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16

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **OAKLAND DIVISION**

20
21 MARA BERTON, on behalf of herself and all
others similarly situated,

22 Plaintiff,

23 v.

24 AETNA INC. and AETNA LIFE
25 INSURANCE COMPANY,

26 Defendants.
27
28

Case No. 4:23-cv-01849-HSG

**DEFENDANTS AETNA INC. AND
AETNA LIFE INSURANCE
COMPANY'S ANSWER TO
PLAINTIFF'S COMPLAINT FOR
DAMAGES AND INJUNCTIVE
RELIEF**

1 Except as expressly admitted below, Aetna Inc. and Aetna Life Insurance Company
2 (together, the “Defendants”) deny the allegations in the Complaint and deny liability to Plaintiff.
3 With respect to those allegations in the Complaint that specify no applicable time period,
4 Defendants have answered as of the present date.

5 Plaintiff includes in the Complaint lettered and numbered headings purporting to
6 characterize certain actions or events. Because the headings and subheadings are not set forth in
7 numbered paragraphs, they are not properly pleaded facts, and no response is necessary. To the
8 extent that Plaintiff has included headings or impertinent materials that are inappropriate under
9 Rules 8 and 12(f) of the Federal Rules of Civil Procedure, no response is necessary, and any such
10 inappropriate material should be stricken. Due to the length of the Complaint, Plaintiff’s
11 headings are repeated below, solely for organizational purposes. Defendants specifically deny,
12 and do not adopt, the characterizations set forth in these organizational headings and subheadings.

13 Plaintiff routinely uses the term “fertility” to describe Aetna’s infertility benefits. These
14 terms have different meanings. As used below, Aetna’s responses refer to infertility benefits
15 unless otherwise indicated.

16 Defendants expressly reserve the right to seek to amend and/or supplement this Answer as
17 may be necessary.

18 **PRELIMINARY STATEMENT**

19 1. Aetna Inc. does not insure or administer health plans and is not a proper party to this
20 action; all references to “Aetna” in the Complaint are, therefore, exclusively construed to mean
21 Aetna Life Insurance Company except where specifically stated otherwise. The allegations in
22 paragraph 1 set forth legal conclusions to which no response is required. Defendants deny the
23 remaining allegations in paragraph 1.

24 2. The policy and plan documents referenced in paragraph 2 speak for themselves. The
25 allegations in paragraph 2 further set forth legal conclusions to which no response is required.
26 Defendants deny the remaining allegations in paragraph 2.

27 3. The policy and plan documents referenced in paragraph 3 speak for themselves.
28 Defendants deny the remaining allegations in paragraph 3. Footnote 2 purports to characterize

1 Plaintiff's claims, to which no response is required. To the extent a response is required,
2 Defendants deny the allegations in footnote 2.

3 4. Defendants lack sufficient knowledge to admit or deny the allegations in paragraph
4 4 regarding Plaintiff's and putative class members' individual experiences and circumstances, and
5 on that basis deny them. The allegations in paragraph 4 also set forth legal conclusions to which
6 no response is required. Defendants deny the remaining allegations in paragraph 4.

7 5. Defendants admit that Plaintiff and June Higginbotham were at one time covered by
8 an employee health plan administered by Aetna Life Insurance Company. Defendants lack
9 sufficient knowledge to admit or deny the allegations in paragraph 5 regarding Plaintiff's individual
10 experiences and circumstances, and on that basis deny them. Defendants deny the remaining
11 allegations in paragraph 5.

12 6. The allegations in paragraph 6 set forth legal conclusions to which no response is
13 required. Defendants deny the remaining allegations in paragraph 6.

14 7. Defendants lack sufficient knowledge to admit or deny the allegations in paragraph
15 7 regarding Plaintiff's and putative class members' individual experiences and circumstances, and
16 on that basis deny them. The allegations in paragraph 7 also set forth legal conclusions to which
17 no response is required. Defendants deny the remaining allegations in paragraph 7.

18 8. The policy documents referenced in paragraph 8 speak for themselves. Defendants
19 lack sufficient knowledge to admit or deny the allegations in paragraph 8 regarding Plaintiff's and
20 putative class members' individual experiences and circumstances, and on that basis deny them.
21 The allegations in paragraph 8 also set forth legal conclusions to which no response is required.
22 Defendants deny the remaining allegations in paragraph 8.

23 9. The allegations in paragraph 9 set forth legal conclusions and characterizations of
24 Plaintiff's claims to which no response is required. To the extent a response is required, Defendants
25 deny the allegations in paragraph 9.

26 **JURISDICTION AND VENUE**

27 10. The allegations in paragraph 10 set forth legal conclusions to which no response is
28 required.

1 11. The allegations in paragraph 11 set forth legal conclusions to which no response is
2 required. To the extent a response is required, Defendants lack sufficient knowledge to admit or
3 deny, and therefore deny, that a substantial portion of the acts complained of occurred in the
4 Northern District of California.

5 12. The allegations in paragraph 12 set forth legal conclusions to which no response is
6 required. To the extent a response is required, Defendants lack sufficient knowledge to admit or
7 deny, and therefore deny, that Plaintiff resides in Santa Clara County and that a substantial part of
8 the acts complained of occurred there.

9 **THE PARTIES**

10 13. Defendants admit that Plaintiff enrolled in a self-insured employee health plan
11 administered by Aetna Life Insurance Company on August 26, 2021. Defendants lack sufficient
12 knowledge to admit or deny, and therefore deny, the allegations in paragraph 13 regarding
13 Plaintiff’s specific age and residence. Defendants deny the remaining allegations in paragraph 13.

14 14. Defendants admit that Aetna Inc. is a holding company incorporated under the laws
15 of the State of Pennsylvania and with a principal place of business in Connecticut. Defendants
16 deny the remaining allegations in paragraph 14.

17 15. Defendants admit that Aetna Life Insurance Company is a company incorporated
18 under the laws of the State of Connecticut, with a principal place of business in Connecticut; that
19 Aetna Life Insurance Company is a wholly-owned subsidiary of Aetna Inc.; and that Aetna Life
20 Insurance Company acts as an insurer and/or third-party administrator for health plans. Defendants
21 deny the remaining allegations in paragraph 15.

22 16. The allegations in paragraph 16 set forth legal conclusions to which no response is
23 required. Defendants deny the remaining allegations in paragraph 16.

24 17. Defendants admit that Aetna Life Insurance Company acts as an insurer or third-
25 party administrator for certain health plans in California and the United States. Defendants deny
26 the remaining allegations in paragraph 17.

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FACTUAL ALLEGATIONS

I. Aetna’s Infertility Policy Discriminates Against LGBTQ Members Seeking to Become Pregnant.

18. Defendants admit that Aetna Life Insurance Company acts as an insurer or third-party administrator for certain health plans. Defendants further admit that they may refer to the individuals enrolled in health plans as “Members.” Defendants deny the remaining allegations in paragraph 18.

19. Defendants admit that some of the health plans Aetna Life Insurance Company insures or administers provide coverage for certain treatment of medical infertility as set forth in those plan documents, which speak for themselves. Defendants deny the remaining allegations in paragraph 19. Footnote 3 purports to characterize a website from the American Society for Reproductive Medicine, which speaks for itself. Footnote 4 purports to characterize a website from the Cleveland Clinic, which speaks for itself.

20. Defendants admit that individuals of any sexual orientation may experience medical infertility. Defendants lack sufficient knowledge to admit or deny the allegations in paragraph 20 regarding individual experiences and circumstances. Defendants deny the remaining allegations in paragraph 20.

21. The policy documents referenced in paragraph 21 speak for themselves. The allegations in paragraph 21 and footnote 6 also set forth legal conclusions to which no response is required. Defendants deny the remaining allegations in paragraph 21 and footnote 6.

22. The policy and plan documents referenced in paragraph 22 speak for themselves. Defendants deny the remaining allegations in paragraph 22.

23. The website referenced in paragraph 23 speaks for itself. Defendants deny the remaining allegations in paragraph 23.

24. The documents referenced in paragraph 24 speak for themselves. Defendants deny the remaining allegations in paragraph 24.

25. The document referenced in paragraph 25 speaks for itself. Footnote 7 purports to characterize Plaintiff’s claims, to which no response is required. To the extent a response is

1 required, Defendants deny the allegations in paragraph 25 and footnote 7.

2 26. Defendants deny the allegations in paragraph 26.

3 27. Defendants deny the allegations in paragraph 27.

4 28. The policy document referenced in paragraph 28 speaks for itself. Defendants admit
5 that the referenced clinical policy document was revised subsequent to Plaintiff's initial request for
6 coverage.

7 29. The clinical policy document referenced in paragraph 29 speaks for itself.
8 Defendants deny the remaining allegations in paragraph 29.

9 30. The clinical policy document referenced in paragraph 30 speaks for itself.
10 Defendants admit that the referenced clinical policy document was revised subsequent to Plaintiff's
11 initial request for coverage.

12 31. The clinical policy document referenced in paragraph 31 speaks for itself.
13 Defendants deny the remaining allegations in paragraph 31.

14 32. The clinical policy documents referenced in paragraph 32 speak for themselves. The
15 allegations in paragraph 32 set forth legal conclusions to which no response is required. Defendants
16 deny the remaining allegations in paragraph 32.

17 33. The clinical policy documents referenced in paragraph 33 speak for themselves.
18 Defendants deny the remaining allegations in paragraph 33.

19 34. The clinical policy documents referenced in paragraph 34 speak for themselves.
20 Defendants deny the remaining allegations in paragraph 34.

21 35. The clinical policy documents referenced in paragraph 35 speak for themselves.
22 Defendants deny the remaining allegations in paragraph 35.

23 36. The clinical policy documents referenced in paragraph 36 speak for themselves.
24 Defendants deny the remaining allegations in paragraph 36.

25 37. The clinical policy documents referenced in paragraph 37 speak for themselves.
26 Defendants deny the remaining allegations in paragraph 37.

27 38. The clinical policy documents referenced in paragraph 38 speak for themselves.
28 Defendants deny the remaining allegations in paragraph 38.

1 39. The clinical policy documents referenced in paragraph 39 speak for themselves.
2 Defendants deny the remaining allegations in paragraph 39.

3 40. Defendants deny the allegations in paragraph 40.

4 41. Defendants admit that IUI is a method of donor insemination. Defendants lack
5 sufficient knowledge to admit or deny the allegations in paragraph 41 regarding individual
6 experiences, and on that basis deny them. Defendants deny the remaining allegations in paragraph
7 41.

8 42. Defendants lack sufficient knowledge to admit or deny the allegations in paragraph
9 42 regarding individual experiences, and on that basis deny them. Defendants deny the remaining
10 allegations in paragraph 42.

11 43. Paragraph 43 purports to characterize a website, which speaks for itself. Defendants
12 lack sufficient knowledge to admit or deny the allegations in paragraph 43 regarding individual
13 experiences. Defendants deny the remaining allegations in paragraph 43.

14 44. The clinical policy document referenced in paragraph 44 speaks for itself.
15 Defendants lack sufficient knowledge to admit or deny the allegations in paragraph 44 regarding
16 individual doctor recommendations, and on that basis deny them. Defendants deny the remaining
17 allegations in paragraph 44.

18 45. The clinical policy document referenced in paragraph 45 speaks for itself.
19 Defendants lack sufficient knowledge to admit or deny, and therefore deny, the allegations in
20 paragraph 45 regarding individual experiences and circumstances. Defendants deny the remaining
21 allegations in paragraph 45.

22 46. Defendants deny the allegations in paragraph 46.

23 47. Defendants lack sufficient knowledge to admit or deny, and therefore deny, the
24 allegations in paragraph 47 regarding individual experiences and circumstances. The allegations
25 in paragraph 47 also set forth legal conclusions to which no response is required. Defendants deny
26 the remaining allegations in paragraph 47.

27 48. Defendants lack sufficient knowledge to admit or deny the allegations in paragraph
28 48 regarding individual experiences and circumstances, and on that basis deny them. Defendants

1 deny the remaining allegations in paragraph 48.

2 49. Defendants lack sufficient knowledge to admit or deny, and therefore deny, the
3 allegations in paragraph 49 regarding individual experiences and circumstances. Defendants deny
4 the remaining allegations in paragraph 49.

5 50. Defendants lack sufficient knowledge to admit or deny, and therefore deny, the
6 allegations in paragraph 50 regarding individual experiences and circumstances. Defendants deny
7 the remaining allegations in paragraph 50.

8 51. Defendants admit that some, but not all or most, of the health plans Aetna Life
9 Insurance Company insures or administers provide coverage for certain treatment of medical
10 infertility as set forth in those plan documents, which speak for themselves. The allegations in
11 paragraph 51 further set forth legal conclusions to which no response is required. Defendants deny
12 the remaining allegations in paragraph 51.

13 **II. Aetna Has Discriminated Against and Continues to Discriminate Against Plaintiff**
14 **Mara Berton.**

15 52. Defendants admit that Plaintiff was enrolled in an employee health plan sponsored
16 by Encore Group USA LLC (the “Encore Plan”), for which Aetna Life Insurance Company was
17 the third-party administrator, on September 10, 2021. Defendants lack sufficient knowledge to
18 admit or deny, and therefore deny, the allegations in paragraph 52 regarding Plaintiff’s own
19 experiences and circumstances. Defendants deny the remaining allegations in paragraph 52.

20 53. Defendants admit that June Higginbotham has been enrolled in the Encore Plan as
21 an employee and that Plaintiff has been enrolled in the Encore Plan as June Higginbotham’s
22 dependent.

23 54. Defendants admit that Aetna Life Insurance Company acts as a third-party
24 administrator of the Encore Plan. Defendants deny the remaining allegations in paragraph 54.

25 55. Defendants admit that Aetna Life Insurance Company acts as a third-party
26 administrator of the Encore Plan. To the extent paragraph 55 purports to characterize the Encore
27 Plan as of a specific date, the plan speaks for itself.

28 56. Defendants lack sufficient knowledge to admit or deny, and therefore deny, the

1 allegations in paragraph 56.

2 57. Defendants lack sufficient knowledge to admit or deny, and therefore deny, the
3 allegations in paragraph 57.

4 58. Defendants admit that Aetna Life Insurance Company received a precertification
5 request for IUI for Plaintiff in February 2022. Defendants lack sufficient knowledge to admit or
6 deny, and therefore deny, the remaining allegations in paragraph 58.

7 59. Defendants admit that the foregoing precertification request was denied.
8 Defendants at present lack sufficient knowledge to admit or deny, and therefore deny, the remaining
9 allegations in paragraph 59. Defendants reserve the right to supplement this response as discovery
10 continues.

11 60. Defendants admit that Aetna Life Insurance Company sent a letter to Plaintiff dated
12 February 21, 2022, which speaks for itself. Defendants deny the remaining allegations in paragraph
13 60.

14 61. Defendants admit Aetna Life Insurance Company received a letter addressed to
15 Aetna dated June 11, 2022, which purported to be authored by Mara Berton and speaks for itself.
16 Defendants deny the remaining allegations in paragraph 61.

17 62. Defendants admit that Aetna Life Insurance Company sent Plaintiff a letter dated
18 June 30, 2022, which speaks for itself. Defendants deny the remaining allegations in paragraph 62.

19 63. Defendants admit Aetna Life Insurance Company received a letter purportedly from
20 Plaintiff dated August 7, 2022, which speaks for itself, and further admit that Plaintiff's second-
21 level appeal was denied. Defendants deny the remaining allegations in paragraph 63.

22 64. Defendants lack sufficient knowledge to admit or deny, and therefore deny, the
23 allegations in paragraph 64 regarding the experiences and circumstances of Plaintiff and her spouse.
24 The allegations in paragraph 64 also set forth legal conclusions to which no response is required.
25 To the extent a response is required, Defendants deny the allegations in paragraph 64.

26 65. Defendants lack sufficient knowledge to admit or deny, and therefore deny, the
27 allegations in paragraph 65 regarding Plaintiff's experiences and circumstances. The allegations
28 in paragraph 65 also set forth legal conclusions to which no response is required. To the extent a

1 response is required, Defendants deny the allegations in paragraph 65.

2 **III. Aetna’s Discrimination Violates the Anti-Discrimination Protections of the ACA.**

3 66. The allegations in paragraph 66 set forth legal conclusions to which no response is
4 required. To the extent a response is required, Defendants deny the allegations in paragraph 66.

5 67. The allegations in paragraph 67 set forth legal conclusions to which no response is
6 required. To the extent a response is required, Defendants deny the allegations in paragraph 67.

7 68. The allegations in paragraph 68 set forth legal conclusions to which no response is
8 required. To the extent a response is required, Defendants deny the allegations in paragraph 68.
9 To the extent paragraph 68 purports to characterize 42 U.S.C. § 18116(a), the statute speaks for
10 itself.

11 69. The allegations in paragraph 69 set forth legal conclusions to which no response is
12 required. To the extent a response is required, Defendants deny the allegations in paragraph 69.

13 **IV. Aetna Has Caused Plaintiff Mara Berton Injury.**

14 70. The allegations in paragraph 70 set forth legal conclusions to which no response is
15 required. To the extent a response is required, Defendants deny the allegations in paragraph 70.

16 71. Defendants lack sufficient knowledge to admit or deny, and therefore deny, the
17 allegations in paragraph 71 regarding Plaintiff’s own experiences and circumstances. The
18 allegations in paragraph 71 also set forth legal conclusions to which no response is required. To
19 the extent a response is required, Defendants deny the allegations in paragraph 71.

20 72. Defendants lack sufficient knowledge to admit or deny, and therefore deny, the
21 allegations in paragraph 72 regarding Plaintiff’s own experiences and circumstances. The
22 allegations in paragraph 72 also set forth legal conclusions to which no response is required. To
23 the extent a response is required, Defendants deny the allegations in paragraph 72.

24 73. Defendants lack sufficient knowledge to admit or deny, and therefore deny, the
25 allegations in paragraph 73 regarding Plaintiff’s own experiences and circumstances. The
26 allegations in paragraph 73 also set forth legal conclusions to which no response is required. To
27 the extent a response is required, Defendants deny the allegations in paragraph 73.

28 74. Defendants lack sufficient knowledge to admit or deny, and therefore deny, the

1 allegations in paragraph 74 regarding individual experiences and circumstances. The allegations
2 in paragraph 74 also set forth legal conclusions to which no response is required. To the extent a
3 response is required, Defendants deny the allegations in paragraph 74.

4 75. Defendants lack sufficient knowledge to admit or deny, and therefore deny, the
5 allegations in paragraph 75 regarding individual experiences and circumstances. The allegations
6 in paragraph 75 also set forth legal conclusions to which no response is required. To the extent a
7 response is required, Defendants deny the allegations in paragraph 75.

8 **CLASS ALLEGATIONS**

9 76. The allegations in paragraph 76 purport to characterize Plaintiff's claims, to which
10 no response is required. To the extent a response is required, Defendants deny the allegations in
11 paragraph 76.

12 77. The allegations in paragraph 77 purport to characterize Plaintiff's claims, to which
13 no response is required. To the extent a response is required, Defendants deny the allegations in
14 paragraph 77.

15 78. The allegations in paragraph 78 purport to characterize Plaintiff's claims, to which
16 no response is required. To the extent a response is required, Defendants deny the allegations in
17 paragraph 78.

18 79. Defendants deny the allegations in paragraph 79. Paragraph 79 purports to
19 characterize the CPB, which speaks for itself.

20 80. The allegations in paragraph 80 set forth legal conclusions to which no response is
21 required. To the extent a response is required, Defendants deny the allegations in paragraph 80.

22 81. Defendants admit that millions of people in the United States are enrolled in health
23 benefits plans for which Aetna Life Insurance Company acts as an insurer and/or third-party
24 administrator. Defendants deny the remaining allegations in paragraph 81.

25 82. Defendants lack sufficient knowledge to admit or deny, and therefore deny, the
26 allegations in paragraph 82.

27 83. Defendants deny that "over one million people" living in California are enrolled in
28 health plans as to which Aetna Life Insurance Company acts as an insurer and/or third-party

1 administrator. Paragraph 83 further purports to characterize a website from the California
2 Department of Insurance, which speaks for itself. Defendants deny the remaining allegations in
3 paragraph 83.

4 84. Defendants lack sufficient knowledge to admit or deny, and therefore deny, the
5 allegations in paragraph 84.

6 85. Defendants lack sufficient knowledge to admit or deny, and therefore deny, the
7 allegations in paragraph 85 regarding the number of LGBTQ individuals enrolled in Aetna-
8 administered plans and regarding the number of those individuals who may require treatment for
9 medical infertility. Defendants deny the remaining allegations in paragraph 85.

10 86. The allegations in paragraph 86 set forth legal conclusions and purport to
11 characterize Plaintiff's claims, to which no response is required. To the extent a response is
12 required, Defendants deny the allegations in paragraph 86.

13 87. The allegations in paragraph 87 set forth legal conclusions to which no response is
14 required. To the extent a response is required, Defendants deny the allegations in paragraph 87.

15 88. The allegations in paragraph 88 set forth legal conclusions and purport to
16 characterize Plaintiff's claims, to which no response is required. To the extent a response is
17 required, Defendants deny the allegations in paragraph 88.

18 89. The allegations in paragraph 89 set forth legal conclusions and purport to
19 characterize Plaintiff's claims, to which no response is required. To the extent a response is
20 required, Defendants deny the allegations in paragraph 89.

21 90. The allegations in paragraph 90 set forth legal conclusions and purport to
22 characterize Plaintiff's claims, to which no response is required. To the extent a response is
23 required, Defendants deny the allegations in paragraph 90.

24 91. The allegations in paragraph 91 set forth legal conclusions and purport to
25 characterize Plaintiff's claims, to which no response is required. To the extent a response is
26 required, Defendants deny the allegations in paragraph 91.

27 92. The allegations in paragraph 92 set forth legal conclusions and purport to
28 characterize Plaintiff's claims, to which no response is required. To the extent a response is

1 required, Defendants deny the allegations in paragraph 92.

2 93. The allegations in paragraph 93 set forth legal conclusions and purport to
3 characterize Plaintiff's claims, to which no response is required. To the extent a response is
4 required, Defendants deny the allegations in paragraph 93.

5 94. The allegations in paragraph 94 set forth legal conclusions and purport to
6 characterize Plaintiff's claims, to which no response is required. To the extent a response is
7 required, Defendants deny the allegations in paragraph 94.

8 **FIRST CAUSE OF ACTION**

9 42 U.S.C. § 18116(a)

10 Discrimination in Health Care on the Basis of Sex

11 (On Behalf of Plaintiff, the National Injunctive Relief Class, and the California Damages Class)

12 95. Defendants repeat and incorporate by reference each and every response set forth
13 above, as though fully and completely set forth here in paragraph 95.

14 96. The allegations in paragraph 96 set forth legal conclusions, to which no response is
15 required. To the extent a response is required, Defendants deny the allegations in paragraph 96.

16 97. The allegations in paragraph 97 set forth legal conclusions, to which no response is
17 required. To the extent a response is required, Defendants deny the allegations in paragraph 97.

18 98. The allegations in paragraph 98 set forth legal conclusions, to which no response is
19 required. To the extent a response is required, Defendants deny the allegations in paragraph 98.

20 99. The allegations in paragraph 99 set forth legal conclusions, to which no response is
21 required. To the extent a response is required, Defendants deny the allegations in paragraph 99.

22 100. The allegations in paragraph 100 set forth legal conclusions, to which no response
23 is required. To the extent a response is required, Defendants deny the allegations in paragraph 100.

24 101. The allegations in paragraph 101 set forth legal conclusions, to which no response
25 is required. To the extent a response is required, Defendants deny the allegations in paragraph 101.

26 102. The allegations in paragraph 102 set forth legal conclusions, to which no response
27 is required. To the extent a response is required, Defendants deny the allegations in paragraph 102.

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1 **PRAYER FOR RELIEF**

2 To the extent that any response is required to the Complaint’s separately denominated
3 Prayer for Relief, Defendants deny each and every averment contained in the Prayer for Relief, and
4 all subparts thereof, and further deny that (i) Plaintiff or the alleged putative class members were
5 damaged in the sum alleged or sums alleged or in any sum at all; or (ii) Plaintiff or the alleged
6 putative class members are entitled to any recovery at all.

7 **AFFIRMATIVE DEFENSES**

8 **First Affirmative Defense**

9 Plaintiff lacks constitutional and statutory standing to bring the claims alleged.

10 **Second Affirmative Defense**

11 Plaintiff fails to state a claim or cause of action upon which relief can be granted.

12 **Third Affirmative Defense**

13 Plaintiff’s claims, and those of the members of the putative classes, are precluded or pre-
14 empted by ERISA.

15 **Fourth Affirmative Defense**

16 Plaintiff’s claims, and those of the members of the putative classes, are barred, in whole or
17 in part, in accordance with Fed. R. Civ. P. 19(a) because Plaintiff failed to join necessary and
18 indispensable parties.

19 **Fifth Affirmative Defense**

20 Plaintiff is seeking the payment of benefits that are not authorized by the terms of her plan.

21 **Sixth Affirmative Defense**

22 Defendants did not abuse any discretion they had when denying Plaintiff’s claim for
23 benefits.

24 **Seventh Affirmative Defense**

25 Substantial evidence supports the determination that Plaintiff was not due benefits under
26 the plan.

27 **Eighth Affirmative Defense**

28 Plaintiff, and the members of the putative classes, are not entitled to relief that is precluded

1 by the terms, conditions, limitations, and other provisions of the governing plans.

2 **Ninth Affirmative Defense**

3 Plaintiff's claims are barred because Defendants satisfied their contractual obligations by
4 processing the claims at issue in accordance with the terms of the plan and/or applying the full
5 contractually required amount for the services at issue.

6 **Tenth Affirmative Defense**

7 Some claims brought by members of the putative classes are barred because unsubmitted
8 claims are not ripe for adjudication by this Court.

9 **Eleventh Affirmative Defense**

10 Defendants assert any and all privileges and defenses available to them under ERISA, 29
11 U.S.C. § 1001, *et seq.*

12 **Twelfth Affirmative Defense**

13 Plaintiff's claims are barred because Defendants complied with their duties under ERISA,
14 29 U.S.C. § 1001, *et seq.* and the terms of the governing plan documents.

15 **Thirteenth Affirmative Defense**

16 Plaintiff's claims are barred because Aetna, in its role as ERISA claims fiduciary, was
17 without legal authority to depart from plan design requirements relating to the administration of
18 infertility benefits.

19 **Fourteenth Affirmative Defense**

20 Plaintiff's claims, and those of the members of the putative classes, are barred, in whole or
21 in part, to the extent Plaintiff failed to follow appropriate procedures to file claims, exhaust
22 administrative remedies, or avail themselves of the applicable claims and appeal procedures.

23 **Fifteenth Affirmative Defense**

24 Defendants' treatment of Plaintiff did not constitute prohibited discrimination (intentional
25 or otherwise) as recognized by any statute under which Plaintiff brings her claims.

26 **Sixteenth Affirmative Defense**

27 Plaintiff's claims, and those of the members of the putative classes, are barred because
28 Aetna Life Insurance Company does not receive federal financial assistance and is thus not a

1 covered entity under 42 U.S.C.A. § 18116.

2 **Seventeenth Affirmative Defense**

3 The relief sought in the Complaint is barred, in whole or in part, by Plaintiff's failure to
4 mitigate damages.

5 **Eighteenth Affirmative Defense**

6 The relief sought in the Complaint is barred, in whole or in part, by the doctrine of estoppel.

7 **Nineteenth Affirmative Defense**

8 The relief sought in the Complaint is barred, in whole or in part, by the applicable statute
9 of limitations or limitations set out in the terms of relevant agreements and plan documents.

10 **Twentieth Affirmative Defense**

11 Plaintiff's claims, and those of the members of the putative classes, are barred, in whole or
12 in part, by the doctrine of laches.

13 **Twenty-First Affirmative Defense**

14 Plaintiff's claims, and those of the members of the putative classes, are barred, in whole or
15 in part, by the doctrine of waiver.

16 **Twenty-Second Affirmative Defense**

17 The claims of members of the putative classes are barred, in whole or in part, to the extent
18 that they have been released.

19 **Twenty-Third Affirmative Defense**

20 The claims of members of the putative classes are barred, in whole or in part, to the extent
21 that they are subject to a covenant not to sue.

22 **Twenty-Fourth Affirmative Defense**

23 Plaintiff's claims, and those of the members of the putative classes, are barred, in whole or
24 in part, because the claimed injuries were not caused by Defendants.

25 **Twenty-Fifth Affirmative Defense**

26 Plaintiff's claims, and those of the members of the putative classes, are barred, in whole or
27 in part, because the claimed injuries were not caused by any fault or wrongdoing by Defendants or
28 persons or entities over which Defendants had responsibility or control.

1 **Twenty-Sixth Affirmative Defense**

2 The damages suffered by Plaintiff and members of the putative classes, if any, are
3 attributable, in whole or in part, to persons or entities other than Defendants (or their agents or
4 employees).

5 **Twenty-Seventh Affirmative Defense**

6 The Complaint fails to allege facts sufficient to support an award of actual, compensatory,
7 consequential, punitive, or exemplary damages.

8 **Twenty-Eighth Affirmative Defense**

9 Any and all damages claimed by Plaintiff and members of the putative classes, whether
10 punitive, compensatory, liquidated, actual, attorneys' fees, or otherwise, are subject to all statutory
11 exclusions and limitations applicable to claims under Title VII of the Civil Rights Act or Section
12 504 of the Rehabilitation Act of 1973.

13 **Twenty-Ninth Affirmative Defense**

14 Damages other than claims dollars claimed by Plaintiff and members of the putative classes,
15 whether punitive, compensatory, attorneys' fees, or otherwise, are subject to exclusion and/or
16 limitations because Aetna was not on notice that, by accepting federal funding in exchange for
17 administering health benefits plans on behalf of governmental entities, it exposed itself to liabilities
18 of that nature.

19 **Thirtieth Affirmative Defense**

20 To the extent the Complaint seeks exemplary or punitive damages, it violates Defendants'
21 right to protection from excessive fines as provided in the Eighth Amendment to the United States
22 Constitution, and violates Defendants' right to substantive due process as provided in the Fifth and
23 Fourteenth Amendments of the United States Constitution, and, therefore, fails to state a cause of
24 action supporting such damages.

25 **Thirty-First Affirmative Defense**

26 To the extent Plaintiff's claims, and those of the members of the putative classes, are
27 governed by ERISA, Plaintiff and members of the putative classes are not entitled to compensatory,
28 non-pecuniary, punitive or exemplary damages and/or attorneys' fees under the circumstances pled.

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Thirty-Second Affirmative Defense

Plaintiff's claims, and those of the members of the putative classes, fail because the governing plans comport with applicable state law.

Thirty-Third Affirmative Defense

Defendants reserve the right to assert, and hereby give notice that they intend to rely upon, any other defense that may become available or appear during discovery proceedings or otherwise in this case and hereby reserve the right to amend their Answer to assert any such defense.

Dated: March 14, 2024

O'MELVENY & MYERS LLP

/s/ Susannah K. Howard
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