel); see also
7 *Kullar, supra*, 168 Cal.App.4th at 129.) Such a presumption exists here.

8 1. The Parties Engaged in Hard Fought Litigation and Resolved the Case Through
9 Mediation Conducted at Arm’s Length

10 First, the Agreement is presumptively fair because the history of the litigation paints a
11 picture of hard-fought, protracted negotiations mediated in good faith and at arm’s length and
12 resolved by experienced and knowledgeable counsel. The proposed Agreement was reached only
13 after four lengthy mediation sessions and on-going subsequent negotiations presided over by Justice
14 Panelli that spanned more than 15 months. (Flanagan Decl., ¶¶ 8-11.) These negotiations were
15 non-collusive and entered into after the extensive review of relevant information. (*Ibid.*)

16 With the assistance of Justice Panelli, the Parties engaged in substantial negotiations before
17 agreeing to the final settlement terms. (*Id.*, ¶ 8-11.) Justice Panelli was fully versed in the issues
18 and the strategic posture of the litigation and is unquestionably an extremely experienced mediator,
19 particularly in complex class action litigation and healthcare issues. (Flanagan Decl., ¶ 8.) The fact
20 that a neutral third party oversaw the mediation further evidences the non-collusive nature of the
21 negotiations. (*See generally, Dunk*, 48 Cal.App.4th at 1799, 1802-03 [affirming approval of
22 settlement where the “independent mediator, a retired superior court judge and appellate justice
23 with substantial experience and respect in the legal community, recommended the settlement”].)

24 Defendant has denied, and continues to deny, each and all of the claims and contentions
25 alleged by Plaintiffs in this case. (Flanagan Decl., ¶ 14.) Defendant has asserted and continues to
26 assert many defenses and has expressly denied any legal liability arising out of the conduct alleged
27 in the litigation. (*Id.*) Nevertheless, it has concluded that it is desirable that this action settle in the
28 manner and on conditions set forth in the Settlement Agreement in order to avoid the expense,

1 inconvenience, and burden of further protracted legal proceedings and the uncertainties inherent in
2 any litigation.

3 2. Class Counsel Is Experienced and Knowledgeable and Find This Settlement in the Best
4 Interest of the Class

5 Courts recognize that the opinion of experienced and informed counsel supporting
6 settlement is entitled to considerable weight. (*In re Salomon Inc. Sec. Litig.* 1994 U.S. Dist. WL
7 265917, *13.) Plaintiffs were represented by Plaintiffs' Counsel who are experienced practitioners
8 in the class action and health care litigation field and were thoroughly familiar with the factual and
9 legal issues raised by this litigation. (Flanagan Decl., ¶¶ 10-11, 15.d; Ex. P.) The Parties
10 considered numerous relevant factors before agreeing to this Settlement. (*Id.*, ¶¶ 10-14.) Prior to
11 settlement, Class Counsel performed an intensive, independent investigation, reviewed thousands of
12 pages of documents provided by the Defendant, conducted six depositions under oath, and
13 otherwise litigated the case vigorously over more than 15 months. (*Id.*, ¶¶ 8-11.) Given these facts
14 and circumstances, the Settlement Agreement is clearly entitled to a presumption of fairness.

15 3. The Settlement Agreement Provides Substantial Benefits to the Class

16 The Settlement is well within the range of approval, because it is tailored to address the
17 concerns raised by this litigation. (Flanagan Decl., ¶ 12-13; see also, *Wershba, supra*, 91
18 Cal.App.4th at 250 [“a settlement need not obtain 100 percent of the damages sought in order to be
19 fair and reasonable”].) This lawsuit was filed to stop the alleged misrepresentations regarding
20 Anthem's ACA provider networks. (Flanagan Decl., ¶¶ 6, 13.) By eliminating this practice
21 prospectively and providing affected Settlement Class Members the opportunity to recover 100% of
22 their out-of-pocket expenses by a combination of direct payment and supplemental claims
23 processes, the Settlement provides substantially the relief Plaintiffs sought without the time and
24 expense of further litigation. (Flanagan Decl., ¶¶ 12-14.) Specifically,

- 25 ➤ the checks-mailed process ensures greater protection of the Settlement Class Member's due
26 process rights, requires no action on the part of the Settlement Class Member, and promises
27 swifter payment;
- 28 ➤ the opportunity to submit claims for additional out-of-pocket expenses that Anthem does not

1 have record of guarantees that Settlement Class Members can recover 100% reimbursement
2 for all out-of-pocket expenses incurred with out-of-network providers;

- 3 ➤ Settlement Class Members and all Californians will benefit from the Process Enhancements,
4 which provide significant protection against future unexpected out-of-pocket expenditures.
5 (Settlement, Ex. 8.)

6 This relief is well within the range of what Plaintiffs could have obtained at trial and is of
7 significantly more value to the Settlement Class Members because it will be received sooner than
8 could have been accomplished without a settlement. (Flanagan Decl., ¶ 13.)

9 What makes this result achieved under the settlement even more reasonable is the level of
10 risk involved for the Plaintiffs and the Settlement Class Members. Absent a settlement, the
11 Settlement Class Members faced risks of non-recovery. Even under the best-case analysis of
12 Plaintiffs' Counsel, there could be long delays before a single Settlement Class Member would
13 receive recovery. (*Id.*, ¶ 14.) In comparison, under the Settlement Agreement, affected Settlement
14 Class Members will receive their payments within 30 days of the Settlement Effective Date.
15 (Flanagan Decl., Ex. A, ¶ (III)(F)(1)(b).)

16 4. The Proposed Notice Program, Request for Exclusion Procedures, and the Objection
17 Protocol Satisfy Due Process and the California Rules of Court

18 The trial court “has virtually complete discretion as to the manner of giving notice to class
19 members.” (*7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th
20 1135, 1164.) The purpose of class notice in the context of a settlement is to give class members
21 sufficient information to decide whether to accept the benefits offered, opt out and pursue their own
22 remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed. Sav. & Loan Ass'n* (1975) 48
23 Cal.App.3d 134, 151-52.) The notice program must be “reasonably calculated to apprise interested
24 parties of the pendency of the action affecting their property interest and an opportunity to present
25 their objections.” (*In re Vitamin Cases, supra*, 107 Cal.App.4th at 829.)

26 The form of the notice is attached to the Settlement as Exhibits 3 and 4. Class notice
27 describes in detail the settlement consideration, scope of the release, relative positions of the
28 Parties, timing of the settlement, the Court's preliminary assessment of the settlement, and the

1 options to which Settlement Class Members are entitled. It does so in clear and understandable
2 language, consistent with the requirements of Civil Code section 1781(e), California Rules of
3 Court, rules 3.766(d) and 3.769(d) through (f), and contains all of the language required by those
4 Rules in a manner designed to provide consumers the most information practicable. (Flanagan
5 Decl., ¶ 14.) In addition, Anthem is establishing a settlement website and a toll-free telephone
6 number for Settlement Class Members to contact if they have any questions in order to obtain more
7 information about the terms of the settlement. (See Flanagan Decl., Ex. A, ¶ (III)(D)(2)-(3).)

8 The Summary Settlement Notice to be distributed to Settlement Class Members informing
9 them of a proposed settlement of the lawsuit (Settlement, Ex. 3) addresses each subject required by
10 Civil Code section 1781(e) and California Rules of Court, rules 3.766 and 3.769 and is proper, even
11 though not all information pertaining to the settlement is contained in the original notice but rather
12 provides a website and toll-free number providing more detailed information. A summary notice
13 that directs a class member who wants more information to a website that contains a more detailed
14 notice and alerts the reader to the significant issues and advises them where to go to learn more
15 about the settlement and their options “is a great deal better than being confronted with a small
16 typed single spaced, full notice,” and has been held to be a “perfectly acceptable” manner of giving
17 notice of a proposed settlement. (*Chavez, supra*, 162 Cal.App.4th at 58, fn. 8.) Creativity is often
18 needed in devising an effective means of notifying class members. (*Wershba, supra*, 89
19 Cal.App.4th at 251; see also Walters, “*Best Notice Practicable*” in the *Twenty-First Century* 2003
20 UCLA J.L. Tech 4 [discussing advantages of using Internet notice actions to provide class notice
21 under Rule 23 in consumer class].) The form and substance of the notice program is appropriate for
22 Court approval. The requirements for stating a valid objection are also reasonable. The
23 requirements include that an objecting Settlement Class Member submit the objection in writing
24 within 30 days of the Class Notice. (Flanagan Decl., Ex. A, ¶ (III)(H).)

25 **C. The Proposed Class Should Be Certified for Settlement Purposes**

26 As part of the Preliminary Approval Order, the Parties request that this Court certify a class
27 for settlement purposes, to be defined as follows: all individuals who were issued ACA Health
28 Plans by Defendant in the State of California for the year 2014. Excluded from the Settlement Class

1 are (i) any judicial officer presiding over the Lawsuits and the members of his/her immediate family
2 and judicial staff; (ii) any person who has entered into a written settlement agreement with
3 Defendant with respect to an ACA Health Plan which releases the same claims released under the
4 Settlement; and (iii) any person who timely opts-out of the Settlement Class. (Flanagan Decl., Ex.
5 A, ¶ (II)(U).)

6 Class certification is appropriate for settlement purposes based upon the stipulation of the
7 parties. (*Wershba, supra*, 91 Cal.App.4th at 237-240.) As set forth in the Flanagan Decl., which
8 provides the appropriate evidentiary support for such a determination under *Daniels v. Centennial*
9 *Group, Inc.* (1992) 16 Cal.App.4th 467, 471, all of the requirements for certification of the
10 Settlement Class, as set forth in Civil Code section 1781(b) and Code of Civil Procedure section
11 382, are satisfied:

12 (a) The class is sufficiently numerous, as there are approximately 500,000 Anthem Blue
13 Cross customers who fall within the Settlement Class definition. (Flanagan Decl., ¶ 17(a).)

14 (b) The named Plaintiffs were enrolled in Anthem health plans affected by the alleged
15 provider network inaccuracies. Named Plaintiffs have paid all the premiums charged to them
16 during the relevant time period, and thus they have standing to pursue such claims and their claims
17 are typical of other Settlement Class Members. (Flanagan Decl., ¶ 17(b).)

18 (c) Common questions of fact and law predominate over individual issues in terms of
19 the propriety of Anthem's advertising and accuracy of provider lists and whether this settlement is
20 fair and reasonable. These primary factual issues are common to all of the Settlement Class
21 Members. (Flanagan Decl., ¶ 17(c).)

22 (d) Named Plaintiffs do not have any irreconcilable conflicts of interest with those of the
23 absent Settlement Class Members, since they have the same basic claims as those of the Settlement
24 Class Members and their claims arise from the same core set of operative facts. Named Plaintiffs
25 have been diligent in prosecuting this case, and have spent time helping to investigate the facts of
26 this case, participating in settlement discussions, approving the settlement and otherwise keeping
27 apprised of the case developments. (Flanagan Decl., ¶ 17(d); Exs. H-Q.) Counsel for Plaintiffs
28 have substantial experience in consumer class action and health care litigation, as demonstrated by

1 their firm resumes. (Flanagan Decl., ¶ 17(d); Ex. R.) Counsel for the Plaintiffs have represented
2 the Settlement Class adequately by avoiding potential conflicts of interest and always putting the
3 Settlement Class Members’ interest at the forefront of this litigation. (Flanagan Decl., ¶ 17(d).)

4 (e) Finally, due to the nature and complexity of the claims at issue, few persons would
5 have an interest in individually controlling the prosecution of separate actions. (Flanagan Decl., ¶
6 17(e).) There is a desire on both sides to maintain and resolve this action in a single forum
7 generally and in this forum in particular. Based on this settlement, there are no difficulties likely to
8 be encountered in the management of this action, nor any superior method of proceeding on a
9 group-wide basis. (*Ibid.*)

10 **D. Dates for the Preliminary Approval Order**

11 Under the schedule the Parties propose to this Court (Flanagan Decl., Ex. Q), the final
12 approval date will occur more than 50 days after preliminary approval.⁸ Such a schedule is
13 appropriate and consistent with case law. (See, e.g., *In re BankAmerica Corp. Secs. Litig.* (E.D.
14 Mo. 2002) 210 F.R.D. 694, 707-708 [28-day notice period adequate for objections in nationwide
15 class action]; *Miller v. Republic Nat’l Life Ins. Co.* (5th Cir. 1977) 559 F.2d 426, 430 [“almost four
16 weeks between the mailing of the notices and the settlement hearing” was adequate for nationwide
17 class action]; *Grunin v. Int’l House of Pancakes* (8th Cir. 1975) 513 F.2d 114, 120-121 [19 days’
18 notice adequate time to object]; *United Founders Life Ins. Co. v. Consumers Nat’l Life Ins. Co.* (7th
19 Cir. 1971) 447 F.2d 647, 652 [notice mailed on May 28 and fairness hearing held on June 22 in
20 nationwide class action; time was sufficient].)

21 **IV. CONCLUSION**

22 Based on the foregoing, the Parties jointly request the Court preliminarily approve this
23 settlement and enter a schedule for final approval by executing the Preliminary Approval Order.

24 Respectfully submitted,

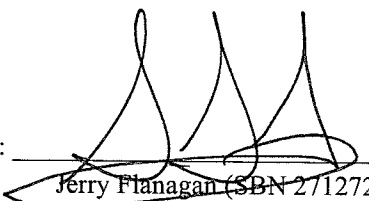
25 //

26 //

27 ⁸ Once the date for the final approval hearing is set, the Parties will resubmit the schedule attached
28 as Ex. Q to the Flanagan Decl. with the dates filled in.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: February 19, 2016

By: 
Jerry Flanagan (SBN 271272)
jerry@consumerwatchdog.com

Harvey Rosenfield (SBN 123082)
harvey@consumerwatchdog.com
Laura Antonini (SBN 271658)
laura@consumerwatchdog.com
Consumer Watchdog
2701 Ocean Park Blvd., Suite 112
Santa Monica, CA 90405
Tel: (310) 392-0522
Fax: (310) 392-8874

Robert S. Arns (SBN 65071)
rsa@arnslaw.com
Julie C. Erickson (SBN 293111)
jce@arnslaw.com
The Arns Law Firm
A Professional Corporation
515 Folsom St., 3rd Floor
San Francisco, CA 94109
Tel: (415) 495-7800
Fax: (415) 495-7888

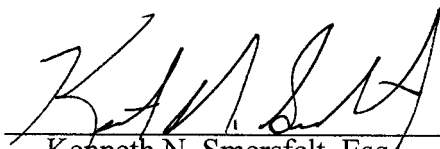
Michael J. Bidart (SBN 60582)
Travis Corby (SBN 268633)
Shernoff Bidart Echeverria Bentley LLP
600 South Indian Hill Boulevard
Claremont, CA 91711
Telephone: (909) 621-4935
Facsimile: (909) 625-6915

Scott C. Glovsky (SBN 170477)
sglovsky@scottglovskylaw.com
Ari Dybnis (SBN 272767)
adybnis@scottglovskylaw.com
Law Offices Of Scott C., Glovsky, APC
100 E. Corson Street, Suite 200
Pasadena, CA 91103
Tel: (626) 243-5598
Fax: (866) 243-2243

Ralph G. Martinez (SBN 82463)
ralph@martinezlawoffice.com
Martinez Law Office, Inc.
24422 Avenida De La Carlota, Ste. 310
Laguna Hills, CA 92653
Tel: (949) 586-0123
Fax: (949) 586-1033

Attorneys for Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

By: 
Kenneth N. Smersfelt, Esq.
ksmersfelt@reedsmith.com

Kurt C. Peterson, Esq.
kpeterson@reedsmith.com
Reed Smith LLP
355 South Grand Avenue, Suite 2900
Los Angeles, CA 90071
Tel: (213) 457-8000
Fax: (213) 457-8080

Molly Moriarty Lane (SBN 149206)
Phillip J. Weise (SBN 291842)
Morgan, Lewis & Bockius LLP
One Market, Spear Street Tower
San Francisco, CA 94105-1126
Tel: (415) 442-1000
Fax: (415) 442-1001

*Attorneys for Defendant Blue Cross of
California d/b/a Anthem Blue Cross*