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13 **UNITED STATES DISTRICT COURT**  
14 **NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

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

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

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17 **DECLARATION OF ANDREW N.**  
**FRIEDMAN IN SUPPORT OF PLAINTIFFS'**  
**MOTIONS FOR FINAL APPROVAL OF**  
**CLASS ACTION SETTLEMENT, AWARD**  
**OF ATTORNEYS' FEES,**  
18 **REIMBURSEMENT OF EXPENSES, AND**  
**SERVICE AWARDS**  
19

20 Date: February 1, 2018  
21 Time: 1:30 p.m.  
22 Judge: Hon. Lucy H. Koh  
Ctrm: 8, 4th Floor

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28 **DECLARATION OF ANDREW N. FRIEDMAN IN SUPPORT OF PLAINTIFFS' MOTIONS FOR**  
**FINAL APPROVAL OF CLASS ACTION SETTLEMENT, AWARD OF ATTORNEYS' FEES,**  
**REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS**

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

1 I, Andrew N. Friedman, declare:

2 1. I am an attorney admitted to practice in the Northern District of California *pro*  
3 *hac vice* in the above-captioned lawsuit (“Action”) against the Anthem Defendants (“Anthem”)  
4 and the Non-Anthem Defendants (collectively, “Defendants”), and am Court-appointed Co-Lead  
5 Plaintiffs’ Counsel in this action. I have practiced law since 1983. I am a partner with the firm  
6 of Cohen Milstein Sellers & Toll PLLC (“Cohen Milstein”) in Washington, D.C. and have been  
7 litigating class actions at Cohen Milstein since 1985. I am making this declaration in support of  
8 Plaintiffs’ Motions for Final Approval of Class Action Settlement and for an Award of  
9 Attorneys’ Fees, Reimbursement of Expenses, and Service Awards.

10 2. I believe the proposed settlement of this Action is extremely beneficial to the  
11 Class. Among other things, the Settlement provides for at least two years of free credit  
12 monitoring and significant enhancements to Anthem’s data security practices. By settling now,  
13 the Class is able to take advantage of these remedies that likely will be unavailable or worth  
14 substantially less by the time this case could be litigated to a final judgment.

15 3. I acted as Co-Lead Counsel in this case and worked in coordination with Co-Lead  
16 Counsel, Eve Cervantez, as well as all other co-counsel. As Co-Lead Counsel, my firm worked  
17 on virtually every aspect of this litigation, although I regularly made work assignments in this  
18 Action to avoid duplicative efforts. Ms. Cervantez and I conferred almost daily for nearly two  
19 years on strategic decisions in this case and ultimately made decisions concerning virtually every  
20 significant action in the litigation. For the nearly two years of active litigation, I spent  
21 approximately 60 percent of my billed time on this litigation, while the other partner and two  
22 associates who spent the most time on this case from my Firm spent approximately half of their  
23 billed time. As a result, these four attorneys were precluded from undertaking significant work  
24 in other cases during that time period. Among the tasks in which I, or legal professionals at my  
25 Firm, took primary responsibility include:

- 1 • Conducting an extensive factual investigation into the data breach, with particular  
2 focus on highly technical aspects and the potential disclosure of class member data  
3 on the Dark Web;
- 4 • Conducting discovery of BCBSA (including taking 2 depositions thereof);
- 5 • Responding to Defendants' Requests for Production;
- 6 • Responding to Defendants' Interrogatories;
- 7 • Collecting, redacting Personally Identifiable Information from, and producing  
8 documents for over 100 Named Plaintiffs;
- 9 • Regularly holding meet and confer conferences with Defendants' counsel over the  
10 scope of discovery requests and drafting numerous joint discovery dispute letters  
11 regarding same, some of which were submitted to Magistrate Judge Cousins;
- 12 • Coordinating the production of 29 Plaintiffs' computers and tablets (totaling 50  
13 devices) to the Independent Forensic Examiner;
- 14 • Preparing for and defending Plaintiffs' depositions, as well as preparing other  
15 Plaintiffs' counsel to do same, for the 105 Plaintiffs who were deposed;
- 16 • Reviewing documents and deposing 9 senior Anthem executives and information  
17 security personnel;
- 18 • Deposing three of Defendants' experts who provided opinions regarding whether the  
19 Anthem Data Breach resulted in Plaintiffs' PII becoming available for online sale,  
20 whether Chinese advanced persistent threat groups steal personal information in order  
21 to commit financial crimes against individuals, and whether Plaintiffs' damages  
22 expert's proposed conjoint survey was feasible;
- 23 • Defending the deposition of Plaintiffs' expert witness regarding whether the Anthem  
24 Data Breach created an increased risk of PII exposure and fraud for class members;  
25 and
- 26 • Arguing at Hearings on various motions, including the motion regarding Request for  
27 Production No. 33 involving the forensic examination of Plaintiffs' computers and  
28 tablets.

4. In addition, as one of Co-Lead Counsel, I oversaw the litigation and, along with  
Co-Lead Counsel, Eve Cervantez, made final strategy decisions, and drafted, edited, reviewed

1 and/or approved all filings with the Court and correspondence with opposing counsel. Among  
2 the tasks in which we oversaw and assisted in include:

- 3
- 4 • Drafting the First, Second, Third, and Fourth Consolidated Amended complaints;
- 5 • Drafting sections of the oppositions to two Motions to Dismiss;
- 6 • Preparing for the hearings on the first and second motions to dismiss;
- 7 • Strategizing over the scope of Defendants' responses to Plaintiffs' discovery requests;
- 8 • Coordinating the preparation for and taking of numerous defendant witnesses;
- 9 • Coordinating the drafting of and argument of numerous discovery motions;
- 10 • Attending and arguing at nine Case Management Conferences;
- 11 • Coordinating with plaintiffs' counsel in the two remaining state court actions related  
12 to the Anthem data breach;
- 13 • Drafting sections of the class certification motion;
- 14 • Coordinating and assisting in the selection of Plaintiffs' experts and preparing for the  
15 deposition of Plaintiffs' expert on the increased risk of fraud to members of the Class  
16 and preparing for the deposition and defending the deposition of one of Plaintiffs'  
17 damage experts; and
- 18 • Conducting settlement negotiations, including participating in three mediation  
19 sessions before Judge Layn Philips.

20  
21 **ATTORNEY SKILL AND EXPERIENCE**

22 5. For 47 years, Cohen Milstein has been a leading class action firm, recovering tens  
23 of billions of dollars for injured plaintiffs. Cohen Milstein is unique among class action firms in  
24 the breadth of its practice areas. It has demonstrated a commitment to protecting consumers and  
25 the public interest in dozens of antitrust, securities, consumer protection, product liability, civil  
26

1 rights, and human rights class actions. Cohen Milstein has earned recognition as a “class-action  
2 powerhouse” (*Forbes*), “the most effective law firm in the U.S. for lawsuits with a strong social  
3 and political component” (*Corporate Legal Times*), one of “America’s 25 Most Influential Law  
4 Firms” (*The Trial Lawyer*), and one of the “Most Feared Plaintiffs Law Firms” (*Law360*). In  
5 2016, *Law360* included Cohen Milstein as one of only three Plaintiffs firms on its list of Class  
6 Action Groups of the Year.<sup>1</sup> A more detailed description of my firm’s practice and achievements  
7 can be found at [www.cohenmilstein.com](http://www.cohenmilstein.com)  
8

9 6. The attorneys primarily working on this matter from my firm also brought their  
10 significant collective experience and skill to bear in reaching this excellent result for the class.

- 11 • **Andrew Friedman.** I am a partner and Co-Chair of the firm’s Consumer Protection  
12 practice group. Practicing in the class action field since 1985, I have specialized in  
13 litigating complex, multi-state class action lawsuits against manufacturers and  
14 consumer service providers such as banks, insurers, credit card companies and others.  
15 Over the years, I have been lead or co-lead counsel in numerous important cases,  
16 bringing relief to millions of consumers and recovering hundreds of millions of  
17 dollars in class actions. I was one of the principal counsel in cases against Nationwide  
18 and Country Life, which asserted sales marketing abuses in the marketing of so-called  
19 “vanishing premium policies,” where insurance agents sold insurance policies to  
20 unsuspecting consumers promising that after a relatively short time the dividends  
21 generated from the policy would be so high as to be able to fully pay the premiums.  
22 The Nationwide case resulted in a settlement valued at between \$85 million and \$103  
23 million, while a settlement with Country Life made \$44 million in benefits available  
24 to policyholders. Recently, I litigated a lawsuit against Symantec, Corp., and Digital  
25 River, Inc., a four-year long nationwide class action battle regarding the marketing of  
26 a re-download service in conjunction with the sale of Norton software. The case  
27 settled in a \$60 million all-cash deal one month before the case was about to go to  
28 trial – one of the most significant consumer settlements in years.

I have significant experience specific to privacy and data breach cases. Among  
other cases, I was appointed to the Plaintiffs’ Steering Committee in both *In re Vizio,*  
*Inc. Consumer Privacy Litig.* (C. D. Cal.) (a case alleging that a major television  
manufacturer surreptitiously collected sensitive personal information from television

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<sup>1</sup> <http://www.law360.com/articles/743097/class-action-group-of-the-year-cohen-milstein>.

1 purchasers) and *In re The Home Depot, Inc. Customer Data Sec. Breach Litig.* (N.D.  
 2 Ga) (a data breach case relating to the theft of credit cards from Home Depot  
 3 customers on behalf of financial institutions). I also played significant roles in *In re:*  
 4 *Science Applications Int'l Corp. (SAIC) Backup Tape Data Theft Litig.* (D.D.C.) (case  
 5 involving data breach of medical and personal health information of 4.7 million  
 6 former and active duty military personnel dismissed on standing grounds) and *Nader*  
 7 *v. Capital One Bank (USA), N.A.* (C.D. Cal.) (one of principal counsel in litigation  
 8 involving bank covertly recording outbound customer service calls, resulted in \$3  
 9 million settlement).

10 Prior to my current role as Co-Chair and member of the Consumer Protection  
 11 group, I was a member of the Securities Litigation & Investor Protection practice,  
 12 litigating many important matters, including the *Globalstar Securities Litigation* in  
 13 which I served as one of the lead trial counsel. The case settled for \$20 million during  
 14 the second week of the trial.

15 Prior to joining the firm, I was an attorney with the U.S. Patent and Trademark  
 16 Office. I graduated from Tufts University in 1980 and the National Law Center at  
 17 George Washington University in 1983.

- 18 • **Geoffrey Graber.** Mr. Graber is a partner specializing in complex litigation aimed at  
 19 protecting consumers deceived and harmed by consumer service providers such as  
 20 banks, insurance, and health care companies. Prior to joining the firm, Mr. Graber  
 21 served as Deputy Associate Attorney General and Director of the Residential  
 22 Mortgage-Backed Securities (RMBS) Working Group at the United States  
 23 Department of Justice, overseeing the DOJ's nationwide investigation into the  
 24 packaging and sale of mortgage-backed securities leading up to the financial crisis.  
 25 The investigations overseen by Mr. Graber ultimately recovered more than \$36  
 26 billion. Previously, he also served as Counsel in the DOJ's Civil Division, proposing  
 27 and leading a three-year investigation of Standard & Poor's and its ratings and  
 28 structured finance products from 2004 to 2007. Before joining the DOJ, Mr. Graber  
 was an associate at a top-tier defense firm, where he defended Fortune 500 companies  
 and their officers and directors in securities and derivative suits, consumer class  
 actions, and government investigations. Mr. Graber graduated from Vassar College  
 in 1995 and the University of Southern California Gould School of Law in 2000.
- **Sally Handmaker.** Ms. Handmaker is an associate and a member of the firm's  
 Consumer Protection practice group, litigating actions to enforce consumer rights  
 under federal and state laws. Ms. Handmaker has been the lead associate in several  
 highly-successful consumer class actions in which she was involved in all aspects of  
 litigation. These include a \$60 million settlement against Symantec and Digital River  
 alleging misrepresentations regarding the companies' Extended Download Service  
 and a \$60 million settlement against Caterpillar alleging that engine exhaust system  
 defects resulted in power losses and shutdowns that prevented or impeded their  
 vehicles from transporting goods or passengers. Prior to joining Cohen Milstein, Ms.

1 Handmaker was a litigation associate at a top-tier defense firm, working on complex  
 2 commercial and general litigation matters in federal and state courts covering a  
 3 variety of subject matters, including antitrust, securities litigation, sports, intellectual  
 4 property, and employment. Ms. Handmaker graduated from the University of  
 5 Southern California in 2007 and the University of Virginia School of Law in 2011.

- 6 • **Eric Kafka.** Mr. Kafka is an associate and a member of the firm's Consumer  
 7 Protection practice group, litigating actions to enforce consumer rights under federal  
 8 and state laws. Mr. Kafka is the lead associate in several complex and ongoing  
 9 consumer class actions in which he is involved in all aspects of litigation. Prior to  
 10 joining Cohen Milstein, Mr. Kafka was a litigation associate at a top-tier defense  
 11 firm, working on complex commercial and general litigation matters. Prior to law  
 12 school, Mr. Kafka worked on multiple successful political campaigns. Mr. Kafka  
 13 graduated from Yale University in 2008 and Columbia University School of Law in  
 14 2014, where he was recognized as a Harlan Fiske Stone Scholar for superior  
 15 academic achievement.

#### 11 TIME AND EFFORT DEDICATED TO THE CASE

12 7. Exhibits 1 and 3 to the Declaration of Eve H. Cervantez provide detailed  
 13 summaries of the amount of time spent by my firm's partners, attorneys, and professional  
 14 support staff who were involved in this litigation through September 30, 2017. They do not  
 15 include any time devoted to preparing this declaration or otherwise pertaining to the Motion for  
 16 Attorneys' fees. The lodestar calculation is based on my firm's current billing rates, and was  
 17 prepared from contemporaneous time records regularly prepared and maintained by my firm.  
 18 The hourly rates for my firm's partners, attorneys, and professional support staff are the usual  
 19 and customary hourly rates charged for their services in similar complex litigation. In addition,  
 20 my firm has submitted fee petitions in other cases that have reported hourly rates at amounts  
 21 comparable to those sought herein (or their historical equivalents), and courts have approved an  
 22 award of attorneys' fees in such cases. *See, e.g., Nitsch v. DreamWorks Animation SKG, Inc.*, No.  
 23 14-CV-04062-LHK, 2017 WL 2423161, at \*9 (N.D. Cal. June 5, 2017) (Koh, J.) (finding that  
 24 Cohen Milstein's 2017 "billing rates for the attorneys, paralegals, and litigation support staff . . .  
 25 are reasonable in light of prevailing market rates in this district and that counsel for Plaintiffs  
 26

1 have submitted adequate documentation justifying those rates” – my rate of \$870 per hour was  
2 approved for a partner (Daniel Small), who graduated law school four years after I did); *In Re*  
3 *Broadcom Corp. Stockholder Litig.*, No. 15-cv-00979-JVS-PJWx (C.D. Cal. Feb. 27, 2017)  
4 (finding Cohen Milstein’s fees “to be high but reasonable,” noting attached declarations and  
5 exhibits demonstrated “that the firm’s attorneys are experienced and successful litigators” and  
6 that “other courts have recently approved the firm’s proposed rates” and concluding that the  
7 2017 “rates are also reasonable for the market” – my rate of \$870 was approved for a partner  
8 (Carol Gilden), who graduated law school my same year; a rate ten dollars per hour lower than  
9 Mr. Graber’s (\$720) was approved for a partner (Joshua Devore) who graduated law school his  
10 same year); *In Re: Cast Iron Soil Pipe and Fittings Antitrust Litig.*, No. 1:14-md-2508-HSM-  
11 CHS (E.D. Tenn. May 26, 2017) (granting attorneys’ fees of one-third of the settlement fund at  
12 Cohen Milstein’s fees after considering “the value of the services on an hourly basis ” – a rate  
13 \$30 per hour more than my rate was approved for a partner (Kit Pierson) who graduated law  
14 school my same year; Ms. Handmaker’s rate of \$490 per hour was approved for an associate  
15 (Robert Braun) who graduated law school her same year as “fairly reflect[ing] the benefit of the  
16 services rendered.”); *see also Khoday et al. v. Symantec Corp. et al.*, No. 0:11-cv-00180-JRT-  
17 TNL (D. Minn. Apr. 5, 2016) (fee award using Cohen Milstein’s 2015 rates to calculate the  
18 lodestar value of class counsel’s work to “double-check” the percentage-of-the-fund method,  
19 including my 2015 rate of \$815 per hour and Ms. Handmaker’s 2015 rate of \$445 per hour).

20 8. Throughout the litigation, Plaintiffs’ Counsel staffed the matter efficiently and  
21 took steps to avoid duplication of effort.

22 9. The total number of hours reasonably expended on this litigation by my firm from  
23 inception through September 30, 2017 is 16,350.9. The total lodestar for my firm at current rates  
24 is \$7,719,178.50. Expense items are billed separately and are not duplicated in my firm’s  
25 lodestar.

