

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

Andrew Beckett, Arizona Doe, California Doe, S.A., Colorado Doe, Connecticut Doe, DC Doe, Florida Doe, Georgia Doe, Illinois Doe, Indiana Doe, 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

**DECLARATION OF SHANON J. CARSON IN SUPPORT OF PLAINTIFFS’
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

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

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

2. I am a Managing Shareholder of Berger & Montague, P.C. (“Berger & Montague”) and one of the proposed Co-Lead Class Counsel for Plaintiffs and the Settlement Class in the above-captioned litigation.

3. 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. I have attached a copy of our Firm's resume hereto as Exhibit 1. Berger & Montague currently consists of over 60 attorneys who primarily represent plaintiffs in complex civil litigation and class action litigation in federal and state courts. Berger & Montague has played lead roles in major class action cases for over 48 years, and has obtained settlement and recoveries totaling well over \$30 billion for our clients and the classes they have represented.

4. Our Firm's Consumer Protection Group protects consumers' rights when they are injured by false or misleading advertising, defective products, data privacy breaches, and various other unfair trade practices. I, along with E. Michelle Drake, another Shareholder at our Firm involved in this litigation, Co-Chair the Consumer Protection Department at Berger & Montague, and we have an extensive background in litigation on behalf of consumers. I currently serve as lead or co-lead counsel in many class and collective action cases in federal courts across the country. This level of experience has enabled Berger & Montague to undertake this matter and to efficiently and successfully prosecute and settle the claims of the Settlement Class.

5. Specifically, Berger & Montague has served as lead counsel and/or on steering committees of multiple nationwide data breach class actions, including serving as Co-Lead Counsel in *In re TJX Companies Retail Security Breach Litigation*, No. 1:07-cv-10162-WGY (D. Mass.), a multidistrict litigation brought on behalf of individuals whose personal and financial data was compromised in the then-largest theft of personal data in history, which was settled for benefits valued at over \$200 million. Berger & Montague also served on the Executive Committee in *In Re: Heartland Payment Systems, Inc. Customer Data Security Breach Litigation*, No. 4:09-MD-2046 (S.D. Tex. 2009), and *In re: Countrywide Financial Corp. Customer Data Security Breach*

Litigation, No. 3:08-md-01998-TBR (W.D. Ky. 2008). My firm currently serves on the Steering Committee in *In Re Experian Data Breach Litigation*, No. 8:15-cv-01592 (C.D. Cal).

6. As stated above, I Co-Chair the Firm's Consumer Protection Department, and I also Co-Chair the Firm's Employment Law Department. I have achieved the highest peer-review rating, "AV," in Martindale Hubbell, and have repeatedly been singled out for honors and awards by numerous publications. For example, in 2015, 2016, and 2017, I was selected as one of the top 100 attorneys in Pennsylvania, as reported by Thomson Reuters. I concentrate my practice on the prosecution of class actions on behalf of consumers and employees across the country.

7. I have served as lead or co-lead counsel in dozens of successful class action cases in federal courts across the country, including, just for example:

- a. *In re: CertainTeed Fiber Cement Siding Litigation*, MDL No. 2270 (E.D. Pa.). Co-Lead Counsel. I served as Co-Lead Counsel in this products liability multidistrict litigation concerning CertainTeed Corporation's fiber cement siding, on behalf of a nationwide class of consumers. We obtained a settlement of more than \$103 million (cash, non-reversionary).
- b. *George v. Uponor, Inc.*, No. 12-249 (D. Minn.). Co-Lead Counsel. I served as Co-Lead Counsel in the products liability nationwide class action concerning Uponor's yellow brass F1960 plumbing fittings, and obtained a large class action settlement.
- c. *Jantz v. Social Security Administration*, EEOC Case No. 531-2006- 00276X. Co-Lead Counsel. I served as Co-Lead Counsel in this nationwide class action alleging that the Social Security Administration discriminated against its employees with targeted disabilities. On October 8, 2008, the EEOC certified a nationwide litigation class of employees of the Social Security Administration who have severe disabilities and who have alleged discrimination with respect to promotions for which they were deemed to be qualified. We subsequently obtained a cash, non-reversionary class action settlement of \$9,980,000 plus significant injunctive relief.
- d. *Employees Committed for Justice v. Eastman Kodak Company*, No. 6:04-cv-06098 (W.D.N.Y.). Co-Lead Counsel. As Co-Lead Counsel, I obtained a settlement of \$21.4 million on behalf of a nationwide class of African American employees of Kodak alleging a pattern and practice of racial discrimination.

I have also served and been appointed as lead or co-lead counsel in numerous other types of class actions throughout the country that have achieved many millions of dollars in settlements on behalf of my clients and the classes they have represented.

8. E. Michelle Drake is a Shareholder in Berger & Montague's Minneapolis office who has worked on this case with me. Michelle focuses her practice primarily on privacy, consumer protection, and financial services class actions. Michelle serves on the Board of the National Association of Consumer Advocates, is a member of the Partner's Council of the National Consumer Law Center, and is a Co-Chair for the Consumer Litigation Section for the Minnesota State Bar Association. She has previously served as a member of the Ethics Committee for the National Association of Consumer Advocates, and as Treasurer and At-Large Council Member for the Consumer Litigation Section for the Minnesota Bar Association. Michelle has been named to The Best Lawyers of America, Top 50 Women Minnesota Super Lawyers, and the Super Lawyers List in multiple years. Michelle was also appointed to the Federal Practice Committee in 2010 by the U.S. District Court for the District of Minnesota. She has been quoted in the New York Times and the National Law Journal, and her cases were named as "Lawsuits of the Year" by Minnesota Law & Politics in both 2008 and 2009.

9. Michelle was appointed as liaison counsel for the Consumer Cases in *In re: Target Corp. Customer Data Security Breach Litig.*, MDL No. 14-2522 (D. Minn.), where she helped obtain a \$10 million settlement (exclusive of attorneys' fees and notice expenses) for over 97 million consumers. She has also served as lead class counsel in a variety of other privacy related matters, including: *Rubio-Delgado v. Aerotek, Inc.*, No. 2:16-cv-01066 (S.D. Ohio) (\$15 million settlement on behalf of class members alleging invasion of privacy by employer); *Knights v. Publix Super Markets, Inc.*, No. 3:14-cv-00720 (M.D. Tenn.) (\$6.75 million settlement on behalf of class

members alleging invasion of privacy by employer); *Hillson v. Kelly Services, Inc.*, No. 2:15-cv-10803 (E.D. Mich.) (\$6.749 million settlement on behalf of class members alleging invasion of privacy by employer); *Ernst v. DISH Network, LLC, Sterling Infosystems, Inc.*, No. 12-cv-8794 (S.D.N.Y.) (\$4.75 million settlement on behalf of class members for claims against consumer reporting agency for illegal publication of information the FCRA requires to be kept private, and \$1.75 million settlement on behalf of class members for claims against employer for invasion of privacy); *Brown v. Delhaize America, LLC*, No. 1:14-cv-00195 (M.D.N.C.) (\$2.99 million settlement on behalf of class members for invasion of privacy by employer and failure to provide consumers with information they have a right to access); *Nesbitt v. Postmates, Inc.*, No. CGC-15-547146 (Cal. Super. Ct., San Fran. Cnty.) (\$2.5 million settlement on behalf of class members in case involving invasion of privacy by employer); *Singleton v. Domino's Pizza, LLC*, No. 8:11-cv-01823 (D. Md.) (\$2.5 million settlement on behalf of class members in case involving invasion of privacy by employer); *Heaton v. Social Finance, Inc.*, No. 3:14-cv-5191 (N.D. Cal.) (\$2.5 million settlement on behalf of class members in case involving privacy of credit information and invasion of that privacy by lender); *Halvorson v. TalentBin, Inc.*, No. 3:15-cv-05166 (N.D. Cal.) (\$1.15 million settlement on behalf of class members in case involving privacy of consumer information and invasion of that privacy by an online data aggregator); *Legrاند v. IntelliCorp Records, Inc.*, No. 1:15-cv-2091 (N.D. Ohio) (\$1.1 million settlement on behalf of class members in case involving the illegal publication of inaccurate background information by a consumer reporting agency).

10. In addition, Sarah R. Schalman-Bergen, a Shareholder of Berger & Montague, and Co-Chair (with me) of our firm's Employment Law Department, has served as *Volunteer Of Counsel* to the AIDS Law Project of Pennsylvania ("AIDS Law Project") for the past ten years.

Through her work with the AIDS Law Project, Berger & Montague has co-counseled HIV discrimination and confidentiality cases, as well as other cases impacting the rights of people living with HIV/AIDS. *See, e.g., Jones v. OSS Orthopaedic Hospital LLC*, No. 1:16-cv-01258-YK (M.D. Pa. 2016) (representing client alleging discriminatory denial of access to aquatic therapy pool because of plaintiff's HIV status); *Jones v. Diamantoni & Associates Family Practice*, No. 2:14-cv-6796-GP (E.D. Pa. 2015) (settlement reached on behalf of client and his family after being allegedly dismissed from a medical practice based on the client's HIV status); *Smith v. Milton Hershey School*, No. 11-7391, 2012 WL 1966125 (E.D. Pa. 2012) (alleging that the Milton Hershey School refused to enroll a 13-year-old student because he is living with HIV; case settled with Department of Justice for \$715,000); *Canal Side Care Manor, LLC v. Pa. Human Relations Commission*, 30 A. 3d 568 (Commw. Ct. Pa. 2011) (affirming finding of discrimination against personal care home who evicted a client because she was HIV positive).

11. Following Aetna's conduct that underlies this case, this case arose from communications among the AIDS Law Project, the Legal Action Center, and HIV legal organizations all over the country, who received calls from people who had been sent the Benefit Notice¹ at the end of July and beginning of August 2017.

12. Specifically, the AIDS Law Project was first contacted by an individual who received the Benefit Notice on August 1, 2017, just a few days after the Benefit Notice was sent.

13. On August 8, 2017, Sally Friedman, Legal Director of the Legal Action Center posted a query to the HIV/AIDS Law and Policy Discussion List, a listserv of advocates representing people with HIV, asking if other organizations had heard complaints about a letter from Aetna that disclosed HIV-related information.

¹ The term "Benefit Notice" and any other capitalized terms in this Declaration have the same meanings as is in the Settlement Agreement.

14. Based on the large response from advocates around the country, the AIDS Law Project and the Legal Action Center decided to send a demand letter to Aetna that the mailing be stopped immediately. On August 24, 2017, the AIDS Law Project and the Legal Action Center along with the AIDS Legal Referral Panel of San Francisco, Lambda Legal, Legal Services NYC, Los Angeles HIV Law & Policy Project, Legal Council for Health Justice – AIDS Legal Council Program, and Whitman-Walker Health, sent a letter to Aetna regarding the mailing of the Benefit Notice.

15. In response to media inquiries, Aetna disclosed that approximately 12,000 letters had been sent. Given the quantity of the mailing, the AIDS Law Project, with the agreement of the Legal Action Center, consulted with my partner, Sarah Schalman-Bergen, for class action guidance, and then with Michelle Drake and me. The AIDS Law Project, Legal Action Center and Berger & Montague (together, “Co-Lead Class Counsel”) subsequently worked together to prepare and file, on behalf of Plaintiff Andrew Beckett, a federal class action law suit in Philadelphia regarding the Incident. Plaintiff Beckett’s Complaint was the first-filed complaint in the country regarding the Incident.

16. Co-Lead Class Counsel subsequently met with Aetna and its counsel in-person on September 6, 2017, and began to negotiate an Immediate Relief Program to provide financial and counseling support for those harmed by the mailing of the Benefit Notice. On September 28, 2017, Aetna announced the program on its website, and Co-Lead Class Counsel all advertised the program through their websites and social media platforms, as well as through direct contact with individuals who had contacted Co-Lead Class Counsel.

17. On October 6, 2017 and October 25, 2017, Co-Lead Class Counsel, along with Torin A. Dorros, Esq. of Dorros Law (who represented the plaintiff who filed the second class

action case regarding the Incident), attended full-day mediation sessions overseen by mediator Magistrate Judge Diane Welsh (Ret.) in Philadelphia.

18. As a result of the mediation sessions and subsequent intensive and vigorous negotiations overseen by Judge Welsh, the Parties negotiated the Settlement Agreement which is now being presented to the Court for preliminary approval.

19. In connection with the Settlement, Berger & Montague obtained bids from three different potential settlement administrators, and after carefully reviewing the bids and interviewing the potential administrators, are recommending to the Court that Angeion Group, LLC be appointed as the Settlement Administrator in this case.

20. Since the original Complaint was filed, I have been intimately involved in every facet of this case, and, with my co-counsel, have overseen the litigation on a day-to-day basis. I am familiar with all of the facts, as well as Aetna's asserted defenses on the merits (both with respect to liability and damages), and to class certification. I believe the negotiated Settlement Agreement provides an excellent settlement for Plaintiffs and the Settlement Class. The Settlement is the result of contested litigation and involved substantial ADR-related discovery and arm's-length negotiations. In my opinion, the Settlement offers significant advantages over the continued prosecution of this case: Plaintiffs and Settlement Class Members will receive significant financial compensation and will avoid the risks inherent in the continued prosecution of this case in which Aetna would assert various defenses to its liability. The non-monetary provided by the Settlement helps ensure that a similar privacy breach will not occur again.

21. Based on the validity testing of the proposed settlement distribution formula that was conducted by the AIDS Law Project (as detailed in the accompanying Declaration of Ronda Goldfein), it is the joint and collective opinion of Co-Lead Class Counsel that the formula

encompassed in the Settlement fairly compensates Settlement Class Members for varying levels of harm suffered as a result of the Incident.

22. The Settlement Agreement also incorporates numerous measures to prevent a further HIV confidentiality breach in the course of its administration.

23. The parties have spent considerable time negotiating and drafting the Settlement Agreement, which ensures that the Settlement Class Members are provided with notice of the Settlement Agreement and its terms. The Settlement Agreement further provides that any Settlement Class Members who wish to do so, can opt out of the Settlement and pursue their own individual claims.

24. I believe that service awards are appropriate in this case as the Named Plaintiffs took very real steps to advance the interests of the Settlement Class in this litigation. The Named Plaintiffs shared intimate details about their personal lives with Class Counsel and risked their reputation in the community, as well as potential discrimination, if their HIV-related information became publicly known.

25. Based upon the foregoing, and for all reasons stated in Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, Plaintiffs respectfully request that the Motion be granted.

Dated: January 16, 2018

/s/ Shanon J. Carson
Shanon J. Carson