UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

OLIVIER MIRAMOND, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. AETNA, INC., MARK T. BERTOLINI, ELLEN M. HANCOCK, BETSY Z. COHEN, FRANK M. CLARK, EDWARD J. LUDWIG, JEFFREY E. GARTEN, FERNANDO AGUIRRE, MOLLY J. COYE, RICHARD J. HARRINGTON, JOSEPH P. NEWHOUSE, ROGER N. FARAH, AND OLYMPIA J. SNOWE, Defendants.	**Case No.** **CLASS ACTION COMPLAINT FOR VIOLATIONS OF SECTIONS 14(a) AND 20(a) OF THE SECURITIES EXCHANGE ACT OF 1934** **JURY TRIAL DEMANDED**

Plaintiff Olivier Miramond ("Plaintiff"), by and through his undersigned counsel, alleges upon personal knowledge with respect to themselves, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

NATURE OF THE ACTION

1. This action is brought as a class action by Plaintiff on behalf of himself and on behalf of all other similarly situated public common stockholders of Aetna, Inc. ("Aetna" or the "Company") against the Company, Mark T. Bertolini, Ellen M. Hancock, Betsy Z. Cohen, Frank M. Clark, Edward J. Ludwig, Jeffrey E. Garten, Fernando Aguirre, Molly J. Coye, Richard J. Harrington, Joseph P. Newhouse, Roger N. Farah, and Olympia J. Snowe, the members of Aetna's board of directors (collectively referred to as the "Board" or the "Individual Defendants"), for violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§78n(a) and 78t(a) respectively, and United States Securities and Exchange Commission ("SEC") Rule 14a-9, 17 C.F.R. § 240.14a-9 in connection with acquisition of Aetna

by CVS Health Corporation ("CVS") through a merger transaction as alleged in detail herein ("Proposed Transaction").

2. On December 3, 2017, Aetna and CVS issued a joint press release announcing the entry into a Transaction Agreement (the "Transaction Agreement") by and among the Company, CVS, Hudson Merger Sub Corp. ("Merger Sub"), a wholly owned subsidiary of CVS, pursuant to which Merger Sub will merge with and into the Company, and Aetna will be the surviving company following the merger and no longer a publicly traded corporation. Pursuant to the terms of the Transaction Agreement, each stock of Aetna's public common stockholders will be converted into the right to receive (i) 0.8378 (the "Exchange Ratio") fully paid and non-assessable shares of CVS Common Stock (the "Share Consideration") and (ii) $145.00 in cash without interest thereon (the "Cash Consideration" and, together with the Share Consideration, the "Merger Consideration"), which would value Aetna at approximately $207.94 per share. The Proposed Transaction is valued at approximately $77 billion.

3. On January 4, 2018, in order to convince Aetna's stockholders to vote in favor of the Proposed Transaction, Defendants authorized the filing of a materially incomplete and misleading Form S-4 Registration Statement (the "S-4") with the Securities and Exchange Commission ("SEC"), in violation of Sections 14(a) and 20(a) of the Exchange Act.

4. In particular, the S-4 contains materially incomplete and misleading information concerning: (i) financial projections for the Company; (ii) the valuation analyses performed by the Company's financial advisor, Lazard Frères & Co. LLC ("Lazard"), in support of its fairness opinions; (iii) the terms and details surrounding any alternative indications of interest in the Company solicited or received from other company; and (iv) the actual Merger Consideration.

5. The special meeting of Aetna stockholders to vote on the Proposed Transaction is forthcoming. It is imperative that the material information that has been omitted from the S-4 is disclosed to the Company's stockholders prior to the forthcoming shareholder vote so that they can properly exercise their corporate suffrage rights.

6. For these reasons, and as set forth in detail herein, Plaintiff asserts claims against Defendants for violations of Sections 14(a) and 20(a) of the Exchange Act and Rule 14a-9. Plaintiff seeks to enjoin Defendants from holding the shareholder vote on the Proposed Transaction and taking any steps to consummate the Proposed Transaction unless and until the material information discussed below is disclosed to Aetna's stockholders sufficiently in advance of the vote on the Proposed Transaction or, in the event the Proposed Transaction is consummated, to recover damages resulting from the Defendants' violations of the Exchange Act.

PARTIES

7. Plaintiff is, and have been at all relevant times, a stockholder of Aetna common stock.

8. Defendant Aetna operates as one of the nation's leading diversified health care benefits companies, serving an estimated 44.6 million people as of September 30, 2017. Aetna offers a broad range of traditional, voluntary and consumer-directed health insurance products and related services, including medical, pharmacy, dental, behavioral health, group life and disability plans, medical management capabilities, Medicaid health care management services, Medicare Advantage and Medicare supplement plans, workers' compensation administrative services and health information technology products and services. Aetna's customers include employer groups, individuals, college students, part-time and hourly workers, health plans, health care providers,

governmental units, government-sponsored plans, labor groups and expatriates. Aetna common stock trades on the NYSE under the symbol "AET".

9. Mark T. Bertolini is, and has been since 2010, a director of the Company and currently serves as the Chairman and Chief Executive Officer of the Company.

10. Ellen M. Hancock is, and has been since 1995, a director of the Company.

11. Betsy Z. Cohen is, and has been since 1994, a director of the Company.

12. Frank M. Clark is, and has been since 2006, a director of the Company.

13. Edward J. Ludwig is, and has been since 2003, a director of the Company and currently serves as the Lead Independent Director of the Company.

14. Jeffrey E. Garten is, and has been since 2000, a director of the Company.

15. Fernando Aguirre is, and has been since 2011, a director of the Company.

16. Molly J. Coye is, and has been since 2005, a director of the Company.

17. Richard J. Harrington is, and has been since 2008, a director of the Company.

18. Joseph P. Newhouse is, and has been since 2001, a director of the Company.

19. Roger N. Farah is, and has been since 2007, a director of the Company.

20. Olympia J. Snowe is, and has been since 2014, a director of the Company.

21. The parties in paragraphs 10 through 21 are referred to herein as the "Individual Defendants" and/or the "Board," collectively with Aetna the "Defendants."

JURISDICTION AND VENUE

22. This Court has subject matter jurisdiction pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question jurisdiction) as Plaintiff alleges violations of Section 14(a) and 20(a) of the Exchange Act.

23. This Court has jurisdiction over the Defendants because each Defendant is either a corporation that conducts business in and maintains operations within this District, or is an individual with sufficient minimum contacts with this District so as to make the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

24. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, as well as under 28 U.S.C. § 1391, because: (i) the conduct at issue had an effect in this District; and (ii) Aetna is incorporated in this District.

CLASS ACTION ALLEGATIONS

25. Plaintiff brings this class action pursuant to Fed. R. Civ. P. 23 on behalf of himself and the other public stockholders of Aetna (the "Class"). Excluded from the Class are Defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any Defendant.

26. This action is properly maintainable as a class action because:

a) the Class is so numerous that joinder of all members is impracticable. As of December 28, 2017, there were approximately 326.7 million shares of Aetna common stock outstanding, held by hundreds to thousands of individuals and entities scattered throughout the country. The actual number of public stockholders of Aetna will be ascertained through discovery;

b) there are questions of law and fact that are common to the Class that predominate over any questions affecting only individual members, including the following:

i. whether Defendants have misrepresented or omitted material information concerning the Proposed Transaction in the S-4 in violation of Section 14(a) of the Exchange Act;

ii. whether the Individual Defendants have violated Section 20(a) of the Exchange Act; and

iii. whether Plaintiff and other members of the Class will suffer irreparable harm if compelled to vote their shares regarding the Proposed Transaction based on the materially incomplete and misleading S-4.

c) Plaintiff is an adequate representative of the Class, has retained competent counsel experienced in litigation of this nature and will fairly and adequately protect the interests of the Class;

d) Plaintiff's claims are typical of the claims of the other members of the Class and Plaintiff does not have any interests adverse to the Class;

e) the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for the party opposing the Class;

f) Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole; and

g) a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

SUBSTANTIVE ALLEGATIONS

I. Company Background and the Proposed Transaction

27. Aetna, incorporated on December 20, 1982, is a diversified healthcare benefits company. The Company operates through three segments: Health Care, Group Insurance and Large Case Pensions. The Company offers a range of traditional, voluntary and consumer-directed health insurance products and related services, including medical, pharmacy, dental, behavioral health, group life and disability plans, medical management capabilities, Medicaid healthcare management services, Medicare Advantage and Medicare Supplement plans, workers' compensation administrative services and health information technology (HIT) products and services. As of September 30, 2017, Aetna serves an estimated 44.6 million people with information and resources to help them make better informed decisions about their health care.

28. On December 3, 2017, Aetna and CVS issued a joint release announcing the Proposed Transaction. The press release stated, in relevant part:

CVS Health to Acquire Aetna

> **WOONSOCKET, RI and HARTFORD, CT,** December 3, 2017 – CVS Health (NYSE: CVS), a company at the forefront of changing the health care landscape, and Aetna (NYSE: AET), one of the nation's leading diversified health care benefits companies, today announced the execution of a definitive merger agreement under which CVS Health will acquire all outstanding shares of Aetna for a combination of cash and stock. Under the terms of the merger agreement, which has been unanimously approved today by the boards of directors of each company, Aetna shareholders will receive $145.00 per share in cash and 0.8378 CVS Health shares for each Aetna share. The transaction values Aetna at approximately $207 per share or approximately $69 billion. Including the assumption of Aetna's debt, the total value of the transaction is $77 billion.
>
> This transaction fills an unmet need in the current health care system and presents a unique opportunity to redefine access to high-quality care in lower cost, local settings—whether in the community, at home, or through digital tools.

CVS Health President and Chief Executive Officer Larry J. Merlo said, "This combination brings together the expertise of two great companies to remake the consumer health care experience. With the analytics of Aetna and CVS Health's human touch, we will create a health care platform built around individuals. We look forward to working with the talented people at Aetna to position the combined company as America's front door to quality health care, integrating more closely the work of doctors, pharmacists, other health care professionals and health benefits companies to create a platform that is easier to use and less expensive for consumers."

This is a natural evolution for both companies as they seek to put the consumer at the center of health care delivery. CVS Health has steadily become an integrated health care company, and Aetna has moved beyond being a traditional insurer to focus more on consumer well-being.

"This is the next step in our journey, positioning the combined company to dramatically further empower consumers. Together with CVS Health, we will better understand our members' health goals, guide them through the health care system and help them achieve their best health," said Mark T. Bertolini, Aetna chairman and CEO. "Aetna has a proud tradition of continually innovating to address unmet consumer needs and providing leading products and services to the marketplace."

Bertolini continued, "Aetna has a talented and dedicated group of employees working to build a healthier world every day. Our combined company will be more competitive in the marketplace and accelerate progress toward achieving this mission."

Today, increasing numbers of consumers are taking on more and more responsibility for paying for their health care as the burden of costs is being shifted to them. Together, CVS Health and Aetna will be a trusted community partner who will help consumers better manage the cost of the health care they need. The combined company will also be well positioned to more effectively meet the health needs of many more people, especially the 50 percent of Americans with chronic conditions that account for more than 80 percent of all health care costs. Finally, capabilities developed following this transaction will directly benefit clients of both companies and enable them to better manage their health care costs.

BENEFITS FOR CONSUMERS

Uniquely Integrated, Community-Based Health Care Experience

Consumers will benefit from a uniquely integrated, community-based health care experience. The combined company will also be able to better understand patients' health goals, guide them through the health care system, and help them achieve their best health. There will be expanded opportunities to bring health

care services to consumers every day. CVS Pharmacy locations will include space for wellness, clinical and pharmacy services, vision, hearing, nutrition, beauty, and medical equipment, in addition to the products and services our customers currently enjoy. An entirely new health services offering available in many locations will function as a community-based health hub dedicated to connecting the pathways needed to improve health and answering patients' questions about their health conditions, as well as prescription drugs and health coverage.

This personalized health care experience will be delivered by connecting Aetna's extensive network of providers with greater consumer access through CVS Health. This includes more than 9,700 CVS Pharmacy locations and 1,100 MinuteClinic walk-in clinics—as well as further extensions into the community through Omnicare's senior pharmacy solutions, Coram's infusion services, and the more than 4,000 CVS Health nursing professionals providing in-clinic and home-based care across the nation. As a result, there will be a better opportunity to utilize local care solutions in a more integrated fashion with the goal of improving patient outcomes.

More Integrated Data and Analytics

The entire health care system will also benefit from broader use of data and analytics, leading to improved patient health at substantially lower cost. This will be achieved, for example, by helping patients avoid unnecessary hospital readmissions. Twenty percent of Medicare patients are readmitted to the hospital soon after being discharged at significant annual costs, much of which is avoidable. Readmission rates can be cut in half if patients have a complete review of their medications after discharge from the hospital to help them manage their care at home. In addition, home devices to monitor activity levels, pulse, and respiratory rates can be used to prevent readmissions. Rather than feeling lost and confused, selected high risk patients discharged from the hospital, or their caregivers, will be able to stop at a health hub location to access services such as medication evaluations, home monitoring and use of durable medical equipment, as needed. All of these services will complement and be integrated with the care provided by their physician and medical team.

Opportunity to Better Fight Chronic Disease

The combined entity will be able to help address the growing cost of treating chronic diseases in important ways. For example, there are 30 million Americans suffering from diabetes, costing the health care system approximately $245 billion annually. Patients with diabetes will receive care in between doctor visits through face-to-face counseling at a store-based health hub and remote monitoring of key indicators such as blood glucose levels. When needed, patients can receive text messages to let them know when their glucose levels deviate from normal ranges. As a follow up, patients can receive counseling on medication adherence, pick up diabetes-related supplies and

engage ancillary services such as counsel on weight loss and programs designed to reverse diabetes through nutrition. This will result in better control of their blood sugar levels and better health, which should be appreciated by both patients and their doctors.

"These types of interventions are things that the traditional health care system could be doing," commented Merlo, "but the traditional health care system lacks the key elements of convenience and coordination that help to engage consumers in their health. That's what the combination of CVS Health and Aetna will deliver."

BENEFITS FOR SHAREHOLDERS

As a result of this transaction, shareholders are expected to benefit from a number of outcomes, including enhanced competitive positioning; low- to mid-single digit accretion in the second full year after the close of the transaction, including the ability to deliver $750 million in near-term synergies; and a platform from which to accelerate growth. The combination over the longer term has the potential to deliver significant incremental value as it will spur the development of new products and generate significant new growth opportunities as a uniquely integrated retailer, pharmacy benefits manager and health plan. Aetna shareholders will receive attractive value from the transaction, including $145 per share in cash, and the ability to participate in the future success and high growth potential of the combined company.

TRANSACTION DETAILS

Transaction Terms

Under the terms of the merger agreement, each outstanding share of Aetna common stock will be exchanged for $145.00 in cash and 0.8378 shares of CVS Health common stock. Upon closing of the transaction, Aetna shareholders will own approximately 22% of the combined company and CVS Health shareholders will own approximately 78%.

The transaction is expected to close in the second half of 2018. It is subject to approval by CVS Health and Aetna shareholders, regulatory approvals and other customary closing conditions.

Financing of the Transaction

CVS Health intends to fund the cash portion of the transaction through a combination of existing cash on hand and debt financing. The transaction is not contingent upon receipt of financing. Barclays, Goldman Sachs and Bank of America Merrill Lynch are providing $49 billion of financing commitments.

Governance Details

> Upon the closing of the transaction, three of Aetna's directors, including Aetna's Chairman and CEO Mark T. Bertolini, will be added to the CVS Health Board of Directors. In addition, members of the Aetna management team will play significant roles in the newly combined company. Aetna will operate as a stand-alone business unit within the CVS Health enterprise and will be led by members of their current management team.[1]

29. The Merger Consideration in the Proposed Transaction is unfair and inadequate, because, among other things, the intrinsic value of the Company and its common stock is materially in excess of the amount offered given the Company's prospects for future growth and earnings. As a result, the Proposed Transaction will deny Class Members their right to fully share equitably in the true value of the Company.

30. On September 18, 2017, Zacks Investment Research—an online website dedicated to providing professional investors with the financial data and analysis—highlighted that Aetna's strong business is well poised for long term growth. Over the last four quarters, Aetna has surpassed estimates with an average positive earnings surprise of 19%. In addition, the Company's common stock gained ***31.2%*** in the last nine months, outperforming the industry's growth of 27%. Moreover, Aetna's trailing 12 month return on equity ("ROE") of 20.5% reinforces its growth potential. Its ROE has increased in the past three years and is higher than ROE of 19% for the industry. [2]

31. Most recently, on October 31, 2017, Aetna announced its Third Quarter 2017 results. Notably, the Company announced a net income of $838 million, or $2.52 per share, which was an increase of $234 million from its last year 2016 third quarter net income of $604 million.

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[1] CVS Health Corporation, Current Report (Form 8-K), at Exhibit 99.1 (Press release dated December 3, 2017, "CVS Health to Acquire Aetna") (Dec. 3, 2017).

[2] *5 Reasons Why You Should Buy Aetna's (AET) Stock Right Now*, ZACKS (Sept. 18, 2017), *available at* https://www.zacks.com/stock/news/276175/5-reasons-why-you-should-buy-aetnas-aet-stock-right-now.

In addition, the Company's adjusted earnings were $814 million, or $2.45 per share, compared with $734 million from last year's third quarter. Furthermore, Aetna substantially outperformed analysts' expectations, who expected the Company's adjusted earnings to be $2.06 per share but in fact was $2.52 per share.[3]

32. Moreover, the valuation analyses conducted by Lazard in its fairness opinion indicate that the value of Aetna's common stock has substantially greater value than represented by the Merger Consideration. For example, Lazard's *Discounted Cash Flow Analysis* indicates an Implied Per Share Equity Value as high as **$**233, which illustrates that each share of Aetna stock has an inherent premium of ***approximately 113%*** over the $207.94 Merger Consideration.

33. In sum, Aetna's common stock has demonstrated considerable industry value and growth in 2017. The Company's public common shareholders should be provided with sufficient financial information in the S-4 to make an informed decision regarding the Proposed Transaction.

34. It is therefore imperative that Aetna public common shareholders receive the material information (discussed in detail below) that has been omitted from the S-4, which is necessary for the Company's stockholders to properly exercise their corporate suffrage rights and make a fully informed decision concerning whether to vote in favor of the Proposed Transaction.

II. The Transaction Agreement's Deal Protection Provisions Deter Superior Offers

35. In addition to failing to conduct a fair and reasonable sales process, the Individual Defendants agreed to certain deal protection provisions in the Transaction Agreement that operate conjunctively to deter other suitors from submitting a superior offer for Aetna.

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[3] *Aetna (AET) Tops Q3 Earnings Estimates, Raises 2017 Guidance*, ZACKS (June 12, 2017), *available at* https://www.zacks.com/stock/news/280987/aetna-aet-tops-q3-earnings-estimates-raises-2017-guidance.

36. First, the Transaction Agreement contains a no solicitation provision that prohibits the Company or the Individual Defendants from taking any affirmative action to obtain a better deal for Aetna shareholders. Specifically, the Transaction Agreement generally states that the Company and the Individual Defendants shall not, among other things: (i) solicit, initiate or take any action to knowingly facilitate or knowingly encourage the submission of any acquisition proposal from any third party, (ii) enter into or participate in any discussions or negotiations with any third party that such party knows is seeking to make, or has made, an acquisition proposal, (iii) fail to make or withdraw or qualify, amend or modify in any manner adverse to the other party the recommendation of such party's board of directors that its shareholders approve and adopt the merger agreement, in the case of Aetna, or its stockholders approve the stock issuance, in the case of CVS Health, or (iv) fail to enforce or grant any waiver or release under any standstill or similar agreement.[4]

37. Second, the Company and the Individual Defendants must notify within 24 hours, discovery of any proposals, indications of interest, and/or draft agreements received from other persons making an acquisition proposal. *See* Transaction Agreement at *69.

38. Third, the Merger Agreement provides that Aetna must pay CVS a termination fee of $2.1 billion, representing approximately ***2.7% of the approximate deal value*** to shareholders of $77 billion, if the Company decides to pursue a superior proposal, thereby essentially requiring that the alternate bidder agree to pay an unreasonable premium for the right to provide the Company's shareholders with a superior offer. A termination fee in the amount of $2.1 billion is

[4] Aetna, Inc., Current Report (Form 8-K), at Exhibit 2.1, at *67-71 (Transaction Agreement, dated as of December 3, 2017, by and among CVS Health Corporation, Hudson Merger Sub Corp. and Aetna Inc.*) (Dec. 3, 2017).

unreasonably high for this type of transaction and strongly discourages any other bidder from coming forward.

39. Ultimately, these preclusive deal protection provisions restrain Aetna's ability to solicit or engage in negotiations with any third party regarding a proposal to acquire all or a significant interest in the Company.

40. Given that the preclusive deal protection provisions in the Transaction Agreement impede a superior bidder from emerging, it is imperative that Aetna's stockholders receive all material information necessary for them to cast a fully informed vote at the shareholder meeting concerning the Proposed Transaction.

III. The Materially Incomplete and Misleading S-4

41. On January 4, 2018, Defendants authorized the filing of the materially incomplete and misleading S-4 with the SEC. The information contained in the S-4 has thus been disseminated to Aetna common stockholders to solicit their vote in favor of the Proposed Transaction. Therefore, Defendants were obligated to carefully review the S-4 before it was filed with the SEC and disseminated to the Company's stockholders to ensure that it did not contain any materially misrepresentations or omissions. However, the S-4 misrepresents and/or omits material information that is necessary for the Company's stockholders to make an informed decision concerning whether or not to vote in favor of the Proposed Transaction, in violation of Sections 14(a) and 20(a) of the Exchange Act.

Material Omissions Concerning Aetna's Financial Projections

42. The S-4 provides several non-GAAP financial metrics, including EBITDA, Adjusted EBITDA, Unlevered Free Cash Flow, Adjusted Revenue and Adjusted Earnings, but fails to provide the line item projections detailed below for the metrics used to calculate these non-GAAP measures.

43. First, for Aetna, the S-4 defines EBITDA as "earnings before interest, taxes, depreciation and amortization, excluding certain one time non-recurring items, as applicable." However, the S-4 fails to provide values for: (i) interest; (ii) taxes; (iii) depreciation; (iv) amortization; and (v) the adjustments made to Aetna's 2017 EBITDA.

44. Second, for Aetna, the S-4 defines Adjusted Revenue as "Total Revenue excluding net realized capital gains or losses and other items, if any, that neither relate to the ordinary course of Aetna's business nor reflect Aetna's underlying business performance. However, the S-4 fails to provide values for: (i) total revenue; and (ii) any projected net realized capital gains for the years ending December 31, 2017 to 2022, despite having an annual net realized capital gains or losses that ranged from a net realized capital loss of $65 million to a net realized capital gain of $86 million during the calendar years 2014 through 2016.

45. Third, for Aetna, the S-4 defines Adjusted Earnings as "Net income, excluding amortization of other acquired intangible assets, net realized capital gains or losses and other items, if any, that neither relate to the ordinary course of Aetna's business nor reflect Aetna's underlying business performance." However, the S-4 fails to provide values for: (i) net income, and (ii) net realized capital gains or losses.

46. Fourth, for Aetna, the S-4 defines Adjusted EBITDA as "Income before income taxes, excluding interest expense, depreciation and amortization, net realized capital gains or losses and other items, if any, that neither relate to the ordinary course of Aetna's business nor reflect Aetna's underlying business performance. However, the S-4 fails to provide: (i) income, (ii) income taxes, (iii) interest expense, (iv) depreciation and amortization, and (v) net realized capital gains or losses.

47. Fifth, for Aetna, the S-4 defines Unlevered Free Cash Flow as "Net income, excluding: (i) net realized capital gains or losses, (ii) other items…, (iii) the corresponding income tax benefit or expense related to net realized capital gains…; less (I) risk based capital contributions (distributions, (II) changes in Aetna Inc.'s working capital, (III) after-tax pension plan contributions, (IV) after tax debt retirement premiums, (V) acquisitions ad investments and (VI) after tax Humana related termination fees; plus (a) after-tax net interest, (b) other net cash flow adjustments and (c) capital projected to be released due to the sale of Aetna's domestic group life insurance, group disability insurance and absence management businesses." However, the S-4 fails to provide the line item projections used to calculate this non-GAAP measure.

48. Failure to provide complete and full disclosure of the line item projections for the metrics used (*e.g.*, interest, taxes, capital expenditures) to calculate the above-mentioned non-GAAP metrics leaves Aetna stockholders without the necessary, material information to reach a fully-informed decision concerning the Company, the fairness of the Merger Consideration, and, ultimately, whether to vote in favor of the Proposed Transaction.

49. The omission of the above-referenced projections renders the financial projections included on pages 154 through 159 of the S-4 materially incomplete and misleading. If a registration statement discloses financial projections and valuation information, such projections must be complete and accurate. The question here is not the duty to speak, but liability for not having spoken enough. With regard to future events, uncertain figures, and other so-called soft information, a company may choose silence or speech elaborated by the factual basis as then known—but it may not choose half-truths.

Material Omissions Concerning Lazard Financial Analyses

50. The S-4 describes Lazard's fairness opinion and the various valuation analyses it performed in support of its opinion. However, the description of Lazard's fairness opinion and analyses fails to include key inputs and assumptions underlying these analyses. Without this information, as described below, Aetna's public stockholders are unable to fully understand these analyses and, thus, are unable to determine what weight, if any, to place on Aetna's fairness opinion in determining whether to tender their shares in favor of the Proposed Transaction. This omitted information, if disclosed, would significantly alter the total mix of information available to Aetna's public common stockholders.

51. With respect to Lazard's *Discounted Cash Flow Analysis*, the S-4 fails to disclose the following key components used in the analysis: (i) CVS and Aetna's terminal value; (ii) the inputs and assumptions underlying the calculation of the perpetuity growth rates ranging from 2.0% to 3.0% used for Aetna; and (iii) the inputs and assumptions underlying the calculation of the discount rate range of 6.0% to 7.0% used for Aetna. *See* S-4 126.

52. These key inputs are material to Aetna common stockholders, and their omission renders the summary of Aetna's *Discounted Cash Flow Analysis* incomplete and misleading. As a highly-respected professor explained in one of the most thorough law review articles regarding the fundamental flaws with the valuation analyses bankers perform in support of fairness opinions, in a discounted cash flow analysis a banker takes management's forecasts, and then makes several key choices "each of which can significantly affect the final valuation." Steven M. Davidoff, *Fairness Opinions*, 55 Am. U.L. Rev. 1557, 1576 (2006). Such choices include "the appropriate discount rate, and the terminal value…" *Id.* As Professor Davidoff explains:

> *There is substantial leeway to determine each of these, and any change can markedly affect the discounted cash flow value. For example, a change in the discount rate by one percent on a stream of cash flows in the billions of dollars can change the discounted cash flow value by tens if not hundreds of millions*

> *of dollars*…. This issue arises not only with a discounted cash flow analysis, but with each of the other valuation techniques. *This dazzling variability makes it difficult to rely, compare, or analyze the valuations underlying a fairness opinion* ***unless full disclosure is made of the various inputs in the valuation process, the weight assigned for each, and the rationale underlying these choices***. The substantial discretion and lack of guidelines and standards also makes the process vulnerable to manipulation to arrive at the "right" answer for fairness. This raises a further dilemma in light of the conflicted nature of the investment banks who often provide these opinions.

Id. at 1577-78.

53. With respect to Lazard's *Selected Precedent Transactions Analysis* and *Selected Public Companies Analysis*, the S-4 fails to include the individual multiples Lazard calculated for each company transaction utilized. The omission of these multiples renders the summary of these analyses and the implied equity value reference ranges materially misleading. A fair summary of Selected Transactions Analysis and Selected Public Companies Analysis requires the disclosure of the individual multiples for each company and transaction; merely providing the range that a banker applied is insufficient, as Aetna shareholders are unable to assess whether the banker applied appropriate multiples, or, instead, applied unreasonably low multiples in order to drive down the implied share price ranges. *See* S-4 115-116.

54. Furthermore, with valuation analyses conducted by Lazard in its fairness opinion indicate that the value of Aetna's stock has substantially greater value than represented by the Merger Consideration. For example, Lazard's *Discounted Cash Flow Analysis* indicates an implied per share equity value range of $233 for the company, which illustrates that each share of Aetna has an inherent premium of ***approximately 113%*** over the $207.94 Merger Consideration.

55. In sum, the omission of the above-referenced information renders the S-4 materially incomplete and misleading, in contravention of the Exchange Act. Absent disclosure of the foregoing material information prior to the expiration of the Proposed Transaction, Plaintiff and

the other members of the Class will be unable to make a fully-informed decision regarding whether to vote in favor of the Proposed Transaction, and they are thus threatened with irreparable harm, warranting the injunctive relief sought herein.

COUNT I

(Against All Defendants for Violations of Section 14(a) of the Exchange Act and Rule 14a-9 Promulgated Thereunder)

56. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

57. Section 14(a)(1) of the Exchange Act makes it "unlawful for any person, by the use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered pursuant to section 78l of this title." 15 U.S.C. § 78n(a)(1).

58. Rule 14a-9, promulgated by the SEC pursuant to Section 14(a) of the Exchange Act, provides that proxy communications shall not contain "any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading." 17 C.F.R. § 240.14a-9.

59. The omission of information from a registration statement will violate Section 14(a) and Rule 14a-9 if other SEC regulations specifically require disclosure of the omitted information.

60. Defendants have issued the S-4 with the intention of soliciting Aetna's common stockholders' support for the Proposed Transaction. Each of the Defendants reviewed and

authorized the dissemination of the S-4, which fails to provide critical information regarding, amongst other things: (i) financial projections for the Company; (ii) the valuation analyses performed by the Company's financial advisor, Lazard, in support of their fairness opinions; and (iii) the background process leading to the Proposed Transaction.

61. In so doing, Defendants made untrue statements of fact and/or omitted material facts necessary to make the statements made not misleading. Each of the Individual Defendants, by virtue of their roles as officers and/or directors, were aware of the omitted information but failed to disclose such information, in violation of Section 14(a). The Individual Defendants were therefore negligent, as they had reasonable grounds to believe material facts existed that were misstated or omitted from the S-4, but nonetheless failed to obtain and disclose such information to Aetna's common stockholders although they could have done so without extraordinary effort.

62. The Individual Defendants knew or were negligent in not knowing that the S-4 is materially misleading and omits material facts that are necessary to render it not misleading. The Individual Defendants undoubtedly reviewed and relied upon most if not all of the omitted information identified above in connection with their decision to approve and recommend the Proposed Transaction; indeed, the S-4 states that Lazard reviewed and discussed their financial analyses with the Board, and further states that the Board considered both the financial analyses provided by Lazard, as well as its fairness opinion and the assumptions made and matters considered in connection therewith. Further, the Individual Defendants were privy to and had knowledge of the projections for the Company and the details surrounding the process leading up to the signing of the Transaction Agreement. The Individual Defendants knew or were negligent in not knowing that the material information identified above has been omitted from the S-4, rendering the sections of the S-4 identified above to be materially incomplete and misleading.

Indeed, the Individual Defendants were required to, separately, review Lazard's analyses in connection with their receipt of the fairness opinions, question Lazard as to the derivation of fairness, and be particularly attentive to the procedures followed in preparing the S-4, and review it carefully before it was disseminated, to corroborate that there are no material misstatements or omissions.

63. The Individual Defendants were, at the very least, negligent in preparing and reviewing the S-4. The preparation of a registration statement by corporate insiders containing materially false or misleading statements or omitting a material fact constitutes negligence. The Individual Defendants were negligent in choosing to omit material information from the S-4 or failing to notice the material omissions in the S-4 upon reviewing it, which they were required to do carefully as the Company's directors. Indeed, the Individual Defendants were intricately involved in the process leading up to the signing of the Transaction Agreement and the preparation of the Company's financial projections.

64. Aetna is also deemed negligent as a result of the Individual Defendants' negligence in preparing and reviewing the S-4.

65. The misrepresentations and omissions in the S-4 are material to Plaintiff and the Class, who will be deprived of their right to cast an informed vote if such misrepresentations and omissions are not corrected prior to the vote on the Proposed Transaction. Plaintiff and the Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff and the Class be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict.

COUNT II

(Against the Individual Defendants for Violations of Section 20(a) of the Exchange Act)

66. Plaintiff incorporate each and every allegation set forth above as if fully set forth herein.

67. The Individual Defendants acted as controlling persons of Aetna within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers and/or directors of Aetna, and participation in and/or awareness of the Company's operations and/or intimate knowledge of the incomplete and misleading statements contained in the S-4 filed with the SEC, they had the power to influence and control and did influence and control, directly or indirectly, the decision making of the Company, including the content and dissemination of the various statements that Plaintiff contends are materially incomplete and misleading.

68. Each of the Individual Defendants was provided with or had unlimited access to copies of the S-4 and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

69. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the Exchange Act violations alleged herein, and exercised the same. The S-4 at issue contains the unanimous recommendation of each of the Individual Defendants to approve the Proposed Transaction. They were thus directly involved in preparing this document.

70. In addition, as the S-4 sets forth at length, and as described herein, the Individual Defendants were involved in negotiating, reviewing, and approving the Transaction Agreement. The S-4 purports to describe the various issues and information that the Individual Defendants

reviewed and considered. The Individual Defendants participated in drafting and/or gave their input on the content of those descriptions.

71. By virtue of the foregoing, the Individual Defendants have violated Section 20(a) of the Exchange Act.

72. As set forth above, the Individual Defendants had the ability to exercise control over and did control a person or persons who have each violated Section 14(a) and Rule 14a-9 by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Individual Defendants' conduct, Plaintiff will be irreparably harmed.

73. Plaintiff and the Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff and the Class be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and relief as follows:

A. Declaring that this action is properly maintainable as a Class Action and certifying Plaintiff as Class Representative and his counsel as Class Counsel;

B. Enjoining Defendants and all persons acting in concert with them from proceeding with the common shareholder vote on the Proposed Transaction or consummating the Proposed Transaction, unless and until the Company discloses the material information discussed above which has been omitted from the S-4;

C. Rescinding, to the extent already implemented, the Merger or any of the terms thereof, or granting Plaintiff and the Class rescissory damages;

D. Directing the Individual Defendants to account to Plaintiff and the Class for all

damages suffered as a result of the Individual Defendants wrongdoing;

E. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and experts' fees; and

F. Granting such other and further equitable relief as this Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury.

Dated: January 16, 2018

Respectfully submitted,

LEVI & KORSINSKY LLP

/s/ Shannon L. Hopkins

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Attorneys for Plaintiff

CERTIFICATION OF PROPOSED LEAD PLAINTIFF

I, Olivier Miramond ("Plaintiff"), declare, as to the claims asserted under the federal securities laws, that:

1. Plaintiff has reviewed a draft of the complaint and has authorized the filing of a complaint substantially similar to the one reviewed.

2. Plaintiff selects Monteverde & Associates PC and any firm with which it affiliates for the purpose of prosecuting this action as my counsel for purposes of prosecuting my claim against defendants.

3. Plaintiff did not purchase the security that is the subject of the complaint at the direction of Plaintiff's counsel or in order to participate in any private action arising under the federal securities laws.

4. Plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary.

5. Plaintiff sets forth in the attached chart all the transactions in the security that is the subject of the complaint during the class period specified in the complaint.

6. In the past three years, Plaintiff has not sought to serve nor has served as a representative party on behalf of a class in an action filed under the federal securities laws, unless otherwise specified below.

7. Plaintiff will not accept any payment for serving as a representative party on behalf of a class beyond Plaintiff's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the Class as ordered or approved by the Court.

I declare under penalty of perjury under the laws of the United States that the foregoing information is correct to the best of my knowledge.

Signed this 16th day of January, 2017.

Olivier Miramond

Signature

Company Name/Ticker	Transaction (Purchase or Sale)	Trade Date	Quantity
AET	Purchase	10/21/14	23
AET	Purchase	1/30/17	7