

**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,

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

Plaintiffs,

v.

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

Defendants.

**DECLARATION OF RONDA B. GOLDFEIN IN SUPPORT OF PLAINTIFFS’
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

I, Ronda B. Goldfein, 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 the executive director of the AIDS Law Project of Pennsylvania (“AIDS Law Project”) (www.aidslawpa.org) and Co-Lead Counsel for Plaintiffs and the proposed

Settlement Class in the above-captioned litigation. I joined the AIDS Law Project in 1992 and have been the executive director since 2000.

3. Founded in 1988, the AIDS Law Project was established when the fear of AIDS was at its height. Routine and widespread discrimination flourished in every major aspect of life, including healthcare, housing and education. Thirty years later, the AIDS Law Project remains as 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.

4. I am a nationally recognized advocate for people living with HIV and AIDS. In December 2010, I was listed among the top 100 HIV/AIDS activists in the United States by POZ magazine. In 2007, I was named "Policymaker of the Year" by the Penn Center for AIDS Research, a joint project of the University of Pennsylvania, the Children's Hospital of Philadelphia, and the Wistar Institute.

5. The AIDS Law Project provides free legal services to people living with HIV and AIDS throughout Pennsylvania and Southern New Jersey. We have a holistic approach to providing legal services. We provide representation in those areas that are HIV-specific, such as discrimination and privacy. We help people obtain health care through private or public health insurance. We assist people who are unable to work obtain private or public disability benefits. We represent people facing eviction, utility terminations or mortgage foreclosures. We provide immigration assistance. We also draft Wills, Living Wills and Medical and Financial Powers of Attorney for our clients.

6. We are part of a continuum of care for people living with HIV in Pennsylvania and southern New Jersey. We have three medical legal-partnerships. One is located at Philadelphia's largest primary care provider for people living with HIV; the second is based at an

infectious disease clinic in Southern New Jersey; and the third is at Philadelphia's only legal syringe exchange. We are also part of a health education program for people living with HIV that is taught in English and Spanish.

7. Our legal services are available to the working poor because we do not impose means testing that often disqualifies this population. We make home and hospital visits to clients who are too ill to travel to our offices, and we utilize bilingual staff and translation services to assist our clients in their preferred language.

8. Complementing our direct legal representation are our public education services and legislative advocacy. The AIDS Law Project educates the public on AIDS-related legal issues through three monthly seminars, trains case management professionals in a biannual two-day public benefits training, and works at local, state and national levels to achieve fair HIV laws and policies.

9. In our 30-year history, the AIDS Law Project has risen to the defense of approximately 43,700 Pennsylvanians living with HIV and AIDS, and educated more than 43,500 others on AIDS-related legal issues so that they could advocate for themselves and their communities.

10. The AIDS Law Project has been honored with several awards as a testament to our dedication and commitment to people living with HIV and AIDS. In 2014, the AIDS Law Project received the Alexander D. Forger Award for Excellence in HIV Legal Services and Advocacy for our "record of commitment and effectiveness in the fight against HIV and AIDS." In 2012, we were awarded the Kiyoshi Kuromiya Award for Justice "for more than 20 years of fighting fearlessly for the legal rights of those living with HIV, educating thousands about AIDS-related issues, and working on multiple levels of government to achieve fair laws and policies for

those living with and affected by the virus.” In 2007, Philadelphia Black Gay Pride recognized us for our “unapologetic commitment to Philadelphia’s Black LGBT communities.” In 2006, we received the Bridge Award for our “unconditional work and dedication to unite and strengthen Philadelphia’s diverse LGBT community.” In 2005, we received the Barristers’ Association of Philadelphia annual Cecil B. Moore award for “continued and selfless service to the Philadelphia community.” That same year, we received the Philadelphia AIDS Consortium Annual Providers’ Choice Award. In 1994, we were awarded Dignity Philadelphia’s annual Community Service Award for our “outstanding service to the Lesbian/Gay/Bisexual community.”

11. The AIDS Law Project has worked to defend the rights of people living with HIV since early in the epidemic’s history. For example, in 1994, the AIDS Law Project sued a Philadelphia health club after a member was ejected because of fears of HIV transmission.¹ The settlement in this case was not just a validation for the client and his family – although the plaintiff did not live long enough to see the resolution – but sent a clear message to the community that people with HIV need not be feared and present no risk of transmission in casual settings.

12. The AIDS Law Project works to ensure that clients understand that their medical information is private and may not be shared without permission, except in certain limited circumstances. In 2016, the AIDS Law Project responded to 235 complaints of HIV-specific medical privacy violations in Pennsylvania and southern New Jersey on behalf of clients who could not find a private lawyer willing to take their case.

13. We have represented numerous individuals living with or affected by HIV in

¹ See Joseph A. Slobodzian, *Lawsuit Accuses Gym of AIDS Bias: A City Center Man Says the Owner Embarrassed Then Ejected Him After Learning He Had AIDS*, PHIL. INQUIRER, Aug. 18, 1994, at B01 (“The plaintiff’s lawyers called the suit the first against a fitness center under the two-year-old Americans With Disabilities Act, the federal law that requires facilities that serve the public to accommodate people with disabilities, including AIDS or HIV, the AIDS virus”).

confidentiality cases. *See, e.g., EEOC and MB v. Shoe Store*. (Aug. 2016) (reached settlement for employer disclosure of HIV status to a co-worker without consent, in violation of the Americans with Disabilities Act); *DD v. Home Healthcare Provider* (Apr. 2015) (reached settlement on behalf of client whose HIV status was disclosed to a family member by a home health worker); *TH v. Doctor & Hospital* (July 2014) (reached settlement where treating physician disclosed client's HIV status to visitor in hospital room); *JS v. Hospital* (Sept. 2014) (reached settlement where treating physician disclosed HIV status to visitor in hospital room); *MM, et al. v. Residential Treatment Center* (Dec. 2011) (reached settlement on behalf of residents of a drug treatment center where dietician was careless with a list of HIV positive patients); *see also Doe v. Southeastern Pennsylvania Transp. Auth.*, 886 F. Supp. 1186 (E.D. Pa. 1994) (alleging that employer's administrative officer reviewed and disclosed information on utilization of employer's prescription benefit plan that indicated that employee was being treated for HIV-related illness, violating client's rights to privacy).

14. The AIDS Law Project has represented numerous clients in HIV discrimination cases, including certain cases where Sarah R. Schalman-Bergen, a Shareholder of Berger & Montague, P.C. ("Berger & Montague"), also worked on the cases on a *pro bono* basis as a volunteer *Of Counsel* to the AIDS Law Project. *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 the 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 a finding of discrimination against a personal care home that evicted a client because she was HIV positive); *see also EEOC v. Capital Healthcare Solutions*, No. 2:11-cv-01249-NBF (W.D. Pa.) (representing a Certified Nursing Assistant who was refused employment by a staffing service because of his HIV status); *Smith v. City of Philadelphia*, 345 F. Supp. 2d 482 (E.D. Pa. 2004) (alleging that city emergency medical technicians failed to provide appropriate care to our client because he was HIV positive).

15. Moreover, the AIDS Law Project serves as an expert in HIV confidentiality laws and HIV privacy issues generally. We train approximately 500 people a year on HIV confidentiality at lectures convened by the Philadelphia Department of Health, the federal AIDS Education and Training Center Program, and the Drexel University College of Medicine. We have also lectured at national and local CLEs, the international AIDS conference, and webinars for private industry.

16. This case arose after the AIDS Law Project, the Legal Action Center, and other HIV legal services organizations across the country received calls from people who had been sent the Benefit Notice² at the end of July and beginning of August 2017.

17. The *Doe* mailing was sent on July 28, 2017. The AIDS Law Project was first contacted by an individual who received the Benefit Notice on August 1, 2017.

18. On August 8, 2017, Sally Friedman, Legal Director of the Legal Action Center,

² The term “Benefit Notice” and any other capitalized terms used herein have the same meanings as set forth in the Settlement Agreement. The term “Benefit Notice” means the notice that was sent by the settlement administrator to certain Settlement Class Members to inform Aetna members of their ability to fill prescriptions for HIV medications through mail order or retail pharmacy, as part of a settlement of legal claims that had been filed against certain Aetna-related entities or affiliates in *Doe v. Aetna, Inc.*, No. 14-cv-2986 (S.D. Cal.).

posted a query on 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.

19. Based on the responses from other organizations around the country, the AIDS Law Project and the Legal Action Center stepped forward to represent the interests of those who had received the Benefit Notice.

20. On August 24, 2017, the AIDS Law Project and the Legal Action Center, along with: (a) the AIDS Legal Referral Panel of San Francisco; (b) Lambda Legal; (c) Legal Services NYC; (d) Los Angeles HIV Law & Policy Project; (e) Legal Council for Health Justice – AIDS Legal Council program; and (f) Whitman-Walker Health, sent a letter to Aetna regarding the *Doe* mailing, and the media subsequently picked up the story after Aetna disclosed that approximately 12,000 Benefit Notices had been sent.

21. The resulting media coverage including on the front page of the CNN App resulted in a flood of telephone calls and emails to the AIDS Law Project and the Legal Action Center from individuals who were harmed by the mailing of the Benefit Notice. Many individuals reported serious harms such as lost housing, estrangement from family members, and other trauma. Some voiced fears about trusting anyone with their HIV information and wondered how they could receive healthcare if their own insurance company could not be trusted to maintain confidentiality. The AIDS Law Project was also contacted by people who had not received the Benefit Notice but did receive other notices related to the settlement of the *Doe* lawsuits and were concerned about their HIV-related privacy.

22. The AIDS Law Project and the Legal Action Center also received telephone calls from government regulators including certain State Attorneys General and government agencies

charged with enforcing antidiscrimination laws.

23. The AIDS Law Project next implemented a call center to respond to the flood of calls from affected individuals across the United States, and the Legal Action Center, consistent with their funding contracts, agreed to take calls from individuals living in New York and to forward other inquiries to the AIDS Law Project.

24. The AIDS Law Project utilized QData Company (“QData”), a data management consultant, to design and implement a database where we could collect and secure the information. The database development also included a protocol for creating a unique identifier for each caller, so that we could manage the data we collected without compromising client and caller confidentiality.

25. For the past eighteen years, QData has been designing and developing data management systems for some of the largest non-profit HIV primary healthcare and case management organizations in the Philadelphia area. QData is proficient with confidential data rules and regulations, including HIPAA and state privacy laws.

26. To handle the volume of calls, we trained our lawyers, managing attorney Yolanda French Lollis, deputy managing attorney Juan Baez, and staff attorneys Adrian Lowe, Jacob Eden, and Jeni Wright, along with our paralegals Maggie Schepcaro and Jade McKnight, to conduct intake interviews. We also developed data entry and telephone triage systems to be used by our in-house data manager, Messapotamia Lefae, and our receptionist, Arlene Vasquez. Even with these systems in place, we realized that we needed additional assistance and hired several others to help keep up with the large volume of calls.

27. Given the nature of the Incident and the class action implications, the AIDS Law Project, with the approval of the Legal Action Center, consulted with Sarah Schalman-Bergen of

Berger & Montague for that firm's class action experience, guidance and resources, and decided that partnering with Berger & Montague was in the best interest of those who were sent the Benefit Notice. This decision was made because of Berger & Montague's significant class action experience since 1970, as well as its ability to provide the necessary resources to properly prosecute the action, both with respect to the experience of its attorneys and the financial resources that it could provide.

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

29. On August 28, 2017, Plaintiff Andrew Beckett, represented by the AIDS Law Project, the Legal Action Center, and Berger & Montague (collectively, "Co-Lead Class Counsel"), filed the first Complaint regarding the Incident in the United States District Court for the Eastern District of Pennsylvania, on behalf of a nationwide class and a Pennsylvania subclass.

30. On September 6, 2017, Co-Lead Class Counsel met with Ed Neugebauer and Aetna's outside counsel from two large defense firms. At this initial meeting, the parties began to negotiate what would eventually become the Immediate Relief Program. Under the Immediate Relief Program, Aetna would reimburse verifiable out-of-pocket costs incurred or estimated by Settlement Class Members and would also pay for up to three counseling sessions, with an opportunity to request additional sessions, for Settlement Class Members and their families who requested such counseling, all without any legal release of claims.

31. During the time period from September 6, 2017 through September 28, 2017, Co-Lead Class Counsel worked at arm's-length with Aetna to negotiate and implement the

Immediate Relief Program. On September 28, 2017, Aetna announced the Immediate Relief Program on its website, and the AIDS Law Project and the Legal Action Center let the public know about the program through their websites, social media platforms, emails blasts, and by notifying all individuals who had contacted the organizations regarding the Incident.

32. To date, thirteen (13) requests for relocation expenses ranging from \$2,500 to \$18,000, and two requests for counseling, have been approved by Aetna through the Immediate Relief Program.

33. During the time period from August 1, 2017 to the present, the AIDS Law Project has conducted detailed interviews of 274 affected individuals from 31 states and Washington, D.C.

34. The AIDS Law Project and the Legal Action Center have worked collaboratively with Berger & Montague since the inception of this case and have played a substantial and material role in advocating for the rights and interests of their clients and the Settlement Class and in negotiating the Settlement Agreement, including, without limitation, by attending both full-day mediation sessions held by Judge Diane Welsh (Ret.) in Philadelphia, on October 6, 2017 and October 25, 2017, and by reviewing and providing input on the Settlement Agreement and its Exhibits.

35. On behalf of the AIDS Law Project, I believe the Settlement Agreement provides an excellent settlement for Plaintiffs and the Settlement Class because it recognizes that while some Settlement Class Members experienced more profoundly damaging consequences as a result of the mailing of the Benefit Notice than others, that, at base, all individuals were harmed. The direct pay Base Payment amount recognizes this reality. The Settlement Agreement also provides an opportunity for individuals who experienced financial harm and/or non-financial

harm to receive additional payments to compensate them for those harms.

36. To ensure that the formula for the additional payments properly compensates harm experienced by Settlement Class Members, the AIDS Law Project validity-tested 92 client stories from the interviews that we conducted against the proposed formula for distribution of the Net Settlement Fund that is included in the Settlement Agreement. This included completing the draft Claim Form based on our clients' reported experiences and then scoring the answers to determine whether the point total and corresponding award were in proportion to each other and to the harm they endured.

37. Based on this validity testing conducted by the AIDS Law Project, it is my opinion and the opinion of all Co-Lead Class Counsel that the proposed formula for settlement distribution fairly compensates Settlement Class Members for varying levels of harm suffered as a result of the Incident.

38. The proposed Settlement Agreement is the result of contested litigation and involved substantial informal discovery and arm's-length negotiations. In my opinion, the Settlement offers significant advantages over the continued prosecution of this case. Namely, 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 Defendants would vigorously assert various defenses to their liability, as well as to class certification.

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

40. 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.

41. 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.

42. Andrew Beckett was the first named Plaintiff in this case. He contacted the AIDS Law Project on August 25, 2017. He shared his information and agreed to serve as a class representative because he believed it would advance the interests of those similarly situated. He knew he was risking his reputation in his community, as well as potential discrimination, if his HIV-related information became publicly known. He was also risking the security of his living arrangements as he discussed the problems the letter caused with his family.

43. The other Named Plaintiffs likewise shared intimate details regarding their personal lives with Co-Lead Class Counsel and risked their reputation in the community, as well as potential discrimination, if their HIV-related information became publicly known.

Dated: January 16, 2018



Ronda B. Goldfein
Executive Director
AIDS Law Project of Pennsylvania