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17 *Co-Lead Plaintiffs' Counsel*

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

20 *In Re Anthem, Inc. Data Breach Litigation*

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

21 **REPLY DECLARATION OF EVE H.**
22 **CERVANTEZ IN SUPPORT OF MOTIONS**
23 **FOR FINAL APPROVAL OF CLASS ACTION**
24 **SETTLEMENT AND ATTORNEYS' FEES,**
25 **LITIGATION EXPENSES, AND SERVICE**
26 **AWARDS TO CLASS REPRESENTATIVES**

25 Date: February 1, 2017

26 Time: 1:30 p.m.

26 Judge: Lucy H. Koh

27 Crtrm: 8, 4th Floor

1 I, Eve H. Cervantez, declare as follows:

2 1. I am a member in good standing of the California State Bar and the bar of this Court, a
3 partner at Altshuler Berzon LLP, and court-appointed Co-Lead Plaintiffs' Counsel and Class Counsel
4 in this multi-district litigation. I have personal knowledge of the matters set forth herein, and could and
5 would testify competently thereto if called upon to do so. I submit this declaration in support of
6 Plaintiffs' Reply Briefs In Support of Motion for Final Approval of Class Action Settlement and
7 Motion for an Award of Attorneys' Fees, Litigation Expenses, and Service Awards to Class
8 Representatives.

9 2. This declaration is divided into the following Sections: Section I (paragraphs 3-11)
10 provides updated information about the value of the proposed settlement. Section II (paragraphs 12-13)
11 discusses the call center that Class Counsel established to assist class members file claims. Section III
12 (paragraphs 14-22) provides updated information about counsel's lodestar. Section IV (paragraphs 23-
13 26) provides updated and additional information about litigation expenses. Section V (paragraphs 27-
14 50) includes additional information about work assignments and tasks performed. Section VI
15 (paragraphs 51-55) provides additional information about rates. Section VII addresses miscellaneous
16 issues (paragraph 56) and Section VIII (paragraphs 57-69) is an Index of Exhibits to this declaration.

17 **I. Updated Information About the Value of the Proposed Settlement**

18 3. As of January 25, 2018, the Settlement Administrator had received 131,221 claims for
19 alternative compensation. *See* Declaration of Lana Lucchesi ("KCC Reply Dec.") ¶ 9. The claims
20 filing deadline is January 29, 2018. Based on the 131,221 claims for alternative compensation received
21 as of January 25, 2018, each of these claimants will receive \$50 ($131,221 \times \$50 = \6.56 million). *See*
22 Settlement Agreement (ECF 916-20) ("SA") (ECF 916-20) ¶5.3 (amount paid for alternative
23 compensation increases to \$50 per class member if the aggregate amount to pay all alternative
24 compensation claimants will require \$13 million or less).

25 4. Based on the number of alternative compensation claims, I anticipate that there will be
26 sufficient funds remaining in the settlement fund to extend credit monitoring for an additional two
27 years. Pursuant to our contract, Experian will charge \$4.6 million to extend credit monitoring for one
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1 year, and \$9.2 million to extend credit monitoring for two years. I estimate that there will be more than
2 \$9.2 million remaining in the \$115 million settlement fund after subtracting the \$15 million out of
3 pocket claim reserve, the alternative compensation at \$50 per claimant (\$6.56 million based on claims
4 so far), the cost of credit monitoring for the first two years (\$17 million), the amount allocated to notice
5 and claims administration (\$23 million), the requested service fee awards (\$597,500), the requested
6 attorneys' fee (\$37,950,000) and the requested litigation expenses (\$2,005,068.59 plus a reserve of
7 \$132,000).

8 5. Based on these numbers, I project that there likely will be approximately \$3,555,432
9 million in unallocated funds remaining after all claims, expenses, and awards are paid. This comes to
10 about 4 cents per class member or \$2.79 per claimant.

11 6. As of January 25, 2018, the Settlement Administrator has received 1,125,275 claims for
12 credit monitoring services. KCC Reply Dec. ¶ 9. As explained in my previous declaration, the
13 conservative retail value of credit monitoring services to class members is \$9.99 per month – that is,
14 \$479.52 for each class member over a four year period. Because at least 1,125,275 class members have
15 claimed credit monitoring, and that credit monitoring is expected to be extended for four years, the
16 conservative value of the credit monitoring services to the class is at least \$500 million.

17 7. In addition to credit monitoring for those who claim it, the Settlement also offers Fraud
18 Resolution Services to *any* class member who requests such services during the pendency of the credit
19 monitoring services, now anticipated to be four years. The retail value of a product containing a
20 comparable service offered by Experian (called “Restore MyID,” [http://www.experian.com/restore-my-
21 id/identity-restoration-landing.html](http://www.experian.com/restore-my-id/identity-restoration-landing.html)) is \$149.95. The Restore MyID service also includes three months
22 of credit monitoring services; assuming the credit monitoring services offered with Restore MyID are
23 worth \$19.99 per month (\$59.97 for three months), then the retail value of the identity restoration
24 feature is approximately \$89.98 (\$149.95 - \$59.97). The aggregate retail value of offering four years of
25 fraud resolution services to all class member is thus in the billions of dollars.

26 8. A number of objectors have questioned why Experian was chosen to provide the credit
27 monitoring services, and/or have speculated that Experian itself might have poor data security or might
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1 otherwise misuse class members' personal data for marketing or other purposes. ECF 913, KCC Reply
2 Dec. Ex. H. As I explained in my original declaration (ECF 916-8), Class Counsel obtained bids from
3 several vendors of credit monitoring services, and, in consultation with our identity fraud expert,
4 worked to negotiate a product specifically designed to address the needs of class members here.
5 Cervantez Dec. ¶¶8, 9, 43. In so doing, we carefully vetted Experian, including by speaking with both
6 references and other MDL attorneys who had previously retained Experian to provide credit monitoring
7 services to class members, and by inquiring about Experian's security for consumer data. Our contract
8 with Experian provides that no off-shore personnel may be used to provide services to class members,
9 and that no class member data may be sent off shore. Our contract with Experian specifically states
10 "No enrollment information or other data provided by or about a Settlement Class Member as a result
11 of this Agreement will be used for marketing, or for any purpose other than the provision of the [credit
12 monitoring] Services."

13 9. A number of objectors have intimated that the credit monitoring offered here is not
14 useful because they are eligible for free credit monitoring due to their involvement in the Equifax data
15 breach. I have obtained information about the Equifax offer of free credit monitoring, available at
16 <https://www.equifaxsecurity2017.com>. I have attached as Exhibit C the information about the Equifax
17 offering that is publicly available on the internet. The Equifax credit monitoring product does not offer
18 the same level of protection as that offered through this settlement for at least three reasons. First, the
19 Equifax credit monitoring offer is good for only one year, whereas the credit monitoring services
20 offered through the settlement here are virtually certain to continue for four years. Second, the credit
21 monitoring services offered here includes identity restoration services, where a U.S. based, trained
22 fraud resolution specialist is available over a live phone line to assist victims of identity theft with
23 information and advice on what steps to take to protect themselves and may even involve, depending
24 on the nature of the situation, the specialist obtaining power of attorney so as to communicate with
25 vendors and others on behalf of the identity fraud victim. The Equifax offer does not include live
26 identity restoration services. Third, the credit monitoring services offered through this settlement
27 include identity validation monitoring to provide real-time alerts whenever a consumer's information is
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1 used to open a new account or perform an identity validation within the Experian identity network. Our
2 expert recommended such a service for victims of the Anthem data breach. The Equifax offering does
3 not include any such service. Finally, we specifically negotiated that Experian, the provider of credit
4 monitoring services for this settlement, cannot use class members' information obtained as a provider
5 of credit monitoring services for any other purpose, such as marketing. In contrast, the Equifax product
6 provides no such protections. *See* Exhibit D, attached hereto, the Equifax credit monitoring privacy
7 notice.

8 10. Several objectors mistakenly believe that Anthem has already implemented the
9 cybersecurity improvements and increased cybersecurity budget called for in the settlement. This is not
10 correct. First, objector Coddington suggests that Anthem already "had agreed to spend \$260 million to
11 make security improvements as a result of its regulatory settlement." Coddington, ECF No. 927 at 4;
12 *see also* Walton, ECF No. 936 at 8 n.10 (asserting similar objection). The only support for this
13 inaccurate contention is a misstatement in a news article appended as Exhibit B to Coddington's
14 objection. I attached the actual regulatory settlement (with state insurance commissioners, not state
15 attorney generals as incorrectly stated in the article), to my original declaration as Exhibit 14 (ECF 916-
16 23). That settlement states only that Anthem had *already*, by December 2016, spent \$115 million on
17 security improvements. ECF 916-23 at § A(6). It also makes clear that the \$260 million number
18 mentioned in the article relates to the total amount that Anthem had already spent with respect to the
19 breach at the time the regulatory settlement was reached, including mailing of mandated data breach
20 notices and provision of AllClear credit monitoring. *Id.* The minimum cybersecurity expenditures
21 required over the course of the next three years in this settlement represent *new* money, not the money
22 Anthem already spent.

23 11. Other objectors contend that Anthem had already implemented the cybersecurity
24 improvements mandated by the settlement, or would soon do so to avoid future liability.
25 Chattopadhyay (ECF 919 at 7), Schulman (ECF 924 at 9-10). But throughout the litigation, Anthem
26 had contested the recommendations of Plaintiffs' expert with respect to remediation needed, and argued
27 that further improvements to their cybersecurity systems were not needed. *Compare* ECF 797-15 at 64-
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1 67 (Anthem’s expert describing the security initiatives Anthem had undertaken) *with* ECF 744-17 at
2 74-81 (Plaintiffs’ expert opining on additional remediation necessary to protect class member PII) and
3 ECF 744-19 at 22-23 (Plaintiffs’ expert refuting the conclusions of Anthem’s expert re remediation).
4 Anthem only agreed to implement additional cybersecurity enhancements as part of this settlement, and
5 they are scheduled to take effect upon final approval of the settlement. In particular, paragraphs 1-5
6 and 8-12 of Exhibit 2 to the Settlement Agreement contain *new* cybersecurity measures that Anthem
7 agreed to only as part of the settlement, that Anthem has not already taken, and that Anthem is not
8 obligated to undertake unless this settlement becomes final.

9 **II. Call Center for Class Members**

10 12. Several class members contacted the Court or Class Counsel because they were having
11 difficulty filing claims forms or contacting the Settlement Administrator. *See, e.g.* Frankel, ECF 906;
12 Drum, KCC Decl. Ex. D. On the few occasions that Class Counsel have heard of technical problems,
13 they have helped the affected class members and immediately contacted KCC, who fixed the problems
14 within 24 hours. Class Counsel reached out to all of these class members to assist them in filing their
15 claim forms, and will continue to assist any class members who contact us with questions or seeking
16 assistance. Additionally, Class Counsel have established a call center with live telephone support to
17 assist class members file their claim forms. Any class member who needs further assistance or
18 information after calling the automated telephone support center run by the Settlement Administrator is
19 directed to this call center for further assistance. The call center has been receiving approximately 100
20 calls per day.

21 13. The claims filing deadline for credit monitoring and alternative compensation is January
22 29, 2018, but class members can continue to file claims for out of pocket expenses for a year after final
23 approval of the settlement. Additionally, if class members submit claims that are deficient (e.g. they
24 forget to include documentation of an out of pocket loss) the Settlement Administrator will contact
25 class members about the deficiency, and given them time to “cure” the defect. SA ¶¶4.3, 5.2, 6.2.
26 Moreover, it is possible some class members will have missed the deadline for filing a claim for credit
27 monitoring or the cash alternative, and will request leave to file a late claim. In all of these instances,
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1 class members may need the assistance of call center personnel to complete their claims. Accordingly,
2 Class Counsel have determined that it would be in the class's best interest to keep the call center open
3 until the number of calls dies down, and/or until the deadline for filing and curing deficient out-of-
4 pocket claims has passed. Accordingly, we respectfully request that we be permitted to maintain an
5 expense reserve in the amount of \$72,000 to keep the call center open and serving class members until
6 it is no longer needed. Counsel respectfully request that the Court allow these costs to be kept in
7 reserve by the Settlement Administrator to be paid as invoiced. Any amount not used would go to
8 extend the period of credit monitoring or to the *cy pres* recipients.

9 **III. Updated Information About Counsel's Fees and Expenses**

10 14. My previous declaration reported that the combined lodestar of all law firms working on
11 this case through September 30, 2017 was \$37,832,349. The two Co-Lead Counsel firms, and the two
12 Plaintiffs' Steering Committee ("PSC") firms, have continued to work on this case after September 30,
13 2017. In particular, the four Lead/PSC firms researched, drafted, and filed the Motion for Final
14 Approval; answered questions from class members and assisted them in filing claims; established and
15 oversaw a call center to further assist class members to file claims; and oversaw the work of the
16 Settlement Administrator in perfecting the class notices, publication notice, and social media campaign
17 advertisements, mailing and re-mailing notice, establishing the case website (including drafting FAQs
18 and creating instructional videos on claims filing procedures), setting up an automated response
19 telephone support system, and responding to class member inquiries. We did not assign any new tasks
20 to Non-Lead/PSC firms.

21 15. From October 1, 2017 through December 31, 2017, the four Lead/PSC firms expended
22 an additional 339.5 hours for the common benefit, with an additional lodestar value of \$197,250. Each
23 firms' hours, billers and rates from October 1, 2017 through December 31, 2017, are set forth on
24 Exhibit G, attached hereto.

25 16. Since filing Plaintiffs' fee motion, I have discovered four typographical/clerical errors in
26 our lodestar charts set forth in Exhibits 1 and 3 to my original declaration. First, Hal Cunningham, a
27 senior associate at Scott + Scott, is incorrectly identified as a contract attorney. Second, Lief Cabraser
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1 Heimann & Bernstein's staff attorneys are incorrectly identified as "contract attorneys." (The correct
2 nomenclature was used in the concurrently filed Declaration of Michael Sobol, ECF 916-31.) Third,
3 Laura Mummert, of counsel at Goldman Scarlato Penny LLP, was inadvertently listed as an associate,
4 and her rate was stated to be \$595 per hour, when her rate should have been \$495 per hour. The
5 correction of Ms. Mummert's rate reduces the lodestar for the Goldman firm by \$59,200. Fourth,
6 James P. Watt, of counsel at Zimmerman Reed, was inadvertently listed as an associate. These errors
7 have been corrected in Exhibits E and H. I have confirmed once again that Exhibits 1 and 3 contain no
8 further errors concerning the rates and positions for any other Plaintiffs' counsel.

9 17. I calculated an updated lodestar figure which includes both the additional hours billed
10 since September 2017 by Lead Counsel/PSC firms, and a reduction reflecting the correct rate for Ms.
11 Mummert. The updated lodestar for all firms combined from case inception through December 31,
12 2017, is \$38,015,714, representing 78,892.5 hours of work.

13 18. Of the total lodestar, \$24,425,721 (49,217.5 hours), or 64% of the lodestar, was
14 expended by the four Lead/PSC firms, with the remaining \$13,589,993 (29,675 hours), or 36% of the
15 lodestar, expended by other MDL counsel.

16 19. Plaintiffs are requesting a fee award of \$37,950,000, which represents a negative
17 multiplier.

18 20. Exhibit E contains an updated detailed chart showing each firm's reasonable hours and
19 lodestar through December 31, 2017, and, within that firm, each biller, law school graduation year,
20 hours billed, and rates billed. Exhibit F contains an updated chart showing each firms' hours divided
21 by task code. Exhibit H corrects the errors identified above with respect to the clerical/typographical
22 errors, and also includes the updated lodestar information for the four Lead/PSC firms.

23 21. The lodestar set forth on Exhibit E and above does not include any time spent after
24 December 31, 2017 by Lead/PSC firms, overseeing the Settlement Administrator, assisting class
25 members, responding to objectors, or drafting the reply brief in support of final settlement approval.
26 Nor does this lodestar include the future work that Class Counsel will necessarily undertake, including
27 preparing for and appearing at the final approval hearing, continued oversight of the Settlement
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1 Administrator and the claims administration process, litigating any appeals that may be taken by
2 objectors, and annually reviewing the independent auditor's report on Anthem's cybersecurity for the
3 next three years.

4 22. This lodestar also does not include the hundreds of hours that I spent collecting,
5 supervising, and reviewing contemporaneous submission of time records by the other 52 firms, nor
6 does it include the time spent drafting Plaintiffs' Motion for Attorneys' Fees, nor opposing Objector
7 Schulman's Motion to Appoint Special Master.

8 **IV. Updated and Additional Information about Litigation Expenses**

9 23. Since Plaintiffs last submitted expenses, Counsel have identified or incurred \$5,430.82
10 in additional litigation expenses – primarily computerized research, printing, copying, overtime, and
11 courier fees associated with preparation of the Final Approval Brief, and anticipated expenses for Co-
12 Lead Counsel Andrew Friedman to travel to the Bay Area for the Final Approval Hearing. The
13 additional expenses are detailed in Exhibits I, J, and K. These expenses do not include all expenses
14 incurred with respect to responding to objections and researching, drafting, and filing the Reply Brief in
15 Support of Final Approval, appearing at the Final Approval hearing, or other expenses that counsel may
16 incur in the future in support of the settlement or to assist class members with the claims filing process.

17 24. Accordingly, Class Counsel have incurred expenses of \$2,005,068.59 to date, and
18 request an additional \$60,000 reserve for a cybersecurity expert to review Anthem's annual
19 cybersecurity reports, and an additional \$72,000 to keep the call center open as long as is necessary to
20 assist class members with the claims filing process. The grand total expenses, including the reserved
21 amounts, is \$2,137,068.59.

22 25. My original declaration set forth the litigation expenses paid for by Plaintiffs' counsel in
23 this case, and the reasons for each. Cervantez Dec. ¶¶56-61 & Exs. 4-10. One objector complains that
24 Class Counsel expended \$707,606 on experts. ECF 924 at 11. All of these expert expenditures were
25 necessary to litigate this case. Class Counsel retained several consulting experts with respect to
26 cybersecurity and the dark web, and four testifying experts, all of whom submitted lengthy reports in
27 support of class certification. *See* ECF 744-17, 744-19, 744-21, 744-22, 744-23, 744-25, 744-27, 744-
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1 28. This was not work that could have been performed by attorneys, but involved in-depth knowledge
2 of cybersecurity, conjoint survey design and analysis, and identity fraud and prevention. The reports of
3 Plaintiffs' cybersecurity and identity fraud experts were crucial not only to supporting class
4 certification, but to formulating the carefully crafted business practice changes and custom designed
5 credit monitoring services necessary to protect class members' personal information and privacy here.

6 26. The objector speculates that Class Counsel had an incentive to spend more on experts
7 than was warranted by the needs of the case. These expert expenses were all necessary to litigate this
8 case well, as set forth above and in my initial declaration. It would have been foolhardy for Class
9 Counsel to pay such large sums out-of-pocket, with no guarantee that they would prevail and receive
10 reimbursement for this money, merely to enhance some future application for attorneys' fees.
11 Contingency fee attorneys, who are not guaranteed reimbursement of either out of pocket expenses or
12 time expended, are already incentivized to minimize expenses to only those necessary to vindicate the
13 rights of the class.

14 **V. Further Information about Assignment of Work and Tasks Performed**

15 27. My original declaration set forth in great detail the work performed by each firm and
16 attorney, including hours expended, rates charged, and tasks performed. I also included the reasons for
17 each task and the division of labor between Lead/PSC firms and other MDL firms that assisted with
18 this litigation. Cervantez Dec. ¶¶ 25-43, 52 & Exs. 2-3. I elaborate on certain points below in response
19 to the filed objections.

20 28. In appointing Lead Counsel and the PSC, this Court specifically encouraged us "as
21 needed, to consult with the other applicants regarding devising damages theories, retaining data
22 security experts, litigating against the defendants in this case, and identifying and communicating with
23 potential plaintiffs." ECF 284. The Court later clarified that we could "assign discrete tasks to counsel
24 for other plaintiffs in this MDL for resource-intensive tasks such as identifying plaintiffs for the
25 Consolidated Amended Complaint and reviewing discovery. This augmentation of resources should be
26 on an as needed basis and consistent with efficiency." ECF 286. That is precisely what we did.

1 29. Several objectors contended that this case should have been litigated by fewer firms.
2 *See, e.g.*, ECF 924. This is not an MDL consolidating duplicate antitrust or securities fraud cases, in
3 which a few plaintiffs may represent the interests of a large nationwide class asserting two or three
4 standard claims. Instead, this MDL was a consolidation of hundreds of state law claims brought on
5 behalf of distinct state law classes by different sets of named plaintiffs, which, had it not been for the
6 MDL procedure, might have resulted in 50 separate lawsuits. Indeed, Defendants argued in their
7 motions to dismiss that we needed separate plaintiffs for each state law claim against each Defendant.
8 ECF 413, 433, 490, 512. The Court granted in part and denied in part Defendants' motion to dismiss
9 on standing grounds, and specifically gave Defendants leave to raise standing again on class
10 certification. EFF 468 at 8-15, ECF 524 at 8-12.

11 30. Therefore, as explained previously, we needed to search for plaintiffs from every state,
12 representing varying types of insurance plans, including from different defendants. *Cervantez Dec.*
13 ¶26. Rather than begin from scratch reaching out to potential plaintiffs, Lead Counsel asked non-PSC
14 firms from around the country to reach out to putative class members with whom they already had
15 established contacts and to assist in identifying those that should serve as Named Plaintiffs. This work
16 was not duplicative; indeed, it was much more efficient for law firms with existing contacts and clients
17 to gather and submit information about prospective Named Plaintiffs to Lead Counsel than it would
18 have been for Lead Counsel to start afresh in 50 states. Many of the MDL law firms' chief contribution
19 to the litigation was in locating, interviewing, and bringing to our attention their clients as prospective
20 named plaintiffs. *See Cervantez Dec.*, Exh. 2, 3 (task code 1). For example, the following firms almost
21 entirely billed to task code 1, communicating with and vetting prospective plaintiffs: Cafferty Clobes,
22 Chestnut Cambronne, Consumer Law Practice of Dan LeBel, Desai Law, Finklestein Thompson,
23 Harwood Feffer, Karon LLC, Litigation Law Group, and Tousley Brain.¹ This work by non-Lead/PSC
24 firms was contemplated by the Court's order.

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26
27 ¹ Some of these law firms also billed to task code 6, pleadings, because we later asked them to file
28 dismissals of their clients' underlying MDL complaints, which had been set for early trials. ECF 856.
Each dismissal required permission of the clients and a separately negotiated stipulation and dismissal.

1 31. Once a class member retained a given MDL law firm, that class member was entitled to
2 representation by his or her counsel of choice. Accordingly, as explained in my prior declaration
3 (Cervantez Dec. ¶¶28-29) and demonstrated in Exhibits 2 and 3 (see task Codes 1, 4, 5, 6), MDL
4 counsel representing a particular plaintiff were responsible for communicating with that plaintiff with
5 respect to pleadings concerning that plaintiff (allegations in the amended complaint, declarations in
6 support of class certification), gathering documents and information to respond to Interrogatories and
7 Document Requests with respect to that plaintiff, assisting in the defense of their clients' depositions,
8 and discussing settlement with their clients, all under the guidance of Lead Counsel. Communicating
9 with plaintiffs and responding to individual discovery directed at them was not duplicative work, and it
10 was far more efficient for MDL counsel to handle these tasks for their own clients than to have
11 Class/PSC Counsel become familiar with 100-plus Named Plaintiffs geographically located throughout
12 the country. Similarly, given the tight discovery schedule, it made little sense for counsel from the PSC
13 firms to defend all 100-plus Named Plaintiff depositions, especially because Named Plaintiffs' personal
14 counsel would be attending each of these depositions regardless of whether the PSC firms took the lead
15 in defending them or not. By delegating the task, Co-Lead Counsel both ensured that the Named
16 Plaintiffs were represented by competent and adequately prepared counsel with whom the Named
17 Plaintiffs had a pre-existing relationship, and also freed up valuable resources at the Lead/PSC firms to
18 focus on other aspects of the litigation.

19 32. The following 25 law firms handled discovery and assisted with deposition defense of
20 their Named Plaintiff clients: Cohen & Malad (32 Named Plaintiffs, including 6 from their home state
21 of Indiana, and several others from nearby Midwestern states); Goldman Scarlato (21 Named Plaintiffs,
22 including six East Coast Plaintiffs near Goldman's Philadelphia office); Stueve Siegel (10 Named
23 Plaintiffs including 2 from Missouri where they are located); Skepnek Law Firm (6 Named Plaintiffs, 2
24 from Kansas where Skepnek's offices are located and 4 from neighboring Missouri); Law Offices of
25 Angela Edwards (4 Named Plaintiffs from New England where Ms. Edwards is located); Morgan &
26 Morgan (4 Named Plaintiffs from the South, near Morgan & Morgan's Florida offices). Several firms
27 had three Named Plaintiff clients (Boucher (Southern California plaintiffs and firm), Robinson
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1 Calcagnie, Weitz & Luxenberg, and Webb Klase & Lemond (Georgia plaintiffs and firm)); some had
2 two Named Plaintiff clients (Federman & Sherwood; Strittmatter Kessler (Washington plaintiffs and
3 firm)); and others had one client: Abington Cole, Berger & Montague, Boucher, Farmer Jaffe Weissing,
4 Fitapelli & Schaffer (New York plaintiff and firm), Janet Jenner and Suggs (Massachusetts plaintiff and
5 firm), Keller Rohrback, Law Office of Paul Whalen (New Jersey plaintiff; New York firm), Levi &
6 Korsinsky, Milberg Tadler Phillips Grossman (Connecticut plaintiff; New York firm), Murray Law
7 Firm (Louisiana plaintiff and firm), Giatras Law Firm (West Virginia plaintiff and firm), and
8 Zimmerman Reed.

9 33. In addition to requesting that MDL counsel work with their own clients on discovery for
10 the sake of efficiency and honoring class members' choice of counsel, it was necessary to assign out
11 these discrete tasks, given the time constraints under which we were operating. Lead Counsel were
12 appointed on September 11, 2015, and discovery closed 14 months later, in December 2016 (during
13 which time Lead Counsel/PSC also litigated two rounds of motions to dismiss brought on behalf of two
14 sets of Defendants). Thus, while Lead Counsel/PSC firms coordinated the discovery directed to
15 Plaintiffs, they could not have effectively responded to all the discovery directed at the 100-plus named
16 Plaintiffs while also taking the necessary affirmative discovery of Anthem and the other Defendants
17 and responding to the Motions to Dismiss. Not only would it have been taxing on Lead Counsel/PSC
18 firms, it would have been less efficient and more costly for Lead Counsel/PSC firms to do so.

19 34. As is evident from Exhibit 2 to my declaration, which sets forth the hours worked under
20 each task code for each firm, for 26 firms, their primary contribution to the litigation was to identify
21 prospective plaintiffs (task code 1) and then, for any client who was selected as a Named Plaintiff,
22 work with their client(s) to respond to discovery directed at that Named Plaintiff (task code 4), defend
23 their clients' depositions (task code 5), and review and revise pleadings specifically referencing their
24 clients (paragraphs in the Amended Consolidated Class Action Complaints (task code 6) and
25 declarations in support of class certification (task code 10)). Those 26 firms are: Abington Cole,
26 Berger & Montague, Cafferty Clobes, Chestnut Cabronne, LeBel, Desai, Fagan, Farmer, Federman,
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1 Finklestien, Fitapelli, Forbes, Harwood, Janet, Karon, Whalen, Edwards Levi & Korsinsky, Litigation
2 Law Group, Robinson, Skepnek, Strittmater, Giatras, Touseley, Webb, and Weitz & Luxenbourg.

3 35. As the Court had anticipated, although Lead Counsel/PSC firms contributed many
4 valuable hours to document analysis and review, the volume of documents was so great, and the time in
5 which to analyze them so short, that Lead Counsel necessarily called upon other MDL firms that could
6 provide the additional resources necessary to complete an efficient and high-quality analysis and
7 review.

8 36. As set forth in Exhibits 2 and 3 to my original declaration, in addition to Lead
9 Counsel/PSC firms, the following 22 firms contributed many valuable hours to document analysis and
10 review (task code 2): Barrack Rodos, Bonnett Fairbourne, Boucher, Branstetter, Carlson Lynch, Cohen
11 & Malad, Cotchett, Goldman Scarlato, Heins Mills, Kantrowitz, Kaplan Fox, Keller Rohrback,
12 Lockridge Grindal, Milberg, Morgan & Morgan, Murray Law Office, Pomerantz, Schubert, Scott +
13 Scott, Stueve Siegal, Stull Stull, and Zimmerman Reed. (Of these firms, eight also had clients who
14 were Named Plaintiffs, and thus assisted with the defensive discovery of their clients, including
15 Boucher, Cohen & Malad, Goldman Scarlato, Keller Rohrback, Milberg, Morgan & Morgan, Murray
16 Law Office, and Stueve Siegal).

17 37. This document analysis and review was conducted very efficiently, as explained in my
18 initial declaration (¶¶30-31, 40-42). Two delegated partners at the PSC firms trained the attorneys
19 conducting document analysis and review, held weekly telephone calls to discuss issues, conducted
20 quality control audits to insure document analysis was undertaken efficiently and correctly, and
21 generally supervised the attorneys carrying out the review.

22 38. None of the above-described work was duplicative. Each document needed to be
23 reviewed. Each deposition needed to be taken or defended. Each set of interrogatories and document
24 requests directed at an individual Named Plaintiff had to be responded to with respect to that Named
25 Plaintiff.

26 39. We also requested that six non-Lead/PSC firms assist with the depositions of the 13
27 Non-Anthem Defendants because of the time constraints imposed by the close of discovery and delays
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1 in the relevant document productions. Cervantez Dec. ¶36. After navigating extensive disputes over
2 the scope of the Non-Anthem deposition topics, Co-Lead Counsel was faced with the resource-
3 intensive task of taking 41 depositions of corporate designees in 13 different states between November
4 14 and December 20, 2016.² Because all but one of the Non-Anthem Defendants designated multiple
5 individuals to cover the different deposition topics, it typically took two days to complete the
6 depositions of each Non-Anthem Defendant. The Non-Anthem Defendants produced documents on a
7 rolling basis in November and December, frequently producing thousands of pages just a week or two
8 prior to the depositions. This highly compressed deposition schedule coincided with the final weeks
9 before the close of fact discovery. By delegating many of the Non-Anthem depositions to non-PSC
10 firms, Lead Counsel freed up valuable resources so that the PSC could complete other discovery
11 objectives.

12 40. There was no duplication of effort because Lead Counsel provided a template outline,
13 and each firm responsible for a deposition reviewed the documents applicable to that particular
14 defendant in order to prepare a more tailored outline to examine the witnesses based on their
15 company's documents. In most cases we were able to use non-PSC firms who were geographically
16 located closer to the deponent than Lead Counsel, thus further fostering efficiency. For example,
17 attorneys from Emerson Scott in Little Rock, Arkansas took the deposition of Arkansas BCBS in Little
18 Rock; attorneys from Carlson Lynch in Pittsburgh took the deposition of Highmark BCBS in
19 Pittsburgh; attorneys from the Branstetter firm in Nashville took the depositions of BCBS Alabama in
20 Birmingham and the deposition of BCBS North Carolina in Raleigh; and attorneys from Morgan &
21 Morgan in Tampa took the deposition of BCBS Florida in Jacksonville. Attorneys from Barrack Rodos
22 and Keller Rohrback also assisted with the Non-Anthem depositions.

23 41. The total of 13,871 hours spent on almost 200 depositions was necessary, and not
24 duplicative or inefficient. Defendants deposed all of the Named Plaintiffs, which we were obligated to
25 defend, including by traveling all over the country to often remote locations. Although, as discussed
26 above, we were able to achieve some efficiencies in travel through the use of non-Lead Counsel/PSC

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28 ² Class Counsel entered into a stipulation to extend the fact discovery deadline for the limited purpose
of finishing these Non-Anthem depositions.

1 firms, it was not always the case that Named Plaintiffs' retained counsel resided near Named Plaintiff.
2 Plaintiffs efficiently took affirmative percipient witness and Rule 30(b)(6) depositions, each of which
3 required thorough preparation, including analysis of documents and thoughtful outlines, particularly
4 given the complex technical, cybersecurity, and contract topics at issue. Defendants, not Plaintiffs,
5 determined the number of Rule 30(b)(6) witnesses they offered on the relevant topics. The evidence we
6 gathered in our affirmative depositions of Defendants was put to good use: Of 84 depositions, we cited
7 to over 50 in our class certification briefing and supporting expert declarations.

8 42. The amount of time Class Counsel invested in depositions was central to Plaintiffs'
9 ability to build an effective case that ultimately provided the leverage for the settlement that was
10 achieved. While some depositions took very little time, others necessarily took a very long time. For
11 example, one partner efficiently used only 12 hours to prepare for, travel to, and take a 30(b)(6)
12 deposition of Anthem concerning where and how Anthem stored and maintained premium information
13 (that would be used later for expert damages calculations). In contrast, we expended well over 300
14 hours preparing for and taking the deposition of Stephen Moore, an Anthem staff vice president in the
15 information security department, who was deposed in his individual capacity and as a 30(b)(6)
16 corporate designee. Mr. Moore testified on the corporation's behalf with respect to more than a dozen
17 topics regarding Anthem's information security practices. In order to prepare for Mr. Moore's
18 deposition, Plaintiffs' counsel analyzed the most important Anthem information security documents
19 and crafted highly technical questions. Similarly, Counsel spent 110 hours preparing for and taking the
20 deposition of Thomas Miller, Anthem's Chief Information Officer, who was deposed in his individual
21 capacity and also as Anthem's corporate designee on Anthem's spending on information security. In
22 order to prepare for Mr. Miller's deposition, Plaintiffs' counsel analyzed six years of Anthem's
23 financial data for information security, and crafted important lines of questioning about Anthem's
24 spending. Plaintiffs' counsel also reviewed Mr. Miller's most important e-mails and asked him
25 pertinent questions about those e-mails. Plaintiffs obtained binding admissions at these two depositions
26 that were central to Plaintiffs' liability theory. The class was well served by the total 442.9 hours that
27 Counsel spent on Mr. Moore and Mr. Miller's depositions.

1 43. Limiting each deposition to 40 hours, as one objector suggested (ECF 924 at 26) would
2 not have served the Class. Conservatively assuming only ten hours for travel back and forth and ten
3 hours on the actual day of the deposition, objector suggests that counsel should spend only two days
4 reviewing and analyzing potentially useful exhibits and crafting an outline. Using such parsimonious
5 time, Class Counsel would not have been able to properly prepare and defend the depositions of Named
6 Plaintiffs, or delve as deeply into the vulnerabilities of Anthem's cybersecurity systems, or build a full
7 understanding of the commonalities between the Defendants' various types of health care contracts
8 with its members. Some depositions take far fewer than 40 hours, and some take far more, but
9 certainly no artificial limit should be set. The reality is that taking and defending depositions in hotly-
10 contested litigation requires careful preparation.

11 44. As is evident from Paragraph 52 and Exhibits 2 and 3 to my original declaration,
12 Lead/PSC firms did almost all of the work on class certification (task code 10) and settlement (task
13 code 11). Non-Lead/PSC firms contributed only 35 hours to class certification (drafting declarations
14 from the ten Named Plaintiff clients who were seeking appointment as class representatives following a
15 template provided by Lead Counsel) and 161 hours to settlement (speaking to over 100 Named
16 Plaintiffs about settlement and, in several instances, providing Lead Counsel with information about
17 other data breach settlements and/or credit monitoring vendors).

18 45. Class Counsel had to invest significant time in pursuing class certification, given the
19 near dearth of relevant models, and met the challenge by preparing a thoroughly substantiated motion
20 that utilized the information gathered during fact and expert discovery. Further, the particular
21 circumstances of the case gave rise to time-intensive tasks. For example, on the bellwether California
22 contract claim, Class Counsel anticipated that Defendants would argue against commonality, typicality,
23 and predominance because there were hundreds of different contracts at issue. To preempt this
24 argument, Class Counsel searched through the voluminous document production to identify all
25 California health plan booklets that were in effect at the time of the data breach, analyzed the resulting
26 245 booklets and identified the contractual privacy provisions within them, determined which of those
27 provisions were substantively the same in the booklets such that they would support class certification,
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1 and created an exhibit that demonstrated the commonalities between the provisions. *See* ECF 746-1
2 (Dec. of Matt Broad); ECF 746-2 (Rule 1006 Summary of Evidence Chart of Anthem Contracts). This
3 is just one example amongst many of the time-intensive projects that were integral to Plaintiffs' motion
4 for class certification. Overall, Plaintiffs' briefing on class certification relied on 190 exhibits and
5 seven expert reports, including an 82-page description of the technology that was at issue in the data
6 breach, the timeline of the breach itself, the security and administrative control failures that contributed
7 to the breach, and the remediation necessary to protect class members in the future. ECF 744-16
8 (Strebe Report). The hours expended on class certification were clearly worth it: Anthem was not
9 willing to even begin discussing settlement until Plaintiffs filed their Motion for Class Certification,
10 and the case did not finally settle until after Plaintiffs filed their Class Certification Reply.

11 46. The 2,500 hours spent on settlement reflect the uniqueness and complexity of this
12 settlement and encompassed far more than "crafting the settlement." The hours instead include: three
13 separate days of mediation (including two trips to New York); complete documentation of a lengthy
14 and complex settlement with multiple types of relief including comprehensive business practice
15 changes; drafting all the different forms of notice (plus revisions thereto at the suggestion of the Court
16 at the Preliminary Approval Hearing); solicitation and vetting of bids from several vendors of claims
17 administration services and credit monitoring services; negotiation of complex contracts with KCC for
18 settlement administration and with Experian for credit monitoring services; supervision of the Notice
19 and claims process; assisting class members; and seeking preliminary and final approval. Given the
20 complexity of this excellent settlement, that was all necessary time.

21 47. One objector contends that "without detailed billing information here, the Court is
22 unable to confirm that plaintiffs had ceased discovery or document review after the settlement was
23 reached." ECF 924 at 24. In fact, Counsel did not perform any work after the settlement was
24 documented in June 2017 pertaining to anything other than the settlement itself, including moving for
25 preliminary and final approval, supervising the Settlement Administrator, and assisting class members
26 with the claims process. Discovery closed in March 2017 and all document review ceased in May
27 2017. The fact discovery cut-off was December 1, 2016 (except for certain Non-Anthem Defendant
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1 depositions which were extended to December 16, 2016 and the forensic examination of Plaintiffs'
2 computers which extended into February 2017, in accordance with this Court's orders (ECF 609, 651)),
3 and all fact discovery ceased in accordance with those deadlines by February 2017. Expert discovery
4 continued into March 2017 (ECF 651), as did preparation and filing of the class certification motion
5 and reply brief and related *Daubert* motions, which were filed in accordance with the schedule set by
6 the Court (ECF 609) on March 10 (class certification brief), May 5 (class certification reply and
7 *Daubert* motions), and June 2, 2017 (*Daubert* replies). We instructed most law firms and attorneys
8 assisting with document analysis and review to stop all such work at the end of December 2016.
9 Beginning in January 2017, only two non-PSC firms (four attorneys total), plus two attorneys at LCHB
10 and two at Girard Gibbs, billed for or conducted any further document analysis and review, and only
11 with respect to discrete projects, including targeted searches to find documents for use by our experts or
12 necessary for class certification, or investigation of Anthem's privilege claims, which we continued to
13 litigate through May 2017. We did not bill for any document analysis or review after May 2017.

14 48. We did not disclose any agreements regarding fees, because there are no agreements to
15 disclose. Neither I, nor Mr. Friedman, Mr. Sobol or Mr. Gibbs, had or have any agreement with any
16 other law firm in this MDL with respect to division of fees or assignment of work on this case. There
17 are no agreements between or among Co-Lead Counsel or the PSC firms regarding how to allocate fees
18 or work in this case, nor are there any agreements between Co-Lead/PSC firms and any other MDL
19 counsel regarding how to allocate fees or work in this case. In particular, Co-Lead/PSC firms have not
20 made any deals to exchange work or fees in this case for work or leadership positions in any other case
21 or MDL. Co-Lead Counsel Andrew Friedman and I made all work assignments (within our own firms,
22 to PSC firms, and to other MDL firms) on the basis of efficiency and experience, and, as promised in
23 our request to be appointed lead counsel, I took the lead on, and personally reviewed, all attorney fee
24 submissions to insure that only non-duplicative and efficient common benefit time was included in our
25 total lodestar.

26 49. Each firm bore its internal costs as documented in Exhibits 6 through 10 of my original
27 declaration; Exhibit 5 details which firms contributed to the Joint Cost Fund, and in what amount.

1 50. Because work on this case is not yet complete, it would be premature to set forth here
2 the precise allocation of fees among Plaintiffs' counsel. In particular, Lead Counsel/PSC firms have
3 much more work yet to come, including continuing to respond to class member inquiries, supervising
4 the claims and distribution process, responding to any appeals that might be filed by objectors, and
5 reviewing the annual report of the independent auditor with respect to Anthem's cybersecurity for the
6 next three years. Moreover, the lodestar set forth in Exhibit E attached hereto does not include any
7 work performed by Lead Counsel/PSC firms after December 31, 2017, nor does it include the work
8 performed by Lead Counsel/PSC firms with respect to Plaintiffs' Motion for Attorneys' Fees (which is
9 not included in the common fund lodestar cross check because it did not benefit the class, but which
10 would be considered in any allocation of fees among Plaintiffs' counsel, because it benefited all
11 Plaintiffs' counsel).

12 **VI. Additional Information about Rates for Document Review**

13 51. One objector complains that the rates charged for document analysis and review are too
14 high because such work is purportedly "menial." ECF 924. All of the attorneys engaged in document
15 analysis and review – associates, contract attorneys, and staff attorneys, employed by Lead/PSC firms
16 and by other MDL firms – performed highly skilled, analytic work that was crucial to the success of the
17 case. Many of the documents were very technical and required a high level of sophistication to
18 understand. There was very little "first level review" because we used computer-aided review to help
19 find relevant documents. Attorneys engaged in document analysis and review were given increasingly
20 sophisticated tasks, coding documents according to a highly detailed matrix of issues, identifying and
21 analyzing "hot" documents, summarizing key documents, running targeted searches on particular topics
22 or witnesses, drafting memos analyzing and comparing documents on a particular subject, and
23 providing critical exhibit identification assistance for depositions and expert analysis. Attorneys also
24 spent significant time identifying missing privileged documents and other holes in the document
25 production.

26 52. The document analysis and review in this case required a high level of technical
27 knowledge and sophistication. For example, this was not a case in which Anthem had a single flaw in
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1 its cybersecurity system that was easily discovered and remedied. Instead, Plaintiffs alleged that,
2 despite Anthem's seemingly sufficient written policies, in practice Anthem's cybersecurity system
3 suffered from numerous flaws, all of which contributed to the data breach, and all of which needed to
4 be remedied. *See, e.g.*, ECF 744-17, ECF 744-19. Counsel had to ferret out and understand these flaws
5 by careful review and comparison of numerous documents that could then be used to question Anthem
6 witnesses under oath. Similarly, counsel had to carefully analyze and compare the numerous insurance
7 contracts applicable to each of the 100 plus plaintiffs, and discern and distill the pattern in the privacy
8 promises contained therein. Attorneys responsible for document analysis and review were trained to
9 identify and analyze these nuances throughout the course of the document review efforts.

10 53. The value of the document analysis and review in this litigation was critically important
11 to the outcome achieved for the class. For instance, Class Counsel relied on the documents to build an
12 understanding of highly technical cybersecurity issues and, ultimately, to identify and successfully
13 negotiate cybersecurity measures that would address the vulnerabilities in Anthem's databases and
14 other systems. In the end, Class Counsel cited to almost 300 documents in the Motion for Class
15 Certification and accompanying expert declarations, which were carefully culled from the millions of
16 documents produced by Anthem. Plaintiffs' showing on class certification in this case could not have
17 occurred without the extensive, careful, and efficient document review process established and
18 supervised by Partners at the Lead/PSC firms and carried out by many skilled associates, staff
19 attorneys, and contract attorneys at Lead/PSC firms and at other MDL firms.

20 54. Document review and analysis was primarily conducted by associates and contract or
21 staff attorneys, with supervision by two partners at the PSC firms, Nicole Sugnet and David Berger.
22 Partners, including Co-Lead Counsel, engaged in some very limited analysis of key hot documents,
23 such as the Mandiant Report. The blended rate for all document analysis and review work in this case,
24 including work by partner-level attorneys, associates, contract or staff attorneys, and paralegals, is \$389
25 per hour. This includes associates billing at rates ranging from \$275 to \$500, depending on their level
26 of experience and market rate for their firm/locality, as established in Exhibit 3 to my original
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1 declaration. The blended rate for contract/staff attorney document analysis and review is \$360 per
2 hour.

3 55. Although Altshuler Berzon takes some contingency fee cases, Altshuler Berzon also has
4 many clients whom we bill for legal services at set hourly rates. When a case calls for document
5 analysis and review, the attorneys responsible for that case conduct the document analysis and review
6 at their applicable rate, and we do not charge any different or lower rate for document analysis and
7 review.

8 **VII. Miscellaneous**

9 56. Objector Pflug (ECF 934) complains about a phone phishing scam directed at Anthem
10 members, which he believes may be related to information taken during the Anthem data breach. We
11 do not know whether or not the phone phishing scam is related to information taken during the Anthem
12 data breach. When Anthem learned about the phone phishing scam in the fall of 2017, Anthem counsel
13 contacted Class Counsel and the Settlement Administrator and asked that a warning about the potential
14 scam be placed on the settlement website, which it was. We have not heard more about the phone
15 phishing scam since then.

16 57. My review of discovery documents produced in this case indicates that the hackers
17 responsible for the Anthem data breach did not exfiltrate all of the PII in Anthem's systems, such that
18 some Anthem members were included in the data breach, while others were not.

19 **VIII. Exhibits**

20 58. Attached hereto as Exhibit A is an index of all objections filed with the Court or
21 received by the Settlement Administrator, which sets forth the page number in the Reply Brief in
22 support of Final Approval and/or the Reply Brief in support of Attorneys' Fees, Litigation Expenses,
23 and Service Awards to Class Representatives on which that objection is discussed.

24 59. Attached hereto as Exhibit B is a chart of all data breach class action settlements
25 involving classes over 15 million individuals that Counsel has been able to find.

26 60. Attached hereto as Exhibit C information is information about the Equifax offer of free
27 credit monitoring, obtained at <https://www.equifaxsecurity2017.com>.

