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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 (lead case)
This Document Relates To: *KPH Healthcare Services, Inc. v. Gilead Sciences, Inc. et al.*, 3:20-cv-06961-EMC	**[PROPOSED] PLAN OF ALLOCATION** Judge: Honorable Edward M. Chen

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

Settlement Fund created pursuant to KPH's Settlement Agreement with Defendants Gilead Sciences, Inc.; Gilead Holdings, LLC; Gilead Sciences, LLC; Gilead Sciences Ireland UC (collectively, "Gilead"), together with any interest accrued thereon (the "Gilead Settlement Fund").

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

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

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

[1] "Net Gilead Settlement Fund" means the Gilead Settlement Fund (including any interest earned) 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.

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

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

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

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

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

[2] The NDCs are standard codes maintained by the FDA and used in the pharmaceutical industry to identify specific pharmaceutical products and will allow Claimants to understand precisely which purchases are eligible for purposes of allocation.

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

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

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

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

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

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

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

[3] As used herein, the phrase "total unit volume" refers to the total unit volume of a Claimant's

total brand [drug] purchases) x (share allocated to [drug]) x (brand multiplier); and

b. for each generic drug (Claimant's total unit volume of generic [drug] purchased / total generic [drug] purchases) x (share allocated to [drug]) x (generic multiplier).

13. The relative share allocated to each concerned drug will be based on each drug's share of Extended Units ("EUs") in the IQVIA National Sales Perspectives ("NSP") data from February 2018 through February 2022: Atripla (12%), Truvada (88%).[4]

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

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

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

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

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

[4] Extended Units ("EUs") means the number of pills purchased.

18. No later than 28 days following the Claims deadline set forth in the Court's order granting preliminary approval of the Settlement, Co-Lead Class Counsel shall cause to be filed with the Court declarations from the Claims Administrator and Dr. Lamb summarizing their actions to effectuate this allocation. The declarations shall also include a summary of all costs and expenses incurred and expected to be incurred in connection with this Allocation Plan.

19. It is anticipated that the entire Net Gilead Settlement Fund will be distributed at one time. If amounts that are not *de minimis* remain in the fund 180 days after the initial distribution date due to expired checks or any other reason, such amounts shall be distributed *pro rata* to claimants that timely cashed their initial settlement checks based on the same formula used for the initial distribution. If the amounts remaining in the fund are *de minimis* such that a second distribution would not be economically feasible based on an assessment of the costs of distribution as compared to the amounts remaining in the fund, Co-Lead Class Counsel shall make an application with the Court, with notice to Gilead, addressing the proposed distribution of those funds.

Respectfully submitted,

Dated: July 24, 2023

By: /s/ Michael L. Roberts

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