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

21 *In re HIV Antitrust Litigation*

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

22 This Document Relates to:
23 *KPH Healthcare Services, Inc. v. Gilead*
Sciences, Inc. et al., 3:20-cv-06961-EMC

**DPPS' UNOPPOSED NOTICE OF MOTION
AND MOTION TO APPROVE CLASS
CERTIFICATION NOTICE PLAN**

24 Date: December 15, 2022
25 Time: 1:30 p.m.
Courtroom: 5, 17th Floor
26 Before: Honorable Edward M. Chen

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 15, 2022, at 1:30 p.m., or as soon thereafter as the matter may be heard, before the Honorable Edward M. Chen, United States District Judge, in Courtroom 5 of the United States District Court for the Northern District of California in San Francisco, California, Plaintiff KPH Healthcare Services, Inc. a/k/a Kinney Drugs, Inc. will move the Court pursuant to Federal Rule of Civil Procedure 23 for entry of an Order appointing KCC Class Action Services LLC as the Class Certification Notice Administrator, approving the proposed manner and form of notice, and allowing a 35-day opt-out period.

This motion is based on the accompanying Memorandum of Points and Authorities, the supporting declaration and exhibits, all papers and records on file in this matter, and the arguments of counsel.

Plaintiff has conferred with counsel for Gilead. Gilead does not oppose this motion.

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7 *In re Loestrin 24 Fe Antitrust Litig.*,
No. 13-md-02472, 2019 WL 3816844 (D.R.I. Aug. 14, 2019)..... 5

8 *In re Niaspan Antitrust Litig.*,
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11 Fed. R. Civ. P. 23..... 2, 3, 4

OTHER AUTHORITIES

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13 *Manual for Complex Litigation, Fourth* 4

14 The Northern District of California’s *Procedural Guidance for Class Action Settlements* 4, 5

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to this Court’s Class Certification Order¹ and the Joint Stipulation and Order
 4 Regarding Class Notice,² Plaintiff KPH Healthcare Services, Inc. a/k/a Kinney Drugs, Inc.
 5 (“Plaintiff”) moves this Court to appoint KCC Class Action Services LLC (“KCC”) as the Class
 6 Certification Notice Administrator, approve the proposed manner and form of notice, and allow a 35-
 7 day opt-out period. The proposed notice plan involves direct mail notice, publication notice, and a
 8 class certification website, as described in more detail below.

9 **II. FACTUAL BACKGROUND**

10 On September 27, 2022, this Court certified two direct purchaser classes and ordered the
 11 parties to report back within two weeks on their meet and confer efforts regarding the content and
 12 timing of class certification notice.³ On October 11, 2022, the parties submitted a joint proposal
 13 regarding class notice,⁴ which this Court approved on October 18, 2022.⁵ That stipulation and order
 14 set October 27, 2022 as the deadline for filing this motion for approval.⁶ Gilead approved the manner
 15 and form of notice proposed in this motion.

16 **III. ARGUMENT**

17 **A. KCC is Qualified to Serve as Notice Administrator**

18 Plaintiff has retained KCC to serve as the Class Certification Notice Administrator. KCC has
 19 been recognized as a best claims administrator by *The Recorder*, *The New York Law Journal*, and *The*
 20 *National Law Journal*, and has administered over 6,500 cases.⁷ The 2020 Antitrust Annual Report on
 21 Class Action Filings in Federal Court, published in August 2021, reports that from 2009 to 2020,
 22

23 ¹ ECF 1388.

24 ² ECF 1426.

25 ³ ECF 1388 at 94.

26 ⁴ ECF 1417.

27 ⁵ ECF 1426.

28 ⁶ *Id.* at 2.

⁷ See <https://www.kccllc.com/our-services/class-action/what-we-do>.

1 KCC was the third top claims administrator by aggregate settlement amount and the second top claims
2 administrator by number of settlements.⁸

3 This Court already has appointed KCC to serve as the Notice and Claims Administrator for
4 the settlement between BMS and the Direct Purchaser Plaintiffs in this litigation (the “BMS
5 Settlement”).⁹ Through its performance of tasks related to that appointment, KCC already is familiar
6 with this case, the list of potential Class Members to whom direct notice will be sent, and the media
7 outlets through which publication notice is proposed. This will allow for a more efficient
8 administration process. This combination of factors—expertise and case-specific experience and
9 knowledge—makes KCC particularly qualified to serve as Class Certification Administrator.

10 **B. The Proposed Manner of Notice Complies with Rule 23**

11 The proposed notice plan is comprised of three parts.¹⁰ *First*, KCC will mail the notice directly
12 to all Class Members,¹¹ which were previously identified through data analyses performed by
13 Plaintiff’s economic expert, Dr. Russell Lamb, as part of the notice administration process for the
14 BMS Settlement.¹² Prior to the initial mailing, KCC will check all postal addresses against the
15 National Change of Address (NCOA) database maintained by the USPS, certify them via the Coding
16 Accuracy Support System (CASS), and verify them through Delivery Point Verification (DPV).¹³
17 KCC will re-mail any returned notices to any alternate addresses available through postal service
18 forwarding order information.¹⁴

19 _____
20 ⁸ See https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3898782, Linked Document at 36.

21 ⁹ See ECF 1159 (Preliminary Approval Order) at ¶ 11.

22 ¹⁰ See Declaration of Carla A. Peak Regarding Gilead Class Certification Notice Plan (“Peak Class
23 Notice Declaration”) at ¶¶ 6-13. The Peak Class Notice Declaration is attached as Exhibit 1 to the
24 Declaration of Michael L. Roberts in Support of Motion to Approve Class Certification Notice Plan
25 (“Roberts Class Notice Declaration”), filed contemporaneously with this motion. All exhibit
26 references in this motion are to the exhibits to the Roberts Class Notice Declaration.

27 ¹¹ *Id.* at ¶ 6.

28 ¹² See ECF 1002 (Preliminary Approval Motion) at 4; ECF 1033 (Supplemental Preliminary Approval
Brief) at 1. Purchasers of brand and generic Atripla, and purchasers of brand and generic Truvada,
are a subset of the Class Members identified for the BMS Settlement. *See id.*

¹³ See Exhibit 1 (Peak Class Notice Declaration) at ¶ 7.

¹⁴ *Id.*

1 *Second*, KCC will provide digital notice—consisting of the notice headline and class action
 2 website URL—to appear once each in: (1) the National Wholesaler-Distributors (NAW) *NAW*
 3 *SmartBrief*, a subscription-only service dedicated to informing its 14,500+ wholesaler and distributor
 4 subscribers of news shaping their industry;¹⁵ (2) *Becker’s Pharmacy Report*, an electronic publication
 5 covering pharmacy and supply chain topics for its more than 18,500 pharmacy leader subscribers;¹⁶
 6 and (3) *Pharmaceutical Commerce Direct*, an e-newsletter geared toward providing pharmaceutical,
 7 biopharmaceutical, and marketing communications to over 14,000 subscribers, including wholesalers
 8 and distributors.¹⁷

9 *Third*, KCC will establish and maintain a case-specific website to allow Class Members to
 10 obtain additional information and documents about this case and the class certification
 11 determination.¹⁸ Class Members will be able to obtain deadline information and read and download
 12 the class certification opinion, the notice, and other important documents.¹⁹ The website address will
 13 be displayed in the notice and will be accessible through a hyperlink embedded in the digital notices.²⁰

14 This plan of sending “individual notice to all members who can be identified through
 15 reasonable effort” constitutes “the best notice that is practicable under the circumstances.” Fed. R.
 16 Civ. P. 23(c)(2)(B); *see also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-77 (1974). This is
 17 particularly true here where data should allow most, if not all, members to be identified. *See Hunt v.*
 18 *Check Recovery Sys., Inc.*, No. 05-cv-04993-MJJ, 2007 WL 2220972, at *3 (N.D. Cal. Aug. 1, 2007)
 19 (“Delivery by first-class mail can satisfy the best notice practicable when there is no indication that
 20 any of the class members cannot be identified through reasonable efforts.”).

21 The plan to supplement this direct notice with media notice and the class action website further
 22 supports the conclusion that the proposed plan satisfies due process. Both the Advisory Committee
 23

24 ¹⁵ *Id.* at ¶¶ 8, 9.

25 ¹⁶ *Id.* at ¶¶ 8, 10.

26 ¹⁷ *Id.* at ¶¶ 8, 11.

27 ¹⁸ *Id.* at ¶ 13.

28 ¹⁹ *Id.*

²⁰ *Id.*

1 Notes for the December 2018 Amendments to Rule 23 and the *Manual for Complex Litigation, Fourth*
 2 (*Manual*) at § 21.311 recognize such electronic means as appropriate methods of notice.

3 Additionally weighing in favor of approval of this notice plan is its similarity to the notice
 4 plan previously approved by this Court for the BMS Settlement, utilizing direct mail notice,
 5 publication in the same media outlets (with one exception), and a website.²¹ The court-approved
 6 notice plan for the BMS Settlement did not include *NAW SmartBrief*, but Plaintiff voluntarily added
 7 that publication because it was determined to provide better coverage and reach among the Class.²²
 8 For the same reason, Plaintiff recommends using *NAW SmartBrief* as part of this notice plan, and
 9 eliminating use of *JAMA*, which is aimed more at reaching medical providers.²³

10 **C. The Proposed Form of Notice Comply with Rule 23**

11 The proposed notice states the following, as required by Rule 23(c)(2)(B): (1) the nature of
 12 the action (at No. 2); (2) the definition of the class certified (at No. 4); (3) the class claims, issues, or
 13 defenses (at No. 2); (4) that a class member may enter an appearance through an attorney if the
 14 member so desires (at Nos. 7, 10); (5) that the court will exclude from the class any member who
 15 requests exclusion (at No. 5); (6) the time and manner for requesting exclusion (at No. 5); and (7) the
 16 binding effect of a class judgment on members under Rule 23(c)(3) (at Nos. 5, 9, 11).²⁴

17 The proposed notice also includes additional information recommended by the *Manual* at §
 18 21.311 by: (1) describing succinctly the positions of the parties (at No. 2); (2) identifying the opposing
 19 parties, class representative, and counsel (at Nos. 3, 6); and (3) explaining any risks and benefits of
 20 retaining class membership and opting out, while emphasizing that the court has not ruled on the
 21 merits of any claims or defenses (at Nos. 2, 5, 9, 11). The notice likewise contains additional
 22 information recommended (albeit for class action settlements) by the Northern District of California's

23
 24 ²¹ *Id.* at ¶ 14; *see also* ECF 1159 (Preliminary Approval Order) at ¶ 14 (ordering direct mail notice
 25 and publication notice in the *Healthcare Distribution Alliance ("HDA") Weekly Digest*,
 26 *Pharmaceutical Commerce*, and *JAMA*); ECF 1234 (Modified Notice Plan) at 1 and ¶ 1 (substituting
 27 publication in *Becker's Pharmacy Report* for publication in the *HDA Weekly Digest*).

28 ²² Exhibit 1 (Peak Class Notice Declaration) at ¶ 12.

²³ *Id.*

²⁴ *See* Exhibit 2.

1 *Procedural Guidance for Class Action Settlements* (“ND CA Procedural Guidance”) at §§ 3-4 by
 2 including: (1) contact information for class counsel (at No. 6); (2) the website address (at No. 12); (3)
 3 instructions on how to access the case docket (at No. 12); and (4) how to opt out via the submission
 4 of minimal information to KCC (at No. 5). In sum, the proposed notice provides sufficient information
 5 to Class Members to satisfy due process.

6 **D. A Thirty-Five Day Opt-Out Period is Adequate and Fair**

7 Plaintiff proposes that this Court allow a 35-day opt-out period, starting from when notices
 8 are mailed, for Class Members to submit requests to exclude themselves from the class. This is
 9 consistent with the period this District requires for class members to opt out of class action
 10 settlements. *See* ND CA Procedural Guidance at § 9. This is also consistent with the opt-out period
 11 granted in other antitrust class actions that similarly seek damages incurred as a result of alleged
 12 generic delay. *See, e.g., In re Intuniv Antitrust Litig.*, No. 16-cv-12653, ECF 400 (D. Mass. Jan. 10,
 13 2020) (approving order proposed at ECF 393-1, which included a 35-day opt-period in ¶ 4); *In re*
 14 *Niaspan Antitrust Litig.*, No. 13-md-02460, ECF 697 at ¶¶ 2-3 (E.D. Pa. Dec. 13, 2019) (setting
 15 deadlines of December 27, 2019 for mailed notice and January 31, 2020 for opt-out requests); *In re*
 16 *Loestrin 24 Fe Antitrust Litig.*, No. 13-md-02472, 2019 WL 3816844, at *2 (D.R.I. Aug. 14, 2019)
 17 (requiring opt-out requests to be postmarked within 35 days from mailed notice).

18 **IV. CONCLUSION**

19 For all the foregoing reasons, Plaintiff respectfully requests that this Court appoint KCC as
 20 the Class Certification Notice Administrator, approve the proposed manner and form of class
 21 certification notice, and allow a 35-day opt-out period.

22 Dated: October 27, 2022

23 Respectfully submitted,
 24 By: /s/ Francis O. Scarpulla
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17 IN THE UNITED STATES DISTRICT COURT
18 FOR THE NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO DIVISION

20 *In re HIV Antitrust Litigation*

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

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

DECLARATION OF MICHAEL L.
ROBERTS IN SUPPORT OF
MOTION TO APPROVE CLASS
CERTIFICATION NOTICE PLAN

Judge: Honorable Edward M. Chen

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1 I, Michael L. Roberts, declare as follows:

2 1. I am the managing partner of Roberts Law Firm US, PC. The Court appointed me
3 as Interim Co-Lead Counsel for the Direct Purchaser Class in this case. I submit this declaration in
4 support of Plaintiff's Motion to Approve Class Certification Notice Plan. I have personal
5 knowledge of the information set forth in this declaration.

6 2. Attached as Exhibit 1 is a true and correct copy of the Declaration of Carla Peak,
7 Vice President of Legal Notification Services at KCC Class Action Services, LLC.

8 3. Attached as Exhibit 2 is a true and correct copy of the proposed Notice.

9 Executed on October 27, 2022 in Dallas, TX.

10 

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EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re HIV Antitrust Litigation

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*

Case No. 3:19-cv-2573-EMC (Lead Case)

**DECLARATION OF CARLA A. PEAK
REGARDING GILEAD CLASS
CERTIFICATION NOTICE PLAN**

I, Carla A. Peak, declare as follows:

1. My name is Carla A. Peak. I am the Vice President of Legal Notification Services at KCC, the administrator appointed by this Honorable Court to oversee the notice plan for the settlement with the BMS Defendants. I have personal knowledge of the matters set forth herein and, if called as a witness, I could and would testify competently to them.

2. My experience and credentials were previously submitted to the court on April 13, 2022 in the Declaration of Carla A. Peak Regarding Settlement Notice Plan (Dkt. 1002-1, Exhibit 3). This Declaration describes the proposed notice plan (the “Notice Plan” or “Notice Program”) designed to provide notice to class members about the certification of classes for the remaining claims pending against Gilead Sciences, Inc.; Gilead Holdings, LLC; Gilead Sciences, LLC; and Gilead Sciences Ireland UC (collectively, “Gilead”).

NOTICE PLAN OVERVIEW

3. The proposed Notice Program utilizes direct notice to effectively reach the Classes. The Notice Program is expected to reach virtually the entirety of the Classes through the direct notice effort alone. Though not measurable, the Notice Program will be further supplemented by paid notice in the electronic newsletters and one print edition of industry trade journals.

4. The expected reach of the Notice Program is consistent with other effective court-approved notice programs and is designed to meet due process requirements. The Federal Judicial Center’s Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide (the “FJC Checklist”) considers 70-95% reach among class members to be a “high percentage” and reasonable.

NOTICE PROGRAM DETAILS

Class Definitions

5. The two classes are defined as:

Atripla Class: All persons or entities in the United States and its territories who purchased Atripla or generic Atripla directly from any Defendants or any brand or generic drug manufacturer from February 1, 2018 until September 27, 2022.

Truvada Class: All persons or entities in the United States and its territories who purchased Truvada or generic Truvada directly from any Defendants or any brand or generic drug manufacturer from February 1, 2018 until September 27, 2022.

Excluded from the Classes are: (1) BMS, Gilead, and their officers, directors, employees, subsidiaries, and affiliates; (2) federal, state, and local governmental entities; and (3) any judicial officer presiding over the litigation and members of their immediate families and judicial staff.

Direct Notice

6. Class Counsel will provide KCC with a list of mailing addresses for all Direct-Purchaser Class Members. This list is expected to contain approximately 78 postal addresses. KCC will use this list to send a detailed notice via United States Postal Service (USPS) to all Class Members.

7. Prior to mailing, all postal addresses will be checked against the National Change of Address (NCOA)¹ database maintained by USPS; certified via the Coding Accuracy Support

¹ The NCOA database contains records of all permanent change of address submissions received by the USPS for the last four years. The USPS makes this data available to mailing firms and lists submitted to it are automatically updated with any reported move based on a comparison with the person’s name and last known address.

System (CASS);² and verified through Delivery Point Validation (DPV).³ Notices returned by USPS as undeliverable will be re-mailed to any address available through postal service forwarding order information.

Media Campaign

8. KCC will cause a digital notice—consisting of the notice headline and class action website URL—to appear once in the National Association of Wholesaler-Distributors (NAW) *NAW SmartBrief*, once in *Becker's Pharmacy Report*, and once in *Pharmaceutical Commerce Direct* e-newsletters.

9. *NAW SmartBrief* is a subscription-only news service dedicated to informing wholesalers and distributors of the news shaping their industry. Developed in partnership with the National Association of Wholesaler-Distributors, *NAW SmartBrief* provides a summary of essential industry news and is delivered to more than 14,500 subscribers daily.

10. Becker's Healthcare (Becker's) provides business news and information for healthcare leaders, consistently reaching and engaging industry decision-makers in hospital and health systems. *Becker's Pharmacy Report* is an electronic publication geared to pharmacy leaders to cover important topics related to pharmacy and supply chain, among others. *Becker's Pharmacy Report* is delivered to more than 18,500 subscribers four times per week.

11. *Pharmaceutical Commerce* is geared toward pharmaceutical, biopharmaceutical, marketing communications and other service/consulting industries, including executive managers in pharmaceutical manufacturing and contract research, wholesalers and distributors, logistic service providers, patient support organizations, internet technology service providers, advertising agencies and consulting firms. *Pharmaceutical Commerce Direct* is issued twice monthly and has over 14,000 e-newsletter subscribers.

² Coding Accuracy Support System is a certification system used by the USPS to ensure the quality of ZIP+4 coding systems.

³ Records that are ZIP+4 coded are then sent through Delivery Point Validation to verify the address and identify Commercial Mail Receiving Agencies. DPV verifies the accuracy of addresses and reports exactly what is wrong with incorrect addresses.

12. The court-approved notice plan for the Settlement with BMS Defendants did not originally include *NAW SmartBrief*. *NAW SmartBrief* was voluntarily added after obtaining court approval because it was determined that it would provide better coverage and reach among the Class. Class Counsel and KCC are now asking the court to approve the use of *NAW SmartBrief* as part of this notice plan and eliminate the use of *JAMA*, which is aimed more at reaching medical providers.

Class Action Website

13. KCC will establish and maintain a case-specific website to allow Class members to obtain additional information and documents about the certification of classes for the remaining claims pending against Gilead. Class Members will be able to read and download the Class Certification Opinion, the Long Form Notice, and other important documents and deadlines. The website address will be displayed in the notice documents and be accessible through a hyperlink embedded in the digital notices.

CONCLUSION

14. The proposed Notice Plan is consistent with other notice programs, including the BMS settlement notice program, and meets the due process communications standard of *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950). It provides the same reach evidence that courts have approved and that has withstood appellate scrutiny, other expert critiques, as well as collateral review. The Notice Plan is consistent with the guidelines set forth in Fed. R. Civ. P. 23(c)(2)(B), the *Manual for Complex Litigation, Fourth*, and the FJC Checklist.

I, Carla A. Peak, declare under penalty of perjury that the foregoing is true and correct. Executed this 27th day of October 2022, at Sellersville, Pennsylvania.



Carla A. Peak

EXHIBIT 2

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

If you purchased brand or generic Atripla[®] (efavirenz/emtricitabine/tenofovir disoproxil fumarate) or brand or generic Truvada[®] (emtricitabine/tenofovir disoproxil fumarate) directly from the manufacturer, a class action lawsuit could affect your rights.

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

- The purpose of this notice is to alert you about a Class Action Lawsuit (the “Lawsuit”) brought by Direct Purchasers of brand or generic Atripla (600 mg of efavirenz/200 mg of emtricitabine/300 mg of tenofovir disoproxil fumarate) or brand or generic Truvada (200 mg of emtricitabine/300 mg of tenofovir disoproxil fumarate). This Lawsuit concerns only Direct Purchasers, which are typically pharmaceutical wholesalers.
- The Lawsuit asserts that Gilead Sciences, Inc.; Gilead Holdings, LLC; Gilead Sciences, LLC; Gilead Sciences Ireland UC (“Gilead”) and Bristol-Myers Squibb Company and E. R. Squibb & Sons, L.L.C. (“BMS”) (collectively, “Defendants”) violated antitrust laws by delaying generic competition for Atripla and Truvada, which caused direct purchasers to pay too much for those products. Defendants deny any wrongdoing. A proposed settlement has been reached with BMS. The Lawsuit remains ongoing against Gilead.
- The Court has determined that the Lawsuit can proceed as a class action because it meets the requirements of Federal Rule of Civil Procedure 23, which governs class actions in federal courts. There are two classes:

Atripla Class: All persons or entities in the United States and its territories who purchased Atripla or generic Atripla directly from any Defendants or any brand or generic drug manufacturer from February 1, 2018 until September 27, 2022.

Truvada Class: All persons or entities in the United States and its territories who purchased Truvada or generic Truvada directly from any Defendants or any brand or generic drug manufacturer from February 1, 2018 until September 27, 2022.

Excluded from the Classes are: (1) BMS, Gilead, and their officers, directors, employees, subsidiaries, and affiliates; (2) federal, state, and local governmental entities; and (3) any judicial officer presiding over the litigation and members of their immediate families and judicial staff.

- If you are a member of the Atripla Class or the Truvada Class (collectively, “Direct Purchaser Class”), your legal rights will be affected whether you act or don’t act, so please read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS	
DO NOTHING	<p>If you do nothing, you will remain in the Direct Purchaser Class, and you may be entitled to share in any recovery that may come from a trial or settlement with Gilead.</p> <p>All the Court’s orders will apply to you and will legally bind you.</p> <p>You will not be able to start another lawsuit, continue another lawsuit, or be part of any other lawsuit against Gilead relating to the legal and factual issues in this case.</p>
EXCLUDE YOURSELF FROM THE CLASS	<p>You may choose to exclude yourself (i.e., “opt out”) from the Direct Purchaser Class.</p> <p>If you decide to exclude yourself, you will not be bound by any decision in this Lawsuit.</p> <p>This is the only option that may allow you to bring, continue, or be part of any other lawsuit against Gilead relating to the legal and factual issues in this case.</p>
GET MORE INFORMATION	<p>If you would like to obtain more information about the Lawsuit, you can review the website: WEBSITE</p> <p>You may also send questions to the lawyers identified in Question 6 of this notice.</p>

- These rights and options – and the deadlines to exercise them – are explained in this notice.

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BASIC INFORMATION

1. WHY DID I GET THIS NOTICE?

You received this notice because according to sales records of Gilead and certain generic manufacturers, you may have purchased brand or generic Atripla (600 mg of efavirenz/200 mg of emtricitabine/300 mg of tenofovir disoproxil fumarate) or brand or generic Truvada (200 mg of emtricitabine/300 mg of tenofovir disoproxil fumarate) directly from the manufacturer at some point between February 1, 2018 and September 27, 2022, and therefore you may be a member of the Direct Purchaser Class.

2. WHAT IS THIS LAWSUIT ABOUT?

This Lawsuit is a class action known as *KPH Healthcare Services, Inc. v. Gilead Sciences, Inc.*, No. 20-cv-06961-EMC (N.D. Cal.). It has been coordinated with *In re HIV Antitrust Litig.*, No. 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 Direct Purchaser Class alleges that Gilead violated federal antitrust laws by engaging in unlawful conduct to delay competition of generic versions of the HIV medications Atripla and Truvada. The Direct Purchaser Class alleges that Gilead entered into a “reverse payment” settlement with Teva Pharmaceuticals (“Teva”), through which it paid Teva to delay entry of its generic versions of Atripla and Truvada. The Direct Purchaser Class also alleges that this arrangement resulted in direct purchasers of Atripla, Truvada, and their generic equivalents paying overcharges.

Gilead denies these allegations and denies that any Class Member is entitled to damages or any other relief. Gilead also denies that any of its conduct violated any applicable law or regulation.

No court or other authority has determined whether the Direct Purchaser Class or Gilead is correct, or whether Gilead violated any laws, and no trial has been held. This notice is not an expression of any opinion by the Court as to the merits of the claims of the Direct Purchaser Class or the defenses asserted by Gilead.

3. WHY IS THIS LAWSUIT A CLASS ACTION?

In a class action, one or more entities called “Class Representatives” sue on behalf of other entities with similar claims. In this case, the Class Representative is KPH Healthcare Services, Inc. a/k/a Kinney Drugs, Inc. (“KPH”).

The Class Representative and the entities on whose behalf it has sued together constitute the “Class” or “Class Members.” They are also called the “Direct Purchaser Class” or “Plaintiffs.” Their attorneys are called “Plaintiffs’ Counsel,” “Co-Lead Counsel for the Class,” or “Class Counsel.”

The companies that have been sued are called the “Defendants.” In this case, the Defendants are Gilead Sciences, Inc.; Gilead Holdings, LLC; Gilead Sciences, LLC; Gilead Sciences Ireland UC (“Gilead”) and Bristol-Myers Squibb Company and E. R. Squibb & Sons, L.L.C. (“BMS”). A proposed settlement has been reached with BMS. The Lawsuit remains ongoing against Gilead.

In a class action lawsuit, one court resolves the issues for all Class Members, except for those who exclude themselves (i.e., “opt out”) from the Class. The District Court, by an order filed on September 27, 2022, has determined that the Lawsuit by the Direct Purchaser Class against Gilead can proceed as a class action. A copy of the District Court’s class certification order may be found on the website developed for this litigation: [WEBSITE](#).

Specifically, the Court has found that:

- The number of Class Members is so numerous that joining them all in one suit is impracticable.
- Class members share common legal and factual issues relating to the claims in this case.
- The claims of the Class Representative are typical of the claims of the rest of the Class Members.
- The Class Representative and the lawyers representing the Class will fairly and adequately protect the Class’s interests.
- Classwide issues predominate over any questions affecting only individual members of the class, and this class action is a superior method to fairly and efficiently adjudicate this controversy.

WHO IS IN THE DIRECT PURCHASER CLASS?

4. AM I PART OF THE DIRECT PURCHASER CLASS?

You are in the Class if you are a person or entity in the United States or its territories that purchased brand or generic Atripla or brand or generic Truvada directly from the manufacturer at any time from February 1, 2018 until September 27, 2022.

Excluded from the Class are: (1) BMS, Gilead, and their officers, directors, employees, subsidiaries, and affiliates; (2) federal, state, and local governmental entities; and (3) any judicial officer presiding over the litigation and members of their immediate families and judicial staff.

If you are not sure whether you are included, you may call or write to the lawyers in this case at the telephone numbers or addresses listed in Question 6 below. If you wish to exclude yourself from the Class, please refer to Question 5 below.

EXCLUDING YOURSELF FROM THE DIRECT PURCHASER CLASS

5. CAN I GET OUT OF THE LAWSUIT?

Yes, if you exclude yourself (i.e., “opt out”) from the Direct Purchaser Class on or before 35 days from the date this notice mailed.

To be excluded from the class, you must send a letter via first-class U.S. mail *or* by email (though we *recommend* you do both) saying you want to exclude yourself from the Direct Purchaser Class in *In re HIV Antitrust Litigation*, No. 19-cv-02573-EMC (N.D. Cal.). Be sure to include your name, address, telephone number, email address, and your signature. Mail or email the exclusion to the Claims Administrator at the following address:

HIV Antitrust Litigation
Claims Administrator
ATTN: Exclusions
P.O. Box 990
Core Madera, CA 94976

EMAIL

Your letter or email requesting exclusion must be postmarked or emailed no later than **[DATE]**, which is 35 days from the date this notice mailed. If there is any dispute regarding your request to be excluded, it will be resolved by the Court.

If your right to recover stems from your own qualifying purchases of brand or generic Atripla or brand or generic Truvada, no more is required of you.

If you wish to be excluded from the class and have been assigned all of the antitrust rights of a person or entity that would have otherwise been a member of the class, you must ultimately also provide a copy of the assignment of claims. If you fail to provide a copy, you may be subject to limited discovery to confirm the assignment.

If you wish to be excluded from the class and you are a partial assignee (i.e., if the entity that assigned antitrust claims to you retained some portion of its antitrust claims and remains a class member), you must ultimately also provide (a) a copy of the assignment of claims, and (b) data identifying the purchases you made from your assignor that you contend define the scope of the assigned claims. If you fail to provide these materials, you may be subject to limited discovery to confirm the assignment and the scope of the assignment.

If you exclude yourself from the Direct Purchaser Class, you will not be legally bound by anything that happens in this Lawsuit. If you exclude yourself from the Direct Purchaser Class so you can start or continue your own lawsuit against Gilead, or be part of any other lawsuit against Gilead relating to the legal and factual issues in this case, you should talk to your own lawyer because your claims will be subject to a statute of limitations, which means that your claims may be subject to expiration without timely action.

If you do not exclude yourself from the Direct Purchaser Class, you will keep the right to a share of any recovery that may come from a trial or settlement of this Lawsuit. You will not be able to start, continue, or be part of any other lawsuit against Gilead about the legal or factual issues in this case. All the Court's orders in the Lawsuit will apply to you and legally bind you. You also will be bound by any judgment in the Lawsuit.

THE LAWYERS REPRESENTING THE CLASS

6. DO I HAVE A LAWYER IN THIS CASE?

The Court appointed the following attorneys as Class Counsel:

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Sarah E. DeLoach
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San Francisco, CA 94118
Telephone: 415-751-4193
Email: fos@scarpullalaw.com

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

7. SHOULD I GET MY OWN LAWYER?

You do not need to hire your own lawyer because Class Counsel are working on your behalf. However, if you wish to do so, you may retain your own lawyer at your own expense.

8. HOW WILL THE LAWYERS BE PAID?

If Class Counsel achieves a recovery for the Class, for example by way of settlement or after winning at trial, they will ask the Court to approve reasonable attorneys' fees, as well as reimbursement of expenses Class Counsel have advanced on behalf of the Class. If the Court grants Class Counsel's requests, fees and expenses would either be deducted from any money obtained for the Class, or the Court may order Gilead to pay attorneys' fees and costs in addition to any damage award to the Class. Class Members will not have to pay any attorneys' fees or expenses except out of money obtained for the Class.

THE TRIAL

9. HOW AND WHEN WILL THE COURT DECIDE WHO IS RIGHT?

If the claims against Gilead are not resolved by settlement or otherwise, Class Counsel will have to prove the claims of the Direct Purchaser Class at trial. A jury trial is scheduled to begin on March 27, 2023. Class Counsel will present the case for the Direct Purchaser Class, and counsel for Gilead will present Gilead's defenses. There is no guarantee that the Direct Purchaser Class will win, or that they will get any money. Any judgment will be binding on all members of the Direct Purchaser Class who have not opted out, regardless of who wins.

10. DO I HAVE TO COME TO THE TRIAL?

You do not need to attend the trial, but you and/or your own lawyer are welcome to attend at your own expense. If the Direct Purchaser Class obtains money or benefits as a result of the trial or settlement, you will be notified about how to participate. We do not know how long this will take.

IF YOU DO NOTHING

11. WHAT HAPPENS IF I DO NOTHING AT ALL?

If you do nothing, you will keep the right to a share of any recovery that may come from a trial or settlement of this Lawsuit. You will not be able to start another lawsuit, continue another lawsuit, or be part of any other lawsuit against Gilead about the legal and factual issues in this case. All the Court's orders in this Lawsuit will apply to you and legally bind you. You will also be bound by any judgment in the Lawsuit.

GETTING MORE INFORMATION

12. HOW DO I GET MORE INFORMATION?

For more detailed information about this litigation, please: (1) refer to the class website developed for this litigation: **WEBSITE**; (2) call or write to Class Counsel using the contact information in Question 6 of this notice; (3) access the Court docket for this case and view selected filings, for a fee, through the Court's PACER system at <https://ecf.cand.uscourts.gov>; or (4) visit the Office of the Clerk of Court, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102-3489 between 9:00 a.m. and 4:00 p.m. on Monday through Friday, excluding Court holidays.

PLEASE DO NOT WRITE OR CALL THE COURT OR THE CLERK'S OFFICE FOR INFORMATION.

DATE: _____, 2022

BY THE COURT
Honorable Edward M. Chen
United States District Judge
Northern District of California

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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] ORDER GRANTING
DPPS’ MOTION TO APPROVE CLASS
CERTIFICATION NOTICE PLAN**

Judge: Honorable Edward M. Chen

Upon review and consideration of the Motion to Approve Class Certification Notice Plan, dated October 27, 2022, along with its supporting memorandum and exhibits, IT IS HEREBY ORDERED that the motion is GRANTED as follows:

1. The Court finds that the proposed form of notice attached to the motion, and the proposed manner of disseminating notice, satisfy Federal Rule of Civil Procedure 23 and principles of due process and are otherwise fair and reasonable. For this reason, the Court approves the proposed form and manner of notice and provides the following directives regarding implementation.

2. The Court appoints KCC Class Action Services, LLC (“KCC”) as the Class Certification Notice Administrator to disseminate notice to the Class and process and engage in follow-up communications.

3. By _____ [14 days after entry of this Order], KCC shall:

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a. cause a detailed notice substantially in the form attached as Exhibit 2 to the Roberts Class Notice Declaration to be mailed to the last-known mailing address of each known Class Member; and

b. cause digital notice, consisting of the notice headline and class action website URL, to appear once each in: (1) the *NAW SmartBrief*; (2) *Becker's Pharmacy Report*; and (3) *Pharmaceutical Commerce Direct*.

4. Prior to the first dissemination of notice, whether by mail or publication, KCC shall cause a class certification website to become live with reference to applicable deadlines and links to copies of the Class Certification Opinion and the Long Form Notice.

5. The notices shall list _____ [49 days after entry of this Order] as the deadline for opting out of the Class.

IT IS SO ORDERED.

Dated: _____

Hon. Edward M. Chen
United States District Judge

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Patrick B. Clayton (Cal. Bar 240191)
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6 *Liaison Counsel for the Direct Purchaser Classes*

7
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17 *Co-Lead Counsel for the Direct Purchaser
Classes*

18
19 IN THE UNITED STATES DISTRICT COURT
20 FOR THE NORTHERN DISTRICT OF CALIFORNIA
21 SAN FRANCISCO DIVISION

22 *IN RE* : HIV ANTITRUST LITIGATION

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

CERTIFICATE OF SERVICE

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25 THIS DOCUMENT RELATES TO :

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

CERTIFICATE OF SERVICE

I certify that on October 27, 2022, I electronically filed the following:

**DPPS' UNOPPOSED NOTICE OF MOTION AND MOTION
TO APPROVE CLASS CERTIFICATION NOTICE PLAN;**

**DECLARATION OF MICHAEL L. ROBERTS IN SUPPORT
OF MOTION TO APPROVE CLASS CERTIFICATION
NOTICE PLAN;**

**[PROPOSED] ORDER GRANTING DPPS' MOTION TO
APPROVE CLASS CERTIFICATION NOTICE PLAN;**

and

CERTIFICATE OF SERVICE

using the CM/ECF system, which will send notification of each filing to all attorneys of record in this matter. I certify under penalty of perjury that the foregoing is true and correct.

DATED this 27th day of October, 2022.

/s/ Francis O. Scarpulla
Francis O. Scarpulla