IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, et al. *Plaintiffs*, v. AETNA INC., and HUMANA INC., *Defendants*.	Case No. 1:16-cv-1494-JDB

DEFENDANT AETNA INC.'S ANSWER AND DEFENSES TO PLAINTIFFS' COMPLAINT

Defendant Aetna Inc. ("Aetna") responds to Plaintiffs' Complaint as set forth below. Any allegation not expressly and explicitly admitted is denied. Aetna also states that, except to the extent indicated below, it lacks knowledge or information sufficient to form a belief about the truth or falsity of allegations that relate to the actions, statements, or intent of Humana Inc. ("Humana") or any third parties, and therefore denies them. Aetna reserves the right to amend this Answer.

INTRODUCTION

The merger of Aetna and Humana will provide enormous benefits to millions of Americans. The efficiencies generated from the proposed transaction will allow the merged company to provide better and more cost-effective health insurance products to American consumers, including seniors and low- and moderate-income individuals and families. The transaction will combine two companies with complementary businesses, cultures, and philosophies, and foster more rapid innovation by allowing the merged company to lower its costs, pass those savings on to its customers, and build on the best approaches of the legacy

companies in ways (and on a timetable) that cannot occur without the transaction.

The Complaint alleges antitrust markets and purported competitive harms that do not comport with reality. The Plaintiffs' entire theory of liability concerning Medicare rests precariously on a product market definition that requires the Court to ignore what the Plaintiffs have already conceded: that Congress created Medicare Advantage as a competitive alternative to "original" Medicare ("Original Medicare"). Compl. ¶ 6 (July 21, 2016), ECF No. 1.

The vast majority of Medicare-eligible Americans elect to receive Medicare coverage through Original Medicare, a Government-administered fee-for-service plan. A much smaller percentage of seniors choose to receive Medicare coverage through Medicare Advantage plans, which are privately administered managed care products. The Government's website, through which all Medicare enrollees must navigate, describes the choice between these options in the simplest of terms:

Screenshot from *Your Medicare coverage choices*, MEDICARE.GOV, https://www.medicare.gov/sign-up-change-plans/decide-how-to-get-medicare/your-medicare-coverage-choices.html (last visited Aug. 11, 2016).

The text and legislative history of Medicare, the Government's own website, and all the ordinary indicia of a properly defined product market compel the conclusion that both types of Medicare plans are in the same product market. In construct and in practice, Original Medicare and Medicare Advantage are the clearest imaginable substitutes for each other. Participants can and routinely do switch back and forth between the two, and relevant econometric analyses

demonstrate that prices for one type of coverage constrain prices for the other, thereby satisfying the applicable legal test for defining a single—and appropriate—market. This simple correction eviscerates the Plaintiffs' Medicare Advantage claim.

This claim suffers from additional errors that foreclose it. Aetna and Humana have entered into a definitive agreement with Molina Healthcare Inc. ("Molina") to divest Medicare Advantage assets in every one of the Complaint's 364 alleged geographic markets, thereby alleviating any competitive concerns with respect to the Plaintiffs' narrowly (and incorrectly) drawn market. Instead of accounting for the divestiture's impact on competition, the Plaintiffs' Complaint prejudged the agreement—without even seeing it. Molina is a sophisticated Fortune 500 managed care company with $14 billion in revenue, over four million existing members, and substantial experience administering the most complex Medicare Advantage plans.

Finally, despite the Plaintiffs' effort to craft a sclerotic product market and discount the divestiture agreement, it cannot avoid the dispositive fact that managed care providers can—and regularly do—enter into the sale of Medicare products in new geographies across the country, and that they would be poised to do so if the merged company attempted to raise prices to supra-competitive levels. The prices of Medicare Advantage plans are already set until January 2018 in every county across the country, and competitors—new and old—can seek approval from the Center for Medicare and Medicaid Services ("CMS") to sell Medicare Advantage plans in any county as of January 2018 by filing proposed plans and rates by mid-2017 (just as the merged company will need to do). For these and other reasons, there is no basis for the Plaintiffs' inference that entities currently selling Medicare Advantage products in a given county will forever stay the same. Rather, the rich history of private insurers entering individual counties strongly supports the conclusion that new providers would enter individual geographies even

assuming a hypothetical price increase. Nor can the Department of Justice ignore CMS' critical role in the regulatory process—which includes setting the benchmark rates against which Medicare Advantage organizations ("MAOs") price their plans, reviewing benefit and plan designs, evaluating the adequacy of provider networks, approving MAO margins and rates, and ultimately determining the rebates to which MAOs may be entitled—and the effect of that role on competition.

The Plaintiffs' claim that the merger would have anticompetitive effects in a handful of Affordable Care Act public exchanges is also wrong. Shortly after the end of the second quarter, after tabulating public exchange losses of over $400 million since 2014, and analyzing new data indicating that substantial risk and volatility continued to plague the public exchanges, Aetna announced in early August that it would withdraw from the public exchanges in hundreds of counties (including all seventeen counties identified in the Complaint) as of January 2017. In response to a direct question asked in a Government subpoena issued before the Government decided to challenge the merger, Aetna informed the Government of this risk, and explained its concern that Aetna would not have the benefit of merger-related cost savings to offset its losses on the public exchanges. The entire predicate of the Plaintiffs' theory is now obviated, as Aetna will no longer participate in the public exchanges serving any of the counties at issue.

Even putting Aetna's exit aside, the Plaintiffs' claim concerning the public exchanges is wrong. The exchanges are volatile, highly price-sensitive marketplaces in which large and small insurers enter, expand, and contract from year to year, leading to market shares that fluctuate dramatically. Indeed, publicly available information indicates that Humana has incurred heavy losses on the public exchanges since their inception, and has ceased to be a significant competitor as a result. Humana has already exited the vast majority of exchanges in which it had

participated, and is seeking approval from CMS to implement large price increases in the relatively few geographies where it will continue to participate. These developments mean that Humana will not be an effective competitor—or corresponding constraint—that would be eliminated as a result of the proposed merger. And all of these facts point to a single conclusion: that the Plaintiffs' historic snapshot of competition on the exchanges will not inform any inferences—let alone conclusions—about competition or pricing on the exchanges in the future.

The Plaintiffs' static view of healthcare marketplaces is based on concentration presumptions that fail to account for commercial realities in the rapidly changing healthcare industry. Far from the Plaintiffs' predictions of dire consequences, this merger will improve the delivery of healthcare to millions of people, and will accelerate the industry's movement toward lower-cost, value-based care that will serve elderly and low- and middle-income individuals and families more effectively and efficiently.

FIRST DEFENSE

1. Aetna denies the allegations of Paragraph 1 in the Complaint.

2. Aetna admits that Medicare Advantage plans offered by private insurers are competitive alternatives to Original Medicare. Aetna further admits that Aetna and Humana offer individual Medicare Advantage plans in some of the same counties. Aetna also admits that Aetna and Humana currently sell health insurance on public exchanges established by the Affordable Care Act, and that they both currently sell such insurance in the seventeen counties in three states identified in the Complaint. Aetna denies the allegation that its proposed merger with Humana would deny consumers the benefits of this or any other competition. Aetna denies the remaining allegations of Paragraph 2 in the Complaint.

3. Aetna admits that Aetna, Humana, other insurance companies, and federal

governmental entities offer various forms of health insurance to Americans. Aetna further admits that consumers do consider Aetna and Humana as well as many other firms and governmental entities when purchasing health insurance products, and avers that competition for such consumers will remain intense once this transaction is completed. Aetna denies the allegations of Paragraph 3 in the Complaint relating to the proffered reasons why seniors and low- and moderate-income individuals and families purchase particular forms of insurance from particular insurers, as Aetna lacks knowledge or information sufficient to form a belief regarding those reasons. Aetna denies the remaining allegations of Paragraph 3 in the Complaint.

4. Aetna admits that it, United, Anthem, Humana, and Cigna have at times been referred to as the "big five." Aetna lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegation that Humana's CEO has called this group the "G-5," and therefore denies this allegation. Aetna admits that it seeks to acquire Humana for $37 billion and that, based on public documents, it appears that Anthem seeks to acquire Cigna for $54 billion. Aetna admits that Aetna and Humana are innovative insurers and avers that there are many other innovative providers of healthcare insurance products, and that insurers will continue to find new ways to lower healthcare costs. Aetna admits that, in the event that Aetna acquires Humana and Anthem acquires Cigna, the five separate companies that previously existed as Aetna, Anthem, Cigna, Humana, and United will, as a matter of simple math, become three. Aetna denies, for lack of knowledge or information sufficient to form a belief, any conclusions regarding the competitive effects of Anthem's proposed acquisition of Cigna. Aetna denies the remaining allegations of Paragraph 4 in the Complaint.

5. Aetna admits the allegations in the first two sentences of Paragraph 5 in the Complaint. Aetna denies the remaining allegations of Paragraph 5.

6. Aetna admits that Congress created Medicare Advantage in 1997 and that Medicare Advantage is a market-based alternative to Original Medicare. Aetna denies the remaining allegations of Paragraph 6.

7. Aetna lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations of Paragraph 7 in the Complaint, and therefore denies these allegations.

8. Aetna admits that, as of July 2016 and based on records available to Aetna, it was the fourth largest Medicare Advantage insurer based on the number of covered lives and to that extent admits the allegations in the second sentence of Paragraph 8 in the Complaint. Aetna denies the allegations in the first and third sentences of Paragraph 8. Aetna does not know the source of the quoted material referenced in the last sentence of Paragraph 8, and therefore denies the allegations in that sentence.

9. Aetna admits that Aetna and Humana compete with each other, and avers that they also compete with other providers of Medicare Advantage plans and with Original Medicare. Aetna admits that, currently, Aetna and Humana both sell Medicare Advantage plans in more than 600 counties, which constitutes nearly 90 percent of the counties where Aetna and Humana offer Medicare Advantage. Aetna admits that one Aetna executive has characterized Humana as a "formidable competitor" in certain counties in two states. Aetna lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegation that Humana has characterized Aetna as a "formidable competitor," and therefore denies that allegation. Aetna denies the remaining allegations of Paragraph 9.

10. Aetna admits that, in the 364 counties listed in the Appendix to the Complaint, individual Medicare Advantage products serve approximately 1.7 million seniors, nearly 980,000

of whom are enrolled with Aetna or Humana. Aetna denies the remaining allegations of Paragraph 10 in the Complaint.

11. Aetna denies the allegations of Paragraph 11 in the Complaint.

12. Aetna denies the allegations of Paragraph 12 in the Complaint.

13. Aetna denies the allegations in the first sentence of Paragraph 13 in the Complaint. The second sentence of Paragraph 13 contains a selective quotation from a document published by CMS. Aetna admits that the quotation appears in that document, but denies any remaining allegations in the second sentence of Paragraph 13.

14. The allegations in the third and fourth sentences of Paragraph 14 in the Complaint are legal conclusions not subject to admission or denial. To the extent that a response is required, Aetna denies the allegations in these sentences. Aetna denies the remaining allegations of Paragraph 14.

15. Aetna admits that, as of January 2016 and based on records available to Aetna, it was the nation's third largest health insurance company; that it offers health insurance products in every state and the District of Columbia; that 23.5 million Americans obtained health insurance through Aetna in 2015; that the company earned revenue of $60 billion in 2015; that Aetna has announced a goal of achieving $100 billion in revenue by 2020; that its Medicare Advantage membership increased by approximately 19 percent from 2014 to 2016; and that Aetna's government-sponsored products (including Medicare Advantage) account for approximately 40 percent of its healthcare revenue. Aetna denies Plaintiffs' characterizations that Aetna is "rapidly growing," that it has a "broad national footprint," that Aetna sought to achieve $100 billion in revenue "in large part by expanding its Medicare Advantage business and growing its presence on the public exchanges," and that Aetna has already "significantly grown

these lines of business," and further denies the remaining allegations of Paragraph 15 in the Complaint.

16. Aetna lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations of Paragraph 16 in the Complaint, and therefore denies them.

17. Aetna admits that, in March 2015, it began to talk to Humana about a potential merger, that Aetna asked its board of directors to authorize formal discussions with Humana, and that Aetna entered into an agreement to acquire Humana for $37 billion in cash and stock on July 2, 2015. Aetna also admits that, on July 23, 2015, Anthem agreed to acquire Cigna for $54 billion. Aetna denies the remaining allegations of Paragraph 17 in the Complaint.

18. Aetna admits that Aetna agreed to pay a $1 billion break-up fee in the event its merger with Humana was not consummated by June 30, 2016, and that this date has been extended to December 31, 2016. The fourth sentence of Paragraph 18 in the Complaint contains selective and out-of-context quotations from one of millions of documents that the Department of Justice ("DOJ") obtained during its year-long investigation. Aetna admits that the quotations appear in that document, but denies the Plaintiffs' characterization of those quotations, and further denies the remaining allegations of Paragraph 18.

19. Aetna admits that Humana currently offers Medicare Advantage products in nearly 90 percent of the counties where Aetna also offers Medicare Advantage products, and avers that many other insurance providers also offer Medicare Advantage products in those counties. Aetna denies the remaining allegations of Paragraph 19 in the Complaint.

20. Aetna admits the allegations of Paragraph 20 in the Complaint.

21. Aetna admits that some seniors choose a Medicare Advantage plan over Original Medicare, that Congress introduced Medicare Advantage, at least in part, to bring the benefits of

competition among private insurers to the Medicare program, and that enrollment in Medicare Advantage plans has more than tripled since 2004. Aetna avers that enrollment in Original Medicare has also increased during that period as more and more Americans have turned 65. Further, Aetna avers that the vast majority of seniors still elect to receive Medicare coverage through Original Medicare. Aetna denies the remaining allegations of Paragraph 21.

22. Aetna admits the allegations of the second sentence of Paragraph 22 in the Complaint. Aetna denies the remaining allegations of Paragraph 22.

23. The allegations in the first three sentences of Paragraph 23 in the Complaint are legal conclusions not subject to admission or denial. To the extent that a response is required, Aetna denies the allegations in those first three sentences of Paragraph 23 in the Complaint. Aetna admits the allegation in the fourth sentence is a definitional convention adopted by Plaintiffs, but it is not subject to admission or denial. Aetna denies any remaining allegations of Paragraph 23.

24. Aetna denies the allegations of the first sentence of Paragraph 24, except that Aetna admits that Medicare Advantage plans are different than Original Medicare inasmuch as the former are offered by private insurers and the latter by the Government, though the two compete with each other. Aetna denies the allegations in the second sentence of Paragraph 24 and further denies any remaining allegations of Paragraph 24 in the Complaint, except admits the allegations in the third, fourth, fifth, and sixth sentences of Paragraph 24.

25. Aetna denies the allegation that Medicare Advantage is a "much better deal" for many seniors, but otherwise admits the allegations in the first sentence of Paragraph 25 in the Complaint. Aetna denies the allegations in the second, third, and fourth sentences of Paragraph 25. Aetna admits that premiums for Medicare Advantage plans typically include some form of

prescription drug coverage and that they typically cap annual out-of-pocket costs, but otherwise denies the allegations in the fifth sentence. Aetna lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegation about the purported ease with which seniors can navigate the respective plans, and Aetna therefore denies the allegations in the sixth sentence of Paragraph 25. Aetna lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegation that Medicare Advantage plans "frequently" provide all of the cited benefits and therefore denies the allegations in the seventh sentence of Paragraph 25.

26. Aetna denies the allegations of Paragraph 26 in the Complaint.

27. Aetna admits that there have been funding cuts to Medicare Advantage programs that will be fully phased in by 2017 and that the total number of individual Medicare Advantage enrollees—and the percentage of Medicare eligible individuals enrolled in Medicare Advantage plans—has grown, but denies that the percentage increased "despite funding cuts to the Medicare Advantage program." Aetna denies the remaining allegations of Paragraph 27 in the Complaint.

28. Aetna lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations of Paragraph 28 in the Complaint to the extent they relate to the business practices and organizational structures of companies other than Aetna, and therefore denies them. Aetna further denies that it views Medicare Advantage as a distinct product and denies that Aetna's senior managers who are responsible for Aetna's Medicare Supplement plans are distinct from those responsible for Aetna's Medicare Advantage plans. Aetna admits that some of Aetna's sales people and actuaries who have involvement in Aetna's Medicare Supplement plans are different from some of Aetna's sales people and actuaries who have some involvement in Aetna's Medicare Advantage plans. Aetna denies the remaining allegations of Paragraph 28.

29. The allegations of Paragraph 29 in the Complaint are legal conclusions not subject to admission or denial. To the extent that a response is required, Aetna denies the allegations of Paragraph 29.

30. Aetna admits that, in hundreds of counties across the United States, both Aetna and Humana currently offer Medicare Advantage plans. Aetna admits the allegations in the second sentence of Paragraph 30 in the Complaint. The allegations in the fourth sentence of Paragraph 30 in the Complaint are legal conclusions not subject to admission or denial. To the extent that a response is required, Aetna denies the allegations in the fourth sentence of Paragraph 30. Aetna denies the remaining allegations of Paragraph 30.

31. The allegations of Paragraph 31 in the Complaint are legal conclusions not subject to admission or denial. To the extent that a response is required, Aetna denies the allegations of Paragraph 31 in the Complaint.

32. Aetna denies that there will be a loss of competition and harm to competition in any counties, let alone in the 364 identified counties, and further denies the allegations in the first sentence of Paragraph 32 in the Complaint. Aetna denies that it will have a monopoly anywhere after the merger and further denies the second sentence of Paragraph 32. Aetna denies the third sentence of Paragraph 32 in the Complaint and avers that it and Humana have entered into a definitive agreement to divest to Molina certain of their assets in all 364 counties identified in the Complaint.

33. Aetna admits that it is introducing Medicare Advantage plans in 11 counties where Humana in 2016 had been the only seller of Medicare Advantage plans, but denies that Humana had a monopoly in those 11 counties. Aetna denies the remaining allegations of Paragraph 33.

34. Aetna admits that Aetna, Humana, and other insurers (including governmental entities) try to attract to their plans seniors who are seeking to enroll or who are already enrolled in a Medicare Advantage plan or in Original Medicare. The allegations in the second sentence of Paragraph 33 are legal conclusions not subject to admission or denial. To the extent that a response is required, Aetna denies those allegations.

35. The second sentence and the bullets following the third sentence of Paragraph 35 contain selective and out-of-context quotations from a limited number of the millions of documents that the DOJ obtained during its year-long investigation. Aetna lacks knowledge or information sufficient to form a belief about the truth or falsity of those allegations to the extent they purport to cite to any Humana documents, and therefore denies those allegations to that extent. Aetna admits that the quotations attributed to Aetna appear in some of Aetna's documents, but denies that they evidence "repeated[] discuss[ion]" regarding "the intense competition between [Aetna and Humana]" and otherwise denies the allegations of Paragraph 35.

36. Aetna admits that Aetna and Humana Medicare Advantage products compete with Original Medicare and with Medicare Advantage products offered by other insurers in various ways, including but not limited to the ways set forth in the first sentence of Paragraph 36 in the Complaint. The second and third sentences of Paragraph 36 in the Complaint contain selective quotations from a limited number of the millions of documents that the DOJ obtained during its year-long investigation. Aetna admits that such quotations appear in some of Aetna's documents, but denies the remaining allegations of Paragraph 36.

37. Aetna admits that it, Humana, and many other insurers (including governmental entities) compete by offering wellness and care management plans, investing in programs designed in part to benefit seniors, and by attempting to innovate in a variety of other ways.

Aetna further admits that it, Humana, and other insurers (including governmental entities) attempt to work with doctors and hospitals to improve quality of care and to reduce costs by improving patients' health. Aetna also admits that its Healthagen subsidiary provides technology solutions to doctors and hospitals to facilitate sharing health data across various platforms. Aetna lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in the fourth sentence of Paragraph 37 to the extent they relate to Humana's subsidiary Transcend, and therefore denies them, and further denies the remaining allegations of Paragraph 37.

38. Aetna admits that it, Humana, and many other insurers (including governmental entities) compete to provide attractive and high quality plans. Aetna denies the remaining allegations of Paragraph 38.

39. Aetna avers that CMS provides bonuses to new plans and therefore denies that CMS provides bonuses solely to plans that receive 4- and 5-star ratings; Aetna further avers that plans that receive star ratings of 3.5 and above receive rebates. Aetna admits that there are regulations that define the extent to which any rebates (as defined in those regulations) must be used on benefits or to lower costs, but otherwise denies the remaining allegations of Paragraph 39 of the Complaint.

40. The last sentence of Paragraph 40 contains a selective quotation from one of millions of documents that the DOJ obtained during its year-long investigation. Aetna admits that the quotation appears in one such document. Aetna denies the remaining allegations of Paragraph 40.

41. Aetna lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in the first sentence of Paragraph 41 in the Complaint related to

bonus payments Humana purportedly receives from CMS, and therefore denies the allegations. The fourth sentence of Paragraph 41 contains selective quotations from deposition testimony that the DOJ obtained during its year-long investigation. Aetna admits that the quotation appears in the transcript of one such deposition. Aetna denies the remaining allegations of Paragraph 41.

42. Aetna denies the allegations of Paragraph 42 in the Complaint, except it admits that Humana has sold insurance on the public exchanges in fifteen States. Aetna avers that Aetna has publicly announced that, beginning in 2017, it will no longer participate in exchanges in 536 counties in which it previously participated. As a result, Aetna will no longer participate in the exchanges in any counties in Florida, Georgia, or Missouri, among counties in other states.

43. Aetna admits that competition on individual public exchanges is evolving, and avers that competition is intense and dynamic as private insurers respond and adjust to a range of factors affecting competition on those exchanges. Aetna thus admits the allegations in the first sentence of Paragraph 43 in the Complaint. Aetna lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in the second, third, fourth, fifth, and seventh sentences of Paragraph 43 to the extent that they allege facts related to Humana, and therefore denies them. Aetna denies the allegation in the fourth and fifth sentences to the extent they relate to Aetna. Aetna avers that it has publicly announced that in light of substantial losses since 2014 and continuing volatility on the public exchanges it will no longer participate in exchanges in 536 counties beginning in 2017. The sixth sentence of Paragraph 43 contains selective and out-of-context quotations from deposition testimony that the DOJ obtained during its year-long investigation. Aetna admits that the quotations appear in the transcript of one such deposition, but denies the Plaintiffs' characterization of those quotations, and Aetna further denies the remaining allegations of Paragraph 43.

44. Aetna admits the second, third, and fourth sentences of Paragraph 44 in the Complaint. The allegations in the first sentence of Paragraph 44 are legal conclusions not subject to admission or denial. To the extent a response is required, Aetna denies those allegations. Aetna further denies the remaining allegations of Paragraph 44.

45. Aetna denies the allegations of Paragraph 45 in the Complaint.

46. The allegations in the first sentence of Paragraph 46 in the Complaint contain legal conclusions and other non-factual statements not subject to admission or denial. To the extent a response is required, Aetna denies the allegations in the first sentence of Paragraph 46 in the Complaint. Aetna denies the allegations contained in the last sentence of Paragraph 46. Aetna admits the allegations in the second and third sentences of Paragraph 46.

47. Aetna admits that Aetna, Humana, and others seek to enroll individuals in their 2016 public exchange plans in 112 counties, but otherwise denies the allegations in the first sentence of Paragraph 47 in the Complaint. Aetna admits the allegations in the second, third, and fourth sentences of Paragraph 47. The allegations in the fifth sentence of Paragraph 47 contain legal conclusions not subject to admission or denial. To the extent a response is required, Aetna denies the allegations of the fifth sentence of Paragraph 47.

48. Aetna denies the allegations in the first sentence of Paragraph 48 in the Complaint. Aetna lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in the second sentence of Paragraph 48 regarding the timing of decisions purportedly made by Humana, and therefore denies them. The allegations in the third sentence of Paragraph 48 contain legal conclusions not subject to admission or denial. To the extent a response is required, Aetna denies the allegations in the third sentence of Paragraph 48.

49. Aetna denies that United's exit from public exchanges in certain counties will

necessarily reduce the number of private insurers offering plans in any such counties since the number of insurers that will be offering plans in those counties in 2017 is not yet known. Aetna otherwise denies the allegations of Paragraph 49 in the Complaint.

50. Aetna lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations of Paragraph 50 in the Complaint to the extent those allegations relate to Humana's views of and responses to its competition with Aetna, and therefore denies those allegations. Aetna denies the remaining allegations of Paragraph 50.

51. Aetna lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in the first sentence of Paragraph 51 in the Complaint to the extent they relate to Humana's views of the importance of insurance sold directly to individuals and families, and therefore denies those allegations. Aetna also lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in the second sentence of Paragraph 51 to the extent those allegations relate to statements purportedly made by Humana's CEO, and therefore denies those allegations. Aetna admits that its CEO made the statement attributed to him in the second sentence of Paragraph 51. Aetna denies the remaining allegations of Paragraph 51.

52. Aetna denies the allegations of Paragraph 52 in the Complaint.

53. Aetna denies the allegations of Paragraph 53 in the Complaint.

54. Aetna denies the allegations of Paragraph 54 in the Complaint.

55. The allegations of Paragraph 55 in the Complaint are legal conclusions not subject to admission or denial. To the extent a response is required, Aetna denies the allegations of Paragraph 55.

56. Aetna avers that, on August 2, 2016, Aetna and Humana entered into a definitive

agreement to divest portions of their Medicare Advantage business in 437 counties to Molina, subject to the successful completion of Aetna's proposed acquisition of Humana, CMS approvals and actions, and customary closing conditions. With the exception of two counties where Aetna will not be offering any Medicare Advantage plans in 2017, this accounts for all of the counties identified in the Appendix to the Complaint, and as a result once this transaction is completed, Aetna and Humana will not both have contracts with Medicare Advantage enrollees in any county identified in the Appendix to the Complaint. Aetna denies the remaining allegations of Paragraph 56 in the Complaint.

57. Aetna avers that the agreements Aetna and Humana entered into with Molina supersede the proposal Aetna described to the DOJ on July 6, 2016, although Aetna further avers that the proposal it previously described to DOJ also would have included replicating, splitting, and divesting via novation those portions of Aetna's contracts covering the membership in the areas of concern alleged by DOJ. Aetna avers that the Molina agreement involves more counties than those identified in the Appendix to the Complaint. Aetna denies the remaining allegations of Paragraph 57.

58. Aetna denies the allegations of Paragraph 58 in the Complaint.

59. Aetna denies the allegations of Paragraph 59 in the Complaint.

60. Aetna denies the allegations of Paragraph 60 in the Complaint.

61. Aetna denies the allegations of Paragraph 61 in the Complaint.

62. Aetna admits that the Government purports to bring this action pursuant to Section 15 of the Clayton Act and that the Government purports to seek to prevent and restrain Defendants from allegedly violating Section 7 of the Clayton Act. Aetna denies that the merger violates the Clayton Act in any way and further denies the remaining allegations of Paragraph 62

in the Complaint.

63. Aetna admits that the Plaintiff States purport to bring the action as *parens patriae* pursuant to Section 16 of the Clayton Act and that the Plaintiff States purport to seek to prevent and to restrain Defendants from allegedly violating Section 7 of the Clayton Act. Aetna denies that the merger violates the Clayton Act in any way and further denies the remaining allegations of Paragraph 63 in the Complaint.

64. Aetna admits the allegations of Paragraph 64 in the Complaint.

65. Aetna admits the allegations of Paragraph 65 in the Complaint.

66. Aetna admits the allegations of Paragraph 66 in the Complaint.

67. Aetna denies the allegations of Paragraph 67 in the Complaint.

68. Aetna admits that, by definition, Aetna and Humana would not compete against each other post-merger since they would be combined into one entity. Aetna denies the remaining allegations of Paragraph 68 in the Complaint.

69. Aetna denies that Plaintiffs are entitled to any of the relief requested, and requests that Aetna be awarded the costs incurred in defending this action, and any and all other relief the Court may deem just and proper.

SECOND DEFENSE

Without assuming any burden of proof not required by law, the Complaint fails to adequately allege any relevant product markets or relevant geographic markets.

THIRD DEFENSE

Without assuming any burden of proof not required by law, the pricing and other aspects of the sale of healthcare insurance are regulated and overseen by governmental laws and regulatory entities. These regulatory conditions ensure that competition will not be substantially

lessened but will remain robust post-acquisition.

FOURTH DEFENSE

Without assuming any burden of proof not required by law, granting the relief sought is contrary to the public interest.

FIFTH DEFENSE

Without assuming any burden of proof not required by law, the proposed merger is procompetitive and will result in substantial acquisition-specific and cognizable efficiencies and other procompetitive effects that will directly benefit consumers. These benefits greatly outweigh any alleged anticompetitive effects.

Date: August 19, 2016

Respectfully submitted,

/s/ John M. Majoras

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CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2016, a true and correct copy of the foregoing was served via the Court's CM/ECF system or via electronic mail, pursuant to Rule 5.4(d) of the Local Civil Rules and Rule 5(b) of the Federal Rules of Civil Procedure, upon the following:

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