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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

*IN RE HIV ANTITRUST LITIGATION*

Case No. 3:19-cv-02573-EMC (Master Docket)

**SETTLEMENT AGREEMENT BETWEEN  
KPH HEALTHCARE SERVICES, INC.,  
INDIVIDUALLY AND ON BEHALF OF THE  
DIRECT PURCHASER CLASSES, AND  
GILEAD SCIENCES, INC.; GILEAD  
HOLDINGS, LLC; GILEAD SCIENCES,  
LLC; AND GILEAD SCIENCES IRELAND  
UC**

Ctrm: 5-17<sup>th</sup> Floor  
Judge: Honorable Edward M. Chen

This Document Relates to:

*KPH Healthcare Services, Inc. a/k/a Kinney  
Drugs, Inc. v. Gilead Sciences, Inc., et al.,  
No. 3:20-cv-06961-EMC*

THIS SETTLEMENT AGREEMENT (“Settlement Agreement” or the “Settlement”) is made and entered into as of July 24, 2023, by and between: (a) Gilead Sciences, Inc.; Gilead Holdings, LLC; Gilead Sciences, LLC; and Gilead Sciences Ireland UC (collectively, “Gilead”); and (b) KPH Healthcare Services, Inc. a/k/a Kinney Drugs, Inc., (“KPH” or “Plaintiff”), individually and on behalf of the Direct Purchaser Classes (as defined below) in this Action (*KPH Healthcare Services, Inc. a/k/a Kinney Drugs, Inc. v. Gilead Sciences, Inc., et al.*, No. 3:20-cv-06961-EMC (N.D. Ca.)).

WHEREAS, KPH filed a lawsuit on behalf of itself and classes of direct purchasers, alleging that Gilead, Bristol-Myers Squibb Company, and E. R. Squibb & Sons, L.L.C. (collectively, “Defendants”) have, among other things, restrained competition for antiretroviral drugs used to treat

1 and prevent Human Immunodeficiency Virus (“HIV”) in violation of federal antitrust laws, and that  
2 KPH and Class Members (as defined below) incurred damages as a result, as detailed in the Direct  
3 Purchaser Plaintiffs’ First Amended Class Action Complaint, filed in this Action on March 15, 2021  
4 (ECF No. 559) (the “Complaint”);

5 WHEREAS, Gilead has asserted defenses to KPH’s and the classes’ claims, denies each and  
6 every one of KPH’s allegations of unlawful or wrongful conduct by Gilead, denies that any conduct  
7 by Gilead challenged by KPH and the classes caused any damage whatsoever, and denies all  
8 liability of any kind;

9 WHEREAS, on September 27, 2022, the Court issued an order on KPH’s motion for class  
10 certification pursuant to Federal Rule of Civil Procedure 23 certifying the Direct Purchaser Classes,  
11 (as defined below), *see In re HIV Antitrust Litig.*, No. 3:19-cv-02573-EMC (N.D. Cal.) (ECF No.  
12 1388);

13 WHEREAS, Co-Lead Class Counsel (as defined below) and counsel for Gilead have  
14 engaged in arm’s-length settlement negotiations and have reached this Settlement Agreement,  
15 subject to approval by the United States District Court for the Northern District of California, San  
16 Francisco Division, which embodies all of the terms and conditions of the Settlement between KPH,  
17 individually and on behalf of the Direct Purchaser Classes, and Gilead;

18 WHEREAS, Co-Lead Class Counsel have concluded, after extensive fact discovery, motion  
19 practice, and trial preparation, and after carefully considering the circumstances of this Action,  
20 including the claims asserted in the Complaint and Gilead’s defenses thereto, that the Settlement is  
21 fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23, and in the best interests of  
22 the Direct Purchaser Classes;

23 WHEREAS, Gilead has concluded, despite its belief that it is not liable for the claims  
24 asserted and that it has good defenses thereto, that it would be in its best interests to enter into this  
25 Settlement Agreement to avoid the risks and uncertainties inherent in complex litigation and also to  
26 avoid additional costs of further litigation;

1 WHEREAS, KPH and Gilead agree that this Settlement Agreement shall not be deemed or  
2 construed to be an admission or evidence of any violation of any statute or law or of any liability or  
3 wrongdoing by Gilead, or of the truth of any of the claims or allegations alleged in the Complaint;

4 WHEREAS, KPH and Gilead agree that this Settlement Agreement shall not be deemed or  
5 construed to be an admission or evidence by KPH or the Direct Purchaser Classes of the absence of  
6 any violation of any statute or law or of any absence of liability or wrongdoing by Gilead, or of the  
7 lack of truth of any of the claims or allegations alleged in the Complaint; and

8 NOW THEREFORE, it is agreed by KPH, individually and on behalf of the Direct  
9 Purchaser Classes, by and through Co-Lead Class Counsel, on the one hand, and Gilead, on the  
10 other, that all claims brought by the Settling Parties be fully, finally, and forever settled,  
11 compromised, discharged, and dismissed with prejudice on the following terms and conditions:

12 **1. Definitions**

13 a) “Action” means *KPH Healthcare Services, Inc. a/k/a Kinney Drugs, Inc., v. Gilead*  
14 *Sciences, Inc., et al.*, No. 3:20-cv-06961-EMC (N.D. Cal.).

15 b) “Claims Administrator” means the entity appointed by the Court to provide notice to  
16 the Direct Purchaser Classes, process the claims submitted by Class Members, and carry out any  
17 other duties or obligations provided for by the Settlement.

18 c) “Class Members” or “Members” means the members of the Direct Purchaser  
19 Classes, as defined below.

20 d) “Co-Lead Class Counsel” means Dianne M. Nast, NastLaw LLC and Michael L.  
21 Roberts, Roberts Law Firm US, PC.

22 e) “Direct Purchaser Classes” means the classes that were certified as follows:

23 **Truvada Class:** All persons or entities in the United States and its territories who  
24 purchased Truvada or generic Truvada directly from any of Defendants or any brand  
25 or generic drug manufacturer from February 1, 2018, until the date of the class  
26 certification order, September 27, 2022.

27 **Atripla Class:** All persons or entities in the United States and its territories who  
28 purchased Atripla or generic Atripla directly from any of Defendants or any brand or

1 generic drug manufacturer from February 1, 2018, until the date of the class  
2 certification order, September 27, 2022.

3 Excluded from the Direct Purchaser Classes are: (1) Defendants, named co-conspirators,  
4 and their officers, directors, employees, subsidiaries, and affiliates; (2) federal, state, and local  
5 governmental entities; (3) any judicial officer presiding over the litigation and members of their  
6 immediate family and judicial staff; (4) the Retailers Plaintiffs; and (5) United Healthcare Services  
7 Inc.

8 f) “DPPs” means KPH and all other Class Members, as defined above, and their past,  
9 present and future assignors, parents, subsidiaries, associates, affiliates, officers, directors,  
10 managers, employees, general or limited partners, divisions, agents, servants, trustees, joint  
11 ventures, heirs, executors, administrators, representatives (and as applicable each of their past,  
12 present, and future officers, directors, managers, employees, general or limited partners, divisions,  
13 agents, servants, trustees, joint ventures, heirs, executors, administrators, and representatives), and  
14 the predecessors, successors, heirs, executors, administrators, and representatives of each of the  
15 foregoing.

16 g) “Effective Date” means the date on which all of the following have occurred: (i) the  
17 Settlement is not terminated pursuant to Paragraph 14; (ii) the Settlement has been finally approved  
18 by the Court as required by Fed. R. Civ. P. 23(e); (iii) the Court has entered a final approval order  
19 (the “Final Approval Order”) described in Paragraph 5, entering a final judgment of dismissal with  
20 prejudice against DPPs and all Class Members; and (iv) the period to appeal the Final Approval  
21 Order has expired and/or all appeals have been finally resolved.

22 h) “Escrow Account” means the Qualified Settlement Fund account, as defined in  
23 Paragraph 10, which holds the Gilead Settlement Fund.

24 i) “Escrow Agreement” means an agreement substantially similar to that annexed  
25 hereto as Exhibit I.

26 j) “Fee and Expense Award” means award(s) by the Court to Co-Lead Class Counsel  
27 for any representative plaintiff service award, attorneys’ fees, and reimbursement of reasonable  
28 costs and expenses incurred in the prosecution of the Action, including any interest accrued thereon.

1 k) “Fund Reduction Amount” means the amount the Escrow Agent shall return to  
2 Gilead from the Gilead Settlement Fund, pursuant to the confidential terms referenced in Paragraph  
3 16(b) and subject to paragraph 7 of the Escrow Agreement.

4 l) “Gilead Release Parties” means Gilead and its past, present, and future parents,  
5 subsidiaries, divisions, affiliates, joint ventures, officers, managers, directors, supervisory boards,  
6 insurers, general or limited partners, employees, agents, servants, representatives (and as applicable  
7 each of their past, present, and future parents, subsidiaries, divisions, affiliates, joint ventures,  
8 officers, managers, directors, supervisory boards, insurers, general or limited partners, employees,  
9 agents, servants, and representatives), and the predecessors, successors, heirs, executors,  
10 administrators, and representatives of each of the foregoing. No other party is intended to be, or is,  
11 included within the scope of the release contained herein.

12 m) “Gilead Settlement Fund” means the Settlement Payment, plus any interest accrued  
13 on the Settlement Payment, which is a Qualified Settlement Fund and shall be held in the Escrow  
14 Account, as defined in Paragraph 10.

15 n) “Notice and Administration Expenses” means all costs and expenses reasonably  
16 incurred or assessed by the Claims Administrator and/or the Escrow Agent relating to providing  
17 notice to the Direct Purchaser Classes and administering and distributing the Gilead Settlement  
18 Fund and Escrow Account.

19 o) “Released Claims”:

20 1) For the DPPs, this term means all claims described in Paragraph 13(a).

21 2) For Gilead Release Parties, this term means all claims described in Paragraph 13(b).

22 3) For both Gilead Release Parties and the DPPs, this term also means any and all  
23 provisions, rights, and/or benefits conferred by (a) Section 1542 of the California Civil  
24 Code, which reads: “Section 1542. Release. A general release does not extend to claims that  
25 the creditor or releasing party does not know or suspect to exist in his or her favor at the  
26 time of executing the release and that, if known by him or her, would have materially  
27 affected his or her settlement with the debtor or released party,” or (b) any law of any state  
28

1 or territory of the United States, or principle of common law, which is similar, comparable  
2 or equivalent to Section 1542 of the California Civil Code, notwithstanding that the release  
3 in Paragraph 13 is not a general release and is only a release of claims by Gilead Release  
4 Parties and the DPPs. Gilead Release Parties and the DPPs may hereafter discover facts  
5 other than or different from those which they know or believe to be true with respect to the  
6 claims that are the subject matter of Paragraph 13. Nonetheless, upon the Effective Date,  
7 Gilead Release Parties and the DPPs hereby expressly waive and fully, finally, and forever  
8 settle and release any known or unknown, foreseen or unforeseen, suspected or unsuspected,  
9 contingent or non-contingent claim that is the subject matter of Paragraph 13, whether or not  
10 concealed or hidden, without regard to the subsequent discovery or existence of such  
11 different or additional facts, and which arise out of, relate to, or are in any way connected to  
12 the facts, occurrences, transactions, or other matters alleged or asserted, or that could have  
13 been alleged or asserted, in the Action or letters referenced in Paragraph 13. The term  
14 “Released Claims” also means any and all claims under § 17200, *et seq.*, of the California  
15 Business and Professions Code or any similar, comparable or equivalent provision of the  
16 law of any other state or territory of the United States or other jurisdiction.

17 p) “Retailer Plaintiffs” means Walgreen Co.; The Kroger Co.; Albertsons Companies,  
18 Inc.; H-E-B, L.P.; Rite Aid Corporation; Rite Aid Hdqtrs. Corp.; and CVS Pharmacy, Inc.

19 q) “Settlement Payment” means two hundred forty-six million, seven hundred fifty  
20 thousand United States Dollars (\$246,750,000.00 USD).

21 r) “Settling Parties” means Gilead and KPH, individually and on behalf of the Direct  
22 Purchaser Classes.

23 **2. Reasonable Steps Necessary to Help Effectuate this Settlement.** The Settling  
24 Parties agree to undertake all reasonable steps necessary to help effectuate the Settlement, including  
25 undertaking all actions contemplated and necessary to carry out the terms of this Settlement and to  
26 secure the prompt, complete, and final dismissal with prejudice of all claims in this Action against  
27 Gilead. The Settling Parties also agree to the following:

28 a) Co-Lead Class Counsel represent that their named class representative client, KPH,

1 supports the Settlement.

2           b)       Gilead agrees to support the Direct Purchaser Classes’ motions for preliminary and  
3 final approval of the Settlement and agrees not to appeal any Court ruling granting either of these  
4 motions.

5           c)       Gilead will serve notice of this Settlement on the appropriate federal and state  
6 officials under the Class Action Fairness Act, 28 U.S.C. § 1715.

7           **3.       Motion for Preliminary Approval of the Settlement.** Plaintiff shall prepare and  
8 file a motion requesting preliminary approval of the Settlement no later than July 10, 2023, which  
9 shall include a plan for dissemination of notice to the Direct Purchaser Classes. The motion for  
10 preliminary approval shall include a proposed form of order substantially similar to Exhibit A (the  
11 “Preliminary Approval Order”), requesting, among other things:

12           a)       preliminary approval of the Settlement as within the range of fair, reasonable, and  
13 adequate within the meaning of Fed. R. Civ. P. 23;

14           b)       a finding that dissemination of notice to the Direct Purchaser Classes is warranted;

15           c)       a finding that the proposed plan of notice complies with Rule 23 and due process,  
16 and approval of a one-page summary notice, a summary “reminder” notice, a long-form notice, a  
17 press release, and claim forms in the forms substantially similar to Exhibits B, C, D, E, F, and G,  
18 respectively;

19           d)       approval of the Plan of Allocation in the form substantially similar to Exhibit H;

20           e)       a finding that a second, discretionary opt-out period pursuant to Rule 23(e)(4) is  
21 unnecessary; and

22           f)       setting a date for a motion for final approval, a deadline for objections, and a fairness  
23 hearing.

24           **4.       Stay of Proceedings.** The motion for preliminary approval shall provide for a stay  
25 of this Action pending final approval or termination of the Settlement.

26           **5.       Motion for Final Approval and Entry of Final Judgment.** If the Court  
27 preliminarily approves the Settlement, Co-Lead Class Counsel shall submit a motion for final  
28 approval of the Settlement pursuant to the schedule provided for in the Preliminary Approval Order.



1 Gilead agrees not to oppose final approval of the Settlement. The final approval motion shall seek  
2 entry of a final approval order (“Final Approval Order”), including:

- 3 a) a finding that the notice given constitutes due, adequate, and sufficient notice and  
4 meets the requirements of due process and the Federal Rules of Civil Procedure;
- 5 b) a finding that the Settlement is fair, reasonable, and adequate within the meaning of  
6 Fed. R. Civ. P. 23;
- 7 c) an order directing consummation of the Settlement pursuant to its terms;
- 8 d) a finding that all Class Members shall be bound by the Settlement Agreement and all  
9 of its terms;
- 10 e) a finding that DPPs shall be bound by the release set forth in Paragraph 13 of this  
11 Settlement Agreement and shall be forever barred from asserting any Released Claims against  
12 Gilead Release Parties;
- 13 f) a finding that Gilead Release Parties shall be bound by the release set forth in  
14 Paragraph 13 of this Settlement Agreement and shall be forever barred from asserting any Released  
15 Claims against DPPs;
- 16 g) an order directing that the Action be dismissed with prejudice as to Gilead and  
17 without costs, except as otherwise provided in the Settlement Agreement;
- 18 h) a determination under Fed. R. Civ. P. 54(b) that there is no just reason for delay;
- 19 i) an order directing that the judgment of dismissal with prejudice as to Gilead be final;  
20 and
- 21 j) an order that the Court retains exclusive jurisdiction over the Settlement, including  
22 the administration and consummation of the Settlement.

23 **6. Finality of Settlement.** This Settlement Agreement shall become final upon the  
24 Effective Date.

25 **7. Settlement Payment; Notice Fees and Costs**

- 26 a) Gilead shall wire the Settlement Payment directly to the Escrow Account within  
27 thirty (30) calendar days after the later of the following occur: (1) KPH and Gilead sign the  
28 Settlement Agreement; and (2) Gilead receives from Co-Lead Class Counsel, on Co-Lead Class



1 Counsel's letterhead, wiring instructions that include the bank name and ABA routing number, bank  
2 account name and account number, and a signed Form W-9 reflecting a valid taxpayer identification  
3 number for the qualified settlement fund account in which the funds are to be deposited. The total  
4 consideration that Gilead will pay for this Settlement shall be the Settlement Payment only. No  
5 portion of the Settlement Payment shall constitute, or shall be construed as constituting, a payment  
6 in lieu of treble damages, fines, penalties, punitive damages, or forfeitures. Co-Lead Class Counsel  
7 shall cooperate with any reasonable fraud prevention mechanisms (e.g., verbal confirmation of the  
8 wire instructions) requested by Gilead to verify the wiring instructions.

9           b)       The Settlement Payment provided for in subparagraph 7(a) shall be held in the  
10 Escrow Account subject to the terms and conditions of the Escrow Agreement attached hereto as  
11 Exhibit I, and in accordance with the provisions of Paragraphs 7-8, 16, and 18, pending finality of  
12 this Settlement Agreement pursuant to Paragraph 6.

13           c)       The Gilead Settlement Fund, to the extent permitted by the Court, shall be used to  
14 pay valid claims submitted by Class Members, Notice and Administration Expenses, and the  
15 amounts of any representative plaintiff service award, attorneys' fees, and costs and expenses  
16 incurred in connection with litigating this Action, as approved by the Court.

17           d)       Co-Lead Class Counsel shall timely authorize payment from the Gilead Settlement  
18 Fund for Notice and Administration Expenses upon receiving invoices from the Claims  
19 Administrator and the Escrow Agent, up to the aggregate sum of one hundred thousand dollars  
20 (\$100,000) absent prior approval from the Court or Gilead. Any withdrawals from the Gilead  
21 Settlement Fund for the payment of Notice and Administration Expenses pursuant to this provision  
22 shall be non-refundable in the event that the Settlement Agreement is terminated or not approved by  
23 the Court. Co-Lead Class Counsel agree to arrange for provision of notice to the Direct Purchaser  
24 Classes in accordance with Fed. R. Civ. P. 23 and any orders of the Court.

25           e)       Gilead shall not pay any additional amount at any time, whether for attorneys' fees,  
26 costs, expenses, incentive awards, Notice and Administration Expenses, or any other cost. Gilead  
27 shall not be liable for any monetary payments under the Settlement Agreement other than the  
28 Settlement Payment.

1           **8. The Gilead Settlement Fund.** At all times prior to the Effective Date, the Gilead  
2 Settlement Fund shall be invested as set forth in paragraph 3 of the Escrow Agreement, in  
3 instruments backed by the full faith and credit of the U.S. Government or fully insured by the U.S.  
4 Government or an agency thereof, including a U.S. Treasury Money Market Fund or a bank account  
5 insured by the FDIC up to the guaranteed FDIC limit. After the Effective Date, the Gilead  
6 Settlement Fund shall be invested pursuant to paragraph 3 of the Escrow Agreement as directed in  
7 writing by Co-Lead Class Counsel. All interest earned on the Gilead Settlement Fund shall become  
8 part of the Gilead Settlement Fund.

9           **9. Disbursements:** After the Effective Date, the Gilead Settlement Fund shall be  
10 distributed in accordance with the Plan of Allocation and the Court’s approval of subsequent  
11 request(s) for distribution.

12           **10. Taxes and Qualified Settlement Fund**

13           a) The Settling Parties and their counsel shall treat, and shall cause the Escrow Agent to  
14 treat, the Escrow Account as a “Qualified Settlement Fund” within the meaning of Treas. Reg.  
15 § 1.468B-1, and agree not to take any position inconsistent with such treatment. The Escrow Agent  
16 and, as required, the Settling Parties, shall timely make such elections as necessary or advisable to  
17 carry out the provisions of this Paragraph, including the “relation-back election” (as defined in  
18 Treas. Reg. § 1.468B-1(j)) back to the earliest permitted date. Such elections shall be made in  
19 compliance with the procedures and requirements contained in such regulations. It shall be the  
20 responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary  
21 documentation for signature by all necessary parties and thereafter to cause the appropriate filing to  
22 occur. All provisions of this Settlement Agreement shall be interpreted in a manner that is  
23 consistent with the Escrow Account being a “Qualified Settlement Fund” within the meaning of  
24 Treas. Reg. § 1.468B-1.

25           b) Co-Lead Class Counsel shall be solely responsible for directing the Escrow Agent  
26 (as defined in the Escrow Agreement) to file all informational and other tax returns necessary to  
27 report any taxable and/or net taxable income earned by the Escrow Account. Further, Co-Lead  
28 Class Counsel shall be solely responsible for directing the Escrow Agent to make any tax payments,

1 including interest and penalties due, on income earned by the Escrow Account. Subject to  
2 Paragraph 8, Co-Lead Class Counsel shall be entitled to direct the Escrow Agent to pay customary  
3 and reasonable tax expenses, including professional fees and expenses incurred in connection with  
4 carrying out the Escrow Agent's or tax preparer's responsibilities as set forth in this Paragraph,  
5 from the Escrow Account. The Escrow Agent shall notify Gilead regarding any payments or  
6 expenses paid from the Escrow Account upon receipt of a request for such information from Gilead.  
7 Gilead shall have no responsibility to make any tax filings relating to this Settlement Agreement,  
8 the Escrow Account, or the Settlement Payments, and shall have no responsibility to pay taxes on  
9 any income earned by the Escrow Account. If, for any reason, for any period of time, Gilead is  
10 required to pay taxes on income earned by the Escrow Account, the Escrow Agent shall, upon  
11 written instructions from Gilead with notice to Co-Lead Class Counsel, timely pay to Gilead  
12 sufficient monies from the Escrow Account to enable it to pay all taxes (state, federal, or other) on  
13 income earned by the Escrow Account.

14 c) For the purpose of § 1.468B of the Internal Revenue Code of 1986, as amended, and  
15 the regulations promulgated thereunder, the Escrow Agent shall be designated as the  
16 "Administrator" of the Escrow Account. The Escrow Agent shall timely and properly file or cause  
17 to be filed on a timely basis, all tax returns necessary or advisable with respect to the Escrow  
18 Account (including without limitation all income tax returns, all informational returns, and all  
19 returns described in Treas. Reg. § 1.468B-2(1)). Such returns shall be consistent with this Section  
20 and, in all events, reflect that all taxes (as defined below) on the income earned by the Gilead  
21 Settlement Fund shall be paid out of the Gilead Settlement Fund as provided herein.

22 d) To the extent permitted by the Court, the Escrow Agent shall pay out of the Escrow  
23 Account without prior order from the Court all: (i) taxes or other similar imposts or charges  
24 (including any estimated taxes, interest, penalties, or additions to tax) arising with respect to the  
25 income earned by the Escrow Account, including any taxes or tax detriments that may be imposed  
26 upon the Settling Parties with respect to any income earned by the Settlement Fund for any period  
27 during which the Settlement Fund does not qualify as a "Qualified Settlement Fund" within the  
28 meaning of Treasury Regulation § 1.468B-1 (or any relevant equivalent for state tax purposes);

1 (ii) other taxes imposed on or in connection with the Escrow Account (collectively, “Taxes”); and  
2 (iii) expenses and costs incurred in connection with the operation and implementation of Paragraph  
3 10 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and  
4 distribution costs and expenses relating to filing (or failing to file) the returns described herein  
5 (“Tax Expenses”). Taxes shall be treated as, and considered to be, a cost of settlement  
6 administration, and the Escrow Agent shall be obligated (notwithstanding anything herein to the  
7 contrary) to withhold from distribution to any claimants authorized by the Court any funds  
8 necessary to pay such amounts including the establishment of adequate reserves for any Taxes (as  
9 well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(l) (2)). The  
10 Settling Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and  
11 accountants to the extent reasonably necessary to carry out the provisions of Paragraph 10.

12 e) Neither the Settling Parties nor their counsel shall have any responsibility for or  
13 liability whatsoever with respect to: (i) any act, omission, or determination of the Escrow Agent or  
14 any other person, or any of their respective designees or agents in connection with the  
15 administration of the Escrow Account; (ii) any plan of distribution approved by the Court; (iii) the  
16 determination, administration, calculation, or payment of any claims asserted against the Escrow  
17 Account; (iv) any losses suffered by, or fluctuations in the value of, the Escrow Account; or (v) the  
18 payment or withholding of any Taxes and/or costs incurred in connection with the taxation of the  
19 Escrow Account or the filing of any returns.

20 **11. Full Satisfaction; Limitation of Interest and Liability.** DPPs shall look solely to  
21 the Settlement Payment for satisfaction for any and all Released Claims against Gilead Release  
22 Parties; and Gilead Release Parties shall look solely to the dismissal with prejudice of the DPPs’  
23 claims for satisfaction of any and all Released Claims against the DPPs. Except as provided by  
24 Final Approval Order of the Court, no Class Member shall have any interest in the Settlement  
25 Payment, Escrow Account, or any portion thereof.  
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1           **12. Representative Plaintiff Service Award and Attorneys' Fees, Costs, and**  
2           **Expenses.**

3           a) Co-Lead Class Counsel shall file any motion requesting a representative plaintiff  
4 service award, an award of attorney's fees, and the reimbursement of costs and expenses in  
5 accordance with the schedule set forth in the Court's Preliminary Approval Order. The  
6 representative plaintiff service award, attorneys' fees, and reimbursement of costs and expenses, as  
7 approved by the Court, shall be paid solely from the Gilead Settlement Fund ("Fee and Expense  
8 Awards") no later than thirty (30) calendar days following the Effective Date. No portion of any  
9 Fee and Expense Award shall be released from the Gilead Settlement Fund prior to the Effective  
10 Date. Gilead is not obligated to take, does not take, and subject to the limitations in this Paragraph,  
11 shall not take any position with respect to the application by Co-Lead Class Counsel for a  
12 representative plaintiff service award, attorneys' fees, and reimbursement of costs and expenses.

13           b) The amount(s) of any representative plaintiff service award and award of attorneys'  
14 fees, costs, and expenses is intended to be considered by the Court separately from the Court's  
15 consideration of the fairness, reasonableness, and adequacy of the Settlement. Any order or  
16 proceeding relating to the Fee and Expense Award, or any appeal from any such order, shall not  
17 operate to modify or cancel this Settlement Agreement, or affect or delay the finality of the  
18 judgment approving the Settlement. A modification or reversal on appeal of any amount of the Fee  
19 and Expense Award shall not be deemed a modification of the terms of this Settlement Agreement  
20 or Final Approval Order and shall not give rise to any right of termination.

21           **13. Releases.**

22           (a) On the Effective Date, the DPPs, whether or not they object to the Settlement and  
23 whether or not they make a claim upon or participate in the Gilead Settlement Fund (collectively,  
24 the "Releasers"), hereby release and forever discharge, and covenant not to sue, Gilead and each  
25 and every Gilead Release Party (collectively, the "Releasees"), from all manner of claims, debts,  
26 obligations, demands, actions, suits, causes of action, damages whenever incurred, liabilities of any  
27 nature whatsoever, including costs, expenses, penalties and attorneys' fees, under federal or state  
28 laws, whether known or unknown, foreseen or unforeseen, suspected or unsuspected, contingent or

1 non-contingent, assigned or otherwise, in law or equity, that arise out of or relate, in whole or in  
2 part in any manner, to all conduct, acts, or omissions alleged in the Action and/or that could have  
3 been alleged in the Action (or arising out of substantially the same subject matter), regardless of  
4 legal theory. Except as otherwise provided herein, this Settlement is not intended to release any  
5 claims arising in the ordinary course of business between DPPs and Gilead Release Parties under  
6 the Uniform Commercial Code, the laws of negligence, product liability, implied warranty, contract,  
7 express warranty, or personal injury (other than breach of warranty or contract based in whole or in  
8 part on any conduct challenged by DPPs in the Action).

9 (b) On the Effective Date, Gilead hereby releases all claims related to the allegations  
10 made in letters to KPH's assignor, McKesson, dated: June 2, 2021 and others, relating to alleged  
11 noncompliance with ADR provisions contained in the McKesson/Gilead distribution agreement. *See*  
12 June 2, 2021 Letter from Gilead's counsel to McKesson's counsel, attached hereto as Exhibit J (to  
13 be filed under seal). For the avoidance of doubt, Gilead shall not seek indemnification from Direct  
14 Purchaser Class Member McKesson Corporation as to any and all claims arising out of the Direct  
15 Purchaser Class settlement of the above-captioned antitrust dispute.

16 (c) In addition, on the Effective Date, Gilead (on behalf of itself and all Gilead Release  
17 Parties) and the DPPs hereby expressly waive and release any and all provisions, rights, and/or  
18 benefits conferred by (a) Section 1542 of the California Civil Code, which reads: "Section 1542.  
19 Release. A general release does not extend to claims that the creditor or releasing party does not  
20 know or suspect to exist in his or her favor at the time of executing the release and that, if known by  
21 him or her, would have materially affected his or her settlement with the debtor or released party;"  
22 or (b) by any law of any state or territory of the United States, or principle of common law, which is  
23 similar, comparable or equivalent to Section 1542 of the California Civil Code, notwithstanding that  
24 the release in Paragraph 13 is not a general release and is only a release of claims by Gilead Release  
25 Parties and the DPPs. Gilead Release Parties and the DPPs may hereafter discover facts other than  
26 or different from those which they know or believe to be true with respect to the claims that are the  
27 subject matter of Paragraph 13. Nonetheless, upon the Effective Date, Gilead Release Parties and  
28 the DPPs hereby expressly waive and fully, finally, and forever settle and release any known or

1 unknown, foreseen or unforeseen, suspected or unsuspected, contingent or non-contingent claim  
2 that is the subject matter of Paragraph 13, whether or not concealed or hidden, without regard to the  
3 subsequent discovery or existence of such different or additional facts, and which arise out of, relate  
4 to, or are in any way connected to the facts, occurrences, transactions, or other matters alleged or  
5 asserted, or that could have been alleged or asserted, in the Action or letters referenced in Paragraph  
6 13. Gilead (on behalf of itself and all Gilead Release Parties) and the DPPs also hereby expressly  
7 waive and fully, finally, and forever settle, release, and discharge any and all claims he, she, or it  
8 may have under § 17200, *et seq.*, of the California Business and Professions Code or any similar  
9 comparable or equivalent provision of the law of any other state or territory of the United States or  
10 other jurisdiction.

11 **14. Effect of Disapproval.** If based on a determination that the Settlement is not fair,  
12 reasonable, or adequate, and on this basis only, the Court (i) declines to approve this Settlement  
13 Agreement; (ii) materially modifies the Agreement; (iii) does not enter a Preliminary Approval  
14 Order containing the elements set forth in Paragraph 3; (iv) does not enter a Final Approval Order  
15 containing the elements set forth in Paragraph 5; or (v) enters a Final Approval Order and appellate  
16 review is sought, and on such review, such Final Approval Order is not affirmed or is affirmed with  
17 material modification, then Co-Lead Class Counsel or Gilead may elect to terminate this Settlement  
18 Agreement by sending written notice to the other party within ten (10) business days of the event  
19 allowing for termination. For the avoidance of doubt, any order of the Court or the Court of Appeals  
20 that is based on a determination that the Settlement is not fair, reasonable, or adequate and that:  
21 (a) narrows or does not approve the scope of the releases and covenants not to sue contemplated by  
22 this Settlement; (b) purports to impose additional material obligations on Gilead or the Direct  
23 Purchaser Classes; or (c) declines to enter a final judgment that meets the requirements set forth in  
24 Paragraph 5, except as otherwise agreed in writing by Co-Lead Class Counsel and Gilead,  
25 constitutes a failure to grant final approval of this Agreement and confers on Co-Lead Class  
26 Counsel and/or Gilead the right to terminate the Agreement. A modification or reversal on appeal of  
27 the Plan of Allocation shall not be deemed a modification of the terms of this Agreement or Final  
28 Approval Order and shall not give rise to any right of termination.



1           **15. Opt-Out Procedure.**

2           a)       Following the Court’s certification of the Direct Purchaser Classes, the Class  
3 Members received notice and were afforded an opportunity to opt out of the Classes. The notice  
4 advised that any Class Member that did not opt-out would be legally bound by all court orders and  
5 judgments in the lawsuit, and would not be able to start, continue, or be part of any other lawsuit  
6 against Gilead about the legal or factual issues in this Action. Co-Lead Class Counsel received  
7 notice from opt-outs from the Direct Purchaser Classes (namely, the Retailer Plaintiffs and United).  
8 KPH and Gilead therefore agree that a second opt-out period pursuant to Rule 23(e)(4) is not  
9 necessary.

10           b)       Nevertheless, in the event the Court determines that a second opt-out period pursuant  
11 to Rule 23(e)(4) is necessary, the procedure shall be as follows. Each person or entity intending to  
12 opt out of the Direct Purchaser Class(es) shall sign and timely mail or submit online written notice  
13 of such intent pursuant to instructions provided in the settlement notice. The written opt-out notice  
14 must clearly manifest an intent to be excluded from the Direct Purchaser Class(es). To be effective,  
15 written notice must be postmarked or submitted online no later than the opt-out deadline set forth by  
16 the Court’s Preliminary Approval Order. The claims of any person or entity that opts out of the  
17 Direct Purchaser Class(es) shall not be governed by this Settlement Agreement or any of its terms.

18           **16. Opt-Out, Reduction in Gilead Settlement Fund, and Termination Rights.**

19           a)       KPH and Gilead agree that a second opt-out period pursuant to Rule 23(e)(4) is  
20 unnecessary, as described in Paragraph 15(a).

21           b)       Should the Court nevertheless order that a second opt-out period pursuant to Rule  
22 23(e)(4) is necessary, the Settling Parties have agreed to certain confidential terms regarding the  
23 potential reduction of the Gilead Settlement Fund and termination of the Settlement Agreement.  
24 The parties will lodge the termination and diminution agreement with the Court for *in camera*  
25 review, if requested by the Court.

26           c)       Should the Gilead Settlement Fund be subject to reduction pursuant to the  
27 confidential terms referenced in Paragraph 16(b), the Escrow Agent shall return to Gilead the  
28 amount by which the Gilead Settlement Fund is to be reduced (the “Fund Reduction Amount”).

1 Subject to paragraph 7 of the Escrow Agreement, the Escrow Agent shall disburse to Gilead the  
2 Fund Reduction Amount in accordance with this Paragraph within fifteen (15) calendar days after  
3 receipt of either (i) written notice signed by Co-Lead Class Counsel and Gilead's counsel stating  
4 that the Fund Reduction Amount is to be returned to Gilead (such written notice will be signed by  
5 Co-Lead Class Counsel within three (3) days of receiving the written notice from Gilead), or (ii)  
6 any order of the Court so directing.

7 d) Any disputes regarding the application of this Paragraph 16, including any disputes  
8 regarding the application of the Settling Parties' termination and diminution agreement referenced  
9 in Paragraph 16(b), may be resolved by the Court, with Plaintiff, Gilead, and the opt-out(s) all  
10 having the opportunity to be heard.

11 **17. Objection Procedure.** Each Class Member intending to object to the Settlement  
12 must submit a timely written notice of his, her, or its objection. Such notice shall contain: (i) the  
13 legal name, headquarters' address, and place of incorporation (if applicable) of the objector; (ii)  
14 information identifying the objector as a Class Member, including proof that they are a Class  
15 Member, (iii) a written statement of all grounds for the objection, accompanied by any legal support  
16 for the objection; (iv) the identity of all counsel representing the objector; (v) the identity of all  
17 counsel representing the objector who may appear at the fairness hearing; (vi) a list of all persons  
18 who will be called to testify at the final fairness hearing in support of the objection; and (vii) the  
19 signature of the objector's duly authorized attorney or other duly authorized representative. To be  
20 timely, written notice of an objection in appropriate form must be filed with the Clerk of the United  
21 States District Court for the Northern District of California at the address where filings are accepted  
22 by the Clerk, no later than the objection deadline set forth by the Court's Preliminary Approval  
23 Order.

24 **18. Reimbursement of the Gilead Settlement Fund upon Termination.** If the  
25 Settlement Agreement is terminated pursuant to the provisions of Paragraph 16, the Escrow Agent  
26 shall return to Gilead the Gilead Settlement Fund at the time of termination. Subject to paragraph 8  
27 of the Escrow Agreement, the Escrow Agent shall disburse the Gilead Settlement Fund to Gilead in  
28 accordance with this Paragraph within fourteen (14) calendar days after receipt of either (i) written

1 notice signed by Co-Lead Class Counsel and Gilead's counsel stating that the Settlement has been  
2 terminated (such written notice will be signed by the non-terminating party within three (3) days of  
3 receiving the written notice from the terminating party), or (ii) any order of the Court so directing.  
4 If the Settlement Agreement is terminated pursuant to Paragraph 16, (1) any obligations pursuant to  
5 this Settlement Agreement other than (i) disbursement of the Gilead Settlement Fund to Gilead as  
6 set forth above and (ii) Paragraph 22 shall cease immediately, and (2) the releases set forth in  
7 Paragraph 13 shall be null and void.

8 **19. Preservation of Rights.** Except as expressly provided for in the Releases in  
9 Paragraph 13, this Settlement Agreement, whether the Settlement becomes final or not, and any and  
10 all negotiations, documents, and discussions associated with it, shall be without prejudice to the  
11 rights of any of the Settling Parties, shall not be deemed or construed to be an admission or  
12 evidence of any violation of any statute or law or lack thereof, of any liability or wrongdoing by  
13 Gilead or lack thereof, or of the truth or lack thereof of any of the claims or allegations contained in  
14 the Complaint or any other pleading, and evidence thereof shall not be discoverable or used directly  
15 or indirectly, in any way other than to enforce the terms of this Settlement Agreement. The Settling  
16 Parties expressly reserve all of their rights if the Settlement does not become final in accordance  
17 with the terms of this Settlement Agreement.

18 **20. No Admission of Liability by Gilead; No Admission of Absence of Merit by**  
19 **Plaintiff.** This Settlement Agreement shall not be deemed or construed to be an admission of  
20 Gilead's liability in this Action. Gilead denies any wrongdoing in relation to the claims brought by  
21 KPH and the Direct Purchaser Classes in this Action. This Settlement Agreement shall not be  
22 deemed or construed to be an admission that KPH and the Direct Purchaser Classes' claims in this  
23 Action lack merit as to Gilead.

24 **21. Resumption of Litigation in the Event of Termination.** The Settling Parties agree  
25 that in the event that the Settlement Agreement is not approved by the Court, or if the Settlement  
26 does not become final pursuant to Paragraph 6, or if the Settlement Agreement is terminated  
27 pursuant to Paragraphs 14 or 16, litigation of the Action by KPH against Gilead will resume in a  
28

1 reasonable manner to be approved by the Court upon a joint application by the Settling Parties, and  
2 upon reimbursement to Gilead of the Gilead Settlement Fund as provided for in Paragraph 18.

3       **22. Maintaining Confidentiality of Litigation Materials.** In the event that any of the  
4 Settling Parties receive a subpoena or other legal process (“Receiving Settling Party”) that would  
5 require disclosure of material that another Settling Party has designated confidential (“Designating  
6 Settling Party”) under any protective order entered in the Action (the “Protective Order”), such  
7 Receiving Settling Party shall promptly notify the Designating Settling Party and forward a copy of  
8 such subpoena or legal process so that the Designating Settling Party may seek a protective order or  
9 otherwise seek to maintain the confidentiality of material covered by the Protective Order; and such  
10 Receiving Settling Party shall object to the production of such material unless and until any such  
11 motion filed by the Designating Settling Party is resolved. In addition, the Settling Parties shall  
12 abide by the terms of the Protective Order in this Action, including with respect to the destruction of  
13 materials and the limitations on the use of any material covered by the Protective Order to this  
14 Action, unless otherwise ordered by a court of competent jurisdiction.

15       **23. Binding Effect.** This Settlement Agreement shall be binding upon, and inure to the  
16 benefit of, Gilead Release Parties and the DPPs.

17       **24. Integrated Agreement.** This Settlement Agreement, together with the exhibits  
18 hereto, contain the complete and integrated statement of every term in this Agreement, and  
19 supersedes all prior agreements or understandings, whether written or oral, between the Settling  
20 Parties with respect to the subject matter hereof. This Settlement Agreement shall not subsequently  
21 be modified except by a writing executed by KPH and Gilead.

22       **25. Independent Settlement.** This Settlement of the Action is not conditioned on the  
23 disposition of the claims of any other plaintiffs who have filed their own complaints. This  
24 Settlement Agreement is not conditioned on the performance or disposition of any other settlement  
25 agreement between KPH and/or the Direct Purchaser Classes and any other Defendant.

26       **26. Headings.** The headings in this Settlement Agreement are intended only for the  
27 convenience of the reader and shall not affect the interpretation of this Settlement Agreement.

28       **27. No Party is the Drafter.** None of the parties shall be considered the drafter of this

1 Settlement Agreement or any provision hereof for the purpose of any statute, case law, or rule of  
2 construction that might cause any provision to be construed against the drafter hereof.

3       **28. Consent to Jurisdiction.** Each Class Member and Gilead hereby irrevocably  
4 submits to the exclusive jurisdiction of Judge Edward M. Chen, or his successor, if any, of the  
5 United States District Court for the Northern District of California for any suit, action, proceeding  
6 or dispute arising out of or relating to this Settlement Agreement or the applicability of this  
7 Settlement Agreement, including, without limitation, any suit, action, proceeding, or dispute  
8 relating to the release provisions herein provided that this consent to jurisdiction shall not affect the  
9 Settling Parties' right or ability to assert this Settlement Agreement or the releases contained herein  
10 as a defense in an action filed in any other jurisdiction asserting Released Claims or concerning this  
11 Settlement Agreement or this Action.

12       **29. Choice of Law.** All terms of this Settlement Agreement shall be governed by and  
13 interpreted according to federal common law or, where state law must apply, the laws of California,  
14 without regard to conflict of law principles.

15       **30. Representations and Warranties.** Each party represents and warrants that it has  
16 the requisite authority to execute, deliver, and perform this Settlement Agreement and to  
17 consummate the transactions contemplated herein.

18       **31. Notice.** Where this Agreement requires either Settling Party to provide notice or any  
19 other communication or document to the other Settling Party, such notice shall be in writing and  
20 provided by email to the counsel set forth in the signature block below for Gilead or Co-Lead Class  
21 Counsel, respectively, or their designees. With respect to notice to Gilead, notice shall also be sent  
22 to General Counsel:

23           Gilead Sciences, Inc.  
24           333 Lakeside Drive  
25           Foster City, CA 94404  
26           generalcounsel@gilead.com

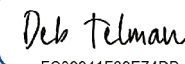
27       **32. Execution in Counterparts.** This Settlement Agreement may be executed in  
28 counterparts. A facsimile or .pdf signature shall be deemed an original signature for purposes of  
executing this Settlement Agreement.

1           **33. Confidentiality.** While the fact of settlement of the Action has been disclosed in  
2 open court, the terms of this Settlement Agreement shall remain confidential until KPH moves for  
3 preliminary approval of the Settlement, unless Gilead and Co-Lead Class Counsel agree otherwise,  
4 provided that Gilead may disclose the terms of this Settlement Agreement to accountants, lenders,  
5 auditors, legal counsel, tax advisors, or in response to a request by any governmental, judicial, or  
6 regulatory authority or otherwise required by applicable law or court order, and provided that KPH  
7 may disclose the terms of the Settlement Agreement to any entity that has applied to serve as Notice  
8 and Claims Administrator or Escrow Agent, who shall abide by the terms of this Paragraph.

9           IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives,  
10 have agreed to this Settlement Agreement as of the date first herein above written.

**For Defendants Gilead Sciences, Inc., Gilead Holdings, LLC, Gilead Sciences, LLC, and Gilead Sciences Ireland LLC:**

DocuSigned by:

/s/ 

FC09941F39E74DB...

Deborah H. Telman  
Executive Vice President, Corporate Affairs and  
General Counsel  
Gilead Sciences, Inc.

**For the Direct Purchaser Classes:**

/s/ 

ROBERTS LAW FIRM US, PC  
Michael Roberts (*pro hac vice*)  
mikeroberts@robertslawfirm.us  
1920 McKinney Avenue, Suite 700  
Dallas, TX 75201  
Telephone: (501) 952-8558

/s/ 

NASTLAW LLC  
Dianne M. Nast (*pro hac vice*)  
dnast@nastlaw.com  
1101 Market Street, Suite 2801  
Philadelphia, PA 19107  
Telephone: (215) 923-9300  
Fax: (215) 923-9302

*Co-Lead Class Counsel for KPH Healthcare Services, Inc. a/k/a Kinney Drugs, Inc. and the Direct Purchaser Classes*



# Exhibit A

1  
2  
3  
4  
5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
7 SAN FRANCISCO DIVISION

8 *IN RE HIV ANTITRUST LITIGATION*

Case No. 3:19-cv-02573-EMC (Master Docket)

9 **[PROPOSED] ORDER GRANTING DIRECT**  
10 **PURCHASER CLASS PLAINTIFFS’**  
11 **MOTION FOR PRELIMINARY APPROVAL**  
12 **OF CLASS ACTION SETTLEMENT WITH**  
13 **GILEAD DEFENDANTS**

Judge: Honorable Edward M. Chen

14 This Document Relates to:

15 *KPH Healthcare Services, Inc. a/k/a Kinney*  
16 *Drugs, Inc. v. Gilead Sciences, Inc., et al.,*  
17 *No. 3:20-cv-06961-EMC*

18 Upon review and consideration of the Settlement Agreement by and between Plaintiff KPH  
19 Healthcare Services, Inc. a/k/a Kinney Drugs, Inc. (“KPH” or “Plaintiff”), individually and on behalf  
20 of the Direct Purchaser Classes previously certified by this Court (the “Direct Purchaser Classes”), and  
21 Defendants Gilead Sciences, Inc.; Gilead Holdings, LLC; Gilead Sciences, LLC; Gilead Sciences  
22 Ireland UC (together, “Gilead”), dated July 24, 2023, and the Direct Purchaser Class Plaintiffs’ Motion  
23 for Preliminary Approval of Class Action Settlement with Gilead, along with its supporting  
24 memorandum and exhibits, IT IS HEREBY ORDERED that the motion is GRANTED as follows:

25 **Jurisdiction**

26 1. This Court has subject matter jurisdiction over this action and personal jurisdiction over  
27 plaintiff class representative KPH and Gilead.  
28

1 **Previously Certified Classes**

2 2. By order dated September 27, 2022 (ECF No. 1388), the Court previously certified the  
3 Direct Purchaser Plaintiff Classes pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3),  
4 defined as follows:

5 **Truvada Class:** All persons or entities in the United States and its territories who  
6 purchased Truvada or generic Truvada directly from any of Defendants or any  
7 brand or generic drug manufacturer from February 1, 2018, until the date of the  
8 class certification order.

9 **Atripla Class:** All persons or entities in the United States and its territories who  
10 purchased Atripla or generic Atripla directly from any of Defendants or any brand  
11 or generic drug manufacturer from February 1, 2018, until the date of the class  
12 certification order.

13 The Court excluded from the Direct Purchaser Classes: (1) Defendants and their officers, directors,  
14 employees, subsidiaries, and affiliates; (2) federal, state, and local governmental entities; and (3) any  
15 judicial officer presiding over the litigation and members of their immediate family and judicial staff.  
16 The Retailers Plaintiffs<sup>1</sup> and United Healthcare Services Inc. subsequently opted themselves out of  
17 the Direct Purchaser Classes.

18 3. The Court also previously appointed KPH as representative for the Direct Purchaser  
19 Classes and appointed Michael L. Roberts of Roberts Law Firm US, PC and Dianne Nast of NastLaw  
20 LLC as Co-Lead Class Counsel for the Direct Purchaser Classes (“Class Counsel”) pursuant to  
21 Federal Rule of Civil Procedure 23(g).

22 **Preliminary Approval of the Proposed Settlement**

23 4. Federal Rule of Civil Procedure 23(e) provides that the claims of a certified class may  
24 be settled only with the Court’s approval. As a first step, plaintiffs typically seek preliminary  
25 approval of the proposed settlement. *Manual for Complex Litig. (Fourth)* (“Manual”), § 21.632  
26 (2015). “A preliminary approval of a settlement and notice to the proposed class is appropriate if ‘the  
27 proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no  
28 obvious deficiencies, does not grant improper preferential treatment to class representatives or  
segments of the class, and falls within the range of possible approval.’” *Cuzick v. Zodiac U.S. Seat*

<sup>1</sup> The Retailer Plaintiffs are Walgreen Co.; The Kroger Co.; Albertsons Companies, Inc.; H-E-B, L.P.; Rite Aid Corporation; Rite Aid Hdqtrs. Corp.; and CVS Pharmacy, Inc.

1 *Shells, LLC*, No. 16-cv-03793, 2017 WL 4536255, at \*5 (N.D. Cal. Oct. 11, 2017) (citing *In re*  
2 *Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)). Preliminary approval is not  
3 a dispositive assessment of the fairness of the proposed settlement, but rather determines whether it  
4 falls within the “range of reasonableness.” *In re High-Tech Emp. Antitrust Litig.*, No. 11-cv-02509,  
5 2013 WL 6328811, at \*1 (N.D. Cal. Oct. 30, 2013) (quoting Alba Conte, *Newburg on Class Actions*,  
6 § 11.25 at 11-91 (4th ed. 2002)). Nonetheless, preliminary approval establishes an “initial  
7 presumption” of fairness, such that notice may be given to the class and the class may have a “full  
8 and fair opportunity to consider the proposed [settlement] and develop a response.” *Tableware*, 484  
9 F. Supp. 2d at 1079; *Manual*, § 21.631.

10 5. All the relevant factors weigh in favor of preliminarily approving the proposed  
11 settlement between KPH and Gilead.

12 6. *First*, the proposed settlement follows full fact and expert discovery and decisions on  
13 motions to dismiss, class certification, and summary judgment motions based on extensive briefing  
14 and supporting submissions, and rigorous trial preparation. Consequently, when executing the  
15 proposed settlement, the parties and their counsel possessed a full discovery record and rulings of the  
16 Court sufficient to permit a fully-informed evaluation of the case, including the risks of litigating this  
17 action through trial.

18 7. *Second*, the proposed settlement is the result of prolonged and intensive arm’s-length  
19 negotiations among sophisticated counsel and of mediation with esteemed mediator Kenneth  
20 Feinberg.

21 8. *Third*, KPH’s agreement to dismiss with prejudice its and the Direct Purchaser  
22 Classes’ claims against Gilead in exchange for the agreed-upon consideration to be paid by Gilead  
23 pursuant to the Settlement Agreement is, upon preliminary review, within the range of reasonableness  
24 based on the circumstances. The proposed settlement provides that Gilead will pay \$246,750,000 into  
25 a Settlement Fund for the benefit of the Class Members.

26 9. *Fourth*, the parties’ releases, as defined in the Settlement Agreement, are, upon  
27 preliminary review, within the range of reasonableness based on the circumstances.

**Approval of Forms and Manner of Notice**

10. The Court finds that the proposed forms of notice attached to the Settlement Agreement, and the proposed methods of disseminating notice, satisfy Federal Rule of Civil Procedure 23(e) and principles of due process and are otherwise fair and reasonable. For these reasons, the Court approves the proposed forms and methods of notice and provides the following directives regarding implementation.

11. The Court finds that because the prior notice of class certification disseminated by U.S. First-Class Mail, digital notice (*i.e.*, notice headlines and class action website URL published in various online publications), and the class action website satisfied the requirements of Federal Rule of Civil Procedure 23(c)(2)(B) and due process, and because the prior notice of class certification provided an opt-out period that closed on February 3, 2023, there is no need for an additional opt-out period pursuant to Federal Rule of Civil Procedure 23(e)(4). *See Officers for Justice v. Civil Serv. Comm'n of City & Cty. of S.F.*, 688 F.2d 615, 635 (9th Cir. 1982) (“[T]o hold that due process requires a second opportunity to opt out after the terms of the settlement have been disclosed to the class would impede the settlement process so favored in the law.”); *In re Lidoderm Antitrust Litig.*, No. 14-md-02521, 2018 WL 11293766, at \*2 (N.D. Cal. May 3, 2018) (“[B]ecause prior notice of class certification . . . satisfied the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process, and because the prior notice of class certification provided an opt-out period that [had] closed, there is no need for an additional opt-out period.”); *Low v. Trump Univ., LLC*, 246 F. Supp. 3d 1295, 1306 (S.D. Cal. 2017) (objector who chose not to opt-out after receiving notice of class certification “cannot now belatedly argue that due process compels a further opt-out opportunity”).

12. The Court appoints KCC Class Action Services LLC (“KCC”) as Claims Administrator to disseminate settlement notice to the Classes, process and engage in follow-up communications relating to the Claim Forms of Class Members, and, if the settlement is approved, administer distribution of the applicable portion of the Settlement Fund to Class Members.

13. The Court appoints The Huntington National Bank to serve as Escrow Agent for the purpose of receiving and investing the Settlement Fund in accordance with the terms of the Escrow Agreement attached as Exhibit I to the Settlement Agreement.

1           14.     Within 10 days after the Direct Purchaser Plaintiffs file their Motion for Preliminary  
2 Approval of Class Action Settlement with Gilead, Gilead shall serve notice of the proposed  
3 settlement on the appropriate federal and state officials as required by the Class Action Fairness Act,  
4 28 U.S.C. § 1715, and contemporaneously provide an electronic copy of the notice to Class Counsel.

5           15.     By \_\_\_\_\_, 2023 (14 days after entry of this Order), KCC shall:

- 6                   a.     cause a Summary Notice substantially in the form attached as Exhibit B to the  
7 Settlement Agreement and a pre-populated version of the Claim Form  
8 substantially in the form attached as Exhibit G to the Settlement Agreement to  
9 be sent via U.S. First-Class mail to the last-known mailing address of each  
10 known Class Member;
- 11                   b.     cause a press release substantially in the form attached as Exhibit E of the  
12 Settlement Agreement to appear in the PR Newswire; and
- 13                   c.     cause a the case-specific Settlement Website to be updated live with links to  
14 copies of the Settlement Agreement, a Detailed Notice substantially in the form  
15 attached as Exhibit D to the Settlement Agreement, a static blank Claim Form  
16 substantially in the form attached as Exhibit F to the Settlement Agreement, a  
17 dynamic Claim Form for use by Direct Purchaser Plaintiff Class Members with  
18 pre-populated versions of the Claim Form, the Allocation Plan attached as  
19 Exhibit H to the Settlement Agreement, the Escrow Agreement attached as  
20 Exhibit I to the Settlement Agreement, and instructions on how to submit a  
21 Claim Form.

22           16.     By \_\_\_\_\_, 2023, (28 days after entry of this Order), KCC shall cause:

- 23                   a.     a Leaderboard substantially in the form illustrated in ¶ 10 of the Peak  
24 Declaration to appear in *Becker's Pharmacy Report*;
- 25                   b.     a Billboard Banner substantially in the form illustrated in ¶ 10 of the Peak  
26 Declaration to appear in *NAW SmartBrief*; and
- 27                   c.     a Notice Headline and website URL substantially in the form illustrated in ¶ 10  
28 of the Peak Declaration to appear in *Pharmaceutical Commerce Direct*.

1           17. By \_\_\_\_\_, 2023 (42 days after entry of this Order), KCC shall cause a  
2 Reminder Notice substantially in the form attached as Exhibit C to the Settlement Agreement to be  
3 sent via U.S. First-Class mail to the last-known mailing address of each known Class Member that  
4 has not yet submitted a Claim Form.

5           18. By \_\_\_\_\_, 2023 (56 days after entry of this Order), Class Counsel shall  
6 begin following up by phone with any Class Member that has not yet submitted a completed Claim  
7 Form.

8           19. By \_\_\_\_\_, 2023 (70 days after entry of this Order), KCC shall cause a  
9 Second Reminder Notice substantially in the form attached as Exhibit C to the Settlement Agreement  
10 to be sent via U.S. First-Class mail to the last-known mailing address of each known Class Member  
11 that has not yet submitted a Claim Form.

12           20. The notices shall list \_\_\_\_\_, 2023 (98 days after entry of this Order) as the  
13 deadline for filing a Claim Form, and \_\_\_\_\_, 2023 (21 days prior to the Final Approval  
14 Hearing) as the deadline to object to the settlement or requests for awards for litigation costs and  
15 expenses, attorneys' fees, and a class representative service award.

16           21. Class Counsel shall have until \_\_\_\_\_, 2023 (14 days prior to the Final  
17 Approval Hearing) to respond to any objections to the settlement or requests for awards for litigation  
18 costs and expenses, attorney's fees, and a class representative service award.

19           22. KCC shall review all submitted Claim Forms and determine whether each is timely,  
20 properly completed, supported by appropriate documentation, or properly signed, and shall  
21 communicate with the claimant via U.S. First-Class Mail, email, or telephone regarding any  
22 deficiencies. The claimant will then have 28 days from the date it is contacted by KCC regarding the  
23 deficiencies to cure the deficiencies. If the claimant fails to cure the deficiencies within that period,  
24 KCC shall reject the claim, and shall notify the claimant of the rejection by letter. KCC's  
25 determination regarding the validity of a claim shall be final.

26           23. KPH's expert economist, Dr. Russell Lamb, shall be responsible for using available  
27 transactional data to prepare a separate, individualized, pre-populated Claim Form for each known  
28 Class Member, with assistance from KCC, and using that available transactional data and any



1 additional documentation submitted by Class Members to calculate each Class Member's percentage  
2 share of the Net Settlement Fund. The Net Settlement Fund is the Gilead Settlement Fund, plus any  
3 interest earned, minus the costs of notice and claims administration and any class representative  
4 service award, attorneys' fees, costs, and expenses, as approved by the Court.

5 **Final Approval Hearing**

6 24. The Final Approval Hearing shall be held before this Court at \_\_\_\_\_[TIME] on  
7 \_\_\_\_\_, 2023 [DATE] (at least 112 days after entry of this Order, at the United States District  
8 Court for the Northern District of California, San Francisco Courthouse, Courtroom 5 – 17th Floor,  
9 450 Golden Gate Avenue, San Francisco, California 94102. At the Final Approval Hearing, the Court  
10 will consider, among other matters: (1) the fairness, reasonableness and adequacy of the proposed  
11 settlement; (2) the proposed Allocation Plan; (3) Class Counsel's request for attorneys' fees and  
12 reimbursement of costs and expenses; (4) Class Counsel's request for a service award to KPH;  
13 (5) any objections; and (6) whether to grant final approval to the proposed settlement and final  
14 judgment terminating this litigation.

15 25. The Final Approval Hearing may be rescheduled or continued. In that event, the Court  
16 will furnish all counsel with appropriate notice. Class Counsel shall be responsible for  
17 communicating any such notice promptly to the Classes by posting conspicuous notice on the  
18 settlement website.

19 26. Any persons or entities that fail to file a timely objection shall not be entitled to  
20 contest any of the terms of the proposed settlement. They will not be heard at the Final Approval  
21 Hearing; their objections (if any) shall not be considered; and they shall be deemed to have waived  
22 any objections by appeal, collateral attack, or otherwise.

23 27. By \_\_\_\_\_, 2023 (56 days prior to the Final Approval Hearing), Class Counsel  
24 shall file a motion for approval of an award for costs, expenses, and attorneys' fees to Class Counsel  
25 and a service award to the class representative.

26 28. By \_\_\_\_\_, 2023 (56 days prior to the Final Approval Hearing), Class Counsel  
27 shall file a motion for final approval of the settlement.

28 29. Pending final approval of the settlement and the entry of final judgment in this action

1 against Gilead, any and all proceedings in this action (other than those incident to the settlement  
2 process) by the Classes against Gilead are stayed.

3 30. In the event the settlement is terminated in accordance with the Settlement Agreement  
4 or the Court does not grant final approval to the settlement, the settlement shall become null and void,  
5 the Classes and Gilead will revert to their positions *ex ante* without prejudice to their claims and  
6 defenses, and the litigation of their claims will resume in a reasonable manner to be approved by the  
7 Court upon joint application of the parties hereto, or upon application by one party if a joint  
8 application is not forthcoming.

9 31. Nothing in the Settlement Agreement, any settlement-related document, or this Order  
10 shall constitute, be construed as, or deemed to be evidence of, or an admission or concession by  
11 Gilead, as to the validity of any claim that has been or could have been asserted against Gilead or any  
12 liability of Gilead in relation to those claims. Nor shall any such matter constitute, be construed as, or  
13 deemed to be evidence of, or an admission or concession by KPH as to the absence of merit in any of  
14 their allegations or claims against Gilead.

15 IT IS SO ORDERED.

16 Dated: \_\_\_\_\_

17 \_\_\_\_\_  
18 HON. EDWARD M. CHEN  
19 United States District Judge  
20  
21  
22  
23  
24  
25  
26  
27  
28

# Exhibit B

**COURT-ORDERED LEGAL NOTICE**  
**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA**

**If you purchased brand or generic Truvada or Atripla directly from the manufacturer, you may receive a payment from a class action settlement.**

*A federal court authorized this notice. This is not a solicitation from a lawyer.*

A proposed settlement has been reached in a class action lawsuit (*KPH Healthcare Services, Inc. v. Gilead Sciences, Inc.*, No. 3:20-cv-06961-EMC (N.D. Cal.), coordinated with *In re HIV Antitrust Litigation* (formerly called *Staley v. Gilead Sciences, Inc.*), No. 3:19-cv-02573-EMC (N.D. Cal.)). The lawsuit alleges that Defendants Gilead and BMS engaged in a variety of allegedly anticompetitive conduct that caused direct purchasers to pay too much for HIV drugs. This settlement resolves the claims against Gilead. A previous settlement resolved the claims against BMS. Gilead and BMS deny any wrongdoing. The Court has not decided who is right.

**WHO IS INCLUDED IN THE SETTLEMENT?**

Generally, the Settlement includes entities that purchased Truvada and Atripla, or their generic equivalents, directly from a brand or generic manufacturer from February 1, 2018 until September 27, 2022. You are receiving this notice because records show you may have made qualifying purchases.

**WHAT DOES THE SETTLEMENT PROVIDE?**

Gilead agreed to pay \$246,750,000 into a Settlement Fund.

If the Court approves the settlement, Class Counsel will seek reimbursement for litigation costs and expenses up to \$4 million, attorneys' fees of up to 33 ⅓% of the Gilead Settlement Fund, and payment of a class representative service award in the amount of \$40,000. These amounts, if approved, will be paid from the Settlement Fund.

The full text of the Settlement is available for inspection at [www.HIVDirectPurchaserClass.com](http://www.HIVDirectPurchaserClass.com).

**HOW CAN YOU GET A PAYMENT?**

If the Court approves the Settlement, to get paid, you must submit a Claim Form by **DATE**, either online (at [www.HIVDirectPurchaserClass.com](http://www.HIVDirectPurchaserClass.com)) or by U.S. Mail. A personalized Claim Form with pre-populated information based on available transactional data is enclosed. See the Claim Form for instructions on how to make any corrections or supplements and submit the form. If the Court approves the Settlement, claims will be paid after the conclusion of any appeals.

**WHAT ARE YOUR OTHER OPTIONS?**

You may write to the Court about why you do not like the Settlement. The objection must be postmarked by **DATE**. Additionally, you may ask to go to the Final Approval Hearing and speak in Court about the fairness of the Settlement. If you object to the Settlement, you are still a member of the Settlement Class(es) and you must file a claim to receive a payment. Descriptions about the effects of objecting, and instructions on how to object, are in the detailed notice available at [www.HIVDirectPurchaserClass.com](http://www.HIVDirectPurchaserClass.com).

The Court scheduled a hearing for **DATE** at **TIME** to consider any objections and whether the Settlement and allocations are fair, reasonable, and adequate. You do not need to attend, but you or your attorney can do so at your own expense. See the detailed notice available at [www.HIVDirectPurchaserClass.com](http://www.HIVDirectPurchaserClass.com) for the hearing location, where to find out if the date or time changes, and what you must do if you or your attorney wishes to speak at the hearing.

**FOR MORE INFORMATION VISIT [www.HIVDirectPurchaserClass.com](http://www.HIVDirectPurchaserClass.com) OR CALL 1-###-###-####**

# Exhibit C

Subject: HIV Drug Antitrust Settlement – File a Claim

Name: <Name>

Claim ID: <ClaimID>

**Our records show that you may have received a settlement package.  
You may receive a payment if you submit a claim on time.**

**File Your Claim at [www.HIVDirectPurchaserClass.com](http://www.HIVDirectPurchaserClass.com)**

To receive a cash payment, you must submit a Claim Form online at [www.HIVDirectPurchaserClass.com](http://www.HIVDirectPurchaserClass.com). Or you may use the prepopulated claim form that was mailed to you, or print a claim form from the website, and mail it to the address on the form.

**Claim Forms must be submitted online or postmarked by **DATE**.**

For more information about this settlement in *KPH Healthcare Services, Inc. v. Gilead Sciences, Inc.*, No. 3:20-cv-06961-EMC (N.D. Cal.), coordinated with *In re HIV Antitrust Litigation* (formerly *Staley v. Gilead Science, Inc.*), No. 3:19-cv-02573-EMC (N.D. Cal.), including the claims being released, visit the settlement website at [www.HIVDirectPurchaserClass.com](http://www.HIVDirectPurchaserClass.com) or contact Class Counsel at 1-###-###-####.

# Exhibit D

**COURT-ORDERED LEGAL NOTICE**  
**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA**

**If you purchased brand or generic Truvada or Atripla directly from the manufacturer, you may receive a payment from a class action settlement.**

*A federal court authorized this notice. This is not a solicitation from a lawyer.*

- A proposed settlement (“Settlement”) has been reached in a class action lawsuit (*KPH Healthcare Services, Inc. v. Gilead Sciences, Inc.*, No. 3:20-cv-06961-EMC (N.D. Cal.), coordinated with *In re HIV Antitrust Litigation* (formerly called *Staley v. Gilead Sciences, Inc.*), No. 3:19-cv-02573-EMC (N.D. Cal.)). The lawsuit alleges that Gilead engaged in a variety of allegedly anticompetitive conduct that caused Direct Purchasers to pay too much for drugs used to treat or prevent HIV. Gilead denies any wrongdoing.
- Generally, the Settlement includes entities that purchased Truvada, Atripla, or their generic equivalents directly from a brand or generic manufacturer from February 1, 2018 until September 27, 2022 (“the Direct Purchaser Classes”).
- This lawsuit and Settlement concern only Direct Purchasers, which are typically pharmaceutical wholesalers.
- The lawsuit was filed against Gilead Sciences, Inc.; Gilead Holdings, LLC; Gilead Sciences, LLC; Gilead Sciences Ireland UC; Bristol-Myers Squibb Company; and E. R. Squibb & Sons, L.L.C. The proposed settlement is only with Gilead Sciences, Inc.; Gilead Holdings, LLC; Gilead Sciences, LLC; Gilead Sciences Ireland UC (collectively, “Gilead.”).
- This Settlement resolves the claims against Gilead. A previous settlement resolved the claims against Bristol-Myers Squibb Company; and E. R. Squibb & Sons, L.L.C (collectively, “BMS”).
- If you are a member of either or both the Direct Purchaser Classes, your legal rights will be affected whether you act or don’t act. Please read this notice carefully.
- The full text of the Settlement is available for inspection at [www.HIVDirectPurchaserClass.com](http://www.HIVDirectPurchaserClass.com). This notice is intended to provide a convenient summary of the Settlement. In the event of any inconsistency between this notice and the terms of the Settlement, the terms of the Settlement will control.



<b>YOUR LEGAL RIGHTS AND OPTIONS</b>	
<b>SUBMIT A CLAIM</b>	If you are a member of either or both of the Direct Purchaser Classes, you may file a claim by obtaining and submitting a Claim Form. This is the only way to receive a payment. The deadline is <b>DATE</b> .
<b>OBJECT</b>	<p>You may write to the Court about why you do not like the Settlement. The objection deadline is <b>DATE</b>.</p> <p>Additionally, you may ask to go to the Final Approval Hearing and speak in Court about the fairness of the Settlement.</p> <p>If you object to the Settlement, you are still a member of the Direct Purchaser Classes and you must file a claim to receive a payment.</p>
<b>DO NOTHING.</b>	If you do nothing, you will not receive any payment. You will be bound by the releases contained in the Settlement and will not be able to file or continue to pursue your own lawsuit.

- These rights and options are explained in this notice.
- If you do not act by the deadline to object, you will lose your right to object.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after the period to appeal has expired and/or all appeals have been resolved. Please be patient.

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## **BASIC INFORMATION**

### **1. WHAT IS THIS LAWSUIT ABOUT?**

This lawsuit is a class action known as *KPH Healthcare Services, Inc. v. Gilead Sciences, Inc.*, No. 3:20-cv-06961 (“the Lawsuit” or “the Action”). The lawsuit has been coordinated with *In re HIV Antitrust Litigation* (formerly called *Staley v. Gilead Sciences, Inc.*), No. 3:19-cv-02573-EMC (N.D. Cal.). Judge Edward M. Chen of the United States District Court for the Northern District of California is overseeing the lawsuit.

The Lawsuit alleges that Gilead violated federal antitrust laws by conspiring to delay generic competition and charge supracompetitive prices. Gilead denies these allegations.

No court or other authority has found that Gilead engaged in any wrongdoing.

### **2. WHAT IS A CLASS ACTION?**

In a class action, one or more people or entities called “named plaintiffs” or “class representatives” (in this case, KPH Healthcare Services, Inc. a/k/a Kinney Drugs, Inc. or “KPH”) sues on behalf of people and entities with similar claims. These people and entities are called a “Class” or “Class Members.” One court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

### **3. ARE YOU PART OF THE DIRECT PURCHASER CLASSES?**

You are part of the Direct Purchaser Classes if you are a person or entity in the United States or its territories that purchased Truvada, Atripla, or their generic equivalents directly from a brand or generic manufacturer of those drugs at any time from February 1, 2018 until September 27, 2022.

Excluded from the Classes are certain Gilead, BMS and Janssen entities; government entities; Retailer Plaintiffs (Walgreen Co.; The Kroger Co.; Albertsons Companies, Inc.; H-E-B, L.P.; Rite Aid Corporation; Rite Aid Hdqtrs. Corp.; and CVS Pharmacy, Inc.); United Healthcare Services Inc.; and the judges in this case, their court personnel, and members of their immediate families.

## **THE SETTLEMENT**

### **4. WHAT DOES THE SETTLEMENT PROVIDE?**

To settle the Action, Gilead agreed to pay \$246,750,000 into a Settlement Fund. In exchange, KPH will ask the Court to dismiss the Action against Gilead with prejudice. The Direct Purchaser Class Members will release all claims alleged in the Action and/or that could have been alleged in the Action (or arising out of substantially the same subject matter), assigned or otherwise, including all claims relating in any way to the alleged delay of generic Truvada and Atripla.

This Settlement is not intended to release any claims arising in the ordinary course of business between Direct Purchaser Class Members and Gilead under the Uniform Commercial Code, the

laws of negligence, product liability, implied warranty, contract, express warranty, or personal injury.

Gilead will release all claims related to the allegations made in letters to KPH's assignor, McKesson, dated June 2, 2021 and others, relating to alleged noncompliance with ADR provisions contained in the McKesson-Gilead distribution agreement.

Direct Purchaser Class Members and Gilead will release any and all provisions, rights, and/or benefits conferred by: (a) Section 1542 of the California Civil Code; (2) § 17200, *et seq.*, of the California Business and Professions Code; and/or (c) any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to either provision. Direct Purchaser Class Members and Gilead also will release any known or unknown, foreseen or unforeseen, suspected or unsuspected, contingent or non-contingent claim that is the subject matter of the above releases, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts, and which arise out of the facts, occurrences, transactions, or other matters alleged or asserted in the Action or letters referenced above.

The Settlement Fund may be reduced or the Settlement may be terminated if a certain percentage of Direct Purchaser Class Members exclude themselves from the Classes. The Settlement also may be terminated if the Court rejects the Settlement. If the Settlement is terminated, the lawsuit will proceed against Gilead as if a settlement had not been reached.

## 5. WHY IS THERE A SETTLEMENT?

The Court has not decided in favor of KPH or Gilead. Instead, both sides have agreed to settle. If the Court approves the Settlement, the parties will avoid the costs and uncertainty of a trial, and Class Members will be eligible to receive a payment from the Settlement. The Settlement does not mean that any law was broken or that Gilead did anything wrong. Gilead denies all legal claims in this case. KPH and its lawyers think the Settlement is best for everyone who has been affected.

## SETTLEMENT PAYMENTS

## 6. HOW CAN YOU GET A PAYMENT FROM THE SETTLEMENT?

To retain your right to seek a payment from this Settlement, you must submit a Claim Form on or before **DATE**.

If you have been identified as a Direct Purchaser Class Member based on available transactional data, you will receive a Claim Form with pre-populated information that you can correct or supplement. If you believe you are a Direct Purchaser Class Member, but you do not receive such a Claim Form, you can obtain one from the settlement website ([www.HIVDirectPurchaserClass.com](http://www.HIVDirectPurchaserClass.com)).

You may complete your Claim Form online at the settlement website ([www.HIVDirectPurchaserClass.com](http://www.HIVDirectPurchaserClass.com)), or you may print a copy, fill it out, and send it by U.S. Mail to the Claims Administrator. The Claim Form includes more detailed instructions.

## 7. HOW MUCH WILL YOU RECEIVE FROM THE SETTLEMENT?

The net settlement fund (the Settlement Fund, plus interest accrued, minus the costs of notice and claims administration and any attorneys' fees, costs, expenses, and representative plaintiff service award approved by the Court) will be allocated to Direct Purchaser Class Members based on their proportionate unit volume share of brand and generic purchases made during the Claim Period (February 1, 2018 – September 27, 2022), with greater weight assigned to brand purchases to reflect the fact that the alleged damages for brand purchases are greater than those for generic purchases.

At this time, it is unknown how much money each Direct Purchaser Class Member will receive. It will depend on the number of Direct Purchaser Class Members that submit Claim Forms and the number of qualifying purchases made by each of those Direct Purchaser Class Members.

If the Court grants final approval to the Settlement, claims will be paid after the period to appeal has expired and/or all appeals have been resolved.

## 8. WHAT WILL YOU GIVE UP IN EXCHANGE FOR THE SETTLEMENT?

Members of the Direct Purchaser Classes will be bound by all future orders in this case and will be bound by the release as described in Question 4.

More information about the release may be found in the Settlement Agreement, which is available on the settlement website ([www.HIVDirectPurchaserClass.com](http://www.HIVDirectPurchaserClass.com)).

## **THE LAWYERS REPRESENTING THE CLASSES**

### 9. DO YOU HAVE A LAWYER IN THIS CASE?

The Court appointed the following attorneys as Co-Lead Class Counsel or “Class Counsel”:

Dianne M. Nast  
NastLaw LLC  
1101 Market Street, Suite 2801  
Philadelphia, Pennsylvania 19107  
Telephone: 215-923-9300  
Email: [dnast@nastlaw.com](mailto:dnast@nastlaw.com)

Michael L. Roberts  
Roberts Law Firm Us, PC  
1920 McKinney Avenue, Suite 700  
Dallas, Texas 75204  
Telephone: 501-952-8558  
Email: [mikeroberts@robertslawfirm.us](mailto:mikeroberts@robertslawfirm.us)

Class Counsel are experienced in handling similar cases against other companies.

### 10. HOW WILL THE LAWYERS BE PAID?

If the Court approves the Settlement, the lawyers will seek reimbursement for litigation costs and expenses up to \$4 million, attorneys' fees up to 33 ⅓% of the Gilead Settlement Fund, and payment

of \$40,000 as a service award to the class representative, KPH, in recognition of its assistance with developing and pursuing the case.

If the Court grants the lawyers' requests, these payments will be made from the Settlement Fund. You will not have to pay these lawyers out of your own pocket.

The lawyers' motion for their costs and expenses award, attorneys' fees, and the class representative service award will be filed with the Court and made available for download or viewing on or before **DATE** at [www.HIVDirectPurchaserClass.com](http://www.HIVDirectPurchaserClass.com).

## **WHAT ARE YOUR OPTIONS?**

As outlined on Page 2, and as described below, Direct Purchaser Class Members have three options: (1) submit a claim; (2) object to the Settlement; and/or (3) do nothing. The deadline for each option is listed in this notice. If you do not act by the deadline for an option, you will lose your legal right to exercise that option.

### **11. OPTION 1 – SUBMIT A CLAIM**

You can request a payment from the Settlement by submitting a Claim Form. Information about how to do this, and the effect of doing this, is outlined in the "Settlement Payments" section on Pages 5-6.

Your Claim Form must be submitted online or postmarked by **DATE**. If your Claim Form is not submitted online or postmarked by that date, you will lose the ability to get a payment from this settlement.

### **12. OPTION 2 – OBJECT TO THE SETTLEMENT**

If you are a member of the Direct Purchaser Classes, you may tell the Court what, if anything, you do not like about the Settlement and/or Class Counsel's requests for an award of attorneys' fees, reimbursement of costs and expenses, and a class representative service award by filing an objection. The Court will consider your views before making a decision.

To object to the Settlement, you must file a written objection with the Court. Your objection must include the following:

1. Case name and number:  
*KPH Healthcare Services, Inc. v. Gilead Sciences, Inc.*, Case No. 3:20-cv-06961, coordinated with *In re HIV Antitrust Litig.* (formerly called *Staley v. Gilead Sciences, Inc.*), No. 3:19-cv-02573-EMC (N.D. Cal.).
2. Your legal name, headquarters address, and place of incorporation (if applicable).
3. Information identifying you as a Direct Purchaser Class Member.
4. The specific reasons why you object to the Settlement or any part of it, accompanied by legal support.

5. The identity of all counsel representing you, if any, and whether each may appear at the Final Approval Hearing.
6. Whether you are requesting permission to speak at the Final Approval Hearing.
7. A list of all persons who will be called to testify in support of the objection at the Final Approval Hearing.
8. Your signature, or the signature of your duly-authorized attorney or other duly-authorized representative.
9. All documents or writings you want the Court to consider.

You may file an objection by: (1) mailing the objection to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102; (2) filing the objection electronically via the Court's ECF system; or (3) filing the objection in person at any location of the United States District Court for the Northern District of California.

Your objection must be filed by **DATE**. If your written objection is not filed by that date, you will lose the ability to object to the Settlement.

If you object, you will remain a member of the Direct Purchaser Classes, so in order to retain your right to seek a payment from the Settlement, you also must file a Claim Form by **DATE**, as addressed above.

### 13. OPTION 3 – DO NOTHING

If you are a Direct Purchaser Class Member and you do nothing, you will remain in the Direct Purchaser Classes and be bound by all orders in this lawsuit. You will also give up the right to seek a share of the Settlement, to object to the Settlement, to speak at the hearing about the Settlement, or to be part of another lawsuit against Gilead for any and all claims released by this Settlement Agreement.

## **FINAL APPROVAL HEARING**

### 14. WHAT IS A FINAL APPROVAL HEARING?

At the Final Approval Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider Class Counsel's request for reimbursement of costs and expenses and payment of attorneys' fees and a class representative's service award. If there are objections, the Court will consider them at that time.

After the hearing, the Court will decide whether to grant final approval to the Settlement. It is unknown how long this decision will take.

#### 15. WHEN IS THE FINAL APPROVAL HEARING?

The Court will conduct the Final Approval Hearing at the United States District Court for the Northern District of California, San Francisco Courthouse, Courtroom 5 – 17<sup>th</sup> Floor, 450 Golden Gate Avenue, San Francisco, California 94102.

The Court has scheduled the Final Approval Hearing for **DATE** at **TIME**, but the date and time may change without further notice to the Direct Purchaser Classes. For updated information on the hearing, you may check the settlement website, contact Class Counsel, or access the court docket for this case as described in the “Getting More Information” section on Pages 9-10.

#### 16. DO YOU HAVE TO ATTEND THE HEARING?

You do not need to attend the Final Approval Hearing. Class Counsel will answer any questions the Court may have.

If you send an objection, you do not have to come to Court to talk about it. As long as you submitted your written objection on time, to the proper address, and it complies with the other requirements provided in this notice, the Court will consider it.

But if you want to attend, you are welcome to do so at your own expense. You may also pay another lawyer to attend for you, but you will be responsible for hiring and paying that lawyer.

#### 17. MAY YOU SPEAK AT THE HEARING?

If you object to the Settlement, you may ask the Court for permission to speak at the hearing. Your objection must include a request to speak, be timely submitted, and comply with the other requirements provided in this notice.

Your objection submission must include information or materials responsive to all nine of the items listed in the “Option 2 - Object to the Settlement” section on Pages 7-8, including not only your identifying information and the reasons for your objection, but also the identification of all counsel representing you and all persons who may appear and/or testify at the hearing, as well as copies of all documents or writings you want the Court to consider.

Ultimately, the Court will decide who will be allowed to speak at the hearing.

### **GETTING MORE INFORMATION**

#### 18. HOW DO YOU GET MORE INFORMATION?

This notice summarizes the proposed Settlement. The precise terms and conditions of the Settlement are detailed in the Settlement Agreement. If there are any inconsistencies between this notice and the terms of the Settlement Agreement, the terms of the Settlement Agreement will control.



You can view the Settlement Agreement by: (1) visiting the settlement website ([www.HIVDirectPurchaserClass.com](http://www.HIVDirectPurchaserClass.com)); (2) calling Class Counsel (1-###-###-####); (3) accessing the Court docket for this case, for a fee, through the Court's PACER system at <https://ecf.cand.uscourts.gov> or a visit to the Clerk of Court at the address listed above between 9:00 a.m. and 4:00 p.m. on Monday through Friday, excluding Court holidays.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.**

# Exhibit E

**If you purchased brand or generic Truvada or Atripla directly from the manufacturer, you may receive a payment from a class action settlement.**

SAN FRANCISCO, CA (PR Newswire) – Roberts Law Firm US, PC and NastLaw LLC announce that a proposed settlement has been reached in a class action lawsuit (*KPH Healthcare Services, Inc. v. Gilead Sciences, Inc.*, No. 20-cv-06961-EMC (N.D. Cal.) (coordinated with *In re HIV Antitrust Litigation* (formerly called *Staley v. Gilead Sciences, Inc.*), No. 3:19-cv-02573-EMC (N.D. Cal.)). The lawsuit alleges that Gilead engaged in a variety of alleged anticompetitive conduct in violation of federal antitrust laws that caused direct purchasers to pay too much for certain drugs used to treat and prevent HIV (Truvada, Atripla, and their generic equivalents). The settlement resolves the claims against Gilead; a prior settlement resolved claims against BMS. Gilead denies any wrongdoing. No court or other authority has found that Gilead engaged in any wrongdoing.

The proposed Settlement generally includes entities that purchased Truvada, Atripla, or any of their generic equivalents directly from Gilead or any generic drug manufacturer from February 1, 2018 until September 27, 2022.

Under the Settlement, Gilead will pay \$246,750,000 into a Settlement Fund to settle all claims in the lawsuit. If you are a Class Member and want to get paid, you must submit a claim form by [DATE], either online at [www.HIVDirectPurchaserClass.com](http://www.HIVDirectPurchaserClass.com) or by mail. If the Court approves the Settlement, claims will be paid after any appeals. Class Counsel will seek reimbursement for litigation costs and expenses, attorneys' fees, and a class representative service award. If approved, these amounts will be paid from the Settlement Fund.

If you are a Class Member, you can write to the Court about what, if anything, you do not like about the Settlement. The deadline to do so is [DATE]. Descriptions about the effects of these options and instructions on how to exercise them are available in the detailed notice available at [www.HIVDirectPurchaserClass.com](http://www.HIVDirectPurchaserClass.com).

The Court scheduled a hearing for [DATE] at [TIME] to consider whether the Settlement and allocations are fair, reasonable, and adequate, as well as any objections and any requests for reimbursement of costs and expenses, attorneys' fees, and a class representative service award. You do not need to attend, but you or your attorney may do so at your own expense. See the detailed notice available at [www.HIVDirectPurchaserClass.com](http://www.HIVDirectPurchaserClass.com) for the hearing location, where to find out if the date or time changes, and what you must do if you or your attorney wish to speak at the hearing.

For more information, visit [www.HIVDirectPurchaserClass.com](http://www.HIVDirectPurchaserClass.com) or call [###-###-#####].

SOURCE: Roberts Law Firm US, PC and NastLaw LLC.

# Exhibit F





## 4. GENERIC PURCHASE INFORMATION

Please list in the space below the total number of units of generic Atripla purchased directly from the generic manufacturer(s) between February 1, 2018 and September 27, 2022, reduced to account for returns and assignments.

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Units of generic Atripla

Please list in the space below the total number of units of generic Truvada purchased directly from the generic manufacturer(s) between February 1, 2018 and September 27, 2022, reduced to account for returns and assignments.

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Units of generic Truvada

*A list of relevant National Drug Codes (NDCs) is included at the end of this Claim Form.*

**\*\* You must submit supporting purchase records. \*\***

*If you are submitting this claim as an assignee, the data and supporting purchase records may be shared with the relevant assignor(s) during the claims administration process.*

## 5. SIGNATURE

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge. I understand that the punishment for perjury varies by state, but perjury is a felony and carries a possible prison sentence of at least one year, plus fines and probation.

Signature: \_\_\_\_\_

Dated: \_\_\_\_\_

**\*XXXXXXXXXX\***

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FOR CLAIMS PROCESSING ONLY	OB	<input type="text"/>	CB	<input type="text"/>	<input type="radio"/> DOC	<input type="radio"/> RED
					<input type="radio"/> LC	<input type="radio"/> A
					<input type="radio"/> REV	<input type="radio"/> B

## Covered NDCs

Purchases from February 1, 2018 to September 27, 2022

<b>Drug Description</b>	<b>Manufacturer</b>	<b>Product NDCs</b>	<b>NDC Package Codes (11 Digit)</b>
Branded Atripla	Gilead Sciences, Inc.	15584-0101	15584-0101-01
Branded Truvada	Gilead Sciences, Inc.	61958-0701	61958-0701-01
Generic Atripla (Efavirenz, Emtricitabine, Tenofovir disoproxil fumarate)	Aurobindo Pharma Ltd.	65862-497	65862-0497-30
	Cipla USA Inc.	69097-210	69097-0210-02, 76282-0678-30
	Laurus Labs Ltd.	42385-915	42385-0915-30, 42385-0915-90
	Macleods Pharmaceuticals Ltd.	33342-138	33342-0138-07
	Teva Pharmaceuticals USA Inc.	0093-5234	00093-5234-56
Generic Truvada (Emtricitabine, Tenofovir disoproxil fumarate)	Amneal Pharmaceuticals NY LLC	60219-2095, 69238-2095, 69238- 1527	60219-2095-03, 69238-2095-03, 69238-1527-03, 42291-0439-30
	Apotex Corp.	60505-4202	60505-4202-03
	Aurobindo Pharma Ltd.	65862-354	65862-0354-30
	Cadila Healthcare Limited (now Zydus Lifesciences Ltd.)	70771-1594, 70771-1709	70771-1709-03, 70771-1709-04, 70771-1709-09, 70771-1594-03, 70771-1594-04, 70771-1594-09
	Cipla USA Inc.	69097-209, 69097-741	69097-0209-02, 69097-0741-02, 76282-0677-30
	Laurus Labs Ltd.	42385-953	42385-0953-30, 42385-0953-90
	Lupin Pharmaceuticals Inc.	68180-287	68180-0287-01, 68180-0287-06
	Macleods Pharmaceuticals Ltd.	33342-106	33342-0106-07
	Mylan Pharmaceuticals Inc.	0378-1930	00378-1930-93
	Strides Pharma Inc.	42543-719, 64380-719	42543-0719-04, 64380-0719-04, 51407-0112-30
	Teva Pharmaceuticals USA Inc.	0093-7607, 0093-7704	00093-7607-56, 00093-7704-56
	Zydus Pharmaceuticals (USA) Inc.	70710-1367	70710-1367-03, 70710-1367-04, 70710-1367-09



# Exhibit G





**4. GENERIC PURCHASE INFORMATION**

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Total number of units of generic Atripla purchased directly from the generic manufacturer(s) between February 1, 2018 and September 27, 2022, reduced to account for returns and assignments.

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Total number of units of generic Truvada purchased directly from the generic manufacturer(s) between February 1, 2018 and September 27, 2022, reduced to account for returns and assignments.

This information has been pre-populated based on transactional data produced by the following Producing Third-Party Generic Manufacturers for generic Atripla and generic Truvada during the below time periods *only*.

Amneal Pharmaceuticals, Inc.  
(3/1/2021–7/1/2022)

Strides Pharma Inc.  
(3/24/2021 – 6/30/2022)

Macleods Pharma USA Inc.\*  
(4/8/2021 – 7/29/2022)

Laurus Generics, Inc.  
(4/1/2021 – 7/27/2022)

Aurobindo Pharma. USA Inc.\*  
(3/30/2021–8/31/2021)

Teva Pharmaceuticals USA, Inc.\*  
(9/30/2020 – 6/30/2022)

Mylan Pharmaceuticals, Inc.  
(3/31/2021 – 6/30/2022)

Lupin Pharmaceuticals, Inc.  
(6/23/2021 – 6/29/2022)

Cipla USA Inc.\*  
(3/30/2021 – 7/26/2022)

Zydus Pharmaceuticals (USA) Inc.  
(3/30/2021 – 11/30/2021)

\*These Producing Third-Party Generic Manufacturers provided transactional data for generic Truvada and generic Atripla; the rest of the Producing Third-Party Generic Manufacturers provided transactional data only for Truvada.

*A list of relevant National Drug Codes (NDCs) is included at the end of this Claim Form.*

**4A. GENERIC PURCHASE INFORMATION (CORRECTED)**

***Please leave this blank and skip to #5 if the information listed in #4 is correct.***

If you wish to correct the number of units of generic Atripla listed in #4, please list the corrected information here.

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Units of generic Atripla

If you wish to correct the number of units of generic Truvada listed in #4, please list the corrected information here.

--	--	--	--	--	--	--	--

Units of generic Truvada

**\*\* You must submit supporting purchase records if you submit corrected information. \*\***

*If you are submitting this claim as an assignee, the data and supporting purchase records may be shared with the relevant assignor(s) during the claims administration process.*

**5. SIGNATURE**

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge. I understand that the punishment for perjury varies by state, but perjury is a felony and carries a possible prison sentence of at least one year, plus fines and probation.

Signature: \_\_\_\_\_

Dated: \_\_\_\_\_

**YOUR CLAIM MUST BE SUBMITTED ONLINE OR  
POSTMARKED ON OR BEFORE [DATE].**

\*XXXXXXXXXX\*

1

FOR CLAIMS PROCESSING ONLY	OB <input type="checkbox"/>	CB <input type="checkbox"/>	<input type="radio"/> DOC <input type="radio"/> LC <input type="radio"/> REV	<input type="radio"/> RED <input type="radio"/> A <input type="radio"/> B
----------------------------------	-----------------------------	-----------------------------	------------------------------------------------------------------------------------	---------------------------------------------------------------------------------



## Covered NDCs

Purchases from February 1, 2018 to September 27, 2022

<b>Drug Description</b>	<b>Manufacturer</b>	<b>Product NDCs</b>	<b>NDC Package Codes (11 Digit)</b>
Branded Atripla	Gilead Sciences, Inc.	15584-0101	15584-0101-01
Branded Truvada	Gilead Sciences, Inc.	61958-0701	61958-0701-01
Generic Atripla (Efavirenz, Emtricitabine, Tenofovir disoproxil fumarate)	Aurobindo Pharma Ltd.	65862-497	65862-0497-30
	Cipla USA Inc.	69097-210	69097-0210-02, 76282-0678-30
	Laurus Labs Ltd.	42385-915	42385-0915-30, 42385-0915-90
	Macleods Pharmaceuticals Ltd.	33342-138	33342-0138-07
	Teva Pharmaceuticals USA Inc.	0093-5234	00093-5234-56
Generic Truvada (Emtricitabine, Tenofovir disoproxil fumarate)	Amneal Pharmaceuticals NY LLC	60219-2095, 69238-2095, 69238- 1527	60219-2095-03, 69238-2095-03, 69238-1527-03, 42291-0439-30
	Apotex Corp.	60505-4202	60505-4202-03
	Aurobindo Pharma Ltd.	65862-354	65862-0354-30
	Cadila Healthcare Limited (now Zydus Lifesciences Ltd.)	70771-1594, 70771-1709	70771-1709-03, 70771-1709-04, 70771-1709-09, 70771-1594-03, 70771-1594-04, 70771-1594-09
	Cipla USA Inc.	69097-209, 69097-741	69097-0209-02, 69097-0741-02, 76282-0677-30
	Laurus Labs Ltd.	42385-953	42385-0953-30, 42385-0953-90
	Lupin Pharmaceuticals Inc.	68180-287	68180-0287-01, 68180-0287-06
	Macleods Pharmaceuticals Ltd.	33342-106	33342-0106-07
	Mylan Pharmaceuticals Inc.	0378-1930	00378-1930-93
	Strides Pharma Inc.	42543-719, 64380-719	42543-0719-04, 64380-0719-04, 51407-0112-30
	Teva Pharmaceuticals USA Inc.	0093-7607, 0093-7704	00093-7607-56, 00093-7704-56
	Zydus Pharmaceuticals (USA) Inc.	70710-1367	70710-1367-03, 70710-1367-04, 70710-1367-09

# Exhibit H

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6 *Liaison Counsel for the*  
*Direct Purchaser Classes*

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15 *Co-Lead Counsel for the*  
*Direct Purchaser Classes*

17 IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
18 SAN FRANCISCO DIVISION

19 *IN RE HIV ANTITRUST LITIGATION*

Case No. 3:19-cv-02573-EMC (lead case)

20 This Document Relates To:

**[PROPOSED] PLAN OF ALLOCATION**

21 *KPH Healthcare Services, Inc. v. Gilead*  
22 *Sciences, Inc. et al.*, 3:20-cv-06961-EMC

Judge: Honorable Edward M. Chen

23  
24 Plaintiff KPH Healthcare Services, Inc. a/k/a Kinney Drugs, Inc. (“KPH” or “Plaintiff”),  
25 individually and on behalf of Direct Purchaser Class Members who purchased Atripla, Truvada,  
26 or their generic equivalents from February 1, 2018 to September 27, 2022 (the “Direct Purchaser  
27 Classes”), submits this plan of allocation (“Allocation Plan”) to apportion the \$246,750,000  
28



1 Settlement Fund created pursuant to KPH’s Settlement Agreement with Defendants Gilead  
2 Sciences, Inc.; Gilead Holdings, LLC; Gilead Sciences, LLC; Gilead Sciences Ireland UC  
3 (collectively, “Gilead”), together with any interest accrued thereon (the “Gilead Settlement  
4 Fund”).

5 1. Plaintiff’s expert economist, Dr. Russell Lamb, will calculate each Direct  
6 Purchaser Class Member’s percentage share of the Net Gilead Settlement Fund<sup>1</sup> as a function of  
7 (a) the amount (measured in units) of each Direct Purchaser Class Member’s purchases of Atripla,  
8 Truvada, and their generic equivalents, (b) the Relevant Share (explained below) assigned to each  
9 concerned drug, and (c) a multiplier based on whether a drug is branded or generic (explained  
10 below).

11 2. Within 14 days of entry of the Court’s Order granting preliminary approval of the  
12 Settlement, the Claims Administrator, in conjunction with Dr. Lamb, will prepare a separate,  
13 individualized Claim Form for each known Direct Purchaser Class Member. The Claim Form will  
14 include each Direct Purchaser Class Member’s name and address. The Claim Form will also be  
15 pre-populated with each Direct Purchaser Class Member’s total unit volume of Atripla, Truvada,  
16 and their generic equivalents, purchased directly from the following entities during the time  
17 periods for which Plaintiff received transactional level data: Gilead (as defined above), and third  
18 parties Teva Pharmaceuticals USA, Inc. (“Teva”), Strides Pharma Inc. (“Strides”), Aurobindo  
19 Pharma USA Inc. (“Aurobindo”), Amneal Pharmaceuticals, Inc. (“Amneal”), Laurus Generics,  
20 Inc. (“Laurus”), Cipla USA Inc. (“Cipla”), Lupin Pharmaceuticals, Inc. (“Lupin”), Macleods  
21 Pharma USA Inc. (“Macleods”), Mylan Pharmaceuticals, Inc. (“Mylan”), and Zydus  
22 Pharmaceuticals (USA) Inc. (collectively, “Producing Third-Party Manufacturers”).

23 3. The Claim Form will be sent via U.S. First-Class mail to each known Direct  
24 Purchaser Class Member along with the Summary Notice of Settlement. The Claim Form will  
25 explain that the pre-populated numbers were compiled from transactional sales data produced by

26 \_\_\_\_\_  
27 <sup>1</sup> “Net Gilead Settlement Fund” means the Gilead Settlement Fund (including any interest earned)  
28 after deducting the costs of notice and claims administration, in addition to any class  
representative service award, attorneys’ fees, costs, and expenses, as approved by the Court.

1 Gilead and Producing Third-Party Generic Manufacturers for defined time periods. The Claim  
2 Form will request that each Direct Purchaser Class Member verify the accuracy of the  
3 information contained in the Claim Form and will provide instructions for submitting additional  
4 purchase records or challenging any of the figures or computations contained in the Claim Form.  
5 If a Direct Purchaser Class Member agrees that the information contained in the Claim Form is  
6 accurate, it will be asked to sign the Claim Form verifying its accuracy and to timely submit it to  
7 the Claims Administrator. If a Direct Purchaser Class Member believes that the information  
8 contained in its Claim Form is not accurate or would like to submit additional or supplemental  
9 information, that Direct Purchaser Class Member may submit its own purchase records pursuant  
10 to the procedures described below.

11 4. The Claim Form will request the Claimant’s full name and mailing address  
12 appropriate for correspondence regarding the distribution of the Net Gilead Settlement Fund and  
13 the identity of and contact information, including email and phone number, for the person  
14 responsible for overseeing the claims process for the Claimant. The Claim Form will also include  
15 the National Drug Codes (“NDCs”) for brand Atripla, Truvada, and their generic equivalents.<sup>2</sup>  
16 The Claim Form will also make clear that data submitted by a person or entity based on an  
17 assignment may be shared with the relevant assignor(s) during the claims administration process.

18 5. Each Direct Purchaser Class Member will be required to timely execute and return  
19 a Claim Form to receive any distribution from the Net Gilead Settlement Fund. The submission of  
20 a Claim Form to the Claims Administrator will be deemed timely if it is submitted online or  
21 postmarked by the Claim Form deadline listed in the Court-approved Notices.

22 6. No later than 42 days following entry of the Court’s Order granting preliminary  
23 approval of the Settlement, the Claims Administrator shall follow up by U.S. First-Class mail  
24 with any Direct Purchaser Class Member that has not yet submitted a completed Claim Form.

25 7. No later than 56 days following entry of the Court’s Order granting preliminary

26 \_\_\_\_\_  
27 <sup>2</sup> The NDCs are standard codes maintained by the FDA and used in the pharmaceutical industry  
28 to identify specific pharmaceutical products and will allow Claimants to understand precisely  
which purchases are eligible for purposes of allocation.

1 approval of the Settlement, Class Counsel shall begin following up by phone with any Direct  
2 Purchaser Class Member that has not yet submitted a signed Claim Form. The Claims  
3 Administrator and/or Class Counsel may engage in additional follow-up communications beyond  
4 those outlined in this Allocation Plan.

5 8. No later than 70 days following entry of the Court's Order granting preliminary  
6 approval of the Settlement, the Claims Administrator shall send a second reminder by U.S. First-  
7 Class mail with any Direct Purchaser Class Member that has not yet submitted a completed Claim  
8 Form.

9 9. All Claim Forms submitted will be reviewed and processed by the Claims  
10 Administrator with assistance from Dr. Lamb and his staff as required and appropriate.

11 10. Upon receiving a Claim Form, the Claims Administrator shall determine whether  
12 the Claim Form is timely, properly completed, supported by appropriate documentation if  
13 accompanying a blank Claim Form or corrected pre-populated Claim Form, and signed. If a  
14 Claim Form is incomplete, not supported by appropriate documentation, or unsigned, the Claims  
15 Administrator shall communicate with the claimant via U.S. First-Class mail, email, or telephone  
16 regarding the deficiency. The claimant will then have 28 days from the date it is contacted by the  
17 Claims Administrator regarding the deficiency to cure the deficiency. If the claimant fails to cure  
18 the deficiency within that period, the Claims Administrator shall reject the claim and will notify  
19 the claimant of the rejection by letter. The Claims Administrator's determination regarding the  
20 validity of a claim shall be final.

21 11. Dr. Lamb and his staff will be responsible for determining the amount each Direct  
22 Purchaser Class Member who timely submitted a valid Claim Form will receive from the Net  
23 Gilead Settlement Fund.

24 12. To calculate each Claimant's pro rata share of the Net Settlement Fund, the Claims  
25 Administrator, working with Dr. Lamb, will add:

26 a. for each brand drug (Claimant's total unit volume<sup>3</sup> of brand [drug] purchased /

27 \_\_\_\_\_  
28 <sup>3</sup> As used herein, the phrase "total unit volume" refers to the total unit volume of a Claimant's

1 total brand [drug] purchases) x (share allocated to [drug]) x (brand multiplier);  
2 and  
3 b. for each generic drug (Claimant’s total unit volume of generic [drug]  
4 purchased / total generic [drug] purchases) x (share allocated to [drug]) x  
5 (generic multiplier).

6 13. The relative share allocated to each concerned drug will be based on each drug’s  
7 share of Extended Units (“EUs”) in the IQVIA National Sales Perspectives (“NSP”) data from  
8 February 2018 through February 2022: Atripla (12%), Truvada (88%).<sup>4</sup>

9 14. To address the fact that alleged damages stemming from the purchases of brand  
10 drugs are higher than those stemming from the purchases of generic drugs, where a generic  
11 equivalent was available for a specific drug, a multiplier of .89 will be applied to brand purchases  
12 and a multiplier of .11 will be applied to generic purchases.

13 15. Dr. Lamb and his staff will work with the Claims Administrator to review any data  
14 and related documentation submitted by claimants to finalize the allocation calculations.

15 16. The Claims Administrator and Dr. Lamb and his staff, in consultation with Co-  
16 Lead Class Counsel, shall review all written challenges to Dr. Lamb’s conclusions regarding  
17 applicable purchase volumes. If, upon review of a challenge and supporting documentation, Dr.  
18 Lamb’s office decides to amend its determination of the claimant’s total qualifying purchases, the  
19 Claims Administrator will send the claimant a letter notifying it of that fact.

20 17. The Claims Administrator shall be responsible for mailing via U.S. First-Class  
21 mail or FedEx to each Direct Purchaser Class Member who timely submitted a valid Claim Form  
22 a check for its approved distribution from the Net Gilead Settlement Fund. Each check shall be  
23 valid for a period of 90 days.

24  
25 \_\_\_\_\_  
26 direct purchases of a concerned drug from Gilead or a generic manufacturer between February 1,  
27 2018 and September 27, 2022, reduced to account for returns and purchases for which the right to  
28 damages has been assigned to another person or entity.

<sup>4</sup> Extended Units (“EUs”) means the number of pills purchased.



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*Liaison Counsel for the Direct Purchaser Classes*

# Exhibit I

## CUSTODIAN/ESCROW AGREEMENT

This Custodian/Escrow Agreement dated August 2, 2023, is made among Roberts Law Firm US, PC and NastLaw LLC (“Co-Lead Class Counsel”), and **THE HUNTINGTON NATIONAL BANK**, as Custodian/Escrow agent (“Custodian/Escrow Agent”).

### Recitals

A. This Custodian/Escrow Agreement governs the deposit, investment and disbursement of the settlement funds that, pursuant to the Stipulation of Settlement (the “Settlement Agreement”) dated June 24, 2023, attached hereto as Exhibit 1, and entered into by, among others, Co-Lead Class Counsel on behalf of the KPH Healthcare Services Inc. and the Direct Purchaser Classes, will be paid to settle the class action captioned *KPH Healthcare Services, Inc. v. Gilead Sciences, Inc. et al.*, No. 3:20-cv-06961 (the “Action”), pending in the United States District Court for the Northern District of California (the “Court”).

B. Pursuant to the terms of the Settlement Agreement, Gilead Sciences, Inc., Gilead Holdings, LLC, Gilead Sciences, LLC, and Gilead Sciences Ireland UC (“Gilead”) agree to pay or cause to be paid the total amount of \$246,750,000.00 in cash (the “Settlement Amount”) in settlement of the claims brought against Gilead in the Action.

C. The Settlement Amount, together with any interest accrued thereon, is to be deposited into Custodian/Escrow and used to satisfy payments to authorized claimants, payments for attorneys’ fees and expenses, payments for tax liabilities, and other costs pursuant to the terms of the Settlement Agreement.

D. Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed to them in the Settlement Agreement.

### Agreement

1. Appointment of Custodian/Escrow Agent. Based on the recommendation of Co-Lead Class Counsel, on behalf of the Plaintiff and the DPP Classes and Gilead, the Custodian/Escrow Agent is hereby appointed as Escrow Agent and Custodian to receive, deposit, and disburse the Settlement Amount upon the terms and conditions provided in this Custodian/Escrow Agreement, the Settlement Agreement and any other exhibits or schedules later annexed hereto and made a part hereof.

2. The Custodian/Escrow Account. The Custodian/Escrow Agent shall establish and maintain a Custodian/Escrow account titled as the Gilead Settlement Fund (the “Custodian/Escrow Account”). Pursuant to the Settlement Agreement, Gilead shall cause the Settlement Amount to be deposited into the Custodian/Escrow Account within thirty (30) days after the later of the following: (1) KPH and Gilead signing of the Settlement Agreement; or (2) Gilead receiving from Co-Lead Class Counsel, on Co-Lead Class Counsel’s letterhead, wiring instructions that include the bank name and ABA routing number, the bank account name and account number, and a signed



Form W-9 reflecting a valid taxpayer identification number for the qualified settlement fund account in which the funds are to be deposited. The Custodian/Escrow Agent shall receive the Settlement Amount into the Custodian/Escrow Account; the Settlement Amount and all interest accrued thereon shall be referred to herein as the “Settlement Fund.” The Settlement Fund shall be held and invested on the terms and subject to the limitations set forth herein, and shall be released by the Custodian/Escrow Agent in accordance with the terms and conditions hereinafter set forth and set forth in the Settlement Agreement and in orders of the Court approving the disbursement of the Settlement Fund.

3. Investment of Settlement Fund. At the written direction of Co-Lead Class Counsel, the Custodian/Escrow Agent shall invest the Settlement Fund exclusively in instruments or accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Fund or a bank account that is either: (a) fully insured by the Federal Deposit Insurance Corporation (“FDIC”) or (b) secured by instruments backed by the full faith and credit of the United States Government. Defendants shall not bear any responsibility for or liability related to the investment of the Settlement Fund by the Custodian/Escrow Agent.

4. Custodian/Escrow Funds Subject to Jurisdiction of the Court. The Settlement Fund shall remain subject to the jurisdiction of the Court until such time as the Fund shall be distributed, pursuant to the Settlement Agreement and on further order(s) of the Court.

5. Tax Treatment & Report. The Settlement Fund shall be treated at all times as a “Qualified Settlement Fund” within the meaning of Treasury Regulation §1.468B-1. Co-Lead Class Counsel and, as required by law, Gilead, shall jointly and timely make such elections as necessary or advisable to fulfill the requirements of such Treasury Regulation, including the “relation-back election” under Treas. Reg. § 1.468B-1(j)(2) if necessary to the earliest permitted date. For purposes of §1.468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” of the Settlement Fund shall be Co-Lead Class Counsel. Co-Lead Class Counsel shall timely and properly prepare, deliver to all necessary parties for signature, and file all necessary documentation for any elections required under Treas. Reg. §1.468B-1. Co-Lead Class Counsel shall timely and properly prepare and file any informational and other tax returns necessary or advisable with respect to the Settlement Funds and the distributions and payments therefrom including without limitation the returns described in Treas. Reg. §1.468B-2(k), and to the extent applicable Treas. Reg. §1.468B-2(1).

6. Tax Payments of Settlement Fund. All taxes with respect to the Settlement Fund, as more fully described in the Settlement Agreement, shall be treated as and considered to be a cost of administration of the Settlement Fund and the Custodian/Escrow Agent shall timely pay such taxes out of the Settlement Fund without prior order of the Court, as directed by Co-Lead Class Counsel. Co-Lead Class Counsel shall be responsible for the timely and proper preparation and delivery of any necessary documentation for signature by all necessary parties, and the timely filing of all tax returns and other tax reports required by law. The Co-Lead Class Counsel may engage an accounting firm or tax preparer to assist in the preparation of any tax reports or the calculation of any tax payments due as set forth in Sections 5 and 6, and the expense of such assistance shall be paid from the Settlement Fund by the Custodian/Escrow Agent at Co-Lead Class Counsel’s direction. The

Settlement Fund shall indemnify and hold Gilead harmless for any taxes that may be deemed to be payable by Gilead by reason of the income earned on the Settlement Fund, and Custodian/Escrow Agent, as directed by Co-Lead Class Counsel, shall establish such reserves as are necessary to cover the tax liabilities of the Settlement Fund and the indemnification obligations imposed by this paragraph. If the Settlement Fund is returned to Gilead pursuant to the terms of the Settlement Agreement, Gilead shall provide Custodian/Escrow Agent with a properly completed Form W-9.

7. Disbursement Instructions

(a) Co-Lead Class Counsel may, without further order of the Court or authorization by Gilead's Counsel, instruct the Custodian/Escrow Agent to disburse the funds necessary to pay Notice and Administration Expenses.

(b) Disbursements other than those described in paragraph 7(a), including disbursements for distribution of Class Settlement Funds, must be authorized by either (i) an order of the Court, or (ii) the written direction of both Co-Lead Class Counsel Michael Roberts and Dianne Nast.

(c) In the event funds transfer instructions are given (other than in writing at the time of execution of this Agreement), whether in writing, by facsimile, e-mail, telecopier, or otherwise, the Custodian/Escrow Agent will seek confirmation of such instructions by telephone call back when new wire instructions are established to the person or persons designated in subparagraphs (a) and (b) above if it is reasonably necessary and/or if it is requested by Gilead, and Custodian/Escrow Agent may rely upon the confirmations of anyone purporting to be the person or persons so designated. It will not be reasonably necessary to seek confirmation if the Custodian/Escrow Agent receives written letters authorizing a disbursement from each of the law firms required in subparagraphs (a) and (b), as applicable, on their letterhead and signed by one of the persons designated in subparagraphs (a) and (b). To assure accuracy of the instructions it receives, the Custodian/Escrow Agent may record such call backs. If the Custodian/Escrow Agent is unable to verify the instructions, or is not satisfied with the verification it receives, it shall not execute the instruction until all issues have been resolved. The persons and telephone numbers for call backs may be validly changed only in a writing that (i) is signed by the party changing its notice designations, and (ii) is received and acknowledged by Custodian/Escrow Agent. Co-Lead Class Counsel will notify the Custodian/Escrow Agent of any errors, delays, or other problems no later than 30 days after receiving notification that a transaction has been executed. If it is determined that the transaction was delayed or erroneously executed as a result of the Custodian/Escrow Agent's error, the Custodian/Escrow Agent's sole obligation is to pay or refund the amount of such error and any amounts as may be required by applicable law. Any claim for interest payable will be at the then-published rate for United States Treasury Bills having a maturity of 91 days.

(d) Promptly upon receipt of notification and confirmation of such deposit from Gilead, the Custodian/Escrow Agent shall confirm in writing to Class Counsel and Defendant receipt of the Settlement Funds into the Escrow Account.

(e) The Custodian/Escrow Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Custodian/Escrow Agent's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The party providing electronic instructions agrees: (i) to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Custodian/Escrow Agent, including, without limitation, the risk of the Custodian/Escrow Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting instructions to the Custodian/Escrow Agent and that there may be more secure methods of transmitting instructions than the method(s) selected by the Custodian/Escrow Agent; and (iii) that the security procedures (if any) to be followed in connection with its transmission of instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances.

8. Termination of Settlement. If the Settlement Agreement terminates in accordance with its terms, Co-Lead Class Counsel and Gilead shall jointly notify the Custodian/Escrow Agent of the termination of the Settlement Agreement. Upon such notification or order of the Court, the balance of the Settlement Fund, together with any interest earned thereon, less any Notice and Administration Expenses paid and actually incurred in accordance with the terms of the Settlement Agreement but not yet paid, and any unpaid taxes due, as determined by Co-Lead Class Counsel and Gilead, shall be returned to Gilead in accordance with instruction from Gilead's Counsel.

9. Fees. The Custodian/Escrow Agent shall be entitled to compensation for its services as stated in the fee schedule attached as Exhibit 2. All fees and expenses of Custodian/Escrow Agent shall be paid solely from the Settlement Fund. The Custodian/Escrow Agent may pay itself such fees from the Settlement Fund only after such fees have been approved for payment by Co-Lead Class Counsel. If the Custodian/Escrow Agent is asked to provide additional services, such as the preparation and administration of payments to Authorized Claimants, a separate agreement and fee schedule will be entered into.

10. Duties, Liabilities and Rights of Custodian/Escrow Agent. This Custodian/Escrow Agreement sets forth all of the obligations of the Custodian/Escrow Agent, and no additional obligations shall be implied from the terms of this Custodian/Escrow Agreement or any other agreement, instrument or document.

(a) The Custodian/Escrow Agent may act in reliance upon any instructions, notice, certification, demand, consent, authorization, receipt, power of attorney or other writing delivered to it by Co-Lead Class Counsel, as provided herein, without being required to determine the authenticity or validity thereof or the correctness of any fact stated therein, the propriety or validity of the service thereof, or the jurisdiction of the court issuing any judgment or order. The Custodian/Escrow Agent may act in reliance upon any signature which is reasonably believed by it to be genuine, and may assume that such person has been properly authorized to do so.

(b) The Custodian/Escrow Agent may consult with legal counsel of its selection in the event of any dispute or question as to the meaning or construction of any of the provisions

hereof or its duties hereunder, and it shall incur no liability and shall be fully protected to the extent the Custodian/Escrow Agent acts in accordance with the reasonable opinion and instructions of counsel. The Custodian/Escrow Agent shall have the right to reimburse itself for reasonable legal fees and reasonable and necessary disbursements and expenses actually incurred from the Custodian/Escrow Account only (i) upon approval by Co-Lead Class Counsel or (ii) pursuant to an order of the Court.

(c) The Custodian/Escrow Agent, or any of its affiliates, is authorized to manage, advise, or service any money market mutual funds in which any portion of the Settlement Fund may be invested.

(d) The Custodian/Escrow Agent is authorized to hold any treasuries held hereunder in its federal reserve account.

(e) The Custodian/Escrow Agent shall not bear any risks related to the investment of the Settlement Fund in accordance with the provisions of paragraph 3 of this Custodian/Escrow Agreement. The Custodian/Escrow Agent will be indemnified by the Settlement Fund, and held harmless against, any and all claims, suits, actions, proceedings, investigations, judgments, deficiencies, damages, settlements, liabilities and expenses (including reasonable legal fees and expenses of attorneys chosen by the Custodian/Escrow Agent) as and when incurred, arising out of or based upon any act, omission, alleged act or alleged omission by the Custodian/Escrow Agent or any other cause, in any case in connection with the acceptance of, or performance or non-performance by the Custodian/Escrow Agent of, any of the Custodian/Escrow Agent's duties under this Agreement, except as a result of the Custodian/Escrow Agent's bad faith, willful misconduct or gross negligence.

(f) Upon distribution of all of the funds in the Custodian/Escrow Account pursuant to the terms of this Custodian/Escrow Agreement and any orders of the Court, Custodian/Escrow Agent shall be relieved of any and all further obligations and released from any and all liability under this Custodian/Escrow Agreement, except as otherwise specifically set forth herein.

(g) In the event any dispute shall arise between the parties with respect to the disposition or disbursement of any of the assets held hereunder, the Custodian/Escrow Agent shall be permitted to interplead all of the assets held hereunder into a court of competent jurisdiction, and thereafter be fully relieved from any and all liability or obligation with respect to such interpleaded assets. The parties further agree to pursue any redress or recourse in connection with such a dispute, without making the Custodian/Escrow Agent a party to same.

11. Non-Assignability by Custodian/Escrow Agent. Custodian/Escrow Agent's rights, duties and obligations hereunder may not be assigned or assumed without the written consent of Co-Lead Class Counsel and Gilead.

12. Resignation of the Custodian/Escrow Agent. Custodian/Escrow Agent may, in its sole discretion, resign and terminate its position hereunder at any time following 120 days prior written notice to the parties to the Custodian/Escrow Agreement herein. On the effective date of

such resignation, the Custodian/Escrow Agent shall deliver this Custodian/Escrow Agreement together with any and all related instruments or documents and all funds in the Custodian/Escrow Account to the successor Custodian/Escrow Agent, subject to this Custodian/Escrow Agreement. If a successor Custodian/Escrow Agent has not been appointed prior to the expiration of 120 days following the date of the notice of such resignation, then Custodian/Escrow Agent may petition the Court for the appointment of a successor Custodian/Escrow Agent, or other appropriate relief. Any such resulting appointment shall be binding upon all of the parties to this Custodian/Escrow Agreement.

13. Notices. Notice to the parties hereto shall be in writing and delivered by electronic mail and/or overnight courier service, addressed as follows:

If to Co-Lead Class  
Counsel: Michael Roberts  
ROBERTS LAW FIRM US, PC  
1920 McKinney Avenue, Suite 700  
Dallas, TX 75201  
mikeroberts@robertslawfirm.us  
Telephone: (501) 952-8558

Dianne M. Nast  
NASTLAW LLC  
1101 Market Street, Suite 2801  
Philadelphia, PA 19107  
dnast@nastlaw.com  
Telephone: (215) 923-9300

If to Gilead: Deborah H. Telman  
Executive VP, Corporate Affairs and General Counsel  
Gilead Sciences, Inc.  
333 Lakeside Drive  
Foster City, CA 94404  
generalcounsel@gilead.com

If to  
Custodian/Escrow  
Agent: THE HUNTINGTON NATIONAL BANK  
Liz Lambert, Senior Managing Director  
2 Great Valley Parkway, Suite 300  
Malvern, PA 19355  
Telephone: (215) 568-2382  
E-mail: liz.lambert@huntington.com  
  
Susan Brizendine, Trust Officer  
Huntington National Bank  
7 Easton Oval – EA5W63  
Columbus, Ohio 43219  
Telephone: (614) 331-9804  
E-mail: susan.brizendine@huntington.com

14. Patriot Act Warranties. Section 326 of the USA Patriot Act (Title III of Pub. L. 107-56), as amended, modified or supplemented from time to time (the "Patriot Act"), requires financial institutions to obtain, verify and record information that identifies each person or legal entity that opens an account (the "Identification Information"). The parties to this Custodian/Escrow Agreement agree that they will provide the Custodian/Escrow Agent with such Identification Information as the Custodian/Escrow Agent may request in order for the Custodian/Escrow Agent to satisfy the requirements of the Patriot Act.

15. Entire Agreement. This Custodian/Escrow Agreement, including all Schedules and Exhibits hereto, constitutes the entire agreement and understanding of the parties hereto. Any modification of this Custodian/Escrow Agreement or any additional obligations assumed by any party hereto shall be binding only if evidenced by a writing signed by each of the parties hereto. To the extent this Custodian/Escrow Agreement conflicts in any way with the Settlement Agreement, the provisions of the Settlement Agreement shall govern.

16. Governing Law. This Custodian/Escrow Agreement shall be governed by the law of the State of California in all respects. The parties hereto submit to the jurisdiction of the Court, in connection with any proceedings commenced regarding this Custodian/Escrow Agreement, including, but not limited to, any interpleader proceeding or proceeding Custodian/Escrow Agent may commence pursuant to this Custodian/Escrow Agreement for the appointment of a successor Custodian/Escrow agent, and all parties hereto submit to the jurisdiction of such Court for the determination of all issues in such proceedings, without regard to any principles of conflicts of laws, and irrevocably waive any objection to venue or inconvenient forum.

17. Termination of Custodian/Escrow Account. The Custodian/Escrow Account will terminate after all funds deposited in it, together with all interest earned thereon, are disbursed in accordance with the provisions of the Settlement Agreement and this Custodian/Escrow Agreement.

18. Miscellaneous Provisions.

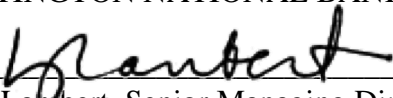
(a) Counterparts. This Custodian/Escrow Agreement may be executed in one or more counterparts, each of which counterparts shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Custodian/Escrow Agreement.

(b) Further Cooperation. The parties hereto agree to do such further acts and things and to execute and deliver such other documents as Custodian/Escrow Agent may request from time to time in connection with the administration, maintenance, enforcement or adjudication of this Custodian/Escrow Agreement in order (a) to give Custodian/Escrow Agent confirmation and assurance of Custodian/Escrow Agent's rights, powers, privileges, remedies and interests under this Agreement and applicable law, (b) to better enable Custodian/Escrow Agent to exercise any such right, power, privilege or remedy, or (c) to otherwise effectuate the purpose and the terms and provisions of this Custodian/Escrow Agreement, each in such form and substance as may be acceptable to Custodian/Escrow Agent.

(c) Non-Waiver. The failure of any of the parties hereto to enforce any provision hereof on any occasion shall not be deemed to be a waiver of any preceding or succeeding breach of such provision or any other provision.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first above written.

THE HUNTINGTON NATIONAL BANK, as Custodian/Escrow Agent

By:   
Liz Lambert, Senior Managing Director

Co-Lead Class Counsel for the Direct Purchaser Classes

By:   
ROBERTS LAW FIRM US, PC  
Michael Roberts  
mikeroberts@robertslawfirm.us  
1920 McKinney Avenue, Suite 700  
Dallas, TX 75201  
Telephone: (501) 952-8558

By:   
NASTLAW LLC  
Dianne M. Nast  
dnast@nastlaw.com  
1101 Market Street, Suite 2801  
Philadelphia, PA 19107  
Telephone: (215) 923-9300

**Exhibit 1**

**Settlement Agreement**



## **Exhibit 2**

### **Fees of Custodian/Escrow Agent**

**Acceptance Fee:**

**Waived**

The Acceptance Fee includes the review of the Custodian/Escrow Agreement, acceptance of the role as Custodian/Escrow Agent, establishment of Custodian/Escrow Account(s), and receipt of funds.

**Annual Administration Fee:**

**Waived**

The Annual Administration Fee includes the performance of administrative duties associated with the Custodian/Escrow Account including daily account management, generation of account statements to appropriate parties, and disbursement of funds in accordance with the Custodian/Escrow Agreement. Administration Fees are payable annually in advance without proration for partial years.

**Out of Pocket Expenses:**

**Waived**

Out of pocket expenses include postage, courier, overnight mail, wire transfer, and travel fees.

# Exhibit J

**REDACTED**