

JS 44 (Rev. 06/17)



**CIVIL COVER SHEET**

17-cv-4566

The JS 44 civil cover sheet is a form that contains information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

R.H., individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff Rooks County, Kansas  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Patricia M. Kipnis, Bailey & Glasser LLP, 923 Haddonfield Road, Suite 300, Cherry Hill, NJ 08002 Phone 856-324-8219

**DEFENDANTS**

AETNA Health, Inc., AETNA Life Insurance Company, AETNA Inc.

County of Residence of First Listed Defendant Shawnee County, Kansas  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
|   | <b>PTF</b>                            | <b>DEF</b>                 |   | <b>PTF</b>                 | <b>DEF</b>                            |
| Citizen of This State                   | <input type="checkbox"/> 1            | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input checked="" type="checkbox"/> 10 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. 1332 (d)  
 Brief description of cause:  
 Public disclosure of Plaintiff's private medical information

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.C.V.P. DEMANDS

CHECK YES only if demanded in complaint:  
 JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

OCT 12 2017

DATE

10/10/17  
 FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD

Patricia M. Kipnis

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE



UNITED STATES DISTRICT COURT

17 4566

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: Motion to proceed under pseudonym to be filed.

Address of Defendant: AETNA, c/o The Corporation Company, Inc., 112 SW 7th Street, Suite 3C, Topeka, KS 66603

Place of Accident, Incident or Transaction: Plainville, Kansas  
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?  
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes  No

Does this case involve multidistrict litigation possibilities? Yes  No

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes  No
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes  No
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes  No
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
Yes  No

CIVIL: (Place  in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. Indemnity Contract, Marine Contract, and All Other Contracts
2.  FELA
3.  Jones Act-Personal Injury
4.  Antitrust
5.  Patent
6.  Labor-Management Relations
7.  Civil Rights
8.  Habeas Corpus
9.  Securities Act(s) Cases
10.  Social Security Review Cases
11. All other Federal Question Cases  
(Please specify) \_\_\_\_\_

B. Diversity Jurisdiction Cases:

1.  Insurance Contract and Other Contracts
2.  Airplane Personal Injury
3.  Assault, Defamation
4.  Marine Personal Injury
5.  Motor Vehicle Personal Injury
6.  Other Personal Injury (Please specify) \_\_\_\_\_
7.  Products Liability
8.  Products Liability — Asbestos
9.  All other Diversity Cases  
(Please specify) \_\_\_\_\_

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Patricia Kipnis, counsel of record do hereby certify:  
 Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;  
 Relief other than monetary damages is sought.

DATE: 10/10/17 Patricia Kipnis 91470  
 Attorney-at-Law Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 10/10/17 Patricia Kipnis 91470  
 Attorney-at-Law Attorney I.D.#

OCT 12 2017



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

CASE MANAGEMENT TRACK DESIGNATION FORM

R.H., individually and on behalf of all others : CIVIL ACTION
similarly situated, : 17 4566
v. :
AETNA Health Inc., AETNA Life Insurance : NO.
Company and AETNA, Inc. :

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
(b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
(c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
(d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
(e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) (X)
(f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

10/10/17 Date Patricia Kipnis Attorney-at-law R.H., plaintiff Attorney for
856-324-8219 Telephone 304-342-1110 FAX Number pkipnis@baileyglasser.com E-Mail Address

OCT 12 2017

#400  
MMB

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

R.H. )  
individually and on behalf of all others )  
similarly situated, )

**17 4566**

Plaintiffs, )

v. )

Case No.  
Div.

AETNA Health, Inc., )  
Serve Registered Agent: )  
The Corporation Company, Inc. )  
112 SW 7<sup>th</sup> Street, Suite 3C )  
Topeka, KS 66603 )

and )

AETNA Life Insurance Company )  
Serve Registered Agent: )  
The Corporation Company, Inc. )  
112 SW 7<sup>th</sup> Street, Suite 3C )  
Topeka, KS 66603 )

and )

AETNA, Inc. )  
Serve Registered Agent: )  
The Corporation Company, Inc. )  
112 SW 7<sup>th</sup> Street, Suite 3C )  
Topeka, KS 66603 )

Defendants. )

**FILED**  
OCT 12 2017  
By KATE BARKMAN, Clerk  
Dep. Clerk

**CLASS ACTION COMPLAINT**

OCT 12 2017

Plaintiff R.H.<sup>1</sup> on behalf of himself and as a representative of all others similarly situated, submits the following Complaint against Defendant. In support of the Petition, Plaintiff respectfully submits the following:

1. Plaintiff is an adult residing in Plainville, KS, a very small, rural town in Kansas.
2. Defendant AETNA Health, Inc. (“AETNA Health”), is a corporation incorporated in the State of Pennsylvania and licensed and operating in and under the laws of the State of Kansas with its principal place of business at 151 Farmington Ave., Hartford, CT. Defendant AETNA Health can be served through its registered agent, The Corporation Company, Inc., 112 SW 7<sup>th</sup> Street, Suite 3C, Topeka, KS 66603.
3. Defendant AETNA Life Insurance Company (“AETNA Life”), is a corporation incorporated in the State of Pennsylvania and licensed and operating in and under the laws of the State of Kansas with its principal place of business at 151 Farmington Ave., Hartford, CT. Defendant AETNA Health can be served through its registered agent, The Corporation Company, Inc., 112 SW 7<sup>th</sup> Street, Suite 3C, Topeka, KS 66603.
4. Defendant AETNA, Inc. (“AETNA, Inc.”), is a corporation incorporated in the State of Connecticut and licensed and operating in and under the laws of the State of Kansas with its principal place of business at 151 Farmington Ave., Hartford, CT. Defendant AETNA, Inc. can be served through its registered agent, The Corporation Company, Inc., 112 SW 7<sup>th</sup> Street, Suite 3C, Topeka, KS 66603.
5. Jurisdiction and venue are proper because Defendants are businesses which can be found in the State of Pennsylvania.

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<sup>1</sup> Due to the highly private nature of the case and allegation of the Petition, Plaintiff requests that his identity be kept confidential. Plaintiff therefore intends to file a motion to proceed under pseudonym.

6. 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 \$5,000,000, 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 the one of the Defendants.

7. Venue is appropriate in this district under 28 U.S.C. §1391 because Defendant AETNA Health resides in this District.

**FACTS COMMON TO ALL CLAIMS**

8. Defendants AETNA Health, AETNA Life, and AETNA, Inc. are health care providers pursuant to state and federal law, providing health care and medical insurance services to the general public, operating throughout the United States of America.

9. As health care providers, Defendants generate and store highly sensitive and confidential medical records and information of their customers.

10. Pursuant to State and Federal law, Defendants, and each of them, are required to maintain the confidentiality of customer medical records and information.

11. Plaintiff purchased an AETNA health insurance policy in Kansas where all three Defendants are licensed to conduct business.

12. Plaintiff is a customer of Defendants who entrusted Defendants with highly sensitive medical records and information.

13. Plaintiff lives in a rural area in Kansas.

14. As Plaintiff is living with the HIV virus, he leases a post office box to protect his privacy.

24. A positive HIV status can carry significant negative social stigma. Federal and State privacy laws, including without limitation, the Health Insurance Portability and Accountability Act, were promulgated in response to the negative and often life-threatening response people living with HIV faced from the public.

25. Defendants post their privacy practices online, stating: “We value the trust you place in us. We take great care to protect your information.” <https://www.aetna.com/legal-notices/privacy.html>

26. Plaintiff and the Class have suffered loss of the benefit of their bargain with Defendants wherein they have paid for privacy services and have not received the service.

#### **CLASS ACTION ALLEGATIONS**

27. Pursuant to Federal Rule of Civil Procedure 23, Plaintiff brings this action on behalf of himself and the following proposed class:

Customers of AETNA Health, Inc., AETNA Life Insurance Company, and AETNA, Inc. whose medical information was released as a result of the unauthorized disclosure of their medical records and information sent via regular mail via the “open window” envelope on July 28, 2017.

28. Excluded from the Class are Defendants, any affiliate, parent, employee or subsidiary of Defendants; any officer, director, or employee of Defendants; anyone employed by counsel for Plaintiff in this action; and any Judge to whom this case is assigned as well as his or her immediate family.

29. This action has been brought and may be properly maintained as a class action under FRCP 23.

30. **Numerosity of the Class – Rule 23(a)(1)**. Class members are so numerous that their individual joinder is impracticable. The precise number of Class members and their

addresses can be obtained from information and records in Defendants' possession and control. Class members may be notified of the pendency of this action by mail or by published notice or other appropriate methods.

31. **Existence and Predominance of Common Questions of Law and Fact – Rule 23(a)(2)**. Common questions of law and fact exist as to all members of the Class and predominate over questions affecting only individual Class members. These common legal and factual questions, each of which may also be certified under FRCP 23, include the following:

- a. Whether Defendants', and each of them, conduct violated the Pennsylvania Confidentiality of HIV-Related Information Act and the Pennsylvania Unfair Trade Practices and Consumer Protection Law;
- b. Whether Defendants, and each of them, breached their fiduciary duties to Plaintiff and the Class;
- c. Whether Defendants, and each of them, breached its contract with Plaintiff and the Class;
- d. Whether Defendants, and each of them, invaded Plaintiff's and the Class' privacy;
- e. Whether Defendants, and each of them, acted negligently with respect to Plaintiff and the Class;
- f. Whether Plaintiff and the other Class members are entitled to equitable relief, including declaratory relief, restitution, rescission, a preliminary and/or a permanent injunction;
- g. Whether Plaintiff and the other Class members are entitled to damages, including punitive damages, and/or other monetary relief; and



h. Whether this case may be maintained as a class action under FRCP 23.

32. **Typicality – Rule 23(a)(3)**. Plaintiff's claims are typical of the claims of the Class because he was a customer of Defendant, and his personal information was compromised in the July 2017 breach. Moreover, Plaintiff and the Class sustained similar injuries as a result of Defendants' uniform conduct and their legal claims all arise from the same policies and practices of Defendant.

33. **Adequacy of Representation – Rule 23(a)(4)**. Plaintiff will fairly and adequately protect the interests of Class members. Plaintiff has retained counsel competent and experienced in complex class action litigation, and Plaintiff will prosecute this action vigorously. Plaintiff has no interests adverse or antagonistic to those of the Class.

34. **Superiority – Rule 23(b)**. A class action is superior to all other available means for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by individual Class members are small compared with the burden and expense that would be entailed by individual litigation of their claims against Defendants. It would thus be virtually impossible for the Class members, on an individual basis, to obtain effective redress for the wrongs done them. Furthermore, even if Class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single court, and presents no unusual management difficulties under the circumstances here.

35. In the alternative, the Class may be certified under Rule 23(b)(1) and/or (b)(2) because:

- a. The prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudication with respect to individual Class members that would establish incompatible standards of conduct for Defendant;
- b. The prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them which would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and/or
- c. Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final and injunctive relief with respect to the Class members as a whole.

**COUNT I**

**(On Behalf of the Plaintiff and Class for Invasion of Privacy)**

36. Plaintiff incorporates by reference and re-alleges all paragraphs previously alleged herein. Plaintiff asserts this cause of action on behalf of the Class against Defendants.

37. At all times relevant hereto, Defendants had the duty to keep Plaintiff's medical information private.

38. Defendants breached their duty to Plaintiff by intentionally disclosing his highly sensitive and confidential medical information to the public without obtaining authorization from Plaintiff.

39. Defendants breached their duty to keep Plaintiff's medical information private by publicizing matters of a highly sensitive nature to the public concerning the private life and medical information of Plaintiff.

40. As a direct result of Defendants' breach of their duty of confidentiality and privacy and the disclosure of Plaintiff's confidential medical information, Plaintiff and the Class suffered damages including, without limitation, loss of privacy, humiliation, shame and embarrassment.

### **COUNT II**

#### **(On behalf of Plaintiff and the Class for Breach of Contract)**

41. Plaintiff incorporates by reference and re-alleges all paragraphs previously alleged herein. Plaintiff asserts this cause of action on behalf of the Class against Defendants.

42. In Defendants' Notice of Privacy Practices, it states "Aetna considers personal information to be confidential. We protect the privacy of that information in accordance with federal and state privacy laws, as well as our own company privacy policies."

<http://www.aetna.com/legal-notices/documents/health-notice-of-privacy-practices.pdf>

43. Defendants' notice constitutes an agreement between Defendants and their patients.

44. Defendants breached their agreement with Plaintiff and the Class by (1) failing to implement security measures to fulfill their agreement with their patients, and (2) failing to implement security measures such as securing medical records and information.

45. Plaintiff and the Class have been damaged by Defendants' breach of their obligations because their personal and medical information has been compromised and they are

more susceptible to public stigma and scrutiny which would impact their daily lives and the loss of costs paid to Defendants for the maintenance of the confidentiality of medical information.

**COUNT III – OUTRAGEOUS CONDUCT**

**(On Behalf of the Plaintiff and Class for violations of the Pennsylvania Confidentiality of HIV-Related Information Act (Act148) 35 P.S. §7601, et seq.)**

46. Plaintiff incorporates by reference and re-alleges all paragraphs previously alleged herein. Plaintiff asserts this cause of action on behalf of the Class against Defendants.

47. 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.

48. 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).

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

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

51. 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.

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

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

54. Defendant's conduct was extreme and outrageous and caused Plaintiff and the other Class Members extreme and severe mental distress.

55. As a direct result of Defendants' actions Plaintiff and the other Class Members suffered damages, including, without limitation, loss of privacy, embarrassment, humiliation, shame and loss of enjoyment of life.

**COUNT IV**  
**(On behalf of Plaintiff and the Class for  
Negligent Training, Hiring and Supervision)**

56. Plaintiff incorporates by reference and re-alleges all paragraphs previously alleged herein. Plaintiff asserts this cause of action on behalf of the Class against Defendants.

57. At all times relevant hereto, Defendants owed a duty to Plaintiff and the Class to hire competent employees, vendors, agents, or other third-party representatives as well as train and supervise them regarding their duties owed to their patients.

58. Defendants breached their duty to Plaintiff and the Class by allowing their employees, vendors, agents, or other third-party representatives to send correspondence to customers in envelopes which did not adequately protect and prevent disclosure of private health information to the public.

59. As a direct result of Defendants' breach of their duty of confidentiality and privacy and the disclosure of Plaintiff's and the Class confidential medical information, Plaintiff and the Class suffered damages, including, without limitation, loss of privacy, confidentiality, embarrassment, humiliation, and loss of enjoyment of life.

**COUNT V – BREACH OF FIDUCIARY DUTY**  
**(On Behalf of the Plaintiff and Class for Breach of Fiduciary Duty)**

60. Plaintiff incorporates by reference and re-alleges all paragraphs previously alleged herein. Plaintiff asserts this cause of action on behalf of the Class against Defendants.

61. In Defendants' Notice of Privacy Practices, it states "We value the trust you place in us. We take great care to protect your information." <https://www.aetna.com/legal-notices/privacy.html>

62. Defendants' notice constitutes an acceptance of their fiduciary duty of confidentiality to their patients.

63. Defendants breached their duty to Plaintiff and the Class by disclosing their customers' HIV status to the public.

64. Plaintiff and the Class have suffered damages, including, without limitation, loss of privacy, loss of medical expenses, confidentiality, embarrassment, humiliation, and loss of enjoyment of life.

**COUNT VI**  
**(On behalf of Plaintiff and the Class for Negligence)**

65. Plaintiff incorporates by reference and re-alleges all paragraphs previously alleged herein. Plaintiff asserts this cause of action on behalf of the Class against Defendants.

66. Defendants owed Plaintiff and the Class a duty to exercise reasonable care in safeguarding and protecting the medical information of their patients. This duty included securing medical records and information and implementing policies regarding properly securing and mailing medical records and information of Plaintiff and the Class.

67. Defendants breached their duty to exercise reasonable care in protecting the personal information of Plaintiff and the Class by (1) failing to implement security measures to

protect the information of Plaintiff and the Class; (2) failing to implement policies regarding sending medical records and information through the mail; and (3) failing to implement security measures such as properly securing medical records.

68. As a result of Defendants' negligence, Plaintiff and the Class suffered damages including without limitation the loss of costs paid to Defendants for the maintenance of confidentiality.

**COUNT VII**

**(On Behalf of the Plaintiff and Class for violations of the  
Pennsylvania Unfair Trade Practices and Consumer Protection  
Law 73 Pa. Stat. Ann. §§ 201-1, *et seq.*)**

69. Plaintiff incorporates by reference and re-alleges all paragraphs previously alleged herein. Plaintiff asserts this cause of action on behalf of the Class against Defendants.

70. Plaintiff and the Class purchased insurance and health benefits services from Defendants in trade and commerce for personal, family, and/or household purposes.

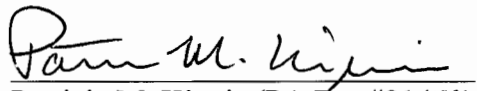
71. Defendants, and each of them, engaged in unlawful, unfair, and deceptive acts and practices, with respect to the sale and advertisement of the services purchased by Plaintiff and the Class, including by representing that Defendants would adequately protect Plaintiff's and the Class' highly confidential 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.

72. Defendants knew or should have known that sending private health information in large-window envelopes and in the fashion in which they were sent was inadequate to safeguard Plaintiff's and the Class' medical information. Defendants' actions were negligent,

4. For an Order that AETNA Health, AETNA Life, and AETNA, Inc., and each of their actions were outrageous so as to cause Plaintiff and the Class damages.
5. For an Order declaring that AETNA Health, AETNA Life, and AETNA, Inc., and each of them, have acted negligently so as to cause Plaintiff and the Class damages.
6. For an order awarding Plaintiff and Class members damages in an amount to be proven at trial, including punitive damages, together with pre-trial and post-trial interest thereon;
7. For an order awarding Plaintiff and Class members restitution, disgorgement, or other equitable relief as the Court deems proper, including corrective notice;
8. For an order enjoining AETNA Health, AETNA Life, and AETNA, Inc., and each of them, from continuing to engage in the unlawful business practices alleged herein;
9. For an order awarding Plaintiff and the Class reasonable attorneys' fees and costs of suit, including expert witness fees; and
10. For an order awarding such other and further relief as this Court deems just and proper.

DATED: October 10, 2017

Respectfully submitted,

  
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# ClassAction.org

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