

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Andrew Beckett, Arizona Doe, California Doe, S.A., Colorado Doe, Connecticut Doe, Dc Doe, Florida Doe, Georgia Doe, Illinois Doe, Indiana Doe, Maine Doe, Maryland Doe, Minnesota Doe, Mississippi Doe, Missouri Doe, Nevada Doe, Newhampshire Doe, Newjersey Doe, Newmexico Doe, Newyork Doe, Newyork1 Doe, Newyork2 Doe, Newyork3 Doe, Northcarolina Doe, Ohio Doe, Oklahoma Doe, Southcarolina Doe, Tennessee Doe, Texas Doe, Virginia Doe, Washington Doe, and John Doe, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

Aetna, Inc., Aetna Life Insurance Company,
and Aetna Specialty Pharmacy, LLC,

Defendants.

Case No. 2:17-CV-3864-JS

**DECLARATION OF SALLY FRIEDMAN IN SUPPORT OF PLAINTIFFS’
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

I, Sally Friedman, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am a member in good standing of the bar of the State of New York, and I am admitted to this Court. I respectfully submit this Declaration in support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement. The following is based on my personal knowledge, and if called upon to do so, I could and would competently testify thereto.

2. I am the Legal Director of the Legal Action Center (“LAC”) and Co-Lead Counsel for Plaintiffs and the proposed Settlement Class in the above-captioned litigation.

3. Established in 1973, the Legal Action Center (www.lac.org) is the nation’s only nonprofit law and policy organization whose sole mission is to fight discrimination against people

with histories of addiction, HIV/AIDS, or criminal records, and to advocate for sound public policies on behalf of these populations.

4. I direct LAC's Legal Department, which serves over 2,000 clients annually (at least 300 of whom are living with HIV) and provides trainings and technical assistance for hundreds of health and social service programs serving LAC's constituencies. Since joining the Legal Action Center in October of 1993, I have prosecuted over a dozen cases involving breach of HIV confidentiality and HIV-related discrimination as well as cases challenging discrimination based on criminal record and drug or alcohol addiction. Under my direction, LAC also has prosecuted several class action lawsuits. I have also advised and trained hundreds of organizations across the country on privacy and anti-discrimination laws protecting individuals with HIV, alcohol/drug addiction, and criminal records.

5. LAC has been delivering free HIV legal services to people in New York since 1989. LAC's HIV legal services cover a wide range of issues, with a primary focus on HIV confidentiality and discrimination. Since 1993, I personally have litigated over a dozen HIV confidentiality cases in federal and state court, filed many administrative complaints with State and Federal agencies, and negotiated pre-suit settlements. I also have trained and supervised *pro bono* law firms to bring such cases and supervised other LAC attorneys. Because I am known nationally as a leading HIV confidentiality litigator, I have fielded calls from attorneys across the country about case strategy. A sampling of the cases I have brought or co-counseled with the *pro bono* bar include the following: *Doe v. Belmare and New York City Health & Hospitals Corp.*, 920 N.Y.S.2d 623 (N.Y. Sup. Ct., Kings County 2014) (settled lawsuit against Kings County Hospital and one of its employees for illegally disclosing Jane Doe's HIV status to the employee's son);

*Jane Doe v. Anonymous New York City Hospital*¹ (N.Y. Sup. Ct., N.Y. County 2009) (obtained a settlement of a suit charging a New York City Hospital with disclosing Jane Doe's HIV status through the disclosure of her partner's HIV status to close family and friends in violation of New York law); *H.O. v. Sullivan County Sheriff's Dept.*, 06 Civ. 12897 (S.D.N.Y. 2008) (settled lawsuit where client's HIV status was unlawfully disclosed by Sullivan County Sheriff's Department, in violation of plaintiff's constitutional right to privacy); *Brown v. H.I.R.E.*, Index No. 03/400072 (Sup. Ct., N.Y. County 2005) (settled lawsuit where client's HIV status was disclosed to his aged mother by the director of his AIDS supportive housing facility); *Roe v. Social Security Administration*, 03-CIV-3812 (SDNY 2004) (settled lawsuit where client's HIV status was illegally disclosed by the Social Security Administration to a third-party without consent); *Doe v. Courtien*, CV-01-1655 (E.D.N.Y 2003) (settled lawsuit where arrestee's HIV status was disclosed to her family by a New York City police officer).

6. I also have successfully represented clients in HIV discrimination cases. *See, e.g., Doe v. Deer Mountain Day Camp, Inc.*, 632 F. Supp. 2d 324 (S.D.N.Y. 2007) (granting summary judgment to ten-year old boy who charged day camp with denying him admission because of his HIV status in violation of the Americans with Disabilities Act); *Donovan v. Girl Scouts-USA and Adirondack Girl Scouts Council*, NYSDHR Case Nos. 9K-PD-99-2400722 and 9K-P-D-99-2400733 Nov. 1999 (settled case charging discrimination based on HIV status; Adirondack Girl Scout Council agreed to revise its HIV policy to ensure that volunteers understand that girls may not be denied admission to a troop or otherwise discriminated against based on HIV status); *Doe v international corporation*² (2014) (private settlement of federal court case resulting in reinstatement, back pay, and emotional harm award to man denied employment due to his HIV

¹ Name removed due to confidential settlement.

² Name removed due to confidential settlement.

status).

7. Moreover, LAC serves as an expert in HIV confidentiality laws generally. Much of the training and technical assistance LAC's Legal Department conducts focuses on the privacy of HIV and substance use disorder information. Since 1989, LAC has been funded by the New York State Department of Health AIDS Institute ("AIDS Institute") to conduct trainings for HIV service providers. Currently, LAC conducts 15 trainings per year, attended by at least 500 employees of dozens of agencies. Examples of trainings I have conducted include "How to Litigate an HIV Confidentiality Case in New York," "HIV/AIDS Confidentiality Law Overview," and "How to Create and Update Your Agency's HIV Confidentiality Policies and Procedures and Ensure Staff Compliance." LAC created the latter two trainings at the request of the AIDS Institute because of LAC's reputation as the leading authority on HIV privacy. I have authored or co-authored numerous publications about HIV confidentiality, including "HIV Testing, Confidentiality and Discrimination: What You Need to Know About New York Law" and "Model HIV Confidentiality Policies and Procedures for Human Service Providers in New York State." I also direct a team of lawyers at LAC who staff LAC's New York "HIV Confidentiality Hotline," which fields questions about HIV confidentiality issues from health and social providers, lawyers and government agencies across New York State. The New York State Department of Health often refers callers with confidentiality questions to LAC's hotline.

8. The instant case arose from communications among the AIDS Law Project, the Legal Action Center, and other HIV legal organizations throughout the United States, after the organizations received calls from people who had been sent the Benefit Notice³ at the end of July

³ The term "Benefit Notice" and any other capitalized terms used herein have the same meanings as set forth in the Settlement Agreement. The term "Benefit Notice" means the notice that was sent by the settlement administrator to certain Settlement Class Members to inform Aetna members of their ability to fill prescriptions for HIV medications through mail order or retail pharmacy, as part

and beginning of August 2017.

9. Specifically, the Legal Action Center was first contacted on or about August 3, 2017 by an HIV legal advocate whose husband received the letter, just a few days after the first Benefit Notices were sent. Similarly, our co-counsel, the AIDS Law Project of Pennsylvania, had been contacted by an individual who received the Benefit Notice on August 1, 2017.

10. On August 8, 2017, I posted a query to the HIV/AIDS Law and Policy Discussion List, a listserv of advocates representing people with HIV, asking if other organizations had heard complaints about a letter from Aetna that disclosed HIV-related information. A number of them responded that they had. Within two weeks, the Legal Action Center and the AIDS Law Project had gathered evidence of people who had received the Benefit Notice in eight states and the District of Columbia. Some of them reported experiencing extremely serious harm when other people (*e.g.*, family and neighbors) saw the Benefit Notice or when they feared that other people saw it.

11. Based on the large response from advocates around the country, the Legal Action Center and the AIDS Law Project, in consultation with the AIDS Law Project's *Volunteer Of Counsel*, Sarah Schalman-Bergen of Berger & Montague, P.C. ("Berger & Montague"), decided to send a letter to Aetna demanding the immediate cessation of any mailings revealing confidential HIV-related information. On August 24, 2017, the Legal Action Center and the AIDS Law Project, with input from the AIDS Legal Referral Panel of San Francisco, Lambda Legal, Legal Services NYC, Los Angeles HIV Law & Policy Project, Legal Council for Health Justice – AIDS Legal Council Program, and Whitman-Walker Health, sent a letter to Aetna regarding the Benefit Notice.

12. Aetna's General Counsel, Thomas Sabatino, called me after receiving our August 24, 2017 letter and disclosed that approximately 12,000 letters had been sent, but that no more

of a settlement of legal claims that had been filed against certain Aetna-related entities or affiliates in *Doe v. Aetna, Inc.*, No. 14-cv-2986 (S.D. Cal.).

such letters were going out. Aetna also disclosed that information to the media.

13. This generated widespread media attention and consequently, hundreds of people contacted the Legal Action Center and AIDS Law Project to share their own stories of the harm they suffered as a result of the sending of the Benefit Notice. They reported harm such as lost housing, estrangement from family members, and other trauma. Many said they had to explain their sexual practices as well as other extremely intimate information to family and friends. Some voiced fears about trusting anyone with their HIV information and wondered how they could receive health care if their own insurance company could not be trusted to maintain confidentiality. Many of them said that until they read the media stories, they did not know where to turn for legal help and that they were gratified that our organizations were taking action. The Legal Action Center was also contacted by people who had not received the Benefit Notice but had received other notices related to the settlement of the *Doe* lawsuits and were concerned about their HIV privacy. The Legal Action Center also received calls from government agencies, including State Attorneys General and agencies that enforce anti-discrimination laws.

14. To handle the volume of the calls, the Legal Action Center trained three paralegals to conduct intake interviews. All had extensive experience providing legal services to people living with and at risk of HIV, including on HIV privacy matters. The Legal Action Center also staffed the case with three attorneys besides myself including Monica Welby, the Deputy Director of Litigation, and Karla Lopez, a Senior Staff Attorney. Both have years of experience working on HIV privacy litigation, technical assistance, and training in New York law. Both substantially assisted in providing excellent service to the Settlement Class through setting up systems to respond to class member calls, conducting legal research and analysis, providing expertise on the HIV confidentiality laws relevant to the case, and participating in the negotiation and drafting of

the Settlement Agreement and its terms.

15. Given the number of people sent the Benefit Notice and the magnitude of the resulting harm, the AIDS Law Project, with the agreement of the Legal Action Center, consulted with Sarah Schalman-Bergen for class action guidance, and decided that partnering with Berger & Montague was in the best interest of those affected by the Incident. This decision was based on Berger & Montague's significant class action experience and the fact that they have served as Lead Counsel in class action litigation for 48 years.

16. On August 25, 2017, Ed Neugebauer, Aetna's Head of Litigation, contacted the Legal Action Center and AIDS Law Project and a meeting was scheduled to discuss the issues.

17. On August 28, 2017, Plaintiff Andrew Beckett, represented by the AIDS Law Project, the Legal Action Center, and Berger & Montague, filed the first Complaint in the United States regarding the Incident, on behalf of a nationwide class and a Pennsylvania subclass.

18. Co-Lead Class Counsel met with Ed Neugebauer and Aetna's outside legal counsel from two large defense law firms on September 6, 2017. At this meeting, the Parties began negotiating the implementation of the Immediate Relief Program, under which Aetna would reimburse or pay verifiable out-of-pocket costs incurred or estimated by Settlement Class Members related to the Incident, and pay in full for up to three counseling sessions, with an opportunity to request additional sessions, for Settlement Class Members and their families. All counsel agreed to work quickly to develop this program, as both the Legal Action Center and AIDS Law Project had heard stories of serious harm from people who had received the Benefit Notice.

19. The Legal Action Center and AIDS Law Project also recognized the importance of offering Benefit Notice recipients a trusted source to contact about the Incident. The Legal Action Center, consistent with our funding contracts, agreed to take calls from individuals living in New

York State, and referred calls from affected individuals outside of New York to the AIDS Law Project.

20. From September 6 through September 28, 2017, Co-Lead Class Counsel worked on a number of projects, including the development of the Immediate Relief Program. On September 28, 2017, Aetna announced the Immediate Relief Program on its website, and Co-Lead Class Counsel advertised the program through their websites and social media platforms. The Legal Action Center and AIDS Law Project also contacted individuals who had called or emailed after receiving the Benefit Notice and conducted email and phone outreach to HIV service organizations to notify them about the program.

21. The AIDS Law Project and Legal Action Center set up mechanisms to field and process requests for immediate relief, forwarding them to Aetna using unique identifiers, rather than names, in order to preserve confidentiality. Individuals whose claims were approved then self-disclosed their identities to Aetna. This way, we could assure individuals that each of our two organizations was not disclosing their identifying information to anyone outside the organization.

22. From August 1, 2017 through January 12, 2018, the Legal Action Center conducted approximately 32 detailed intake interviews with people in New York who were impacted by the sending of the Benefit Notice. During that period, I understand that the AIDS Law Project conducted interviews of many other members of the Settlement Class. In addition, both organizations responded to dozens of emails and calls from individuals who had read media coverage of the Incident after having received the Benefit Notice and other notices sent in connection with the *Doe* lawsuits.

23. I believe the proposed Settlement Agreement provides an excellent settlement for Plaintiffs and the Settlement Class. The Settlement is the result of contested litigation and involved

substantial informal discovery and vigorous arm's-length negotiations. In my opinion, the Settlement offers a fair and just way to compensate the Settlement Class Members for potential harm suffered by being sent the Benefit Notice as well as having their confidential HIV-related transferred without required authorization from Aetna to its legal counsel, GDC and mail vendor, KCC. I believe that it will provide a sense of justice and a clear message that their voices were heard, as well as help restore their dignity. The fact that every Settlement Class member will receive an automatic base payment (of either \$75 or \$500, depending on whether they were sent the Benefit Notice) recognizes the inherent harm in the violation of HIV privacy rights. The fact that the Settlement provides for additional monetary relief for financial harm and/or non-financial harm for those who were sent the Benefit Notice provides a fair and just opportunity for those with more extensive harm to obtain redress. At the same time, any Settlement Class Members who wish to opt out of the Settlement to pursue their own individual claim can do so. For these reasons, I believe that the Settlement provides significant advantages over the continued prosecution of this case because Plaintiffs and Settlement Class Members will receive swift and significant financial compensation as well as assurances through practice changes procured through the Settlement that Aetna will take strong measure to prevent this type of breach in the future. This is precisely the type of relief that Settlement Class Members told the Legal Action Center they were seeking. Settlement Class Members also will avoid the risks inherent in the continued prosecution of this case, in which Defendants would assert various affirmative defenses to its liability and to class certification.

24. The Settlement Agreement also incorporates numerous measures to prevent any possibility of an HIV confidentiality breach in the course of its administration.

25. The Parties have spent considerable time negotiating and drafting the Settlement

Agreement, which ensures that the Settlement Class Members are provided with notice of the Settlement Agreement and its terms.

26. I believe that service awards are appropriate in this case as the Named Plaintiffs took very real steps to advance the interests of the Settlement Class in this litigation.

27. Andrew Beckett was the first Named Plaintiff in this case. He met in person with AIDS Law Project attorneys on August 25, 2017, and spoke with me that day by telephone after having shared with the AIDS Law Project his story of how the Benefit Notice forced him to have embarrassing conversations with his sister about private matters.

28. I have also had detailed conversations with two of the New York Plaintiffs about how the Benefit Notice harmed them, and they shared intimate details about their personal lives with me. All the Named Plaintiffs risked their reputations in the community, as well as potential discrimination, if their HIV-related information became publicly known. They also spent significant time reviewing and discussing with Class Counsel the First Amended Complaint, the status of the settlement discussions, and the Settlement Agreement.

Dated: January 16, 2018


Sally Friedman