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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

ALABAMA DOE 1, ALABAMA DOE 2, INDIANA DOE, MISSOURI DOE, AND FLORIDA DOE, Individually and on Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

GILEAD SCIENCES, INC.,

Defendant.

Case No.: 20-CIV-03699

DECLARATION OF JOHN G. ALBANESE

Dept: 22
Judge: Hon. Danny Chou

CLASS ACTION

Action Filed: September 1, 2020
Trial Date: None Set

I, John Albanese, hereby declare under penalty of perjury and under the laws of California that the following is true and correct:

1. 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. Attached to this declaration are true and correct copies of the following documents:

- Exhibit 1: Amended Settlement Agreement and Exhibits;
- Exhibit 2: Amended Complaint filed in *Beckett v. Aetna, Inc.*, Case No. 2:17-cv-3864 (E.D. Pa. Dec. 5, 2017);
- Exhibit 3: Consolidated Complaint filed in *John Doe One v. Caremark L.L.C.*, Case No. 2:18-cv-238 (S.D. Ohio Feb. 27, 2019);
- Exhibit 4: Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement in *John Doe One v. Caremark L.L.C.*, Case No. 2:18-cv-238 (S.D. Ohio Sept. 9, 2019);
- Exhibit 5: Plaintiffs' Statement Regarding *Doe v. Aetna, Inc.* in *Beckett v. Aetna, Inc.*, Case No. 2:17-cv-3864 (E.D. Pa. Feb. 27, 2018);
- Exhibit 6: Plaintiffs' Memorandum of Law in Support of Motion for Final Approval of Class Action Settlement in *Beckett v. Aetna, Inc.*, Case No. 2:17-cv-3864 (E.D. Pa. Oct. 1, 2018);
- Exhibit 7: Reply in Support of Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement in *John Doe One v. Caremark L.L.C.*, Case No. 2:18-cv-238 (S.D. Ohio Jan. 6, 2020);
- Exhibit 8: Group Exhibit – Named Plaintiffs Form Interrogatory No. 6.2 Responses. Personally identifying information and other interrogatory responses have been redacted;
- Exhibit 9: Stipulation Regarding Class List in *Beckett v. Aetna, Inc.*, Case No. 2:17-cv-3864 (E.D. Pa. Nov. 27, 2018); and
- Exhibit 10: Transcript of Demurrer Hearing, *Alabama Doe 1, et al. v. Gilead Sciences, Inc.*, Case No.: 20-CIV-03699 (Dec. 11, 2020).

Date: December 23, 2022

/s/ John G. Albanese
John G. Albanese

Exhibit 1

AMENDED SETTLEMENT AGREEMENT

This Amended Settlement Agreement (the "Settlement Agreement" or "Agreement") is made and entered into by Plaintiffs Alabama Doe 1, Alabama Doe 2, Indiana Doe, Missouri Doe, and Florida Doe (collectively, "Plaintiffs"), individually and on behalf of the Settlement Class defined below, and Defendant Gilead Sciences, Inc. ("Gilead"). Plaintiffs and Gilead are collectively referred to herein as the "Parties."

RECITALS

A. On September 1, 2020, Plaintiffs Alabama Doe 1, Indiana Doe, and Missouri Doe filed a Class Action Complaint captioned *Alabama Doe, et al. v. Gilead Sciences, Inc.*, No. 20-CIV-03699, in the Superior Court of the State of California, for the County of San Mateo (the "Litigation"). Plaintiffs are represented by Berger Montague PC ("Berger Montague"), Langer, Grogan & Diver PC ("LGD"), and the AIDS Law Project of Pennsylvania ("AIDS Law Project"), a nonprofit legal organization whose mission is to represent and advocate for clients who are living with HIV and AIDS. Berger Montague, LGD, and AIDS Law Project are collectively referred to herein as "Co-Lead Class Counsel."

B. Plaintiffs alleged in their Class Action Complaint that confidential medical information belonging to Plaintiffs and the Settlement Class Members was disclosed by Gilead to third parties through a mailing of an envelope with the words "HIV Prevention Team" on the face of the envelope in the return address (the "Mailer" as defined below in Section 1.N). The Class Action Complaint further alleged that Gilead was responsible for all harm caused by the Mailer under various theories of liability. Gilead has not disputed that the Plaintiffs were each sent the Mailer as defined in this Agreement.

C. On April 13 and 14, 2021, the Parties participated in two full-day mediation sessions conducted via Zoom by an experienced California mediator, Jill Sperber, Esq., to determine whether Plaintiffs' claims could be resolved. Prior to and during the mediation process, Gilead produced documents and information requested by Co-Lead Class Counsel to ensure that any potential settlement would be informed by relevant discovery and based on an adequate factual record. In addition, Co-Lead Class Counsel continued to conduct their own independent factual and legal investigation of the case.

D. Gilead's production of documents and information to Co-Lead Class Counsel for purposes of the mediation included, for example: (1) documents regarding the Mailer; (2) documents and data identifying the size and geographic location of all Settlement Class Members; (3) documents evidencing Gilead's policies and procedures regarding printing/mailing confidential medical information; (4) complaints received about the Mailer from recipients; and (5) iterations of the Advancing Access enrollment form.

E. The April 2021 mediation did not result in a settlement and the Parties resumed litigation and formal discovery efforts. On August 25, 2021, Plaintiffs filed a First Amended Complaint (the "Complaint") that added Plaintiffs Alabama Doe 2 and Florida Doe, and added Lahlouh, Inc. as an additional defendant. On September 17, 2021, Gilead filed its

General Denial and Affirmative Defenses to the Complaint. Plaintiffs subsequently agreed to dismiss the claims against Lahlouh, Inc. without prejudice following Lahlouh's production of documents. The Court granted Plaintiffs' request to dismiss Lahlouh on February 23, 2022.

F. As part of the Parties' formal discovery efforts in the Litigation, Gilead and Plaintiffs each responded to written discovery requests and produced documents, including the production of thousands of documents by Gilead. Certain Plaintiffs were also deposed. The Parties also engaged in numerous meet-and-confer conferences to negotiate various discovery issues, and Gilead filed a motion to compel, which the Court granted.

G. In March 2022, following the above extensive discovery efforts, the Parties resumed their settlement discussions, and Plaintiffs, through their counsel, and Gilead, through its counsel, engaged in arm's-length settlement negotiations.

H. Gilead represents that it no longer uses the term "HIV Prevention Team" in the return addresses or otherwise on the face of the envelopes sent to individuals enrolled in Gilead's Advancing Access Program.

I. Gilead does not admit that it is liable to Plaintiffs and the Settlement Class for the claims, damages, harm, causes of action, costs, expenses, and attorneys' fees asserted in the Litigation and/or related to the sending of the Mailer; denies all allegations by Plaintiffs; and further has asserted numerous legal and factual defenses against Plaintiffs' claims. Nonetheless, Gilead has concluded, in light of the costs, risks, and burden of litigation, that this Settlement Agreement is in the interest of all parties.

J. Plaintiffs, through their undersigned counsel, represent that they have made a thorough and independent investigation of the facts and law relating to the allegations in the Complaint, including, without limitation: (1) interviews by Co-Lead Class Counsel of the Plaintiffs; (2) the review and analysis by Co-Lead Class Counsel of the documents, data, and information produced by Gilead as part of the Parties' mediation process and as part of formal discovery in the Litigation; (3) documents produced by Lahlouh, Inc.; (4) the depositions that were taken by Gilead of several Plaintiffs; and (5) extensive factual investigation and legal research by Co-Lead Class Counsel with respect to the claims and defenses in the Litigation. After careful consideration, Plaintiffs and their undersigned counsel represent that they have concluded that it is in the best interests of the Settlement Class to settle the Released Claims against the Released Parties for the consideration set forth in this Settlement Agreement, and this Settlement Agreement is the result of arm's-length negotiations including the mediation process described above. Plaintiffs and Co-Lead Class Counsel have also considered, among other things: (1) the complexity, expense and likely duration of the litigation if it was litigated through trial and appeals; (2) the stage of the litigation and amount of fact gathering completed; (3) Gilead's factual and legal arguments and defenses and the potential for Gilead to prevail on the merits with respect to class certification, liability, and/or damages; and (4) the range of possible recovery, and have determined that the proposed resolution of Plaintiffs' individual and class action claims as set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interests of Plaintiffs and the Settlement Class. Plaintiffs and Co-Lead Counsel represent that they are not aware of any member of the Settlement Class that has expressed an

interest in opting out of the settlement.

K. The Parties executed a settlement agreement dated October 7, 2022, and now wish to amend the settlement pursuant to comments received from the Court.

L. The Parties desire to settle, compromise, and resolve fully all Released Claims, and to seek the Court's review and approval of the Settlement Agreement.

NOW, THEREFORE, the foregoing recitals are expressly incorporated into this Settlement Agreement, and in consideration of the agreements set forth in this Settlement Agreement, this Litigation shall be settled and compromised under the following terms and conditions.

SECTION 1
DEFINITIONS

1.1 The following terms used in this Settlement Agreement shall have the meanings ascribed to them below for purposes of this Settlement Agreement:

A. "Claimant" means a Settlement Class Member who submits a Claim Form.

B. "Claimant Award" means the amount of money that is paid by the Settlement Administrator out of the available Net Settlement Fund to each Claimant who submits a valid and timely Claim Form.

C. "Claim Form" means the Claim Form attached as Exhibit A hereto that Settlement Class Members may complete to make a claim for harm they experienced as a result the Mailer in addition to the Base Payment defined in Paragraph 4.2(a) below.

D. "Claim Period" shall mean the time period of sixty (60) days after the date that notice of this Settlement is issued by the Settlement Administrator to submit a Claim Form.

E. "Class Representatives" or "Plaintiffs" mean Alabama Doe 1, Alabama Doe 2, Indiana Doe, Florida Doe, and Missouri Doe.

F. "Co-Lead Class Counsel" means Shanon J. Carson, John Albanese, and Sophia Rios of Berger Montague; John Grogan and Kevin Trainer of LGD, and Ronda B. Goldfein, Yolanda French Lollis, and Adrian Lowe of AIDS Law Project.

G. "Complaint" means the First Amended Complaint filed in the Litigation on August 25, 2021.

H. "Counsel for Gilead" means Kenneth L. Chernof, Angel Tang Nakamura, Stephanie N. Kang, Alexander S. Altman, David B. Schwartz, and Hannah R. Coleman of Arnold & Porter Kaye Scholer LLP.

I. "Court" means the Superior Court of the State of California, San Mateo County.

J. "Effective Date" means the day following the date of the Court's Final Approval Order and Judgment approving the Settlement Agreement if there are no objectors, and if there are any objectors, means (i) the day following the expiration of the deadline for appealing the entry by the Court of the Final Approval Order and Judgment approving the Settlement Agreement, if no appeal is filed; or (ii) if an appeal of the Final Approval Order and Judgment is filed, the date upon which all appellate courts with jurisdiction affirm such Final Approval Order and Judgment, or deny any such appeal or petition for certiorari, such that no future appeal is possible.

K. "Final Approval Hearing" means the hearing scheduled by the Court to consider the fairness, reasonableness, and adequacy of this Settlement Agreement, and to determine whether a Final Approval Order and Judgment should be entered.

L. "Final Approval Date" means the date on which the Court enters the Final Approval Order and Judgment.

M. "Final Approval Order" means the Final Approval Order and Judgment entered by the Court.

N. "Mailer" means the mailing sent by Gilead to Plaintiffs and the Class between April 15 and April 30, 2020, in an envelope with the words "HIV Prevention Team" on the face of the envelope in the return address.

O. "Net Settlement Fund" means the amount of money remaining in the Settlement Fund after the following amounts are subtracted as approved by the Court in its Final Approval Order: (1) any service awards to the Class Representatives; (2) attorneys' fees and costs to Co-Lead Class Counsel; and (3) reasonable fees and costs invoiced by the Settlement Administrator.

P. "Notice of Deficiency" means any written notice that the Settlement Administrator sends to any Claimant who submits a Claim Form that contains a deficiency that needs to be cured as determined by the Settlement Administrator. A form of Notice of Deficiency to be used by the Settlement Administrator is attached hereto as Exhibit B.

Q. "Notice of Settlement" means the Notice of Class Action Settlement in the form of Exhibit C attached hereto, to be approved by the Court in its Preliminary Approval Order, which is to be provided by the Settlement Administrator to the Settlement Class Members to provide notice of this Settlement. For those Settlement Class Members who will receive notice via email, and Email Notice of Settlement is attached hereto as Exhibit D.

R. "Preliminary Approval Order" means the Court's Order preliminarily approving the Settlement Agreement and preliminarily certifying the Settlement Class.

S. "Released Claims" means the claims released as set forth in Section 6

below.

T. "Released Parties" means Gilead and each of its respective past, present or future successors, assigns, predecessors, parents, subsidiaries, sister companies, joint venturers, partnerships, related companies, affiliates, unincorporated entities, divisions and groups, and each of their directors, officers, shareholders, employees, managers, agents, representatives, insurers, reinsurers, partners, accountants, consultants, legal representatives, administrators, contractors and subcontractors, and agents of and all persons acting under, by, through, or in concert with any of them, and each of them.

U. "Settlement Administrator" means Kroll Settlement Administration LLC, who will be presented to the Court for approval in the Preliminary Approval Order to perform all responsibilities assigned to the Settlement Administrator in this Settlement Agreement.

V. "Settlement Agreement" or "Settlement" mean this Settlement Agreement and its exhibits which are incorporated herein, including any subsequent amendments and subsequent exhibits that are agreed to by the Parties in writing and approved by the Court.

W. "Settlement Payment" means the total payment that each Settlement Class Member is entitled to receive pursuant to the terms of this Agreement as determined by the Settlement Administrator.

X. "Settlement Class" or "Settlement Class Members" mean all persons to whom a Mailer was sent by Gilead between April 15 and April 30, 2020, and that was not returned as undeliverable by the United States Postal Service. Gilead has represented and produced data evidencing that there are 18,192 Settlement Class Members.

Y. "Settlement Fund" means the non-reversionary cash amount of Four Million Dollars ($4,000,000) which shall be the total amount from which the following will be paid, all subject to the approval of the Court: (1) all Settlement Payments to Settlement Class Members; (2) all reasonable settlement administration fees and costs; (3) Co-Lead Class Counsel's attorneys' fees and costs; and (4) all service awards to the Class Representatives.

Z. "Settlement Website" means the website regarding this Settlement that will be established by the Settlement Administrator following issuance by the Court of its Preliminary Approval Order.

SECTION 2
BENEFITS FOR SETTLEMENT CLASS MEMBERS

2.1 Consideration. In consideration of the Releases set forth in Section 6 below, Gilead shall pay, as further described in Section 4.1 below, the non-reversionary cash amount of Four Million Dollars ($4,000,000.00) into the Settlement Fund, to be distributed as set forth herein and approved by the Court in its Final Approval Order. This payment is the total consideration provided by Gilead in connection with this Settlement Agreement, and under no circumstances will Gilead provide any additional payment.

SECTION 3
SETTLEMENT ADMINISTRATOR AND NOTICE TO SETTLEMENT CLASS MEMBERS

3.1 Appointment of Settlement Administrator and Protection of Class List

3.1.1 Plaintiffs' Motion for Preliminary Approval will request the Court to appoint Kroll Settlement Administration LLC to act as the Court-appointed independent Settlement Administrator and to implement all settlement administration tasks and duties set forth in this Settlement Agreement. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest and the Parties jointly conducted a request for proposal/bidding process to four (4) potential companies to find and select the proposed Settlement Administrator.

3.1.2 The Settlement Administrator shall perform all tasks and duties ascribed to it in this Settlement Agreement and as the Court may direct. The Settlement Administrator shall prepare and submit written status reports and declarations to Co-Lead Class Counsel and/or Counsel for Gilead at any time upon written request.

3.1.3 The term "Class List" means the list of names and last known contact information, including last known mailing addresses (where available) and email addresses (where available), of the Settlement Class Members. After the Settlement Administrator is appointed by the Court and agrees to be bound by a Qualified Protective Order entered by the Court (which may be contained in the Preliminary Approval Order), and within five (5) business days following the issuance of the Court's Preliminary Approval Order, Gilead will cause the Class List to be delivered to the Settlement Administrator as directed by the Preliminary Approval Order.

3.1.4 At no time shall the Settlement Administrator share the Class List or any information contained on the Class List, or any confidential medical information, with the Court, Co-Lead Class Counsel, Counsel for Gilead, or any other person or entity, without a Court Order or an authorization form that is signed by the Settlement Class Member whose information is to be disclosed (or by someone with legal authorization to sign on their behalf), except that the Settlement Administrator shall comply with any federal and state tax laws and required reporting and withholding with respect to this Settlement, and Gilead shall have no obligations relating to such matters.

3.2 Settlement Administrator Fees and Costs. The reasonable fees and costs of the Settlement Administrator incurred in administering this Settlement that are approved by the Court in its Final Approval Order will be paid out of the Settlement Fund.

3.3 Settlement Website. Within ten (10) days after the Preliminary Approval Order, the Settlement Administrator will cause to be established and maintained a Settlement Website containing relevant information about the Settlement, including, without limitation, downloadable .pdf copies of the Complaint, this Settlement Agreement and its exhibits, the

Notice of Settlement, the Claim Form, the Preliminary Approval Order, the Final Approval Order, and other case documents relevant to the Settlement, as well as a "Frequently Asked Questions" webpage. The Settlement Website shall also contain a fillable version of the Claim Form that can be completed and submitted online. A draft of the Settlement Website shall be reviewed and approved by Co-Lead Class Counsel and Counsel for Gilead before it is made available to the public. The Settlement Website shall be owned and operated by the Settlement Administrator. The Settlement Administrator will post relevant information about the Settlement on the Settlement Website, including, as it becomes available, information about deadlines and methods to participate, and Claim Form requirements. Claim Forms may be submitted to the Settlement Administrator via the Settlement Website in a secure and private fashion and using Share File, a secure file transfer tool, or a suitable alternative. In addition, the Settlement Administrator shall implement reasonable measures designed to protect individual privacy rights and encourage check-cashing including by allowing Settlement Class Members as part of the notice process to inform the Settlement Administrator of a direct method to issue payment other than checks, such as through PayPal, through their Claim Form.

3.4 Automated Telephone System. Within ten (10) days after the Preliminary Approval Order, the Settlement Administrator will cause to be established and maintained an automated telephone system using a toll-free number to provide information about the Settlement to the Settlement Class Members, utilizing an interactive voice response script approved by Co-Lead Class Counsel and Counsel for Gilead. The automated telephone system shall be operated by the Settlement Administrator. The automated telephone system shall permit Settlement Class Members to request and obtain copies of the Settlement Agreement, Notice of Settlement and Claim Form, and shall also provide the opportunity for Settlement Class Members to speak with a live operator during business hours for further information.

3.5 De-identified Information. The Settlement Administrator shall utilize a unique number identifier system so it can communicate with and about Settlement Class Members without including or identifying any confidential medical information or identifying their names, addresses, or other identifying information belonging to any Settlement Class Member. All Parties and all Counsel shall cooperate in good faith to respect the privacy and confidentiality of all Settlement Class Members' confidential medical information.

3.6 Notice of Settlement to Settlement Class Members. The notice shall include sending the Notice of Settlement attached hereto as Exhibit C or Email Notice of Settlement attached hereto as Exhibit D to all Settlement Class Members (1) by U.S. first class mail where Gilead has the Settlement Class Members' physical mailing addresses; and (2) by email where Gilead does not have Settlement Class Members' physical mailing addresses but does have the Settlement Class Members' email addresses, using practices for the physical mailing and emailing, as applicable, intended to maintain the confidentiality of Settlement Class Members' confidential medical information, including, without limitation:

(a) by using an opaque envelope of appropriate and sufficient stock and with no transparent window in order to obscure the contents of the envelope;

(b) by using a return address on the outside of the envelope with no

identifying information other than the name of the Settlement Administrator, a P.O. Box, City, State and Zip Code;

(c) by including a statement on the front of the envelope stating that it contains "Confidential Legal Information – To Be Opened Only By The Addressee";

(d) by using a protective cover page that folds around the Notice of Class Action Settlement and that identifies that the information being provided therein is confidential and solely for reading by the Settlement Class Member;

(e) by using paper stock for the cover page that will protect the confidentiality of the contents of the envelope from being read through the envelope; and

(f) for emailed notice, by using the subject line "Confidential Legal Information – To Be Read Only By The Named Email Recipient."

3.7 Other Notice Requirements. Prior to mailing the Notice of Class Action Settlement, the Settlement Administrator shall process the information in the Class List through the U.S. Postal Service's National Change of Address database. The notice shall include: (a) direct notice by U.S. first-class mail as set forth above; (b) email notice to those Settlement Class Members for whom email addresses are available but for whom physical mailing addresses are not available; (c) notice through the Settlement Website (and utilizing the automated telephone system set forth above); (d) the issuance of press releases by both Gilead and Co-Lead Class Counsel, which each party will have the opportunity to review before they are finalized, following the issuance of the Preliminary Approval Order; and (e) an announcement to be included on the webpages dedicated to this litigation that are already maintained by Co-Lead Class Counsel. To the extent any Notice of Settlement sent as described in (a) is returned to the Settlement Administrator as undeliverable, Settlement Administrator shall then utilize postal service processes to identify any updated address information for any such individual and resend the notice accordingly. If no such updated address information is available or mail sent to the updated address is returned, Settlement Administrator shall send the Notice of Settlement as described in (b).

3.8 Compliance with all Regulatory and Other Requirements. The Class List delivered by Gilead to the Settlement Administrator and as ordered by the Court and any completed Claim Forms or other information submitted by Claimants to the Settlement Administrator, will be recorded by the Settlement Administrator in a computerized database that will be securely and confidentially maintained by the Settlement Administrator in accordance with all applicable federal, state, and local laws, regulations, and guidelines, including, without limitation, any laws concerning heightened privacy for confidential medical information. The Settlement Administrator must: (a) designate specifically-assigned employees to handle its administration of this Settlement; (b) train them concerning their legal duties and obligations arising out of this Settlement with respect to the information that they are provided; (c) ensure that all of the information it receives is used properly in accordance with all applicable federal, state and local laws and solely for the purpose of administering this Settlement; and (d) ensure that an orderly system of data management and maintenance is adopted and implemented, and

that the information is retained under responsible custody until the conclusion of this litigation and the check-cashing period discussed below applicable to Settlement Class Members, at which time all of the information and data shall be destroyed by the Settlement Administrator. The Settlement Administrator will keep the database in a form that grants access for settlement administration use only and shall restrict access rights only to the least possible number of employees of the Settlement Administrator who are working directly on the administration of this Settlement. The Settlement Administrator shall immediately notify the Court, Co-Lead Class Counsel, and Counsel for Gilead in writing if there is any breach of applicable privacy laws in any respect.

3.9 Access to the Class List and Related Information. Only the Settlement Administrator shall have access to the Class List, Claim Forms, and any supporting information submitted by Settlement Class Members. All information submitted by Settlement Class Members to the Settlement Administrator will be treated as highly confidential pursuant to the Court's Preliminary Approval Order and applicable protective orders, and the Settlement Administrator shall not share any such information with Co-Lead Class Counsel, Counsel for any Plaintiff, Gilead, Gilead's outside counsel, or any other person, except upon an Order of the Court or an authorization form that is signed by the Settlement Class Member whose information is to be disclosed (or by someone with legal authorization to sign on their behalf).

SECTION 4
MONETARY PAYMENTS FOR SETTLEMENT CLASS MEMBERS AND DISTRIBUTION OF NET SETTLEMENT FUND

4.1 Consideration. As set forth above, Gilead shall pay the non-reversionary cash amount of $4,000,000 into the Settlement Fund to be distributed in accordance with the Court's Final Approval Order. This payment is the total consideration provided by Gilead in connection with this Settlement Agreement, and under no circumstances will Gilead provide any additional payment. Gilead will provide the Settlement Administrator with an IRS Form 1099 for the lump sum payment made pursuant to this Settlement Agreement. Gilead shall wire the payment to an escrow account within fourteen (14) business days after the Effective Date and receipt by Gilead of wiring instructions to an escrow account at a bank selected by Co-Lead Class Counsel (which shall be established and maintained by the Settlement Administrator as a Qualified Settlement Fund for federal tax purposes pursuant to Treas. Reg. § 1.468B-1) and a W-9 from the Settlement Administrator, whichever is later. The Settlement Administrator shall be responsible for all administrative, accounting, and tax compliance activities in connection with the Qualified Settlement Fund, including any filings necessary to obtain Qualified Settlement Fund status pursuant to Treas. Reg. § 1.468B-1. Gilead shall provide to the Settlement Administrator any documentation necessary to facilitate obtaining Qualified Settlement Fund status.

4.2 Allocation and Distribution of Net Settlement Fund. The Net Settlement Fund will be distributed as follows.

a. First, every Settlement Class Member is automatically entitled to receive a base payment of One Hundred Dollars ($100.00) without having to submit a Claim Form ("Base Payment").

b. Second, Settlement Class Members may include information on their Claim Form credibly alleging under oath that they incurred reasonable non-reimbursed out-of-pocket expenses that were directly caused by the Mailer, including, for example, any moving costs, medical or counseling costs, loss of income, or other non-reimbursed out-of-pocket expenses upon a showing of reasonable proof. The term "reasonable proof" means the submission to the Settlement Administrator by the Claimant of actual receipts, invoices, credit card statements, medical records, insurance records, copies of returned checks, and/or any other reasonable form of supporting written proof of non-reimbursed out-of-pocket expenses incurred as a direct result of the Mailer, which must be submitted with the Claim Form in support of any claimed economic damages. Reasonable non-reimbursed out-of-pocket expenses may be reimbursed up to $2,000.

c. Third, Settlement Class Members may set forth information on their Claim Form credibly alleging under oath with details about (i) how the Settlement Class Member became aware of the Mailer, (ii) that they experienced non-economic harm constituting emotional distress, anxiety, or fear, as a direct result of the Mailer, and (iii) a description of that emotional distress, anxiety, or fear. If they make such a showing, the Settlement Administrator will determine if they will be eligible for an award of up to $500.

d. If the Net Settlement Fund does not cover the total collective amount of all base payments and all Claimant Awards as set forth above and calculated by the Settlement Administrator, then each totaled Claimant Award (not including the base payment) shall be reduced *pro rata* to be paid out of the remaining amount in the Net Settlement Fund.

4.3 Mailing of Settlement Payments. The Settlement Administrator will distribute Settlement Payments to Settlement Class Members by U.S. first class mail or a direct method, such as through PayPal (if that method is selected by a Settlement Class Member on their Claim Form), no later than thirty (30) days after the Effective Date or as soon as reasonably practicable.

4.4 Review and Processing of Claim Forms. Within two weeks after receiving a Claim Form from a Claimant, the Settlement Administrator shall determine the sufficiency and completeness of the Claim Form and any required contents. The Settlement Administrator shall reject a Claim Form if it does not include all required content and supporting documentation, as applicable, subject to the cure provisions set forth below.

4.5 Deficiencies and Cure. For any rejected Claim Form, the Settlement Administrator shall send via U.S. mail, email, or secure message as indicated in the Claim Form, a Notice of Deficiency to the Settlement Class Member that contains a brief explanation of the deficiency(ies) at issue, and will, where necessary, request the additional information and/or documentation. The Notice of Deficiency will be sent no later than twenty-one (21) days from the date of receipt of the Claim Form by the Settlement Administrator. The Notice of Deficiency will provide that the deficiency must be cured within twenty-one (21) days from the date of mailing of the Notice of Deficiency. Any Claim Form that is not timely cured will be denied by the Settlement Administrator in writing. If the deficiency is later cured before such time as the Settlement Administrator determines and calculates all Claimant Awards, then the Settlement Administrator shall accept the cure.

4.6 Challenge to Approved Claims to Prevent Fraud. For every Claim approved, the Settlement Administrator shall provide the Claim Form and any supporting documentation to the Parties within seven (7) days of approving the Claim Form. Prior to providing the Claim Form and supporting information to the Parties, the Settlement Administrator shall remove any personally identifying information from the Claim Form and supporting documentation. Should any Party believe in good faith that the Claim should not have been approved, in whole or in part, the Party may challenge the Claim within seven (7) days of receiving the Claim Form and any supporting information by serving the Settlement Administrator and all Parties with a notice, not to exceed one page, as to why the Claim should not have been approved in whole or in part. The Settlement Administrator shall serve a copy of the notice to the affected Settlement Class Member via mail, unless the Claim Form submitted by Settlement Class Member provides an email address and expresses a preference to be contacted by email only. Any party, including the affected Settlement Class Member, may respond to that notice within fourteen (14) days after the notice is sent by sending a response to the Settlement Administrator at the return mail or email address (as applicable) that was used to send the notice. The Settlement Administrator shall then consider the challenge and make a determination as to the merits of the challenge. The Settlement Administrator's decision shall be final and non-reviewable. The Parties agree that challenges to approved Claims shall be limited to instances where one Party believes that a fraudulent claim has been approved.

4.7 Use of Settlement Fund Prior to the Effective Date. If the Settlement does not become final and effective for any reason, then Gilead will not owe the payment of the Settlement Fund except for any amounts reasonably incurred and billed by the Settlement Administrator, which shall be Gilead's responsibility.

4.8 Check Cashing. All settlement checks to Settlement Class Members will remain negotiable for 180 days from the date they are issued and shall be accompanied by the cover letter attached hereto as Exhibit E when they are sent by the Settlement Administrator. If payment is made through electronic means, an email message shall be sent to the Settlement Class Member. Any mailed checks shall be mailed using the same protections and mailing procedures as set forth in Paragraph 3.6 above. At any point in the check-cashing period, the Settlement Administrator shall have the authority to stop payment on a lost check and issue a new check or other form of payment to an eligible Settlement Class Member upon reasonable request, and after the Settlement Class Member has executed and sent to the Settlement Administrator an affidavit or declaration of lost check. Sixty (60) days prior to the expiration of the check-cashing period, the Settlement Administrator will send a reminder letter or email, the content of which shall be subject to the Parties' approval, to any Settlement Class Members who have not yet cashed their settlement check.

4.9 Remaining Funds from Net Settlement Fund and Uncashed Checks. Ninety (90) days following the 180-day check negotiation period, the Settlement Administrator shall distribute any remaining amounts in the Net Settlement Fund, subject to the approval of the Court pursuant to Cal. Code. Civ. P. § 384, to Positive Women's Network-USA, a non-profit *cy pres* recipient chosen by the Parties, subject to approval by the Court in its Final Approval Order.

SECTION 5
PRELIMINARY APPROVAL, FINAL APPROVAL, OPT-OUTS, AND OBJECTIONS

5.1 Motion for Preliminary Approval. Promptly after this Settlement Agreement is executed, Co-Lead Class Counsel shall file a Motion for Preliminary Approval of Class Action Settlement, which shall include a copy of this Settlement Agreement and its exhibits. The Motion shall request that the Court schedule a Final Approval Hearing approximately two weeks after the conclusion of the Claim Period.

5.2 Stay of Proceedings. The Parties shall request that the Preliminary Approval Order stay the Litigation during the pendency of the Court's approval process regarding this Settlement Agreement.

5.3 Stipulation to Certification of Settlement Class. The Parties stipulate and agree to certification of the Settlement Class pursuant to Cal. Code Civ. P. § 382 and Cal. Rule of Court 3.769. The Parties agree that this stipulation is for settlement purposes only. The Parties do not waive or concede any position or arguments they have for or against certification of any class for any other purpose in any action or proceeding. The Parties agree that the Court's certification of the Settlement Class for purposes of this Settlement does not constitute an admission by Gilead that the claims of the Settlement Class would be appropriate for class treatment if the claims were contested in this or any other forum.

5.4 Opt Outs. The Notice of Settlement attached hereto as Exhibit C provides detailed instructions to Settlement Class Members regarding the procedures that must be followed to opt out of the Settlement Class. To validly request exclusion from the Settlement Class, a Settlement Class Member must submit a written request to opt out to the Settlement Administrator stating "I wish to exclude myself from the Settlement Class in *Alabama Doe 1, et al. v. Gilead Sciences, Inc.*, No. 20-CIV-03699 (Cal. Sup. Ct., San Mateo Cty.) (or substantially similar clear and unambiguous language), no later than sixty (60) days after the Notice of Settlement is sent to Settlement Class Members by the Settlement Administrator (the "Opt-Out Date"). That written request shall contain the Settlement Class Member's printed name, address, telephone number, email address, and date of birth. A written request for exclusion must contain the actual written signature of the Settlement Class Member seeking to exclude himself or herself from the Settlement Class and requests for exclusion cannot be made on a group or class basis. The Settlement Administrator will provide redacted and de-identified copies of all requests for exclusion to Co-Lead Class Counsel and Counsel for Gilead as they are received, and only redacted and de-identified copies shall be filed with the Court. All Settlement Class Members who do not timely and properly request exclusion from the Settlement Class will in all respects be bound by all terms of this Settlement Agreement and the Court's Final Approval Order, and upon the Effective Date, will be entitled to all benefits described in this Settlement Agreement. Settlement Class Members who opt out can withdraw their request for exclusion before the Final Approval Hearing by submitting a written request stating their desire to revoke their request for exclusion along with their written signature. In the event that more than one percent (1%) of the Settlement Class Members timely and validly opt out, Gilead may, by notifying Co-Lead Class Counsel and the Court in writing within ten (10) days of the Opt-Out deadline, void this Settlement Agreement, in which case the Parties shall return to their respective positions before this Agreement was executed.

5.5 Objections. Any Settlement Class Member who does not submit a written request

for exclusion may present a written objection to the Settlement explaining why he or she believes that the Settlement Agreement should not be approved by the Court as fair, reasonable, and adequate. A Settlement Class Member who wishes to object to any aspect of the Settlement must submit to the Settlement Administrator a written statement of the objection no later than sixty (60) days after the Notice of Settlement is sent to Settlement Class Members. The written statement must include a detailed statement of the Settlement Class Member's objection(s), as well as the specific reasons, if any, for each such objection, including any evidence and legal authority that the Settlement Class Member wishes to bring to the Court's attention. That written statement shall contain the Settlement Class Member's printed name, address, telephone number, and date of birth, and any other supporting papers, materials, or briefs that the Settlement Class Member wishes the Court to consider when reviewing the objection. A written objection must contain the actual written signature of the Settlement Class Member making the objection. The Settlement Administrator shall provide Co-Lead Class Counsel and Counsel for Gilead with copies of any objections as they are received. The names of any objectors who affirmatively state in writing that they wish to use a pseudonym shall be held in strict confidence by Co-Lead Class Counsel and Counsel for Gilead and shall not be disclosed on the public record without the objector's written permission. The parties may file responses to any Settlement Class Member's written objection to the Settlement.

5.6 Representation. A Settlement Class Member may object on his or her own behalf or through an attorney, however, even if represented, the Settlement Class Member must sign the objection and all attorneys who are involved in any way asserting objections on behalf of a Settlement Class Member must file a notice of appearance with the Court at the time when the objection is submitted, or as the Court may otherwise direct.

5.7 Final Approval Hearing. A Settlement Class Member (or counsel representing him or her, if any) seeking to make an appearance at the Final Approval Hearing must file with the Court, by twenty-one (21) days prior to the Final Approval Hearing, a written notice of his or her intention to appear at the Final Approval Hearing, including a statement of any evidence or exhibits that will be presented.

5.8 Motion for Final Approval and Final Approval Order. No later than fourteen (14) days prior to the Final Approval Hearing or at such other time as ordered by the Court, Plaintiffs shall file a Motion for Final Approval of Class Action Settlement to request a Final Approval Order and Judgment from the Court, the approval and entry of which shall be a condition of this Settlement Agreement, that: (1) approves the Settlement Agreement as fair, reasonable, and adequate; (2) confirms the final certification of the Settlement Class; (3) confirms the appointments of the Class Representatives and of Co-Lead Class Counsel; (4) finds that the Notice Plan is acceptable to the Court; (5) states that all notices and communications described herein are approved of by the Court as compliant with applicable laws, including but not limited to privacy laws; (6) permanently bars, enjoins and restrains the Releasors (and each of them) from commencing, filing, initiating, prosecuting, asserting, and/or maintaining any and all Released Claims against the Released Parties; (7) dismisses with prejudice the operative Complaint pursuant to the terms of the Settlement Agreement; (8) confirms the appointment of the Settlement Administrator; and (9) provides that the Court retains continuing and exclusive jurisdiction over the Parties, the Settlement Class and this Settlement Agreement, to interpret, implement, administer and enforce the Settlement Agreement in accordance with its terms and

conditions.

SECTION 6
RELEASES

6.1 In consideration of the benefits provided to Settlement Class Members by Gilead as described in this Settlement Agreement, upon the Effective Date, each Settlement Class Member, on his or her own behalf and on behalf of his or her respective predecessors, successors, assigns, assignors, representatives, attorneys, agents, trustees, insurers, heirs, estates, beneficiaries, executors, administrators, and any natural, legal, or juridical person or entity to the extent he, she, or it is or will be entitled to assert any claim on behalf of any Settlement Class Member (the "Releasors"), hereby waive and release, forever discharge and hold harmless the Released Parties, and each of them, of and from any and all past, present and future claims, counterclaims, actions, rights, causes of action, liabilities, suits, demands, damages, losses, payments, judgments, debts, dues, sums of money, costs and expenses (including, without limitation, attorneys' fees and costs), accounts, bills, covenants, contracts, controversies, agreements, obligations, or promises, in law or in equity, contingent or non-contingent, known or unknown, suspected or unsuspected, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, liquidated or unliquidated, whether patent or latent, concealed or overt, direct, representative, class or individual in nature, in any forum ("Claims") that the Releasors, and each of them, had, has, or may have in the future arising out of, in any way relating to, or in connection with, the Mailer or the allegations, transactions, facts, matters, occurrences, representations or omissions involved, that are or could have been alleged or set forth in, referred to, or relate to the Complaint and/or the Mailer (collectively the "Released Claims," or the "Releases").

6.2 California Civil Code Section 1542. Plaintiffs and each Settlement Class Member may hereafter discover claims or facts in addition to, or different from, those which he now knows or believes to exist. As of the Effective Date, Plaintiffs and each Settlement Class Member shall further be deemed to have waived and released any and all provisions, rights, and benefits conferred by § 1542 of the California Civil Code to the extent applicable or similar laws of any other state or jurisdiction.

Section 1542 of the California Civil Code reads:

"CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

6.3 Nothing in the Releases will preclude any action to enforce the terms of this Settlement Agreement in the Court.

6.4 The Parties represent and warrant that no promise or inducement has been offered

or made for the Releases contained in this Article except as set forth in this Settlement Agreement and that the Releases are executed without reliance on any statements or any representations not contained in this Settlement Agreement.

SECTION 7
ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS

7.1 Attorneys' Fees and Costs. Co-Lead Class Counsel will file a Motion for Attorneys' Fees, Costs, and Service Awards with the Court fourteen (14) days before the deadline for objections for a payment of attorneys' fees and reimbursement of Co-Lead Class Counsel's out-of-pocket costs from the Settlement Fund, and which will be posted on the Settlement Website. The Parties agree that the amount for attorneys' fees shall not exceed one-third of the $4 million Settlement Fund (*i.e.*, $1,333,333.33). In addition, Co-Lead Class Counsel's out-of-pocket costs shall not exceed $60,000. Should the Court decline to approve any requested payment, the Settlement shall remain effective. The Settlement Administrator shall wire the Court-approved attorneys' fees and costs to Berger Montague after the Effective Date. Gilead shall bear its own costs of litigation and attorneys' fees incurred in connection with the Action and this Settlement Agreement.

7.2 Class Representative Service Awards. In recognition of their service to the Settlement Class, the Motion for Fees, Costs, and Service Awards may request the Court to approve service awards of $5,000 each to the Class Representatives subject to the approval of the Court. Gilead will take no position on the Motion for Attorneys' Fees, Costs, and Service Awards as long as the requested amounts are consistent with this and the preceding paragraph. The service awards shall be paid from the Settlement Fund at the same time as Settlement Payments are made to Settlement Class Members. Should the Court reduce or decline to approve any requested service awards, the Settlement shall remain effective.

SECTION 8
MISCELLANEOUS PROVISIONS

8.1 Continuing Jurisdiction. The Court will retain continuing and exclusive jurisdiction over the interpretation, implementation, administration, and enforcement of this Settlement Agreement. The Parties and the Settlement Class are hereby deemed to have submitted to the exclusive jurisdiction of this Court for any suit, action, proceeding, or dispute arising out of, or relating to, this Settlement Agreement.

8.2 Authority. Each of the undersigned signatories represent and warrant that they have authority to enter and sign this Settlement Agreement and fulfill its terms as set forth herein.

8.3 No Admission of Liability. It is understood and agreed that this Settlement Agreement is a compromise of disputed claims and that any consideration given is not to be construed as an admission of liability by the Parties. Gilead denies any liability and nothing in this Settlement Agreement is, or may be construed as, an admission or concession on any point of fact or law by or against any Party.

8.4 No Liability for Actions in Accordance with Agreement. Plaintiffs and Gilead, as well as Co-Lead Class Counsel, Counsel for any Plaintiff, and Counsel for Gilead, shall not be liable for any acts undertaken in conformance with this Settlement Agreement and the Court's Preliminary Approval Order and Final Approval Order. Plaintiffs and the Settlement Class shall hold harmless the Released Parties from any acts undertaken in conformance with this Settlement Agreement, including acts that result in disclosure of any information, including, but not limited to, confidential medical information.

8.5 Non-Disparagement. The Parties and their counsel agree not to make any public statements, written or verbal, or cause or encourage others to make any public statements, written or verbal, that defame, disparage, or in any way criticize the personal or business reputation, practices, or conduct of the Parties, their affiliates, employees, directors, officers, or attorneys based upon the facts alleged in the Litigation.

8.6 Choice of Law. This Settlement Agreement will be interpreted and enforced in accordance with the laws of the State of California, without regard to conflict of law principles.

8.7 Cooperation. The Parties will cooperate, assist and undertake all reasonable actions to accomplish all steps contemplated by this Settlement Agreement and to implement the Settlement Agreement on the terms and conditions provided herein. The Parties and all of their counsel agree to support the final approval and implementation of this Settlement Agreement. Neither the Parties nor their counsel, directly or indirectly, will encourage any person to object to the Settlement or assist them in doing so.

8.8 Integration. This Settlement Agreement and its exhibits shall constitute the entire agreement and understanding among the Parties and supersedes all prior proposals, negotiations, letters, conversations, agreements, term sheets, and understandings, whether written or oral, relating to the subject matter of this Settlement Agreement. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, agreement, arrangement, or understanding, whether written or oral, concerning any part or all of the subject matter of this Settlement Agreement has been made or relied on except as expressly set forth in this Settlement Agreement.

8.9 Severability. If any provision or any part of any provision of this Settlement Agreement is for any reason held to be invalid, unenforceable, or contrary to any public policy, law, statute, and/or ordinance, that provision may be severed from the Settlement Agreement and the remainder of the Settlement Agreement shall remain valid and enforceable as if the invalid, unenforceable, or illegal provision or part of any provision had not been contained herein.

8.10 Headings. The headings used in this Settlement Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement in any manner. Any inconsistency between the headings used in this Settlement Agreement and the text of the Settlement Agreement shall be resolved in favor of the text.

8.11 Incorporation of Exhibits. All of the exhibits to this Settlement Agreement are

hereby incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, any inconsistency between this Settlement Agreement and any exhibits hereto will be resolved in favor of this Settlement Agreement.

8.12 Amendment. Subject to the approval of the Court, the Parties may agree in a writing executed by Co-Lead Class Counsel and Counsel for Gilead to amend this Settlement Agreement or to modify the exhibits to this Agreement to effectuate the purpose of this Agreement or to conform to guidance from the Court about the contents of such exhibits without the need to further amend this Agreement. Any amendment modifying the Settlement must be filed with the Court and is subject to the Court's approval.

8.13 Mutual Preparation. The Parties negotiated this Settlement Agreement at arm's-length and following a mediation process overseen by an experienced mediator, Jill Sperber, Esq. Neither the Settlement Class Members nor Gilead, nor any one of them, nor any of their counsel, will be considered to be the sole drafter of this Settlement Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement. This Settlement Agreement will be deemed to have been mutually prepared by the Parties and will not be construed against any of them by reason of authorship.

8.14 Independent Advice of Counsel. The Parties represent and declare that in executing this Settlement Agreement, each relied upon the advice and recommendations of their own independently selected counsel. Further, the Parties represent that each has had sufficient opportunity to consult with their respective attorneys about the terms and conditions of this Settlement Agreement prior to its execution. Each Party has read and fully understands the full contents and effect of this Settlement Agreement, and consciously and voluntarily contracts and agrees as provided herein.

8.15 Extensions of Time. Co-Lead Class Counsel and Counsel for Gilead may agree in writing, subject to approval of the Court where required, to reasonable extensions of time to implement the provisions of this Settlement Agreement.

8.16 Execution in Counterparts. This Settlement Agreement may be executed in counterparts, and an emailed, or electronic signature, for example, via DocuSign, shall be deemed an original signature for purposes of this Settlement Agreement.

8.17 Issuance of Notices. In any instance in which this Settlement Agreement requires the issuance of any notice to the Parties and/or to Co-Lead Class Counsel and Counsel for Gilead, such notice must be issued by issuing written notice to Co-Lead Class Counsel and to Counsel for Gilead as defined above.

AGREED TO AS OF THIS 16 DAY OF DECEMBER, 2022

DocuSigned by:
5862EEE2B0C84BD...

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Co-Lead Class Counsel for Plaintiffs and the Settlement Class

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_____

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_____

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Attorneys for Gilead Sciences, Inc.

EXHIBIT A

CLAIM FORM

IMPORTANT -- All Settlement Class Members will automatically receive a minimum Base Payment of $100.

This Claim Form is solely for Class Members who want to make a claim for harm they experienced as a direct result the Mailer.

Please answer all questions honestly and accurately. You are swearing under penalty of perjury that your statements below are true and correct as if you were testifying in court.

To complete this Claim Form, you must:

(a) completely fill out Part I -- Claimant Information;

(b) fill out Part II -- Explanation of Harm;

(c) personally sign the Certification and Declaration;

(d) attach all documentation of your alleged harm as requested below; and

(e) return your completed Claim Form and any requested documentation to the Settlement Administrator.

YOU MUST SUBMIT YOUR COMPLETED CLAIM FORM BY DATE FOR IT TO BE CONSIDERED TIMELY.

You may fill out this Claim Form in hard copy or you may download and fill out the electronic Claim Form located at WEBSITE. The electronic Claim Form can be uploaded using the secure portal also located on the website. If you fill out the Claim Form in hard copy, you may return it by uploading it using the secure portal at WEBSITE or by mail to INSERT MAIL ADDRESS.

If you have any questions about this Claim Form, please call the Settlement Administrator toll-free at xxx-xxx-xxxx or contact the Settlement Administrator using the Contact Us form located at WEBSITE. For additional information about the Settlement, please visit WEBSITE.

PART I -- CLAIMANT INFORMATION

Note -- All information you provide on this Claim Form will be kept strictly confidential by the Settlement Administrator and will be destroyed by the Settlement Administrator after the distribution of the settlement proceeds.

Name of Claimant: _____

Personal Identification Number: _____

Note -- It is <u>your</u> responsibility to let the Settlement Administrator know if your mailing address changes at any time before you receive a Settlement Payment or if you want future mail related to this Settlement sent to a different mailing address.

Current Mailing Address: _____

Telephone: _____ Email: _____

Social Security Number ___ _____

<u>If you prefer to be contacted by email only, please check the box:</u>

☐ <u>I prefer to be contacted by email only at email address above.</u>

<u>If you would like to receive your settlement payment via Paypal rather than by check, please check the box below and make sure that your email address listed above corresponds with your Paypal or Venmo account.</u>

☐ <u>I would like to receive my settlement payment by Paypal at the email address above.</u>

PART II -- EXPLANATION OF HARM

A. Out-of-Pocket Expenses

If you incurred any non-reimbursed out-of-pocket expenses as a direct result of the Mailer, such as moving costs, medical or counseling costs, loss of income, or other non-reimbursed out-of-pocket expenses, for which you are seeking reimbursement pursuant to this Settlement, please list and itemize those expenses below. For each expense listed, **<u>you must attach and return to the Settlement Administrator the corresponding receipt, invoice, credit card statement, medical record, insurance record, copy of returned check, or other reasonable form of evidence documenting that you made each payment listed below</u>**. If you need more room, please continue the list on a separate sheet of paper and return it to the Settlement Administrator along with this Claim Form and the required documentation.

Total Amount Claimed:		

B. Emotional Distress

If you experienced, emotional distress, anxiety, or fear, as a direct result of the Mailer, please describe in detail the circumstances under which you became aware of the Mailer, and the emotional distress, anxiety, or fear you experienced. Attach a separate sheet if necessary.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

_____ _____

SIGNATURE DATE

_____

PRINT NAME

REMINDER CHECKLIST BEFORE YOU SUBMIT THIS CLAIM FORM

1. Make sure that you fully completed Part I -- Claimant Information.
2. Make sure that you fully completed Part II -- Explanation of Harm.
3. Make sure that you have signed and dated the Claim Form.
4. Make sure that you retain a copy of this Claim Form and your supporting documentation for your records.

EXHIBIT B

INSERT SETTLEMENT ADMINISTRATOR INFO

Mail Date

INSERT PERSONAL CLAIMANT NUMBER

«ClaimantName»

«Addr1»«Addr2»

«City» «State» «Zip»

RE: ***Alabama Doe 1, et al. v. Gilead Sciences, Inc.*, No. 20-CIV-03699 (Cal. Sup. Ct., San Mateo Cty.)**
Notice of Deficiency with Claim Form

Dear INSERT NAME:

Thank you for submitting your Claim Form pursuant to the Settlement Agreement in the above-referenced matter. We are the Court-appointed Settlement Administrator. We have reviewed your Claim Form and it is deficient or lacks necessary information for the following reason(s):

- INSERT detailed explanation for the deficiency and how it can be fixed.
- INSERT more bullet points if needed.

Please note that the deficiency(ies) noted above must be cured by you by **INSERT CURE DEADLINE DATE**, which is thirty (30) days from the date this notice was mailed. You may respond to this notice through the secure portal located at WEBSITE, by email to EMAIL ADDRESS, or by mail to INSERT MAIL ADDRESS.

If you do not fix the problems identified above, your claim may be denied by the Settlement Administrator.

Please make sure to include your Personal Claimant Number above to assist us in verifying your identity. Your Personal Claimant Number was also printed on the earlier Notice of Settlement that was mailed to you.

If you have any questions about the settlement, please call us toll-free at xxx-xxx-xxxx, email us at EMAIL ADDRESS, or by using the Contact Us form located at WEBSITE. For additional information about the Settlement, please visit WEBSITE.

Sincerely,
Settlement Administrator

EXHIBIT C

Name: INSERT
Personal Identification No.: 123456789

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO

ALABAMA DOE 1, et al., individually and on behalf of all others similarly situated, Plaintiffs, v. GILEAD SCIENCES, INC., Defendant.	Case No. 20-CIV-03699

NOTICE OF CLASS ACTION SETTLEMENT ("NOTICE")

You are receiving this Notice because you have been identified as being part of a group of people whose confidential medical information ("CMI") is alleged to have been disclosed by Defendant Gilead Sciences, Inc. ("Gilead") when Gilead mailed you an envelope with the words "HIV Prevention Team" on the face of the envelope in the return address between April 15 and April 30, 2020 (the "Mailer").

A class action lawsuit was filed concerning the Mailer and a settlement has now been preliminarily approved by the Court. This Notice provides information about the lawsuit, the settlement, and your options as a Settlement Class Member. Please read this Notice carefully because it affects your legal rights. A California state court ordered the sending of this Notice to you. This is not a solicitation or any other form of marketing.

1. Why Should You Read This Notice?

You are receiving this Notice because Gilead's records show that you are a Settlement Class Member. The term "Settlement Class" means all persons to whom a Mailer was sent by Gilead between April 15 and April 30, 2020, and that was not returned as undeliverable by the United States Postal Service. Gilead has confirmed that approximately 18,192 Settlement Class Members were sent the Mailer and did not have the Mailer returned as undeliverable by the United States Postal Service, and therefore are Settlement Class Members.

This lawsuit was filed on September 1, 2020, in the Superior Court of California, San Mateo County by plaintiffs using pseudonyms to address the alleged harm caused by the Mailer.

Following a mediation process overseen by experienced mediator, Jill Sperber, Esq., in April 2021, and continued settlement negotiations, Plaintiffs and Gilead have now reached a settlement that has been preliminarily approved by the Superior Court, and as a Settlement Class Member, you are entitled to a settlement payment.

All Settlement Class Members shall automatically receive a "Base Payment" of $100. Settlement Class Members who fill out a Claim Form may receive a payment of up to $2,000 for reimbursement of out-of-pocket expenses that were directly caused by the Mailer, and up to $500 for non-economic harms constituting emotional distress, anxiety, or fear as a direct result of the Mailer.

The Superior Court of California, San Mateo County has preliminarily approved this Settlement as fair and reasonable and authorized this Notice to be sent to you. The Court will hold a Final Approval Hearing on _____, 2022 at _____, in Department 22, Courtroom K, Northern Court, 1050 Mission Road, South San Francisco, California 94080. Additional information about this case and the Settlement can be found at WEBSITE. The Court may hold the Final Approval Hearing through remote means, such as by Zoom videoconference. If the Final Approval Hearing is held by videoconference, the relevant information necessary to participate will be posted to the Settlement Website, INSERT, no later than one week prior to the Final Approval Hearing.

2. What Are the Terms of the Settlement?

Under the terms of the Settlement Agreement, a copy of which is available at WEBSITE, Gilead has agreed to pay the non-reversionary cash amount of $4,000,000 (the "Settlement Fund") to settle all claims relating to the alleged disclosure described above and/or asserted in this lawsuit unless the Settlement Agreement is voided, disapproved, or otherwise terminated for any reason. The Settlement Fund is non-reversionary, meaning none of the funds will be returned to Gilead.

The Settlement Fund will be used to pay: (a) all Settlement Payments to Settlement Class Members; (b) all reasonable settlement administration fees and costs as approved by the Court, not to exceed $160,865.66; (c) Co-Lead Class Counsel's attorneys' fees, not to exceed $1,333,333.33, plus costs not to exceed $60,000, subject to the approval of the Court; and (d) service awards to the five Class Representatives of $25,000 in the aggregate, subject to the approval of the Court. The "Net Settlement Fund" is the amount left in the Settlement Fund after the Court-approved deductions for settlement administration fees and costs, attorneys' fees and costs, and service awards.

A. **The Settlement Payments to Settlement Class Members will be calculated as follows:**

Base Payment: All Settlement Class Members will automatically receive a "Base Payment" of $100.

Claimant Award: Settlement Class Members who fill out a Claim Form demonstrating harm may receive additional payment. Settlement Class Members that include information on their Claim Form credibly alleging under oath that they incurred reasonable non-reimbursed out-of-pocket

expenses that were directly caused by the Mailer may be reimbursed up to $2,000 upon a showing of reasonable proof. Settlement Class Members may also set forth information on their Claim Form credibly alleging under oath that they experienced non-economic harm constituting emotional distress, anxiety, or fear, as a direct result of the Mailer, for a payment of up to $500. The Settlement Administrator will consider the evidence submitted by each Claimant to determine if a Claimant is eligible for a Claimant Award.

The final amounts will depend on the number of Claims filed. In order to be considered timely and valid, all Claim Forms must be submitted or postmarked by DATE.

B. **Remaining Amounts in the Net Settlement Fund.** If there is money remaining in the Net Settlement Fund after subtracting all Base Payments and Claimant Awards, any service awards to the Class Representatives; attorneys' fees and costs to Co-Lead Class Counsel; and reasonable fees and costs invoiced by the Settlement Administrator, the remaining money shall be donated to the Parties' proposed *cy pres* recipient, Positive Women's Network-USA, subject to the Court's approval.

C. **Timing of Payments**. Settlement Checks will be mailed by U.S. first class mail by the Settlement Administrator to Settlement Class Members or sent by an alternative direct method, such as through PayPal, as selected by the Settlement Class Members, no later than 30 days after final approval by the Court and the time for any appeals have expired, or any appeals have been resolved.

D. **Uncashed Checks**. If possible, the Settlement Administrator will make two attempts to distribute settlement payments to each Settlement Class Member. The total amount of any uncashed settlement checks after the second attempt will be distributed to the Parties' proposed *cy pres* recipient, Positive Women's Network-USA, subject to the Court's approval.

F. **Release**. In consideration of the benefits provided to Settlement Class Members by Gilead as described in this Settlement Agreement, upon the Effective Date, each Settlement Class Member, on his or her own behalf and on behalf of his or her respective predecessors, successors, assigns, assignors, representatives, attorneys, agents, trustees, insurers, heirs, estates, beneficiaries, executors, administrators, and any natural, legal, or juridical person or entity to the extent he, she, or it is or will be entitled to assert any claim on behalf of any Settlement Class Member (the "Releasors"), hereby waive and release, forever discharge and hold harmless the Released Parties, and each of them, of and from any and all past, present and future claims, counterclaims, actions, rights or causes of action, liabilities, suits, demands, damages, losses, payments, judgments, debts, dues, sums of money, costs and expenses (including, without limitation, attorneys' fees and costs), accounts, bills, covenants, contracts, controversies, agreements, obligations, or promises, in law or in equity, contingent or non-contingent, known or unknown, suspected or unsuspected, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, liquidated or unliquidated, whether patent or latent, concealed or overt, direct, representative, class or individual in nature, in any forum ("Claims") that the Releasors, and each of them, had, has, or may have in the future arising out of, in any way relating to or in connection with the Mailer or the allegations, transactions, facts, matters, occurrences, representations or omissions involved, that are or could have been alleged or set forth in, referred to, or relate to the Complaint and/or the Mailer (collectively, the "Released Claims," or the "Releases"). The term Released Parties means Gilead and each of its respective past, present or future successors, assigns, predecessors, parents, subsidiaries, sister companies, joint venturers, partnerships, related companies,

affiliates, unincorporated entities, divisions and groups, and each of their directors, officers, shareholders, employees, managers, agents, representatives, insurers, reinsurers, partners, accountants, consultants, legal representatives, administrators, contractors and subcontractors, and agents of and all persons acting under, by, through, or in concert with any of them, and each of them.

3. How Do I Submit A Claim Form?

To be considered valid and timely, Claim Forms must be submitted to the Settlement Administrator by DATE.

You may fill out this Claim Form in hard copy or you may fill out the electronic Claim Form located at WEBSITE. If you fill out the Claim Form in hard copy, you may return it by uploading it using the secure portal at WEBSITE or by mail to INSERT ADDRESS. To be considered valid and timely, Claim Forms returned by mail must be postmarked by DATE.

If you have any questions about this Claim Form, please call the Settlement Administrator toll-free at xxx-xxx-xxxx or contact the Settlement Administrator by using the Contact Us form located at WEBSITE. For additional information about the Settlement, please visit WEBSITE.
If you decide to fill out and return the Claim Form, all information you provide will be kept strictly confidential by the Settlement Administrator and will be destroyed by the Settlement Administrator after the distribution of the settlement proceeds.

Important -- It is <u>your</u> responsibility to let the Settlement Administrator know if your mailing address changes at any time before you receive a Settlement Payment or if you want future mail related to this Settlement sent to a different mailing address or to receive further correspondence by email only. If you fail to keep your address current, you may not receive your Settlement Award.

4. What Are My Rights?

If you wish to participate in the Settlement, you will automatically receive the Base Payment of $100 via check as described above. You may also submit a Claim Form explaining the harm caused by the sending of the Mailer, for compensation in addition to the Base Payment. All Claim Forms must be submitted or postmarked by DATE. You may also use the Settlement Website to elect to receive any payment by a method other than check. All elections must be made by DATE.

If you wish to exclude yourself from the Settlement so that you do not receive any Settlement Award and are not bound by any release of claims, then you must submit a written request to opt out to the Settlement Administrator stating "I wish to exclude myself from the Settlement Class in *Alabama Doe 1, et al. v. Gilead Sciences, Inc.*, No. 20-CIV-03699 (Cal. Sup. Ct., San Mateo Cty.) (or in substantially similar clear and unambiguous language), postmarked by DATE. Your request for exclusion must include your printed name, address, telephone number, email address, date of birth, and actual written signature. The Settlement Administrator will provide redacted and de-identified copies of all requests for exclusion to Co-Lead Class Counsel and Counsel for Gilead as they are received, and only redacted and de-identified copies shall be filed with the Court. Requests for exclusion cannot be made on a group or class basis. All Settlement Class Members who do not timely

and properly request exclusion from the Settlement Class will in all respects be bound by all terms of this Settlement Agreement and the Court's Final Approval Order, and upon the Effective Date, will be entitled to all benefits described in this Settlement Agreement. The request for exclusion must be sent to the Settlement Administrator at INSERT ADDRESS. Any person who requests exclusion from the Settlement will not be entitled to any Settlement Award and will not be bound by the Settlement Agreement or have any right to object, appeal, or comment thereon.

You can also ask the Court to deny approval by filing an objection. If you choose to object, you remain part of the Settlement Class and will in all respects be bound by all terms of this Settlement Agreement. You can't ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

Any objection to the proposed settlement must be submitted in writing to the Settlement Administrator on or before DATE [60 days from date of notice]. The written statement must include a detailed statement of the Settlement Class Member's objection(s), as well as the specific reasons, if any, for each such objection, including any evidence and legal authority that the Settlement Class Member wishes to bring to the Court's attention. That written statement shall contain the Settlement Class Member's printed name, address, telephone number, date of birth, and actual written signature, and any other supporting papers, materials, or briefs that the Settlement Class Member wishes the Court to consider when reviewing the objection. The Settlement Administrator shall provide Co-Lead Class Counsel and Counsel for Gilead with copies of any objections as they are received. The names of any objectors who affirmatively state in writing that they wish to use a pseudonym shall be held in strict confidence by Co-Lead Class Counsel and Counsel for Gilead and shall not be disclosed on the public record without the objector's written permission.

If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. A Settlement Class Member (or counsel representing him or her, if any) seeking to make an appearance at the Final Approval Hearing must file with the Court, by twenty-one (21) days prior to the Final Approval Hearing, a written notice of his or her intention to appear at the Final Approval Hearing, including a statement of any evidence or exhibits that will be presented.

If you wish to send the Settlement Administrator a letter in support of the Settlement, you are free to do so, and may send your letter to INSERT ADDRESS.

5. How Will My Information Be Kept Confidential?

The Parties and their Counsel have agreed to implement several measures to protect the confidential information of the Settlement Class Members and shall cooperate in good faith to respect the privacy and confidentiality of all Settlement Class Members' confidential medical information.

Gilead ensured that the Class List was delivered to the Settlement Administrator at the Court's direction. At no time shall the Settlement Administrator share the Class List or any information contained on the Class List, or any confidential medical information, with the Court, Co-Lead Class

Counsel, Counsel for Gilead, or any other person or entity, without a Court Order or an authorization form that is signed by the Settlement Class Member whose information is to be disclosed (or by someone with legal authorization to sign on their behalf), except that the Settlement Administrator shall comply with any federal and state tax laws and required reporting and withholding with respect to this Settlement.

Notice of the Settlement was sent using practices for the physical mailing and emailing, as applicable, intended to maintain the confidentiality of Settlement Class Members' confidential medical information, including, for example:

(a) by using an opaque envelope of appropriate and sufficient stock and with no transparent window in order to obscure the contents of the envelope;

(b) by using a return address on the outside of the envelope with no identifying information other than the name of the Settlement Administrator, a P.O. Box, City, State and Zip Code;

(c) by including a statement on the front of the envelope stating that it contains "Confidential Legal Information – To Be Opened Only By The Addressee";

(d) by using a protective cover page that folds around the Notice of Class Action Settlement and that identifies that the information being provided therein is confidential and solely for reading by the Settlement Class Member;

(e) by using paper stock for the cover page that will protect the confidentiality of the contents of the envelope from being read through the envelope; and

(f) for emailed notice, by using the subject line "Confidential Legal Information – To Be Read Only By The Named Email Recipient."

Co-Lead Class Counsel, Counsel for Gilead, Gilead, and the Court shall not have access to the Class List, Claim Forms, or any supporting information submitted by Settlement Class Members. Any completed Claim Forms or other information submitted by Claimants to the Settlement Administrator, will be recorded by the Settlement Administrator in a computerized database that will be securely and confidentially maintained by the Settlement Administrator in accordance with all applicable federal, state, and local laws and regulations, including, without limitation, any laws concerning heightened privacy for confidential medical information.

The Settlement Administrator will also assign each Settlement Class Member a unique number identifier so that any communications amongst Co-Lead Class Counsel, Counsel for Gilead, Gilead, and/or the Court will not include any confidential medical information or names, addresses, or other identifying information belonging to any Settlement Class Member.

In addition, the Settlement Class Members may elect a direct method to receive payment other than checks delivered via U.S. Mail, such as through PayPal, through their Claim Form and on the Settlement Website.

6. Who Are The Attorneys Representing The Class?

The attorneys who represent the Settlement Class are listed below:

Ronda B. Goldfein
Yolanda French Lollis
Adrian M. Lowe
AIDS LAW PROJECT OF PENNSYLVANIA
1211 Chestnut Street, #600
Philadelphia, PA 19103
(215) 587-9377
Gileadclass@aidslawpa.org

Shanon J. Carson
BERGER MONTAGUE PC
1818 Market Street, Ste. 3600
Philadelphia, PA 19103
scarson@bm.net
Telephone: (215) 875-4656

John J. Grogan
Kevin Trainer
LANGER, GROGAN & DIVER PC
1717 Arch Street, Suite 4020
Philadelphia, PA 19103
jgrogan@langergrogan.com
Telephone: (215) 320-5660

John Albanese
BERGER MONTAGUE PC
1229 Tyler Street NE
Suite 205
Minneapolis, MN 55413
jalbanese@bm.net
Telephone: (612) 594-5997

Sophia Rios
BERGER MONTAGUE PC
401 B Street, Suite 2000
San Diego, CA 92101
srios@bm.net
Telephone: (858) 252-6649

The AIDS Law Project of Pennsylvania is a nonprofit public-interest legal organization for almost thirty-four years.

7. How Will The Attorneys For The Settlement Class Be Paid?

You do not have to pay the attorneys who represent the Settlement Class. The Settlement Agreement provides that attorneys' fees and costs will be paid from the Settlement Fund subject to the approval of the Court. The attorneys' request for fees will not exceed $1,333,333.33 plus reimbursement of reasonable out-of-pocket costs not to exceed $60,000.

8. Who May I Contact If I Have Further Questions?

If you need more information or have any questions, you may contact the AIDS Law Project of Pennsylvania at (215) 587-9377 or by email at Gileadclass@aidslawpa.org, or you may contact the Settlement Administrator below. Please refer to the Gilead Mailer Settlement.

Gilead Mailer Settlement
[ADDRESS]
[TELEPHONE NUMBER]
[TOLL FREE NUMBER]
[EMAIL]
INSERT SETTLEMENT WEBSITE

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the Settlement Agreement available at www._____.com, by contacting the AIDS Law Project of Pennsylvania, or by accessing the Court docket in this case or by visiting the Clerk's office, 1050 Mission Road, South San Francisco, CA, 94080, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

EXHIBIT D

Subject: Confidential Legal Information – To Be Read Only By The Named Email Recipient

You are receiving this Notice because you have been identified as being part of a group of people whose confidential medical information is alleged to have been disclosed by Defendant Gilead Sciences, Inc. ("Gilead") when Gilead mailed you an envelope with the words "HIV Prevention Team" on the face of the envelope in the return address in April 2020 (the "Mailer"). Gilead's records show that you are a Settlement Class Member. The term "Settlement Class" means all persons to whom the Mailer was sent by Gilead and that was not returned as undeliverable by the United States Postal Service. Gilead has confirmed that approximately 18,192 Settlement Class Members were sent the Mailer and did not have the Mailer returned as undeliverable by the United States Postal Service, and therefore are Settlement Class Members.

Please read this Notice carefully because it affects your legal rights.

A California state court ordered the sending of this Notice to you. This is not a solicitation or any other form of marketing.

More details about the settlement including the full settlement notice can be found at the settlement website, INSERT URL.

What has happened in the lawsuit?

The lawsuit, *Alabama Doe, et al. v. Gilead Sciences, Inc.*, Case No. 20-CIV-03699, was filed on September 1, 2020, in the Superior Court of California, San Mateo County by plaintiffs using pseudonyms to address the alleged harm caused by the Mailer. Following a mediation process and continued settlement negotiations, Plaintiffs and Gilead (collectively, the "Parties") have now reached a settlement that has been preliminarily approved by the Superior Court, and as a Settlement Class Member, you are entitled to a settlement payment.

What will I receive as a result of the Settlement?

All Settlement Class Members shall automatically receive a "Base Payment" of $100. If you do nothing, you will receive a Settlement Check by U.S. first class mail 30 days after final approval by the Court. You can elect to receive your payment via another method. All elections must be made by DATE.

Click here to choose how to receive your settlement payment.

Settlement Class Members who fill out a Claim Form may receive a payment of up to $2,000 for reimbursement of out-of-pocket expenses that were directly caused by the Mailer, and up to $500 for non-economic harms constituting emotional distress, anxiety, or fear as a direct result of the Mailer. All Claim Forms must be submitted or postmarked by DATE.

Click here to file a Claim Form.

If I file a Claim Form, how will my payment amount be determined?

Settlement Class Members that include information on their Claim Form credibly alleging under oath that they incurred reasonable non-reimbursed out-of-pocket expenses that were directly caused by the Mailer may be reimbursed up to $2,000 upon a showing of reasonable proof. Settlement Class Members may also set forth information on their Claim Form credibly alleging under oath that they experienced non-economic harm constituting emotional distress, anxiety, or fear, as a direct result of the Mailer, for a payment of up to $500. The Settlement Administrator will consider the evidence submitted by each Claimant to determine if a Claimant is eligible for a Claimant Award.

What are my options?

By participating in the Settlement and receiving payment, you release all claims against Gilead relating to the Mailer. If you do nothing, you will receive the $100 Base Payment. You may also submit a Claim Form explaining the harm caused by the sending of the Mailer, for compensation in addition to the Base Payment.

If you wish to exclude yourself from the Settlement so that you do not receive any Settlement Award and are not bound by any release of claims, then you must submit a written request to opt out to the Settlement Administrator postmarked by DATE.

How Will My Information Be Kept Confidential?

The Parties and their counsel have agreed to implement several measures to protect the confidential information of the Settlement Class Members and shall cooperate in good faith to respect the privacy and confidentiality of all Settlement Class Members' confidential medical information. More details about how your information will be kept confidential may be found in the full settlement notice at the settlement website. INSERT URL.

Contact information:
If you need more information or have any questions, you may contact the AIDS Law Project of Pennsylvania at (215) 587-9377 or by email at Gileadclass@aidslawpa.org, or you may contact the Settlement Administrator below

Gilead Mailer Settlement
[ADDRESS]
[TELEPHONE NUMBER]
[TOLL FREE NUMBER]
[EMAIL]
INSERT SETTLEMENT WEBSITE

EXHIBIT E

SETTLEMENT ADMIN INFO

Mail Date

«ClaimantName»
«Addr1»«Addr2»
«City» «State» «Zip»

RE: ***Alabama Doe 1, et al. v. Gilead Sciences, Inc.*, No. 20-CIV-03699 (Cal. Sup. Ct., San Mateo Cty.)**
SETTLEMENT CHECK ENCLOSED

Dear INSERT NAME:

Thank you for participating in the class action settlement in the above-referenced matter. Your settlement payment, which is attached to this letter, was calculated in accordance with the terms of the Court-approved Settlement Agreement.

Please note that your attached check must be cashed on or before MAILDATE+180 days. If you fail to cash your check by MAILDATE+180, your check will be voided and the funds will be distributed to INSERT CY PRES APPROVED BY THE COURT, pursuant to the Court's Final Approval Order and Judgment.

Please also note that the Settlement Administrator and Class Counsel cannot provide tax advice. We suggest that you contact your tax advisor regarding your settlement payment and the tax consequences related to these proceeds.

If you have any questions about your settlement payment, please call us toll-free at xxx-xxx-xxxx or contact us using the Contact Us form located at WEBSITE. For additional information about the Settlement, please visit WEBSITE.

Sincerely,
Settlement Administrator

SAVE THIS INFORMATION

I. Settlement Payment	II. «Bene»
III. **Total Payment**	IV. **«CKAMT»**

DETACH CHECK BEFORE CASHING -- VOID AFTER MAILDATE+180 days

3

Exhibit 2

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

Andrew Beckett[1], Arizona Doe, California Doe, S.A., Colorado Doe, Connecticut Doe, DC Doe, Florida Doe, Georgia Doe, Illinois Doe, Indiana Doe, Kansas Doe, Maine Doe, Maryland Doe, Minnesota Doe, Mississippi Doe, Missouri Doe, Nevada Doe, NewHampshire Doe, NewJersey Doe, NewMexico Doe, NewYork Doe1, NewYork Doe2, NewYork Doe3, NewYork Doe4, NorthCarolina Doe, Ohio Doe, Oklahoma Doe, SouthCarolina Doe, Tennessee Doe, Texas Doe, Virginia Doe, Washington Doe, John Doe, Jane Doe2, John Doe1, and John Doe2, 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 **AMENDED CLASS ACTION COMPLAINT**

Plaintiffs (1) Andrew Beckett; (2) Arizona Doe; (3) California Doe; (4) S.A.; (5) Colorado Doe; (6) Connecticut Doe; (7) DC Doe; (8) Florida Doe; (9) Georgia Doe; (10) Illinois Doe; (11) Indiana Doe; (12) Kansas Doe; (13) Maine Doe; (14) Maryland Doe; (15) Minnesota Doe; (16)

[1] Pseudonyms have been used in place of Plaintiffs' real names due to privacy concerns. The Court has ordered that Plaintiffs may proceed using pseudonyms for all pretrial proceedings. *See* Dkt. No. 31 at ¶ 13; *see also Doe v. Megless*, 654 F.3d 404, 408-9 (3d Cir. 2011) (endorsing a non-comprehensive balancing test, which balances, "whether a litigant has a reasonable fear of severe harm that outweighs the public's interest in open litigation," and including AIDS as an example of an area where courts have permitted plaintiffs to proceed with pseudonyms); *see also Smith v. Milton Hershey Sch.*, No. CIV.A. 11-7391 (E.D. Pa. 2011) (allowing mother of HIV-positive minor child to proceed under pseudonym); *Doe v. Deer Mountain Day Camp, Inc.*, No. 07-cv-5495 (S.D.N.Y. Jun. 22, 2007) (permitting minor and his parent alleging HIV discrimination against camp to proceed under pseudonym); *EW v. New York Blood Center*, 213 F.R.D. 108, 110 (E.D.N.Y. 2003) (holding that the prejudice of embarrassment and fear of stigmatization because plaintiff had a "sexually and blood-transmitted disease" like AIDS "is real.").

Mississippi Doe; (17) Missouri Doe; (18) Nevada Doe; (19) NewHampshire Doe; (20) NewJersey Doe; (21) NewMexico Doe; (22) NewYork Doe1; (23) NewYork Doe2; (24) NewYork Doe3; (25) NewYork Doe4; (26) NorthCarolina Doe; (27) Ohio Doe; (28) Oklahoma Doe; (29) SouthCarolina Doe; (30) Tennessee Doe; (31) Texas Doe; (32) Virginia Doe; (33) Washington Doe; (34) John Doe; (35) Jane Doe2; (36) John Doe1; and (37) John Doe2, individually and on behalf of the classes set forth below, through their undersigned counsel, bring this Amended Class Action Complaint ("Amended Complaint") against Defendants Aetna, Inc., Aetna Life Insurance Company, and Aetna Specialty Pharmacy, LLC (collectively, "Aetna" or "Defendants"), pursuant to FED. R. CIV. P. 15(a)(1).

INTRODUCTION

1. This case is about Aetna's repeated failure to respect the privacy rights of people who are taking HIV-medications.

2. In 2014 and 2015, Aetna was sued in two separate class action lawsuits which alleged that Aetna jeopardized the privacy of people taking HIV medications by requiring its insureds to receive their HIV medications through mail and not allowing them to pick up their medications in person at the pharmacy.

3. Those lawsuits were never certified as class actions. Instead, Aetna entered into a settlement with the individual plaintiffs in those cases, paying the individuals $24,000 and paying their lawyers an undisclosed sum.

4. As a condition of the individual settlement, Aetna agreed to send its affected insureds a notice informing them that they may obtain their medications through a retail pharmacy.

5. Aetna also agreed to pay up to $295,000 in actual damage claims to individuals who incurred extra expenses due to Aetna's policies.

6. The settlement was not a class action settlement. The settlement did not release any

claims besides those of the individual plaintiffs. Thus, the settlement was neither presented to nor approved by any court.

7. Pursuant to the individual settlement, Aetna provided contact information for approximately 11,800 of its insured who were prescribed HIV medications to its attorneys at Gibson Dunn & Crutcher ("Gibson Dunn") without the proper and legally required protections in place for the transmission of this highly confidential information.

8. In turn, Gibson Dunn provided the information on Aetna's behalf to a third party mailing vendor, Kurtzman Carson Consulting, LLC ("KCC"), again without the proper and legally required protections in place for the transmission of this highly confidential information.

9. KCC then processed the mailing on Aetna's behalf and at Aetna's request.

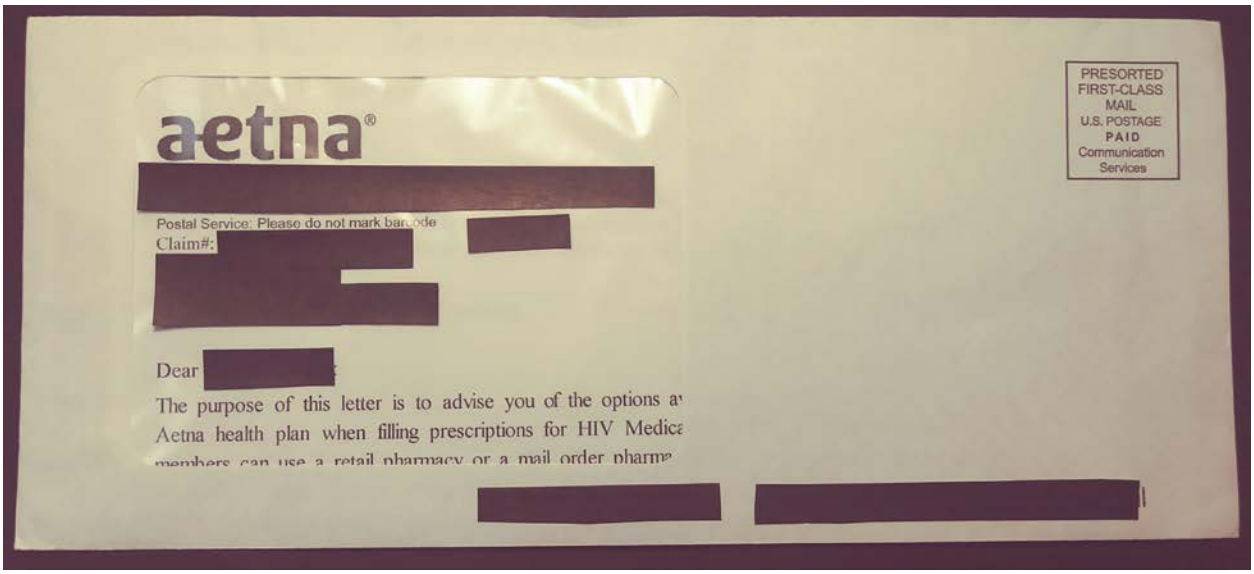
10. In the course of sending out the agreed notices, however, Aetna failed to recognize the dangers associated with sending information about HIV medications through the mail.

11. Specifically, rather than sending the notice about how people taking HIV medications could fill their prescriptions in an opaque envelope, and with other protections in place, Aetna, through its mail vendor, instead sent this highly sensitive information in an envelope with a large transparent glassine window.

12. The information about how individuals could obtain their HIV medications was visible through the transparent glassine window from the outside of the envelope and available to anyone who saw the envelope.

13. As shown in the photograph below, information about the new option provided to recipients to fill their HIV medication prescription was plainly visible through the large-window section of the envelope. Specifically, the visible portion of the letter clearly indicated that it was from Aetna, included a claims number and information for the addressee, and stated "[t]he purpose of this letter is to advise you of the options av… Aetna health plan when filling prescriptions for

HIV Medica… members can use a retail pharmacy or a mail order pharma…."



14. HIV is the virus that causes AIDS.

15. Despite the fact that the first AIDS case was identified more than 40 years ago, people living with HIV and AIDS still face extreme stigma. In fact, stigma is widely recognized as a driver of the AIDS epidemic. *See* The People Living With HIV Stigma Index, at http://www.stigmaindex.org/. To ensure that people feel safe to come forward to be tested and treated for HIV, many states have enacted laws that protect the confidentiality of a person's HIV-related information.

16. Aetna's actions carelessly, recklessly, negligently, and impermissibly revealed HIV-related information of their current and former insureds to their family, friends, roommates, landlords, neighbors, mail carriers, and complete strangers (including at Gibson Dunn and KCC). This action seeks redress against Defendants for their unlawful exposure of Plaintiffs' and Class members' confidential HIV-related information.

PARTIES

17. To protect their privacy, all Plaintiffs are proceeding under pseudonyms.

18. Plaintiff Andrew Beckett is a resident of Pennsylvania and lives in this judicial

district.

19. Plaintiff Arizona Doe is a resident of Arizona.

20. Plaintiff California Doe is a resident of California.

21. Plaintiff S.A. is a resident of California.

22. Plaintiff Colorado Doe is a resident of Colorado.

23. Plaintiff Connecticut Doe is a resident of Connecticut.

24. Plaintiff DC Doe is a resident of Washington D.C.

25. Plaintiff Florida Doe is a resident of Florida.

26. Plaintiff Georgia Doe is a resident of Georgia.

27. Plaintiff Illinois Doe is a resident of Illinois.

28. Plaintiff Indiana Doe is a resident of Indiana.

29. Plaintiff Kansas Doe is a resident of Kansas.

30. Plaintiff Maine Doe is a resident of Maine.

31. Plaintiff Maryland Doe is a resident of Maryland.

32. Plaintiff Minnesota Doe is a resident of Minnesota.

33. Plaintiff Mississippi Doe is a resident of Mississippi.

34. Plaintiff Missouri Doe is a resident of Missouri.

35. Plaintiff Nevada Doe is a resident of Nevada.

36. Plaintiff NewHampshire Doe is a resident of New Hampshire.

37. Plaintiff NewJersey Doe is a resident of New Jersey.

38. Plaintiff NewMexico Doe is a resident of New Mexico.

39. Plaintiffs NewYork Doe1, NewYork Doe2, NewYork Doe3, and NewYork Doe4 are residents of New York.

40. Plaintiff NorthCarolina Doe is a resident of North Carolina.

41. Plaintiff Ohio Doe is a resident of Ohio.

42. Plaintiff Oklahoma Doe is a resident of Oklahoma.

43. Plaintiff SouthCarolina Doe is a resident of South Carolina.

44. Plaintiff Tennessee Doe is a resident of Tennessee.

45. Plaintiff Texas Doe is a resident of Texas.

46. Plaintiff Virginia Doe is a resident of Virginia.

47. Plaintiff Washington Doe is a resident of Washington.

48. Plaintiff John Doe is a resident of California.

49. Plaintiff Jane Doe1 is a resident of Illinois.

50. Plaintiff John Doe1[2] is a resident of Florida.

51. Plaintiff John Doe2[3] is a resident of California.

52. Defendant Aetna, Inc. is a Pennsylvania corporation with its principal place of business in Pennsylvania.

53. Defendant Aetna Specialty Pharmacy LLC is a Delaware limited liability company registered to do business in Pennsylvania.

54. Defendant Aetna Life Insurance Company is a Connecticut company.

55. The Aetna Defendants have principal places of businesses in Pennsylvania and Connecticut.

JURISDICTION AND VENUE

56. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(d) of the Class Action Fairness Act because the amount in controversy exceeds the sum or value of

[2] Plaintiff John Doe1 was identified as "John Doe" in *Jane Doe 1, et al. v. Aetna, Inc.*, No. 3:17-CV-01751 (D. Conn. Oct. 18, 2017).

[3] Plaintiff John Doe2 was identified as "John Doe" in *Doe v. Aetna, Inc.*, No. 17-cv-1947 (S.D. Cal. Sept. 25, 2017).

$5,000,000.00, exclusive of interest and costs, there are at least 100 members of the proposed Class, and at least one member of the proposed Class is a citizen of a different state from one of the Defendants.

57. Venue is appropriate in the Eastern District of Pennsylvania under 28 U.S.C. § 1391 because Aetna, Inc. and Aetna Specialty Pharmacy LLC reside in this District and because a substantial part of the events giving rise to the claims occurred in this District.

AETNA'S UNAUTHORIZED DISCLOSURE OF HIV INFORMATION

58. Since HIV and AIDS first entered the public consciousness as an ongoing public health crisis in the early 1980s, people living with HIV and AIDS have been subjected to social stigma and discrimination.

59. HIV related stigma is still widely prevalent, and such stigma can have a debilitating effect on people living with HIV. The People Living with HIV Stigma Index is an international research project spearheaded by the Global Network of People Living with HIV launched in 2008 to measure and detect changing trends in relation to stigma and discrimination experienced by people living with HIV. *See* The People Living With HIV Stigma Index, at http://www.stigmaindex.org/. While the U.S. study is ongoing, the data from Michigan reveals sobering levels of HIV-related stigma in the daily lives of Americans with HIV. For example, nearly 73% of participants experienced at least 1 of 11 forms of exclusion, stigma or discrimination, including gossip, rejection by family or friends, exclusion from religious organizations, or verbal and/or physical harassment. *See* UNIFIED-HIV Health and Beyond, The U.S. People Living with HIV Stigma Index: Michigan, Wave I Findings, 2014-2016, at 30.

60. As recently as 2012, more than half of Americans still said they felt some discomfort with people with HIV/AIDS. *See* Henry J. Kaiser Family Foundation, The Washington

Post/Henry J. Kaiser Family Foundation 2012 Survey of Americans on HIV/AIDS (July 2012).[4] In a national survey, 52% of respondents indicated they would be less than "very comfortable" working with someone with HIV/AIDS. *Id.* The same survey found many Americans with misconceptions about how HIV is transmitted. *Id.*

61. A survey conducted in 2015 by Kaiser Family Foundation found that 75% of survey respondents from Georgia believed that people living with HIV suffer from a lot or some stigma and discrimination. *See* Henry J. Kaiser Family Foundation, The Public Attitudes and Knowledge about HIV/AIDS in Georgia (November 2015).[5] Only 20% of respondents said that they would be very comfortable personally with having their food prepared by someone who has HIV, and only 30% said they would be very comfortable having a roommate who has HIV. *Id.* Only 8% of individuals said that they would be very or somewhat comfortable being in a sexual relationship with someone who has HIV. *Id.*

62. In addition, people living with HIV often are not able to turn to their families for support due to the associated stigma. The same Georgia survey found that 91% of Georgians agree that having the support of family and loved ones is "very important" to the health and well-being of people with HIV. Yet, comparatively only 38% say most people with HIV in the state get that support (44% say most do not and 18% don't know). *Id.*

63. Some people who are not living with HIV take HIV medications as part of a regimen of pre-exposure prophylaxis ("PrEP"). According to the U.S. Centers for Disease Control and Prevention (the "CDC"), "PrEP is a powerful HIV prevention tool" and "[w]hen taken consistently, PrEP has been shown to reduce the risk of HIV infection in people who are at high

[4] Available at http://kff.org/hivaids/poll-finding/2012-survey-of-americans-on-hivaids.

[5] Available at http://www.kff.org/hivaids/poll-finding/public-attitudes-and-knowledge-about-hivaids-in-georgia/.

risk by up to 92%. PrEP has been associated with "sexual risk taking" and a "fear of stigmatization" has reduced motivation to "seek or sustain" PrEP use.[6]

64. To be prescribed PrEP, a person must undergo an HIV test.

65. To ensure that people feel safe to come forward to be tested and treated for HIV, many states have enacted laws that protect the confidentiality of a person's HIV-related information.

66. For example, in Pennsylvania, the state legislature passed the Confidentiality of HIV-Related Information Act (commonly known as "Act 148") to promote "testing and counseling" by "establishing confidentiality requirements which protect individuals from inappropriate disclosure and subsequent misuse of confidential HIV related information." 35 P.S. § 7602(a). The Act strictly limits health or social service providers from disclosing HIV-related information except in certain limited circumstances. 35 P.S. § 7607.

67. Thirty-nine states have either HIV-specific privacy statutes or general privacy provisions that expressly mention HIV. The remaining states may protect its confidentiality under other statutes or provisions. *See* Electronic Privacy Information Center, Lawrence O. Gostin, *Legislative Survey of State Confidentiality Laws, with Specific Emphasis on HIV and Immunization*, available at https://epic.org/privacy/medical/cdc_survey.html.

68. Federal laws, such as the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), were also enacted in recognition of the important privacy rights that individuals should expect to have over their sensitive medical information.

69. Aetna is a health care plan provider and provides coverage for HIV medications.

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[6] Sarah K. Calabrese and Kristen Underhill, *How Stigma Surrounding the Use of HIV Preexposure Prophylaxis Undermines Prevention and Pleasure: A Call to Destigmatize "Truvada Whores,"* Am. J. Publ. Health (Oct. 2015), available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4566537/.

70. In 2014 and 2015, Aetna was sued in two lawsuits alleging that it had illegally required its insureds to obtain HIV medication solely through the mail, instead of allowing insureds to also obtain their medications in person at a retail pharmacy. *See Doe v. Aetna, Inc.*, No. 14-cv-2986 (S.D. Cal.); *Doe v. Coventry Health Care, Inc.*, No. 15-cv-62685 (S.D. Fla.) (collectively, the "*Doe* lawsuits").

71. The *Doe* lawsuits explicitly noted the privacy concerns associated with receiving HIV related information in the mail. *See, e.g.*, *Doe v Coventry*, No. 15-cv-62685, Am. Compl. ¶¶ 1, 3-6, 8, 9, 11, 32, 65, 68, 71, 92 (S.D. Fla. May 27, 2015) (ECF No. 61) (noting privacy concerns associated with being required to receive HIV medications through the mail).

72. Aetna was represented in the *Doe* lawsuits by Gibson Dunn.

73. The *Doe* lawsuits were never certified as class actions.

74. Instead, the *Doe* lawsuits were resolved in a consolidated individual settlement. The settlement was neither presented to nor approved by any court, and therefore, no court was involved in overseeing the official appointment of a settlement administrator or the transmission of the confidential information of Aetna's insureds.

75. The Settlement Agreement pertaining to the *Doe* lawsuits is attached hereto as Exhibit 1 ("*Doe* Settlement Agreement"), and is incorporated here by reference.[7]

76. All of the Defendants sued here were parties to the *Doe* Settlement Agreement.

77. As part of the *Doe* Settlement Agreement, Aetna agreed to send out notices (the "*Doe* Settlement Notices" or the "*Doe* mailing" or the "*Doe* Notice") to former and current members of Aetna health plans who had submitted claims for coverage for HIV medication.

[7] The *Doe* Settlement Agreement only releases the claims of the named plaintiffs in the *Doe* lawsuits. It was not a class action settlement pursuant to Rule 23 of the Federal Rules of Civil Procedure. If it had been a Rule 23 class action settlement, it would have been overseen by the Court.

78. Aetna provided its insureds' protected health information ("PHI") to its attorneys at Gibson Dunn without the proper and legally required protections in place.

79. In turn, Gibson Dunn gave the information about Aetna's insureds to KCC, again without the proper and legally required protections in place, acting on Aetna's behalf and with Aetna's knowledge and consent. The list of Aetna's insureds identified Plaintiffs and Class members as people who had been prescribed HIV medications.

80. Aetna never sought or received a court order allowing it to disclose this information to Gibson Dunn or KCC. While the courts in the *Doe* litigation allowed disclosure to vendors through discovery, those court orders did not allow disclosure for settlement purposes, and moreover, these orders may have no longer even have been in effect. Neither did those courts' orders contain the findings required under Pennsylvania law, which are specific to HIV-related information, namely a finding that there is a "compelling need" for the disclosure and that the need could not be accommodated by other means. Other state laws require similar findings.

81. On or about July 28, 2017 or immediately thereafter, Aetna's notices substantially identical to the notice set forth in Exhibit A2 and B2 of the *Doe* Settlement Agreement were sent by Aetna, through its mail vendor, KCC, to approximately 11,800 people. *See* http://www.cnn.com/2017/08/24/health/aetna-hiv-status/index.html.

82. One set of notices was sent to current members of certain Aetna health plans to inform them of the options available to fill prescriptions for HIV medications. *Doe* Settlement Agreement Ex. A2. The first sentence of this notices states: "The purpose of this letter is to advise you of the options available to you as a member of your Aetna health plan when filling prescriptions for HIV Medications." *Id.*

83. Another set of notices informs current and former plan members how to submit claims for reimbursement of out-of-pocket costs to be paid under the *Doe* Settlement Agreement

by using a claim form. *Doe* Settlement Agreement Ex. B2, C2. The first sentence of this set of notices states: "Our records show that you sought coverage for HIV Medications under an Aetna health plan." *Id.*

84. The *Doe* notices were sent by KCC using an envelope with a large transparent glassine window.

85. As shown in paragraph 13 above, due to the large-window envelope, and the way in which the notices were formatted, folded and inserted in the envelope, the individual's name and address, as well as their claim number and instructions related to HIV medication were clearly visible from the face of the envelope to anyone who came into contact with the mail.

86. Aetna recklessly provided the information about its insureds to KCC in the first place, and then recklessly failed to properly supervise KCC to ensure that the highly sensitive information was not illegally disclosed to third parties.

87. Aetna easily could have avoided the disclosure of its members' private HIV-related information through the window on the envelopes. For example, Aetna could have instructed its vendor to use the industry-standard practice of protecting the contents of the envelope by using a blank cover page that contained only the recipient's name and address. Alternatively, Aetna could have used an envelope that did not have a glassine window. Aetna also could have simply ensured that the text of its letter was appropriately spaced so as not to reveal sensitive information on the transparent part of the envelope that anybody handling the mail could see without opening the envelope.

88. Envelope vendors acknowledge that envelopes with windows are less secure than conventional solid envelopes. *See* https://www.belightsoft.com/products/resources/envelope-styles-and-sizes ("Open window envelopes are growing in popularity as more environmentally friendly, however, they are less secure."); http://www.autumnpress.com/wp-

content/uploads/2014/02/autumn-press-envelopes-styles-and-sizes.pdf (same).

89. As described below, Plaintiffs and Class Members have been harmed by Defendants' reckless exposure of Plaintiffs' and Class Members' confidential HIV-related information.

PLAINTIFFS' EXPERIENCES[8]

90. All of the Plaintiffs received a *Doe* Settlement Notice, which was sent by and at the direction of Aetna, and under the supervision of Aetna.

PENNSYLVANIA (Plaintiff Andrew Beckett)

91. Plaintiff Andrew Beckett takes HIV medications as part of PrEP. On or about July 31, 2017, Plaintiff Beckett received a *Doe* Settlement Notice at his Pennsylvania address. Plaintiff Beckett lives with his sister and her fiancée. As Plaintiff Beckett's sister's fiancée was sorting the mail by household recipient, she saw that a letter addressed to Plaintiff Beckett from Aetna contained instructions, visible through a large-window envelope, on how to fill his prescription for HIV medication. Plaintiff Beckett's sister's fiancée immediately told Plaintiff Beckett's sister about the mail. Specifically, Plaintiff Beckett's sister's fiancée believed Plaintiff was living with HIV and did not confide in his family. Plaintiff Beckett's sister approached him to "address an issue in the mail." As he looked at his mail, he immediately understood what was happening. He felt he had no choice but to tell her why he was taking HIV medications. This conversation led to further embarrassing and invasive discussions on why he needed to protect himself, which activities put him at risk and other topics of an intimate nature. These conversations between Plaintiff Beckett, his sister and her fiancée have changed the nature of their relationships to one another and in their household. Defendants' mailing has caused him to feel embarrassed and

[8] Each of the Named Plaintiffs is a proposed Class Representative for the state law class(es) in which they reside.

exposed. Plaintiff Beckett has suffered from increased stress and anxiety as a result of Defendants' reckless conduct. The increased stress has exacerbated Plaintiff Beckett's pre-existing medical conditions and altered his relationships with his family.

ARIZONA (Arizona Doe)

92. Plaintiff Arizona Doe lives in a duplex where the mailboxes are not locked or closed. His neighbor brought his mail to him that contained the *Doe* Settlement Notice. Arizona Doe's neighbor expressed concern for his health. Plaintiff Arizona Doe was shocked at the disclosure, felt humiliated, embarrassed, and helpless. Plaintiff Arizona Doe describes it as "an outing" over which Plaintiff Arizona Doe had no control.

CALIFORNIA (California Doe, S.A., John Doe, and John Doe2)

93. Plaintiff California Doe was out of town when the *Doe* Settlement Notice arrived. The house sitter he hired on the recommendation of a work colleague took in the mail. When Plaintiff California Doe returned home, the mail was in his house with the *Doe* Settlement Notice on top. The house sitter did not know he was gay or took PrEP. Plaintiff California Doe is a senior vice president in a corporation and worries his private information will be shared in his workplace.

94. S.A. received the *Doe* Settlement Notice which, disclosed, without authorization, S.A.'s information relating to HIV and/or HIV mediations to numerous persons who were not authorized to view and/or receive such PHI, including S.A.'s roommates, and upon information and belief the mail carrier, all of whom had access to the mail that was delivered to S.A.'s home address. S.A.'s roommates, and upon information and belief, the mail carrier, had no knowledge of S.A.'s PHI related to HIV and/or HIV medications and S.A. had no desire or intention to disclose such information to those third parties. As a result, Defendants' actions directly and proximately caused substantial, ongoing, and irreparable damages and harm to S.A., including without limitation, economic damages and non-economic damages, including without limitation,

severe emotional distress, anxiety, embarrassment, and stress.

95. Plaintiff John Doe's family received the *Doe* Settlement Notice and quickly contacted Plaintiff John Doe about their concerns regarding the information that was clearly visible though the transparent envelope. Plaintiff John Doe, who is taking PrEP, had not disclosed this information to Plaintiff John Doe's family because the information was highly sensitive, personal, and private, particularly given that it revealed information about Plaintiff John Doe's sexuality. Immediately, Plaintiff John Doe was concerned the *Doe* Settlement Notice was intended to inform him that he was in fact HIV positive or that he had been exposed to HIV via a partner while taking preventative medication. Plaintiff John Doe's family was shocked and concerned for the health well-being of their child who they believed had contracted or was at high-risk of contracting a life threatening illness. By its disclosure, Defendants deprived Plaintiff John Doe the right to his medical privacy, and the ability to inform his parents of private information regarding his sexuality and health on his own terms in a manner that would not cause unnecessary stress or disruption. As a result of Defendants' disclosure, Plaintiff John Doe had to disclose this information to his family. Plaintiff John Doe's parents ultimately flew across the United States to ensure he was healthy and to assist him with dealing with the fall out of the notice, which has been highly disruptive to Plaintiff John Doe's life.

96. Plaintiff John Doe2 receives his mail in a common mailbox. He discovered the *Doe* Settlement Notice face up at the top of the mailbox, after others had sorted through the mail. The information relating to HIV was clearly displayed through the envelope. He was extremely distressed that the information would be revealed so publicly and that the other tenants who share the property would have a clear opportunity to see it. Plaintiff John Doe2 is a healthcare worker who knows that health information should be highly protected and is concerned that publicity about his HIV status could cause considerable harm to his employment. As a result of this

disclosure, Plaintiff John Doe2 feels constant anxiety and a distrust for his neighbors.

COLORADO (Colorado Doe)

97. Plaintiff Colorado Doe lived with his grandparents. He moved out before his *Doe* Settlement Notice arrived, and his grandparents received the Notice. Plaintiff Colorado Doe's grandparents had not known Plaintiff Colorado Doe's HIV status prior to receiving the *Doe* Settlement Notice. Plaintiff Colorado Doe's grandparents have become distant and expressed disappointment with him.

CONNECTICUT (Connecticut Doe)

98. Plaintiff Connecticut Doe was appalled when he received the *Doe* Settlement Notice as it revealed his personal medical information in plain view and he had not taken PrEP in over a year. Plaintiff Connecticut Doe feels vulnerable and is worried that his father may have found out that he had been taking PrEP, and may have questions about Plaintiff Connecticut Doe's sexual practices.

DISTRICT OF COLUMBIA (DC Doe)

99. Plaintiff DC Doe is living with HIV. Plaintiff DC Doe's daughter saw the *Doe* Settlement Notice and told Plaintiff DC Doe's mother and grandmother about what she saw in the envelope window. Plaintiff DC Doe's daughter, mother, and grandmother had previously been unaware of Plaintiff DC Doe's HIV status. Plaintiff DC Doe felt forced to acknowledge her HIV status to her mother and grandmother as a result of the *Doe* Settlement Notice, and in a manner and at a time when she had not been prepared to disclose this information. Plaintiff DC Doe's relationship with her grandmother has become tense and strained. Plaintiff DC Doe is also concerned about her daughter's ability to cope with this information.

FLORIDA (Florida Doe and John Doe1)

100. Plaintiff Florida Doe and his husband are living with HIV and had not disclosed

their HIV status to their families. Plaintiff Florida Doe found the *Doe* Settlement Notice on a table in the public lobby of his apartment building where mis-delivered mail is placed. Plaintiff Florida Doe fears that his neighbors saw the letter and as a result, he avoids using the front door of his apartment building. Plaintiff Florida Doe believes that the Building Manager, who had the opportunity to see the letter while it was in the lobby, has changed her demeanor towards him. She had previously been friendly and now seems to be avoiding him, ignoring his maintenance requests, and delaying arranging for needed repairs. At the time the letter arrived, Plaintiff Florida Doe and his husband were hosting a family reunion with people from around the country and abroad. Plaintiff Florida Doe's family members saw the *Doe* Settlement Notice and became very upset because a family member had died from AIDS-related complications and now feared for Florida Doe's health. Plaintiff Florida Doe's husband's relatives shared the information with other relatives abroad.

101. Plaintiff John Doe1 is a young man living with HIV who has chosen not to disclose his status to family and friends. Concerned about maintaining the privacy of his information, he takes certain precautions, such as promptly updating his mailing address with Aetna when he moved to a different state prior to July 2017. Despite his proactive steps, Aetna mailed the *Doe* Settlement Notice to his previous address where his brother, sister, and his sister's husband reside. Plaintiff John Doe1's sister saw the letter and was able to see his HIV status information through the envelope window. She shared the information regarding John Doe2's HIV status with the other family members living in the house. John Doe1 had not previously disclosed his HIV status to his family, and had no intention of doing so. As a result of his sister seeing the *Doe* Settlement Notice, John Doe1 felt forced to acknowledge his HIV status to his family, and in a manner and at a time when he had not been prepared or willing to disclose this information. After he contacted Aetna to complain about this disclosure of his private health information, Aetna resent

the *Doe* Settlement Notice to his current address-- again with his private health information showing through the envelope window.

GEORGIA (Georgia Doe)

102. Plaintiff Georgia Doe has kept his HIV status private since he was diagnosed in 2003. Plaintiff Georgia Doe lives in a small town and has a mailbox at the end of his long driveway. Plaintiff Georgia Doe's neighbor picked up the mail with the *Doe* Settlement Notice on his way to visit. He hand-delivered the mail to Plaintiff Georgia Doe and left. The neighbor has since not returned or responded to Plaintiff Georgia Doe's repeated phone calls. Plaintiff Georgia Doe is upset and concerned that his relationship with his neighbor has been forever damaged.

ILLINOIS (Illinois Doe and Jane Doe2)

103. Plaintiff Illinois Doe is a pastor at a small church. Plaintiff Illinois Doe's mail carrier handed Plaintiff Illinois Doe the *Doe* Settlement Notice in front of Plaintiff Illinois Doe's neighbor. Since then, routine attendance at Plaintiff Illinois Doe's church has dropped from approximately 50 people to approximately 8 people. Plaintiff Illinois Doe is concerned that the mail carrier and Plaintiff Illinois Doe's neighbor have spread gossip about him.

104. Plaintiff Jane Doe2 lives in an apartment building. Her mailbox is adjacent to six other apartment units. At the time the letter from Aetna was delivered, her mailbox was full and the mailman left this letter in the crease of the mailbox and attached a note to her mailbox letting her know that it was full. Because of the way that the letter was left on the crease of the mailbox, Jane Doe2 is concerned that anyone getting mail from any of the other six units sharing that mailbox area could have easily seen her information.

INDIANA (Indiana Doe)

105. Plaintiff Indiana Doe's relatives work at the post office. Plaintiff Indiana Doe is concerned that his mail carrier and relatives saw the *Doe* Settlement Notice, and have learned

about his private medical information. Plaintiff Indiana Doe cried when he received the *Doe* Settlement Notice and tore it to pieces. Plaintiff Indiana Doe is prone to anxiety attacks, and has had several panic attacks related to the letter since it arrived.

KANSAS (Kansas Doe)

106. Plaintiff Kansas Doe lives in the rural small town where he grew up. He has carefully kept his HIV status private. He is on a first name basis with the postal workers in the town who also know his family and friends. Plaintiff Kansas Doe believes that the *Doe* settlement notice was seen by several people, and he no longer knows who is aware of his HIV status. The disclosure of his HIV status has caused him severe anxiety, embarrassment and humiliation.

MAINE (Maine Doe)

107. Plaintiff Maine Doe had not told his siblings, several of whom are quite religious, that he is gay. Plaintiff Maine Doe was out of town when the *Doe* Settlement Notice arrived. His sister picked up the mail and saw that Plaintiff Maine Doe took HIV medications through the transparent window. Plaintiff Maine Doe's sister panicked because she thought Plaintiff Maine Doe was seriously ill. Plaintiff Maine Doe was forced to share the fact that he is gay and takes PrEP with his siblings. Since this time his relationship with his siblings has become strained. Plaintiff Maine Doe lives in a small city where his name is well-known. He believes that the envelope may have been seen by others, as he has begun to overhear derogatory comments at his workplace.

MARYLAND (Maryland Doe)

108. Plaintiff Maryland Doe has only told one person he is living with HIV since he was diagnosed in 2004. Plaintiff Maryland Doe is very close with his roommate, but she did not know his HIV status. She learned Plaintiff Maryland Doe's status when the mail carrier handed her the *Doe* Settlement Notice letter, saying: "You may want to see this." Plaintiff Maryland Doe and his

roommate are now distant and Plaintiff Maryland Doe is considering moving out.

MINNESOTA (Minnesota Doe)

109. Plaintiff Minnesota Doe lives with his partner, who knows his HIV status. Plaintiff Minnesota Doe's partner saw the *Doe* Settlement Notice while Plaintiff Minnesota Doe's partner was sorting the mail. Plaintiff Minnesota Doe and his partner felt alarmed and upset that others may have learned about Plaintiff Minnesota Doe's HIV status.

MISSISSIPPI (Mississippi Doe)

110. Plaintiff Mississippi Doe was living with her daughter and her daughter's baby at the time the *Doe* Settlement Notice arrived. Plaintiff Mississippi Doe's daughter saw the *Doe* Settlement Notice and panicked, fearing Plaintiff Mississippi Doe had endangered her baby by hugging and kissing her. Plaintiff Mississippi Doe's daughter moved out of their shared residence, leaving Plaintiff Mississippi Doe unable to pay the rent without her daughter's help. Plaintiff Mississippi Doe was evicted, lived in her car for a period of time and is staying with her sister, sleeping on her sofa.

MISSOURI (Missouri Doe)

111. Plaintiff Missouri Doe lives in a small town. He has carefully kept his HIV status private. Plaintiff Missouri Doe receives his mail from a mail carrier who is an old friend from church, who did not know Plaintiff Missouri Doe's HIV status. Plaintiff Missouri Doe no longer knows who is aware of his HIV status. Plaintiff Missouri Doe has overheard someone in his town refer to him as "the faggot with AIDS" since he received his *Doe* Settlement Notice in the mail, and has noticed that some people in his town now keep their distance from him. Plaintiff Missouri Doe has increased his anti-anxiety medication due to panic attacks, and he avoids leaving the house and interacting with others in his town because he has fear and angst about the disclosure of his HIV status. He feels his only recourse is to relocate.

NEVADA (Nevada Doe)

112. Plaintiff Nevada Doe is living with HIV. Plaintiff Nevada Doe lives with his partner, his partner's sister and her daughter. Plaintiff's partner's sister's daughter retrieved the *Doe* Settlement Notice from the mail and everyone in Plaintiff's household saw the letter. While the individuals in his household were aware of his HIV status, Plaintiff Nevada Doe is angry about Aetna's careless disregard for his privacy.

NEW HAMPSHIRE (NewHampshire Doe)

113. Plaintiff NewHampshire Doe has been living with HIV since 2009 and has only disclosed his HIV status to a limited number of people. Plaintiff NewHampshire Doe had not told his roommate. Plaintiff NewHampshire Doe's roommate brought in the mail with the *Doe* Settlement Notice and handed it directly to Plaintiff NewHampshire Doe. Plaintiff NewHampshire Doe is convinced that this roommate now knows his HIV status.

NEW JERSEY (NewJersey Doe)

114. Plaintiff NewJersey Doe was in the hospital when the *Doe* Settlement Notice arrived. His two housemates saw the letter. In addition, Plaintiff NewJersey Doe's mail carrier is also his neighbor, and the mail carrier and Plaintiff NewJersey Doe had been friendly. Since the letter was delivered, Plaintiff NewJersey Doe's mail carrier no longer speaks to him.

NEW MEXICO (NewMexico Doe)

115. Plaintiff NewMexico Doe is a former law enforcement officer. His mother-in-law lives in a small house behind the house he shares with his husband, and they share a mailbox. Plaintiff NewMexico Doe received the *Doe* Settlement Notice, and was worried that his mother-in-law could have seen the letter.

NEW YORK (NewYork Doe1, NewYork Doe2, NewYork Doe3, and NewYork Doe4)

116. Plaintiffs NewYork Doe1 and NewYork Doe2 are married and both received the

letters while they were out of town for a month. They live in an apartment building with 64 apartments. When they returned to their home, Plaintiffs NewYork Doe's and Plaintiff NewYork Doe2's mail, including the *Doe* Settlement Notices, had been placed on the floor in front of their apartment door. Plaintiffs NewYork Doe1's and Plaintiff NewYork Doe2 are worried that others in the building, including, vendors, service staff, and visitors, saw the letters. Plaintiff NewYork Doe2 is also on the board of a state wide civil rights organization and is an ardent advocate of medical, social and sexual privacy. By receiving the Aetna letter, Plaintiff NewYork Doe2 feels compromised in his efforts.

117. Plaintiff NewYork Doe3 is living with HIV and had always kept his HIV status private. His landlord from whom he rents a room controls his mailbox and delivered his mail. After his landlord gave him the *Doe* Settlement Notice, she asked him if he had HIV. He felt compelled to disclose his HIV status to her. The dynamic in the household has changed and Plaintiff NewYork Doe3 thinks his neighbors now know his status.

118. Plaintiff NewYork Doe 4 takes PrEP. Plaintiff NewYork Doe 4 and his husband live with Plaintiff NewYork Doe 4's father and step-mother. Plaintiff NewYork Doe 4 and his husband were on vacation when the *Doe* Settlement Notice arrived. Plaintiff NewYork Doe 4's stepmother saw the envelope and told his father. Plaintiff NewYork Doe 4 and his father have since had several awkward conversations about why Plaintiff NewYork Doe 4 takes HIV medication. The letter has created turmoil and strained their relationship.

NORTH CAROLINA (NorthCarolina Doe)

119. Plaintiff NorthCarolina Doe lives in a small town where his family name is well known – his father was a doctor in town, and Plaintiff NorthCarolina Doe has worked as an educator. Plaintiff NorthCarolina Doe gets his mail at a P.O. Box. The mail is routed through another post office in a nearby town. Plaintiff NorthCarolina Doe is on a first name basis with

people who work at both post offices. Plaintiff NorthCarolina Doe believes that the *Doe* Settlement Notice was seen by several people, and he no longer knows who is aware of his HIV status. Plaintiff NorthCarolina Doe believes that gossip in his community about his HIV status is affecting his employment; his teaching post was not renewed, and though he has applied for open positions in his field, he has not been hired despite over twenty years of experience. He is now seeking employment in other towns twenty to forty miles away. He is very worried and angry that his HIV status has been exposed.

OHIO (Ohio Doe)

120. Plaintiff Ohio Doe takes PrEP and lives with a roommate who did not know that he takes PrEP. Plaintiff Ohio Doe's roommate saw the *Doe* settlement notice. Plaintiff Ohio Doe was forced to have a conversation with his roommate about the fact that he takes PrEP, which was embarrassing, intrusive, and unwanted.

OKLAHOMA (Oklahoma Doe)

121. Plaintiff Oklahoma Doe is a well-known public servant living in a small town in Oklahoma. He guards his privacy and drives 45 minutes outside his town to pick up his HIV medication. His mail is delivered to a P.O. Box. Plaintiff Oklahoma Doe found the *Doe* Settlement Notice attached to the outside of his P.O. Box. Plaintiff Oklahoma Doe believes that his HIV status was seen by several people, and he no longer knows who is aware of information he had previously kept private. He has noticed that people in his community who had previously been friendly are now cool and reserved.

SOUTH CAROLINA (SouthCarolina Doe)

122. Plaintiff SouthCarolina Doe is a medical student and a former Marine. The *Doe* Settlement Notice was sent to his parents' house. Plaintiff SouthCarolina Doe's parents were aware of his HIV status, but were unhappy about the notice because of concern about the impact it could

have on Plaintiff SouthCarolina Doe's medical career.

TENNESSEE (Tennessee Doe)

123. Plaintiff Tennessee Doe is living with HIV. Plaintiff Tennessee Doe and her husband, who takes PrEP, both received *Doe* Settlement Notices. Plaintiff Tennessee Doe was angry and shocked upon receiving the letters. She is worried that her longtime mail carrier saw the information and shared the information with others.

TEXAS (Texas Doe)

124. Plaintiff Texas Doe was out of town when the *Doe* Settlement Notice arrived. Plaintiff Texas Doe's house sitter saw the letter and showed it to his housekeeper. His housekeeper has since refused to return to Plaintiff Texas Doe's house because of what she saw through the window of the envelope. Plaintiff Texas Doe fired the house sitter, and is aware that the house sitter has told other people that Plaintiff Texas Doe has HIV.

VIRGINIA (Virginia Doe)

125. Plaintiff Virginia Doe has carefully kept his HIV status private for over 30 years. He received the *Doe* Settlement Notice in a mailbox shared with this immediate neighbors. Plaintiff Virginia Doe found it so hard to believe Aetna would send such a letter that he initially thought it could be fake. Plaintiff Virginia Doe is anxious that his socially conservative neighbors may have seen the letter and that his reputation in the community could be damaged. Plaintiff Virginia Doe has lost trust in his insurance carrier as a result of the breach.

WASHINGTON (Washington Doe)

126. Plaintiff Washington Doe lives in an apartment complex and his partner, who knows his HIV status, brought in the *Doe* Settlement Notice. Plaintiff Washington Doe has worked in the healthcare industry and is an ardent believer in privacy. When he saw the letter, he was furious.

DAMAGES

127. Plaintiffs and all Class members have suffered and are entitled to damages for the lost benefit of their bargain with Aetna. Plaintiffs and Class members paid Aetna for health insurance. Part of the price for insurance was intended to fund adequate privacy practices. The lost benefit of the bargain is measured by the difference between the value of what Plaintiff and Class members should have received when they paid for their insurance, and the value of what they actually did receive: insurance without adequate privacy safeguards.

128. Plaintiffs and Class members suffered a loss of value of their confidential medical information each time it was disclosed to another third party without their permission.

129. Plaintiffs and Class members suffered a loss of value of their confidential medical information when it was disclosed through the envelope window.

130. Plaintiffs and Class members have suffered and will continue to suffer embarrassment, humiliation, frustration, anxiety, emotional distress, and fear, and are at increased risk for losing employment, housing, access to health care, and even violence or other trauma as a result of the disclosure of their use of HIV medications.

CLASS ACTION ALLEGATIONS

131. Plaintiff brings this action individually and on behalf of the following Nationwide Class and the Statewide Classes defined below (together, the "Classes"):

> ***Nationwide Class***. All persons whose Aetna *Doe* Settlement Notice was mailed to a United States address.
>
> ***Statewide Classes.*** All persons whose Aetna *Doe* Settlement Notice was mailed to a [name of State] address.

132. Statewide Classes are brought on behalf of Class Members in the following states: (1) Arizona; (2) California; (3) Colorado; (4) Connecticut; (5) Florida; (6) Georgia; (7) Illinois; (8) Indiana; (9) Kansas; (10) Maine; (11) Maryland; (12) Minnesota; (13) Mississippi; (14)

Missouri; (15) Nevada; (16) New Hampshire; (17) New Jersey; (18) New Mexico; (19) New York; (20) North Carolina; (21) Ohio; (22) Oklahoma; (23) Pennsylvania; (24) South Carolina; (25) Tennessee; (26) Texas; (27) Virginia; (28) Washington; and (29) Washington, D.C.

133. The members of the Classes are so numerous that the joinder of all members is impractical. While the exact number of Class members is unknown at this time, the Nationwide Class is estimated by Aetna to be approximately 11,800.

134. The Statewide Classes are sufficiently numerous.

135. The recipients of the *Doe* Settlement Notices are easily and quickly ascertained from Aetna's records. Aetna knew exactly what was sent and to whom it was sent. Thus, the proposed Classes are ascertainable.

136. There are questions of fact and law common to the Class as all members of the Classes were subject to the same conduct under the same factual circumstances. Common questions of law and fact include:

a. whether Aetna disclosed Plaintiffs' and Class members confidential PHI as alleged herein;

b. whether Aetna violated the HIV/AIDS confidentiality statutes set forth below;

c. whether Aetna had a duty to use reasonable care to safeguard Plaintiffs' and Class members' PHI;

d. whether Aetna breached their duty to use reasonable care to safeguard Plaintiffs' and Class members' PHI;

e. whether Aetna breached their contractual promises to safeguard Plaintiffs' and Class members' PHI;

f. whether Defendants were negligent *per se* in not complying with federal and state privacy laws;

g. whether Defendants violated state unfair and deceptive practices acts; and

h. The proper measure of damages.

137. Plaintiffs' claims are typical of those of the members of the Classes because Plaintiffs suffered the same breach of privacy as that of Class members.

138. Plaintiffs will fairly and adequately protect the interests of the Classes because Plaintiffs and their experienced counsel are free of any conflicts of interest and are prepared to vigorously litigate this action on behalf of the Classes. Plaintiffs' lead counsel includes Berger & Montague, P.C., the AIDS Law Project of Pennsylvania, and the Legal Action Center. Berger & Montague, P.C. is a national plaintiffs' law firm headquartered in Philadelphia with additional offices in Minneapolis and Washington D.C. The Firm has played lead roles in major cases for over 47 years, resulting in recoveries of over $30 billion for its clients. Both of the undersigned non-profit organizations have represented people living with HIV since the earliest days of the epidemic and are uniquely positioned to advocate on behalf of Plaintiffs and Class members.

139. Class certification is appropriate under Fed. R. Civ. P. 23(b)(2) because Aetna acted or refused to act on grounds that apply generally to the Classes, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Classes as a whole.

140. Class certification is appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the Classes predominate over any questions affecting only individual members of the Classes, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Aetna's conduct described in this Amended Complaint stems from a common course of conduct. Members of the Classes do not have an interest in pursuing separate actions against Aetna, as the amount of each Class member's

individual claim is small compared to the expense and burden of individual prosecution. Class certification also will obviate the need for unduly duplicative litigation that might result in inconsistent judgments concerning Aetna's practices. Moreover, management of this action as a class action will not present any likely difficulties. In the interests of justice and judicial efficiency, it would be desirable to concentrate the litigation of all Class members' claims in a single forum.

CLAIMS FOR RELIEF[9]

HIV/AIDS CONFIDENTIALITY STATUTES

COUNT ONE
PENNSYLVANIA AND NATIONWIDE CLASS
Pennsylvania Confidentiality of HIV-Related Information Act (Act 148)
35 P.S. § 7601, *et seq.*

141. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

142. The information contained in the *Doe* Settlement Notices was Confidential HIV-Related Information as defined in 35 Pa. Stat. § 7603 because it concerned whether "an individual has been the subject of an HIV-related test, or has HIV, HIV-related illness or AIDS; or any information which identifies or reasonably could identify an individual as having one or more of these conditions."

143. The HIV-related health information was obtained by Aetna from a person who provides one or more health or social services or pursuant to a release of confidential HIV-related information.

144. Act 148 prohibits any individual, including an insurer, to whom confidential HIV-related information has been disclosed, to disclose that information to another person without written consent or other statutorily enumerated authorization. 35 Pa. Stat. § 7607(b).

[9] Unless otherwise noted, the state law statutory and common law causes of action are brought on behalf of the Named Plaintiff(s) that reside in those states and the statewide subclass.

145. Aetna violated Act 148 by disclosing Plaintiff's and Class Members' HIV-related information to the mailing vendor and its lawyers without authorization to do so.

146. Defendants also violated Act 148 by the subsequent unlawful disclosure of Plaintiff's and Class Members' HIV-Related Information and third parties by sending such information in large-window envelopes where the information was exposed and readily viewable by others.

147. Act 148 provides that, "any person aggrieved by a violation of this act shall have a cause of action against the person who committed such violation and may recover compensatory damages." 35 Pa. Stat. § 7610.

148. As a direct and proximate result of Defendants' unlawful acts, Plaintiff and Class Members suffered harm.

149. Plaintiff and Class Members seek relief, including, but not limited to, injunctive relief and compensatory damages.

COUNT TWO
ARIZONA
Ariz. Rev. Stat. § 20-448.01, *et seq*.

150. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

151. The information contained in the *Doe* Settlement Notices was Confidential HIV-Related Information as defined in Ariz. Rev. Stat. § 20-448.01(A) because it concerned whether "a person has had an HIV-related test or has HIV infection, HIV-related illness or acquired immune deficiency syndrome and includes information which identifies or reasonably permits identification of that person or the person's contacts."

152. The HIV-related health information was obtained by Aetna from a person pursuant to a release of confidential HIV-related information.

153. Ariz. Rev. Stat. § 20-448.01(C) law prohibits any individual, including an insurer, to whom confidential HIV-related information has been disclosed, to disclose that information to another person without written consent or other statutorily enumerated authorization.

154. Aetna violated Ariz. Rev. Stat. § 20-448.01(C) by disclosing Plaintiff's and Arizona's Class Members' HIV-Related Information to its lawyers and mail vendor without authorization to do so.

155. Defendants also violated the act by the subsequent unlawful disclosure of Plaintiff's and Arizona Class Members' HIV-Related Information to third parties by sending such information in large-window envelopes where the information was exposed and readily viewable by others.

156. As a direct and proximate result of Defendants' unlawful acts, Plaintiff and Arizona Class Members suffered harm.

157. Plaintiff and Arizona Class Members seek relief, including, but not limited to, actual damages, injunctive relief, attorneys' fees, and costs.

COUNT THREE
CALIFORNIA
Cal. Health & Safety Code § 120980

158. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

159. The information contained in the *Doe* Settlement Notices revealed the results of HIV tests as meant by Cal. Health and Safety Code § 120775.

160. Cal. Health and Safety Code § 120980 prohibits any individual from disclosing the results of an HIV test to any third party without written or statutory authorization.

161. Aetna violated Cal. Health and Safety Code § 120980 by disclosing the California Plaintiffs and California Class members to its lawyers and mail vendor without authorization to do

so.

162. Defendants unlawful disclosure was negligent and/or willful.

163. As a direct and proximate result of Defendants' unlawful acts, the California Plaintiffs and California Class Members suffered harm.

164. The California Plaintiffs and California Class Members seek relief pursuant to Cal. Health & Safety Code § 120980, including, but not limited to, civil penalties, actual damages, attorneys' fees, and costs.

COUNT FOUR
CONNECTICUT
Conn. Gen. Stat. Ann. § 19a-581, *et seq*.

165. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

166. The information contained in the *Doe* Settlement Notices was Confidential HIV-Related Information as defined in Conn. Gen. Stat. Ann. § 19a-581(8) because it concerned whether "whether a person has been counseled regarding HIV infection, has been the subject of an HIV-related test, or has HIV infection, HIV-related illness or AIDS, or information which identifies or reasonably could identify a person as having one or more of such conditions, including information pertaining to such individual's partners."

167. The HIV-related health information was obtained by Aetna from a person pursuant to a release of confidential HIV-related information.

168. Conn. Gen. Stat. Ann. §§ 19a-583, 19a-587 prohibits any individual, including an insurer, to whom confidential HIV-related information has been disclosed, to disclose that information to another person without written consent or other statutorily enumerated authorization.

169. Aetna violated Conn. Gen. Stat. Ann. § 19a-583 by disclosing Plaintiff's and

Connecticut Class Members' HIV-Related Information to its lawyers and mail vendor without authorization to do so.

170. Defendants also violated the act by the subsequent unlawful disclosure of Plaintiff's and Connecticut Class Members' HIV-Related Information to third parties by sending such information in large-window envelopes where the information was exposed and readily viewable by others.

171. Connecticut's statute provides that any person "who willfully violates any provision of this chapter shall be liable in a private cause of action for injuries suffered as a result of such violation." Conn. Gen. Stat. Ann. § 19a-590 (West)

172. As a direct and proximate result of Defendants' unlawful acts, Plaintiff and Connecticut Class Members suffered harm.

173. Plaintiff and Connecticut Class Members seek relief, including, but not limited to, compensatory damages and injunctive relief.

COUNT FIVE
ILLINOIS
410 ILCS 305/1, *et seq.*

174. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

175. The information contained in the *Doe* Settlement Notices was "HIV-related Information" as defined in 410 ILCS 305/3 because it concerned whether "the identity of a person upon whom an HIV test is performed, the results of an HIV test, as well as diagnosis, treatment, and prescription information that reveals a patient is HIV-positive."

176. 410 ILCS 305/9 prohibits any individual, to whom confidential HIV-related information has been disclosed, to disclose that information to another person without written consent or other statutorily enumerated authorization.

177. Defendants negligently and/or recklessly disclosed Plaintiff's and Illinois Class Members HIV-related Information by sending such information in large-window envelopes where the information was exposed and readily viewable by others in violation of ILCS 305/9

178. As a direct and proximate result of Defendants' unlawful acts, Plaintiff and Illinois Class Members suffered harm and were aggrieved.

179. Plaintiff and Illinois Class Members seek relief, including, but not limited to, actual and/or liquidated damages and injunctive relief. 410 ILCS 305/13.

COUNT SIX
MAINE
5 Me. Rev. Stat. Ann. § 19201 *et seq*.

180. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

181. The information contained in the *Doe* Settlement Notices was protected information because it concerned the results of an HIV test as defined in 5 Me. Rev. Stat. Ann. § 19201(4-A).

182. Maine law prohibits any individual from disclosing HIV testing information to another person without written consent or other statutorily enumerated authorization. 5 Me. Rev. Stat. Ann. § 19203.

183. Aetna violated 5 Me. Rev. Stat. Ann. § 19203 by disclosing Plaintiff's and Maine Class Members' HIV test to its lawyers and mail vendor without authorization to do so.

184. Defendants also violated the act by the subsequent unlawful disclosure of Plaintiff's and Maine Class Members' HIV test information to third parties by sending such information in large-window envelopes where the information was exposed and readily viewable by others.

185. Maine law provides that any person "any person violating this chapter is liable to the subject of the test for actual damages and costs plus a civil penalty of up to $1,000 for a

negligent violation and up to $5,000 for an intentional violation." 5 Me. Rev. Stat. Ann. § 19206

186. As a direct and proximate result of Defendants' unlawful acts, Plaintiff and Maine Class Members suffered harm.

187. Plaintiff and Maine Class Members seek relief, including, but not limited to, actual damages, civil penalties and injunctive relief.

COUNT SEVEN
MISSOURI
Mo. Rev. Stat. § 191.650, *et seq.*

188. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

189. The information contained in the *Doe* Settlement Notices was protected information because it concerned an "individual's HIV infection status or the results of any individual's HIV testing." Mo. Stat. Ann. § 191.656(1)(1).

190. Missouri law prohibits anyone from disclosing HIV testing information to another person without statutorily enumerated authorization. Mo. Stat. Ann. § 191.656.

191. Aetna violated Mo. Stat. Ann. § 191.656 by disclosing Plaintiff's and Missouri Class Members' HIV information to its lawyers and mail vendor without authorization to do so.

192. Defendants also violated the act by the subsequent unlawful disclosure of Plaintiff's and Missouri Class Members' HIV information to third parties by sending such information in large-window envelopes where the information was exposed and readily viewable by others.

193. Missouri law provides that any person "aggrieved by a violation of this section or regulations promulgated by the department of health and senior services may bring a civil action for damages." Mo. Ann. Stat. § 191.656(6).

194. As a direct and proximate result of Defendants' negligent, willful, reckless, and/or unlawful acts, Plaintiff and Missouri Class Members suffered harm.

195. Plaintiff and Missouri Class Members seek relief, including, but not limited to, actual damages, liquidated damages of $1,000 or $5,000, exemplary damages, injunctive relief, and attorneys' fees and costs.

COUNT EIGHT
NEW HAMPSHIRE
NH Rev. Stat. Ann. §§ 141-F:1, *et seq.*

196. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

197. The information contained in the *Doe* Settlement Notices was protected information because it revealed "the identity of a person tested for the human immunodeficiency virus." NH Rev. Stat. Ann. §§ 141-F:8(I).

198. New Hampshire law prohibits disclosing any record mentioned above to another person without written consent or without statutorily enumerated authorization. NH Rev. Stat. Ann. §§ 141-F:8.

199. Aetna violated NH Rev. Stat. Ann. §§ 141-F:8(II) by disclosing Plaintiff's HIV information to its lawyers and mail vendor without authorization to do so.

200. Defendants also violated New Hampshire law by the subsequent unlawful disclosure of Plaintiff's and New Hampshire Class Members' HIV test information to third parties by sending such information in large-window envelopes where the information was exposed and readily viewable by others.

201. New Hampshire provides for a civil remedy for unlawful disclosure of the identity of a person infected by the human immunodeficiency virus. NH Rev. Stat. Ann. § 141-F:10.

202. As a direct and proximate result of Defendants' purposeful of the law, Plaintiff and New Hampshire Class Members suffered harm.

203. Plaintiff and New Hampshire Class Members seek relief, including, but not limited to, actual damages, civil penalties up to $5,000, injunctive relief, and attorneys' fees and costs.

COUNT NINE
NEW JERSEY
AIDS Assistance Act
N.J.S.A. § 26:5C-1, *et seq.*

204. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

205. The information contained in the *Doe* Settlement Notices was protected information because it contained "identifying information about a person who has or is suspected of having AIDS or HIV infection." N.J.S.A. § 26:5C-7.

206. New Jersey law prohibits disclosing any record mentioned above to another person without written consent or without statutorily enumerated authorization. N.J.S.A. § 26:5C-8.

207. Aetna violated New Jersey law by disclosing Plaintiff's and New Jersey Class Members' HIV information to its lawyers and mail vendor without authorization to do so.

208. Defendants also violated the act by the subsequent unlawful disclosure of Plaintiff's and New Jersey Class Members' HIV information to third parties by sending such information in large-window envelopes where the information was exposed and readily viewable by others.

209. New Jersey law provides that [a] person who has or is suspected of having AIDS or HIV infection who is aggrieved as a result of a violation of this act may commence a civil action against the individual or institution who committed the violation to obtain appropriate relief, including actual damages, equitable relief and reasonable attorneys' fees and court costs." N.J.S.A. § 26:5C-14. The statute also provides for punitive damages for wantonly reckless conduct.

210. As a direct and proximate result of Defendants' negligence and/or wanton recklessness Plaintiff and New Jersey Class Members suffered harm.

211. Plaintiff and New Jersey Class Members seek relief, including, but not limited to, actual damages, punitive damages, injunctive relief, and attorneys' fees and costs.

COUNT TEN
NEW YORK
N.Y. Public Health Law § 2780, *et seq.*

212. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

213. The information contained in the *Doe* Settlement Notices was protected information because it contained "whether an individual has been the subject of an HIV related test, or has HIV infection, HIV related illness or AIDS, or information which identifies or reasonably could identify an individual as having one or more of such conditions." N.Y. Pub. Health Law § 2780.

214. New York law prohibits covered persons from disclosing any record mentioned above to another person without written consent or without statutorily enumerated authorization. N.Y. Pub. Health Law § 2782.

215. Aetna violated N.Y. Pub. Health Law § 2782 by disclosing Plaintiffs' and New York Class Members' confidential HIV information to its lawyers and mail vendor without authorization to do so and/or without ensuring that its lawyers and mail vendors had received education on HIV confidentiality.

216. Defendants also violated New York law by the subsequent unlawful disclosure of Plaintiffs' and New York Class Members' HIV test information to third parties by sending such information in large-window envelopes where the information was exposed and readily viewable by others.

217. As a direct and proximate result of Defendants' violation of the law, Plaintiffs and New York Class Members suffered harm.

218. Plaintiffs and New York Class Members seek relief, including, but not limited to, compensatory damages, punitive damages, and injunctive relief.

COUNT ELEVEN
OHIO
Ohio Rev. Code Ann. § 3701.243, *et seq.*

219. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

220. The information contained in the *Doe* Settlement Notices was protected information because it contained "the identity on any individual on whom an HIV test is performed," "the results of an HIV test in a form that identifies the individual tested," and/or "the identity of any individual diagnosed as having AIDS or an AIDS-related condition." Ohio Rev. Code Ann. § 3701.243(A)(1)-(3).

221. Ohio law prohibits disclosing any record mentioned above to another person without written consent or without statutorily enumerated authorization. Ohio Rev. Code Ann. § 3701.243.

222. Aetna violated Ohio Rev. Code Ann. § 3701.243 by disclosing Plaintiff's and Ohio Class Members' HIV information to its lawyers and mail vendor without authorization to do so.

223. Defendants also violated Ohio law by the subsequent unlawful disclosure of Plaintiff's and Ohio Class Members' HIV test information to third parties by sending such information in large-window envelopes where the information was exposed and readily viewable by others.

224. Ohio law provides a private right of action of violation of Ohio's law regarding HIV confidentiality. Ohio Rev. Code Ann. § 3701.244.

225. As a direct and proximate result of Defendants' violation of the law, Plaintiff and Ohio Class Members suffered harm.

226. Plaintiff and Ohio Class Members seek relief, including, but not limited to, compensatory damages, injunctive relief, and attorneys' fees and costs.

COUNT TWELVE
OKLAHOMA
Okla. Stat. Ann. tit. 63, § 1-502.2, *et seq.*

227. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

228. The information contained in the *Doe* Settlement Notices was protected information because it contained "information regarding any communicable or noncommunicable disease which is required to be reported" under Oklahoma law. Okla. Stat. Ann. tit. 63, § 1-502.2(A).

229. Oklahoma law prohibits disclosing any record mentioned above to another person without written consent or without statutorily enumerated authorization. Okla. Stat. Ann. tit. 63, § 1-502.2(A).

230. Aetna violated Okla. Stat. Ann. tit. 63, § 1-502.2(A) by disclosing Plaintiff's and Oklahoma Subclass Members' HIV information to its lawyers and mail vendor without authorization to do so.

231. Defendants also violated Oklahoma law by the subsequent unlawful disclosure of Plaintiff's and Oklahoma Class Members' HIV test information to third parties by sending such information in large-window envelopes where the information was exposed and readily viewable by others.

232. Oklahoma law provides that "[a]ny person who negligently, knowingly or intentionally discloses or fails to protect medical or epidemiological information classified as confidential pursuant to this section shall be civilly liable to the person who is the subject of the disclosure for court costs, attorneys' fees, exemplary damages and all actual damages, including

damages for economic, bodily or psychological harm which is proximately caused by the disclosure. Okla. Stat. Ann. tit. 63, § 1-502.2(H).

233. As a direct and proximate result of Defendants' violation of the law, Plaintiff and Oklahoma Class Members suffered harm.

234. Plaintiff and Oklahoma Class Members seek relief, including, but not limited to, actual damages, exemplary damages injunctive relief, and attorneys' fees and costs.

COUNT THIRTEEN
TEXAS
Tex. Health & Safety Code Ann. §§ 81.101, *et seq.*

235. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

236. The information contained in the *Doe* Settlement Notices was protected information because it contained "any statement that indicates that an identifiable individual has or has not been tested for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS, including a statement or assertion that the individual is positive, negative, at risk, or has or does not have a certain level of antigen or antibody." Tex. Health & Safety Code Ann. § 81.101 (West).

237. Texas law prohibits disclosing any record mentioned above to another person without written consent or without statutorily enumerated authorization. Tex. Health & Safety Code Ann. § 81.103.

238. Aetna violated Tex. Health & Safety Code Ann. § 81.103 by disclosing Plaintiff's and Texas Class Members' HIV information to its lawyers and mail vendor without authorization to do so.

239. Defendants also violated Texas law by the subsequent unlawful disclosure of Plaintiff's and Texas Class Members' HIV test information to third parties by sending such

information in large-window envelopes where the information was exposed and readily viewable by others.

240. Texas law provides for a civil remedy for unlawful disclosure of a "Test Result" as defined by Texas law. Tex. Health & Safety Code Ann. § 81.104.

241. As a direct and proximate result of Defendants' negligent and/or willful violation of the law, Plaintiff and Texas Class Members suffered harm.

242. Plaintiff and Texas Class Members seek relief, including, but not limited to, actual damages, civil penalties up to $10,000, injunctive relief, and attorneys' fees and costs.

COUNT FOURTEEN
Negligence
On Behalf of Plaintiffs and the Nationwide Class and the Statewide Classes

243. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

244. Defendants owed duties of care to protect the disclosure of Plaintiffs' and Class Members' private medical information. Plaintiffs and Class Members entrusted their private medical information to Defendants.

245. Defendants knew or should have known of the risks inherent in disseminating highly personal and confidential, HIV-related medical information of Plaintiffs and Class Members in a large-window envelope.

246. Defendants owed duties of care to Plaintiffs and Class Members because Plaintiffs and Class Members were foreseeable and probable victims of using a large-window envelope and negligent mailing practices to send confidential medical information.

247. Defendants acted with wanton and reckless disregard for the security and confidentiality of Plaintiff's and Class Members' private medical information by providing this information to their mail vendor and their lawyers, and by failing to properly supervise the manner

in which the vendor and lawyers disseminated the information.

248. By allowing the *Doe* Settlement Notices to be sent in a large-window envelope in the fashion that they did, Defendants breached their duties to Plaintiffs and Class Members by failing to exercise reasonable care in protecting Plaintiffs' and the Class Members' medical information.

249. As a direct result of Defendants' negligence and/or negligent supervision, Plaintiffs and Class Members have suffered or will suffer damages, including embarrassment, humiliation, frustration, anxiety, emotional distress, and fear, and are at increased risk for losing employment, housing, access to health care, and even violence or other trauma.

COUNT FIFTEEN
Negligence *Per Se*
On Behalf of Plaintiffs and the Nationwide Class and the Statewide Classes

250. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

251. Pursuant to HIPAA (42 U.S.C. § 1320d, *et seq.*) and the laws of various states, Defendants had a duty to implement reasonable safeguards to protect Plaintiff's and Class Members' medical information.

252. Pursuant to state laws listed below, Defendants had a duty to Plaintiffs and Class Members' residing in those states to not disclose and to safeguard Plaintiffs' and Class Members' confidential HIV-related medical information:

Arizona	Ariz. Rev Stat. § 20-448.01, *et seq.*
California	Cal. Health & Safety Code § 120980, *et seq.*
Colorado	Colo. Rev. Stat. Ann. § 25-4-1404, *et seq.*
Connecticut	Conn. Gen Stat. § 19a-583, *et seq.*
Florida	Fla. Stat. Ann. § 381.004, *et seq.*
Georgia	Ga. Code Ann. § 24-12-21, *et seq.*
Maine	Me. Rev. Stat. tit. 5 § 19201, *et seq.*
Mississippi	Miss. Code Ann. § 41-34-7
Missouri	Mo. Rev. Stat. § 191.650

Nevada	Nev. Rev. Stat. § 441 A.335
New Jersey	N.J. Stat. Ann. § 26:5C-7
New Mexico	N.M. Stat. Ann § 24-2B-6
North Carolina	N.C. Gen. Stat. § 130A-143
New York	N.Y. Pub. Health Law § 2782
Ohio	Ohio Rev. Code § 3701.243
Oklahoma	Okla. Stat. 63, §1-502.2
Pennsylvania	35 P.S. § 7601
South Carolina	S.C. Code § 44-29-135
Tennessee	Tenn. Code Ann. § 68-10-113
Texas	Tex. Health and Safety Code Ann. § 81.103

253. Defendants breached their duties to Plaintiffs and Class Members under the aforementioned statutes by disclosing their information to a third party vendor and by allowing the *Doe* Settlement Notices to be sent in an unreasonable manner.

254. Defendants' failure to comply with applicable laws and regulations constitutes negligence *per se*.

255. But for Defendants' negligent breach of their duties and/or negligent supervision, Plaintiffs and the Class Members would not have been injured.

256. The injury and harm suffered by Plaintiffs and the Class Members was the reasonably foreseeable result of Defendants' breach of their duties. Defendants knew or should have known that they were failing to meet their duties, and that Defendants' breach would cause Plaintiffs and Class Members to experience the foreseeable harms associated with the exposure of their confidential medical information.

257. As a direct and proximate result of Defendants' negligent conduct and/or negligent supervision, Plaintiffs and Class Members have been injured and are entitled to damages.

COUNT SIXTEEN
Breach of Contract
On Behalf of Plaintiffs and the Nationwide Class and the Statewide Classes

258. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

259. Plaintiffs and Class Members who purchased individual insurance policies or who enrolled pursuant to the terms of a group contract with Aetna entered into binding and enforceable contracts with Aetna, supported by consideration including the payment of premiums, contributions and/or fees by Plaintiffs and the Class Members.

260. These contracts incorporated Aetna's privacy polices wherein Aetna promised to protect the privacy of Plaintiffs' and Class Members' personal information in accordance with federal and state privacy laws, as well as their own privacy policies.

261. Specifically, in a document provided to Plaintiff Beckett, and on information and belief, other Plaintiffs and Class Members, in connection with their Aetna health insurance coverage, Aetna stated:

> Aetna considers non public personal member information confidential and has policies and procedures in place to protect the information against unlawful use and disclosure. When necessary for your care or treatment, the operation of your health Plan, or other related activities, Aetna uses personal information internally, shares it with our affiliates, and discloses it to health care providers (doctors, dentists, pharmacies, hospitals, and other caregivers), vendors, consultants, government authorities, and their respective agents. These parties are required to keep personal information confidential as provided by applicable law.
>
> Participating Network/Preferred Care Providers are also required to give you access to your medical records within a reasonable amount of time after you make a request.
>
> ***By enrolling in the Plan, you permit Aetna to use and disclose this information as described above on behalf of yourself and your Covered Dependents.***

262. The Aetna policies and procedures referenced in Aetna's plan documents state that Aetna complies "with all state and federal law pertaining to the security and confidentiality of personal information."

263. It was a violation of federal, state, and Aetna's privacy policies to disclose Plaintiffs' and Class Members' highly confidential HIV medication information in the manner described above.

264. As a result of Aetna's breach of contract, Plaintiffs and Class Members did not

receive the full benefit of the bargain and instead received health insurance and/or health care services that were less valuable than described in their contracts.

265. Plaintiffs and Class Members have been injured as a result of Defendants' breach of contract and are entitled to damages.

COUNT SEVENTEEN
Invasion of Privacy
On Behalf of Plaintiffs and the Nationwide Class and the Statewide Classes

266. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

267. Defendants published private facts about Plaintiffs and Class Members by disclosing and exposing that Plaintiffs and Class Members were prescribed HIV medication through the use of the large-window envelope and other negligent mailing practices.

268. The disclosure of the kinds of medications a person is taking, especially HIV medications, would be offensive to a reasonable person of ordinary sensibilities.

269. The fact that Class Members are taking HIV medications is not a matter of legitimate public concern.

270. As a direct and proximate result of Defendants' conduct, Plaintiffs and Class Members have been injured and are entitled to damages.

UNFAIR AND DEECPTIVE TRADE PRACTICES STATUTES
On Behalf of Plaintiffs and the Statewide Classes Against Aetna

COUNT EIGHTEEN
PENNSYLVANIA
Pennsylvania Unfair Trade Practices and Consumer Protection Law
73 Pa. Stat. Ann. §§ 201-1, *et seq*.

271. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

272. Plaintiff and Pennsylvania Class Members purchased insurance and health benefits

services from Aetna in trade and commerce for personal, family, and/or household purposes.

273. Aetna engaged in unlawful, unfair, and deceptive acts and practices, with respect to the sale and advertisement of the services purchased by Plaintiff and Pennsylvania Class Members, including by representing that Aetna would adequately protect Plaintiff and Pennsylvania Class Members' highly confidential medical information from unauthorized disclosure and release, and comply with relevant state and federal privacy laws. These injuries outweigh any benefits to consumers or to competition.

274. Aetna knew or should have known that sending the *Doe* Settlement Notices in large-window envelopes and in the fashion in which they were sent was inadequate to safeguard Plaintiff's and the Pennsylvania's Class Members' medical information. Aetna's actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff and the Pennsylvania Class.

275. As a direct and proximate result of Aetna's deceptive acts and practices, Plaintiff and Pennsylvania Class Members suffered an ascertainable loss of money or property, real or personal, as described above, including the loss of their legally protected interest in the confidentiality and privacy of their personal information.

276. Plaintiff and Pennsylvania Class Members seek relief under 73 Pa. Stat. § 201-9.2, including, but not limited to, injunctive relief, actual damages or $100 per Class Member, whichever is greater, treble damages, and attorneys' fees and costs.

COUNT NINETEEN
ARIZONA
Arizona Consumer Fraud Act
Ariz. Rev. Stat. § 44-1521, *et seq.*

277. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

278. Aetna engaged in unlawful, unfair, and deceptive acts and practices, with respect

to the sale and advertisement of the services purchased by Plaintiff and Arizona Class Members, in violation of Arizona law, including by representing that Aetna would adequately protect Plaintiff's and Arizona Class Members' highly confidential medical information from unauthorized disclosure and release, and comply with relevant state and federal privacy laws. These injuries outweigh any benefits to consumers or to competition.

279. The above unfair and deceptive practices and acts by Aetna were immoral, unethical, oppressive, and unscrupulous.

280. Aetna knew or should have known that sending the *Doe* Settlement Notices in large-window envelopes and in the fashion in which they were sent was inadequate to safeguard Plaintiff's and the Arizona Class Members' medical information.

281. Aetna's actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff and the Arizona Class.

282. As a direct and proximate result of Aetna's deceptive acts and practices, Plaintiff and Arizona Class Members suffered an ascertainable loss of money or property, real or personal, as described above, including the loss of their legally protected interest in the confidentiality and privacy of their personal information.

283. Plaintiff and Arizona Class Members seek relief including, but not limited to injunctive relief, actual damages, punitive damages, and attorneys' fees and costs.

COUNT TWENTY
CALIFORNIA
California Unfair Competition Law
Cal. Bus. Prof. Code § 17200, *et seq.*

284. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

285. Aetna engaged in unlawful, unfair or fraudulent, and deceptive acts and practices, with respect to the sale and advertisement of the services purchased by Plaintiffs and California

Class Members, in violation of Cal. Business and Professions Code § 17200, *et seq.*, including by representing that Aetna would adequately protect Plaintiffs' and California Class Members' highly confidential medical information from unauthorized disclosure and release, and comply with relevant state and federal privacy laws. These injuries outweigh any benefits to consumers or to competition.

286. The above unfair and deceptive practices and acts by Aetna were immoral, unethical, oppressive, and unscrupulous.

287. Aetna knew or should have known that sending the *Doe* Settlement Notices in large-window envelopes and in the fashion in which they were sent was inadequate to safeguard Plaintiffs' and the California Class Members' medical information.

288. Aetna's actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiffs and the California Class.

289. As a direct and proximate result of Aetna's deceptive acts and practices, Plaintiffs and California Class Members suffered an ascertainable loss of money or property, real or personal, as described above, including the loss of their legally protected interest in the confidentiality and privacy of their personal information.

290. Plaintiffs and California Class Members seek relief under Cal. Bus. & Prof. Code § 17200 including, but not limited to injunctive relief, restitution, and attorneys' fees and costs.

COUNT TWENTY-ONE
COLORADO
Colorado Consumer Protection Act
Colo. Rev. Stat. § 6-1-101, *et seq.*

291. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

292. Aetna engaged in unlawful, unfair, and deceptive acts and practices, with respect to the sale and advertisement of the services purchased by Plaintiff and Colorado Class Members,

in violation of Colo. Rev. Stat. § 6-1-105, including by representing that Aetna would adequately protect Plaintiff's and Colorado Class Members' highly confidential medical information from unauthorized disclosure and release, and comply with relevant state and federal privacy laws. These injuries outweigh any benefits to consumers or to competition.

293. The above unfair and deceptive practices and acts by Aetna were immoral, unethical, oppressive, and unscrupulous.

294. Aetna knew or should have known that sending the *Doe* Settlement Notices in large-window envelopes and in the fashion in which they were sent was inadequate to safeguard Plaintiff's and the Colorado Class Members' medical information.

295. Aetna's actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff and the Colorado Class.

296. As a direct and proximate result of Aetna's deceptive acts and practices, Plaintiff and Colorado Class Members suffered an ascertainable loss of money or property, real or personal, as described above, including the loss of their legally protected interest in the confidentiality and privacy of their personal information.

297. Plaintiff and Colorado Class Members seek relief under Colo. Rev. Stat. § 6-1-101 including, but not limited to injunctive relief, compensatory damages, restitution, statutory damages, penalties, and attorneys' fees and costs.

COUNT TWENTY-TWO
CONNECTICUT
Connecticut Unfair Trade Practices Act
Conn. Gen. Stat. § 42-110a, *et seq.*

298. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

299. Aetna engaged in unlawful, unfair, and deceptive acts and practices, with respect to the sale and advertisement of the services purchased by Plaintiff and Connecticut Class

Members, in violation of Conn. Gen. Stat. § 42-110b, including by representing that Aetna would adequately protect Plaintiff's and Connecticut Class Members' highly confidential medical information from unauthorized disclosure and release, and comply with relevant state and federal privacy laws. These injuries outweigh any benefits to consumers or to competition.

300. The above unfair and deceptive practices and acts by Aetna were immoral, unethical, oppressive, and unscrupulous.

301. Aetna knew or should have known that sending the *Doe* Settlement Notices in large-window envelopes and in the fashion in which they were sent was inadequate to safeguard Plaintiff's and the Connecticut Class Members' medical information.

302. Aetna's actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff and the Connecticut Class.

303. As a direct and proximate result of Aetna's deceptive acts and practices, Plaintiff and Connecticut Class Members suffered an ascertainable loss of money or property, real or personal, as described above, including the loss of their legally protected interest in the confidentiality and privacy of their personal information.

304. Plaintiff and Connecticut Class Members seek relief under Conn Gen. Stat. § 42-110a including, but not limited to injunctive relief, damages, restitution, statutory damages, penalties, and attorneys' fees and costs.

COUNT TWENTY-THREE
DISTRICT OF COLUMBIA
D.C. Consumer Protection Procedures Act
D.C. Code § 28-3904, *et seq.*

305. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

306. Aetna engaged in unlawful, unfair, and deceptive acts and practices, with respect to the sale and advertisement of the services purchased by Plaintiff and D.C. Class Members, in

violation of D.C. Code § 28-3904, including by representing that Aetna would adequately protect Plaintiff's and D.C. Class Members' highly confidential medical information from unauthorized disclosure and release, and comply with relevant state and federal privacy laws. These injuries outweigh any benefits to consumers or to competition.

307. The above unfair and deceptive practices and acts by Aetna were immoral, unethical, oppressive, and unscrupulous.

308. Aetna knew or should have known that sending the *Doe* Settlement Notices in large-window envelopes and in the fashion in which they were sent was inadequate to safeguard Plaintiff's and the D.C. Class Members' medical information.

309. Aetna's actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff and the D.C. Class.

310. As a direct and proximate result of Aetna's deceptive acts and practices, Plaintiff and D.C. Class Members suffered an ascertainable loss of money or property, real or personal, as described above, including the loss of their legally protected interest in the confidentiality and privacy of their personal information.

311. Plaintiff and D.C. Class Members seek relief under D.C Code § 28-3905(k) including, but not limited to injunctive relief, damages, restitution, punitive damages, treble damages or $1500 per violation, and attorneys' fees and costs.

COUNT TWENTY-FOUR
ILLINOIS
Illinois Consumer Fraud Act
815 ILCS 505/1, *et seq.*

312. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

313. Aetna engaged in unlawful, unfair, and deceptive acts and practices, with respect to the sale and advertisement of the services purchased by Plaintiff and Illinois Class Members, in

violation of 815 ILCS § 505/2, including by representing that Aetna would adequately protect Plaintiff's and Illinois Class Members' highly confidential medical information from unauthorized disclosure and release, and comply with relevant state and federal privacy laws. These injuries outweigh any benefits to consumers or to competition.

314. The above unfair and deceptive practices and acts by Aetna were immoral, unethical, oppressive, and unscrupulous.

315. Aetna knew or should have known that sending the *Doe* Settlement Notices in large-window envelopes and in the fashion in which they were sent was inadequate to safeguard Plaintiff's and the Illinois Class Members' medical information.

316. Aetna's actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff and the Illinois Class.

317. As a direct and proximate result of Aetna's deceptive acts and practices, Plaintiff and Illinois Class Members suffered an ascertainable loss of money or property, real or personal, as described above, including the loss of their legally protected interest in the confidentiality and privacy of their personal information.

318. Plaintiff and Illinois Class Members seek relief under 815 ILCS § 505/10a, including, but not limited to injunctive relief, damages, restitution, punitive damages and attorneys' fees and costs.

COUNT TWENTY-FIVE
Illinois Uniform Deceptive Trade Practices Act
815 ILCS § 510/2(a), *et seq.*

319. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

320. Aetna engaged in unlawful, unfair, and deceptive acts and practices, with respect to the sale and advertisement of the services purchased by Plaintiff and Illinois Class Members, in

violation of 815 Ill. Comp. Stat. 510/2(a)(5), (7), including by representing that Aetna would adequately protect Plaintiff's and Illinois Class Members' highly confidential medical information from unauthorized disclosure and release, and comply with relevant state and federal privacy laws. These injuries outweigh any benefits to consumers or to competition.

321. Aetna knew or should have known that sending the *Doe* Settlement Notices in large-window envelopes and in the fashion in which they were sent was inadequate to safeguard Plaintiff's and the Illinois Class Members' medical information.

322. Aetna's actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff and the Illinois Class.

323. Plaintiff and Illinois Class Members seek relief under 815 ILCS § 510, including, but not limited to injunctive relief and attorneys' fees and costs.

COUNT TWENTY-SIX
MAINE
Maine Uniform Deceptive Trade Practices Act
10 Me. Rev. Stat. § 1212, *et seq.*

324. Plaintiffs re-allege and incorporates by reference the allegations in the preceding paragraphs.

325. Aetna engaged in unlawful, unfair, and deceptive acts and practices, with respect to the sale and advertisement of the services purchased by Plaintiff, in violation of 5 Me. Rev. Stat. § 1212(E), (G), including by representing that Aetna would adequately protect Plaintiff's highly confidential medical information from unauthorized disclosure and release, and comply with relevant state and federal privacy laws. These injuries outweigh any benefits to consumers or to competition. The above unfair and deceptive practices and acts by Aetna were immoral, unethical, oppressive, and unscrupulous.

326. Aetna knew or should have known that sending the *Doe* Settlement Notices in large-window envelopes and in the fashion in which they were sent was inadequate to safeguard

Plaintiff's and the Maine Class Members' medical information.

327. Aetna's actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff and Maine Class Members.

328. Plaintiff seeks relief under 5 Me. Rev. Stat. § 1213, including, but not limited to injunctive relief and attorneys' fees and costs.

COUNT TWENTY-SEVEN
MARYLAND
Maryland Consumer Protection Act
Md. Code. Ann., Com. Law § 13-301, *et seq.*

329. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

330. Aetna engaged in unlawful, unfair, and deceptive acts and practices, with respect to the sale and advertisement of the services purchased by Plaintiff and Maryland Class Members, in violation of Md. Code. Ann., Com. Law § 13-301, including by representing that Aetna would adequately protect Plaintiff's and Maryland Class Members' highly confidential medical information from unauthorized disclosure and release, and comply with relevant state and federal privacy laws. These injuries outweigh any benefits to consumers or to competition.

331. The above unfair and deceptive practices and acts by Aetna were immoral, unethical, oppressive, and unscrupulous.

332. Aetna knew or should have known that sending the *Doe* Settlement Notices in large-window envelopes and in the fashion in which they were sent was inadequate to safeguard Plaintiff's and the Maryland Class Members' medical information.

333. Aetna's actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff and the Maryland Class.

334. As a direct and proximate result of Aetna's deceptive acts and practices, Plaintiff and Maryland Class Members suffered an ascertainable loss of money or property, real or personal,

as described above, including the loss of their legally protected interest in the confidentiality and privacy of their personal information.

335. Plaintiff and Maryland Class Members seek relief under Md. Code. Ann., Com. Law § 13-408, including, but not limited to injunctive relief, damages, and attorneys' fees and costs.

COUNT TWENTY-EIGHT
MINNESOTA
Minnesota Consumer Fraud Act
Minn. Stat. § 325F.68, *et seq*. and Minn. Stat. § 8.31, *et seq.*

336. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

337. Aetna engaged in unlawful, unfair, and deceptive acts and practices, with respect to the sale and advertisement of the services purchased by Plaintiff in violation of Minn. Stat. § 325F.69, including by representing that Aetna would adequately protect Plaintiff's highly confidential medical information from unauthorized disclosure and release, and comply with relevant state and federal privacy laws. These injuries outweigh any benefits to consumers or to competition.

338. The above unfair and deceptive practices and acts by Aetna were immoral, unethical, oppressive, and unscrupulous.

339. Aetna knew or should have known that sending the *Doe* Settlement Notices in large-window envelopes and in the fashion in which they were sent was inadequate to safeguard Plaintiff's medical information.

340. Aetna's actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff.

341. As a direct and proximate result of Aetna's deceptive acts and practices, Plaintiff suffered an ascertainable loss of money or property, real or personal, as described above, including

the loss of their legally protected interest in the confidentiality and privacy of their personal information.

342. Plaintiff seeks relief under Minn. Stat. § 8.31, including, but not limited to injunctive relief, damages, and attorneys' fees and costs.

COUNT TWENTY-NINE
Minnesota Uniform Deceptive Trade Practices Act
Minn. Stat. § 325D.43*, et seq.*

343. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

344. Aetna engaged in unlawful, unfair, and deceptive acts and practices, with respect to the sale and advertisement of the services purchased by Plaintiff, in violation of Minn. Stat. § 325F.44(5), (7), (9), and (13), including by representing that Aetna would adequately protect Plaintiff's highly confidential medical information from unauthorized disclosure and release, and comply with relevant state and federal privacy laws. These injuries outweigh any benefits to consumers or to competition.

345. The above unfair and deceptive practices and acts by Aetna were immoral, unethical, oppressive, and unscrupulous.

346. Aetna knew or should have known that sending the *Doe* Settlement Notices in large-window envelopes and in the fashion in which they were sent was inadequate to safeguard Plaintiff's medical information.

347. Aetna's actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff.

348. As a direct and proximate result of Aetna's deceptive acts and practices, Plaintiff suffered an ascertainable loss of money or property, real or personal, as described above, including

the loss of their legally protected interest in the confidentiality and privacy of their personal information.

349. Plaintiff seeks relief under Minn. Stat. §§ 325D.45 and 8.31, including, but not limited to injunctive relief, damages, and attorneys' fees and costs.

COUNT THIRTY
MISSOURI
Missouri Merchandising Practices Act
Mo. Stat. § 407.010, *et seq.*

350. Plaintiff re-alleges and incorporates by reference the allegations in the preceding paragraphs.

351. Aetna engaged in unlawful, unfair, and deceptive acts and practices, with respect to the sale and advertisement of the services purchased by Plaintiff and Missouri Class Members, in violation of Mo. Stat. § 407.020(1), including by representing that Aetna would adequately protect Plaintiff's and Missouri Class Members' highly confidential medical information from unauthorized disclosure and release, and comply with relevant state and federal privacy laws. These injuries outweigh any benefits to consumers or to competition.

352. The above unfair and deceptive practices and acts by Aetna were immoral, unethical, oppressive, and unscrupulous.

353. Aetna knew or should have known that sending the *Doe* Settlement Notices in large-window envelopes and in the fashion in which they were sent was inadequate to safeguard Plaintiff's and the Missouri Class Members' medical information.

354. Aetna's actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff and the Missouri Class.

355. As a direct and proximate result of Aetna's deceptive acts and practices, Plaintiff and Missouri Class Members suffered an ascertainable loss of money or property, real or personal,

as described above, including the loss of their legally protected interest in the confidentiality and privacy of their personal information.

356. Plaintiff and Missouri Class Members seek relief under Mo. Stat. § 407.025, including, but not limited to injunctive relief, actual damages, punitive damages, and attorneys' fees and costs.

COUNT THIRTY-ONE
NEVADA
Nevada Deceptive Trade Practices Act
Nev. Rev. Stat. § 598.0915, *et seq.*

357. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

358. Aetna engaged in unlawful, unfair, and deceptive acts and practices, with respect to the sale and advertisement of the services purchased by Plaintiff and Nevada Class Members, in violation of Nev. Rev. Stat. § 598.0915, including by representing that Aetna would adequately protect Plaintiff's and Nevada Class Members' highly confidential medical information from unauthorized disclosure and release, and comply with relevant state and federal privacy laws. These injuries outweigh any benefits to consumers or to competition.

359. The above unfair and deceptive practices and acts by Aetna were immoral, unethical, oppressive, and unscrupulous.

360. Aetna knew or should have known that sending the *Doe* Settlement Notices in large-window envelopes and in the fashion in which they were sent was inadequate to safeguard Plaintiff's and the Nevada Class Members' medical information.

361. Aetna's actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff and the Nevada Class.

362. As a direct and proximate result of Aetna's deceptive acts and practices, Plaintiff and Nevada Class Members suffered an ascertainable loss of money or property, real or personal,

as described above, including the loss of their legally protected interest in the confidentiality and privacy of their personal information.

363. Plaintiff and Nevada Class Members seek relief under Nev. Rev. Stat. § 41.600, including, but not limited to injunctive relief, actual damages, treble damages, and attorneys' fees and costs.

COUNT THIRTY-TWO
NEW HAMPSHIRE
New Hampshire Consumer Fraud Act
N.H. Rev. Stat. § 358-A:1, *et seq.*

364. Plaintiffs re-allege and incorporates by reference the allegations in the preceding paragraphs.

365. Aetna engaged in unlawful, unfair, and deceptive acts and practices, with respect to the sale and advertisement of the services purchased by Plaintiff, in violation of N.H. Rev. Stat. § 358-A:2, including by representing that Aetna would adequately protect Plaintiff's highly confidential medical information from unauthorized disclosure and release, and comply with relevant state and federal privacy laws. These injuries outweigh any benefits to consumers or to competition.

366. The above unfair and deceptive practices and acts by Aetna were immoral, unethical, oppressive, and unscrupulous.

367. Aetna knew or should have known that sending the *Doe* Settlement Notices in large-window envelopes and in the fashion in which they were sent was inadequate to safeguard Plaintiff's medical information.

368. Aetna's actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff.

369. As a direct and proximate result of Aetna's deceptive acts and practices, Plaintiff suffered an ascertainable loss of money or property, real or personal, as described above, including

the loss of their legally protected interest in the confidentiality and privacy of their personal information.

370. Plaintiff seeks relief under N.H. Rev. Stat.. § 358-A:10, including, but not limited to injunctive relief, actual damages or $1,000, treble damages, and attorneys' fees and costs.

COUNT THIRTY-THREE
NEW JERSEY
New Jersey Consumer Fraud Act
N.J.S.A. § 56:8-1, *et seq.*

371. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

372. Aetna sells "merchandise," as meant by N.J.S.A. § 56:8-1, by offering health insurance and health benefits services to the public.

373. Aetna engaged in unlawful, unfair, and deceptive acts and practices, with respect to the sale and advertisement of the services purchased by Plaintiff and New Jersey Class Members, in violation of N.J.S.A.§ 56:8-2, including by representing that Aetna would adequately protect Plaintiff's and New Jersey Class Members' highly confidential medical information from unauthorized disclosure and release, and comply with relevant state and federal privacy laws. These injuries outweigh any benefits to consumers or to competition.

374. The above unfair and deceptive practices and acts by Aetna were immoral, unethical, oppressive, and unscrupulous.

375. Aetna knew or should have known that sending the *Doe* Settlement Notices in large-window envelopes and in the fashion in which they were sent was inadequate to safeguard Plaintiff's and the New Jersey Class Members' medical information.

376. Aetna's actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff and the New Jersey Class.

377. As a direct and proximate result of Aetna's deceptive acts and practices, Plaintiff and New Jersey Class Members suffered an ascertainable loss of money or property, real or personal, as described above, including the loss of their legally protected interest in the confidentiality and privacy of their personal information.

378. Plaintiff and New Jersey Class Members seek relief under N.J.S.A. § 56:8-10, including, but not limited to injunctive relief, actual damages, treble damages, and attorneys' fees and costs.

COUNT THIRTY-FOUR
NEW MEXICO
New Mexico Unfair and Deceptive Trade Practices Act
N.M. Stat. Ann. § 57-12-1, *et seq.*

379. Plaintiffs re-allege and incorporates by reference the allegations in the preceding paragraphs.

380. Aetna engaged in unlawful, unfair, and deceptive acts and practices, with respect to the sale and advertisement of the services purchased by Plaintiff and New Mexico Class Members, in violation of N.M. Stat. Ann. § 57-12-3, including by representing that Aetna would adequately protect Plaintiff's highly confidential medical information from unauthorized disclosure and release, and comply with relevant state and federal privacy laws. These injuries outweigh any benefits to consumers or to competition.

381. The above unfair and deceptive practices and acts by Aetna were immoral, unethical, oppressive, and unscrupulous.

382. Aetna knew or should have known that sending the *Doe* Settlement Notices in large-window envelopes and in the fashion in which they were sent was inadequate to safeguard Plaintiff's medical information.

383. Aetna's actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff.

384. As a direct and proximate result of Aetna's deceptive acts and practices, Plaintiff suffered an ascertainable loss of money or property, real or personal, as described above, including the loss of their legally protected interest in the confidentiality and privacy of their personal information.

385. Plaintiff seeks relief under N.M. Stat. Ann. § 57-12-10, including, but not limited to injunctive relief, actual damages, treble damages, statutory damages or $300, and attorneys' fees and costs.

COUNT THIRTY-FIVE
NEW YORK
New York Gen. Bus. Law § 349, *et seq.*

386. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

387. Aetna engaged in unlawful, unfair, and deceptive acts and practices, with respect to the sale and advertisement of the services purchased by Plaintiffs and New York Class Members, in violation of N.Y. Gen. Bus. Law § 349(a), including by representing that Aetna would adequately protect Plaintiffs' and New York Class Members' highly confidential medical information from unauthorized disclosure and release, and comply with relevant state and federal privacy laws. These injuries outweigh any benefits to consumers or to competition.

388. The above unfair and deceptive practices and acts by Aetna were immoral, unethical, oppressive, and unscrupulous.

389. Aetna knew or should have known that sending the *Doe* Settlement Notices in large-window envelopes and in the fashion in which they were sent was inadequate to safeguard Plaintiffs' and the New York Class Members' medical information.

390. Aetna's actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiffs and the New York Class.

391. As a direct and proximate result of Aetna's deceptive acts and practices, Plaintiffs' and New York Class Members suffered an ascertainable loss of money or property, real or personal, as described above, including the loss of their legally protected interest in the confidentiality and privacy of their personal information.

392. Plaintiffs and New York Class Members seek relief under N.Y. Gen. Bus. Law § 349(h), including, but not limited to injunctive relief, actual damages, treble damages, statutory damages, and attorneys' fees and costs.

COUNT THIRTY-SIX
NORTH CAROLINA
North Carolina Unfair Trade Practices Act
N.C. Gen. Stat. An. § 75-1.1, *et seq.*

393. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

394. Aetna's sale, advertising, and marketing of insurance and health benefited affected commerce, as meant by N.C. Gen. Stat. Ann. § 75-1.1.

395. Aetna engaged in unlawful, unfair, and deceptive acts and practices, with respect to the sale and advertisement of the services purchased by Plaintiff and Tennessee Class Members, in violation of N.C. Gen. Stat. Ann. § 75-1.1, including by representing that Aetna would adequately protect Plaintiff's and North Carolina Class Members' highly confidential medical information from unauthorized disclosure and release, and comply with relevant state and federal privacy laws. These injuries outweigh any benefits to consumers or to competition.

396. The above unfair and deceptive practices and acts by Aetna were immoral, unethical, oppressive, and unscrupulous.

397. Aetna knew or should have known that sending the *Doe* Settlement Notices in large-window envelopes and in the fashion in which they were sent was inadequate to safeguard Plaintiff's and the New York Class Members' medical information.

398. Aetna's actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff and the North Carolina Class.

399. As a direct and proximate result of Aetna's deceptive acts and practices, Plaintiff and North Carolina Class Members suffered an ascertainable loss of money or property, real or personal, as described above, including the loss of their legally protected interest in the confidentiality and privacy of their personal information.

400. Plaintiff and North Carolina Class Members seek relief under N.C. Gen. Stat. Ann. §§ 75-16 and 75-16.1, including, but not limited to injunctive relief, actual damages, treble damages, and attorneys' fees and costs.

COUNT THIRTY-SEVEN
OKLAHOMA
Oklahoma Consumer Protection Act
15 Okla. Stat. Ann. § 751, *et seq*.

401. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

402. In purchasing insurance and health benefits, Oklahoma Class Members purchased "merchandise" in "consumer transactions" as defined in 15 Okla. Stat. Ann. § 751.

403. Aetna engaged in unlawful, unfair, and deceptive acts and practices, with respect to the sale and advertisement of the services purchased by Plaintiff and Oklahoma Class Members, in violation of 15 Okla. Stat. Ann. § 753, including by representing that Aetna would adequately protect Plaintiff's and Oklahoma Class Members' highly confidential medical information from unauthorized disclosure and release, and comply with relevant state and federal privacy laws. These injuries outweigh any benefits to consumers or to competition.

404. The above unfair and deceptive practices and acts by Aetna were immoral, unethical, oppressive, and unscrupulous.

405. Aetna knew or should have known that sending the *Doe* Settlement Notices in

large-window envelopes and in the fashion in which they were sent was inadequate to safeguard Plaintiff's and the Oklahoma Class Members' medical information.

406. Aetna's actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff and the Oklahoma Class.

407. As a direct and proximate result of Aetna's deceptive acts and practices, Plaintiff and Oklahoma Class Members suffered an ascertainable loss of money or property, real or personal, as described above, including the loss of their legally protected interest in the confidentiality and privacy of their personal information.

408. Plaintiff and Oklahoma Class Members seek relief under 15 Okla. Stat. Ann. § 761.1, including, but not limited to injunctive relief, actual damages, and attorneys' fees and costs.

COUNT THIRTY-EIGHT
TENNESSEE
Tenn. Code Ann. § 47-18-1010, *et seq.*

409. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

410. Aetna advertised and sold "goods" or "services" in "trade" and "commerce," as meant by Tenn. Code Ann. § 47-18-103, in the form of insurance and health benefits services from Defendants.

411. Aetna engaged in unlawful, unfair, and deceptive acts and practices, with respect to the sale and advertisement of the services purchased by Plaintiff and Tennessee Class Members, in violation of Tenn. Code § 47-18-104, including by representing that Aetna would adequately protect Plaintiff's and Tennessee Class Members' highly confidential medical information from unauthorized disclosure and release, and comply with relevant state and federal privacy laws. These injuries outweigh any benefits to consumers or to competition.

412. The above unfair and deceptive practices and acts by Aetna were immoral,

unethical, oppressive, and unscrupulous.

413. Aetna knew or should have known that sending the *Doe* Settlement Notices in large-window envelopes and in the fashion in which they were sent was inadequate to safeguard Plaintiff's and the Tennessee Class Members' medical information.

414. Aetna's actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff and the Tennessee Class.

415. As a direct and proximate result of Aetna's deceptive acts and practices, Plaintiff and Tennessee Class Members suffered an ascertainable loss of money or property, real or personal, as described above, including the loss of their legally protected interest in the confidentiality and privacy of their personal information.

416. Plaintiff and Tennessee Class Members seek relief under Tenn. Code Ann. § 17.50, including, but not limited to injunctive relief, economic damages, damages for mental anguish, treble damages, injunctive relief, restitution, and attorneys' fees and costs.

COUNT THIRTY-NINE
WASHINGTON
Washington Consumer Protection Act
RCW § 19.86.020*, et seq.*

417. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

418. Plaintiff and Washington Class Members purchased insurance and health benefits services from Aetna in trade and commerce for personal, family, and/or household purposes.

419. Aetna engaged in unlawful, unfair, and deceptive acts and practices, with respect to the sale and advertisement of the services purchased by Plaintiff and Washington Class Members, including by representing that Aetna would adequately protect Plaintiff's and Washington Class Members' highly confidential medical information from unauthorized disclosure and release, and comply with relevant state and federal privacy laws. These injuries

outweigh any benefits to consumers or to competition.

420. Aetna knew or should have known that sending the *Doe* Settlement Notices in large-window envelopes and in the fashion in which they were sent was inadequate to safeguard Plaintiff's and the Washington's Class Members' medical information. Aetna's actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff and the Washington Class.

421. As a direct and proximate result of Aetna's deceptive acts and practices, Plaintiff and Washington Class Members suffered an ascertainable loss of money or property, real or personal, as described above, including the loss of their legally protected interest in the confidentiality and privacy of their personal information.

422. Plaintiff and Washington Class Members seek relief under RCW § 19.86.090, including, but not limited to injunctive relief, actual damages, treble damages, and attorneys' fees and costs.

State Insurance Information Privacy Statutes

COUNT FORTY
ARIZONA
Arizona Insurance Information and Privacy Protection Act
Ariz. Rev. Stat. § 20-2101, *et seq.*

423. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

424. Plaintiff's and Arizona Class Members' HIV-medication information was "personal information" as defined under Ariz. Rev. Stat. § 20-2102(19) because it was "individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health or any other personal characteristics."

425. Aetna disclosed without authorization or legal basis personal information regarding

Plaintiff and Arizona Class Members that was collected or received in connection with an insurance transaction, in violation of Ariz. Rev. Stat. § 20-2113.

426. Plaintiff and Arizona Class Members have been harmed by Aetna's willful and unauthorized disclosure of their personal information.

427. Plaintiff and Arizona Class Members seek relief under Ariz. Rev. Stat. § 20-2118, including but not limited to, actual damages, nominal damages, injunctive relief, and attorney's fees and costs.

COUNT FORTY-ONE
CONNECTICUT
Connecticut Insurance Information and Privacy Protection Act
Conn. Gen. Stat. § 38a-975, *et seq.*

428. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

429. Plaintiff's and Connecticut Class Members' HIV-medication information was "personal information" as defined under Conn. Gen. Stat. § 38a-976(20) because it was "individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health or any other personal characteristics."

430. Aetna disclosed without authorization or legal basis personal information regarding Plaintiff and Connecticut Class Members that was collected or received in connection with an insurance transaction, in violation of Conn. Gen. Stat. § 38a-988.

431. Aetna failed to create and implement the standards and procedures for the management, transfer and security of personal information, including medical record information, required by Conn. Gen. Stat. § 38a-999, including standards and procedures to guard against the unauthorized disclosure of personal information.

432. Plaintiff and Connecticut Class Members have been harmed by Aetna's willful and

unauthorized disclosure of their personal information.

433. Plaintiff and Connecticut Class Members seek relief under Conn. Gen. Stat. § 38a-995, including but not limited to, actual damages, injunctive relief, and attorney's fees and costs.

COUNT FORTY-TWO
GEORGIA
Georgia Insurance Information and Privacy Protection Act
Ga. Code § 33-39-1, *et seq.*

434. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

435. Plaintiff's and Georgia Class Members' HIV-medication information was "personal information" as defined under Ga. Code § 33-39-3(20) because it was "individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health or any other personal characteristics."

436. Aetna disclosed without authorization or legal basis personal information regarding Plaintiff and Georgia Class Members that was collected or received in connection with an insurance transaction, in violation of Ga. Code § 33-39-14.

437. Plaintiff and Georgia Class Members have been harmed by Aetna's willful and unauthorized disclosure of their personal information.

438. Plaintiff and Georgia Class Members seek relief under Ga. Code § 33-39-21(b), including but not limited to, actual damages, injunctive relief, and attorney's fees and costs.

COUNT FORTY-THREE
ILLINOIS
Illinois Insurance Information and Privacy Protection Act
215 ILCS § 5/1001, *et seq.*

439. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

440. Plaintiff's and Illinois Class Members' HIV-medication information was "personal information" as defined under 215 ILCS § 5/1003(T) because it was "individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health or any other personal characteristics."

441. Aetna disclosed without authorization or legal basis personal information regarding Plaintiff and Illinois Class Members that was collected or received in connection with an insurance transaction, in violation of 215 ILCS § 5/1014.

442. Plaintiff and Illinois Class Members have been harmed by Aetna's willful and unauthorized disclosure of their personal information.

443. Plaintiff and Illinois Class Members seek relief under 215 ILCS § 5/1021 including but not limited to, actual damages, injunctive relief, and attorney's fees and costs.

COUNT FORTY-FOUR
MAINE
Maine Insurance Information and Privacy Protection Act
24 Me. Rev. Stat. Ann. § 2201, *et seq.*

444. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

445. Plaintiff's HIV-medication information was "personal information" as defined under 24 Me. Rev. Stat. Ann. § 2204(20) because it was "individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health or any other personal characteristics."

446. Aetna disclosed without authorization or legal basis personal information regarding Plaintiff that was collected or received in connection with an insurance transaction, in violation of 24 Me. Rev. Stat. Ann. § 2215.

447. Plaintiff has been harmed by Aetna's willful and unauthorized disclosure of their personal information.

448. Plaintiff seeks relief under 24 Me. Rev. Stat. Ann. § 2217(2), including but not limited to, actual damages, injunctive relief, and attorney's fees and costs.

COUNT FORTY-FIVE
MINNESOTA
Minnesota Insurance Fair Information Reporting Act
Minn. Stat. § 72A.49, *et seq.*

449. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

450. Plaintiff's HIV-medication information was "personal information" as defined under Minn. Stat. § 72A.491 subd. 17 because it was "individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health or any other personal characteristics."

451. Aetna disclosed without authorization or legal basis personal information regarding Plaintiff that was collected or received in connection with an insurance transaction, in violation of Minn. Stat. § 72A.502.

452. Plaintiff has been harmed by Aetna's willful and unauthorized disclosure of their personal information.

453. Plaintiff seeks relief under Minn. Stat. § 72A.503 and Minn. Stat. § 13.08, including but not limited to, actual damages, exemplary damages, injunctive relief, and attorney's fees and costs.

COUNT FORTY-SIX
NEW JERSEY
New Jersey Insurance Information and Privacy Protection Act
N.J.S.A. § 17:23A-1, *et seq.*

454. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

455. Plaintiff brings this claim against the Aetna entities operating in New Jersey on behalf of the New Jersey Class.

456. Plaintiff's and New Jersey Class Members' HIV-medication information was "personal information" as defined under N.J.S.A. § 17:23A-2(t) because it was "individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health or any other personal characteristics."

457. Aetna disclosed without authorization or legal basis personal information regarding Plaintiff and New Jersey Class Members that was collected or received in connection with an insurance transaction, in violation of N.J.S.A. § 17:23A-13.

458. Plaintiff and New Jersey Class Members have been harmed by Aetna's willful and unauthorized disclosure of their personal information.

459. Plaintiff and New Jersey Class Members seek relief under N.J.S.A. § 17:23A-20(b), including but not limited to, actual damages, injunctive relief, and attorney's fees and costs.

COUNT FORTY-SEVEN
NORTH CAROLINA
North Carolina Consumer and Customer Information Privacy Act
N.C. Gen. Stat. § 58-39-1, *et seq.*

460. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

461. Plaintiff's and North Carolina Class Members' HIV-medication information was "personal information" as defined under N.C. Gen. Stat. § 58-39-15(19) because it was "individually identifiable information gathered in connection with an insurance transaction from

which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health or any other personal characteristics."

462. Aetna disclosed without authorization or legal basis personal information regarding Plaintiff and North Carolina Class Members that was collected or received in connection with an insurance transaction, in violation of N.C. Gen. Stat. § 58-39-75.

463. Plaintiff and North Carolina Class Members have been harmed by Aetna's willful and unauthorized disclosure of their personal information.

464. Plaintiff and North Carolina Class Members seek relief under N.C. Gen. Stat. § 58-39-105, including but not limited to, actual damages, injunctive relief, and attorney's fees and costs.

COUNT FORTY-EIGHT
OHIO
Ohio Insurance Information and Privacy Protection Act
Ohio Rev. Code § 3904.01, *et seq.*

465. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

466. Plaintiff's and Ohio Class Members' HIV-medication information was "personal information" as defined under Ohio Rev. Code. § 3904.01(R) because it was "individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health or any other personal characteristics."

467. Aetna disclosed without authorization or legal basis personal information regarding Plaintiff and Ohio Class Members that was collected or received in connection with an insurance transaction, in violation of Ohio Rev. Code. § 3904.13.

468. Plaintiff and Ohio Class Members have been harmed by Aetna's willful and unauthorized disclosure of their personal information.

469. Plaintiff and Ohio Class Members seek relief under Ohio Rev. Code § 3904.21, including but not limited to, actual damages, injunctive relief, and attorney's fees and costs.

State Insurance Unfair Practices Statutes

COUNT FORTY-NINE
ARIZONA
Ariz. Rev. Stat. § 20-442, *et seq.*

470. Plaintiff re-alleges and incorporates by reference the allegations in the preceding paragraphs.

471. Aetna engaged in unlawful, unfair, and deceptive acts and practices in the business of insurance in violation of Ariz. Rev. Stat. § 20-442, 443, and 444, including by representing that Aetna would adequately protect Plaintiff's highly confidential medical information from unauthorized disclosure and release, and comply with relevant state and federal privacy laws. These injuries outweigh any benefits to consumers or to competition.

472. Aetna knew or should have known that sending the *Doe* Settlement Notices in large-window envelopes and in the fashion in which they were sent was inadequate to safeguard Plaintiff's and the Arizona Class' medical information.

473. Aetna's actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff.

474. As a direct and proximate result of Aetna's deceptive acts and practices, Plaintiff and the Arizona Class suffered an ascertainable loss of money or property, real or personal, as described above, including the loss of their legally protected interest in the confidentiality and privacy of their personal information.

475. Plaintiff and the Arizona Class seek relief, including, but not limited to actual damages, nominal damages, injunctive relief, and attorneys' fees and costs.

COUNT FIFTY
NEW MEXICO

N.M. Stat. Ann. § 59A-16-1, *et seq.*

476. Plaintiff re-alleges and incorporates by reference the allegations in the preceding paragraphs.

477. Aetna engaged in unlawful, unfair, and deceptive acts and practices in the business of insurance in violation of N.M. Stat. Ann. § 59A-16-4 and N.M. Stat. Ann § 59A-16-5, including by representing that Aetna would adequately protect Plaintiff's highly confidential medical information from unauthorized disclosure and release, and comply with relevant state and federal privacy laws. These injuries outweigh any benefits to consumers or to competition.

478. Aetna knew or should have known that sending the *Doe* Settlement Notices in large-window envelopes and in the fashion in which they were sent was inadequate to safeguard Plaintiff's medical information.

479. Aetna's actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff.

480. As a direct and proximate result of Aetna's deceptive acts and practices, Plaintiff suffered an ascertainable loss of money or property, real or personal, as described above, including the loss of their legally protected interest in the confidentiality and privacy of their personal information.

481. Plaintiff seeks relief under N.M. Stat. Ann. § 59A-16-30, including, but not limited to actual damages, injunctive relief, and attorneys' fees and costs.

State Insurance Personal Information Privacy Statutes

COUNT FIFTY-ONE
CALIFORNIA
Confidentiality of Medical Information Act
Cal. Civil Code § 56, *et seq.*

482. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

483. Aetna is a "health care service plan" as defined in Cal. Civil Code § 56.05(g).

484. Aetna disclosed and released without authorization or legal basis medical information regarding Plaintiffs and California Class Members in violation of Cal. Civil Code § 56.10(a).

485. Aetna failed to maintain medical information in a manner that preserves the confidentiality of the information in violation of Cal. Civil Code § 56.101(a).

486. Plaintiffs and California Class Members have been harmed by Aetna's willful and unauthorized disclosure and release of their personal information.

487. Plaintiffs and California Class Members seek relief under Cal. Civil Code §§ 56.35-36, including but not limited to, compensatory damages, nominal damages of $1,000, injunctive relief and attorneys' fees and costs.

COUNT FIFTY-TWO
MARYLAND
Maryland Disclosure Requirement for Insurers
Md. Code. Ann., Ins. § 4-403, *et seq.*

488. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

489. Aetna is an "insurer" as meant by Md. Code Ann., Ins. § 4-403.

490. Aetna disclosed without authorization or legal basis medical information regarding Plaintiff and Maryland Class Members, in violation of Md. Code Ann., Ins. § 4-403.

491. Plaintiff and Maryland Class Members have been harmed by Aetna's knowing and unauthorized disclosure of their medical information.

492. Plaintiff and Maryland Class Members seek relief under Md. Code Ann., Ins. § 4-403, including but not limited to, damages and attorneys' fees and costs.

COUNT FIFTY-THREE
Maryland Confidentiality of Medical Records Act
Md. Code. Ann., Health § 4-301, *et seq.*

493. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

494. Aetna is a "health maintenance organization" and thus a "health care provider" as defined in Md. Code. Ann., Health § 4-301(g)(1).

495. Aetna disclosed without authorization or legal basis medical information regarding Plaintiff and Maryland Class Members, in violation of Md. Code Ann., Health § 4-302.

496. Plaintiff and Maryland Class Members have been harmed by Aetna's knowing, willful and unauthorized disclosure of their medical information.

497. Plaintiff and Maryland Class Members seek relief under Md. Code Ann., Health § 4-309, including but not limited to, actual damages, injunctive relief, and attorneys' fees and costs.

COUNT FIFTY-FOUR
MINNESOTA
Minnesota Health Records Act
Minn. Stat. § 144.291, *et seq.*

498. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

499. Aetna is a "provider" as defined by Minn. Stat. § 144.291 subd.2(i).

500. Aetna disclosed without authorization or legal basis medical information regarding Plaintiff, in violation of Minn. Stat. § 144.293.

501. Plaintiff has been harmed by Aetna's knowing, willful and unauthorized disclosure of their medical information.

502. Plaintiff seeks relief under Minn. Stat. § 144.298, including but not limited to, compensatory damages, and attorneys' fees and costs.

COUNT FIFTY-FIVE
WASHINGTON
Washington Health Records Act
RCW § 70.02.005, *et seq.*

503. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

504. As a result of conducting the business of insurance and other health benefits services, including but not limited to the processing of claims and third-party payments for health care, in Washington, Aetna possessed personal information including personal health care information pertaining to Plaintiff and Washington Class Members.

505. Aetna disclosed without authorization or legal basis medical information regarding Plaintiff and Washington Class Members, in violation of RCW § 70.02.045.

506. Plaintiff and Washington Class Members have been harmed by Aetna's knowing, willful and unauthorized disclosure of their medical information.

507. Plaintiff and Washington Class Members seek relief under RCW § 70.02.170 including but not limited to, actual damages, and attorneys' fees and costs.

COUNT FIFTY-SIX
Violation of California's Constitutional Right to Privacy
On Behalf of California Plaintiffs and the California Class

508. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

509. Plaintiffs and California Class Members have a constitutionally protected privacy interest in their confidential medical information and a reasonable expectation of privacy in their confidential medical information.

510. Defendants violated that constitutional right to privacy.

511. As a result of Defendants' conduct, Plaintiffs and California Class Members have been harmed and their privacy rights have been violated. Plaintiffs and California Class Members are entitled to compensatory damages, punitive damages, and attorneys' fees and costs.

COUNT FIFTY-SEVEN

Unjust Enrichment
On Behalf of Plaintiffs and the Nationwide Class and Statewide Classes

512. Plaintiffs re-allege and incorporate by reference the allegations in the preceding paragraphs.

513. Plaintiffs and Class Members conferred a monetary benefit on Aetna in the form of premiums paid for the purchase of health insurance.

514. Aetna appreciated or had knowledge of the benefits conferred upon them by Plaintiffs and Class Members.

515. The insurance premiums that Plaintiffs and Class Members paid to Aetna should have been used, in part, to pay for the administrative costs of reasonable privacy safeguards.

516. As a result of Aetna's conduct, Plaintiffs and Class Members suffered actual damages in an amount equal to the difference in value between health insurance with the reasonable privacy safeguards that Plaintiff and Class Members paid for, and health insurance without reasonable privacy safeguards.

517. Under principals of equity and good conscience, Aetna should not be permitted to retain the excess funds paid by Plaintiffs and Class Members.

518. Aetna should be compelled to disgorge into a common fund for the benefit of Plaintiffs and Class Members all inequitable proceeds received by Aetna.

JURY TRIAL DEMANDED

519. Plaintiffs, individually and on behalf of the Classes, demand a jury trial as to all claims so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the Classes, seek the following relief:

a. Determining that this action may proceed as a class action under Fed. R. Civ. P. 23

on behalf of the Classes;

b. Appointing Plaintiffs as the class representatives for the Nationwide Class and the Statewide Classes where they are a resident of that state;

c. Appointing Plaintiffs' undersigned counsel as counsel for the Classes;

d. Issuing proper notice to the Classes at Defendants' expense;

e. Declaring that Defendants committed the violations of law set forth above;

f. Ordering appropriate injunctive relief, including the implementation of appropriate policies and procedures to protect HIV- related information;

g. Awarding compensatory, statutory, exemplary, and punitive damages on behalf of Plaintiffs and the Class members;

h. Awarding reasonable attorneys' fees and costs and expenses; and

i. Granting other and further relief, in law or equity, as this Court may deem appropriate and just.

Dated: December 5, 2017

Respectfully submitted,

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Exhibit 3

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

JOHN DOE ONE; JOHN DOE TWO; JOHN DOE THREE; and JOHN DOE FOUR, on behalf of themselves and all similarly situated individuals, *Plaintiffs,* v. CAREMARK, L.L.C.; FISERV, INC., FISERV SOLUTIONS, LLC; and DEFENDANTS DOES 1–10, *Defendants.*	No. 2:18-cv-00238-EAS-CMV No. 2:18-cv-00488-EAS-CMV (Consolidated for all purposes) CLASS ACTION (1) Unauthorized, Unprivileged Disclosure to a Third-Party of Nonpublic Medical Information; and (2) Violation of Ohio Rev. Code § 3701.243 (3) Violation of Ohio Insurance Information and Privacy Protection Act, Ohio Rev. Code § 3904.01, et seq. (4) Declaratory Relief DEMAND FOR JURY TRIAL

CONSOLIDATED AMENDED CLASS ACTION COMPLAINT

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INTRODUCTION

1. Medical privacy is among the most important tenets of American healthcare. Patients must be able to trust their physicians, insurers, and pharmacies to protect their medical information from the improper disclosure (including, but not limited to, their health conditions and courses of treatment). Indeed, numerous state and federal laws explicitly require this. And, these laws are especially important when protecting individuals with particular medical conditions such as HIV or AIDS that can and do subject them to regular discrimination.

2. The Plaintiffs,[1] who are living with HIV, bring this action based on the above-listed Defendants' ("Defendants") unauthorized disclosures of theirs and over 6,000 persons' HIV status and their participation in the OhDAP Program. Except where specifically noted as being based on personal knowledge, the allegations herein are based on information and belief formed after an inquiry, reasonable under the circumstances, which allegations are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery. Accordingly, Plaintiffs bring suit as a putative class action for damages, injunctive, and declaratory relief.

PARTIES

3. On personal knowledge, Plaintiff John Doe One is an individual residing in Delaware County, Ohio. He is a client of the Ohio HIV Drug Assistance Program ("OhDAP"). In or about August 2017, he received the mailing at issue herein disclosing his HIV status and suffered injury in fact as a result thereof.

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[1] Plaintiffs John Doe One, John Doe Two, and John Doe Three have been granted leave to proceed under fictitious names. Doc. No. 26. Plaintiff John Doe Four was granted leave to proceed under a fictitious name in Civil Case No. 2:18-cv-488, now consolidated with this matter. Doc. No. 16.

4. On personal knowledge, Plaintiff John Doe Two is an individual residing in Defiance County, Ohio. He is a client of OhDAP. In or about August 2017, he received the mailing at issue herein disclosing his HIV status and suffered injury in fact as a result thereof.

5. On personal knowledge, Plaintiff John Doe Three is an individual residing in Gallia County, Ohio. He is a client of OhDAP. In or about August 2017, he received the mailing at issue herein disclosing his HIV status and suffered injury in fact as a result thereof.

6. On personal knowledge, Plaintiff John Doe Four is an individual residing in Montgomery County, Ohio. He is a client of OhDAP. In or about July or August 2017, he received the mailing at issue herein disclosing his HIV status and suffered injury in fact as a result thereof.

7. Defendant Caremark, L.L.C. ("CVS") is a foreign limited liability company with its principal place of business in either Rhode Island or Illinois. CVS entered into an agreement in or about March 2017, effective July 2017, with the State of Ohio in response to a February 2017 request for proposal to operate as the pharmacy benefits manager for the State's Ryan White Program, which agreement resulted in CVS being responsible for the mailings and illegal disclosures at issue herein. As part of that Request For Proposal for services, CVS advertised, marketed, promoted, offered for sale and sold its services to the State of Ohio, which were provided in a manner that adversely impacted Plaintiffs and Class members.[2]

8. Defendant Fiserv, Inc. is a foreign corporation with its principal place of business in Wisconsin. On its own or through its subsidiary Fiserv Solutions, LLC, it was contracted by CVS in connection with CVS obtaining the contract with the Ohio Department of Health

[2] CVS Health Corporation, and Caremark Rx, L.L.C., were named as defendants in the original complaint in this action, and were previously dismissed without prejudice pursuant to Federal Rule of Civil Procedure 15(a).

("ODH") to mail information to Plaintiffs and thousands of individuals throughout Ohio, including the mailings and illegal disclosures at issue herein. In doing so, Fiserv, either directly or through its subsidiary, agreed that it was obligated to comply with various CVS agreements, protocols, practices and orders, several of which are cited herein, to protect the confidentiality and prevent the disclosure of the personal health information at issue herein.

9. Defendant Fiserv Solutions, LLC is a foreign Limited Liability Company with its principal place of business in Wisconsin. Fiserv Solutions, LLC is a wholly-owned subsidiary of Fiserv, Inc. Fiserv Solutions, LLC, on its own or through Fiserv Inc., was contracted by CVS to mail information to Plaintiffs and thousands of individuals throughout Ohio, including the mailings and illegal disclosures at issue herein, and appears to be the entity that disseminated the mailing at issue herein. Fiserv, Inc. and Fiserv Solutions, LLC will be collectively referred to as "Fiserv" in this Complaint. Fiserv did not have authorization from Plaintiffs to access, be provided access to or disclose the personal health information at issue herein.

10. Defendant Does 1–10 are entities whose identities are not currently known or verified. As the true names, roles and capacities of Defendants named as Does 1–10 are currently unknown to Plaintiffs; they are therefore named as Defendants under fictitious names. Plaintiffs will identify their true identities and their involvement in the wrongdoing at issue if and when they become known. All Defendants' conduct described herein, including that of Does 1–10, was undertaken or authorized by Defendants' officers or managing agents who were responsible for the supervision and operation decisions relating to the wrongdoing here at issue. The described conduct of said managing agents and individuals was therefore undertaken on behalf of Defendants. Defendants had advance knowledge of the actions and conduct of said individuals whose actions and conduct were ratified, authorized, and approved by such managing agents. By

engaging in the conduct described herein, Defendants agreed with each other, the Doe Defendants and/or other third-parties to engage in the illegal conduct at issue herein. As set forth below, Defendants unjustly profited as a result of these agreements in violation of the laws and regulations detailed herein. As a result of such agreements, the Defendants named and to be named herein conspired and aided and abetted each other in violating the laws set forth herein.

JURISDICTION AND VENUE

11. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(d) because the amount in controversy exceeds the sum of $5,000,000, exclusive of interest and costs, and is a class action in which at least one member of the Class (as defined below) is a citizen of a State (Ohio) different from Defendants CVS (Rhode Island or Illinois) and Fiserv (Wisconsin). As set forth below, the Defendants illegally disclosed the HIV status of approximately 6,000 people without authorization. Ohio courts have awarded at least $6,000 in damages for individuals whose HIV status has been disclosed without authorization. The potential for a similar award in this Court shows that the amount in controversy is in excess of $5,000,000.

12. Venue is appropriate in this District under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred in this District and at least one of the Plaintiffs resides in this District.

FACTUAL ALLEGATIONS

13. OhDAP was initially established in 1990 under the Ryan White HIV/AIDS Treatment Extension Act, 42 U.S.C. §§ 300ff, *et seq*. This federal legislation has been renewed four times – 1996, 2000, 2006 and 2009 – and is now called the Ryan White Program within Ohio and nationwide.

14. The OhDAP website states:

> The Ohio Department of Health (ODH) administers the Ohio HIV Drug Assistance Program (OHDAP), providing medications to fight HIV and to treat HIV-related conditions. This program must be the payer of last resort. For eligible participants, HIV-related medications are provided free of charge. The medications are obtained through a specialty mail-order pharmacy to ensure confidentiality and to ensure all geographic areas of Ohio have equal access to this service. Verification of monthly income, updated enrollment applications and a physician's report are required at the beginning of each enrollment period.

See http://ohiv.org/care/medication-payment-assistance/ (last accessed 1/29/2019).

15. There are three main components within OhDAP. One component is for direct drug provision for eligible uninsured individuals (*i.e.*, individuals with HIV who are not eligible for Medicaid due to income level or citizenship status). Another component is used to provide premium assistance to eligible individuals (*i.e.*, ACA, Medicare Part D, private health insurance or the employee copayment or coinsurance portion of employer-based insurance). The last component assists insured individuals with their co-pays for their life-saving HIV-related medications.

16. To participate in OhDAP, an individual must submit an application and certify that he or she is HIV-positive, stating the year of the individual's first positive HIV test. The applicant must also attach "medical verification documents," which "are required to establish that an individual is HIV+ and, thus, eligible for our services." Therefore, for purposes of OhDAP, an individual's HIV-positive status necessarily means that the individual has had an HIV test performed on him or her, the result of that HIV test was positive, and provided Personal Health Information ("PHI") to a third party reflecting those results.

17. In February 2017, ODH issued a request for proposals for the purchase of pharmacy benefit management services for OhDAP. The first criterion for evaluating services to be provided under the contract was "Pharmacy Services," the first of which was the development

of a pharmacy distribution network. CVS, which submitted a proposal to promote, market and sell its services to ODH, proposed to create this network through its own retail and mail-order pharmacies, through which it has provided medications under contracts with OhDAP since 2000. In the cover letter for its bid, CVS stated, "All of the information contained in this proposal references the capabilities of, and services available from Caremark, L.L.C. ('CVS Caremark')." CVS also stated that it is a health care provider: after stating that it was using the terms "CVS Health" and "CVS Caremark" interchangeably, CVS stated, "As a Fortune 10 company, CVS Health is the largest pharmacy health care provider in the United States with integrated offerings across the entire spectrum of pharmacy care." In another part of its bid, CVS also stated, "We understand that offering open access to pharmacy services and honoring consumer preferences (retail, mail delivery, or personal consultation with a CVS pharmacist) sets us apart from other health care providers."[3] CVS also repeatedly described its delivery of healthcare services under the heading "Pharmacy Distribution Network." For example, CVS stated, "Our therapy-specific CareTeam outreach, provided by expert specialty pharmacy clinicians with up-to-date knowledge of evidence-based protocols, helps improve member adherence by educating them on taking medications correctly, reviewing proper medication storage and handling, and troubleshooting medication side effects. … Additionally, our national nursing model delivers specialty nursing services, education, and drug administration to our members who receive infusion and injection medications …."

[3] This was a false and misleading marketing statement, since with regard to the HIV medications in question here, CVS in fact does not "honor consumer preferences" and typically requires consumers to obtain such medications exclusively through mail delivery, directly from a CVS retail outlet, or through some other onerous delivery mechanism ("specialty pharmacy program"). CVS does so even if consumers prefer to seek personal consultation from a community pharmacist of their choice where they receive other medications, and/or if consumers do not want to obtain their medications under the specialty pharmacy program due to privacy and other concerns.

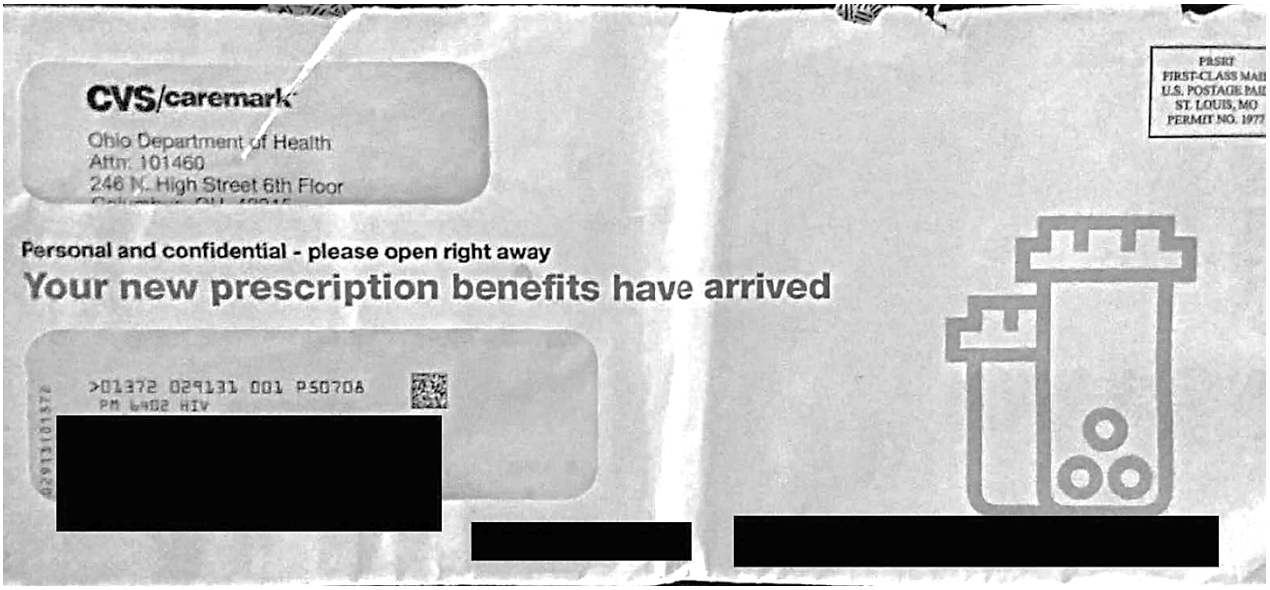
18. CVS's bid, which was made in connection with the marketing, promotion, offering for sale and sale of such services, also represented that it understood state and federal laws concerning the privacy of personal information and thus the extent to which it maintains and protects the privacy, confidentiality and integrity of personal information collected from or about consumers: "We are in compliance with federal and state laws and regulations that are applicable to the services to be provided by CVS Health under the Contract."

19. In or about March 2017, ODH awarded an exclusive contract to CVS, effective July 2017. Through this contract and others, CVS is responsible not only for managing OhDAP's pharmacy benefits, but also providing medications to OhDAP participants.

20. Beginning in approximately late July or early August 2017, Defendants mailed a letter containing membership cards and information marketing and promoting the CVS program and how persons would access their HIV-related prescriptions. The PHI provided by ODH was shared and/or this letter was mailed to an estimated 6,000 participants in OhDAP, regardless of whether they were active pharmacy customers of CVS. CVS thus marketed and promoted the use not only of CVS's pharmacy benefit management services, but also of its health care delivery services. The letter advised OhDAP participants that they could obtain their HIV medications in one of two ways, both provided exclusively by CVS-affiliated entities: from one of CVS's 320 retail pharmacies in Ohio (as well as 59 pharmacies located in Target stores), or through CVS's specialty mail-order pharmacy. Such services were thus offered from CVS as a singular health care entity, since otherwise Caremark LLC would have been prohibited by law from sharing the PHI it possessed and was provided to it by the ODH with these other CVS entities.

21. Even though the information contained in this letter contained the PHI of each individual, specifically information relating to their HIV status, the envelopes containing these

mailings had two clear glassine windows. One, in the upper left, contained the logo of "CVS/caremark," the words "Ohio Department of Health," and an address for ODH. A second window contained the recipient's name and address, with the designation "PM 6402 HIV" directly above the person's name. This reference to the recipient's HIV status was plainly visible through the glassine window. The designation "HIV" in the program identification number was not required by ODH, but rather was created by CVS. The envelope referred in big red letters to "new prescription benefits," thereby revealing that the mailing from CVS involved health-related information, including information about prescription medications. The envelope also stated that it was sent from St. Louis, Missouri, with Postal Permit No. 1977. Fiserv is the owner of this permit. Defendants clearly made no advance effort to test or review the disclosure of such information prior to disseminating the mailing, since had they done so they would have seen that the identification number with "HIV" next to it was prominently visible through the envelope and directly above the name and address of the individual recipient, as shown by the following:



22. The Defendants' combined use of a glassine windowed envelope, their design of the letter containing the HIV status of the individual recipient in an identification code that was

not required by law, and placing that code directly above the consumers' name and address such that no matter what size glassine envelope that was used this PHI could be seen through the envelope window, instead of using a different code, an opaque envelope or a letter that was properly spaced not to publicly reveal such information through the envelope window and an identification reference with the term "HIV," resulted in the actual disclosure of recipients' HIV status to the United States Postal Service, which was not privileged to receive this information under Ohio law or federal law, and potential disclosure to numerous individuals, including their families, friends, roommates, landlords, neighbors, and complete strangers. A reasonable person seeing this envelope with the letter in it, or even seeing a mock-up of the letter with the code directly above the name, or creating the identification code in the first place, would conclude that the recipient was HIV-positive or seeking medical treatment for HIV or AIDS-related conditions. That conclusion would be correct in every instance, as this mailing was sent only to HIV-positive individuals, apparently from or at the direction of ODH.

23. The use of envelopes with transparent glassine windows contravenes the standard practice of ODH, which is to send all mailings relating to HIV-related issues in opaque, non-windowed envelopes. Thus, Defendants must not have cleared the form of this mailing, or they did so with the knowledge of that Department in contravention of such practices.

24. Defendants were under a legal duty and must have known, or either knew or reasonably should have known, that this mailing was disseminated in violation of both federal and state laws. While CVS refers in connection with its privacy practices to different entities as "CVS Health" as a collective health care entity, without defining precisely what entity they are referring to, CVS has publicly represented it has systems in place to protect the privacy of sensitive health information. For example, in its Vendor Code of Conduct entitled "Conducting

Business With CVS Health" (which would apply to its relationship with Fiserv), CVS claims on page 3 "It is critical that CVS Health and our vendors/supplies, who also access, use and store this information, handle it only as needed and in accordance with our Privacy and Information Security Policies and Procedures as required under our agreement with our vendors/suppliers, including our Information Privacy and Security Requirements and Business Associate Agreements. It is critical that our vendors/suppliers have in place reasonable and appropriate administrative, technical and physical safeguards to protect this information from improper or unauthorized access or use." In addition, CVS requires in this same Code of Conduct that its vendors and suppliers are expected "to abide by applicable laws and regulations, including applicable Federal health care program requirements, in the states and countries in which they conduct business" – in this case, the Ohio state laws here at issue. In addition, as noted above CVS requires all vendors to comply with CVS' Data Privacy and Security Requirement Agreements, its information Privacy and Security Requirements, and its Privacy and Information Security Policies. This Code of Conduct was executed by Neal Baker as the Chief Privacy Officer of "CVS Health" – the same person who responded to Plaintiffs' request for a response as to this particular privacy breach as set forth herein. Yet under no set of agreements, Codes, business associate agreements, policies or procedures would it be permissible to disclose for public viewing the HIV status of a particular person, in violation of Ohio law.

25. In addition, in the CVS Health "Notice of Privacy Practices" effective as of June 30, 2017 on the CVS/Caremark website (just a few weeks before the disclosure at issue), CVS made further public representations how it protects PHI under HIPAA, as it claims to ODH as part of its agreement that it would do. This Notice covers the CVS defendant here as an Affiliated Covered Entity even though it is supposedly issued by "CVS Caremark, Inc.". Under

that policy CVS states it will not use or disclose PHI for marketing purposes. Yet that was part of the purpose of the notice at issue – to advise persons, many of whom did not use CVS, to utilize CVS under the OhDAP program to obtain their HIV medications. That policy also states that "we will obtain your written authorization before using or disclosing your PHI for purposes other than those described in this Notice or as otherwise permitted by law." Yet no applicable law permitted CVS to send Plaintiffs and Class members a notice publicly disclosing their PHI as part of a haphazard identification code, which was not a specifically identified purpose in this Notice of Privacy Practices. Nor did CVS obtain any advance written authorization from Plaintiffs and Class members to do so or to provide this information to Fiserv, in further violation of this Notice, its agreement with ODH and Ohio law.

26. In addition, all CVS related subsidiaries, divisions, and affiliates are currently subject to an FTC consent decree from *In the Matter of CVS Caremark Corporation*, FTC Case No. C-4259. This Consent Decree resulted from several other episodes where CVS was careless with consumers' PHI data. In the order implementing that consent decree, CVS agreed it would not in connection with marketing or promoting any product or service (which would include the services contracted with the ODH and offered to be provided to Plaintiffs and Class members) "the extent to which it maintains and protects the privacy, confidentiality, security or integrity of personal information collected from or about consumers." Yet in obtaining the contract at issue from ODH, such security and CVS' compliance with state and federal privacy laws was one of the representations CVS focused upon in connection with selling its services and obtaining access to the PHI in question as part of the OhDAP. In addition, CVS was required as part of the FTC Order to establish, implement and maintain, with an independent third party, a "comprehensive information security program that is reasonably designed to protect the security,

confidentiality and integrity of personal information collected from or about consumers." CVS also was ordered to develop reasonable safeguards to "select and retain service providers capable of appropriately safeguarding personal information they receive" from CVS, and for those providers to implement and maintain such safeguards. Yet in connection with this particular breach, it appears CVS created program IDs that actually and directly referred to the medical condition of the consumer. CVS also made no effort to either test or quality control its mailings to ensure no PHI was publicly visible, or to prevent its vendors, including Fiserv, from using windowed envelopes that would disclose such information. The fact that Mr. Baker, the Chief Privacy Officer of CVS, and CVS' other statements to the media was simply that this breach was not "intentional", and that it would modify its procedures in place to ensure such an incident would not happen again, is significant evidence that Defendants' procedures – required to be in place under this FTC Order – were not adequate to protect the confidentiality of the PHI of Plaintiffs and Class members. Defendants' violations of the above provisions of the FTC Order combined with the cavalier use of such a program code directly above a consumers' name and address and the decision to use a windowed envelope disclosing that information, is in abrogation of all such applicable laws and obligations. Such conduct was thus in violation of the standards and commitments imposed under the agreement with ODH and Ohio law, upon both CVS and its vendor Fiserv.

27. Defendants also acted with a conscious disregard for the rights and safety of other persons that has a great probability of causing substantial harm, resulting in knowing conduct. Based on the representations, Codes of Conduct, agreements and orders set forth above, including the FTC Order, Defendants knew that it is unlawful and likely harmful to disclose patients' HIV status to the public, and that any persons whose PHI was disclosed were to be

separately notified of that breach. In addition to CVS's representations about its compliance with state and federal laws as described above, CVS states in its "Notice of Privacy Practices," "We are required by law to protect the privacy of your PHI and to provide you with this Notice explaining our legal duties and privacy practices regarding your [Protected Health Information]…. You have a right to be notified in the event there is a breach of your unsecured PHI as defined by HIPAA." https://www.cvs.com/content/patient-privacy (accessed June 5, 2018). Fiserv advertises its compliance as well: "From enrollment to payment, let Fiserv help you create, maintain and grow member engagement while adhering to the strongest risk and compliance standards, including HITRUST® CSF® certification." https://www.fiserv.com/customer-channel-management/output-solutions/healthcare-printing.aspx (accessed June 5, 2018). In addition, as alleged above CVS's Vendor Code of Conduct purports to require vendors, which would include Fiserv here, to ensure that their "use, disclosure, transmission, storage, and destruction of confidential information [is] in accordance with vendor/supplier contracts and applicable laws."

28. Contrary to these obligations that Defendants either knew or reasonably should have been aware of, after disclosing the PHI of over 6,000 Ohio residents, CVS hampered efforts to remediate the damage by failing to notify affected individuals and the United States Department of Health and Human Services, in violation of their own stated privacy policy and in violation of 45 C.F.R. §§ 164.400–414. One of the undersigned counsel sent CVS a letter advising CVS that it had violated HIPAA, asking for verification of the corrective measures that CVS had taken to ensure that breaches will not happen in the future, and demanding that CVS notify the affected individuals. Mr. Baker, CVS's Chief Privacy Officer, acknowledged receipt of the letter and stated that CVS was investigating this claim, and only later weakly stated in

response to public inquiry and outcry that its conduct was not "intentional" and would not happen again – of no relevance or comfort to the thousands of individuals impacted by this breach. What's worse, and as further evidence of the knowing nature of its wrongful act, in almost a year CVS did not communicate further or notify the approximately 6,000 affected individuals or the U.S. Department of Health and Human Services of this breach – even though its current merger partner Aetna, Inc., under virtually identical circumstances, did so within days of learning of a similar breach. Defendants' failure to provide a notification of this breach shows that it is knowingly attempting to cover up this wrongdoing by ignoring it.

29. Defendants' conduct is especially egregious in this instance because it was directed at a class of individuals historically subject to discrimination based upon their medical condition. Although many would like to believe a lot has changed since the U.S. Supreme Court held in 1998 that HIV/AIDS was subject to protections of the Americans with Disabilities Act[4], persons living with HIV and those at high risk of infection continue to battle for equal access to healthcare and rights. In fact, in a 2009 survey by Lambda Legal, "nearly 63 percent of the respondents who had HIV reported experiencing one or more of the following types of discrimination in health care: being refused needed care; being blamed for their healthcare status; and/or a healthcare professional refusing to touch them or using excessive precautions, using harsh or abusive language, or being physically rough and abusive."[5] Of those surveyed, 19% reported being denied care altogether. As Caremark pointed out on its own website, if patients can't trust their physicians and insurers to protect their health information, they will be less likely to seek important and potentially lifesaving medical treatment.

[4] *Bragdon v. Abbott*, 524 U.S. 624 (1988).

[5] https://www.lambdalegal.org/sites/default/files/publications/downloads/fs_hiv-stigma-and-discrimination-in-the-us_1.pdf, last accessed May 8, 2018. All statistics cited herein are taken from Lambda's report unless otherwise attributed.

30. Persons living with HIV (and their families) are also regularly subjected to employment and housing discrimination. In the 2000s, the U.S. Equal Employment Opportunity Commission received 2,175 complaints of discrimination based on HIV, with complaints peaking in the last year of the survey, demonstrating a disturbing *upward* trend. And, a 2009 national survey conducted by the Kaiser Foundation also showed that only 21% of people were comfortable living with someone with HIV. There are also numerous reported lawsuits over instances in which individuals with HIV (including children) have been denied housing and equal access because of their HIV status.

31. It is also well known that HIV and AIDS disproportionately impacts minority groups such as the LGBT community and African Americans. According to AmFAR, gay and bisexual men accounted for 82% of the United States' 1.2 million people living with HIV, with African-Americans accounting for 45% of HIV diagnoses but only 12% of the general population.[6]

32. The pervasive discrimination suffered by those with HIV or AIDS leads to a social stigma that results in significant harm, including a direct correlation to higher rates of depression, loneliness, and social isolation—and results in those suffering from (or at high risk of) the illness to avoid testing and treatment to avoid the negative consequences of a positive diagnosis. One meta-analysis of 119 studies "demonstrated that perceived interpersonal risks are associated with HIV disclosure and outlined evidence of associations with anxiety, fear and worry."[7] They may also run the risk of the loss of housing, relationships, and employment when their HIV status is revealed. A 2012 national survey by the Washington Post and the Kaiser

[6] http://amfar.org/About-HIV-and-AIDS/Facts-and-Stats/Statistics--United-States/, last accessed May 9, 2018.

[7] Michael Evangeli and Abigail L. Wroe, HIV Disclosure Anxiety: A Systematic Review and Theoretical Synthesis, AIDS Behavior (2017) 21:1–11, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5216111/pdf/10461_2016_Article_1453.pdf

Family Foundation showed that fewer than half of respondents would feel "very comfortable" working with someone who has HIV or AIDS, or having a teacher for their children who has HIV or AIDS. Only a third would feel "very comfortable" with having a roommate who is living with HIV, and fewer than a quarter would feel "very comfortable" having food prepared by someone who is living with HIV.[8] Such studies and analysis demonstrate that even if individuals living with HIV do not know and cannot show who may been made aware of their HIV status, acts such as at issue here increase stress and anxiety, and result in personal harm and injury in fact.

33. The State of Ohio, where Plaintiffs reside and where CVS has substantial operations, provides a right to privacy that encompasses unconsented medical information disclosures. "[I]t is for the patient—not some medical practitioner, lawyer or court—to determine what the patient's interests are with regard to personal confidential medical information." *Biddle v. Warren Gen. Hosp.*, 86 Ohio St. 3d 395, 408, 715 N.E.2d 518.528 (Ohio 1999); *see also Hageman v. Southwest Gen. Health Ctr.*, 119 Ohio St. 3d 185, 188-89, 893 N.E.2d 153, 156 (Ohio 2008) (applying the rule of *Biddle* to disclosures made by parties other than physicians or hospitals).

34. In addition to the general protection against the unwanted or unauthorized disclosure of medical information and PHI under state law, and the statutory and regulatory protections against the disclosure of PHI pursuant to HIPAA, 42 U.S.C. § 1320d-6 and the HIPAA Privacy Rules at 45 C.F.R. § 164.500, *et seq.*, the State of Ohio has enacted legislation to specifically protect HIV patients (and those at risk) in order to encourage testing and treatment. This legislation protects against the unauthorized disclosure of a person's HIV status such as the

[8] Washington Post and Kaiser Family Foundation, 2012 Survey of Americans on HIV/AIDS, https://kaiserfamilyfoundation.files.wordpress.com/2013/01/8334-f.pdf.

Defendants did here, pursuant to Ohio Rev. Code § 3701.243(A) (”no person or agency of state or local government that acquires the information while providing any health care service or while in the employ of a health care facility or health care provider shall disclose or compel another to disclose any of the following … (3) The identity of any individual diagnosed as having AIDS or an AIDS-related condition.”); *see also Ohio* Rev. Code 3701.244(B) (A person or agency of state or local government that knowingly violates … division (A) of section 3701.243 … may be found liable in a civil action; the action may be brought by any individual injured by the violation.”). In addition, applicable law requires companies to specifically identify to consumers who may have access to their PHI. Defendants have violated all of these laws. By taking the position Defendants were not obligated to notify either the U.S. Department of Health and Human Services or the affected consumers of what happened , even though they cannot deny a disclosure of PHI occurred, shows Defendants’ wanton and conscious disregard of the rights, feelings and safety of such persons.

35. The damages that result from the unauthorized disclosure of a person’s HIV status are significant. For example, an Ohio court awarded damages of $6,000 for the inadvertent disclosure of a prisoner’s HIV status to government employees, even though the plaintiff presented “no evidence as to the extent of his emotional distress.” *Miller v. Ohio Dep’t of Rehab. & Corr.*, No. 2016-00393-AD (Ohio Ct. Cl. Nov. 4, 2016).

36. In addition, Plaintiffs may be without adequate remedy at law, rendering equitable, injunctive and/or declaratory relief appropriate in that: (a) relief is necessary to inform the parties of their rights and obligations under the laws at issue herein; (b) damages may not adequately compensate them for the injuries suffered, nor may other claims permit such relief; (c) the relief sought herein in terms of correcting such practices and precluding the further use of

glassine envelopes may not be fully accomplished by awarding damages; and (d) if the conduct complained of is not corrected, harm may continue to result to members of the general public.

37. On personal knowledge, each of the Plaintiffs received the letter in question, publicly revealing their HIV status.

(a) John Doe One feels that CVS has essentially handed a weapon to anyone who handled the envelope, giving them the opportunity to attack his identity or cause other harm to him. He is also experiencing significant distress at home from receiving a mailing that used his name, address, birthdate and PHI from an entity with whom he had no business connection. He is rightfully concerned that members of his local community have or will learn of his HIV status.

(b) John Doe Two lives in a small town and fears the stigma that would result from the disclosure of his HIV status. The more people who know that he is living with HIV, the less safe he feels. In his town, many people still believe in "guilt by association," and thus his friends and family run the risk of being stigmatized just by being seen with him. He is concerned that people such as his postal delivery person now knows his HIV status, particularly since CVS forces him to obtain his HIV medications by mail order and he receives those medications at the same address. He is also experiencing significant distress based on the adverse consequences of a similar incident years ago.

(c) John Doe Three lives in a small town where "everyone knows everyone." He does not publicly disclose his HIV status, but has friends and relatives who work for the U.S. Postal Service who would have seen this mailing and discovered his HIV status because of the Defendants' mailing. He is also experiencing significant distress as a result of this disclosure,

including an understandable fear to leave his home, and has also experienced increased complications and health issues since this disclosure.

(d) John Doe Four has taken great pains to keep his HIV status private for many years. As a result of the disclosure of his HIV status, Plaintiff has suffered, and continues to suffer, ongoing harm, including the loss of his medical privacy, the disclosure of highly personal information, mental, emotional, and physical distress including panic, anxiety, loss of sleep, loss of productivity, and time spent dealing with the fallout of the disclosure. Moreover, Plaintiff remains in imminent threat of future harm from Defendants because they continue to maintain his PII and PHI but are not safeguarding it from unlawful disclosure in compliance with state and federal laws.

CLASS ALLEGATIONS

38. This action is brought by the Plaintiffs both on behalf of themselves and on behalf of all other similarly situated persons pursuant to Rule 23 of the Federal Rules of Civil Procedure. The Plaintiffs seek to represent the following class ("Class"):

> All participants in OhDAP to whom Defendants provided information to an unauthorized recipient and/or sent a mailing in or about July or August 2017 in which the participant's name and the letters "HIV" were visible through the envelope window.

39. The precise number and identity of Class members are unknown to the Plaintiffs but can be obtained from the records of Defendants. News reports have estimated the class number to be more than 6,000 persons.

40. Common questions of law and fact predominate over any questions affecting individual members of the Class. Such common legal and factual questions include the following:

(a) Whether Defendants' conduct was tortious and violated the applicable standard of care;

(b) Whether Defendants' conduct was unlawful, including in violation of the state and federal statutes and regulations cited above;

(c) Whether the Class members are entitled to damages and the extent of those damages; and

(d) Whether the Class members are entitled to injunctive or declaratory relief.

41. The Plaintiffs' claims are typical of the claims of the Class members because similar mailings to those identified above were sent to Plaintiffs and every Class member.

42. The Plaintiffs are willing and prepared to serve the Court and the proposed Class in a representative capacity. The Plaintiffs will fairly and adequately represent and protect the interests of the Class and have no interests adverse or antagonistic to or that materially and irreconcilably conflict with the interests of the other members of the Class. Based on the facts detailed above, the interests of the Plaintiffs are reasonably coextensive with those of absent Class members.

43. The Plaintiffs have engaged the services of counsel who are experienced in complex class litigation and the issues raised in this Complaint who will vigorously prosecute this action, and who will assert and protect the rights of and otherwise adequately represent the rights of the Plaintiffs and absent Class members.

44. Prosecuting separate actions by individual Class members would create a risk of inconsistent or varying adjudications with respect to individual Class members that would establish incompatible standards of conduct for Defendants.

45. By disclosing the PHI in question without having first obtained consent to do so and sending similar mailings to thousands of people and later refusing to send notification thereof Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making injunctive and declaratory relief appropriate respecting the Class as a whole.

46. Because all Class members are seeking the same relief based on the same course of conduct by Defendants, the questions of law or fact common to Class members as set forth in this Complaint predominate over any questions affecting only individual members. Thus, a class action is superior to other available group-wide methods for fairly and efficiently adjudicating this controversy, to the extent necessary in order to maintain this action on behalf of the Class.

CAUSES OF ACTION

Count I

Unauthorized, Unprivileged Disclosure to a Third-Party of Nonpublic Medical Information

47. The Plaintiffs repeat and re-allege all allegations as if fully incorporated and set forth herein.

48. An individual's HIV status is a fact learned within the physician–patient relationship. A patient has the right to privacy of this information.

49. To be eligible for OhDAP, an applicant must submit "medical verification documents" confirming the applicant's HIV status. Therefore, a person's participation in OhDAP necessarily reflects facts about that person's HIV status obtained from documents protected by the physician–patient privilege. A patient has the right to privacy of this information.

50. CVS disclosed the HIV status of Plaintiffs and Class members to Fiserv without the authorization of Plaintiffs and Class members.

51. Defendants also disclosed the HIV status of Plaintiffs and Class members, without their authorization, to third-parties, including government employees of the United States Postal Service without authorization, which was not privileged to receive this information, and disclosed this information to others, including families, friends, roommates, landlords, neighbors, and complete strangers.

52. Defendants have not been authorized by any of the Plaintiffs or Class members to disclose the Plaintiffs' and Class members' HIV status to any of the above persons or the public.

53. As a direct and proximate result of Defendants' actions, the Plaintiffs and Class members have suffered damages.

54. The Plaintiffs, on behalf of themselves and all Class members, seek relief, including but not limited to damages, injunctive relief, declaratory judgment, and punitive damages in amounts according to proof at time of trial.

Count II

Violation of Ohio Rev. Code § 3701.243

55. The Plaintiffs repeat and re-allege all of the allegations of the preceding Paragraphs as if fully incorporated and set forth herein.

56. At all times material herein Defendants have been subject to the requirements of § 3701.243. The information contained in the Notice was protected information because it contained "the identity of any individual diagnosed as having AIDS or an AIDS-related condition." Ohio Rev. Code Ann. § 3701.243(A)(3).

57. Ohio law prohibits disclosing any record mentioned above to another person without written consent or without statutorily enumerated authorization. Ohio Rev. Code Ann. § 3701.243.

58. CVS knowingly disclosed the HIV status, including having AIDS or an AIDS-related condition, of Class members to Fiserv without these Class members' advance written authorization.

59. Defendants also knowingly disclosed the HIV status, including having AIDS or an AIDS-related condition, of Class members, without their authorization, to the United States Postal Service without written authorization, which was not privileged to receive this information, and further potentially disclosed this information to others, including their families, friends, roommates, landlords, neighbors, and complete strangers.

60. These disclosures were made in connection with the provision of health care services in this State. Defendants violated Ohio law by knowingly disclosing, without receiving advance authorization from the Plaintiffs or any Class members:

> (1) The identity of any individual on whom an HIV test is performed; (2) The results of an HIV test in a form that identifies the individual tested; [or] (3) The identity of any individual diagnosed as having AIDS or an AIDS-related condition.

and without the required disclosures, in violation of Ohio Rev. Code § 3701.243(A)(1)-(3) and (E). The disclosed information was obtained while administering a state-run program, and providing a health care service, namely CVS's provision of pharmacy benefits management and pharmacy services to OhDAP and obtaining a contract for the sale of such services from ODH.

61. Based on the host of orders, laws, codes of conduct, and agreements set forth above, the Defendants knew about the laws governing confidentiality of HIV information in Ohio and federal law, and they knowingly committed the actions described above, which violated Section 3701.243(A).

62. As a direct and proximate result of Defendants' actions, the Plaintiffs and Class members have suffered damages.

63. The Plaintiffs and Class members have a private right of action for Defendants' violations of this law. Ohio Rev. Code § 3701.244(B).

64. The Plaintiffs and Class members seek relief, including but not limited to damages, punitive damages, injunctive relief, declaratory judgment, and attorneys' fees and costs.

Count III

Violation of Ohio Insurance Information and Privacy Protection Act

Ohio Rev. Code § 3904.01, *et seq*.

65. Plaintiffs repeat and re-allege the allegations of all Paragraphs as if fully incorporated and set forth herein.

66. Plaintiffs' and Class Members' HIV-medication information was "personal information" as defined under Ohio Rev. Code § 3904.01(R) because it was "individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about and individual's character, habits, avocations, finances, occupation, general reputation, credit, health or any other personal characteristics."

67. Defendants disclosed without authorization or legal basis personal information regarding Plaintiffs and Class Members to third-parties that was collected or received in connection with an insurance transaction, in violation of Ohio Rev. Code § 3904.13. Plaintiffs and Class Members have been harmed by Defendants' willful and unauthorized disclosures of their personal information.

68. Plaintiffs and Class Members seek relief under Ohio Rev. Code § 3904.21, including but not limited to, actual damages, injunctive relief, and attorneys' fees and costs.

Count IV

Declaratory Relief

28 U.S.C. § 2201

69. Plaintiffs repeat and re-allege the allegations of all Paragraphs as if fully incorporated and set forth herein.

70. An actual controversy has arisen and now exists between Plaintiffs and the putative Class on the one hand, and Defendants on the other, concerning Defendants' failure to protect Plaintiffs' and Class Members' PHI in accordance with applicable state and federal regulations and the agreements between the parties. Plaintiffs and the Class Members contend that Defendants failed to maintain adequate and reasonable privacy practices to protect their PHI while on the other hand, Defendants contends they have complied with applicable state and federal regulations and its agreements with Plaintiffs and Class Members to protect their PHI.

71. Accordingly, Plaintiffs and Class Members are entitled to and seek a judicial determination of whether Defendants have performed, and are performing, the medical privacy practices and obligations necessary to protect and safeguard Plaintiffs' and Class Members' PHI from further unauthorized access, use and disclosure or insecure disposal.

72. A judicial determination of the rights and responsibilities of the parties over Defendants' medical privacy practices is necessary and appropriate at this time so that: (a) the rights of the Plaintiffs and the Class may be determined with certainty for purposes of resolving this action; and (b) so that the parties will have an understanding of Defendants' obligations in the future given their continuing legal obligations and ongoing relationship with Plaintiffs and Class Members.[9]

[9] In their previous complaints, Plaintiffs asserted claims for violation of the Fair Credit Reporting Act, breach of confidentiality, breach of fiduciary duty, negligence, negligence *per se*,

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs, individually and on behalf of the Class, demand judgment against the Defendants, jointly and severally, as follows:

A. Determine that this action may proceed as a class action under Fed. R. Civ. P. 23, appoint the Plaintiffs as the class representatives, and appoint the Plaintiffs' undersigned counsel as counsel for the Class;

B. Declare that Defendants have engaged in unauthorized, non-privileged disclosure to a third-party of non-public PHI;

C. Declare that Defendants have violated Ohio Rev. Code § 3701.243 et seq., and 3904.01 et seq.;

D. Declare that Defendants have breached the confidentiality of Plaintiffs and Class members;

E. Enjoin Defendants from disclosing the HIV status of individuals without authorization, including by refraining from using a glassine envelope for any communications where the HIV status of any individual is disclosed in any way;

F. Enjoin Defendants from refusing to notify affected individuals and the United States Department of Health and Human Services Office for Civil Rights of the conduct at issue;

G. Award compensatory and punitive damages to the Plaintiffs and the Class;

H. Award pre- and post-judgment interest, reasonable costs, attorneys' fees and expert fees, expenses and costs of prosecuting this action to the Plaintiffs and the Class;

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breach of contract, invasion of privacy, and intentional infliction of emotional distress. The Court dismissed these claims. Plaintiffs reassert these claims here, and incorporate their previous complaints, only to the extent necessary to preserve these claims for appeal. *See Hayward v. Cleveland Clinic Found.*, 759 F.3d 601, 616–18 (6th Cir. 2014) (holding that a plaintiff generally need not replead dismissed claims to preserve them for appeal).

I. Grant any other relief that the Court deems just and proper.

JURY TRIAL DEMANDED

The Plaintiffs, individually and on behalf of the Class, demand a jury trial on all claims so triable pursuant to Federal Rule of Civil Procedure 38.

DATED: February 27, 2019

Respectfully Submitted,

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Exhibit 4

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

JOHN DOE ONE; JOHN DOE TWO; JOHN DOE THREE; and JOHN DOE FOUR, on behalf of themselves and all similarly situated individuals, *Plaintiffs,* v. CAREMARK, L.L.C.; FISERV, INC., FISERV SOLUTIONS, LLC; and DEFENDANTS DOES 1–10, *Defendants.*	No. 2:18-cv-00238-EAS-CMV No. 2:18-cv-00488-EAS-CMV (Consolidated for all purposes) CLASS ACTION

PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I. INTRODUCTION

Plaintiffs John Does One through Four (hereinafter "Plaintiffs" or "Class Representatives") filed this class action lawsuit on behalf of themselves and all individuals enrolled in the Ohio HIV AIDS Drug Assistance Program ("OhDAP[1]") who were sent a mailing in August 2017 with the letters "HIV" in a program code displayed directly above their names and addresses, which could be viewed through a regular glassine envelope (the "OhDAP Mailing"). As a result of the OhDAP Mailing, Plaintiffs' Consolidated Amended Class Action Complaint alleges that Defendants Caremark, L.L.C. ("Caremark"), Fiserv, Inc. and Fiserv Solutions, LLC (collectively, "Fiserv," and with Caremark, the "Defendants") unlawfully disclosed Confidential HIV-related Information of Plaintiffs and approximately 4,500 Settlement Class Members and, after this Court's Order on Defendants' Motions to Dismiss, Dkt. No. #59, asserts claims for (1) the unauthorized, unprivileged disclosure to a third party of nonpublic medical information (a "*Biddle* claim"), (2) violation of Ohio Rev. Code § 3701.243, (3) violation of Ohio Rev. Code § 3904.01, and (4) and declaratory relief.

Plaintiffs and Defendants, through their respective counsel, have entered into a Settlement Agreement ("Settlement" or "Settlement Agreement"), which is attached as Exhibit 1 to the Joint Declaration of Henry Quillen and Matthew Wilson ("Decl."). The Settlement Agreement will create a non-reversionary cash settlement fund of $4,400,000, which will provide substantial, meaningful and immediate benefits for all of the Settlement Class Members. The underlying purposes of this lawsuit have been achieved by the Settlement by providing both: (1) direct compensation of *at least* $400 to all Settlement Class Members *without* the necessity of filing a

[1] Capitalized terms have the same meaning as set forth in the Settlement Agreement unless otherwise stated.

claim and *also* providing Settlement Class Member's the ability to make a claim for up to an *additional* $12,500 for monetary losses and emotional distress per person; and (2) modifying the OhDAP program code to remove the letters "HIV" and providing medical privacy training to its employees who manage the OhDAP relationship. The terms of the payment allocation and claims process are detailed in the Settlement Agreement and are described more fully below. The Settlement Agreement and administration process use special, comprehensive methods to protect Confidential HIV-related information. Settlement Class Members who choose to do so may submit claims by mail or via the Internet via a HIPAA-compliant secured web portal.

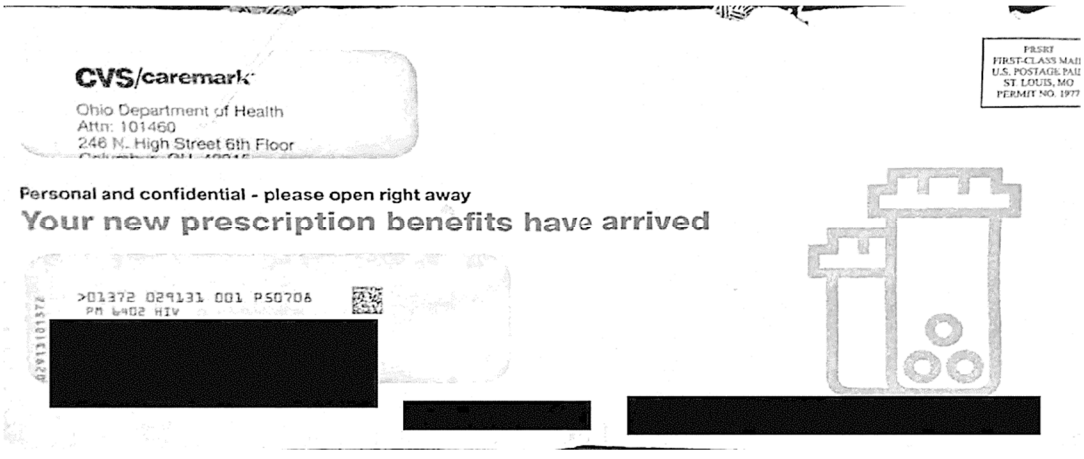
Counsel for Plaintiffs respectfully submit that the terms of the Settlement Agreement are more than fair, reasonable, and adequate, and should be preliminarily approved. Indeed, Plaintiffs submit that this Settlement is an excellent result for plaintiffs in patient privacy class actions and compares favorably with many other federal court-approved settlements in comparable cases. At this first stage of the settlement approval process, Plaintiffs respectfully request that the Court enter the proposed Preliminary Approval Order attached as Exhibit B to the Settlement Agreement, which will among other things: (1) certify the proposed Settlement Class pursuant to Rule 23(e) of the Federal Rules of Civil Procedure; (2) appoint Whatley Kallas, LLP, Meyer Wilson Co, LPA, The Law Offices of Terry L. Kilgore, and Kaplan Fox & Kilsheimer, LLP as Co-Lead Settlement Class Counsel; and Consumer Watchdog and Lambert Law Firm, LLC as Class Counsel, and the Plaintiffs as Class Representatives; (3); approve the proposed Notice of Settlement and Short Form Notice (attached as Exhibits C and D to the Settlement Agreement) and proposed notice plan; (4) approve Heffler Claims Group as the Settlement Administrator to provide notice and administer the Settlement; (5) enter a Qualified Protective Order in accordance with the requirements of HIPAA and relevant state law and order Caremark to provide the Class List to the Settlement

Administrator; (6) set a date for Plaintiffs to file a motion for final settlement approval and petition for an award of attorneys' fees and costs, payment of Settlement Administrator fees and costs, and service awards to the Representative Plaintiffs; (7) schedule the Final Approval Hearing for final settlement approval; and (7) preliminarily find the terms of the proposed Settlement Agreement fair, reasonable, and adequate.

II. FACTUAL AND PROCEDURAL BACKGROUND[2]

The Ohio Department of Health ("ODH") administers OhDAP, which provides "medications to fight HIV and to treat HIV-related conditions" free of charge to Ohio residents who have a confirmed diagnosis of being HIV-positive. Dkt. # 74, ¶¶ 13–15. In 2017, ODH entered into an exclusive contract with Caremark for Caremark to provide pharmacy benefit management services for the provision of life-saving HIV medications to OhDAP participants. *Id.* ¶ 19.

In August 2017, as part of its administration, Caremark, via subcontract with Defendant Fiserv, sent the following "welcome letter" to program participants:



Id. ¶¶ 9, 21. The OhDAP Mailing contained information concerning Caremark's management of

[2] Defendants deny all substantive allegations in the Consolidated Complaint, including those described herein.

OhDAP and explained how participants would access their HIV-related prescriptions. *Id*. ¶ 20.

In issuing the OhDAP Mailing, Plaintiffs allege that Defendants violated Ohio's statutory and common law medical privacy protections by: (1) unlawfully providing the names and addresses of approximately 4,505 OhDAP participants to Fiserv, but without ODH's or Settlement Class Members' prior approval; and (2) by disclosing Confidential HIV-related Information to third-parties in the way the OhDAP Mailing was issued.[3] More specifically, in the transparent window on the line above the recipient's name and address, "PM 6402 HIV" was displayed under the statement in red text that "Your new prescription benefits have arrived." Plaintiffs allege that the information in the top left window makes it clear that the OhDAP Mailing is from both CVS/Caremark and ODH. *Id*. Thus, Plaintiffs allege that anyone exposed to the letter (such as family members, roommates, neighbors, mail carriers, and others), without even opening it, would (1) know that the communication was at the behest of the ODH; (2) the communication related to "new prescription benefits" and (3) the communication referred to "HIV" directly above the patient's name and address. *Id*. ¶ 22. Plaintiffs allege that someone seeing this letter would thus be able to reasonably infer the individual was part of a state-sponsored medication benefits program managed by Caremark to obtain HIV medications. *Id*.

On March 21, 2018, Plaintiffs John Does One through Three filed an action on behalf of a class of those who received the OhDAP Mailing against various Caremark entities, Fiserv, Inc., and Doe Defendants. (Dkt. #1). On May 16, 2018, Plaintiff John Doe Four filed *John Doe v. CVS Health Corporation et al.*, No. 18-cv-488 (S.D. Ohio), alleging similar and additional claims on behalf of the same class. On June 13, 2018, the cases were designated as related. (Dkt. #40).

[3] Based on publicly available information about OhDAP and the Mailing, the Plaintiffs alleged that approximately 6,000 people received the Mailing. The actual number of Class Members is 4,505. See Declaration ¶ 11.

Defendants moved to dismiss both cases pursuant to Federal Rule of Civil Procedure 12(b)(6). (Dkt. #29, 33). While the motions were pending, the Plaintiffs and Caremark participated in mediation on October 24, 2018 with the Honorable James R. Melinson (Ret.) of JAMS in Philadelphia. Declaration ¶ 4. The participating Parties did not reach settlement. *Id*. The motions were fully briefed, and on December 21, 2018, the Court issued a consolidated ruling, permitting Plaintiffs to proceed on their Ohio-based statutory claims, their common-law *Biddle* medical privacy claim, and seek declaratory relief. (Dkt. #59). The two matters were formally consolidated on January 17, 2019 (Dkt. #65), and thereafter, the Plaintiffs filed the Consolidated Complaint. (Dkt. #74). Defendants filed their Answers to the operative Complaint on March 20 and April 5, 2019 (Dkt. #79, #80), asserting numerous affirmative defenses and maintaining that class certification would be inappropriate.

During and after the pleading motions and consolidation, the Parties engaged in thorough discovery, exchanged initial disclosures and written discovery requests and responses, and negotiated a comprehensive HIPAA-compliant protective order. Declaration ¶ 5. Defendants ultimately produced over 1,200 pages of documents in response to Plaintiffs' requests, including: (1) documents identifying the size of the Settlement Class, and (2) documents regarding the OhDAP Mailing. *Id*. The Parties also spent a significant amount of time negotiating a discovery protocol, a custodian list, and targeted search terms in order to obtain email and other documents responsive to Plaintiffs' requests, during which Plaintiffs obtained valuable information on the roles Defendants and their employees played regarding the OhDAP Mailing.

Plaintiffs also conducted an intensive, independent factual investigation of the claims. *Id*. In addition to speaking with many Settlement Class Members regarding their experiences with the OhDAP Mailing, Plaintiffs subpoenaed ODH for the relevant information and reviewed

documents obtained under Ohio's Open Records Law. The resulting productions of more than 1,200 additional pages of documents provided additional, new information about OhDAP Mailing. *Id*. Collectively, Defendants' and ODH's document productions provided Plaintiffs with more than a sufficient means to further assess the strengths and weaknesses of their claims prior to the time the parties agreed to and participated in a second mediation. *Id*.

On May 9, 2019, Plaintiffs and Caremark participated in a second mediation with the Honorable Morton Denlow (Ret.) of JAMS in Chicago. The mediation included extensive negotiation as well as the informal exchange of relevant information. *Id*. ¶ 6. All negotiations between Caremark and Plaintiffs were at arm's-length and hard fought. *Id*. At the end of that mediation session the parties executed a detailed term sheet. The Parties then spent months working through the details of the Settlement, including the proposed distribution of the settlement funds and the notice procedures set forth below. The Parties spent a tremendous amount of time working through logistical challenges presented by the privacy issues implicated in this case to ensure no loss of or access to Confidential HIV-related Information. On September 9, 2019, the parties executed the Settlement Agreement. *Id*.

III. THE PROPOSED SETTLEMENT

A. The Settlement Class

Plaintiffs and Defendants have stipulated in the Settlement Agreement and request the Court certify a class under Fed. R. Civ. P. 23(b)(3) for settlement purposes only defined as "all persons to whom the OhDAP Mailing was mailed, provided, or sent for delivery as identified on the Class List." "Class List" is defined as "the list provided by Caremark to the Settlement Administrator containing the names of all Settlement Class Members, along with their last known addresses received by Caremark from OhDAP and any other appropriate identifying information."

B. Settlement Fund

The Settlement Agreement requires Caremark to establish a non-reversionary Settlement Fund of $4,400,000, to be distributed as follows: (1) an automatic Base Payment of $400 to each Settlement Class Member *without* the need to file a Claim Form; (2) each Settlement Class Member may submit a Claim Form for up to $10,000 in Financial Harm, which includes, for example, any moving costs, counseling costs, loss of income, or other non-reimbursed out-of-pocket expenses upon a showing of reasonable proof resulting from the OhDAP Mailing; (3) each Settlement Class Member may also submit a Claim Form for up to $2,500 in Non-Financial Harm, such as emotional distress or disclosure of HIV status to roommates or employers, based on a questionnaire set forth in the Claim Form; (4) Class Representative Service Awards of $3,500 for each of the four Class Representatives; (5) costs of the Settlement Administrator (estimated to be $120,000); and (6) attorneys' fees of up to 33 1/3% of the Settlement Fund, plus costs of litigation. Should there be excess funds in the Settlement Fund after payment of the items above, each Settlement Class Member's Base Payment of $400 shall be *increased* on a *pro rata* basis. If the amount of potential Claimant Awards for those Class Members who submit claims exceeds the apportionment of funds set aside for Claimant Awards, then *only* the Claimant Awards will be reduced on a *pro rata* basis. There is no circumstance in which the automatic Base Payment be reduced to less than $400. Decl. ¶ 11. Finally, if it is not administratively and/or economically feasible to make a *pro rata* distribution, then Plaintiffs' counsel will make an application to the Court to approve a final distribution of any remaining funds to a *cy pres* entity, which recommendation shall be mutually agreed upon by the Parties. A detailed description of the distribution of the Settlement Fund is set forth in Exhibit H to the Settlement Agreement.

C. Non-Monetary Relief

Plaintiffs also negotiated implementation of changes with Caremark, namely (1) revising

the OhDAP program identification number to remove the letters "HIV" and (2) providing medical privacy training to Caremark employees who manage the OhDAP relationship. Settlement Agreement, ¶¶ 5.1-5.5. Plaintiffs believe such changes enhance privacy protection going forward.

D. Administration Costs, Incentive Awards, and Attorneys' Fees and Costs

The Settlement Agreement provides that all costs of settlement administration will be paid out of the Settlement Fund. After a competitive bidding process from four companies, the Plaintiffs and Caremark have recommended the Court appoint Heffler Claims Group as the Settlement Administrator. In addition to Heffler's experience as a class action notice and claims processor, Heffler has specific expertise in cases involving sensitive privacy concerns, and Plaintiffs and Caremark have extensively worked with Heffler to develop a privacy sensitive plan for notice and administration that minimizes the possibility that a Settlement Class Member's HIV status will be disclosed. These procedures are described in Exhibit G to the Settlement Agreement, and include, privacy-conscious mailing procedures; assigning a unique, anonymous class member identification number so that Settlement Class Members do not need to use their names when communicating with the Settlement Administrator; establishing protocols at Heffler that will avoid the disclosure of Class Members' names to other than a very limited number of personnel; the establishing a HIPAA-compliant web portal permitting Class Members to file claims online; and permitting Class Members to file objections or opt-outs without the disclosure of their identities publicly. Heffler is ultimately responsible for ensuring that these protocols are properly implemented and executed. See Declaration of James Prutsman ("Prutsman Decl.").

Plaintiffs' counsel will also request that the Court approve incentive awards for the Class Representatives in the amount of $3,500 per Plaintiff ($14,000 total). In addition, Plaintiffs' counsel will also petition the Court for reasonable attorneys' fees of no more than 33 1/3% of the Settlement Fund, which is consistent with the percentage of the common fund approach typically

applied by Courts in this District—as well as and costs of litigation. Decl. ¶ 12. Plaintiffs will provide all necessary support for their requested attorneys' fees and costs in connection with the final approval and attorneys' fees motions, the latter of which will be filed before the expiration of the Objection Deadline so that Settlement Class Members can comment should they so choose. Decl. ¶ 12.

E. Notice Plan

The Settlement Agreement provides for notice to the Settlement Class Members, including direct notice by U.S. first class mail in the format suggested by the Federal Judicial Center to virtually all Settlement Class Members. In keeping with the sensitive nature of this case, mailings will be made in opaque envelopes that do not reveal anything about the recipient's health status on the outside of the envelope and contain warnings that the envelope should only be opened by the intended recipient or addressee. Each Settlement Class Member for which an address is available will be sent the Notice of Settlement as well as a Claim Form, both of which carefully avoid any direct reference to HIV or AIDS. Because there are a few dozen Settlement Class Members for whom no recent address is available, the notice plan will also: (1) provide ODH with copies of the Notice of Settlement to distribute to OhDAP caseworkers who can let current and former clients know about the settlement and where to get more information[4]; and (2) limited publication notice targeted towards the relevant demographics and community groups.

The Settlement Administrator will also: (1) establish a HIPAA-compliant Settlement Website (OhioPrivacySettlement.com) where the Settlement Agreement, Notice of Settlement,

[4] Address information will likely be available for more than 98% of Settlement Class Members. In addition, each OhDAP participant is assigned a social worker. Although ODH is not a party to the Settlement Agreement, Plaintiffs have secured its cooperation in letting OhDAP caseworkers know about the settlement so that they can encourage and assist Settlement Class Members with filing claims and potentially notify Settlement Class Members who are experiencing homelessness or may not have a current physical address on file with ODH.

and other relevant documents and orders will be posted *and* through which Claims can be submitted; (2) establish a dedicated, toll-free telephone number that Class Members can call to hear information regarding the Settlement and speak with a live operator who will be specially trained in the privacy concerns this case presents. All costs of disseminating the notice and setting up a settlement website will be included in the costs of settlement administration and will be paid out of the Settlement Fund.

F. Settlement Class Members' Releases

In consideration of the relief provided, Settlement Class Members will release their claims against Defendants (and Defendants' respective Affiliates) and ODH that result from, arise out of, are based upon, or relate to the Incident, OhDAP Mailing, the facts, circumstances, or allegations in the above-captioned litigation (i.e., in either 2:18-cv-238-EAS-CMF or 2:28-cv-00488-EAS-CMV), as set forth in greater detail in the Settlement. The Settlement does not release claims relating to actions taken after the Effective Date of the settlement. Settlement Agreement., ¶ 7.2.

G. Exclusion and Objections

Settlement Class Members may choose to opt out of the Settlement Class within 60 days after mailing of the Notice. Settlement Class Members may file an objection to the Settlement within 60 days after mailing of the Notice and can do so without disclosing their names publicly should they so choose. The Agreement permits Caremark to not go through with the settlement if a certain number of Class Members submit timely, valid opt out requests, which can be submitted to the Court.

IV. ARGUMENT

A. The Applicable Legal Standard

The settlement of a class action requires court approval. Consistent with Rule 23(e), district courts in this District and throughout the Sixth Circuit review class action settlement proposals

using a three-step process: (1) issuing a preliminary settlement approval order based on the submission of the parties; (2) disseminating notice to the class of the proposed settlement; and (3) conducting a fairness hearing after dissemination of that notice, "after which the Court must decide whether the proposed settlement is fair, adequate, and reasonable to the class as a whole, and consistent with the public interest." *Levell v. Monsanto Research Corp.*, 191 F.R.D. 543, 547 (S.D. Ohio 2000) (citations omitted). With this motion, Plaintiffs request that the Court take the first step in the approval process by granting preliminary approval of the proposed settlement. This procedure, used by courts in this Circuit, safeguards class members' due process rights and enables the Court to fulfill its role as the guardian of class action interests. *See* Herbert V. Newberg & Alba Conte, Newberg on Class Actions, §13:1 (5th ed. 2018).

The preliminary approval of a proposed settlement is based on the Court's "familiarity with the issues and evidence of the case as well as the arms-length nature of the negotiations prior to the settlement." *Robinson v. Ford Motor Co.*, No. 1:04-CV-00844, 2005 WL 5253339, at *3 (S.D. Ohio June 15, 2005). The Court "should also determine that the settlement is neither illegal nor collusive." *Id*. If the Court later finally concludes after giving class members the opportunity to submit their views on the settlement that the settlement is "fair, reasonable and adequate," the Court finally approves the settlement. Fed. R. Civ. P. 23(e)(2). *See Stinson v. Delta Management Assoc., Inc.*, 302 F.R.D. 160, 164 (S.D. Ohio 2014).

The Sixth Circuit has recognized "that the law generally favors and encourages the settlement of class actions." *Franks v. Kroger Co.*, 649 F.2d 1216, 1224 (6th Cir. 1981) *on reh'g*, 670 F2d 71 (6th Cir. 1982). (citations omitted). Class actions and other complex matters are unique in that the inherent costs, delays, risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain.

B. The Proposed Settlement Is an Excellent Result for the Settlement Class, and There are No Deficiencies to Cast Doubt on Its Fairness.

The Settlement Agreement exceedingly meets the standard for preliminary approval under Rule 23(e). Under the terms of the Settlement, the non-reversionary fund of $4.4 million will provide significant monetary relief to the Settlement Class. To compensate the Settlement Class Members for the alleged improper disclosure of their HIV status, every Settlement Class Member has the right to receive $400 out of the Settlement Fund *without* filing a claim, *and* the ability to claim up to $12,500, using simple and expeditious methods for doing so.

A comparison with the monetary recovery in a similar privacy breach case demonstrates the strength of this settlement. In October 2017, Aetna, Inc. entered into a class action settlement arising out of a similar alleged disclosure of HIV status in a mailing. Decl. ¶ 7. In that case, each class member who received the mailing automatically received a check for $500, as well as the ability to claim additional monies based on particular monetary losses and emotional distress they incurred. *Id*.

The amount automatically paid to Settlement Class Members in this case ($400) is commensurate to what was paid in the Aetna settlement ($500), and both offered claims procedures to claim additional compensation. Although the settlements were comparable and Aetna was approved *without a single objection*, there were some important, material differences between these two actions. First, and most significantly, Aetna settled the case almost immediately without even filing a motion to dismiss. By contrast, multiple Defendants in this case vigorously contested the pleadings, and continued to strongly defend the lawsuit by engaging in protracted discovery negotiations and maintaining that the case would not be suited for class certification on Plaintiffs' untested legal theories. Indeed, Plaintiffs are not aware of a prior case certifying a class action under either of the Ohio statutory causes of action at issue in this case or the Ohio common law

Biddle claim. Second, the Aetna case involved almost 14,000 individuals nationwide, garnered nationwide media publicity, and implicated statutory claims in other states that provided significant statutory damage awards (such as California's Confidentiality in Medical Information Act, Cal. Civ. Code section 56, *et seq*.) that were not available to Plaintiffs here. Third, there were some factual differences that Defendants in this case asserted would limit or obviate Plaintiffs' ability to recover, such as that the term "HIV" was being used as part of a group code, and thus Defendants' argued the OhDAP Mailing was not as a direct disclosure of the medications that the individuals were taking or of their HIV status in the same manner that was done in the Aetna matter. *Id*. Accordingly, given that Defendants were vigorously defending this case, that Plaintiffs' ultimate recovery is close to par with that in the Aetna case is all the more remarkable and demonstrative of the settlement's reasonableness.

In addition, the Settlement here exceeds what has been recovered in other medical and data privacy breach settlements. For example, this Settlement provides many multiples of the direct compensation than that available in recent multidistrict litigation over Anthem's massive data breach of medical information, which only provided credit monitoring services or $50 for each class member—and required them all to file a claim to obtain anything. *In re Anthem, Inc. Data Breach Litig.*, No. 15-md-02617 (N.D. Cal.) (80 million class members and case settled for a $115 million, including nearly $40 million in attorneys' fees). *In re Target Corp. Customer Data Security Breach Litig.*, No. MDL 14-2522, 2015 WL 7253765 (D. Minn.) (settled for a $10 million total fund for breach of 97 million credit card numbers). *See also* Decl. ¶ 8.

Here, Settlement Class Members will automatically receive a settlement check of $400. This structure was established to recognize Plaintiffs' claim that the potential disclosure of Settlement Class Members' Confidential HIV-related Information to third-parties may have

resulted in significant distress and subjected them to potential discrimination and complications in their personal lives. The automatic $400 payment also recognizes that some Settlement Class Members may not want to submit additional personal information in order to receive funds from the Settlement. At the same time, as in the Aetna case, the Settlement here also properly provides an opportunity for individuals who claim to have experienced additional harm, such as out-of-pocket expenses for counseling, or emotional harm from unwanted disclosure of their HIV status to a friend or relative, to recover additional funds for their injuries. And, while an imperfect art, Plaintiffs believe they simplified the claims procedures from the Aetna matter and with the benefit of looking at the claims rates in related matters set appropriate maximum recoveries for Financial and Non-Financial Harm.

The Settlement represents an excellent result given the risks of continued litigation, which would require a substantial amount of time to yield any benefit to the Settlement Class Members. While Plaintiffs contend that they could ultimately establish that the OhDAP Mailing contravened Ohio law, this issue is far from certain and Defendants vigorously contest the claims asserted. Defendants denied any disclosure occurred and that any putative class member had been injured, among other arguments. These arguments would negatively impact the likelihood of class certification. These factors were all taken into account in reaching the Settlement Agreement. Decl. ¶ 13.

C. The Settlement Agreement Is the Product of Informed, Non-Collusive Negotiation After a Significant Investigation of Plaintiffs' Claims.

As part of the negotiation process, the participating Parties engaged in extensive negotiations and two full day mediations with former federal judges and experienced mediators. The successful mediation was conducted fairly and at arm's-length before an experienced mediator, Judge Denlow. Decl. ¶¶ 4,6. *Bert. V. AK Steel Corp.*, 2008 WL 4693747, *2 (S.D. Ohio

Oct. 23, 2008) ("[t]he participation of an independent mediator in settlement negotiations virtually insures that the negotiations were conducted at an arm's length and without collusion between the parties."). The terms of the agreement reached during the mediation before Judge Denlow were only arrived at after: (1) an early failed mediation, (2) review of key documents produced in discovery and obtained through an independent investigation; and (3) the ruling on Defendants' pleading challenges. Decl. ¶ 4. Thus, there is no dispute that the Settlement was reached on an informed legal and evidentiary record and via non-collusive means by an independent and highly regarded neutral.

V. The Court Should Provisionally Certify the Settlement Class

In connection with preliminary approval, Plaintiffs request the Court certify for settlement purposes only the following Class under Rule 23(b)(3):

> **All persons to whom the OhDAP Mailing was mailed, provided, or sent for delivery, as identified on the Class List.**

A. The Settlement Class Is Sufficiently Numerous

Rule 23(a)(1)'s numerosity requirement is met if the class is "so numerous that joinder of all members is impracticable." *Swigart v. Fifth Third Bank*, 288 F.R.D. 177, 182 (S.D. Ohio 2012). "There is no strict numerical test for determining impracticability of joinder," *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1079 (6th Cir. 1996), but courts routinely hold that "a class of 40 or more members is sufficient to meet the numerosity requirement," *Castillo v. Morales, Inc.*, 302 F.R.D. 480, 487 (S.D. Ohio 2014). The proposed class consists of 4,505 individuals.

B. The Proposed Settlement Class Satisfies the Commonality Requirement

Commonality under Rule 23 "is satisfied when the legal question linking the class members is substantially related to the resolution of the litigation." *Swigart*, 288 F.R.D. at 183 (quoting *DeBoer v. Mellon Mortgage Co.*, 64 F.3d 1171, 1174 (8th Cir. 1995)). However, "individual class

members need not be 'identically situated' to meet the commonality requirement." *Id.* (quoting *Parkhill v. Minn. Mut. Life Ins. Co.*, 188 F.R.D. 332, 338 (D. Minn. 1999)). Here, the commonality requirement is met because the factual questions regarding the reasonableness of this settlement are the same. The claims of the Class Representatives and each of the Settlement Class Members are predicated on the same alleged conduct by Defendants—the OhDAP Mailing that disclosed the Plaintiffs' and Settlement Class Members' HIV status.

C. The Claims of the Named Plaintiffs are Typical of the Settlement Class

Under Rule 23(a)(3), "the claims … of the representative parties [must] be typical of the claims … of the class." *Swigert*, 288 F.R.D. at 185. Commonality and typicality "are separate and distinct requirements" but "tend to merge" and "are often discussed together." *Id.* (quoting *Gen. Tel. Co. v. Falcon*, 457 U.S. 147, 157 n.3 (1982)). Here, the typicality requirement is met because the claims of the Class Representatives and each of the Settlement Class Members are predicated on the theory that Defendants' conduct related to the OhDAP Mailing was unlawful. Accordingly, they each satisfy the typicality requirement.

D. The Proposed Class Representatives and Their Counsel Are Adequate Representatives

Rule 23(a)(4) requires that "the representatives parties will fairly and adequately protect the interests of the class." The two criteria for this are: "(1) the representatives must have common interests with unnamed members of the class, and (2) it must appear that the representatives will vigorously prosecute the interests of the class through qualified counsel." *Swigart*, 288 F.R.D. at 185-86 (quoting *Senter v. Gen. Motors Corp.*, 532 F.2d 511, 525 (6th Cir. 1976)).

As set forth in the attached declarations, Class Counsel are highly qualified and particularly suited to representation the Settlement Class in this case. The law firms of Whatley Kallas, Kaplan Fox & Kilsheimer, Meyer Wilson, and Consumer Watchdog have substantial experience in

consumer and data privacy class actions and have adequately represented the Settlement Class herein by avoiding potential conflicts of interest. Decl. ¶ 17. Additionally, Class Counsel Terry Kilgore has decades of experience representing individuals living with HIV in Ohio. There is nothing to suggest the Class Representatives have interests materially antagonistic to or that would irreconcilably conflict with those of the Settlement Class. Rather, all share a common interest in obtaining appropriate compensation and non-monetary relief for the Settlement Class. Plaintiffs Does One through Four have been diligent in prosecuting this case. These Plaintiffs risked subjecting themselves to scrutiny in their most personal matters by Defendants and the disclosure of their identities publicly, and have collectively spent dozens of hours assisting counsel, reviewed and approved the settlement, and otherwise kept apprised of the case developments. Decl. ¶ 17.

E. The Settlement Class Satisfies the Predominance and Superiority Requirements of Rule 23(b)(3).

Rule 23(b)(3) requires that "questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficient adjudication of the controversy." Rule 23(b)(3) contains two requirements: predominance and superiority. These claims satisfy both.

The predominance inquiry requires the Court to ask "whether the proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 623 (1997). The predominance inquiry is about whether class-wide questions are at the heart of the litigation." *Powers v. Hamilton County Public Defender Comm.*, 501 F.3d 592, 619 (6th Cir. 2007). As described above, the Settlement Class members' claims are founded upon common questions of law and fact. Thus, a common question that can be answered for all class members predominates over any individual questions. Any individualized questions regarding damages do not defeat the predominance requirement. *See Beattie v. CenturyTel, Inc.*, 511 F.3d

554 (6th Cir. 2007) (where liability can be determined on a class-wide basis, common issues predominate even when there are some individualized damage issues).

The superiority requirement of Rule 23(b)(3) requires the Court to find that a class action is superior to other available methods for the fair and efficient group wide adjudication of the dispute and lists four factors for the courts to consider: (1) the interests of the class members in individually controlling the prosecution of separate actions; (2) the extent and natures of other pending litigation about the controversy by members of the class; (3) the desirability of concentrating the litigation in a particular forum; and (4) the difficulties likely to be encountered in the management of the class action. Fed. R. Civ. P. 23(b)(3). Each factor weights in favor of certification of the Settlement Class for settlement purposes.

There is no evidence that the Settlement Class Members have any interest in maintaining this litigation in separate actions. Indeed, the only two separate actions that were filed arising out of this issue were consolidated into this action. The Settlement Agreement and Rule 23 mechanism allows the putative class members to preserve the medical privacy that was alleged to have been breached by the OhDAP Mailing while also reducing burdens on the courts from having individual adjudications. In addition, due to the relatively small size of the claims at issue, very few persons would have an interest in filing and controlling the prosecution of separate actions individually.

VI. The Proposed Notice Provides Adequate Notice to the Settlement Class Members and Satisfies Due Process.

The U.S. Supreme Court has held notice of a class action settlement must be "reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Pursuant to Rule 23(c)(2)(B), the notice must provide:

> The best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must

> concisely and clearly state in plain, easily understood language: the nature of the action, the definition of the class certified; the class claims, issue, or defenses; that a class member may enter an appearance through counsel if the member so desires; that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded; and the binding effect of a class judgment on class members under Rule 23(c)(3).

The content of the proposed notices, attached to the Settlement Agreement as Exhibits C and D, conforms to the Federal Judicial Center's guidelines for class action notices, complies with due process and all of the requirements of Rule 23.

The proposed notices of Settlement and the manner of distribution negotiated and agreed upon by the parties in the Settlement Agreement is the "best notice practicable" as required under Rule 23(c)(2)(B), and is designed to ensure as many Settlement Class Members as reasonably practicable actually receive the notice. The notice will be sent to nearly all Settlement Class Members by first class mail, and also published in specifically designated publications intended to reach the target population. Prutsman Decl. ¶ 15; *see* also Settlement Agreement, Ex. D (publication notice). Caremark has received address information provided by OhDAP for the vast majority of the Settlement Class Members. Plaintiffs have secured ODH's cooperation in letting OhDAP caseworkers know about the settlement so that they can assist Settlement Class Members as well. The proposed Notice provides clear and accurate information regarding the principal terms of the Settlement, including the relief the Settlement will provide to Settlement Class Members, the procedures and deadlines for opting out of the Settlement or submitting objections, the consequences of the various options available to Settlement Class Members, and will contain the date, time and place of the final approval hearing. In addition, information regarding the Settlement and the Complaint, the Settlement, the Class Notices, and other relevant documents will be posted on the Settlement Website.

To provide notice, communicate with Settlement Class Members, and (eventually) disburse settlement payments to Settlement Class Members, the Settlement Administrator needs a copy of the Class List from Caremark. The Class List will contain the names of all Settlement Class Members, along with their last known addresses received by Caremark from OhDAP and any other appropriate identifying information. This confidential information may contain Protected Health Information ("PHI"), as defined by the HIPAA in 45 C.F.R. § 160.103, or other confidential information protected by applicable federal and state privacy laws, including O.R.C. § 3701.243. The proposed preliminary approval order contains a proposed qualified protective order (as defined under HIPAA) that is intended to comply with the requirements of HIPAA and applicable HIV/AIDS confidentiality protections, including but not limited to Ohio Revised Code § 3701.243, which provides that a "party may seek authority for the disclosure" of HIV-related information by filing a motion which may be granted if the Court "finds by clear and convincing evidence that a compelling need for the disclosure has been demonstrated." O.R.C. 3701.243(c)(2). Plaintiffs request that the Court issue the Qualified Protective Order based on clear and convincing evidence of a demonstrated compelling need for Caremark to disclose the Class List to the Settlement Administrator to effectuate the Settlement and provide Settlement Class Members with the benefits of the Settlement. The proposed Qualified Protective Order therefore specifically orders Caremark to disclose the Class List to the Settlement Administrator.

The notice program is also designed to maximize the privacy of Settlement Class Member, with the Parties and the Settlement Administrator implementing unique, comprehensive procedures designed to ensure that the administration of the Settlement does not result in a disclosure of a recipient's health information, and places appropriate limits on the parties' counsel from learning any more about a claimant than is necessary to administer the Settlement.

VII. CONCLUSION

For the above reasons, Plaintiffs request the Court issue the preliminary approval order (Ex. B to Settlement Agreement), and adopt the schedule set forth in the Declaration.

DATED: September 10, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was filed via the Court's ECF system and was thereby served on all parties.

By: /s/ *Matthew R. Wilson*
Matthew R. Wilson

One of the Attorneys for Plaintiffs

Exhibit 5

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

Andrew Beckett, *et al.*, Plaintiffs, v. Aetna, Inc., *et al.*, Defendants.	Civil Action No. 2:17-CV-03864-JS

PLAINTIFFS' STATEMENT REGARDING *DOE V. AETNA, INC.*

Plaintiffs in the above-captioned matter provide this statement to address certain issues raised by the plaintiff in the related case of *Doe v. Aetna, Inc.*, No. 18-cv-547 (E.D. Pa.), which was recently transferred to this Court from the Western District of Missouri. In *Doe*, the plaintiff (the "Missouri plaintiff") alleges Missouri law claims against Aetna related to the disclosure of confidential HIV information on behalf of herself and a putative class of 107 Missouri residents. Pursuant to her most recent filing (*Doe*, ECF No. 18), the Missouri plaintiff requests that the Court allow her to file an opposition to the Motion for Preliminary Approval of Class Action Settlement (ECF No. 50) of the $17,162,000 class action settlement ("Settlement," ECF No. 50-3) reached in this case. The Missouri plaintiff's request should be denied for two separate and independent reasons. It is both untimely and improper.

Plaintiffs in *Beckett* filed their Motion for Preliminary Approval on January 16, 2018. Plaintiffs' Counsel in *Beckett* properly informed counsel for the Missouri plaintiff of the settlement prior to the filing of the Motion for Preliminary Approval, and the Aetna Defendants notified the Missouri plaintiff of the filing of the Motion for Preliminary Approval and the Settlement via a filing on January 18, 2018. *Doe v. Aetna, Inc.*, No. 17-cv-929, ECF No. 36 (W.D. Mo. Jan. 18,

2018). The *Doe* matter was transferred to this Court over the Missouri plaintiff's objection on February 2, 2018. It is only now, more than a month after the Missouri plaintiff was made aware of the pending Motion for Preliminary Approval that she requests to file an opposition. Any opposition would be untimely under L.R. 7.1(c), and thus the request to file the untimely opposition should be denied.

Further, the Missouri plaintiff would not be prejudiced by such a denial. Just like every other proposed Settlement Class Member, she will have the opportunity to fully voice whatever issues she may have with the proposed Settlement during the objection phase of the settlement approval process, should the Court grant the Motion for Preliminary Approval. For that reason, federal courts consistently deny motions to intervene during the pendency of a proposed class action settlement, finding that the objection process adequately protects the proposed intervenors' interests. *See, e.g., Demarco v. Avalonbay Communities, Inc.*, No. CV15628JLLJAD, 2016 WL 5934704, at *5 (D.N.J. Oct. 12, 2016) (denying a motion to intervene because the proposed intervenors "will have an opportunity to prepare a written objection and be heard at the final approval hearing"); *Demchak Partners Ltd. P'ship v. Chesapeake Appalachia, LLC*, No. CIV.A. 3:13-2289, 2014 WL 4955259, at *4 (M.D. Pa. Sept. 30, 2014) (denying a motion to intervene because "[a]ny substantive challenges raised by the intervenors can be addressed, if they so choose, as objections to the settlement"); *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 263–64 (D. Del. 2002) ("The movants' primary motivation in filing these motions to intervene is to preserve their rights to object to the settlement and appeal settlement approval. Intervention for these purposes is unnecessary in the Third Circuit. Objecting class members are eligible to appeal from any final order entered by the court."). Further, allowing the Missouri plaintiff to assert an objection now would be an end-run around the proposed Settlement's provision allowing for

depositions of objectors. (Settlement ¶ 6.8.) The Missouri plaintiff's issues with the Settlement are much better considered at the final approval stage after *all* class members have had an opportunity to consider the proposed Settlement and voice their opinions as a group. Moreover, doing so will allow the Court to weigh any asserted objections against support for the Settlement (*e.g.*, through participation, lack of objections, lack of opt-outs, *etc.*).

Moreover, the Missouri plaintiff's purported issues with the Settlement are ill-founded. The chief complaint is that the Settlement "treats all class members the same regardless of the applicable state law." (*Doe,* ECF No. 18 at 3.) In *Sullivan v. DB Investments, Inc.*, 667 F.3d 273 (3d Cir. 2011), however, the Third Circuit, sitting *en banc*, soundly rejected this exact proposition that variations in state law preclude approval of a class settlement. The Third Circuit held that state law variations are largely "irrelevant to certification of a settlement class" and there is "no persuasive authority for deeming the certification of a class for settlement purposes improper based on differences in state law." *Id.* at 304 (internal quotations omitted). The Third Circuit further held that variations in state law did not have to be taken into account when allocating the settlement funds, finding that where each class member "suffered the same alleged injury" as a result of the defendant's conduct, "the vagaries of applicable state laws" were of little relevance. *Id.* at 329. The Third Circuit found no support "for differentiating within a class based on the strength or weakness of the theories of recovery." *Id.* at 328. Lastly, the Third Circuit affirmed the district court's finding that there were no intra-class conflicts among class representatives from different states because "all putative class members experienced injury caused by [the defendant], all sought recovery . . ., and all shared common interests in establishing damages and injunctive relief." *Id.* at 327. Per *Sullivan*, the Missouri plaintiff's objections to the proposed Settlement based on differences in state law are meritless and contrary to Third Circuit law.

Prior to mediation, Aetna provided the undersigned counsel with the number of persons who received the offending mailings broken down by state, and at all times during the negotiation process, counsel understood that they were negotiating on behalf of a nationwide class. Thus, prior to mediation, the undersigned counsel thoroughly examined the HIV-related laws of all 50 states. For example, Missouri law allows "aggrieved" individuals who had their HIV information unlawfully disclosed to potentially recover actual damages or liquidated damages of $1,000 for negligent violations and the greater of actual damages or liquidated damages of $5,000 for willful, intentional or reckless violations. Mo. Rev. Stat. § 191.656(6).

Missouri is certainly not unique in providing a measure of liquidated damages for proven violations of state HIV confidentiality laws. *See* Cal. Health & Safety Code § 120980 (providing for a civil penalty of $2,500 for a negligent violation and $5,000-$10,000 for a willful or malicious violation for each unlawful disclosure); Cal. Civil Code § 56.36 (proving for nominal damages of $1,000); Tex. Health and Safety Code Ann. § 81.104 (providing for a civil penalty of $5,000 for a negligent violation and $5,000-$10,000 for a willful violation for each unlawful disclosure); 410 ILCS 305/13 (providing for liquidated damages of $2,000 for a negligent violation and $10,000 for an intentional or reckless violation); Wis. Stat. Ann § 252.15(8) (providing for statutory damages of $2,000 for a negligent violation and $50,000 for an intentional violation); Me. Rev. Stat. tit. 5 § 19206 (providing for liquidated damages of $1,000 for a negligent violation or $5,000 for an intentional or reckless violation); Mich. Comp. Laws § 333.5131 (providing for statutory damages of $1,000); Mont. Code Ann. § 50-16-1013 (providing for liquidated damages of $5,000 for a negligent violation or $20,000 for an intentional or reckless violation); Del. Code Ann. tit 16 § 718 (providing for liquidated damages of $1,000 for a negligent violation or $5,000 for an intentional or reckless violation); Haw. Rev. Stat. Ann. § 325-102 (providing for a civil penalty of

$1,000 to $10,000); 18 Vt. Stat. Ann. § 1001(e) (providing for a civil penalty of $2,500 for a negligent violation or $10,000-$25,000 for a willful or malicious disclosure); Va. Code Ann. §32.1-36.1 ($100 for violation); W. Va. Code Ann. § 16-3C-5 (providing for liquidated damages of $1,000 for a negligent violation or $10,000 for an intentional or malicious violation). After review, the undersigned counsel found that none of these laws are so significantly different from each other, either in substance or relief provided, as to warrant sub-classing or any other structure that divides Settlement Class Members based on state. To the contrary, these laws strongly support the settlement structure set forth in the proposed Settlement.

Specifically (and unstated in the Missouri plaintiff's brief), in addition to the automatic payment of at least $500, the proposed Settlement provides Settlement Class Members with the opportunity to claim up to an additional $20,000 using a straightforward claim process that is easy to understand and administer. The allocation plan was based on interviews that were conducted by the undersigned counsel with over 200 affected Settlement Class Members, and is based on the AIDS Law Project of Pennsylvania's and the Legal Action Center's decades of experience litigating HIV-privacy related claims. Furthermore, if a Settlement Class Member is dissatisfied with the amount of the Settlement, the Class Member has the right to opt out and pursue his or her case individually. Restated, participation in the Settlement is voluntary.

Lastly, and as explained in Plaintiffs' Memorandum in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (ECF No. 52 at 9-10), at all times during the negotiation process, Aetna assumed the full risk of non-recovery against Gibson Dunn & Crutcher ("GDC") and/or Kurtzman Carson Consultants, LLC, ("KCC"). The undersigned counsel fully took into account that any settlement would release all potentially liable parties and therefore Aetna would be responsible for paying 100% of any purported harm. This settlement framework,

negotiated with the assistance of an experienced mediator, Judge Diane Welsh (Ret.), was in the best interest of Settlement Class Members, and allowed the Settlement to be reached efficiently without potentially years of protracted litigation against multiple defendants pointing the finger at each other. Indeed, since the filing of the Motion for Preliminary Approval, the concerns that led to the proposed Settlement have already come to fruition. Aetna and KCC have now each filed suits against one another in different jurisdictions regarding which party is more to blame for the disclosure of Settlement Class Members' HIV information. *See Aetna Inc. v. Kurtzman Carson Consultants, LLC*, No. 18-cv-470 (E.D. Pa.); *KCC Class Action Services, LLC v. Aetna, Inc.*, No. 18-cv-1018 (C.D. Cal). Finally, in the event that the proposed Settlement is not approved, Settlement Class Members are protected by the tolling agreements that Plaintiff Beckett and the undersigned counsel executed with KCC and GDC. (ECF No. 52 at 10.)

In sum, there is no basis to allow the Missouri plaintiff to submit a late opposition to the Motion for Preliminary Approval, and in any event, the issues raised by the Missouri plaintiff are without merit and contradicted by Third Circuit law. The Settlement is supported by the undersigned counsel and the 37 Plaintiffs named on the amended complaint in this case, including the named Plaintiffs from all of the other formerly competing class actions and their counsel. Plaintiffs respectfully request that this Court grant the Motion for Preliminary Approval so that notice of the proposed Settlement can proceed, and then consider any issues raised regarding the Settlement in conjunction with the final approval process and on a full record.

Dated: February 27, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing has been filed on the ECF docket and is available for viewing and download on this 27th day of February, 2018.

s/ Shanon J. Carson
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Exhibit 6

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

Andrew Beckett, *et al.*, Plaintiffs, v. Aetna, Inc., *et al.*, Defendants.	No. 2:17-CV-03864-JS

MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT

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I. INTRODUCTION

Plaintiffs, individually and on behalf of the Settlement Class, respectfully submit this unopposed Motion for Final Approval of Class Action Settlement, to request that the Court grant final approval and find as fair and reasonable, the Settlement Agreement[1] reached by Plaintiffs and Defendants Aetna Inc., Aetna Life Insurance Company, and Aetna Specialty Pharmacy, LLC (collectively "Aetna" or "Defendants"). The Settlement, which resolves what is believed to be the largest ever breach of HIV privacy, provides for a $17,162,000 non-reversionary Settlement Fund to compensate Plaintiffs and the Settlement Class, and provides for significant and meaningful process changes to Aetna's handling of Protected Health Information ("PHI") in future litigation.

On May 9, 2018, the Court preliminarily approved the Settlement as "reasonable, adequate, and in the best interests of Settlement Class Members," preliminary certified the Settlement Class under Fed. R. Civ. P. 23(a) and (b)(3), and ordered that notice be sent to the Settlement Class by the Court-appointed Settlement Administrator, Angeion Group, LLC ("Angeion"). (ECF No. 59 ¶¶ 2, 5, 6, 9.) Notice has now been issued to the Settlement Class and their reaction demonstrates that the Court's preliminary findings were correct.

Specifically, there are ***no objections*** to the Settlement and only ten out of a total of 13,468 Settlement Class Members have opted out of the Settlement (0.07% of the Settlement Class). Moreover, of the 11,853 Settlement Class Members who were eligible to submit a Claim Form, there were ***934*** Claim Forms received by the Settlement Administrator as of October 1, 2018, representing a claims rate of 7.88%. This response demonstrates: (a) that the notice process was effective; (b) that the Settlement was positively received by the Settlement Class; and (c) that

[1] All capitalized terms used in this Memorandum of Law have the meanings ascribed to them in the Parties' Settlement Agreement filed with the Court on January 16, 2018. (*See* ECF No. 50-3.)

approximately 8% of the Settlement Class Members who received the mailing have indicated by returning the Claim Form that they suffered some level of actual damages in addition to just having been a recipient of the mailing.

Moreover, this is not a class action settlement where in the absence of a submitted claim form the class member receives nothing. Far from it, the claims rate is even more impressive considering that all of the Settlement Class Members who received the mailing will receive an automatic $500 payment under the Settlement.

As reflected by the fact that the Settlement is completely unopposed after giving notice to the Class (a very rare phenomenon in a consumer data breach class action settlement), it is clear that the Settlement Agreement is fair, reasonable, and adequate, and the requirements for final approval are satisfied. This is an excellent result for the Settlement Class that sends a message that HIV privacy issues are not to be taken lightly. The Settlement Class satisfies the criteria for class certification under Fed. R. Civ. P. 23, and the notice provided to the Class Members comported with due process and Rule 23, both as to its content and the method of dissemination.

For these reasons, Plaintiffs respectfully request that the Court, (a) grant final approval of the Settlement; (b) grant Plaintiffs' Motion for Attorneys' Fees and Expenses and Class Representative Service Awards (ECF No. 66) with respect to which there were also no objections by any Settlement Class Member; and (c) enter the accompanying proposed Final Approval Order submitted with this Motion. Aetna supports and does not oppose the relief sought by this motion.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

A. The Privacy Breach

The Court is well-familiar with the background of this case. In 2014 and 2015, Aetna was sued in two lawsuits alleging that it had jeopardized the privacy rights of its insureds by requiring

them to obtain HIV medication solely through the mail, and not in person at a retail pharmacy. *Doe v. Aetna, Inc.*, No. 14-cv-2986 (S.D. Cal.); *Doe v. Coventry Health Care, Inc.*, No. 15-cv-62685 (S.D. Fla.) (together, "the *Doe* lawsuits"). The plaintiffs in the *Doe* lawsuits were represented by law firms not representing the class here (Whatley Kallas, LLP and Consumer Watchdog).

The *Doe* lawsuits were resolved in a consolidated individual settlement and never certified as class actions. As part of the individual settlement of the *Doe* lawsuits, the parties agreed that notices would be sent to former and current members of certain Aetna and Coventry health plans who had filled prescriptions for HIV-related medication. Aetna provided data identifying the Settlement Class Members[2] to its own counsel in the *Doe* lawsuits, Gibson Dunn & Crutcher ("GDC"), who in turn provided it to a third party mail vendor, Kurtzman Carlson Consultants LLC ("KCC"), so that KCC could prepare and mail the notices required as part of the settlement of the *Doe* lawsuits.

Plaintiffs allege that, at the end of July 2017 and beginning of August 2017, the mail vendor, KCC, sent out the notices. Four types of notices were agreed to as part of the settlement of the *Doe* lawsuits. Of these, only the "Benefit Notice," that was sent to approximately 11,853 Aetna members, is alleged to have been mailed in an envelope with a large transparent window allegedly displaying the recipient's name, address, and claim number, as well as instructions related to filling prescriptions for HIV medication, including specifically the acronym "HIV." Plaintiffs allege that a similar large-windowed No. 10 envelope was used to send the other notices required as part of the settlement of the *Doe* lawsuits, but the acronym "HIV" was not visible through the window of

[2] After deduplication of names on the Class List provided by Aetna, the Settlement Administrator has determined that there are 13,468 total Settlement Class Members, 11,853 of whom were sent the "Benefit Notice" and 1,615 of whom were not sent the Benefit Notice. (Admin. Decl. ¶¶ 4-5.)

the envelopes used to send the other notices. The alleged privacy breach described above is referred to in the Settlement Agreement as the "Incident."

Immediately after the mailing by KCC, the AIDS Law Project of Pennsylvania ("AIDS Law Project") and the Legal Action Center ("LAC") – two non-profit entities that specialize in representing people living with HIV – began to receive complaints about harm to recipients of the Benefit Notice. On August 24, 2017, with input from other HIV legal services providers, the AIDS Law Project and LAC sent a letter to Aetna regarding the Incident. At the same time, the Incident began to receive widespread media attention. The AIDS Law Project and LAC were thereafter contacted by hundreds of affected individuals requesting legal assistance and conducted over 260 interviews documenting the harm from the Benefit Notice.

B. The Present Litigation

On August 28, 2017, Plaintiff Andrew Beckett, represented by Co-Lead Class Counsel, filed the first Complaint in the country concerning the Incident. Plaintiff Beckett alleged both statutory and common law claims, including: (1) violation of the Pennsylvania Confidentiality of HIV-Related Information Act (Act 148), 35 P.S. § 7601, *et seq.*; (2) negligence; (3) negligence *per se*; (4) breach of contract; (5) invasion of privacy; (6) violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1, *et seq.*; and (7) unjust enrichment.

Co-Lead Class Counsel and Aetna promptly began negotiations to address any claimed immediate harm to potentially affected individuals and their families who were sent the Benefit Notice. In light of the severity of the allegations of harm, Co-Lead Class Counsel and Aetna negotiated and implemented a program to address any claimed immediate needs of Settlement Class Members (the "Immediate Relief Program"). The Immediate Relief Program provided: (1) up to three counseling sessions, with an opportunity to request additional sessions, for Settlement Class

Members and their families; and (2) cash reimbursements by Aetna for verifiable emergency out-of-pocket costs claimed to have been incurred by Settlement Class Members as a result of the Incident. To date, there have been fourteen requests for relocation expenses ranging from $2,500 to $18,000, two requests for counseling, and one request for lost household income, all of which Aetna has approved.

On October 7, 2017 and October 25, 2017, the Parties participated in two full-day in-person mediation sessions before former United States Magistrate Judge Diane Welsh of JAMS Philadelphia. At the end of the second mediation session, the Parties had made substantial progress toward reaching a settlement, and over the course of the next two and a half months, and with the further assistance of Judge Welsh who remained involved in the process, the Parties negotiated and drafted the Settlement Agreement and its Exhibits.

On December 5, 2017, Plaintiffs filed a First Amended Complaint with 37 Class Representatives (including Plaintiff Beckett) from 28 states and the District of Columbia, and additional common law and statutory claims. This Complaint also served to consolidate five other pending class actions related to the Incident in this Court.

C. The Settlement Agreement

On January 16, 2018, after months of hard-fought and intensive arm's-length negotiations, the Parties finalized the Settlement Agreement and Plaintiffs moved for preliminary approval of the Settlement. (ECF No. 50.) As described in Plaintiffs' preliminary approval papers, the Settlement Agreement provides for a gross, non-reversionary, Settlement Fund of $17,161,200.00, which includes the costs of settlement administration, service awards to the Named Plaintiffs, and attorneys' fees and costs. (Settlement ¶ 1.1(PP).) After deductions for Court-approved attorneys' fees and costs, service awards and settlement administration fees and costs, the remaining amount

(the "Net Settlement Fund") will be distributed to the Settlement Class Members. All Settlement Class Members who do not opt out of the Settlement will be allocated an automatic "Base Payment" without needing to submit a Claim Form. (*Id.* ¶ 1.1(D).) Settlement Class Members who were not mailed a Benefit Notice will receive a net Base Payment of $75 for the alleged improper disclosure of their information to GDC and KCC. (*Id.*, Ex. A.) Settlement Class Members, to whom the Benefit Notice was alleged to have been mailed, will receive a net Base Payment of $500 (inclusive of the $75 payment noted above). (*Id.*) In addition, Settlement Class Members who received a Benefit Notice are eligible to submit a claim for Financial Harm of up to $10,000 and Non-Financial Harm of up to $10,000.

The Settlement also provides significant non-monetary benefits. Specifically, in addition to the Settlement Fund, Aetna has agreed to: (a) develop and implement a "best practices" policy (the "Policy") for use of PHI in litigation; (b) communicate the Policy to Aetna in-house and outside counsel in all existing litigation matters; (c) implement procedures to ensure that the Policy is clearly communicated to in-house and outside counsel on all new litigation matters; (d) provide training regarding the Policy and Aetna's requirements under HIPAA and applicable federal and state privacy laws as appropriate to all Aetna in-house counsel whose primary responsibility is to manage litigation involving Aetna; and (e) conduct an audit of all outside counsel handling Aetna litigation matters to ensure that such counsel has executed an Aetna-approved Business Associates Agreement with Aetna. Aetna will keep records to ensure compliance with the terms of the Settlement Agreement for a period of seven (7) years. Aetna will incur additional costs to implement these actions that Aetna will pay ***in addition to*** the Settlement Fund described above. (*Id.* ¶ 5.1 & Ex. F.)

Checks will be mailed to Settlement Class Members within 45 days of the Effective Date of the Settlement. (*Id.* ¶ 4.3.) Settlement Class Members shall have 180 days to cash their checks. (*Id.* ¶ 4.8.) Any amounts remaining in the Net Settlement Fund from uncashed checks will be submitted, subject to the approval of the Court, to a *cy pres* recipient, the AIDS Coordinating Committee of the American Bar Association. (*Id.* ¶ 4.9.) The AIDS Coordinating Committee shall use a request for proposals ("RFP") process to distribute any funds that it receives to nonprofit public-interest law firms working on HIV-related privacy issues. (*Id.*) None of Plaintiffs' Counsel will request any of these funds. (*Id.*)

In exchange for the monetary and non-monetary consideration described above, Settlement Class Members will release all claims related to the Incident. (*Id.* ¶ 7.1.) With the assistance of the mediator (Judge Welsh), Co-Lead Class Counsel and Aetna agreed for the purpose of settlement that Aetna would stand in the shoes for all potentially other liable parties and pay a settlement amount that would fully and completely compensate the Settlement Class. Aetna would then reserve and retain the future right to seek contribution, indemnification, subrogation and/or reimbursement from any potentially liable third parties. Aetna's willingness to assume the full risk of non-recovery against other potential liable parties assured that the Settlement Class could obtain a settlement on a timely basis without the risk of many years of litigation with multiple defendants pointing their fingers at each other (which as the Court is aware, has come to fruition).

On May 7, 2018, the Court conducted a Preliminary Approval Hearing, and on May 9, 2018, preliminarily approved the Settlement as "fair and reasonable," preliminary certified the Settlement Class, appointed Angeion as the Settlement Administrator, and authorized the sending of notice of the Settlement to the Settlement Class Members. (ECF No. 59 ¶¶ 2, 5, 6, 9.)

D. Notice Has Been Sent To The Settlement Class Pursuant To The Settlement Agreement And The Court's Preliminary Approval Order

The accompanying Declaration of Eamon J. Willard on behalf of Angeion Group details under oath all of the steps that Angeion took to provide notice to the Settlement Class as set forth in the Settlement Agreement and the Court's Preliminary Approval Order. To summarize, on or about June 1, 2018, Angeion sent by first class mail, the Court-approved Notice of Settlement to the 13,468 Settlement Class Members and sent the Claim Form to the 11,853 Class Members who were sent the Benefit Notice. (Admin. Decl. ¶ 9.)

Pursuant to the Settlement Agreement, Angeion employed various measures to protect the privacy of the Settlement Class Members, including:

(a) an opaque envelope of appropriate and sufficient stock and with no transparent window so as to obscure the contents of the envelope;

(b) a return address on the outside of the envelope with no identifying information other than a P.O. Box, City, State and Zip Code;

(c) a statement on the front of the envelope stating that it contains "Confidential Legal Information – To Be Opened Only By The Addressee";

(d) a protective cover page that folds around the Notice of Class Action Settlement and that identifies that the information being provided therein is confidential and solely for reading by the Settlement Class Member; and

(e) paper stock that will protect the confidentiality of the contents of the envelope from being read through the envelope.

(*Id*. ¶ 10; Settlement ¶ 3.6.)

Following the initial mailing of the Notices, the U.S Postal Service returned 28 Claim Packets as undeliverable but with a forwarding address. Angeion promptly re-mailed the Claim Packets to the forwarding addresses that were provided. (Admin. Decl. ¶ 19.) The U.S. Postal Service also returned 763 Claim Packets and 114 Notices of Settlement as undeliverable with no forwarding address. Angeion promptly utilized skip-tracing methods (utilizing publicly available databases), and using such locator services, Angeion located 533 updated addresses. (*Id.* ¶ 20.)

Following conferences that took place with Class Counsel to discuss the updated addresses in the context of the confidentiality concerns in this case, and to ensure that the mailings were directed to the correct Settlement Class Member, Angeion caused 533 Identity Verification Letters, a true and correct copy of which is attached as Exhibit D to Mr. Willard's Declaration, to be sent to the updated addresses, directing the recipient to contact Angeion by phone to confirm their identity. The Identity Verification Letters were printed on Angeion letterhead and did not contain any mention of this specific Settlement. (*Id.* ¶ 21.) This process was successful in that Angeion subsequently received 75 responses to the mailing of the Identity Verification Letters, and then caused 61 additional Claim Packets and 14 additional Notices of Settlement to be sent to the now-confirmed addresses. (*Id.* ¶ 22.) Angeion also received requests via telephone and email from certain Settlement Class Members (and also through Class Counsel), and as a result, re-mailed 45 Claim Packets. (*Id.* ¶ 23.) As a result of these efforts, as of Friday, September 28, 2018, there are approximately 787 Settlement Class Members whose notice was returned as undeliverable where a new address could not be verified and therefore their Notice or Claim Packet was not re-mailed. Thus, Angeion has estimated a delivery rate of approximately ***94.2%*** in this case. (*Id.* ¶ 24.)

Moreover, this case and Settlement were widely publicized by the media across the country, and Angeion also established the Settlement Website, www.beckettprivacyclassaction.com, which contains general information about the case, a secured online claims submission process, frequently asked questions, and important case filings. (*Id.* ¶ 25.) Angeion also set up an Interactive Voice Response ("IVR") phone number that Settlement Class Members could call to receive more information about the Settlement. (*Id.* ¶ 27.) It is reasonable to believe that any Settlement Class Members who claim to have been damaged by the mailing of the Benefit Notice and who did not receive the direct mailing of the notice by Angeion

have had the opportunity to learn about and participate in the Settlement by virtue of a simple Google search for "Aetna HIV Settlement" or similar terms that immediately reveal multiple websites that have publicized the Settlement and/or that contain links to the Settlement Website.

All Settlement Class Member information delivered to the Settlement Administrator, and any completed Claim Forms or other information submitted by Claimants to the Settlement Administrator, have been recorded by the Settlement Administrator in a secure and confidential database that complies with HIPAA and all other applicable federal, state, and local laws. (*Id.* ¶ 12.) At the conclusion of the litigation, and in accordance with the Court's Final Approval Order, the Settlement Administrator will destroy all of the information and data upon a written certification to be filed with the Court.

E. The Settlement Class Has Reacted Positively To The Settlement

The Settlement Class Members' reaction to the Settlement demonstrates that they support final approval of the Settlement. Co-Lead Class Counsel received many communications from Settlement Class Members expressing their approval and gratitude for the Settlement. This is borne out by the claims rate, the total absence of any objections, and the miniscule number of Settlement Class Members who elected to opt out of the Settlement.

Specifically, as set forth above, there are no objections to the Settlement and only ten out of a total of 13,468 Settlement Class Members opted out (0.07% of the Settlement Class). Moreover, of the 11,853 Settlement Class Members who were eligible to submit a Claim Form, there were 934 Claim Forms received by the Settlement Administrator as of October 1, 2018, representing a claims rate of 7.88%. (Admin. Decl. ¶ 30.) The Claim Period closed on September 29, 2018 so it is possible that there may be a few more Claim Forms received by the Administrator

over the next week, and Co-Lead Class Counsel will update the Court accordingly on the final number at the Final Approval Hearing.

Further, there are *zero* pending objections to the Settlement either by Settlement Class Members, governmental regulators that received notice of the Settlement pursuant to the Class Action Fairness Act, 28 U.S.C § 1715, or any other interested parties, including counsel in all the other filed cases.[3] (Admin. Decl. ¶ 32.)

F. Attorneys' Fees, Costs, Class Representative Service Awards, And Settlement Administration Expenses

Two weeks prior to the deadline for exclusions and objections, on July 17, 2018, Co-Lead Class Counsel filed their Motion for Attorneys' Fees and Expenses and Class Representative Service Awards, requesting approval of attorneys' fees in the amount of 25% percent of the Settlement Fund ($4,290,300), $73,892.68 in costs, and service awards in the amount of $5,000 to each of the seven (7) Class Representatives who filed the Complaints that were consolidated in this litigation and $2,000 to each of the thirty (30) additional Class Representatives whose claims were alleged in Plaintiffs' Amended Class Action Complaint. (ECF No. 66.) A copy of the Motion was immediately posted on the Settlement Website. To date, no objections have been received with respect to any of these requests.

Angeion has also submitted invoices to Co-Lead Class Counsel for its Settlement Administration fees and expenses incurred to date, which include $13,990.00 for the May 2018 invoice; $35,808.41 for the June 2018 invoice; $6,820.53 for the July 2018 invoice, and $2,697.56 for the August 2018 invoice (totaling $59,316.50 to date). (Admin. Decl. ¶ 33.) Consistent with its

[3] Co-Lead Class Counsel believes that the Settlement Class Member from Missouri who previously expressed a desire to oppose preliminary approval of the Settlement (*see* ECF No. 54) excluded him or herself from the Settlement in order to pursue his or her own individual claim.

administration bid, Angeion estimates that total settlement administration expenses will be around $155,000 and will not exceed $180,000. (*Id*. ¶ 35.) Pursuant to the Settlement Agreement, Co-Lead Class Counsel is submitting these figures and requesting that the Court approve deductions from the Settlement Fund not to exceed $180,000 for Settlement Administration fees and expenses.

III. ARGUMENT

A. Final Certification of the Settlement Class Is Warranted

The Court preliminary certified the Settlement Class under Fed. R. Civ. P. 23(a) and (b)(3) defined as:

> All persons whose Protected Health Information and/or Confidential HIV-related information was allegedly disclosed improperly by Aetna and/or Aetna-related affiliated entities, or on their behalf, to third parties, including GDC and KCC, and/or to whom any written notice was mailed as required by the settlement of the *Doe* lawsuits.

(ECF No. 59 ¶¶ 5-7; Settlement ¶ 1.1(OO).) The Court must now determine whether to grant final certification of the Settlement Class. *See Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 296 (3d Cir. 2011) (*en banc*). The Court found at the preliminary approval stage that the Rule 23(a) and (b)(3) requirements were all satisfied, and nothing has occurred since then to warrant a change in thinking. (ECF No. 59 ¶¶ 5-7.) Thus, Plaintiffs now move for final certification of the Settlement Class pursuant to Fed. R. Civ. P. 23(a) and (b)(3).

Under Rule 23(a), Plaintiffs must demonstrate that: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. FED. R. CIV. P. 23(a). Rule 23(b)(3) requires that "questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." FED.

R. CIV. P. 23(b)(3). However, when a court is "[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial." *Amchem v. Windsor*, 521 U.S. 591, 620 (1997).

1. The Settlement Class Is Sufficiently Numerous

To meet the numerosity requirement of Rule 23(a)(1), "the class size only need be large enough that it makes joinder impracticable." *Fry v. Hayt, Hayt & Landau*, 198 F.R.D. 461, 467 (E.D. Pa. 2000). The Settlement Class here easily meets the numerosity requirement because as detailed in the accompanying Declaration of the Settlement Administrator, the Settlement Class includes 13,468 people. In addition, Settlement Class Members are geographically dispersed throughout the United States. There can be no dispute, therefore, that the proposed Settlement Class meets the numerosity requirement.

2. The Settlement Class Seeks Resolution of Common Questions

The commonality requirement of Rule 23(a)(2) is satisfied if the Named Plaintiffs share at least one question of fact or law with the grievances of the prospective class. *See Stewart v. Abraham*, 275 F.3d 220, 227 (3d Cir. 2001). Here, the central issues posed by this litigation are whether Aetna's conduct related to the Incident violated the duties owed to Settlement Class Members. These are common factual questions with common proof that can be answered on a class-wide basis. Given the presence of these common questions central to this litigation, Rule 23(a)(2)'s requirement for the existence of common questions of fact or law is met.

3. The Claims of the Named Plaintiffs Are Typical of the Settlement Class

The typicality requirement of Rule 23(a)(3) is satisfied because Plaintiffs' claims are reasonably coextensive with those of the other Settlement Class Members and because Plaintiffs

possess the same interests and suffered the same injuries as the Class Members. *See Fry*, 198 F.R.D. at 468; *Gen. Tel. Co. of S.W. v. Falcon*, 457 U.S. 147, 156 (1982). Here, the claims of the Plaintiffs and each Settlement Class Member are predicated on the same alleged conduct by Aetna and others involved in the Incident. Aetna's alleged liability for the alleged resulting damage to each Settlement Class Member does not depend on the individual circumstances of the Class Members.

The common issues necessarily share "the same degree of centrality" to Plaintiffs' claims, such that in litigating the liability issues, Plaintiffs reasonably can be expected to advance the interests of all Settlement Class Members in a favorable determination with respect to each such issue. *Franks v. O'Connor Corp.*, No. 92-0947, 1993 WL 76212, at *5 (E.D. Pa. Mar. 17, 1993). "Factual differences will not render a claim atypical if the claim arises from the same event or practice or course of conduct that gives rise to the claims of the class members and if based on the same legal theory." *Hoxworth v. Blinder, Robinson & Co., Inc.*, 980 F.2d 912, 923 (3d Cir. 1992). This is what is alleged to have occurred here. Accordingly, the typicality requirement is satisfied.

4. Co-Lead Class Counsel and Plaintiffs Meet the Adequacy Requirements

Rule 23(a)(4)'s adequacy prong requires that "the representative parties will fairly and adequately protect the interests of the class." The Third Circuit consistently has ruled that

> [a]dequate representation depends on two factors: (a) the Plaintiff's attorney must be qualified, experienced and generally able to conduct the proposed litigation; and (b) the Plaintiffs must not have interests antagonistic to those of the class.

Weiss v. York Hosp., 745 F.2d 786, 811 (3d Cir. 1984) (quoting *Wetzelv. Liberty Mutual Insurance Co.*, 508 F.2d 239, 247 (3d Cir. 1975)); *see also In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 312 (3d Cir. 1998). These two components are designed to ensure that class members' interests are fully pursued.

The presumption of adequate representation here cannot be rebutted. Co-Lead Class Counsel's credentials and efforts in this case have been set out in detail in prior filings (ECF No. 52; ECF No. 66), but simply stated, Co-Lead Counsel are highly qualified and are particularly suited to represent the Settlement Class. The AIDS Law Project is the nation's only independent nonprofit public-interest law firm that provides free legal services exclusively to people living with HIV and AIDS and those affected by the epidemic. LAC 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. Berger Montague specializes in class action litigation in federal and state courts and is one of the preeminent class action law firms in the United States.

Further, there is nothing to suggest that Plaintiffs have interests antagonistic to those of the Settlement Class. *See Dietrich v. Bauer,* 192 F.R.D. 119, 126 (S.D.N.Y. 2000) ("[G]auging the adequacy of representation requires an assessment whether the class representatives have interests antagonistic to those of the class they seek to represent."). Here, the Class Representatives have been actively engaged in this case, and are committed to obtaining appropriate compensation for the Settlement Class.

Having demonstrated that each of the requirements of Rule 23(a) are satisfied, Plaintiffs now turn to consideration of the factors that justify class treatment under Rule 23(b)(3).

5. The Settlement Class Satisfies the Predominance and Superiority Requirements of Rule 23(b)(3)

Under Rule 23(b)(3), class certification is appropriate if "the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." FED. R. CIV. P. 23(b)(3).

The Settlement Class satisfies the predominance requirement because common questions of law and fact predominate here. The Settlement Class Members' claims for compensatory relief are founded upon common legal theories. Thus, Class Members have an interest in the adjudication of the issue of law and fact that predominates this litigation, *i.e.*, whether or not Aetna illegally disclosed Settlement Class Members' PHI.

In addition, the Settlement Agreement renders this class action superior to other potential avenues of recovery for Named Plaintiffs and the Class. In fact, this case presents a paradigmatic example of a dispute resolution that effectuates the fundamental goals of Rule 23: (1) to promote judicial economy through the efficient resolution of multiple claims in a single action; and (2) to provide persons with smaller claims, who would otherwise be economically precluded from doing so, the opportunity to assert their rights. Wright, Miller & Kane, Federal Practice & Procedure: Civil 2d § 1754. At the same time, the Settlement fully preserves the due process rights of each individual plaintiff seeking damages. Accordingly, the Settlement Class meets the requirements of Fed. R. Civ. P. 23(a) and (b)(3), and the Court should grant final certification of the Settlement Class.

B. The Parties' Settlement Agreement Is Fair, Reasonable And Adequate And Should Be Finally Approved

The Court should grant final approval if the proposed Settlement is fair, reasonable and adequate. *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 258 (3d Cir. 2009); FED. R. CIV. P. 23(e). "Trial courts generally are afforded broad discretion in determining whether to approve a proposed class action settlement." *In re Processed Egg Prod. Antitrust Litig.*, 284 F.R.D. 249, 266 (E.D. Pa. 2012). This discretion is conferred in recognition that "[t]he evaluation of [a] proposed settlement in this type of litigation … requires an amalgam of delicate balancing, gross approximations and rough justice." *Williams v. Aramark Sports, LLC*, No. 10-1044, 2011 U.S.

Dist. LEXIS 102173, at *18 (E.D. Pa. Sept. 9, 2011) (citing *City of Detroit v. Grinnell Corp.*, 356 F. Supp. 1380, 1385 (S.D.N.Y. 1972), *aff'd in part and rev'd in part on other grounds*, 495 F.2d 448 (2d Cir. 1974)). Thus, the Court considers whether the proposed settlement is within a "range of reasonableness" that experienced attorneys could accept in light of the relevant risks of the litigation. *See Walsh v. Great Atlantic & Pacific Tea Co.*, 96 F.R.D. 632, 642 (D.N.J. 1983). "The law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation." *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 102 (D.N.J. 2012) (citing *In re General Motors*, 55 F.3d 768, 784 (3d Cir. 1995)); *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004) (explaining that there is an "overriding public interest in settling class action litigation, and it should therefore be encouraged").

The Third Circuit has set forth nine factors to consider when determining the fairness of a proposed class action settlement:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Girsh v. Jepson, 521 F.2d 153, 157 (3d Cir. 1975) (internal quotations, citations, and punctuation marks omitted); *see Barel v. Bank of Am.*, 255 F.R.D. 393, 400 (E.D. Pa. 2009) ("The Third Circuit requires district courts to weigh and analyze nine factors, known as the *Girsh* factors, when they are making a fairness determination."). Here, the *Girsh* factors strongly support final approval of this Settlement.

1. The Complexity, Expense and Likely Duration of the Litigation

The first factor "captures 'the probable costs,' in both time and money of continued litigation." *In re Cendant Corp. Litig.*, 264 F.3d 201, 233 (3d Cir. 2001) (quoting *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 812 (3d Cir. 1995)).

> The Court must balance the proposed settlement against the time and expense of achieving a potentially more favorable result through further litigation. Where the complexity, expense and likely duration of the litigation are significant, the Court will view this factor as weighing in favor of settlement.

Lenahan v. Sears, Roebuck and Co., No. 02-0045, 2006 U.S. Dist. LEXIS 60307, at *36 (D.N.J. July 24, 2006) (citing *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 536 (D.N.J. 1997) (hereinafter "*Prudential II*")).

Here, continued litigation would be long, complex, expensive, and a burden to the Court and the litigants. Continuing this litigation against Aetna would entail a lengthy and expensive battle, delaying relief to Settlement Class Members for years at a minimum. It is reasonable to expect that all such issues would be sharply disputed and contested, as they have been in the individual cases that have been brought against Aetna. Additionally, a jury trial (assuming the case proceeded beyond pretrial motions) might well turn on class questions of proof, making the outcome of a trial uncertain for all parties. Moreover, even after trial is concluded, there would very likely be one or more lengthy appeals. Given this uncertainty, a certain "bird in the hand in this litigation is surely worth more than whatever birds are lurking in the bushes." *In re Chambers Dev. Sec. Litig.*, 912 F. Supp. 822, 838 (W.D. Pa. 1995).

Further, events since the Settlement suggest that if the Settlement is not approved, it may be years before the Settlement Class Members' claims could be resolved. For example, since the Settlement was announced, Aetna has become involved in four different lawsuits against KCC, Whatley Kallas, and Consumer Watchdog related to assessing blame for the Incident. *See Aetna, Inc. v. Kurtzman Carson Consultants, LLC*, No. 2:17-cv-470 (E.D. Pa.); *Aetna, Inc. v. Whatley*

Kallas, LLP, No. 2:18-cv-2172 (E.D. Pa.); *Aetna, Inc. v. Whatley Kallas, LLP*, No. BC707386 (Cal. Sup. Ct., L.A. Cnty.); *KCC Class Action Services, LLC v. Aetna, Inc.*, No. 18-cv-1018 (C.D. Cal.). Without the relief provided by the Settlement, it could be years before Settlement Class Members see any relief given the finger pointing between Aetna and other potentially responsible parties.

Approval of this Settlement will guarantee the Settlement Class a substantial cash payment, of up to $20,500 for those Class Members that were mailed a Benefit Notice, with a minimum automatic payment of $500. Without approval of the Settlement, Plaintiffs will face expensive and protracted litigation with Aetna and possibly other defendants. Balancing the complexities of this litigation, the substantial risk, expense and duration of continued litigation against Aetna, and the likely appeals if Plaintiffs did prevail against Aetna at trial, Co-Lead Class Counsel firmly believes that the Settlement represents a highly successful resolution of this litigation.

2. The Reaction of the Class to the Settlement

The second factor "attempts to gauge whether members of the class support the settlement." *Prudential I*, 148 F.3d. at 318. Typically, the reaction of the class is reviewed by looking at the percentage of objections and opt-outs received in relation to the class as a whole. *See, e.g., Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 251 (D.N.J. 2005) (because only .06% of the class members opted out of the settlement, factor favored approval of the settlement); *Bell Atlantic Corp. v. Bolger*, 2 F.3d 1304, 1313-14 (3d Cir. 1993) ("[l]ess than 30 of approximately 1.1 million shareholders objected.... This small proportion of objectors does not favor derailing settlement").

The fact there are no pending objections to the Settlement "strongly militates a finding that the settlement is fair and reasonable." *In re Pressure Sensitive Labelstock Antitrust Litig.*, 584 F. Supp. 2d 697, 701 (M.D. Pa. 2008) (quoting *In re Linerboard Antitrust Litig.*, 321 F. Supp. 2d 619, 629 (E.D. Pa. 2004)). Moreover, only ten members of the Settlement Class requested

to be excluded, representing only a miniscule fraction of the Class (0.07% of the Settlement Class). This lack of objections and low number of opt-outs strongly weighs in favor of approving the Settlement. *See Boone v. City of Phila.*, 668 F. Supp. 2d 693, 712 (E.D. Pa. 2009) ("A low number of objectors compared to the number of potential class members creates a strong presumption in favor of approving the settlement."); *In re Philips/Magnavox Television Litig.*, No. 09-3072, 2012 WL 1677244, at *9 (D.N.J. May 14, 2012) (finding that where .00002% and .00004% of the settlement class objected or opted-out, showed "overwhelming" approval of the settlement by the class); *Varacallo*, 226 F.R.D. at 237-38 (finding objection and opt-out rates of .003% and .06% to be "extremely low" and indicated approval by the class); *In re Cendant*, 264 F.3d at 235 ("The vast disparity between the number of potential class members who received notice of the Settlement and the number of objectors creates a strong presumption that this factor weighs in favor of the Settlement."); *In re Auto. Refinishing Paint Antitrust Litig.*, 617 F. Supp. 2d 336, 342 (E.D. Pa. 2007) ("The fact that an overwhelming majority of the Class did not file objections is a significant element to consider in determining the overall fairness of the settlements."); *Sullivan*, 667 F.3d at 323 (upholding district court's finding that twenty objections in a class of millions favored settlement).

Further, of the 11,853 Settlement Class Members who were sent a Benefit Notice and were eligible to submit a Claim Form, 934 or 7.88% did so, which compares well to other consumer class action settlements. *See*, *e.g.*, *Vasco v. Power Home Remodeling Group LLC*, No. 15-4623, 2016 WL 5930876, at *12 (E.D. Pa. Oct. 12, 2016) (finding a claims rate of about 9% to be "higher than rates found permissible in other class settlements" under the Telephone Consumer Protection Act); *Rougvie v. Ascena Retail Group, Inc.*, No. 15-724, 2016 WL 4111320, *38 (E.D. Pa. July 29, 2016) (granting final approval of consumer class settlement with 3.3% claims rate); *In re Am.*

Family Enterprises, 256 B.R. 377, 418 (D.N.J. 2000) (1.43% claims filing rate weighed in favor of settlement); *see also Gascho v. Global Fitness Holdings, LLC*, 822 F.3d 269, 276, 290 (6th Cir. 2016) (stating that "8.2% response rate was well within the acceptable range of responses in a consumer class action," and citing to a settlement administrator's testimony that "response rates in consumer class actions generally range from 1 to 12 percent," with a "median response rate of 5 to 8 percent."); *Couser v. Comenity Bank*, 125 F. Supp. 3d 1034, 1044 (S.D. Cal. 2015) (claims rate of 7.7% was "higher than average" for a consumer class action); *Zepeda v. PayPal, Inc.*, No 10-2500, 2017 WL 1113293, **15, 16 (N.D. Cal. March 24, 2017) (finding in consumer protection case that a 3.8% claims rate indicated that the notice process had been "remarkably successful – and the Settlement Class's reaction to the Settlement has been overwhelmingly positive."); *Sullivan*, 667 F.3d at 329 (describing special master finding that "consumer claim filing rates rarely exceed seven percent, even with the most extensive notice campaigns").

Moreover, here, the claims rate is even more impressive considering that the Settlement Class Members eligible to submit a Claim Form are entitled to an automatic payment of $500 even without submitting a Claim Form, and the Claim Form is explicitly intended to be used by Settlement Class Members who suffered specialized Financial Harm or Non-Financial Harm as a result of the breach at issue.

The total lack of objections, the miniscule number of opt-outs, and the robust submission of Claim Forms, together demonstrate that the Settlement Class is overwhelmingly satisfied with the Settlement and that final approval of the Settlement should be granted.

3. The Stage of the Proceeding and Amount of Discovery Completed

The third factor "'captures the degree of case development that class counsel [had] accomplished prior to settlement. Through this lens, courts can determine whether counsel had an adequate appreciation of the merits of the case before negotiating.'" *In re Cendant,* 264 F.3d at

235 (quoting *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d at 813).

Here, there was a significant and thorough investigation of Plaintiffs' claims prior to the Settlement being reached. As part of their factual investigation, Co-Lead Class Counsel conducted lengthy interviews with over 250 Settlement Class Members to investigate the impact of the Incident. Co-Lead Class Counsel also reviewed documents that they obtained from Aetna and GDC and researched the HIV/AIDS confidentiality laws of all 50 states, along with other relevant privacy laws.

Moreover, the AIDS Law Project and LAC have substantial knowledge and experience litigating HIV confidentiality claims, and possess significant expertise in relevant privacy health laws. Although this case presented a number of legal complexities, the underlying facts surrounding the Incident are not that complicated, and Co-Lead Class Counsel had more than enough information to evaluate the merits of the case during the mediation and settlement negotiation process as a result of the ADR-related discovery that they obtained and their own investigative efforts.

4. The Risks of Establishing Liability, Proving Damages and Maintaining the Class Action through Trial

The fourth through sixth factors "examine what the potential rewards (or downside) of the litigation might have been had class counsel elected to litigate the claims rather than settle them." *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d at 814. The factors include: (4) the risks of establishing liability; (5) the risks of establishing damages; and (6) the risks of maintaining the class action through trial. *Girsh*, 521 F.2d at 157. As one court explained:

> In examining [the risks of establishing liability], the Court need not delve into the intricacies of the merits of each side's arguments, but rather may "give credence to the estimation of the probability of the success proffered by class counsel, who are experienced with the underlying case, and the possible defenses which may

be raised to their causes of action."

Perry v. FleetBoston Fin. Corp., 229 F.R.D. 105, 115 (E.D. Pa. 2005) (quoting *Lachance v. Harrington,* 965 F. Supp. 630, 638 (E.D. Pa. 1991)). The "court should avoid conducting a mini-trial and must, to a certain extent, give credence to the estimation of the probability of success proffered by class counsel." *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 124–25 (D.N.J. 2002) (internal citation omitted).

Co-Lead Class Counsel believe that the claims asserted in the operative complaint are strong and that Plaintiffs would prevail at trial, but recognize that complex litigation against large companies with able defense counsel has inherent risks. In ongoing litigation, Aetna would potentially raise a number of defenses issues including, among others, that: 1) Plaintiffs' claims are covered by an enforceable arbitration agreement; 2) Plaintiffs' state law claims are preempted by the Employee Retirement Income Security Act ("ERISA"); and (3) that some HIV-confidentiality laws would not cover the conduct at issue. The risks of litigation faced by the Settlement Class are amply demonstrated by Aetna's attempts to dismiss the individual cases related to the Incident that are currently being litigated. *See, e.g., D.L. v. Aetna*, No. 18-cv-893, Mot. to Dismiss, ECF No. 26 (C.D. Cal. June 28, 2018).

The risk of maintaining the Settlement Class through trial also favors approval of the Settlement. A litigation class had not yet been certified, and while Co-Lead Class Counsel are confident that such a class would have been certified, Aetna would have fought aggressively to show that any litigation class should not be certified. As previously noted, the Settlement removes any potential threats to class certification based on individual defenses and damage issues. Without class certification, each Settlement Class Member would be left to fend for him or herself.

In sum, the risks of establishing liability, establishing damages, and maintaining the class

action through trial – and ultimately through appeals as well – strongly favors final approval.

5. The Ability of Aetna to Withstand a Greater Judgment

The seventh factor "is concerned with whether the defendants could withstand a judgment for an amount significantly greater than the Settlement." *In re Cendant*, 264 F.3d at 240. "Even if solvency could be assured," the Third Circuit "regularly find[s] a settlement to be fair even though the defendant has the practical ability to pay greater amounts." *McDonough v. Toys R Us, Inc.*, 80 F. Supp. 3d 626, 645 (E.D. Pa. 2015) (citing cases). For example, in *Lazy Oil*, the district court concluded that the fact that a settling defendant had the financial resources to pay a larger judgment did not weigh against settlement "in light of the risks that Plaintiffs would not be able to achieve any greater recovery at trial." *Lazy Oil v. Witco Corp.*, 95 F. Supp. 2d 290, 318 (W.D. Pa. 1997).

Before entering into the proposed Settlement Agreement, Co-Lead Class Counsel engaged in extensive arm's-length negotiations with Aetna. Co-Lead Class Counsel believe that they obtained the maximum settlement value for the Settlement Class, given all risks of litigation. Here, Aetna has agreed to pay $17,162,000.00 to the Settlement Class, which provides the Class Members with substantial compensation and a very meaningful recovery. Even if Plaintiffs proceeded to trial and won, and then prevailed following appeals, a successful collection of the full judgment is not a certainty. The fact that Aetna has the financial resources to pay a larger judgment does not necessarily weigh against approval of a settlement when considered along with the substantiality of the Settlement within the context of the litigation. In light of these facts, including the real possibility of recovering less or nothing at all, this factor weighs in favor of final approval.

6. The Range of Reasonableness of the Settlement in Light of the Best Possible Recovery and the Attendant Risks of Litigation

Both the eighth and ninth *Girsh* factors evaluate the reasonableness of the Settlement. "While the court is obligated to ensure that the proposed settlement is in the best interest of the class members by reference to the best possible outcome, it must also recognize that settlements typically represent a compromise and not hold counsel to an impossible standard." *In re Aetna Inc. Sec. Litig.*, No. MDL1219, 2001 U.S. Dist. LEXIS 68, at *20-21 (E.D. Pa. Jan. 4, 2001); *see also In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d at 806 (noting that "after all, settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution"); *Lazy Oil*, 95 F. Supp. 2d at 338-39 (stating that a court "should not make a proponent of a proposed settlement 'justify each term of settlement against a hypothetical or speculative measure of what concessions might have been gained; inherent in compromise is a yielding of absolutes and abandoning of highest hopes.'") (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977)). In addition, "a future recovery, even one in excess of the proposed Settlement, may ultimately prove less valuable to the Class than receiving the benefits of the proposed Settlement at this time." *In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491, 501 (W.D. Pa. 2003).

Here, Co-Lead Class Counsel has concluded that the Settlement results in a significant portion of potentially recoverable damage from Aetna. Under the terms of the Settlement, the non-reversionary gross settlement amount of $17,161,200.00 will provide significant monetary relief to the Settlement Class without subjecting them to the risks and delay of further litigation. To compensate the Settlement Class for the allegedly improper disclosure of PHI from Aetna to GDC and KCC, every Settlement Class Member will receive an automatic net Base Payment of $75. Settlement Class Members who were sent a Benefit Notice that allegedly exposed their PHI through a transparent envelope window will automatically receive a net Base Payment of at least

$500 inclusive of the $75 payment noted above (without having to show that they were damaged), as well as an opportunity to seek additional payments of up to $10,000 for Financial Harm and up to $10,000 for Non-Financial Harm caused by the disclosure (for a total of up to $20,500 for each person sent the Benefit Notice). The Settlement also includes Aetna's development of a "best practices" policy to prevent similar disclosures in the future. In addition, approximately one month after the original Complaint was filed, Co-Lead Class Counsel and Aetna negotiated and implemented the Immediate Relief Program to provide financial assistance and counseling for those alleged to have been harmed by the disclosure, without an accompanying release of legal claims, which remains in effect through the Effective Date of the Settlement.

A comparison with the monetary recovery in other privacy breach settlements demonstrates the strength of this Settlement. On a per-person basis, this Settlement far exceeds what has been recovered in other privacy breach settlements, even for those receiving the $75 payment. For example, this Settlement provides approximately 10,000 times the per-person monetary relief provided in the Target data breach settlement that received national attention. *See In re Target Corp. Customer Data Security Breach Litig.*, No. MDL 14-2522, 2015 WL 7253765 (D. Minn.) (settled for $10 million fund for breach of 97 million credit card numbers).[4]

[4] *See, e.g.*, *St. Joseph Health System Medical Info. Cases*, No. JCCP 4716 (Cal. Superior Ct., Orange Cty.) (medical information for ***32,000*** patients was publicly accessible on the internet for 1 year and settled for (i) a $7.5 million common fund by which each class member could receive at least $241; and (ii) a $3 million claims-made fund to reimburse out-of-pocket losses.); *In re Anthem, Inc. Data Breach Litig.*, No. 15-md-02617 (N.D. Cal.) (***80 million*** insureds' social security numbers, medical information, and related information was breached and case settled for a $115 million non-reversionary fund to be used for 2-4 years of credit monitoring, or cash-in-lieu for class members who do not want credit monitoring; a $15 million fund to reimburse out-of-pocket costs such as fraud charges, protective measures paid for by class members, and lost time; attorneys' fees and costs of up to $40.95 million; and service awards for the named plaintiffs); *In re The Home Depot, Inc. Customer Security Breach Litig.*, No. 14-md-02583 (N.D. Ga.) (settled for $13 million common fund to compensate for out-of-pocket losses and/or time spent responding to the breach and $6.5 million to provide 18 months of "account monitoring" services for breach of ***40 million*** credit cards); *Juana Curry v. AvMed, Inc.*, No. 10-cv-24513 (S.D. Fla.) ($3 million

Moreover, the Settlement provides monetary relief that is within the range of damages available under many state HIV confidentiality laws. *See* Cal. Health & Safety Code § 120980 (providing for a civil penalty of $2,500 for a negligent violation and $5,000-$10,000 for a willful or malicious violation for each unlawful disclosure); Cal. Civil Code § 56.36 (providing for nominal damages of $1,000); Tex. Health and Safety Code Ann. § 81.104 (providing for a civil penalty of $5,000 for a negligent violation and $5,000-$10,000 for a willful violation for each unlawful disclosure); 410 ILCS 305/13 (providing for liquidated damages of $2,000 for a negligent violation and $10,000 for an intentional or reckless violation); Wis. Stat. Ann § 252.15(8) (providing for statutory damages of $2,000 for a negligent violation and $50,000 for an intentional violation); Me. Rev. Stat. tit. 5 § 19206 (providing for liquidated damages of $1,000 for a negligent violation or $5,000 for an intentional or reckless violation); Mich. Comp. Laws § 333.5131 (providing for statutory damages of $1,000); Mont. Code Ann. § 50-16-1013 (providing for liquidated damages of $5,000 for a negligent violation or $20,000 for an intentional or reckless violation); Del. Code Ann. tit. 16 § 718 (providing for liquidated damages of $1,000 for a negligent violation or $5,000 for an intentional or reckless violation); Haw. Rev. Stat. Ann. § 325-102 (providing for a civil penalty of $1,000 to $10,000); 18 Vt. Stat. Ann. § 1001(e) (providing for a civil penalty of $2,500 for a negligent violation or $10,000-$25,000 for a willful or malicious disclosure); Va. Code Ann. §32.1-36.1 ($100 for violation); W. Va. Code Ann. § 16-3C-5 (providing for liquidated damages of $1,000 for a negligent violation or $10,000 for an intentional or malicious violation); Mo. Rev. Stat. § 191.656(6) (allowing for "aggrieved" individuals to

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settlement fund for ***1.2 million*** insureds' medical information that was stolen from a health services company); *In re TJX Companies Retail Security Breach Litig.*, 584 F. Supp. 2d 395 (D. Mass.) ($18 million settlement for breach of ***450,000*** driver's license numbers and ***45 million*** credit card numbers); *In re Ashley Madison Customer Data Security Breach Litig.*, No. 15-md-02669 (E.D. Mo.) ($11.2 million settlement for breach of information of ***37 million*** users of adultery website).

potentially recover actual damages or liquidated damages of $1,000 for negligent violations and the greater of actual damages or liquidated damages of $5,000 for willful, intentional or reckless violations).

The AIDS Law Project and LAC, who have vast experience litigating HIV confidentiality cases and conducted hundreds of interviews with Settlement Class Members, firmly believe that the Settlement is an excellent result for the Settlement Class that will result in Class Members receiving a substantial percentage of the value of their claims. This conclusion is further supported by the absence of any objections and the very small number of opt-outs. Given the risks of continued litigation, the substantial non-monetary relief provided by the Settlement falls well within the range of reasonableness, and the Settlement should be approved.

C. The Settlement Administrator's Expenses Should Be Approved.

As set forth above, Angeion's monthly invoices received to date are detailed in the accompanying Declaration of Eamon J. Willard and are expected not to exceed $180,000 which is consistent with Angeion's bid price for this matter. The Settlement Administrator's fees and expenses are reasonably incurred in the furtherance of the Settlement, are in accordance with the Settlement Agreement, and should be approved for reimbursement from the common fund. *See In re CertainTeed Fiber Cement Siding Litig.*, 303 F.R.D. 199, 225 (E.D. Pa. 2014) (approving expenses of settlement administrator for reimbursement from common fund).

D. The Requested Attorneys' Fees, Costs, and Class Representative Service Awards Should Be Approved

On July 17, 2018, two weeks prior to the deadline to opt-out or object to the Settlement, Plaintiffs filed their Motion for Attorneys' Fees, Costs, and Class Representative Service Awards, which was promptly posted on the Settlement Website for Class Members to review. (ECF No. 66.) There have been no objections to any aspect of this Motion. For the reasons stated in the

motion papers, Plaintiffs' requests for attorneys' fees, costs, and Class Representative service awards should be granted.

IV. CONCLUSION

Based upon the foregoing reasons, Plaintiffs respectfully request that this Motion be granted. A proposed Final Approval Order is submitted for the Court's consideration.

Dated: October 1, 2018

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Exhibit 7

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

JOHN DOE ONE; JOHN DOE TWO; JOHN DOE THREE; and JOHN DOE FOUR, on behalf of themselves and all similarly situated individuals, *Plaintiffs,* v. CAREMARK, L.L.C.; FISERV, INC.; FISERV SOLUTIONS, LLC; and DEFENDANTS DOES 1–10, *Defendants.*	No. 2:18-cv-00238-EAS-CMV No. 2:18-cv-00488-EAS-CMV (Consolidated for all purposes) CLASS ACTION

REPLY IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiffs submit this brief reply to update the Court on the Class's response to the Notice of Settlement. There have been no timely objections to Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement, Dkt. #96.

Rather, the response from the class as a whole has been positive. The deadline for Class Members to file claims, opt out of the Settlement Agreement, or object to the Settlement was December 20, 2019. There were no objections and only one opt-out (representing 0.02% of the Class Members). Shaffer Decl. (Ex. A.) at 2. There were 284 Class Members who filed timely claims for payment above and beyond the $400 to which each of the 4,505 Class Members is entitled.[1] *Id.* The number of Class Members who filed claims represents 6.35% of the Class. This percentage is comparable with the settlement in *Beckett v. Aetna*, which was discussed in Plaintiffs' motion for final approval. Dkt. #96 at 14–16. In that case, whose settlement was structured similarly to this one, 7.88% of class members submitted claims. Dkt. #70-2 at 1, Case No. 17-cv-3864 (E.D. Pa.). Although the claims must be reviewed for compliance with the requirements of the Settlement Agreement, if they were paid in full, they would total $674,058.53. Ex. A at 2. The settlement administrator has estimated that its fees will be approximately $155,471.72 by the time its work is finished. *Id.* Based on these figures, it appears that the Class Members who did not opt out will receive substantially more than $400; their automatic payment will be approximately $510. *Id.* at 2–3. Plaintiffs continue to believe that they have obtained an excellent result for the class.

There are two housekeeping matters that require small revisions to the proposed final approval order. Now that the deadline for objections has passed without any objections, the Order

[1] Two claims were received after the deadline. It is Plaintiffs' recommendation those claims be accepted for review.

should be amended to reflect that fact. In addition, after the Plaintiffs submitted their Unopposed Motion and Memorandum in Support of an Award of Attorneys' Fees, Costs, and Service Payments, Dkt. #97, Whatley Kallas received a partial refund of the mediator fee it paid, in the amount of $1,186.94. Declaration of Henry Quillen, Ex. B. Therefore, Whatley Kallas is reducing its request for reimbursement of expenses from $16,728.42 to $15,541.48, and the Plaintiffs are reducing their total request for reimbursement of expenses from $50,289.72 to $49,102.78. A revised proposed final approval order is attached as Exhibit C.

While there are no formal timely objections to the settlement, on January 2, an individual filed a request with the Court to appear at the final approval hearing, asking the Court to hold back a portion of the settlement fund (that would be otherwise distributed to Class Members) while another attempt is made to locate the 426 Class Members whose notice was returned as undeliverable.[2] Case No. 2:18-cv-238, Dkt. #98; Case No. 2:18-cv-488, Dkt. #76. The request is essentially a response to the notice and allocation plan contained in the settlement agreement. Even if the Court were to review this as some type of formal objection to the settlement, which it is not, it should be rejected because it was filed well after the December 20 deadline for objections. *In re Auto. Parts Antitrust Litig.*, No. 2:12-CV-00203, 2017 WL 3499291, at *7 (E.D. Mich. July 10, 2017) ("Courts routinely strike objections to class action settlements that are filed after the objection deadline.").

The fact is that the request, if granted, would not improve the Court-approved notice plan and is based on a misunderstanding of how the class list was created. The class member's proposal is that a list of the Class Members whose mail was returned as undeliverable be given to the Ohio

[2] When the Plaintiffs moved for final approval, 420 Class Members' notices had been returned as undeliverable. Dkt. #96 at 9–10. That figure is now 426. Ex. A at 2.

Department of Health so that it can search its records for a current address. The problem is that Caremark *already* used the Ohio Department of Health's address database, which it receives on a regular basis in connection with its administration of OhDAP, when compiling the addresses of the Class Members. It was updated right before the notice was to be disseminated. Therefore, searching the Ohio Department of Health's records will simply duplicate a process that has already been carried out. There is no reason to believe that another search will result in the discovery of a substantial number of new addresses.[3] To hold back a portion of the settlement funds would serve no useful purpose. In fact, a new search may not even be possible, as the Court cannot compel the Ohio Department of Health, a non-party, to participate in the administration of this settlement.

Additionally, while the request speculates that an undeliverable rate of 10% is unreasonably high, it actually represents an excellent result. According to a recent study by the Federal Trade Commission, the average percentage of class members who are not reached in consumer class action notice mailings is 12%, higher than the percentage here. Federal Trade Commission, *Consumers and Class Actions: A Retrospective and Analysis of Settlement Campaigns* at 29 (Sept. 2019), https://www.ftc.gov/system/files/documents/reports/consumers-class-actions-retrospective-analysis-settlement-campaigns/class_action_fairness_report_0.pdf. In its guidance to judges, the Federal Judicial Center states, "It is reasonable [for notice] to reach between 70–95%." Federal Judicial Center, *Judges Class Action Notice and Claims Process Checklist and Plain Language Guide* at 3 (2010), https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf; *see also* Federal Judicial Center,

[3] The proposal did not call for the use of a third-party address database to attempt to locate Class Members, as providing Class Members' personal information to a third party without their consent would raise many of the same issues of privacy that led to this suit. *See* Ex. A at 2 (explaining why this method was not attempted).

Managing Class Action Litigation: A Pocket Guide for Judges at 27 (3d ed. 2010) ("The norm is in the 70–95% range."). Here, the statistics show that the notice program is reasonable, as the reach of 90% by direct mail alone is at the high end of this range, and does not include further notice through publication, a press release, a website, a toll-free number, and OhDAP case workers, all of which were added to the notice program in an effort to notify Class Members who did not receive notice by mail.[4] *See* Dkt. #96 at 10. Therefore, the notice program as a whole that the Court approved is reasonable. *See Fidel v. Farley*, 534 F.3d 508, 513–15 (6th Cir. 2008) (affirming approval of a settlement in which 20% of the class did not receive timely notice); *In re Polyurethane Foam Antitrust Litig.*, 135 F. Supp. 3d 679, 684 (N.D. Ohio 2015) (affirming approval of settlement where direct mail that reached less than 65% of the class, supplemented with publication notice, a website, and a toll-free number, was the "best notice practicable"). The settlement should be finally approved.

CONCLUSION

For the reasons stated in their motion and this reply, Plaintiffs respectfully request that the Court approve the Settlement and enter the revised form of order submitted herewith.

[4] While Plaintiffs would naturally prefer to have reached 100% of the Class Members, Plaintiffs correctly anticipated that some would be difficult to locate. Accordingly, the settlement was publicized and potential Class Members and permitted potential class members sixty days to self-identify or provide updated contact information. Unfortunately, there is no other feasible mechanism to obtain more current information for former OhDAP participants without running afoul of the HIV privacy laws at issue and spending a significant sum on further publication notice that will unnecessarily deplete the settlement funds. Here, those funds for unlocated Class Members will be equitably redistributed amongst the locatable Class Members.

DATED: January 6, 2020

Respectfully submitted,

/s/ *Matthew R. Wilson*

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was filed via the Court's ECF system and was thereby served on all parties.

By: /s/ *Henry C. Quillen*
Henry C. Quillen

One of the Attorneys for Plaintiffs

Exhibit 8

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Attorneys for Plaintiffs and the Proposed Classes

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

ALABAMA DOE, INDIANA DOE, and MISSOURI DOE, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. GILEAD SCIENCES, INC., Defendant.	Case No. 20-CIV-03699 **PLAINTIFF ALABAMA DOE'S RESPONSES TO DEFENDANT GILEAD SCIENCES, INC.'S FORM INTERROGATORIES, SET ONE** Judge: Hon. Danny Chou Dept.: 22 Compl. Filed: September 1, 2020 Trial: Not set

PROPOUNDING PARTY: DEFENDANT GILEAD SCIENCES, INC.

RESPONDING PARTY: PLAINTIFF ALABAMA DOE

SET NO. ONE

Identify each injury you attribute to the INCIDENT and the area of your body affected.

RESPONSE TO FORM INTERROGATORY NO. 6.2:

Alabama Doe experienced stress, worry, anxiety and sleepless nights regarding the incident. Otherwise, Alabama Doe does not claim any physical injuries as a result of the INCIDENT.

FORM INTERROGATORY NO. 6.3:

Do you still have any complaints that you attribute to the INCIDENT? If so, for each complaint state:

(a) A description;

(b) Whether the complaint is subsiding, remaining the same, or becoming worse; and

(c) The frequency and duration.

RESPONSE TO FORM INTERROGATORY NO. 6.3:

[redacted]

FORM INTERROGATORY NO. 6.4:

Did you receive any consultation or examination (except from expert witnesses covered by Code of Civil Procedure sections 2034.210-2034.310) or treatment from a HEALTH CARE PROVIDER for any injury you attribute to the INCIDENT? If so, for each HEALTH CARE PROVIDER state:

(a) The name, ADDRESS, and telephone number;

(b) The type of consultation, examination, or treatment provided;

(c) The dates you received consultation, examination, or treatment; and

(d) The charges to date.

RESPONSE TO FORM INTERROGATORY NO. 6.4:

[redacted]

VERIFICATION

I, [redacted], declare I am the Alabama Doe plaintiff in the within matter. I have read the foregoing Answers to Interrogatories and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief and, as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 5/29/2021

[redacted]

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

ALABAMA DOE, ALABAMA DOE 2, INDIANA DOE, MISSOURI DOE, and FLORIDA DOE, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. GILEAD SCIENCES, INC., and LAHLOUH, INC. Defendants.	Case No. 20-CIV-03699 **PLAINTIFF ALABAMA DOE 2's RESPONSES TO DEFENDANT GILEAD SCIENCES, INC.'S FORM INTERROGATORIES, SET ONE** Judge: Hon. Danny Chou Dept.: 22 Compl. Filed: September 1, 2020 Trial: Not set

PROPOUNDING PARTY: DEFENDANT GILEAD SCIENCES, INC.

RESPONDING PARTY: PLAINTIFF ALABAMA DOE 2

SET NO. ONE

RESPONSE TO FORM INTERROGATORY NO. 6.2:

Alabama Doe experienced stress, worry, anxiety and sleepless nights regarding the incident. Otherwise, Alabama Doe 2 does not claim any physical injuries as a result of the INCIDENT.

FORM INTERROGATORY NO. 6.3:

Do you still have any complaints that you attribute to the INCIDENT? If so, for each complaint state:

(a) A description;

(b) Whether the complaint is subsiding, remaining the same, or becoming worse; and

(c) The frequency and duration.

RESPONSE TO FORM INTERROGATORY NO. 6.3:

[redacted]

FORM INTERROGATORY NO. 6.4:

Did you receive any consultation or examination (except from expert witnesses covered by Code of Civil Procedure sections 2034.210-2034.310) or treatment from a HEALTH CARE PROVIDER for any injury you attribute to the INCIDENT? If so, for each HEALTH CARE PROVIDER state:

(a) The name, ADDRESS, and telephone number;

(b) The type of consultation, examination, or treatment provided;

(c) The dates you received consultation, examination, or treatment; and

(d) The charges to date.

RESPONSE TO FORM INTERROGATORY NO. 6.4:

[redacted]

FORM INTERROGATORY NO. 6.5:

Have you taken any medication, prescribed or not, as a result of injuries that you attribute to the INCIDENT? If so, for each medication state:

VERIFICATION

I, [redacted], declare I am the Alabama Doe 2 plaintiff in the within matter. I have read the foregoing Answers to Interrogatories and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief and, as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 11/5/2021

[redacted]

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

ALABAMA DOE, INDIANA DOE, and MISSOURI DOE, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. GILEAD SCIENCES, INC., Defendant.	Case No. 20-CIV-03699 **PLAINTIFF INDIANA DOE'S RESPONSES TO DEFENDANT GILEAD SCIENCES, INC.'S FORM INTERROGATORIES, SET ONE** Judge: Hon. Danny Chou Dept.: 22 Compl. Filed: September 1, 2020 Trial: Not set

PROPOUNDING PARTY: DEFENDANT GILEAD SCIENCES, INC.

RESPONDING PARTY: PLAINTIFF INDIANA DOE

SET NO. ONE

[redacted]

FORM INTERROGATORY NO. 6.2:

Identify each injury you attribute to the INCIDENT and the area of your body affected.

RESPONSE TO FORM INTERROGATORY NO. 6.2:

Indiana Doe experienced anger and anxiety as a result of the INCIDENT.

FORM INTERROGATORY NO. 6.3:

Do you still have any complaints that you attribute to the INCIDENT? If so, for each complaint state:

(a) A description;

(b) Whether the complaint is subsiding, remaining the same, or becoming worse; and

(c) The frequency and duration.

RESPONSE TO FORM INTERROGATORY NO. 6.3:

[redacted]

FORM INTERROGATORY NO. 6.4:

Did you receive any consultation or examination (except from expert witnesses covered by Code of Civil Procedure sections 2034.210-2034.310) or treatment from a HEALTH CARE PROVIDER for any injury you attribute to the INCIDENT? If so, for each HEALTH CARE PROVIDER state:

(a) The name, ADDRESS, and telephone number;

VERIFICATION

I, [redacted] declare I am the Indiana Doe plaintiff in the within matter. I have read the foregoing Answers to Interrogatories and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief and, as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: [redacted]

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

ALABAMA DOE, INDIANA DOE, and MISSOURI DOE, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. GILEAD SCIENCES, INC., Defendant.	Case No. 20-CIV-03699 **PLAINTIFF MISSOURI DOE'S RESPONSES TO DEFENDANT GILEAD SCIENCES, INC.'S FORM INTERROGATORIES, SET ONE** Judge: Hon. Danny Chou Dept.: 22 Compl. Filed: September 1, 2020 Trial: Not set

PROPOUNDING PARTY: DEFENDANT GILEAD SCIENCES, INC.

RESPONDING PARTY: PLAINTIFF MISSOURI DOE

SET NO. ONE

RESPONSE TO FORM INTERROGATORY NO. 6.1:

[redacted]

FORM INTERROGATORY NO. 6.2:

Identify each injury you attribute to the INCIDENT and the area of your body affected.

RESPONSE TO FORM INTERROGATORY NO. 6.2:

Missouri Doe felt confusion, disbelief, anger and alarm as a result of the INCIDENT.

FORM INTERROGATORY NO. 6.3:

Do you still have any complaints that you attribute to the INCIDENT? If so, for each complaint state:

(a) A description;

(b) Whether the complaint is subsiding, remaining the same, or becoming worse; and

(c) The frequency and duration.

RESPONSE TO FORM INTERROGATORY NO. 6.3:

[redacted]

FORM INTERROGATORY NO. 6.4:

Did you receive any consultation or examination (except from expert witnesses covered by Code of Civil Procedure sections 2034.210-2034.310) or treatment from a HEALTH CARE PROVIDER for any injury you attribute to the INCIDENT? If so, for each HEALTH CARE PROVIDER state:

(a) The name, ADDRESS, and telephone number;

(b) The type of consultation, examination, or treatment provided;

(c) The dates you received consultation, examination, or treatment; and

VERIFICATION

I, [redacted], declare I am the Missouri Doe plaintiff in the within matter. I have read the foregoing Answers to Interrogatories and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief and, as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 5/31/2021

[redacted]

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

ALABAMA DOE, ALABAMA DOE 2, INDIANA DOE, MISSOURI DOE, and FLORIDA DOE, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. GILEAD SCIENCES, INC., and LAHLOUH, INC. Defendants.	Case No. 20-CIV-03699 **PLAINTIFF FLORIDA DOE'S RESPONSES TO DEFENDANT GILEAD SCIENCES, INC.'S FORM INTERROGATORIES, SET ONE** Judge: Hon. Danny Chou Dept.: 22 Compl. Filed: September 1, 2020 Trial: Not set

PROPOUNDING PARTY:	DEFENDANT GILEAD SCIENCES, INC.
RESPONDING PARTY:	PLAINTIFF FLORIDA DOE
SET NO.:	ONE

INCIDENT? (*If your answer is "no," do not answer interrogatories 6.2 through 6.7*).

RESPONSE TO FORM INTERROGATORY NO. 6.1:

[redacted]

FORM INTERROGATORY NO. 6.2:

Identify each injury you attribute to the INCIDENT and the area of your body affected.

RESPONSE TO FORM INTERROGATORY NO. 6.2:

Florida Doe felt disbelief, anger, and alarm as a result of the INCIDENT.

FORM INTERROGATORY NO. 6.3:

Do you still have any complaints that you attribute to the INCIDENT? If so, for each complaint state:

(a) A description;

(b) Whether the complaint is subsiding, remaining the same, or becoming worse; and

(c) The frequency and duration.

VERIFICATION

I, [redacted], declare I am the Florida Doe plaintiff in the within matter. I have read the foregoing Answers to Interrogatories and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief and, as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 11/04/2021

Exhibit 9

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

Andrew Beckett, *et al*, Plaintiffs, v. Aetna, Inc., *et al*, Defendants	No. 2:17-CV-03864-JS

STIPULATION REGARDING CLASS LIST

Plaintiffs and Defendants Aetna, Inc., Aetna Life Insurance Company, and Aetna Specialty Pharmacy, LLC ("Aetna") (collectively, the "Parties"), through their undersigned counsel, hereby stipulate and agree as follows:

WHEREAS, on January 16, 2018, all parties to the above-captioned action entered into a Settlement Agreement requiring, among other things, that a settlement administrator review and process forms and claim packages from Settlement Class Members and then mail settlement payments to Settlement Class Members not later than forty-five (45) days after the Effective Date of the Settlement (ECF No. 50-3 ("Settlement Agreement") §§ 4.3, 4.5);

WHEREAS, on May 10, 2018, the Court granted Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and Qualified Protective Order (ECF No. 59 ("Preliminary Approval Order"));

WHEREAS, in connection with preliminary approval of the class action settlement in this case, the Court ordered Aetna to produce data regarding the Settlement Class Members (the "Class List") to the Settlement Administrator, Angeion Group, LLC (Preliminary Approval Order ¶ 10), which data included names and addresses of Settlement Class Members but not

social security numbers;

WHEREAS, on or about May 16, 2018, Aetna produced the Class List to Angeion in a secure manner pursuant to the Preliminary Approval Order and the Protective Order that has been entered in this case;

WHEREAS, on October 16, 2018, the Court granted final approval of the Parties' Settlement, and retained jurisdiction over all matters related to the Settlement (ECF No. 72 ¶ 21),

WHEREAS, the Settlement Administrator has been processing Claim Forms and is preparing to distribute the settlement funds to the Settlement Class Members, but has informed the Parties that to comply with IRS regulations, the Settlement Administrator requires social security numbers of Settlement Class Members;

WHEREAS, if approved and ordered by the Court, Aetna has agreed to provide that information to the extent it is in Aetna's possession to the Settlement Administrator pursuant to this Stipulation and Proposed Order and the Protective Order that has been entered in this case for the sole purpose of administering the Settlement; and

WHEREAS, Plaintiffs and Plaintiffs' counsel represent that there is good cause and a compelling need for the production of this information by Aetna on a confidential basis to the Settlement Administrator, and that there is not an alternative for administering the Settlement that would involve not producing this information.

NOW, THEREFORE, the Parties agree that Aetna shall provide social security numbers that it has in its possession for Settlement Class Members to the Settlement Administrator pursuant to the Protective Order that has been entered in this case, after an Order is entered by the Court requiring Aetna to do so. A proposed Order is being submitted to the Court.

Dated: November 20, 2018

BERGER MONTAGUE PC

/s/ Shanon J. Carson

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Dated: November 20, 2018

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

321143240.1

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

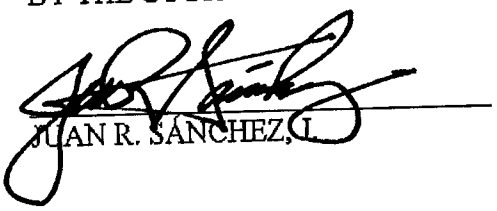
Andrew Beckett, *et al* , Plaintiffs, v. Aetna, Inc., *et al.*, Defendants.	No. 2:17-CV-03864-JS

ORDER

AND NOW, upon consideration of the Parties' Stipulation Regarding Class List, the Court finds that there is good cause and a compelling need for the disclosure of Settlement Class Members' social security numbers by Aetna on a confidential basis to the Settlement Administrator for the sole purpose of administering the Settlement. The Court further finds that there is not an alternative for administering the Settlement that would involve not producing this information to the Settlement Administrator. IT IS HEREBY ORDERED that Defendants shall provide the Settlement Administrator, on a confidential basis and pursuant to and in accordance with this Order and the Protective Order that has been entered in this case, with the social security numbers for Settlement Class Members that Defendants have in their possession. The Settlement Administrator shall maintain this information in accordance with, and shall otherwise comply with the terms of, the Protective Order that has been entered in this case and all applicable federal and state privacy laws. Following the distribution of the settlement funds, the Settlement Administrator shall destroy this data in accordance with Paragraph 20 of the Order Granting Plaintiffs' Motion for Final Approval of Class Action Settlement. (ECF No. 72.)

Dated: November 26, 2018

BY THE COURT:



JUAN R. SÁNCHEZ, J.

321137329.1

Exhibit 10

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

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ALABAMA DOE,

PLAINTIFF,

VS.

CASE NO. 20-CIV-03699

GILEAD SCIENCES, INC.,

DEFENDANT(S).

_____/

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE DANNY Y. CHOU, JUDGE

DEPARTMENT 22, COURTROOM K

ZOOM HEARING

THURSDAY, OCTOBER 28, 2021

A P P E A R A N C E S:

FOR THE PLAINTIFF: BY: SOPHIA RIOS, ESQ.
BY: JOHN ALBANESE, ESQ.
BERGER MONTAGUE

---and---

BY: RHONDA GOLDFEIN, ESQ.
BY: ADRIAN LOWE, ESQ.
AIDS LAW PROJECT OF PENNSYLVANIA

FOR THE DEFENDANT(S): BY: KENNETH L. CHERNOF, ESQ.
BY: ANGEL NAKAMURA, ESQ
ARNOLD AND PORTER

---and---

A P P E A R A N C E S continued:

FOR THE DEFENDANT(S): BY: NELL CLEMENT, ESQ.
BY: KELLY VALENCIA, ESQ.
BY: RACHEL GUPTA, ESQ.
IN-HOUSE COUNSEL FOR
GILEAD SCIENCES

REPORTED BY: ROSARIO AYON, CLR, CSR 12372
OFFICIAL REPORTER

---o0o---

PROCEEDINGS

SOUTH SAN FRANCISCO, CALIFORNIA

MORNING SESSION THURSDAY, OCTOBER 28, 2021

HONORABLE DANNY Y. CHOU, DEPARTMENT 22, COURTROOM K

---o0o---

(Court called to order at 9:00 a.m.)

THE COURT: Welcome, everybody.

Calling the case of *"Alabama Doe versus Gilead Sciences,"* 20-CIV-03699.

If the parties could please state their appearances for the record beginning with plaintiff.

MS. RIOS: Sophia Rios, Berger Montague, for Plaintiffs.

MR. ALBANESE: Good morning, Your Honor. John Albanese from Berger Montague for plaintiffs.

MS. GOLDFEIN: Good morning, Your Honor. Rhonda Goldfein from the AIDS Law Project of Pennsylvania for Plaintiff.

MR. LOWE: Adrian Lowe from the AIDS Law Project of Pennsylvania for Plaintiff.

THE COURT: For Defendants?

MR. CHERNOF: Good morning, Your Honor. This is Ken Chernof. I'm from Arnold and Porter, and I'm appearing on behalf of Defendant, Gilead Sciences, Inc.

MS. NAKAMURA: Good morning, Your Honor, Angel

Nakamura also of Arnold and Porter for Defendant, Gilead Sciences, Inc.

MS. CLEMENT: Good morning, Your Honor. Nell Clement, in-house counsel for Gilead Sciences.

MS. VALENCIA: Good morning, Your Honor. Kelly Valencia, also in-house counsel for Gilead Sciences.

MS. GUPTA: Good morning. Rachel Gupta in-house counsel for Gilead Sciences.

THE COURT: Great. Thank you. Good morning again.

So I believe that the plaintiffs are challenging the tentative.

Who is going to be arguing on behalf of the plaintiffs?

MS. RIOS: I will, Your Honor.

THE COURT: And who is going to be arguing on behalf of Defendant?

MR. CHERNOF: I will, Your Honor.

THE COURT: So, Ms. Rios, you may proceed.

And I'm assuming everyone got the tentative?

MS. RIOS: Yes, we did.

THE COURT: Go ahead.

MS. RIOS: Good morning, Your Honor. We have reviewed the tentative, and Plaintiffs do understand it. And while we do not concede that's actually viewed as the applicable standard for Plaintiff's CMI claims or

the information Defendant seeks is generally relevant to the action, we do not contest Your Honor's order on those bases.

We do, however, wish to discuss three conclusions with Your Honor. The first being that further responses to --

THE REPORTER: I'm sorry. You're going to have to slow down.

MS. RIOS: The first issue was to Interrogatories Number 3 and 6 are not relevant to this action, and the order should be -- the Court should deny the motion as to those interrogatories.

The second is that Plaintiffs contend that their privacy concerns are not premature at this time.

And the third is that if Plaintiffs are compelled to disclose this information, they respectfully request that the Court impose conditions on that disclosure now as is necessary to protect Plaintiffs' privacy interests.

There are also two smaller issues we wish to raise as to Your Honor's order regarding Alabama Doe -- Doe's response to Interrogatory Number 11 and the timing of the responses.

THE COURT: Okay. Why don't you go ahead and begin with the Indiana Doe arguments as to 3 and 6.

MS. RIOS: Sure.

Indiana Doe has identified two persons that have access to the mailbox where the mailer was delivered. However, Indiana Doe does not contend that those persons saw the mailer or that they even may have seen the mailer.

Yet Defendant asked the Court to compel Indiana Doe to provide contact information for those two persons, however, has made no showing that those two people have relevant information as to this action nor could it as Plaintiff does not contend that they may have seen the mailer.

THE COURT: Let me stop you right there.

Mr. Chernof, given that concession by Plaintiff, do you need the contact information for those two individuals?

MR. CHERNOF: Thank you, Your Honor. As long as the concession is on the record that Plaintiffs do not contend that these two individuals saw the mailer or the return address on the mailer, we don't need further contact information with regard to those two.

THE COURT: Just to be clear, Ms. Rios, that is the position your client, Indiana Doe, is taking here and that this is on the record, and on that basis, then, you're not going to need to provide additional information regarding those two individuals; is that correct?

MS. RIOS: Yes, as stated in the Indiana Doe's discovery responses, he does not believe that anyone -- these two individuals included -- saw the mailer after it was delivered.

THE COURT: That's not in your response. I have it in front of me. I just want to make it very clear on the record that that is basically going to be a supplement to the response that you are stating on the record right now and on that basis that the defendant is going to, I guess, effectively withdraw the request to compel further responses to 3 and 6 on the part of Indiana Doe?

MS. RIOS: Yes, Your Honor, you are correct. It's not included in the response to 3 and 6. It is included in the response to Interrogatory Number 11, but we can supplement the responses to 3 and 6 to include that information as well.

THE COURT: Is that acceptable to you, Mr. Chernof?

MR. CHERNOF: I believe so, Your Honor. I'm just taking a quick look at the responses to confirm. I believe that's acceptable, yes.

THE COURT: So what I'm going to do in the order is modify with respect to Indiana Doe and 3 and 6 and simply require you to supplement to confirm that Indiana Doe is not alleging that those individuals identified

saw or may have seen the mailer.

MS. RIOS: Yes, Your Honor.

THE COURT: Okay. Now to your next issue about whether the privacy concerns are premature.

MS. RIOS: Yes. The second and third point are related.

So Plaintiffs' concerns about invasion of privacy are not premature at this time. Given the sensitivity of the topic at issue and the potential for disclosure to harm Plaintiffs, requiring Plaintiffs to turn over names and contact information for those in close proximity to them without any prohibitions or conditions on what Gilead can do with that information is an invasion of privacy as it would result in Plaintiffs experiencing both stress and anxiety at the time of disclosure.

Now, Plaintiffs will experience that stress and anxiety regardless of whether Gilead actually does as it has said it will do and go about contacting these individuals.

Which brings me to the third point, Your Honor, and that is, because disclosure itself is an invasion of Plaintiffs' privacy, if the Court has ruled as it has outlined in its tentative, Plaintiffs' privacy interest can and should be protected now by imposing conditions on the disclosure of that information.

Now, conditions on disclosure are necessary because Plaintiffs cannot rely on their statutory rights to protect them.

THE COURT: Ms. Rios, let me short circuit this. What are you proposing as a condition?

MS. RIOS: Plaintiffs believe that two conditions would adequately protect their privacy interests. First, that Gilead not be allowed to informally contact these individuals using the contact information and names provided by Plaintiffs and, second, that Gilead should not be permitted to serve a subpoena on these individuals until Plaintiffs have had an opportunity to file and have heard a motion for a protective order or a motion to quash.

THE COURT: All right. Mr. Chernof, what is your client's position on this issue?

MR. CHERNOF: Well, Thank you, Your Honor. I will give you our position on this issue and our potential path forward on these if I may.

So, first, just briefly our position, first off, twofold, first, I don't believe this is an issue that needs to be really addressed at this point in time. As Your Honor set forth in the tentative ruling, all the Court is ordering at this juncture is for Plaintiffs to provide the names and contact information of the people who they contend may have viewed the return address on

their mailer.

So there is nothing about that that should be private, and the Court reserve, I think -- it's fair to convene the order for another day -- the manner in which Gilead cannot contact these individuals whether informally or by subpoena.

So I don't think the issue is before the Court at this point.

I will say that, yes, at some point Gilead is going to have no choice but to use this information and to take testimony from these individuals as long as Plaintiffs continue to allege and contend that people within these groups that we're asking for, for information about, may have viewed their mailer. Then Gilead is going to have no choice but to ask them whether that's true or not.

This is a fundamental aspect of what remains of Plaintiffs' case. And without the ability to test that allegation, Plaintiffs will have a one-sided litigation, and we can't defend Gilead appropriately under those circumstances.

That said, Your Honor, we're mindful of Plaintiffs' stated concerns. And so our view has always been that we do our best to work with Plaintiffs' counsel to come up with a mechanism for communicating and getting testimony from these people that is

protective of the Plaintiffs' privacy as possible. We remain open to do that. And I would suggest that we -- once Plaintiffs produce this information forthrightly, we're prepared to meet and confer with them and to see if we can't come up with an agreement as to how to do that. And if we can, then that will be -- should be fine. And if not, we can be back before Your Honor with that dispute at that time.

But just to give the Court some brief context and then I'll pause. Just to make sure it's clear how important this discovery is, for one example, one of the newly added plaintiffs, a Florida Doe, specifically alleges that his mother opened or collected his mail.

Okay. So maybe she did, and maybe she didn't. This is an important fact that needs to be explored by the parties: Did she collect the letter? Did she open it up, et cetera?

Of course, we're going to have to take her deposition to explore that issue. How could we not? And so the same is true with regard to any other person for whom Plaintiff continues -- Plaintiffs continue to maintain may have viewed their mailer.

And so it's going to be a core issue in this case whether it's now or later.

With that said, Your Honor, we really are prepared to work out a mechanism that Plaintiffs are

comfortable with.

THE COURT: Okay. Here's what I'm going to do. I'm going to order the parties to meet and confer about protocols to address Plaintiffs' privacy concerns.

I'm going to prohibit Defendant from contacting those individuals until they've had that meet and confer and until that issue has resolved.

Obviously, if your meet and confer doesn't result in any resolution, then you should schedule an informal discovery conference. We'll see if we can figure stuff out there. If not, then presumably the next step would be a motion for protective order that will hash those issues out.

But what I will do is prohibit Defendant from contacting until we finish going through this process.

I will -- I'm not in the business of giving advisory opinions, but I do want to note that it seems clear that this, sort of, contact is going to be inevitable to some extent if you're alleging that those individuals actually viewed or may have viewed the mailer.

That being said, there should be ways to, at least mitigate, if not reduce the privacy concerns. Just off the top of my head, I was thinking in a deposition that Defendant could just show the mailer without any addresses and just ask a witness, "Have you

ever seen it?" And if the person has never seen it, you're done. There's no need to disclose anything. And even then, if they have seen it, you can ask them, "Do you remember where? Do you remember any information on that envelope?"

If they've seen it, there's no privacy issue. If they haven't seen it, you're done, and that would, presumably, at least with third parties, protect the identities of the plaintiffs.

It may be tricky with relatives or whatnot, but those are issues that can be hashed out through some, sort of, protocol that at least minimizes the risk.

I'm not suggesting that you have to adopt any of them. I just want to be clear that I see the privacy concerns, but I don't necessarily see them as an insurmountable barrier to doing discovery without at least minimizing the infringement on those privacy rights.

And the reality is, by filing this lawsuit, they have to at least recognize that some of those privacy rights are going to have to give way a little bit if they're going to pursue this lawsuit.

With that does any party have any objections to the Court's approach at this point on the issue?

Ms. Rios?

MS. RIOS: No, Your Honor.

THE COURT: Okay. Mr. Chernof, that's acceptable to you as well?

MR. CHERNOF: That's fine with Gilead as well. Thank you, Your Honor.

THE COURT: I guess the only question I have for both of you, do you need a timeline or deadline for doing the meet and confer, or are you guys happy with an order to meet and confer?

MR. CHERNOF: Well, from Gilead's perspective, I believe the Court's order requires Plaintiffs to produce the requested discovery within ten days.

THE COURT: They may be requesting some additional time, I'm guessing.

MR. CHERNOF: I was going to see what they requested and then to respond on the timing for the meet and confer maybe after that, if that's okay.

THE COURT: That's perfectly fine.

Ms. Rios, the two side points -- actually, one of them is a little extra time to provide the information?

MS. RIOS: That's correct, Your Honor.

First, I wanted to raise Alabama Doe 1's response to Interrogatory Number 11.

THE COURT: I apologize, yeah.

MS. RIOS: We seek clarification on that point, and I believe Your Honor knows that it did not

officially deny the motion as to Interrogatory Number 11.

THE COURT: And that was probably an oversight on my end. Well, I thought I did include Alabama Doe as to 11.

MS. RIOS: Yes, Your Honor. The opinion states that Alabama Doe's response is adequate, but in the order it does not officially deny the motion as to Interrogatory Number 11.

THE COURT: My bad. I will add that in.

I assume no objection, Mr. Chernof?

MR. CHERNOF: No objections.

THE COURT: And thank you for catching that.

MS. RIOS: Thank you, Your Honor.

Lastly, Plaintiffs do request additional time to provide supplemental responses. As noted in the CMC report, Plaintiffs are preparing other discovery responses that are due on November 10th. We, therefore, respectfully request 21 days to provide any supplemental responses.

THE COURT: Any objections, Mr. Chernof?

MR. CHERNOF: No, Your Honor. That's fine.

THE COURT: Okay. So I'll give you guys 21 days.

MS. RIOS: Thank you, Your Honor.

THE COURT: So with that, Mr. Chernof, 21

days -- let's see -- would take us almost to Thanksgiving.

How much time do you think you need to meet and confer? Factor in right after you get it, there's Thanksgiving, and we've got Christmas coming up thereafter, and I always want to make sure that no associate's holidays are unnecessarily infringed upon if we can avoid it.

MR. CHERNOF: And the associates who are involved in this case thank you in advance for that.

This is fine. We don't need to -- we're not here to unduly press Plaintiffs on the timing. We can be flexible with regard to that. If we want to put a timeframe to meet and confer, it's just important for us to have the information before the meet and confer so we know what we're dealing with.

THE COURT: I'll give you 60 days to meet and confer from the date in which the discovery is produced.

MR. CHERNOF: I think that's fine. We would like to do it sooner because there may be discovery to undertake. But hopefully we can set an outside boundary, and if Plaintiffs' counsel would commit to meeting with us as soon as practicable, we're okay with that.

THE COURT: Any objection to that, Ms. Rios?

MS. RIOS: No objections.

THE COURT: So the order will be that you meet and confer within 60 days. It certainly doesn't prevent you from meeting and conferring earlier. 60 days should take you, if everything sits right, will take you to about the end of January. So that would avoid the holiday rush, if necessary, and hopefully will provide plenty of time.

I'm guessing that will not be the only piece of discovery you will be meeting and conferring on. So there's a reasonable chance you'll be able to combine a lot of stuff in whatever meeting you do schedule.

MR. CHERNOF: Your Honor, may I make one suggestion to amend that slightly. Can the order be that's 60 days to complete the meet and confer process?

THE COURT: Any objection to that, Ms. Rios?

MS. RIOS: No objections.

THE COURT: Okay. All right. Any other issues you want to raise, Ms. Rios, relating to the Court's order?

MS. RIOS: None at this time. Thank you.

THE COURT: Mr. Chernof, anything on your end?

MR. CHERNOF: No, Your Honor. Thank you very much.

THE COURT: All right. Let me recall your case management statements. So it looks like both parties are in agreement that we need to set a new date for the

class cert schedule; is that right?

MS. RIOS: That's correct, Your Honor, although I believe no date has been ordered by Your Honor until -- presently.

THE COURT: Sure, and obviously there's a slight disagreement over the proposed schedules.

Frankly, they're not that far different. It looks like it's about 60 days, roughly, difference; is that right?

MR. CHERNOF: Yes. Your Honor, I can respond to that.

THE COURT: Go ahead, Mr. Chernof.

MR. CHERNOF: That's correct. 60 days is approximately the difference. And our position was Gilead is not opposed to the longer schedule. We didn't think it was going to be necessary, given that Gilead's production will be substantially complete next month, and the other reason for the extension didn't seem to be important.

However, essentially, given the timeline that Your Honor has just set out with regard to the discovery with regard to the plaintiffs, I think, you know, we don't -- we tend not to oppose the schedule.

THE COURT: So if the required brief is due October 14, 2022 -- I'm going to pull out a calendar and see what that corresponds to.

I don't have access to my research attorney's schedule, but I'm reasonably confident it's available, and there's no limitation on what the possible hearing dates are.

I would suggest scheduling it for the first Thursday in November, November 3rd of 2022.

Does that work for the parties?

MS. RIOS: That's fine for Plaintiffs, Your Honor.

THE COURT: Mr. Chernof, does that work for you as well?

MR. CHERNOF: That's fine with us. Thank you.

THE COURT: So we'll set the day as November 3, 2022, at 9:00 a.m., using Plaintiffs' proposed briefing schedule.

What I would ask is one of the parties prepare a stip and order incorporating all of that information.

And, Ms. Rios, since we're taking your schedule, I'm going to put the onus on you. And, obviously, just make sure Mr. Chernof is okay with it and just submit it, and that will be the order of the Court.

MS. RIOS: Thank you, Your Honor. I'll do that.

THE COURT: And for the next CMC, you guys are suggesting February of 2022. Is there a particular date on a Thursday in February that the parties would prefer?

MR. CHERNOF: This is Ken Chernof. If we said

60 days, we might want to time it such that, if there's a protective order or whatnot, it might coincide.

THE COURT: That's a good thought. You want to say March? If you meet and confer by mid-January, we schedule an IDC, hopefully, no later than the end of January. Assuming that it's not resolved at that point, then you would be authorized to file the brief.

I assume Plaintiffs will have a brief motion on file within a couple weeks from the IDC.

Ms. Rios?

MS. RIOS: Yes, Your Honor, that sounds good for Plaintiffs. And also in relation to the proposed conclusion of fact discovery, that seems like a good date as well.

THE COURT: Mr. Chernof, does that make sense to you?

MR. CHERNOF: I'm having some heartburn about that because the proposed close of discovery, I think, it is April 4th. So assuming that -- once we conclude that process and under the assumption we're going to go forward with this third-party discovery --

THE COURT: You know, I think -- the way I look at it is, if it's -- if there is a protective order that doesn't get placed until March, we can always extend the discovery cutoff deadline, if necessary, to accommodate the third-party discovery that's going to be necessary

at that stage.

Is that something that, Ms. Rios, you're open to?

MS. RIOS: Yes, Your Honor.

MR. CHERNOF: That's fine with Defendant as well, Gilead as well.

THE COURT: So you want to pick a date in March on a Thursday?

MR. CHERNOF: Your Honor, any date in March would be good for Gilead.

THE COURT: March 10th?

MR. CHERNOF: Yes.

MS. RIOS: That's good.

THE COURT: Jane, is the 10th wide open now?

THE CLERK: Give me just a second.

March 10th is wide open.

THE COURT: Let's say March 10th at 9:00 a.m.

In your stip and order, if you can add that the CMC will also be scheduled for March 10th at 9:00 a.m.

MS. RIOS: Yes, Your Honor.

THE COURT: Any other issues the parties want to raise in the conference today?

MS. RIOS: None from Plaintiffs.

MR. CHERNOF: Nor from Gilead, Your Honor. Thank you.

THE COURT: I think I have everything that I

need. I will issue an order with the changes that we discussed on -- for my order regarding the motion, and then I will look for the stipulation and order from the plaintiff. Great.

MS. RIOS: Thank you.

MR. CHERNOF: Thank you very much, Your Honor.

(Whereupon, the proceedings were concluded.)

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STATE OF CALIFORNIA)
) ss
COUNTY OF SAN MATEO)

REPORTER'S CERTIFICATE

I, ROSARIO AYON, an Official Court Reporter of the Superior Court, State of California, County of San Mateo, Certificate No. 12372, do hereby certify that the foregoing Pages 1 through 22 comprise a full, true, and correct computer-aided transcription of the proceedings given and had in the above-entitled matter that was reported by me on October 28, 2021, in Department 22, and that the same is a correct transcript of the proceedings.

DATED: OCTOBER 28, 2021

Rosario Ayon
ROSARIO AYON, CLR, CSR #12372
OFFICIAL COURT REPORTER