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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  
MDL No. 2420

**[PROPOSED] ORDER GRANTING MOTION  
OF ADAM SCHULMAN TO APPOINT  
SPECIAL MASTER**

1  
2 Having considered class member and objector Adam Schulman's Motion to Appoint a Special Master,  
3 together with the objection of Adam Schulman, the briefs in support and in opposition to the motion, and the  
4 relevant rules and precedent, it is hereby ordered that the motion is GRANTED as follows:

- 5 (1) The Court will appoint a special master to conduct an accounting of class counsel's lodestar, to  
6 inquire into any fee-sharing agreements, and to propose a division of the total fee among plaintiffs'  
7 counsel.
- 8 (2) Interested class members will be permitted to participate in the proceedings in front of the special  
9 master to avoid an unhelpful *ex parte* presentation. To the extent that it becomes necessary, the  
10 Court will consider appointing a guardian *ad litem* to protect the class's interests in these  
11 proceedings.
- 12 (3) Pursuant to Fed. R. Civ. P. 53(g)(2)(B), the master's compensation will be paid from a deduction  
13 in a fee that will be awarded to class counsel.

14 The Court finds that the exercise of its discretion to appoint a special master for these purposes under  
15 Fed. R. Civ. P. 23(h)(4), 53(a) and 54(d)(2)(D) is justified by several factors. First, plaintiffs' counsel claim to  
16 have expended more than 78,000 billable hours on this litigation that is less than two years old, and have  
17 submitted lodestar time from 53 firms. There appear to be excesses, duplication, inefficiency, and overbilling  
18 within the proclaimed hours. For example, more than 34,000 of those hours were spent reviewing documents  
19 at hourly rates up to \$500. Counsel has not demonstrated that paying clients would pay such a rate for that  
20 work. Second, the declaration in support of the fee motion lacks sufficient detail for this Court to determine  
21 whether the claimed hours were beneficial to the class or whether they were unnecessarily duplicative and  
22 wasteful. Third, class counsel has not proposed a division of the fee award nor have they provided the court  
23 with any information regarding fee-sharing arrangements to which class counsel intend to adhere. Fed. R. Civ.  
24 P. 23(h) obligates this Court to oversee the distribution of fees amongst various counsel. Because class  
25 counsel's fee motion has necessitated the referral to the special master, this Court in its discretion will deduct  
26 the master's compensation from the fee ultimately award to counsel. *See* Advisory Committee Notes to 2003  
27 Amendments to Rule 53 ("A party whose unreasonable behavior has occasioned the need to appoint a  
28 master...may be charged all or a major portion of the master's fees.").

1           Within \_\_ days of this order, any interested parties may submit the names of candidates for  
2 appointment in accordance with Rule 53(b)(1). After that time the Court will select a master and issue a further  
3 order delineating the exact scope of his or her duties under Rule 53(a); the time by which the master should  
4 submit a Report and Recommendation; the circumstances (if any) in which the master may communicate *ex*  
5 *parte* with the Court or a party; any limitations on the master's authority under Rule 53(c); the nature of the  
6 materials to be preserved and filed as a record of the master's activities; and the process by which parties may  
7 object to orders of the master. *See* Fed. R. Civ. P. 53(b)(2). The appointment order will only issue after the  
8 selected master has filed an affidavit disclosing that there are no grounds for disqualification under 28 U.S.C.  
9 § 455. *See* Fed. R. Civ. P. 53(b)(3).

10  
11 **IT IS SO ORDERED.**

12  
13 Dated: \_\_\_\_\_, 2018

\_\_\_\_\_  
The Honorable Lucy H. Koh  
U.S. DISTRICT COURT JUDGE