

EXHIBIT 8

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

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

IN RE ANTHEM, INC. DATA BREACH
LITIGATION

Case No. 5:15-MD-02617-LHK

**[PROPOSED] ORDER GRANTING
MOTION FOR FINAL APPROVAL AND
JUDGMENT OF CLASS ACTION
SETTLEMENT**

This matter is before the Court on Plaintiffs’ motion for final approval of the proposed class action settlement and entry of final judgment. Plaintiffs, individually and on behalf of the proposed settlement class, and Defendants have entered into a Settlement Agreement and Release (“Settlement Agreement”) that settles the above-captioned litigation. Having considered the motion, the Settlement Agreement together with all exhibits and attachments thereto, the record, and the briefs and oral argument in this matter, **IT IS HEREBY ORDERED** as follows:

1. Unless otherwise defined herein, all terms that are capitalized herein shall have the same meaning ascribed to those terms in the Settlement Agreement.
2. The Court has jurisdiction over this multidistrict litigation, all actions transferred to, filed in or otherwise coordinated as part of this multidistrict litigation, Plaintiffs, Defendants,

1 and Settlement Class Members, and any party to any agreement that is part of or related to the
2 Settlement Agreement.

3 FINAL SETTLEMENT AGREEMENT APPROVAL

4 3. Federal Rule of Civil Procedure 23(e)(2) requires the Court to find that the
5 Settlement Agreement is “fair, reasonable, and adequate.” The Court may consider the following
6 factors in evaluating the Settlement Agreement under this standard: “the strength of plaintiffs’
7 case; the risk, expense, complexity, and likely duration of further litigation; the risk of
8 maintaining class action status throughout the trial; the amount offered in settlement; the extent of
9 discovery completed and the stage of proceedings; the experience and views of counsel; the
10 presence of a governmental participant; and the reaction of the class members to the proposed
11 settlement.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982);
12 *accord Torrisi v. Tuscon Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993).

13 4. The Court finds that the Settlement Agreement is fair, adequate, and reasonable in
14 light of these factors. First, the Settlement reflects the strength of Plaintiffs’ case as well as the
15 Defendants’ position. This Court has been ““exposed to the litigants and their strategies,
16 positions and proof,”” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1988) (*quoting*
17 *Officers for Justice*, 688 F.2d at 626), and finds that the judicial policy favoring the compromise
18 and settlement of class action suits is applicable here. *See Class Plaintiffs v. City of Seattle*, 955
19 F.2d 1268, 1276 (9th Cir. 1992).

20 5. The Court further finds the Settlement Agreement was reached after arm’s length
21 negotiations by capable counsel, aided by an experienced mediator, former United States District
22 Judge Layn R. Phillips, and that it was not the product of fraud, overreaching, or collusion among
23 the parties.

24 6. Second, the risks, expense, complexity, and likely duration of further litigation
25 also support approval of the Settlement. Even if the Court granted Plaintiffs’ motion for class
26 certification of the selected claims, Plaintiffs still would have faced Defendants’ motion for
27 summary judgment, trial, and appeals. Trial of any case, let alone a large class action, is
28 inherently risky.

1 7. Third, the extent of discovery completed also supports approval. During fact
2 discovery, Plaintiffs’ Counsel reviewed almost 4 million pages of documents. The parties also
3 exchanged expert and rebuttal expert reports. Plaintiffs took 80 percipient and corporate designee
4 depositions, produced 105 Plaintiffs for deposition, and took and defended expert depositions.
5 Plaintiffs also briefed 14 joint discovery letters in this Court and moved to compel third-party
6 discovery in other jurisdictions. Accordingly, the Parties have ample information with which to
7 weigh the relative merits of settlement and continued litigation.

8 8. Fourth, the consideration provided, a Settlement Fund of \$115 million, is
9 substantial, and the parties have structured the benefits to maximize the benefits to the Settlement
10 Class.

11 9. Fifth, the views of Class Counsel, who are experienced in litigating and settling
12 data breach and privacy class actions, weigh in favor of final approval. *See Linney v. Cellular*
13 *Alaska P’Ship*, No. 96-3008-DJL, 1997 WL 450064, at *5 (N.D. Cal. July 18, 1997), *aff’d* 151
14 F.3d 1234 (9th Cir. 1998). Class Counsel endorse the Settlement as fair, adequate, and
15 reasonable.

16 10. Finally, the reaction of the Settlement Class Members supports final approval of
17 the Settlement. **[PLACEHOLDER TO SUMMARIZE AND DISMISS OBJECTIONS]**

18 11. The Court, therefore, finds that the Settlement Agreement is in the best interests of
19 Settlement Class Members, is fair, reasonable, and adequate within the meaning of Federal Rule
20 of Civil Procedure 23, and GRANTS final approval of the Settlement Agreement and all of the
21 terms and conditions contained therein.

APPROPRIATE NOTICE

22
23 12. Federal Rule of Civil Procedure 23(c)(2)(B) requires that Settlement Class
24 Members be provided “the best notice that is practicable under the circumstances, including
25 individual notice to all members who can be identified through reasonable effort. The notice
26 must clearly and concisely state in plain, easily understood language: (i) the nature of the action;
27 (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class
28 member may enter an appearance through an attorney if the member so desires; (v) that the court

1 will exclude from the class any member who requests exclusion; (vi) the time and manner for
2 requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule
3 23(c)(3).”

4 13. The Court finds that the Notice Plan the Court previously approved has been
5 implemented and satisfies the requirements of Federal Rule of Civil Procedure 23(c)(2)(B) and
6 due process. The Notice, which the Court approved, clearly defined the Settlement Class and
7 explained the rights and obligations of the Settlement Class Members. The Notice explained how
8 to obtain credit monitoring services, cash payments for those who already had credit monitoring
9 services, and reimbursement for out of pocket costs, and how to contact Class Counsel and the
10 Settlement Administrator. The Court appointed KCC as the Settlement Administrator to fulfill
11 the duties set forth in the Notice Plan.

12 14. The Notice Plan permitted Class Members to access information and documents
13 about the case to inform their decision about whether to opt out of or object to the Settlement.

14 **[PLACEHOLDER TO DESCRIBE CLASS MEMBER CONTACTS TO SETTLEMENT**
15 **ADMINISTRATOR AND CLASS COUNSEL].**

16 **FINAL CERTIFICATION OF SETTLEMENT CLASS**

17 15. Pursuant to Federal Rule of Civil Procedure 23, the Court finally certifies, for
18 settlement purposes only, the Settlement Class defined as follows:

19 All Individuals whose Personal Information was maintained on Anthem’s
20 Enterprise Data Warehouse and are included in Anthem’s Member Impact
21 Database and/or received a notice relating to the Data Breach; provided, however,
22 that the following are excluded from the Settlement Class: (i) Defendants, any
23 entity in which Defendants have a controlling interest, and Defendants’ officers,
24 directors, legal representatives, successors, subsidiaries, and assigns; (ii) any
25 judge, justice, or judicial officer presiding over this matter and the members of
26 their immediate families and judicial staff; and (iii) any individual who timely and
27 validly opts-out from the Settlement Class.
28

1 16. The Court finds that the Settlement Class satisfies the requirements of Federal
2 Rule of Civil Procedure 23(a): the Settlement Class is comprised of approximately 79 million
3 individuals; there are questions of law or fact common to the Settlement Class; the Settlement
4 Class Representatives' claims are typical of those of Settlement Class Members; and the
5 Settlement Class Representatives will fairly and adequately protect the interests of the Settlement
6 Class.

7 17. The Court finds that the Settlement Class satisfies the requirements of Federal
8 Rule of Civil Procedure 23(b): the questions of law or fact common to the Settlement Class
9 predominate over individual questions, and class action litigation is superior to other available
10 methods for the fair and efficient adjudication of this controversy.

11 **THE REQUEST FOR ATTORNEYS' FEES IS REASONABLE**

12 18. The Court has reviewed the application for an award of fees submitted by Class
13 Counsel and the exhibits, memoranda of law, and other materials submitted regarding that
14 application. On the basis of its review of the foregoing, the Court hereby awards \$_____ in
15 attorneys' fees, to be paid in accordance with the provisions of the Settlement Agreement.

16 **[PLACEHOLDER TO ADD KEY POINTS FROM ATTORNEYS' FEES MOTION**
17 **AS FINDINGS]**

18 **THE REQUEST FOR COSTS IS REASONABLE**

19 19. The Court has reviewed the application for reimbursement of costs submitted by
20 Class Counsel and the exhibits, memoranda of law, and other materials submitted regarding that
21 application. On the basis of its review of the foregoing, the Court hereby awards \$_____ in
22 costs, to be paid in accordance with the provisions of the Settlement Agreement.

23 **THE REQUEST FOR SERVICE PAYMENTS IS REASONABLE**

24 20. The Court has reviewed the application for an award of Service Payments to
25 Settlement Class Representatives submitted by Class Counsel and the exhibits, memoranda of
26 law, and other materials submitted regarding that application. On the basis of its review of the
27 foregoing, the Court hereby awards Service Payments in the amount of \$_____ per Settlement
28 Class Representative whose computer was forensically imaged and \$_____ per Settlement Class

1 Representative whose computer was not forensically imaged, to be paid in accordance with the
2 provisions of the Settlement Agreement.

3 **NO ADMISSION OF LIABILITY**

4 21. This final approval order shall not be offered or received against any Defendant as
5 evidence of or construed as or deemed to be evidence of any presumption, concession or
6 admission by any Defendant with respect to the truth of any fact alleged by any Plaintiff or the
7 validity of any claim that has been or could have been asserted in the Actions or in any litigation,
8 or the deficiency of any defense that has been or could have been asserted in the Actions or any
9 litigation, or of any liability, negligence, fault, breach of duty or wrongdoing of any Defendant.

10 22. This final approval order shall not be used for any purpose in this or any other
11 matter or proceeding other than as may be necessary to enforce the terms of the Settlement
12 Agreement or this final approval order and judgment.

13 **DISMISSAL AND RELEASE**

14 23. Upon the Effective Date, all Actions are dismissed with prejudice, with each Party
15 to bear its own costs and attorneys' fees except as provided by the terms of the Settlement
16 Agreement. Every Settlement Class Member who did not timely and validly opt-out and exclude
17 himself or herself from the Settlement Class fully, finally, and forever releases any and all
18 Released Claims in accordance with the terms of the Settlement Agreement. All Settlement Class
19 Members shall be bound by the terms of the Settlement Agreement upon entry of this final
20 approval order.

21 **TERMINATION**

22 24. In the event that the Settlement Agreement is terminated pursuant to the terms of
23 the Settlement Agreement, (a) the Settlement Agreement and this order shall become void, shall
24 have no further force or effect, and shall not be used in any Action or any other proceedings for
25 any purpose other than as may be necessary to enforce the terms of the Settlement Agreement that
26 survive termination; (b) this matter will revert to the status that existed before execution of the
27 Settlement Agreement; and (c) no term or draft of the Settlement Agreement or any part of the
28 Parties' settlement discussions, negotiations or documentation (including any briefs filed in

1 support of preliminary or final approval of the Settlement) shall (i) be admissible into evidence
2 for any purpose in any Action or other proceeding other than as may be necessary to enforce the
3 terms of the Settlement Agreement that survive termination, (ii) be deemed an admission or
4 concession by any Party regarding the validity of any Released Claim or the propriety of
5 certifying any class against Defendants, or (iii) be deemed an admission or concession by any
6 Party regarding the truth or falsity of any facts alleged in the Actions or the availability or lack of
7 availability of any defense to the Released Claims.

8 **JURISDICTION**

9 25. Without affecting the finality of the Court's judgment, the Court retains
10 jurisdiction over the implementation, administration, effectuation, and enforcement of the
11 Settlement Agreement and its terms. The Court also has the jurisdiction and authority to enforce
12 the provisions of this final approval order and the Court's judgment.

13 **ENTRY OF FINAL JUDGMENT**

14 26. The Court finds there is no just reason for delay and DIRECTS the Clerk to enter
15 judgment pursuant to Federal Rule of Civil Procedure 54 immediately.

16 **IT IS SO ORDERED.**

17
18 Dated: _____, 2017

19 _____
20 The Honorable Lucy H. Koh
21 U.S. DISTRICT COURT JUDGE
22
23
24
25
26
27
28