

ORIGINAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

XAVIER BECERRA
Attorney General of California
NICKLAS A. AKERS
Senior Assistant Attorney General
STACEY SCHESSER
Supervising Deputy Attorney General
JESSICA WANG (SBN 278300)
Deputy Attorney General
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3542
Fax: (415) 703-5480
E-mail: Jessica.Wang@doj.ca.gov
Attorneys for Plaintiff
The People of the State of California

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION
FEB 26 2019
BY  VERONICA GONZALEZ, DEPUTY

[EXEMPT FROM FILING FEES
UNDER GOVT. CODE, § 6103]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

AETNA INC.,

Defendant.

Case No. CIVDS1903012

**[PROPOSED] FINAL JUDGMENT AND
PERMANENT INJUNCTION**

ny
Plaintiff, the PEOPLE OF THE STATE OF CALIFORNIA (“People”), appearing through their attorney Xavier Becerra, Attorney General of the State of California, by Deputy Attorney General Jessica Wang, and defendant Aetna Inc. *ny* (“Aetna” or “Defendant”), appearing through its attorneys, Manatt, Phelps & Phillips, LLP, by Matthew P. Kanny, having stipulated to the entry of this Final Judgment and Permanent Injunction (“Judgment”) without the taking of proof and without trial or adjudication of any fact or law, without this Judgment constituting evidence of or

1 an admission by Defendant regarding any issue of law or fact alleged in the Complaint on file,
2 and without Defendant admitting any liability, and with all parties having waived their right to
3 appeal, and the Court having considered the matter and good cause appearing:

4 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

5 1. This Court has jurisdiction over the allegations and subject matter of the People’s
6 Complaint filed in this action, and the parties to this action; venue is proper in this County; and
7 this Court has jurisdiction to enter this Judgment.

8 **DEFINITIONS**

9 2. The following terms in this Judgment shall have these meanings:
10 a. “Effective Date” shall mean the date that this Judgment is entered.
11 b. “Medical Information” shall mean any individually identifiable
12 information, in electronic or physical form, in possession of or derived from a provider of health
13 care, health care service plan, pharmaceutical company, or contractor regarding a patient’s
14 medical history, mental or physical condition, or treatment. “Individually identifiable” means
15 that the medical information includes or contains any element of personal identifying information
16 sufficient to allow identification of the individual, such as the patient’s name, address, electronic
17 mail address, telephone number, or social security number, or other information that, alone or in
18 combination with other publicly available information, reveals the individual’s identity. Medical
19 information may also include “protected health information” as defined by the Health Insurance
20 Portability and Accountability Act of 1996 (“HIPAA”), including, but not limited to, 45 C.F.R.
21 section 160.103.

22 **INJUNCTIVE PROVISIONS**

23 3. Nothing in this Judgment alters the requirements of federal or state law to the
24 extent they offer greater protection to consumers.
25 4. The injunctive provisions of this Judgment shall apply to Defendant and its
26 directors, officers, employees, agents, independent contractors, partners and associates, who
27 receive actual notice of this Judgment and whose actions are within Defendant’s control, subject
28 to the limitations set forth in paragraph 27.

1 5. Under California Business and Professions Code sections 17203 and 17535,
2 Defendant is hereby permanently enjoined and restrained from failing to comply with California
3 Civil Code sections 56.10, 56.101, subdivision (a) (hereafter California Civil Code section
4 56.101(a)), and 56.36, subdivision (c)(1) (hereafter California Civil Code section 56.36(c)(1)),
5 California Health & Safety Code section 120980, and Health Insurance Portability and
6 Accountability Act of 1996, 42 U.S.C. section 1320d-2(d)(2) and 45 C.F.R. section 164.502
7 concerning the disclosure of Medical Information relating to HIV status when mailing documents
8 to a California resident as part of a settlement in litigation.

9 6. Defendant shall modify its procedures for print mailing member Medical
10 Information (“Medical Information Mailing Procedure”) by no later than one hundred eighty
11 (180) days after the Effective Date. The Medical Information Mailing Procedure will apply to all
12 Aetna business units. Aetna shall comply with its modified mailing procedures, which shall
13 require Aetna to:

14 a. Evaluate whether it is necessary to include Medical Information in the
15 mailing;

16 b. Take steps to ensure that Medical Information is not visible to third parties
17 through the envelope’s window or on the envelope itself before any mailing is sent by Aetna or
18 Aetna-retained mailing vendors;

19 c. Take steps to confirm that Medical Information is not visible to third
20 parties through the envelope’s window or on the envelope itself before any mailing is sent by
21 Aetna or Aetna-retained mailing vendors;

22 d. Develop training materials and implement training requirements regarding
23 the Medical Information Mailing Procedure; and

24 e. Take steps to ensure that either (i) a HIPAA-compliant Business Associates
25 Agreement (“BAA”) or HIPAA-compliant subcontractor agreement is executed with any Aetna-
26 retained mailing vendor that potentially may use, disclose, store, handle, or dispose of member
27 Medical Information, or (ii) a Qualified Protective Order is entered and the Aetna-retained
28

1 mailing vendor has agreed to be bound by its terms prior to disclosing member Medical
2 Information to said vendor.

3 7. Defendant shall develop and implement procedures for litigation that may involve
4 member Medical Information (“Litigation Procedure”) by no later than one hundred eighty (180)
5 days after the Effective Date. The procedures shall be designed to:

6 a. Prevent the inadvertent disclosure of Medical Information to third parties
7 when Medical Information may be used in the litigation; and

8 b. Train Aetna’s litigation staff and retained litigation counsel regarding the
9 Litigation Procedure.

10 8. In addition to the training on the Medical Information Mailing Procedure and
11 Litigation Procedure, Defendant shall provide training to its litigation staff and retained litigation
12 counsel regarding Aetna’s requirements under HIPAA and applicable federal and state privacy
13 laws. The training shall occur no less frequently than annually from the Effective Date.

14 9. In addition to its existing privacy risk assessment, for three (3) years from the
15 Effective Date, Defendant shall complete an annual privacy risk assessment that specifically
16 addresses member mailings. As part of this annual privacy risk assessment on member mailings:

17 a. For the first two (2) years, Aetna shall engage the services of an
18 independent consultant who is approved by the California Attorney General’s Office, which
19 approval shall not be unreasonably withheld. The consultant shall:

20 i. Review all of Aetna’s policies and procedures relating to member
21 Medical Information, including plans to disseminate the policies and employee training on the
22 policies, to evaluate compliance with California Civil Code sections 56.10, 56.101(a), and
23 56.36(c)(1); California Health & Safety Code section 120980; and Health Insurance Portability
24 and Accountability Act of 1996, 42 U.S.C. section 1320d-2(d)(2) and 45 C.F.R. section 164.502;

25 ii. Monitor Aetna’s compliance with this Judgment;

26 iii. Make recommendations for enhancement of privacy policies in an
27 effort to maintain best practices in handling Medical Information;

28

1 iv. Provide an initial report to the California Attorney General's Office
2 regarding his or her findings within one hundred eighty (180) days of the Effective Date; and

3 v. Be extended for a one (1) year period if Aetna is not in substantial
4 compliance with this Judgment. Any such extension shall be at the discretion of the California
5 Attorney General's Office.

6 b. For the remainder of the one (1) year in which Aetna does not use an
7 independent consultant to generate a privacy risk assessment, Aetna shall provide the California
8 Attorney General's Office an annual report detailing its compliance with the requirements set
9 forth in this Judgment.

10 c. At any time during the three (3) years from the Effective Date, and upon
11 thirty (30) days written notice from the California Attorney General's Office, Aetna shall provide
12 to the California Attorney General's Office a report detailing and a certification affirming its
13 compliance with the requirements set forth in this Judgment.

14 10. Defendant shall conduct an audit of all outside counsel handling Aetna litigation
15 matters to ensure that such counsel has executed a HIPAA-compliant BAA with Aetna, by no
16 later than ninety (90) days from the Effective Date. Additionally, Aetna shall take steps to ensure
17 that, in all litigation matters commenced on or after the Effective Date of this Judgment, any
18 entity retained by Aetna or its litigation counsel who potentially may use, disclose, store, handle,
19 or dispose of member Medical Information, before it receives any member Medical Information,
20 either (i) executes a HIPAA-compliant BAA or subcontractor BAA, or (ii) agrees to be bound by
21 a Qualified Protective Order.

22 11. Within sixty (60) days after the Effective Date, Defendant shall designate an
23 existing or new employee or employees who shall make good-faith efforts to: be knowledgeable
24 of relevant and applicable California and federal privacy statutes; ensure that Aetna develops and
25 follows privacy policies and procedures for Aetna that are consistent with applicable state and
26 federal privacy laws; oversee Aetna's compliance with such policies and procedures; maintain
27 and monitor Aetna's Medical Information Mailing Procedure referenced in Paragraph 5; and
28 ensure that Aetna-retained mailing vendors handling member Medical Information are complying

1 with Aetna's privacy policies and procedures. Such employee or employees, in their capacity as
2 the person or persons with these responsibilities, shall have authority and autonomy to perform
3 these responsibilities and to report any significant privacy concerns to the Chief Executive Officer
4 or other designated Aetna executives. Additionally, Defendant shall notify the California
5 Attorney General's Office of the titles and number of employees who have been designated
6 pursuant to this paragraph.

7 12. Defendant shall retain all records relating to its obligations hereunder, including
8 outreach, training, special programs, and other activities, until at least three (3) years from the
9 Effective Date. During that time, Aetna shall, upon thirty (30) days written notice from the
10 California Attorney General's Office, provide all documentation and information necessary for
11 the California Attorney General's Office to verify compliance with this Judgment.

12 13. The terms of Paragraphs 6, 7, 8, 9, 10, 11, and 12 of this Judgment, unless they
13 expire earlier on their own terms, shall expire no later than three (3) years after the entry of this
14 Judgment.

15 MONETARY PROVISIONS

16 14. Pursuant to Business and Professions Code section 17206, Aetna shall pay the
17 Attorney General the amount of \$ 935,000, which shall be used in accordance with Business and
18 Professions Code section 17206, subdivision (c). Payment shall be made by wire transfer to the
19 California Attorney General's Office pursuant to instructions provided by the California Attorney
20 General's Office, no later than thirty (30) days after the date this Judgment is entered and receipt
21 of wiring instructions, whichever is later.

22 15. Said payment shall be used by the California Attorney General for attorneys' fees
23 and other costs of investigation and litigation, used to defray costs of the inquiry leading to this
24 Judgment, and for the California Attorney General's enforcement of California's consumer
25 protection and privacy laws, at the sole discretion of the California Attorney General.

26 16. Except as otherwise expressly provided herein, each party shall bear its own
27 attorney's fees and costs.

28

RELEASE

1
2 17. Following full payment of the amount due under this Judgment, the California
3 Attorney General shall release and discharge Defendant and its affiliates, subsidiaries, divisions,
4 successors, agents or representatives from and against any and all civil claims that the California
5 Attorney General could have brought under the Unfair Competition Law, California Civil Code
6 sections 56.10, 56.101(a), and 56.36(c)(1), California Health & Safety Code section 120980, the
7 Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. section 1320d-2(d)(2)
8 and 45 C.F.R. section 164.502 or any other laws relating to the disclosure of Medical Information
9 related to, based on or arising from Defendant's conduct in connection with or related to a
10 mailing to members of Aetna or Aetna-affiliated entities on or about July 28, 2017, which it has
11 been alleged revealed through the envelope window that the recipient was taking HIV-related
12 medication and/or to any other mailings sent to members of Aetna or Aetna-affiliated entities that
13 may have had Medical Information visible to third parties on the envelope or through the
14 envelope window from May 1, 2017 through the Effective Date of this Judgment.

15 18. This Judgment shall have res judicata effect and shall resolve any and all civil
16 claims by the People against Defendant and its affiliates, subsidiaries, divisions, successors,
17 agents or representatives that the California Attorney General could have brought under the
18 Unfair Competition Law, California Civil Code sections 56.10, 56.101(a), and 56.36(c)(1),
19 California Health & Safety Code section 120980, the Health Insurance Portability and
20 Accountability Act of 1996, 42 U.S.C. section 1320d-2(d)(2) and 45 C.F.R. section 164.502 or
21 any other laws relating to the disclosure of Medical Information related to, based on or arising
22 from Defendant's conduct in connection with or related to a mailing to members of Aetna or
23 Aetna-affiliated entities on or about July 28, 2017, which it has been alleged revealed through the
24 envelope window that the recipient was taking HIV-related medication and/or to any other
25 mailings sent to members of Aetna or Aetna-affiliated entities that may have had Medical
26 Information visible to third parties on the envelope or through the envelope window from May 1,
27 2017 through the Effective Date of this Judgment.

1 modifications or enactment of any federal or state statute, law or regulation affecting Defendant's
2 obligations hereunder, Defendant shall, after meeting and conferring with the California Attorney
3 General's Office, be permitted to change its practices consistent with the change, modification
4 and enactment of such statute, law or regulation.

5 27. All terms and conditions of this Judgment shall continue in full force and effect on
6 any successor, assignee, or transferee of Aetna's applicable business operations with respect to
7 such operations as of the Effective Date, regardless of how such applicable business operations
8 are structured within the successor, assignee, or transferee. For an avoidance of doubt, the terms
9 and conditions of this Judgment shall not apply to any pre-existing business operations of any
10 successor, assignee or transferee of Aetna's applicable business operations, or any of their
11 directors, officers, employees, agents, independent contractors, partners, associates, and
12 representatives of each of them. Aetna will provide notice of the obligations under this Judgment
13 to any acquiring entity of Aetna's applicable business operations during the term of this
14 Judgment.

15 28. Except as otherwise provided by law, this Judgment may only be enforced by
16 Plaintiff, Defendant and this Court.

17 29. This Judgment shall take effect immediately upon entry thereof.


18 30. Notices under this Judgment shall be served by email and regular mail as follows:

19 31. The clerk is directed to enter this judgment forthwith.
To the People or People's counsel:

20 Jessica Wang
21 California Attorney General's Office
22 455 Golden Gate Ave., Suite 11000
23 San Francisco, California 94102-7004
24 Direct dial: 415-510-3542
25 Email: jessica.wang@doj.ca.gov

26 To Defendant or Defendant's counsel:

27 Matthew P. Kanny
28 Manatt, Phelps & Phillips, LLP
11355 W. Olympic Boulevard
Los Angeles, California 90064
Direct dial: 310-312-4225
Email: mkanny@manatt.com

IT IS SO ORDERED

Judge of the Superior Court
DONALD ALVAREZ

FEB 26 2019

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

31. The clerk is directed to enter this Judgment forthwith.

Dated: _____

Judge of the Superior Court