

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

IN RE ANTHEM, INC. DATA BREACH  
LITIGATION

Case No. 15-MD-02617-LHK

**ORDER APPOINTING SPECIAL  
MASTER**

At the February 1, 2018 hearing on Plaintiffs’ Motion for Final Approval and related Motion for Attorneys’ Fees, the Court notified the parties of the Court’s intention to appoint a special master to review the billing records and suggested Hon. James Kleinberg (Ret.). Pursuant to Federal Rule of Civil Procedure 53, the Court offered the parties an opportunity to object to Judge Kleinberg and to suggest other candidates for the appointment. Plaintiffs volunteered to do so by February 2, 2018. On February 2, 2018, Plaintiffs filed a statement indicating that they have no objection to Judge Kleinberg, unless Judge Kleinberg reveals a ground for disqualification under 28 U.S.C. § 455. ECF No. 970 at 2. Plaintiffs did not suggest another candidate. *Id.*

On February 6, 2018, Judge Kleinberg filed an affidavit stating that he knows of “no grounds for disqualification under 28 United States Code § 455 that would prevent [him] from

1 serving as an attorneys' fee master in [this] case." ECF No. 982 at 2. On the same day, the Court  
 2 issued an Order Re: Objections to Proposed Special Master. ECF No. 983. The Court noted that  
 3 Judge Kleinberg had filed the required affidavit and gave the parties until February 7, 2018 to file  
 4 any objections. *Id.* at 1. That deadline has passed, and no party has filed an objection.

5 Accordingly, pursuant to Federal Rules of Civil Procedure 23(h)(4) and 53, the Court  
 6 hereby APPOINTS Judge Kleinberg to serve as special master in this case. Pursuant to Federal  
 7 Rule of Civil Procedure 53(b)(2), the Court provides the following:

- 8 1. The Special Master shall proceed with all reasonable diligence to analyze the evidence  
 9 in the record regarding the time and expenses spent litigating this case in order to  
 10 prepare a report calculating the lodestar for the representation of the Class in this  
 11 action. In performing these duties, the Special Master shall have all of the authority  
 12 specified by Federal Rules of Civil Procedure 53(c) and 54(d)(2)(D).
- 13 2. The Special Master may review the entire record in determining the appropriate  
 14 lodestar and shall determine the hours reasonably expended, deducting the time and  
 15 expenses that are excessive, unnecessary, or duplicative. If the Special Master requires  
 16 any additional information, the Special Master shall file on the electronic docket a  
 17 request for additional information. Any responses to the Special Master's requests for  
 18 additional information shall be filed on the docket.
- 19 3. The Special Master may not communicate ex parte with any party or objector.
- 20 4. The Special Master will be responsible for filing a Report and Recommendation setting  
 21 forth in full his calculation of the lodestar together with the basis for that calculation.
- 22 5. As stated at the February 1, 2018 hearing, the Court will follow the timeline set in  
 23 Federal Rule of Civil Procedure 53(f)(2) for objecting or moving to adopt or modify  
 24 the Special Master's Report and Recommendation. Under Rule 53(f)(2), any party  
 25 may file objections to—or a motion to adopt or modify—the Special Master's Report  
 26 and Recommendation no later than 21 days after a copy is served. The Court has set a  
 27 hearing for April 9, 2018 at 2:00 p.m., but may revise the date if the Special Master

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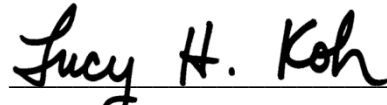
requires more time or may vacate the hearing.

6. The Special Master shall bill his time at his customary billing rate. The Special Master shall issue an invoice to Plaintiffs to cover the initial fee and initial retainer, and Plaintiffs shall promptly pay those fees.

7. The Court will allocate the fees of the Special Master in a fair and reasonable manner, taking into account the reasonableness of the parties' respective positions and the Special Master's recommendation in this regard. *See* Fed. R. Civ. P. 53(g)(3).

**IT IS SO ORDERED.**

Dated: February 8, 2018



LUCY H. KOH  
United States District Judge