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16 **UNITED STATES DISTRICT COURT**  
17 **CENTRAL DISTRICT OF CALIFORNIA**

18 SAMANTHA KIRBY, individually and on  
19 behalf of all others similarly situated,

20 Plaintiff,

21 v.

22 ANTHEM, INC., d/b/a Anthem Health,  
Inc., an Indiana corporation, THE  
23 ANTHEM COMPANIES, INC., an Indiana  
corporation, THE ANTHEM COMPANIES  
24 OF CALIFORNIA, INC., a California  
corporation, ANTHEM BLUE CROSS  
25 LIFE AND HEALTH INSURANCE  
COMPANY, a California corporation, and  
26 DOES 1-25,

27 Defendants.  
28

CASE NO. 2:15-cv-00820

CLASS ACTION COMPLAINT FOR:

1. Violations of Cal. Bus. & Prof. Code § 17200, *et seq.*
2. Invasions of Privacy
3. Negligence
4. Bailment
5. Conversion
6. Violation of Cal. Civ. Code § 1798.80, *et seq.*
7. Violation of Cal. Civ. Code § 56, *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff Samantha Kirby (“Plaintiff”) brings this class action against Defendants  
2 Anthem, Inc., doing business as Anthem Health, Inc., an Indiana corporation, The  
3 Anthem Companies, Inc., an Indiana corporation, The Anthem Companies Of  
4 California, Inc., a California corporation, Anthem Blue Cross Life And Health  
5 Insurance Company, a California corporation (collectively, “Anthem”), and DOES 1-  
6 25 (collectively, “Defendants”), as a result of the massive data breach suffered by as  
7 many as 80 million Anthem customers, on behalf of herself and all others similarly  
8 situated to obtain damages, restitution, and injunctive relief for the Class, as defined  
9 below, from Defendants. Plaintiff makes the following allegations upon information  
10 and belief, except as to her own actions, the investigation of her counsel, and the facts  
11 that are a matter of public record:

#### 12 NATURE OF CLAIM

13 1. This is a consumer class action lawsuit brought on behalf of Plaintiff,  
14 individually, and on behalf of all other individuals, against Defendants for their failure  
15 to safeguard and secure the medical records, and other personally identifiable  
16 information, including names, dates of birth, social security numbers, billing  
17 information, and highly confidential health and other types of information  
18 (collectively, “Personally Identifiable Information” or “PII”) and personal health  
19 related information (collectively, “Personal Health Information” or “PHI”) of Plaintiff  
20 and Class Members. Defendants announced to the public this massive loss of  
21 information on or about February 4, 2015.

22 2. Defendants failed to keep safe their customers’ sensitive private,  
23 financial, medical, and personal information.

#### 24 PARTIES

25 3. Plaintiff is an individual who resides in Los Angeles, California.

26 4. Defendant Anthem, Inc., doing business as Anthem Health, Inc., is an  
27 Indiana corporation, registered with the California Secretary of State to do business in  
28 California, and headquartered in Indianapolis, Indiana.



1           15. On or about February 4, 2014, Anthem issued notice to its California  
2 insureds that they had fallen victim to a data breach stating that “the personal  
3 information from our current and former members such as their names, birthdays,  
4 member ID/Social Security numbers, street addresses, email addresses and  
5 employment information, including income data.” A true and correct copy of this  
6 notice is attached hereto as Exhibit A.

7           16. Anthem does not provide any information as to when its systems were  
8 compromised, how long third parties had access to its systems or what measures have  
9 been taken to prevent further breaches.

10           17. Anthem does not definitely state that customers banking and medical  
11 information was not disclosed to third parties.

12           18. Given Anthem’s carefully worded and conclusory notice, attached as  
13 Exhibit A, the medical information of its customers, such as claims, test results,  
14 medical history, and diagnoses were also compromised and disclosed to third parties.

15           19. Given Anthem’s carefully worded and conclusory notice, attached as  
16 Exhibit A, the banking and credit information of its customers was also compromised  
17 and disclosed to third parties.

18           20. Anthem also set up a website at <[www.anthemfacts.com](http://www.anthemfacts.com)> where the data  
19 breach was disclosed to Anthem customers by way of a letter from Joseph R. Swedish,  
20 President and CEO of Anthem. This website also provide a short and vague facts page  
21 at <[www.anthemfacts.com/faq](http://www.anthemfacts.com/faq)> (last visited Feb. 5, 2015).

22           21. On information and belief, Plaintiff’s PII and PHI was disclosed in the  
23 data breach.

24                           **CONSEQUENCES OF DEFENDANTS’ CONDUCT**

25           22. The ramifications of Defendants’ failure to keep class members’ PII and  
26 PHI secure are severe.

27           23. The information Defendants lost, including Plaintiff’s PII and PHI, is “as  
28 good as gold” to identity thieves, in the words of the Federal Trade Commission

1 (“FTC”). FTC, *About Identity Theft*, available at  
2 <<http://www.vanderbilt.edu/PersonalIdentityTheftProtection.pdf>> (last visited Feb. 5,  
3 2015). Identity theft occurs when someone uses another’s PII and/or PHI, such as that  
4 person’s name, address, credit card number, credit card expiration dates, and other  
5 information, without permission, to commit fraud or other crimes. *Id.* The FTC  
6 estimates that as many as 9 million Americans have their identities stolen each year.  
7 *Id.*

8 24. Identity thieves can use identifying data to open new financial accounts  
9 and incur charges in another person’s name, take out loans in another person’s name,  
10 incur charges on existing accounts, or clone ATM, debit, or credit cards. *Id.*

11 25. Identity thieves can use PII and PHI such as that pertaining to the Class,  
12 which Defendants failed to keep secure to perpetrate a variety of crimes that do not  
13 cause financial loss, but nonetheless harm the victims. For instance, identity thieves  
14 may commit various types of government fraud such as: immigration fraud; obtaining  
15 a driver’s license or identification card in the victim’s name but with another’s picture;  
16 using the victim’s information to obtain government benefits; or filing a fraudulent tax  
17 return using the victim’s information to obtain a fraudulent refund.

18 26. In addition, identity thieves may get medical services using the Plaintiff’s  
19 PII and PHI or commit any number of other frauds, such as obtaining a job, procuring  
20 housing, or even giving false information to police during an arrest.

21 27. Annual monetary losses from identity theft are in the billions of dollars.  
22 According to a Presidential Report on identity theft produced in 2008:

23 In addition to the losses that result when identity thieves fraudulently  
24 open accounts or misuse existing accounts, . . . individual victims often  
25 suffer indirect financial costs, including the costs incurred in both civil  
26 litigation initiated by creditors and in overcoming the many obstacles they  
27 face in obtaining or retaining credit. Victims of non-financial identity  
28 theft, for example, health-related or criminal record fraud, face other types  
of harm and frustration.

In addition to out-of-pocket expenses that can reach thousands of dollars  
for the victims of new account identity theft, and the emotional toll  
identity theft can take, some victims have to spend what can be a

1 considerable amount of time to repair the damage caused by the identity  
2 thieves. Victims of new account identity theft, for example, must correct  
3 fraudulent information in their credit reports and monitor their reports for  
4 future inaccuracies, close existing bank accounts and open new ones, and  
5 dispute charges with individual creditors.

6 The President's Identity Theft Task Force, *Combating Identity Theft: A Strategic*  
7 *Plan*, at p.11 (April 2007), available at  
8 <[http://www.ftc.gov/sites/default/files/documents/reports/combating-identity-  
10 theft-strategic-plan/strategicplan.pdf](http://www.ftc.gov/sites/default/files/documents/reports/combating-identity-<br/>9 theft-strategic-plan/strategicplan.pdf)> (last visited Feb. 5, 2015).

11 28. According to the U.S. Government Accountability Office ("GAO"),  
12 which conducted a study regarding data breaches:

13 [L]aw enforcement officials told us that in some cases, stolen data may be  
14 held for up to a year or more before being used to commit identity theft.  
15 Further, once stolen data have been sold or posted on the Web, fraudulent  
16 use of that information may continue for years. As a result, studies that  
17 attempt to measure the harm resulting from data breaches cannot necessarily  
18 rule out all future harm.

19 GAO, *Report to Congressional Requesters*, at p.33 (June 2007), available at  
20 <<http://www.gao.gov/new.items/d07737.pdf>> (last visited Feb. 5, 2015).

21 29. "In addition to the financial harm associated with other types of identity  
22 theft, victims of medical identity theft may have their health endangered by inaccurate  
23 entries in their medical records. This inaccurate information can potentially cause  
24 victims to receive improper medical care, have their insurance depleted, become  
25 ineligible for health or life insurance, or become disqualified from some jobs. Victims  
26 may not even be aware that a theft has occurred because medical identity theft can be  
27 difficult to discover, as few consumers regularly review their medical records, and  
28 victims may not realize that they have been victimized until they receive collection  
29 notices, or they attempt to seek medical care themselves, only to discover that they  
30 have reached their coverage limits." *Id.* at 30.

31 30. "With the advent of the prescription drug benefit of Medicare Part D, the  
32 Department of Health and Human Services' Office of the Inspector General (HHS  
33 OIG) has noted a growing incidence of health care frauds involving identity theft."

1 Identity thieves can use such information “fraudulently to enroll unwilling  
2 beneficiaries in alternate Part D plans in order to increase . . . sales commissions” or  
3 commit other types of fraud. “The types of fraud that can be perpetrated by an identity  
4 thief are limited only by the ingenuity and resources of the criminal.” *Id.* at 31.

5 31. The unauthorized disclosure of Social Security Numbers can be  
6 particularly damaging, because Social Security Numbers cannot easily be replaced. In  
7 order to obtain a new number, a person must prove, among other things, that he or she  
8 continues to be disadvantaged by the misuse. Thus, no new number can be obtained  
9 until the damage has been done. Furthermore, as the Social Security Administration  
10 (“SSA”) warns:

11 a new number probably will not solve all your problems. This is because  
12 other governmental agencies (such as the Internal Revenue Service and state  
13 motor vehicle agencies) and private businesses (such as banks and credit  
14 reporting companies) likely will have records under your old number. Also,  
15 because credit reporting companies use the number, along with other  
16 personal information, to identify your credit record, using a new number will  
17 not guarantee you a fresh start. This is especially true if your other personal  
18 information, such as your name and address, remains the same.

19 If you receive a new Social Security Number, you will not be able to use the  
20 old number anymore.

21 For some victims of identity theft, a new number actually creates new  
22 problems. If the old credit information is not associated with the new  
23 number, the absence of any credit history under the new number may make  
24 it more difficult for you to get credit.

25 SSA, *Identity Theft and Your Social Security Number*, SSA Publication No. 05-10064  
26 (Aug. 2009), available at <<http://www.ssa.gov/pubs/10064.html>> (last visited Feb. 5,  
27 2015).

28 32. Plaintiff and the Class she seeks to represent now face years of constant  
surveillance of their financial and medical records, monitoring, loss of rights, and  
potential medical problems.

### **CLASS ACTION ALLEGATIONS**

33. Plaintiff brings this action on her own behalf, and on behalf of all other  
persons similarly situated (“the Class”). The Class that Plaintiff seeks to represent is:

1 All persons who reside in California and have purchased health  
2 insurance from Anthem, Inc. d/b/a Anthem Health, Inc., The  
3 Anthem Companies, Inc., The Anthem Companies Of  
4 California, Inc., and Anthem Blue Cross Life And Health  
5 Insurance Company, and whose personally identifiable  
6 information, personal health information, and/or financial  
7 information was breached as a result of the data breach  
8 announced on or about February 4, 2015.

9 Excluded from the Class are Defendants; officers, directors,  
10 and employees of Defendants; any entity in which Defendants  
11 have a controlling interest; the affiliates, legal representatives,  
12 attorneys, heirs, and assigns of the Defendants.

13 34. The members of the Class are so numerous that the joinder of all members  
14 is impractical. While the exact number of Class members is unknown to Plaintiff at  
15 this time, based on information and belief, it is in the millions.

16 35. There is a well-defined community of interest among the members of the  
17 Class because common questions of law and fact predominate, Plaintiff's claims are  
18 typical of the members of the Class, and Plaintiff can fairly and adequately represent  
19 the interests of the Class.

20 36. This action satisfies the requirements of Federal Rule of Civil Procedure  
21 23(b)(3) because it involves questions of law and fact common to the member of the  
22 Class that predominate over any questions affecting only individual members,  
23 including, but not limited to:

- 24 a. Whether Defendants unlawfully used, maintained, lost or disclosed  
25 Class members' PII and PHI;
- 26 b. Whether Anthem unreasonably delayed in notifying affected  
27 customers of the data breach;
- 28 c. Whether Defendants failed to implement and maintain reasonable  
security procedures and practices appropriate to the nature and  
scope of the information compromised in the data breach;
- d. Whether Defendants violated the requirements of California Civil  
Code Section 1798.80, *et seq.*;
- e. Whether Defendants' conduct violated the California Business &



1 Professions Code §17200, *et seq.*;

- 2 f. Whether Defendants' conduct was negligent;
- 3 g. Whether Defendants acted willfully and/or with oppression, fraud,  
4 or malice;
- 5 h. Whether Defendants' conduct constituted Intrusion;
- 6 i. Whether Defendants' conduct constituted Public Disclosure of  
7 Private Facts;
- 8 j. Whether Defendants' conduct constituted Misappropriation of  
9 Likeness and Identity;
- 10 k. Whether Defendants' conduct violated Class members' California  
11 Constitutional Right to Privacy;
- 12 l. Whether Defendants' conduct constituted Bailment;
- 13 m. Whether Defendants' conduct constituted Conversion;
- 14 n. Whether Defendants unlawfully used, maintained, lost or disclosed  
15 Class members' PII and PHI;
- 16 o. Whether Defendants' conduct violated the California  
17 Confidentiality of Medical Information Act, California Civil Code  
18 § 56, *et seq.*; and
- 19 p. Whether Plaintiff and the Class are entitled to damages, civil  
20 penalties, punitive damages, and/or injunctive relief.

21 37. Plaintiff's claims are typical of those of other Class members because  
22 Plaintiff's PII and PHI, like that of every other class member, was misused and/or  
23 disclosed by Defendants.

24 38. Plaintiff will fairly and accurately represent the interests of the Class.

25 39. The prosecution of separate actions by individual members of the Class  
26 would create a risk of inconsistent or varying adjudications with respect to individual  
27 members of the Class, which would establish incompatible standards of conduct for  
28 Defendants and would lead to repetitive adjudication of common questions of law and

1 fact. Accordingly, class treatment is superior to any other method for adjudicating the  
2 controversy. Plaintiff knows of no difficulty that will be encountered in the  
3 management of this litigation that would preclude its maintenance as a class action  
4 under Rule 23(b)(3).

5 40. Damages for any individual class member are likely insufficient to justify  
6 the cost of individual litigation, so that in the absence of class treatment, Defendants’  
7 violations of law inflicting substantial damages in the aggregate would go un-remedied  
8 without certification of the Class.

9 41. Defendants have acted or refused to act on grounds that apply generally to  
10 the class, as alleged above, and certification is proper under Rule 23(b)(2).

11 **FIRST COUNT**

12 **Violations of the California Unfair Competition Law,**  
13 **Cal. Bus. & Prof. Code § 17200, *et seq.***

14 42. Plaintiff incorporates the substantive allegations contained in all previous  
15 paragraphs as if fully set forth herein.

16 43. Defendants’ conduct constitutes unfair and illegal and fraudulent business  
17 practices within the meaning of the California Business & Professions Code § 17200,  
18 *et seq.* (the “UCL”).

19 44. Defendants’ conduct violated certain laws as alleged herein. By engaging  
20 in the said conduct in the course of doing business, Defendants engaged in unlawful  
21 business practices in violation of the UCL.

22 45. By engaging in the above-described conduct in the course of doing  
23 business, Defendants engaged in unfair business practices in violation of the UCL.  
24 The harm to each Plaintiff outweighed any utility that Defendants’ conduct may have  
25 produced.

26 46. Defendants’ failure to disclose information concerning the data breach  
27 directly and promptly to affected customers, constitutes a fraudulent act or practice in  
28 violation of the UCL.

1 47. Plaintiff suffered injury in fact and lost property and money as a result of  
2 Defendants' conduct.

3 48. Plaintiff seeks restitution and injunctive relief on behalf of the Class.

4 **SECOND COUNT**

5 **Invasion of Privacy – Intrusion, Public Disclosure of Private Facts,**  
6 **Misappropriation of Likeness and Identity, and California Constitutional Right**  
7 **to Privacy**

8 49. Plaintiff incorporates the substantive allegations contained in all previous  
9 paragraphs as if fully set forth herein.

10 50. Plaintiff had a reasonable expectation of privacy in the PII and PHI  
11 Defendants mishandled.

12 51. By failing to keep Plaintiff's PII and PHI safe, and by misusing and/or  
13 disclosing said information to unauthorized parties for unauthorized use, Defendants  
14 invaded Plaintiff's privacy by:

- 15 a. intruding into Plaintiff's private affairs in a manner that would be  
16 highly offensive to a reasonable person;
- 17 b. publicizing private facts about Plaintiff, which is highly offensive  
18 to a reasonable person;
- 19 c. using and appropriating Plaintiff's identity without Plaintiff's  
20 consent; and
- 21 d. violating Plaintiff's right to privacy under California Constitution,  
22 Article 1, Section 1, through the improper use of Plaintiff's PII and  
23 PHI properly obtained for a specific purpose for another purpose, or  
24 the disclosure of it to some third party.

25 52. Defendants knew, or acted with reckless disregard of the fact that, a  
26 reasonable person in Plaintiff's position would consider Defendants' actions highly  
27 offensive.

28 53. Defendants invaded Plaintiff's right to privacy and intruded into

1 Plaintiff's private affairs by misusing and/or disclosing Plaintiff's PII and PHI without  
2 her informed, voluntary, affirmative and clear consent.

3 54. As a proximate result of such misuse and disclosures, Plaintiff's  
4 reasonable expectations of privacy in her PII and PHI was unduly frustrated and  
5 thwarted. Defendants' conduct amounted to a serious invasion of Plaintiff's protected  
6 privacy interests.

7 55. In failing to protect Plaintiff's PII and PHI, and in misusing and/or  
8 disclosing Plaintiff's PII and PHI, Defendants have acted with malice and oppression  
9 and in conscious disregard of Plaintiff's and the Class members' rights to have such  
10 information kept confidential and private. Plaintiff, therefore, seeks an award of  
11 punitive damages on behalf of the Class.

### 12 **THIRD COUNT**

#### 13 **Negligence**

14 56. Plaintiff incorporates the substantive allegations contained in all previous  
15 paragraphs as if fully set forth herein.

16 57. Defendants came into possession of Plaintiff's PII and PHI and had a duty  
17 to exercise reasonable care in safeguarding and protecting such information from being  
18 compromised, lost, stolen, misused, and/or disclosed to unauthorized parties.

19 58. Defendants had a duty to timely disclose that Plaintiff's PII and PHI  
20 within its possession had been compromised.

21 59. Defendants had a duty to have procedures in place to detect and prevent  
22 the loss or unauthorized dissemination of Plaintiff's PII and PHI.

23 60. Defendants, through their actions and/or omissions, unlawfully breached  
24 their duty to Plaintiff by failing to exercise reasonable care in protecting and  
25 safeguarding Plaintiff's PII and PHI within Defendants' possession.

26 61. Defendants, through their actions and/or omissions, unlawfully breached  
27 their duty to Plaintiff by failing to exercise reasonable care by failing to have  
28 appropriate procedures in place to detect and prevent dissemination of Plaintiff's PII

1 and PHI.

2 62. Defendants, through their actions and/or omissions, unlawfully breached  
3 their duty to timely disclose to the Plaintiff and the Class members the fact that their  
4 PII and PHI within their possession had been compromised.

5 63. Defendants' negligent and wrongful breach of their duties owed to  
6 Plaintiff and the Class proximately caused Plaintiff's and Class members' PII and PHI  
7 to be compromised.

8 64. Plaintiff seeks the award of actual damages on behalf of the Class.

9 **FOURTH COUNT**

10 **Bailment**

11 65. Plaintiff incorporates the substantive allegations contained in all previous  
12 paragraphs as if fully set forth herein.

13 66. Plaintiff and the Class members delivered and entrusted their PII and PHI  
14 to Defendants for the sole purpose of receiving services from Defendants.

15 67. During the time of bailment, Defendants owed Plaintiff and the Class  
16 members a duty to safeguard this information properly and maintain reasonable  
17 security procedures and practices to protect such information. Defendants breached  
18 this duty.

19 68. As a result of these breaches of duty, Plaintiff and the Class members  
20 have suffered harm.

21 69. Plaintiff seeks actual damages on behalf of the Class.

22 **FIFTH COUNT**

23 **Conversion**

24 70. Plaintiff incorporates the substantive allegations contained in all previous  
25 paragraphs as if fully set forth herein.

26 71. Plaintiff and Class members were the owners and possessors of their PII  
27 and PHI. As the result of Defendants' wrongful conduct, Defendants have interfered  
28 with the Plaintiff's and Class Members' rights to possess and control such property, to

1 which they had a superior right of possession and control at the time of conversion.

2 72. As a direct and proximate result of Defendants' conduct, Plaintiff and the  
3 Class members suffered injury, damage, loss or harm and therefore seek compensatory  
4 damages.

5 73. In converting Plaintiff's PII and PHI, Defendants have acted with malice,  
6 oppression and in conscious disregard of the Plaintiff and Class members' rights.  
7 Plaintiff, therefore, seeks an award of punitive damages on behalf of the Class.

8 74. Plaintiff and the Class members did not consent to Defendants'  
9 mishandling and loss of their PII and PHI.

### 10 **SIXTH COUNT**

#### 11 **Violation of Cal. Civ. Code § 1798.80, et seq.**

12 75. Plaintiff incorporates the substantive allegations contained in all previous  
13 paragraphs as if fully set forth herein.

14 76. The data breach described above constituted a "breach of the security  
15 system" of Defendants, within the meaning of Section 1798.82(g) of the California  
16 Civil Code.

17 77. The information lost in the data breach constituted "personal information"  
18 within the meaning of Section 1798.80(e) of the California Civil Code.

19 78. Defendants failed to implement and maintain reasonable security  
20 procedures and practices appropriate to the nature and scope of the information  
21 compromised in the data breach.

22 79. Defendants unreasonably delayed informing anyone about the breach of  
23 security of Class Members' confidential and non-public information after Defendants  
24 knew the data breach had occurred.

25 80. Defendants failed to disclose to Class Members, without unreasonable  
26 delay, and in the most expedient time possible, the breach of security of their  
27 unencrypted, or not properly and securely encrypted, personal Information when they  
28 knew or reasonably believed such information had been compromised.



1 and/or disclosure of their medical information and therefore Plaintiff and the Class  
2 seek relief under Civil Code §§ 56.35 and 56.36.

3 91. Plaintiff and the Class seek actual damages, statutory damage, statutory  
4 penalties, attorney fees and costs pursuant to Civil Code §§ 56.35 and 56.36.

5 **PRAYER FOR RELIEF**

6 WHEREFORE Plaintiff prays for judgment as follows:

7 A. For an Order certifying this action as a class action and appointing  
8 Plaintiff and her Counsel to represent the Class;

9 B. For equitable relief enjoining Defendants from engaging in the wrongful  
10 conduct complained of herein pertaining to the misuse and/or disclosure of Plaintiff's  
11 and Class members' personally identifiable information, personal health information,  
12 and financial information, and from refusing to issue prompt, complete and accurate  
13 disclosures to the Plaintiff and Class members;

14 C. For equitable relief requiring restitution and disgorgement of the revenues  
15 wrongfully retained as a result of Defendants' wrongful conduct;

16 D. For an award of actual damages, compensatory damages, statutory  
17 damages, and statutory penalties, in an amount to be determined;

18 E. For an award of punitive damages;

19 F. For an award of costs of suit and attorneys' fees, as allowable by law; and


20 G. Such other and further relief as this court may deem just and proper.  
21  
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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial of her claims to the extent authorized by law.

Dated: February 5, 2015 AHDOOT & WOLFSON, PC

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