

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA *et al.*,

Plaintiffs,

v.

CVS HEALTH CORPORATION

and

AETNA INC.

Defendants.

Case No. 1:18-cv-02340-RJL

**PLAINTIFF STATES' STATEMENT OF SUPPORT AND
REQUEST TO ADDRESS THE COURT**

After reviewing the record in this proceeding and in consideration of the upcoming Tunney Act hearing, the Attorneys General of the states of California, Florida, Hawaii, Mississippi, and Washington (collectively, "Plaintiff States") file this statement to advise the Court of our support for the position of the United States Department of Justice ("DOJ") regarding our combined Proposed Final Judgment on the merger of CVS Health Corporation ("CVS") and Aetna Inc. ("Aetna"). Plaintiff States respectfully request the opportunity to address the Court for ten minutes during any arguments from attorneys that the Court may allow following the now ordered hearing.¹

As the chief law enforcers of our respective states, the Attorneys General of Plaintiff States may exercise broad common law powers as the public interest requires. *See, e.g., State of Fla. ex rel. Shevin v. Exxon Corp.*, 526 F.2d 266, 268 (5th Cir. 1976) (citing *D'Amico v. Board of*

¹ DOJ and CVS do not oppose Plaintiff States' request.

Medical Examiners, 11 Cal.3d 1 (1974) and *State ex rel. Patterson v. Warren*, 254 Miss. 293 (1965)). Consistent with those powers, Plaintiff States may bring *parens patriae* actions to protect the general economy of our states from the harmful effects of antitrust violations. *State of Ga. v. Pennsylvania R. Co.*, 324 U.S. 439, 447 (1945). Accordingly, Plaintiff States have standing to enforce federal merger law and to pursue divestiture remedies to protect competition in markets. *California v. Am. Stores Co.*, 495 U.S. 271, 283 (1990).

In addition to initiating enforcement actions independently, Plaintiff States also partner with federal enforcers to evaluate the possible anticompetitive effects of a proposed merger during the merger review process. In joint investigations, as occurred in this case, Plaintiff States have access to documents, produced by the merging parties, and participate in the interviews and depositions conducted by our federal counterparts. This federal-state cooperation advances a mutual interest in antitrust enforcement and conserves the resources of all parties and of the Court, by combining what would otherwise be multiple investigations. Plaintiff States bring a unique local perspective to our joint investigations with our federal counterparts when evaluating the merger's effects on the marketplace. Healthcare markets are of particular concern to state attorneys general in part because many of the effects of healthcare mergers are local, rather than national. *See e.g., United States v. Anthem, Inc.*, 236 F. Supp. 3d 171, 254 (D.D.C. 2017) ("There is no dispute that . . . 'healthcare is local.'"). Additionally, the states provide and fund healthcare for many of its citizens. *See Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) (noting the "historic primacy of state regulation of matters of health and safety"); Brief of Amicus Curiae States of California et al., *St Luke's Health Care System et al. v. Fed. Tr. Comm'n. et al.*, Case No 14-35173, 2014 WL 4312205, at **5-6, 8-14 (9th Cir. Aug. 20, 2014) (discussing the importance and challenges for states in providing affordable healthcare to all its

residents). As a result, state antitrust enforcers play a vital role in the review of healthcare mergers.

Plaintiff States conducted a thorough 11-month investigation of the CVS-Aetna merger, which involved close collaboration with DOJ and our own independent due diligence. At the conclusion of the investigation, Plaintiff States believed, like DOJ, that the horizontal aspects of the merger presented anticompetitive issues and that the proposed divestiture would resolve those issues.

Plaintiff States are independent co-Plaintiffs who joined the Proposed Final Judgment. Not only do Plaintiff States support the approval of the Proposed Final Judgment by the Court but once approved, have an important role in its enforcement. We have participated in each step of the implementation of the Proposed Final Judgment in accordance with the role of Plaintiff States set forth therein.

After reviewing the public comments and *amici* briefs, and DOJ's response, Plaintiff States continue to believe that the divestiture in the Proposed Final Judgment provides an effective and appropriate remedy for the antitrust violations alleged in the Complaint. Therefore, Plaintiff States support DOJ's position that the Proposed Final Judgment is in the public interest.

///

Dated: May 15, 2019

Respectfully submitted,

FOR PLAINTIFF STATE OF CALIFORNIA:

XAVIER BECERRA
Attorney General

Emilio Varanini ss *myl*

EMILIO VARANINI

MALINDA LEE

Deputy Attorneys General

Office of the Attorney General of California

455 Golden Gate Avenue, Suite 11000

San Francisco, California 94102

Phone: (415) 510-3541

Fax: (415) 703-5480

E-mail: Emilio.Varanini@doj.ca.gov

FOR PLAINTIFF STATE OF FLORIDA:

ASHLEY MOODY

Attorney General



PATRICIA A. CONNERS

Chief Associate Deputy Attorney General

LIZABETH A. BRADY

Chief, Multistate Enforcement

CHRISTOPHER R. HUNT

Assistant Attorney General

RACHEL MICHELLE STEINMAN

Assistant Attorney General

Office of the Attorney General of Florida

PL-01, The Capitol

Tallahassee, FL 32399-1050

Phone: (850) 414-3851

Fax: (850) 488-9134

liz.brady@myfloridalegal.com

FOR PLAINTIFF STATE OF HAWAII:

CLARE E. CONNORS

Attorney General

A handwritten signature in black ink, appearing to read 'Rodney I. Kimura', is written over a horizontal line.

RODNEY I. KIMURA

Deputy Attorney General

Office of the Attorney General of Hawaii

425 Queen Street

Honolulu, HI 96813

Phone: (808) 586-1180

Fax: (808) 586-1205

rodney.i.kimura@hawaii.gov

FOR PLAINTIFF STATE OF MISSISSIPPI:

JIM HOOD
Attorney General



CRYSTAL UTLEY SECOY
Consumer Protection Division
Mississippi Attorney General's Office
P.O. Box 22947
Jackson, Mississippi 39225
Phone: (601) 359-4213
cutle@ago.state.ms.us

FOR PLAINTIFF STATE OF WASHINGTON:

ROBERT W. FERGUSON
Attorney General

A handwritten signature in cursive script, appearing to read "Lumi Nodit", is written over a horizontal line.

LUMINITA NODIT
Assistant Attorney General
Attorney General's Office
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
Phone: (206) 254-0568
Fax: (206) 464-6338
Lumi.Nodit@atg.wa.gov

CERTIFICATE OF SERVICE

Case Name: **United States of America et al.,
v. CVS Health Corporation and
Aetna Inc.**

No. 1:18-cv-02340-RJL

I hereby certify that on **May 15, 2019**, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

PLAINTIFF STATES' STATEMENT OF SUPPORT AND REQUEST TO ADDRESS THE COURT

I certify that parties in the case are registered CM/ECF users and that service will be accomplished via the CM/ECF system, with the exception of Plaintiff State of Mississippi. I served a copy of the foregoing document by mailing the document electronically to the duly authorized legal representative of Plaintiff State of Mississippi:

Crystal Utley Secoy
Consumer Protection Division
Mississippi Attorney General's Office
P.O. Box 22947
Jackson, Mississippi 39225
Phone: (601) 359-4213
cutle@ago.state.ms.us

I declare under penalty of perjury the foregoing is true and correct and that this declaration was executed on **May 15, 2019**, at Los Angeles, California.

Malinda Lee
Declarant

/s/ Malinda Lee
Signature