

**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

**MOTION OF THE UNITED STATES TO TREAT FILINGS AS PART OF
EVIDENTIARY RECORD IN THE TUNNEY ACT HEARING**

The Court's April 8, 2019 Order provides that, at an upcoming hearing on the United States' Motion for Entry of Final Judgment, the amici may present witness testimony and that the United States and defendants may then provide rebuttal testimony. *See* Dkt. No. 70. To prepare for this hearing, the United States respectfully moves that the Court incorporate the United States' Complaint, Proposed Final Judgment, Competitive Impact Statement, Explanation of Consent Decree Procedures, and Response to Public Comments (collectively, the "Tunney Act Materials"), filed with the Court as Dkt. Nos. 1, 2-1, 3, 2, and 56, respectively, as part of the evidentiary record for the purpose of the public interest determination before this Court.

The Tunney Act Materials provide substantial information to the Court to assist with its review of the proposed final judgment. The Tunney Act expressly provides that the Court may take these materials into consideration when making its public interest determination. *See* 15 U.S.C. § 16(f)(4). Indeed, the statute requires the United States to file these materials with the

Court and states that no other evidence is necessary for the public interest determination. *See* 15 U.S.C. § 16(e)(2). Consistent with this approach, Courts in prior Tunney Act proceedings have regularly relied on these materials when finding that proposed judgments are in the public interest.¹ The United States intends to focus its efforts in the upcoming proceedings on testimony on the topics that may need to be rebutted, following the Courts' Order of April 8, 2019, Dkt. No. 70. Granting this motion would also enable the United States to rely on undisputed factual assertions that were covered in its filings to streamline the upcoming hearing.

For these reasons, the United States respectfully requests that the Court grant this motion that the Tunney Act Materials will be treated as part of the evidentiary record for the purpose of, and in support of, a determination that the proposed Final Judgment is in the public interest.

Dated: April 18, 2019

Respectfully submitted,

/s/
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¹ *See, e.g., United States v. Anheuser-Busch Inbev SA/NV and SABMiller PLC*, 1:16-cv-01483 (D.D.C. Oct. 10, 2018); *United States v. Verso Paper Corp. and NewPage Holdings Inc.*, 1:14-cv-2216 (D.D.C. Dec. 11, 2015); *United States and Plaintiff States v. Comcast Corp.*, 1:11-cv-00106 (D.D.C. Feb. 22, 2011); *United States v. KeySpan Corp.*, 1:10-cv-01415 (S.D.N.Y. Feb. 2, 2011).

CERTIFICATE OF SERVICE

I, Jay D. Owen, hereby certify that on April 18, 2019, I caused a copy of the foregoing document to be served upon Plaintiffs State of California, State of Florida, State of Hawaii, State of Washington, and Defendants CVS Health Corporation and Aetna Inc., via the Court's CM/ECF system, and to be served upon Plaintiff State of Mississippi by mailing the document electronically to its duly authorized legal representative:

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_____/s/_____
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[PROPOSED] ORDER

Having reviewed the Motion of the United States to Treat Filings as part of the Evidentiary Record in the Tunney Act Hearing, the Court confirms that the Complaint, Proposed Final Judgment, Competitive Impact Statement, Explanation of Consent Decree Procedures, and Response to Public Comments filed with the Court will be treated as part of the evidentiary record for the purpose of, and in support of, a determination that the proposed Final Judgment is in the public interest, and therefore GRANTS the Motion.

IT IS SO ORDERED by the Court, this _____ day of _____, 2019.

United States District Judge