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Superior Court of California  
County of Los Angeles

FEB 11 2015

Sherri R. Carter, Executive Officer/Clerk  
By Cristina Grijalva, Deputy

7 Attorneys for Plaintiffs

8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF LOS ANGELES

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11  
12 MANUEL VASQUEZ and BETHANY  
13 NOEL, on behalf of themselves and all  
others similarly situated,

14 Plaintiffs,

15 vs.

16 BLUE CROSS OF CALIFORNIA dba  
17 ANTHEM BLUE CROSS; a California  
18 corporation; and DOES 1 through 100,  
inclusive,

19 Defendants.  
20  
21  
22

Case No.:

**BC 572246**

**CLASS ACTION COMPLAINT AND  
DEMAND FOR JURY TRIAL**

1. Violation of California Unfair Competition Law (Bus. & Prof. C. § 17200)
2. Violation of California Data Breach Act (Civ. C. § 1798.80 et seq.)
3. Invasion of Privacy (Cal. Const. Art. 1 Sec. 1)
4. Negligence

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24  
25 Plaintiffs Manuel Vasquez, and Bethany Noel, individuals, on behalf of themselves and all  
26 others similarly situated ("Plaintiffs"), hereby allege based on their personal knowledge with  
27 respect to their own acts and on information and belief with respect to all other matters:  
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**GENERAL ALLEGATIONS**

**1.**

**INTRODUCTION**

1. Plaintiff Manuel Vasquez is a current member and plaintiff Bethany Noel is a former member of Defendant Blue Cross of California dba Anthem Blue Cross' ("Defendant" or "Blue Cross") health plans. In order to subscribe to Blue Cross' health plans, Blue Cross required that the plaintiffs provide their social security numbers with the understanding that Blue Cross would be diligent in safeguarding the information from disclosure to third parties.

2. Such safeguards are important because identity theft is one of the fastest growing crimes in America and criminals can use social security numbers to commit identity theft.<sup>1</sup> For example, criminals can use social security numbers to apply for credit cards which they use without paying the subsequent bills, causing severe injury to the person whose identity has been stolen.

3. In recent years, criminals have targeted and infiltrated numerous large corporations such as Target Corp., Home Depot Inc., J.P. Morgan Chase & Co. and Sony Pictures Entertainment Inc., who like Blue Cross, hold massive amounts of sensitive and personal information for large numbers of people. As a result of these data breaches, the personal information of millions of people has been compromised.

4. Despite the importance of the information that the plaintiffs provided to Blue Cross as a requirement for acquiring health care coverage and the recent wave of similar attacks on other corporations, Blue Cross failed to properly secure and protect its current and past customers' private information.

5. As a result, sometime between December 10, 2014 and February 4, 2015, third party criminals were able to access Blue Cross' records and acquire the information of the plaintiffs and millions of other current and former Blue Cross members. Blue Cross kept this information in an unencrypted format, which means that these criminals could easily view and use to unlawful ends the private information that they viewed and stole.

<sup>1</sup> See Social Security Administration, SSA Publication No. 05-10064 (December 2013)



1 things herein alleged, each such defendant was acting within the purpose and scope of said  
2 agency and/or employment and with the permission and counsel of each other defendant.

3 **3.**

4 **FACTUAL ALLEGATIONS**

5 14. Blue Cross is one of the largest health plan providers in California. As a  
6 requirement for those who seek to enroll in a Blue Cross health plan, Blue Cross requires that  
7 enrollees provide personal information such as their social security number, their address, and  
8 their phone number.

9 15. It was reasonable for the plaintiffs and all others similarly situated to expect that  
10 the private information that they provided to Blue Cross would remain private and that part of  
11 what they paid to Blue Cross was for adequate and sufficient security systems and practices to  
12 safeguard the private information that Blue Cross holds.

13 16. Once Blue Cross acquired the private information from enrollees, it would produce  
14 this private information to Anthem Inc. ("Anthem"), a related corporation based in Indiana.  
15 Despite the sensitive nature of the information, Anthem kept a trove of enrollee information in a  
16 central server in an unencrypted format. Encryption is a mathematical process that makes  
17 information unreadable except to those who are authorized to access such information. Anthem  
18 could have used encryption to make the private information indecipherable to unauthorized third  
19 parties, but chose not to do so, nor did Blue Cross insist that Anthem do so.

20 17. Sometime approximately between December 2014 and February 2015,  
21 unauthorized parties breached and gained unauthorized access to Anthem's data storage system.  
22 According to Anthem, its system includes information such as Blue Cross' member names, dates  
23 of birth, member ID/ social security numbers, addresses, phone numbers, email addresses and  
24 employment information. Because the information was not encrypted, once the unauthorized  
25 parties accessed the system, they were able to see this information and use it for unlawful ends  
26 such as committing identity theft.

27 18. Consequently, Blue Cross has unreasonably and unnecessarily exposed the  
28 plaintiffs and others similarly situated to the risk of identity theft.

CLASS ACTION ALLEGATIONS

19. Pursuant to California Code of Civil Procedure section 382 and California Rules of Court Rule 3.765, Plaintiffs seek class certification of the following Class:

All California residents who currently are or formerly were subscribers to one of Blue Cross of California's health care plans and whose information was in Blue Cross' control but was accessed by an unauthorized third party during a data breach that occurred sometime between December 1, 2014 and February 4, 2015.

20. The members of the Class are so numerous that a joinder of all members is impracticable. While the exact number of class members is unknown to Plaintiffs at this time, it is believed that there are thousands of members.

21. Plaintiffs' claims are typical of the claims of the class members and are similarly affected by Blue Cross' wrongful conduct.

22. Plaintiffs will fairly and adequately protect the interests of the class members and has retained counsel competent and experienced in class and insurance litigation.

23. Common questions of law and fact exist as to all class members and predominate over any questions solely affecting individual members of the Class.

24. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since a joinder of all members is impracticable. Furthermore, as damages suffered by the class members may be relatively small, the expense and burden of individual litigation make it impossible for class members to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

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1 **FIRST CAUSE OF ACTION**

2 **(For unlawful, unfair, and fraudulent business practices under California Business and**  
3 **Professions Code § 17200, et seq.)**

4 25. Plaintiffs incorporate by reference each and every of the forgoing paragraphs.

5 26. The Unfair Competition Law (“UCL”) prohibits unfair competition, which is  
6 defined as including “any unlawful, unfair or fraudulent business act or practice.” (Business &  
7 Professions Code section 17200.) The UCL’s “purpose is to protect both consumers and  
8 competitors by promoting fair competition in commercial markets for goods and services. (*Kasky*  
9 *v. Nike, Inc.* (2002) 27 Cal.4<sup>th</sup> 939, 949.) The UCL is broadly worded, and “was intentionally  
10 framed in its broad, sweeping language, precisely to enable judicial tribunals to deal with the  
11 innumerable new schemes which the fertility of man’s invention would contrive.” (*Barquis v.*  
12 *Merchants Collection Association* (1972) 7 Cal.3d 94, 112.)

13 27. There are four types of conduct regulated by the UCL, i.e., conduct which is  
14 “unlawful,” “unfair,” or “fraudulent.”

15 (a) The unlawful prong proscribes “anything that can properly be called a  
16 business practice and that at the same time is forbidden by law.” (*People v.*  
17 *McKale* (1979) 25 Cal.3d 626, 632.) In this case, Blue Cross’ failure to provide  
18 reasonable and adequate safeguards for the personal information of its current  
19 and past members is an unlawful business practice.

20 (b) Additionally, Blue Cross’ false and misleading advertising about the level  
21 of protection that it provides for members’ personal information is untrue,  
22 misleading or deceptive.

23 (c) The California courts have developed several tests for application of the  
24 unfair prong under the UCL. The most stringent test, articulated by the  
25 California Supreme Court in *Cel-Tech Communications, Inc. v. Los Angeles*  
26 *Cellular Telephone Co.* (1999) 20 Cal.4<sup>th</sup> 163, 187, for application in antitrust  
27 contexts, provides that a business practice is unfair when the defendant’s  
28 conduct “threatens an incipient violation of [the law], or violates the policy or

1 spirit of a [law] because its effects are comparable to or the same as a violation  
2 of the law, *or otherwise significantly threatens or harms competition.*”

3 (Emphasis added.) Blue Cross’ conduct in this case violates this test because,  
4 by refusing to provide adequate safeguards, Blue Cross spends less money, in  
5 comparison with a competitor who does provide such adequate safeguards, and  
6 Blue Cross thereby obtains a competitive advantage and harms its competition  
7 in the health care plan marketplace.

8 (d) The fraud prong of the UCL affords “protection against the probability or  
9 likelihood as well as the actuality of deception or confusion.” (*Payne v. United*  
10 *California Bank* (1972) 23 Cal.App.3d 850, 856.) The test is whether the  
11 public is “likely to be deceived” by the defendant’s representations, not  
12 whether they are actually false. (*Committee on Children’s Television v.*  
13 *General Foods Corp.* (1983) 35 Cal.3d 197, 211.) Blue Cross’s conduct is  
14 likely to deceive a reasonable consumer into believing that the information  
15 they provide to Blue Cross will be kept reasonably and adequately safe from  
16 unauthorized third parties.

17 28. Defendant’s acts and practices also constitute unlawful practices in that they  
18 violate the California Data Breach Act, Cal. Civ. Code § 1798.80, *et seq.* Defendant’s unlawful  
19 practices also violate California’s Online Privacy Protection Act, Cal. Bus. & Prof. Code § 22576,  
20 which prohibits any company whose website or online service that collects personal identifiable  
21 information from California consumers from “knowingly and willfully” or “negligently and  
22 materially” breaching its own posed privacy policy.

23 29. Plaintiffs are informed and believe and thereon allege that Blue Cross’ acts of  
24 unfair competition are continuing in nature.

25 30. Plaintiffs seek restitution for the acts alleged herein and seek to enjoin Blue Cross  
26 from continuing to engage in the unfair competition alleged herein.

27 31. Plaintiffs further respectfully request that the court order any other and further  
28 equitable relief deemed necessary by the court.

1           32.     Plaintiffs respectfully request an award of attorneys' fees upon prevailing in the  
2 request for relief in this cause of action, pursuant to Code of Civil Procedure section 1021.5.

3           33.     As a direct and proximate result of Defendant's unlawful, unfair and fraudulent  
4 business practices, Plaintiffs and the Class have suffered injury in fact and lost money or  
5 property, in that they purchased retail health products they otherwise would not have purchased  
6 and paid more for these products and services than they otherwise would have paid.

### 8   SECOND CAUSE OF ACTION

9           **(Violation of the California Data Breach Act, Cal. Civ. Code § 1798.80, et seq.)**

10          34.     Plaintiffs incorporate by reference each and every of the forgoing paragraphs.

11          35.     Blue Cross is a "business" as defined by the California Civil Code § 1798.80(a).

12          36.     California Civil Code § 1798.81.5(b) requires that any "business that owns or  
13 licenses personal information about a California resident shall implement and maintain reasonable  
14 security procedures and practices appropriate to the nature of the information, to protect the  
15 personal information from unauthorized access, destruction, use, modification, or disclosure."  
16 Blue Cross violated this statute by failing to implement reasonable and adequate procedures  
17 appropriate to protect the personal information of the plaintiffs and the Class from unauthorized  
18 access.

19          37.     The data breach described above included personal information within the  
20 meaning of California Civil Code § 1798.82. Accordingly, defendant had an obligation to  
21 promptly disclose any breach in the security of those files to any resident of California whose  
22 unencrypted personal information was, or is reasonably believed to have been, acquired by  
23 unauthorized person.

24          38.     Defendant unreasonably delayed informing the Plaintiffs and member of the Class  
25 about the security breach after Blue Cross discovered that the data breach had occurred.

26          39.     As a result of Anthem's conduct Plaintiffs and the Class incurred economic  
27 damages and thus seek appropriate injunctive, and/or declaratory relief, statutory damages;  
28 attorney's fees, and all other damages that the Court deems appropriate.



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**THIRD CAUSE OF ACTION**

**(Invasion of Privacy (Cal. Const. Art. 1 Sec. 1))**

40. Plaintiffs incorporate by reference each and every of the forgoing paragraphs.

41. California Constitution, Article 1, Section 1, provides that "[a]ll people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."

42. Plaintiffs and Class Members had a legally protected privacy interest in the personal information that they provided to Blue Cross.

43. Plaintiffs and Class Members had a reasonable expectation of privacy as to that information that they provided Blue Cross under the circumstances.

44. Blue Cross' actions and inactions amounted to a serious invasion of Plaintiffs' and Class Members' protected privacy interests.

45. Blue Cross' invasion of Plaintiffs' and Class Members' reasonable expectation of privacy caused Plaintiffs and Class Members to suffer damages.

46. By reason of the foregoing, Plaintiffs, individually and on behalf of Class Members, seek all remedies available at law, including injunctive relief in an amount to be determined at trial.

**FOURTH CAUSE OF ACTION**

**(Negligence)**

47. Plaintiffs incorporate by reference each and every of the forgoing paragraphs.

48. Plaintiffs bring this cause of action on behalf of all current and former Blue Cross subscribers whose information was compromised as a result of the data breach that occurred approximately between December of 2014 and February of 2015.

49. In collecting and maintaining Plaintiffs' and Class Members' personal information, Blue Cross had a duty to use reasonable care to protect and adequately secure the personal

1 information of Plaintiffs and Class Members from unauthorized access, use, and disclosure.

2 50. The duty Blue Cross owed to Plaintiffs and Class Members to protect their  
3 information is also underscored by the California Data Breach Act, which was created to protect  
4 the personal information of California residents.

5 51. Blue Cross knew, or should have known, of the industry standards and/or "best  
6 practices" of the industry when it came to protecting the private information of current and former  
7 subscribers. Blue Cross did not follow industry standards and/or "best practices" of the industry  
8 when it came to protecting Plaintiffs' and Class Members' personal information.

9 52. Through its acts and omissions described in detail above, Blue Cross unlawfully  
10 breached its duty to use reasonable care to protect and secure Plaintiffs' and Class Members'

11 53. More specifically, Blue Cross failed to maintain a number of reasonable security  
12 procedures and practices designed to protect the personal information of Plaintiffs and Class  
13 Members.

14 54. Blue Cross' negligence was a substantial factor in causing harm to Plaintiffs and  
15 Class Members.

16 55. As a direct and proximate result of Blue Cross' breach of its duties, Plaintiffs and  
17 Class Members suffered economic damages. Plaintiffs and Class Members will have to spend  
18 time and money to protect themselves, their credit and their reputations. In addition, Plaintiffs and  
19 Class Members will continue to suffer damages because they are at an increased risk of identity  
20 theft.

21 56. Neither Plaintiffs nor Class Members contributed to the security breach, nor did  
22 they contribute to Blue Cross' employment of insufficient security measures to safeguard.  
23 Plaintiffs' or Class Members' personal information.

24 57. By reason of the foregoing, Plaintiffs, individually and on behalf of Class  
25 Members, seek all remedies available at law, including injunctive relief in an amount to be  
26 determined at trial.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs pray for judgment against defendants, and each of them, as  
3 follows:

- 4 1. An order certifying this matter as a class action;  
5 2. An order naming counsel herein as class counsel;

6 AS TO THE FIRST CAUSE OF ACTION:

- 7 3. For restitution;  
8 4. For injunctive and/or declaratory relief;  
9 5. For attorney's fees;  
10 6. For costs of suit incurred herein; and  
11 7. For such other and further relief as the Court deems just and proper.

12 AS TO THE SECOND CAUSE OF ACTION:

- 13 8. For statutory and consequential damages;  
14 9. For special and general damages according to proof at the time of trial;  
15 10. For attorney's fees;  
16 11. For injunctive and/or declaratory relief;  
17 12. For costs of suit incurred herein; and  
18 13. For such other and further relief as the Court deems just and proper.

19 AS TO THE THIRD CAUSE OF ACTION:

- 20 14. For a declaration of rights;  
21 15. For attorneys' fees pursuant to Code of Civil Procedure section 1021.5;  
22 16. For costs of suit incurred herein; and  
23 17. For such other and proper relief as the Court deems just and proper.


24 AS TO THE FOURTH CAUSE OF ACTION:

- 25 15. For general and special damages according to proof at trial;  
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- 16. For injunctive relief;
- 15. For attorney's fees;
- 16. For costs of suit incurred herein; and
- 16. For such other and proper relief as the Court deems just and proper.

LAW OFFICES OF SCOTT GLOVSKY, APC

By:   
SCOTT C. GLOVSKY  
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**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial of their claims by jury to the extent authorized by law.

DATED: February 11, 2015

LAW OFFICES OF SCOTT GLOVSKY, APC

By:   
SCOTT C. GLOVSKY  
ARI DYBNIS  
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