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

29 *IN RE HIV ANTITRUST LITIGATION*

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

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

DECLARATION OF MICHAEL L. ROBERTS IN SUPPORT OF DIRECT PURCHASER CLASS PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT WITH GILEAD DEFENDANTS, AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF COSTS AND EXPENSES, AND A CLASS REPRESENTATIVE SERVICE AWARD

Judge: Honorable Edward M. Chen

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

2 1. I am an attorney duly licensed to practice in the States of Arkansas, Florida,
3 Illinois, New York, Tennessee, and Texas. I am the managing partner of Roberts Law Firm US,
4 PC (“RLF”), and am Court-appointed as Co-Lead Class Counsel for the Direct Purchaser Plaintiff
5 (“DPP”) Classes (“Classes”). RLF’s firm resume is attached as Exhibit 1. I have personal
6 knowledge of the information set forth in this declaration and, if called upon, I could and would
7 competently testify thereto.

8 2. I respectfully submit this declaration in support of Direct Purchaser Class
9 Plaintiffs’ Motion for Final Approval of Class Action Settlement with Gilead and Attorneys’
10 Fees, Costs and Expenses, and Service Award.

11 **I. INTRODUCTION AND SUMMARY OF WORK PERFORMED**

12 3. After four years of complex case work and hard-fought litigation, DPPs reached a
13 Settlement with Gilead providing for Gilead’s payment of \$246,750,000 to resolve Direct
14 Purchaser Class Members’ claims against it. After weeks of exhaustive negotiations assisted by
15 Kenneth Feinberg, the Settlement was reached just hours before opening statements were to be
16 given in the jury trial. The Settlement is a tremendous result for the Settlement Class and readily
17 exceeds the requisite final approval standard of fair, adequate, and reasonable.

18 4. The Settlement is attributable to the judgment and skill of DPP Counsel¹ and the
19 tremendous resources, in terms of both time and money, that DPP Counsel devoted to advancing
20 DPP Class Members’ claims. The litigation was novel because, among other factors, the pay-for-
21 delay theory advanced was based solely on acceleration clauses in an agreement between Gilead
22 (a brand manufacturer) and Teva (a generic manufacturer), and Teva (but not Gilead) waived
23 attorney-client privilege as to settlement communications regarding the agreement at issue. It was
24 also extremely complex to prosecute because DPPs were required to coordinate with four other
25 plaintiff groups advancing similar (but not overlapping) claims; indeed, DPPs’ claims were based
26 in federal law, while three of the four other plaintiff groups’ claims were based in state law.

27
28 ¹ “DPP Counsel” refers to all counsel representing DPPs in this litigation.

1 5. To reach this result, DPP Counsel engaged in exhaustive discovery (including
2 representing the DPP Classes in 90 depositions and reviewing millions of pages of documents);
3 briefed scores of motions; coordinated with 13 experts; participated in dozens of hearings, case
4 management conferences, and meet-and-confer conferences with counsel for Defendants and for
5 third parties; defended a petition for leave to appeal to the Ninth Circuit Court of Appeals; and
6 prepared extensively for trial, including holding two DPP-only focus group sessions in the Bay
7 Area, a two-day in-person DPP-only mock jury trial in the Bay Area, and actively participating in
8 an all-plaintiffs' mock trial in the Bay Area. DPP Counsel's efforts throughout the litigation
9 produced successful results for the DPP Classes: DPPs prevailed in defeating a motion to dismiss
10 and a motion to compel arbitration, having two direct purchaser classes certified and defeating
11 Gilead's petition for appellate review of that decision, defeating Defendants' motion for summary
12 judgment on Plaintiffs' reverse payment claims (working alongside other plaintiff groups), and
13 negotiating a settlement in which Gilead paid \$246,750,000 for the benefit of the Classes.

14 6. DPP Counsel report having expended 39,091 hours working on the litigation for a
15 collective lodestar of \$34,281,869 calculated at current rates.² DPP Counsel also report having
16 incurred unreimbursed costs and expenses of \$2,887,478.45 in furtherance of the litigation.³

17 7. The following describes the background of the litigation, including its procedural
18 history, motion practice, settlement negotiations, and other activities. This declaration further
19 supports that the Settlement should be finally approved and that the requested award of attorneys'
20 fees, costs, and expenses is reasonable and justified.

21
22
23
24 ² The 39,091 hours Class Counsel refer to herein excludes the 520 hours DPP Counsel
25 collectively spent between inception and October 31, 2023 on this filing, BMS Settlement
administration, and time from attorneys with less than \$20,000 in lodestar on the case.

26 ³ The exhibits attached to this declaration are as follows. Attached as Exhibit 1 is the RLF Firm
27 Resume. Attached as Exhibit 2 is RLF's categorized time. Attached as Exhibit 3 is the Decl. of
28 Dianne M. Nast. Attached as Exhibit 4 is the Decl. of Michael D. Hausfeld. Attached as Exhibit 5
is the Decl. of Francis O. Scarpulla. Attached as Exhibit 6 is the Decl. of Carla Peak. Attached as
Exhibit 7 is the Decl. of Brian T. Fitzpatrick.

1 **II. OVERVIEW OF THE LITIGATION**

2 **A. Factual Investigation, Complaints, Motions to Dismiss, and Motions to Compel**
3 **Arbitration and Alternative Dispute Resolution**

4 8. KPH began investigating a potential claim on behalf of itself and DPPs in June
5 2019. DPP counsel researched the underlying facts and investigated the allegations supporting
6 antitrust claims and potential damages for KPH and the Classes. KPH investigated its purchases
7 of the drugs at issue. Following DPP Counsel’s careful analysis of the evidence and law in
8 support of direct purchaser claims, on February 5, 2020, KPH filed its initial complaint against
9 Gilead Sciences, Inc.; Gilead Holdings, LLC; Gilead Sciences, LLC; and Gilead Sciences Ireland
10 UC (collectively, “Gilead”); Bristol-Myers Squibb Company, E.R.; Squibb & Sons, LLC
11 (collectively, “BMS”); Janssen R&D Ireland; and Johnson & Johnson (collectively, “Janssen”);
12 and Japan Tobacco. Complaint, Case No. 3:20-cv-00880, ECF No. 1.

13 9. On May 8, 2020, the Court entered an Order appointing Dianne Nast and me as
14 Interim Co-Lead Counsel for the putative Direct Purchaser Classes, and appointing Francis
15 Scarpulla as Interim Liaison Counsel for the putative Direct Purchaser Classes. Order Appointing
16 Interim Co-Lead Counsel, Case No. 3:20-cv-00880, ECF No. 48.

17 10. On June 5, 2020, Defendants moved to dismiss KPH’s initial complaint and to
18 compel KPH to arbitrate its claims against them. *See* Gilead’s Motion to Dismiss, ECF No. 358;
19 Janssen’s Motion to Dismiss and Janssen and Gilead’s Motion to Compel Arbitration, ECF No.
20 359. Defendants’ motions invoked settlement negotiation clauses in the McKesson-Gilead
21 Authorized Distributor of Record Agreement and the McKesson-BMS Distribution Services
22 Agreement. KPH’s Notice of Voluntary Dismissal, ECF No. 369. Although DPPs maintained the
23 provisions did not apply, on June 23, 2020, KPH agreed to dismiss the case and engage in
24 settlement negotiations to avoid protracted litigation that would almost certainly involve litigation
25 of those clauses. *Id.* ¶ 5.

26 11. KPH, along with its assignor, McKesson Corporation, proceeded to mediate in
27 good faith with Gilead and BMS to satisfy the alleged pre-suit mediation requirements in the
28 distribution service agreements between McKesson and Gilead, and between McKesson and

1 BMS. *See* Complaint, Case No. 3:20-cv-06951 (N.D. Cal. Oct. 26, 2020), ECF No. 1 ¶ 47.

2 Consistent with the alleged requirements, KPH then waited at least 90 days after its initial attempt
3 to mediate before filing its next complaint. *Id.* ¶ 48.

4 12. The initial mediation was unsuccessful and on October 6, 2020, KPH filed a new
5 class action complaint against Gilead and BMS. *See* Case No. 3:20-cv-06961 (N.D. Cal. Oct. 6,
6 2020), ECF No. 1.

7 13. Before KPH filed its complaint, another direct purchaser, FWK Holdings LLC,
8 filed its complaint on September 29, 2020, against Gilead and BMS. *See* Case No. 3:20-cv-06793
9 (N.D. Cal. Sept 29, 2020), ECF No. 1. The case was related to the EPPs' case, *Staley v. Gilead*
10 *Sciences, Inc.*, Case No. 3:19-cv-02573 (N.D. Cal.) (now known as *In re HIV Antitrust Litig.*)
11 ("*Staley*") and was transferred to the Honorable Edward M. Chen. ECF No. 432.

12 14. On November 23, 2020, the Court entered an Order (again) appointing Dianne
13 Nast and me as Interim Co-Lead Counsel for the putative Direct Purchaser Classes, and
14 appointing Francis Scarpulla as Interim Liaison Counsel for the putative Direct Purchaser
15 Classes. ECF No. 454.

16 15. In response to FWK and KPH's complaints, Gilead and BMS filed a motion to
17 compel arbitration, a motion to dismiss, and a motion for costs and for a stay of proceedings
18 pursuant to Fed. R. Civ. P. 41(d) on November 25, 2020. ECF Nos. 460, 461, and 463.

19 16. FWK and KPH fully briefed joint oppositions to each motion, addressing issues of
20 applicable state law, standing, and damages, among others. ECF Nos. 490, 491, and 492.
21 Following Gilead's and BMS's replies in response to DPPs' oppositions, ECF Nos. 504, 505, and
22 506, the Court heard argument from the parties on the motions to compel arbitration and to
23 dismiss on February 11, 2021, ECF No. 543. The Court denied Gilead's and BMS's motion for
24 costs and for a stay without oral argument. ECF No. 509.

25 17. On March 8, 2021, the Court entered an Order denying Gilead's and BMS's
26 motion to compel arbitration and denying their motion to dismiss in substantial part while
27 granting KPH leave to file an amended complaint. ECF No. 558 (public version). Following entry
28

1 of the Order, FWK Holdings LLC voluntarily dismissed its action without prejudice. ECF No.
2 560.

3 18. In accordance with the Court's motion to dismiss Order, on March 15, 2021, KPH
4 filed DPPs' First Amended Class Action Complaint. ECF No. 559 & n.1. Gilead and BMS
5 answered the First Amended Complaint on April 19, 2021. ECF Nos. 567, 568.

6 **B. Case Management**

7 19. Throughout the litigation, DPP Counsel fought for the Classes' interests with
8 regard to case administration, seeking to resolve DPPs' claims as quickly and as efficiently as
9 possible while litigating the case fiercely and thoroughly. DPP Counsel were also agile as the
10 schedule changed multiple times throughout the litigation, including the trial date being pushed to
11 May 2023 just months before it was due to begin. *See* Minute Entry, ECF No. 1604.

12 20. After both KPH's February 2020 and its October 2020 complaints were filed, the
13 case was related to the *Staley* case and transferred to the Honorable Edward M. Chen. Orders
14 Relating Case, ECF Nos. 269 and 437. With an eye toward efficiency, in each instance, KPH
15 agreed that the case should be coordinated with *Staley* for purposes of pre-trial, discovery, and
16 trial (in each case), and on April 27, 2020, KPH agreed to be bound by the Protective Order,
17 Privilege Order, and Order Regarding Non-Disclosure of Certain Information Regarding Expert
18 Witnesses. ECF No. 306, 453.

19 21. After filing its complaint in October 2020, KPH and FWK's motion for entry of
20 prior orders as to the master docket and the ESI Protocol was granted, binding DPPs under those
21 orders. *Id.* DPPs also stipulated to be bound by the protective order entered in the *Staley* case, and
22 shortly thereafter the supplemental protective order. ECF Nos. 455, 484, 584.

23 22. On May 7, 2021, the Court approved the parties' agreement that DPPs would be
24 bound by the Stipulated Privilege Order and Stipulation and Order Regarding Non-Disclosure of
25 Certain Information Regarding Expert Witnesses previously entered in the *Staley* case. ECF No.
26 584.

27 23. DPP Counsel participated in every status conference before the Court and the
28 drafting of joint status conference statements preceding each status conference—including the

1 meet-and-confers and exchanges of drafts preceding such statements regarding the case status,
2 schedule, and other case management matters—with all parties and occasionally with non-parties
3 as well, regularly concluding negotiations just before filing at midnight.

4 24. Additionally, in accordance with the local rules and the stipulated protective
5 orders, DPP Counsel made significant efforts to ensure that information marked confidential was
6 protected through the litigation, which involved countless meet-and-confers with parties and non-
7 parties, including absent class members, and extensive briefing. *See, e.g.*, Order Directing Parties
8 to Narrow Sealing Motions, ECF No. 502; Unopposed Administrative Motion for Extension
9 Regarding Deadline on Sealing, ECF No. 514; Amended Administrative Motion to File Under
10 Seal, ECF No. 548.

11 **C. Coordination with other Plaintiff Groups**

12 25. In a complex antitrust class action such as this matter, coordination among the
13 various plaintiff groups is critical. Even before filing their initial complaint, DPP Counsel reached
14 out to EPPs' lead counsel to ensure the two groups' claims and theories of damages were not
15 inconsistent with one another. As the case progressed, DPP Counsel coordinated with EPPs (and
16 later Retailers, United, and IHPPs) regarding discovery, shared experts, motion practice, and
17 pretrial preparation. The coordination took place via multiple mediums, including weekly
18 coordination calls among all plaintiff groups; participation on various subject matter teams
19 (economics, causation, agreements, patents, etc.); investigating, retaining, and coordinating with
20 shared experts, vendors, and other consultants; collaborating on task-specific assignments, such
21 as deposition preparation and shared motion practice; and collaborating on various other pretrial
22 tasks (jury instructions, verdict form, exhibit list, deposition designation, witness outlines, etc.).

23 **D. DPPs' Offensive Discovery Efforts**

24 26. DPPs devoted significant resources to offensive discovery in the litigation. These
25 efforts included the service of written discovery, review and analysis of millions of pages of
26 documents produced by Defendants, third parties, and other plaintiff groups, and substantial,
27 hard-fought third-party discovery.

28

1 27. Shortly after filing its initial complaint, KPH served its initial disclosures,
2 assignment, and first set of requests for production and interrogatories on Defendants. At
3 approximately the same time, pursuant to the agreement negotiated by DPP Counsel, Gilead and
4 BMS produced to DPPs all documents previously produced in response to the Plaintiffs’
5 discovery requests in the *Staley* case. *See* Stipulated Order on Coordination, ECF No. 306. DPP
6 Counsel successfully fought Defendants’ attempts to keep KPH from conducting its own
7 discovery, ensuring DPPs could serve and pursue their own discovery requests. *See* Joint Status
8 Report, ECF No. 311 at 13; Joint Case Management Statement, ECF No. 341 at 7-8. On June 4,
9 2020, KPH agreed to be bound by the ESI Protocol in *Staley* but reserved its right to object to the
10 portion concerning the preservation of call logs. *See* Stipulation and Order on ESI Protocol in
11 *KPH* Action, ECF No. 357.

12 28. DPPs’ discovery efforts picked up again after KPH filed its Complaint on October
13 6, 2020. KPH sought to coordinate discovery in the most efficient manner possible on behalf of
14 the Classes, and stipulated and agreed to a deposition protocol that envisioned a shared, unified
15 approach by the *Staley* and *KPH* plaintiffs to Defendant and third-party depositions. *See* ECF No.
16 571. KPH further sought to minimize any delay to the case schedule as proposed by the *Staley*
17 plaintiffs, while ensuring it had sufficient time to prepare for class certification and the close of
18 discovery. ECF No. 592.

19 29. As of Spring 2021, when Defendants Answered DPPs’ Amended Complaint,
20 millions of pages of documents had already been produced by Defendants and third parties in
21 response to discovery requests served by EPPs. With depositions scheduled beginning in late
22 May, DPP Counsel began the process of reviewing and analyzing these documents, oftentimes
23 working alongside EPPs to prepare whitepapers and prepare for depositions. In conjunction with
24 that review, and again with an eye toward efficiency, DPPs focused their discovery requests on
25 what else was needed from Defendants and/or third parties to advance their claims. On April 30,
26 2021, DPPs noticed two additional topics for Gilead’s 30(b)(6) deposition.

27 30. The DPPs also drafted and served document and deposition subpoenas on 13 third-
28 party generic manufacturers in late July 2021 and negotiated productions of documents,

1 depositions, and declarations from those third-party generic manufacturers by the close of fact
2 discovery (with one deposition agreed to occur in January 2022 after fact discovery had closed).
3 DPPs successfully negotiated these document productions, depositions, and declarations without
4 court intervention, often over stout opposition from the third-party generic manufacturers, and in
5 coordination with the EPPs, who had already served their own subpoenas on the third parties.
6 These negotiations involved countless meet-and-confer calls, letters, and emails between DPP
7 Counsel and counsel for generic manufacturers, in addition to the communication DPPs
8 undertook with EPPs to efficiently and cooperatively coordinate discovery efforts. Ultimately,
9 DPPs successfully obtained thousands of documents and several depositions and declarations
10 from these third parties that benefitted all plaintiff groups.

11 31. In addition, DPPs served document and deposition subpoenas on former Defendant
12 employees, such as Scott McAllister of Gilead, as well as on agreement negotiators and board
13 members, such as David Hashmall, Nicholas Cannella, John Cogan, and Richard Whitley, in the
14 summer and fall of 2021. When negotiations as to the deposition subpoena directed to Gilead
15 board member Richard Whitley reached an impasse, DPPs spearheaded the motion to compel and
16 motion to transfer in the Northern District of Alabama.

17 32. DPPs also served document and deposition subpoenas on numerous PBMs,
18 marketing firms, and other consulting firms that DPPs believed possessed information relevant to
19 their claims. DPPs successfully obtained document productions, depositions, and declarations in
20 response to these subpoenas.

21 33. On September 29, 2021, DPPs served requests for production and interrogatories
22 on Gilead and BMS. DPPs served Amended Initial Disclosures on December 17, 2021. DPPs also
23 communicated with Defendants and third-party generic manufacturers to ensure they produced
24 updated transactional data.

25 34. When the Retailers, United, and IHPPs dove into discovery efforts—largely in the
26 first half of 2022—DPPs worked tirelessly to protect the Classes’ interests to discovery from the
27 new Defendant in the Retailer, United, and IHPP cases (Teva), and to work efficiently and
28 cooperatively with these plaintiff groups, as DPPs had done and continued to do with the EPPs.

1 This included drafting and commenting on drafts of document requests and deposition topics,
2 representing the DPP Classes in countless strategy meetings, participating in meet-and-confer
3 calls and correspondence with Teva, and representing the DPP Classes in depositions regarding
4 potentially relevant issues.

5 **E. DPPs' Defensive Discovery**

6 35. KPH and its counsel participated in extensive defensive discovery in this case.
7 KPH responded to written discovery requests, engaged in substantial document production, and
8 provided a 30(b)(6) deposition. During fact discovery, KPH's counsel met and conferred on
9 multiple occasions and exchanged correspondence with defense counsel regarding KPH's
10 responses to interrogatories, document production and the topics noticed for KPH's 30(b)(6)
11 deposition.

12 36. With respect to written discovery, KPH provided responses for defendants'
13 interrogatories and followed up promptly with supplemental responses for some interrogatories.

14 37. For KPH's document productions, KPH's counsel negotiated custodians and
15 search terms with defense counsel. KPH was diligent in responding to defendants' document
16 requests by searching for and collecting responsive documents and transactional data for review
17 and production. In total, KPH made seven productions with 11,156 documents and 26,349 pages
18 produced. Through counsel, KPH also served its assignor with a Rule 45 subpoena to obtain
19 additional transactional data for production in October of 2021; KPH negotiated a supplement of
20 that transactional data in August of 2022.

21 **F. Fact Depositions**

22 38. DPPs devoted extensive resources to fact depositions in this litigation. As
23 summarized in the chart below, DPP Counsel participated in 46 offensive fact witness
24 depositions. Virtually all these depositions occurred in a compressed time frame during the
25 summer and fall of 2021. A list of these depositions follows:
26
27
28

| Name | Company/Position ⁴ | Date |
|--------------------------|---|------------|
| Li, Jing | Gilead Associate Director, Commercial Strategy* | 5/26/2021 |
| Chopskie, Greg | Gilead Associate General Counsel* | 6/24/2021 |
| Shantharam, Harish | Gilead Vice President and Head of Global Commercial Finance | 6/30/2021 |
| Okada, Sheldon | Gilead, Director, Commercial Planning and Operations* | 7/23/2021 |
| Choi, Jung | Gilead Head of Corporate Development* | 7/28/2021 |
| Koomey, Melissa | Gilead Vice President, Head Global Commercial Operations | 8/10/2021 |
| Hilton, John | Gilead Senior Director, US Sales and Advocacy* | 8/12/2021 |
| O'Connell, Sean | Gilead Senior Director, Corporate Development* | 8/18/2021 |
| Bhatt, Elizabeth | Gilead Vice President, Corporate Development* | 8/19/2021 |
| Stout, Coy | Gilead Vice President, U.S. Market Access, Strategy and Account Management* | 9/8/2021 |
| Young, Kevin | Gilead Chief Operating Officer* | 9/15/2021 |
| Moxham, Cary | Gilead Senior Director, Alliance Management* | 9/16/2021 |
| Cotton, Geoff | Gilead Vice President, Commercial Planning* | 10/6/2021 |
| Steele, Joe | Gilead Vice President, Commercial Operations* | 10/7/2021 |
| Kearney, Brian | Gilead Vice President, Clinical Research* | 10/8/2021 |
| Gibbs, Craig | Gilead Vice President, Commercial Strategy* | 10/12/2021 |
| Alen, Philippe | Janssen Senior Director, Business Development* | 10/12/2021 |
| Hashmall, David | Teva Outside Counsel | 10/19/2021 |
| Cannella, Nick | Gilead Outside Counsel | 10/20/2021 |
| Bischofberger, Norbert | Gilead Executive Vice President, R&D and Chief Scientific Officer* | 10/26/2021 |
| Lee, William | Gilead Executive Vice President, Research* | 11/9/2021 |
| Watson, Debi | Johnson & Johnson Vice President for JJDC Group | 11/10/2021 |
| Milligan, John | Gilead Chief Executive Officer* | 11/11/2021 |
| Tiruvattar, Chandran | Strides Pharma Inc. Vice President, Regulatory Affairs | 11/12/2021 |
| Patel, Anil | Cipla USA, U.S. Counsel* | 11/18/2021 |
| Pletcher, Brett | Gilead General Counsel* | 11/19/2021 |
| Piontkowsky, David | Gilead Vice President and Head of Global Medical Affairs Therapeutic Areas* | 11/22/2021 |
| Meyers, James | Gilead Executive Vice President Worldwide Commercial Organization* | 11/30/2021 |
| Meyers, James (30(b)(6)) | Gilead Executive Vice President Worldwide Commercial Organization* | 12/2/2021 |
| Tomkins, Paul | Gilead Senior Vice President and Global Head of Regulatory Affairs* | 12/3/2021 |

⁴ The chart includes each individual's last known position. Where an individual is known to be a former employee, an asterisk (*) is included after the position.

| | | | |
|----|--------------------|---|------------|
| 1 | Trott, John | Johnson & Johnson Global Marketing Lead for HIV Portfolio | 12/7/2021 |
| 2 | Moriarty, Sean | Lupin Inc. Senior Vice President, Legal Affairs* | 12/8/2021 |
| 3 | Banks, Kristie | Gilead Vice President, U.S. Managed Markets | 12/13/2021 |
| 4 | Guyer, William | Gilead Senior Vice President* | 12/14/2021 |
| 5 | Versosky, Thomas | Laurus President Finished Dose Forms North America | 12/14/2021 |
| 6 | Hitchcock, Michael | Gilead Interim Head of Alliance Management* | 12/15/2021 |
| 7 | Oliyai, Reza | Gilead Senior Vice President of Pharmaceutical and Biologics Operations | 12/15/2021 |
| 8 | Mitchell, David | Mylan Senior Director of North American Portfolio Development | 12/15/2021 |
| 9 | Johnson, David | Gilead Vice President, Antiviral Business Unit* | 12/16/2021 |
| 10 | Bradish, Kathleen | Gilead Outside Counsel | 12/16/2021 |
| 11 | Payne, Mike | Gilead, Senior Director, Commercial Planning and Operations* | 12/16/2021 |
| 12 | Sagar, Deep | Cipla Outside Counsel | 12/17/2021 |
| 13 | Johns, Blessy | Aurobindo Pharma USA, Inc. Vice President Regulatory Affairs | 1/19/2022 |
| 14 | McCallister, Scot | Gilead Executive Director* | 1/27/2022 |
| 15 | Stoffels, Paul | Janssen Chief Science Officer* | 1/31/2022 |
| 16 | Cogan, John | Gilead Board of Directors, Lead Independent Director* | 5/20/2022 |

15 39. Substantial work went into preparing for these depositions. As the above chart
16 demonstrates, several of Defendants' top executives were deposed in connection with this
17 litigation, often within days of each other or on the same day within a tight deposition schedule.
18 To prepare for each deposition, a small team of experienced attorneys from DPPs and EPPs (and
19 Retailers for some of the later depositions) was tasked with preparing the deposition outline and
20 selecting potential deposition exhibits. Because of the number of witnesses, the compressed
21 nature of the deposition schedule, and the sheer magnitude of Defendants' productions, additional
22 attorneys were brought in to aid in reviewing relevant documents for certain high-profile
23 witnesses.

24 40. For the individual witness depositions, an experienced attorney from DPPs, EPPs,
25 or Retailers was assigned the task of taking the lead in questioning each witness. DPPs took the
26 lead in questioning certain important witnesses with testimony important to the reverse payment
27 claims, including Melissa Koomey, Coy Stout, Kristie Banks, David Johnson, and John Cogan.
28

1 The Gilead 30(b)(6) deposition was split between DPPs and EPPs, with DPPs taking the lead on
2 some topics and EPPs taking the lead on others.

3 41. In addition to the above-referenced depositions, I and other DPP Counsel prepared
4 KPH's corporate representative, Charles Aquilina, for KPH's 30(b)(6) deposition and defended
5 the deposition on November 19, 2021. As noted in the Motion for Approval of Expense and
6 Service Awards in the BMS settlement, Mr. Aquilina spent eight to ten hours preparing for the
7 30(b)(6) deposition by reviewing documents produced by KPH and meeting with counsel, and
8 Mr. Aquilina spent five hours as the deponent during the 30(b)(6) deposition.

9 42. DPP Counsel also represented the DPP Classes in the depositions of experts and
10 representatives of other plaintiff groups where their testimony was anticipated to be relevant to
11 DPPs' claims. DPP Counsel represented the DPP Classes in the depositions of the following
12 Retailer employees and representatives: Kristin Alves (5/12/22), Owen McMahon (5/6/22),
13 Zachary Mikulak (5/19/22), Ina Perales (4/26/22), Erin Shaal (6/16/22), Britt Turner (5/18/22).
14 DPP Counsel also represented the DPP Classes in the depositions of EPP experts Richard Frank
15 (5/18/22 and 8/31/22) and Laura Craft (5/13/22), IHPP expert Brian Hoyt (8/22/22), United
16 expert Ernest Berndt (7/20/22 and 8/31/22), and Retailers' expert Keith Leffler (8/30/22).

17 **G. Class Certification**

18 43. KPH filed a motion for class certification on October 20, 2021. DPPs' Motion for
19 Class Certification, ECF No. 692. DPPs sought to certify three classes: a Truvada Class, for direct
20 purchasers of Truvada and its generic equivalents, an Atripla Class, for direct purchasers of
21 Atripla and its generic equivalents, and a Complera Class, for direct purchasers of Complera. The
22 Class Period for each class ran from February 1, 2018 until the date of the class certification
23 order. *Id.* at 2. In support of their class certification motion, DPPs submitted two dozen exhibits,
24 including reports by DPPs' economist, Dr. Russell L. Lamb, Ph.D, regarding class-wide impact
25 and damages, and by economist Professor Thomas G. McGuire, regarding market power. Dr.
26 Lamb Report, ECF No. 693-4; Prof. McGuire Report, ECF No. 693-5.

27 44. Shortly after DPPs filed their class certification motion, the Court vacated the
28 hearing on the class certification motion set for February 3, 2022, and the schedule for further

1 class certification briefing pending the Court's review of the EPPs' motion for leave to file an
2 amended complaint adding a new plaintiff. *See* Joint Case Management Statement, ECF No. 761
3 at 1-2. DPPs argued for a schedule to be set as soon as possible that minimized any delay for the
4 Classes. *See id.* at 7. Nevertheless, in connection with the Court's granting the EPPs leave to
5 amend, the remainder of class certification briefing was postponed until June 2022. Order
6 Granting EPPs' Motion for Leave to Amend, ECF No. 781.

7 45. On May 18, 2022, Defendants deposed Dr. Lamb regarding his report submitted in
8 support of DPPs' class certification motion. Defendants filed their opposition to KPH's motion
9 for class certification along with a motion to exclude the testimony of Dr. Lamb under *Daubert*
10 on June 2, 2022. ECF Nos. 1124, 1125. Less than two weeks later, KPH filed DPPs' opposition to
11 the Defendants' *Daubert* motion. ECF No. 1171. (Also in mid-June, Plaintiffs served merits
12 expert reports. *See* ECF No. 1200 at 2.) On June 30, KPH filed DPPs' reply in support of their
13 class certification motion, supported by a rebuttal report from Dr. Lamb and over a dozen other
14 exhibits, including deposition excerpts and Defendants' internal documents. ECF No. 1196. On
15 August 25, 2022, DPP Counsel presented oral argument in support of DPPs' motion for class
16 certification.

17 46. On September 27, 2022, the Court entered an Order granting the DPPs' motion for
18 class certification in substantial part, certifying a class of Truvada direct purchasers and a class of
19 Atripla direct purchasers. ECF No. 1388 ("Class Certification Order"). The classes were defined
20 as follows.

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

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

26 Excluded from the Classes are (1) Defendants, named co-conspirators, and their officers,
27 directors, employees, subsidiaries, and affiliates; (2) federal, state, and local governmental
28

1 entities; (3) any judicial officer presiding over the litigation and members of their immediate
2 family and judicial staff; (4) the Retailer Plaintiffs;⁵ and (5) United Healthcare Services Inc.

3 47. The Class Certification Order also appointed Dianne Nast and I as Co-Lead Class
4 Counsel and Francis Scarpulla as Liaison Counsel for the DPP Classes. *Id.*

5 48. Following the Court's Class Certification Order, Defendants filed a petition for
6 permission to appeal under Rule 23(f). *See* Acknowledgement of Receipt of Petition to Appeal,
7 ECF No. 1421. DPPs defended against the Defendants' petition, and the Ninth Circuit Court of
8 Appeals quickly denied Defendants' petition for permission to appeal. *See* Order, ECF No. 41,
9 *Fraternal Order of Police, Miami Lodge 20, Insurance Trust Fund*, Case No. 22-80116 (9th Cir.
10 Dec. 8, 2022).

11 H. Class Certification Notice

12 49. Pursuant to the Class Certification Order, DPPs met and conferred with
13 Defendants regarding the timing and content of class notice. *See* Proposed Order and Stipulation,
14 ECF No. 1426 at 3. Following the exchange of a draft notice plan and notices and a meet and
15 confer regarding any comments to DPPs' proposed notice plan and notices, DPPs filed a motion
16 with the Court regarding the notice plan and notices. *See id.*; Motion Regarding Class Notice,
17 ECF No. 1436. The motion provided for a notice plan involving direct mailed notice, digital
18 notice, a case-specific website, and an opt-out period of 35 days. *Id.* The Court ordered DPPs and
19 Defendants to meet and confer regarding certain edits to the content of the class notice, *see* ECF
20 No. 1470, all of which DPPs and Defendants agreed were acceptable, *see* Joint Status Report
21 Regarding Class Notice, ECF No. 1538 at 2. With that change, the Court granted DPPs' motion
22 regarding the class notice plan. ECF No. 1539, 1548.

23 50. DPPs executed the notice plan in accordance with the Court's Order, causing Class
24 Members to receive direct mail notice, and for media notice and a case-specific website to be
25 published. DPPs received opt-outs from the six Retailers and United Healthcare Services Inc.

26
27 ⁵ The Retailer Plaintiffs and United Healthcare Services Inc. opted out of the Classes. The
28 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 **I. BMS Settlement**

2 51. At the same time DPPs were finalizing their class certification motion, supporting
3 expert reports, and other exhibits, DPPs were also negotiating the settlement of their claims as to
4 BMS. A settlement in principle was reached on the eve of DPPs' class certification motion. *See*
5 Letter to the Court (Oct. 20, 2021), ECF No. 691.

6 52. Following five months of negotiations with BMS regarding the language of the
7 settlement agreement, including the scope of the BMS Settlement Class, the terms of the release,
8 timing for funding, and cooperation that could materially impact the ongoing litigation against
9 Gilead, DPPs filed an unopposed motion for preliminary approval of their settlement with BMS
10 on April 13, 2022. Preliminary Approval Motion, ECF No. 1002. The motion proposed a notice
11 program providing for direct mail notice and reminder notice, digital media notice, phone calls to
12 BMS Settlement Class Members from the claims administrator, and a settlement website. *Id.*

13 53. In response to the Court's order, DPPs filed supplemental briefing addressing a
14 number of issues including the BMS Settlement Class definition as compared to the release; the
15 number of BMS Settlement Class members; the plan of allocation; whether an average payout
16 should be included in the notice; maximum value and litigation risk involved in the claims as to
17 BMS; estimated litigation expenses incurred by counsel; as well as certain questions as to the
18 amount and content of the notice and claim forms. Supplemental Briefing, ECF No. 1033.
19 Pursuant to the Court's order, counsel for DPPs were prepared to discuss these topics at the
20 hearing on the preliminary approval motion. Order, ECF No. 1078.

21 54. The Court heard oral argument on the preliminary approval motion on May 19,
22 2022. Minute Entry, ECF No. 1097. Following the hearing, the Court granted preliminary
23 approval of the BMS Settlement and ordered that DPP Counsel provide additional notice as
24 discussed during the hearing. Order Granting Preliminary Approval, ECF No. 1159. In so doing,
25 the Court appointed Dianne Nast and I as Co-Lead Settlement Class Counsel. *Id.* at 3.

26 55. The Settlement Administrator, KCC, executed the notice program as provided in
27 the Court's order granting preliminary approval. *See, e.g.,* Declaration of Carla Peak, ECF No.
28 1446-2. In addition to the ordered notice program, DPP Counsel reached out by telephone and/or

1 email to each BMS Settlement Class Member who had not yet submitted a claim in advance of
2 the claims deadline. *See* Declaration of Michael L. Roberts ¶ 4, ECF No. 1446-1.

3 56. KPH filed DPPs' motion for approval of expense and service awards on
4 September 1, 2022. ECF No. 1364. DPP Counsel did not seek an award of fees in connection with
5 the BMS Settlement. DPPs sought a service award of \$10,000 for KPH's service to the BMS
6 Settlement Class and an expense award of \$2.5 million for reimbursement of some of DPP
7 Counsel's out-of-pocket expenses. *Id.*

8 57. On October 31, 2022, KPH filed DPPs' motion for final approval of the BMS
9 Settlement. ECF No. 1446. The motion sought final approval of the settlement, approval of the
10 allocation plan, and dismissal of the claims against BMS with prejudice, *id.*, and was supported
11 by supplemental declarations from economist Dr. Lamb and from claims administrator KCC,
12 ECF Nos. 1453 and 1489-1.

13 58. The Court heard oral argument as to the final approval of the BMS Settlement and
14 the Motion for Service and Expense Awards on November 17, 2022 and granted final approval of
15 the settlement. ECF No. 1522. Following the hearing, the Court issued the order granting DPPs'
16 motions, granting final approval and awarding DPP Counsel \$2.5 million in partial
17 reimbursement of their out-of-pocket costs and \$10,000 to KPH for its service as class
18 representative. ECF Nos. 1523, 1524.

19 **J. Expert Discovery**

20 59. Expert discovery was extensive in this litigation. At the class certification stage,
21 DPPs relied on the expert reports of Dr. Russell Lamb, Ph.D. and Professor Thomas McGuire,
22 and Defendants relied on the expert report of Dr. Bruce Strombom, Ph.D. At the merits stage,
23 Plaintiffs (including DPPs) jointly served 11 merits reports and DPPs served the merits report of
24 Dr. Lamb regarding DPP Class Member damages resulting from Defendants' alleged
25 misconduct.⁶ (Dr. Lamb's merits report was served on June 28, 2022, with his rebuttal in support
26 of DPPs' motion for class certification following two days later.) As summarized below,

27 _____
28 ⁶ Of the eleven shared merits reports, two were served in October 2021 in connection with DPPs'
motion for class certification and the remaining nine were served in June 2022.

1 Plaintiffs' merits reports pertained to, among other issues and subject matters, market power,
2 stereochemistry, the strength of Gilead's FTC patents (or lack thereof), Teva's chances of
3 prevailing in the FTC patent litigation, certain generic manufacturers' motivations, readiness, and
4 ability to enter the market with generic Truvada and/or Atripla, the anticompetitive effects of the
5 MFE/MFEP clauses in the FTC Settlement, and when robust entry of generic Truvada and
6 generic Atripla would have occurred had Gilead and Teva not entered into an agreement
7 including the concerned allegedly anticompetitive provisions. In response to Plaintiffs' experts'
8 merits reports, Defendants served 13 merits reports of their own. Plaintiffs' shared experts and
9 DPP-only experts collectively responded to Defendants' experts reports with 13 rebuttal reports
10 on August 12, 2022 (with Dr. Lamb's rebuttal report following on August 17 2022).

11 **60. Plaintiffs' Experts.** In coordination with the other plaintiff groups, DPP Counsel
12 identified, interviewed, and retained joint experts. DPP Counsel further worked collaboratively
13 with the other plaintiff groups to facilitate preparation of the experts' merits and rebuttal reports,
14 to prepare the experts to be deposed by Defendants' counsel, and to prepare the experts to testify
15 at trial. DPP Counsel also worked with Dr. Lamb to facilitate the preparation of his DPP-only
16 class certification, merits, and rebuttal reports, to prepare him to be deposed by Defendants'
17 counsel on four separate occasions, and to prepare him to testify at trial. The following is a
18 summary of the issues opined upon by each Plaintiff expert relevant to DPPs' claims.

19 **a. *John Caldwell, Ph.D.*** A stereochemistry expert, Dr. Caldwell opined that a
20 person of ordinary skill in the art ("POSA") in 1990 reviewing Gilead's '639 and '085 FTC
21 patents would have recognized that the β -FTC molecule may exist as two enantiomers and would
22 have been capable of and motivated to isolate and evaluate the two β -FTC enantiomers to
23 determine whether a pharmaceutical compound that was substantially pure (-)- β -FTC or
24 substantially pure (+)- β -FTC would be better to use in treating HIV.

25 **b. *Jon E. Clark.*** Mr. Clark opined that from a regulatory perspective several
26 generic competitors could have received approval of their ANDAs for generic Truvada and/or
27 Atripla and would have been able to enter the market on or before January 26, 2018.

28

1 c. **Todd Clark**. Mr. Clark opined that in the absence of the alleged reverse
2 payment settlement, six manufacturers of generic Truvada would have been ready, willing, and
3 able to enter the market in May 2019, and three manufacturers of generic Atripla would have
4 been ready, willing, and able to enter the market in May 2019.

5 d. **Leemore Dafny, Ph.D.** Dr. Dafny opined as to the history and policy
6 considerations underlying the Drug Price Competition and Patent Term Restoration Act of 1984
7 (the “Hatch-Waxman Act”) and automatic substitution laws. She also opined that in response to
8 such laws passed to encourage the development and sale of lower-priced generics, branded
9 pharmaceutical companies have adopted a number of strategies to limit and delay generic rivals
10 including, but not limited to, reverse payment settlements.

11 e. **Stephen Follansbee, M.D.** Based on his review of clinical research, other
12 documents and testimony, and experience as an HIV specialist and treating physician, Dr.
13 Follansbee opined: (i) as early as 2002, TDF was associated with increased risk of renal
14 toxicities; (ii) data available in 2004 supported TAF’s potential to address the increased risk of
15 renal toxicities associated with TDF; (iii) TAF’s potential to meet unmet medical needs did not
16 change between 2004 and 2010; (iv) as of 2009, there was an association between combining
17 TDF and a booster and an increase in tenofovir exposure and consequently increased risk of renal
18 toxicities; (v) Stribild clinical trials show an association between the administration of Stribild
19 and an increased risk of renal toxicities as compared to un-boosted TDF regimens; and
20 (vi) Gilead’s registrational path for its TAF products did not allow for a fair comparison of the
21 relative risks of bone and renal toxicities between TDF and TAF products.

22 f. **W. David Hardy, M.D.** Dr. Hardy is a physician with more than 40 years of
23 experience as a primary care and infectious disease clinician focused on treating patients with
24 HIV. Dr. Hardy served as an expert on the history of HIV and AIDs, the clinical practice of HIV
25 treatment and prevention, the relevant differences between HIV drugs, how prescribing
26 physicians make decisions relevant to the treatment and prevention of HIV, Gilead’s clinical trial
27 comparing TDF to TAF-based regimens, and the approach to treatment and prevention in light of
28 the available information regarding TDF and TAF.

1 g. **Russell Lamb, Ph.D.** Dr. Lamb served as an expert economist for DPPs at the
2 class certification and merits stages. In that capacity, he opined that common evidence could be
3 used to prove that DPP Class Members were injured as a result of Defendants' alleged
4 misconduct, that a common methodology could be used to prove DPP Class Members' aggregate
5 damages, and calculated DPP Class Member damages. Dr. Lamb also served as a shared expert
6 for all plaintiff groups. In that capacity, he opined that direct evidence established Gilead's
7 market power for purposes of analyzing the anticompetitive effects of the NGR clauses in
8 Gilead's agreements with BMS and Janssen and, alternatively, that the relevant markets for
9 analyzing such effects were the brand drugs and their generic equivalents.

10 h. **Edward Lentz.** Ed Lentz opined that a reasonable, competent, and well-
11 informed attorney with significant experience in the field of pharmaceutical patents would have
12 advised his or her client that there was a 75 to 85% likelihood that Teva would prevail in the FTC
13 patent litigation against Gilead and that the claims of the follow-on patents were invalid or not
14 infringed and would not have blocked the commercialization of Teva's generic Truvada and
15 generic Atripla products.

16 i. **Thomas G. McGuire, Ph.D.** Professor McGuire is an expert in health
17 economics and opined that Gilead's market power could be proven with direct evidence and,
18 alternatively, that the relevant markets for analyzing the potential anticompetitive effects of the
19 FTC Settlement were Truvada and its generic equivalents and Atripla and its generic equivalents.
20 Professor McGuire opined that the MFE/MFEP clauses in the FTC Settlement constitute an
21 anticompetitive reverse payment that delayed Teva's entry and the entry of subsequent generics.
22 Professor McGuire also opined that in the absence of such anticompetitive provisions, reasonable
23 companies sitting in the shoes of Gilead and Teva would have agreed to a generic entry date of
24 May 2019, and Gilead would have agreed to provide subsequent generics with a license to enter
25 on the same date.

26 j. **Daniel L. Rubinfeld, Ph.D.** Dr. Rubinfeld is an expert economist and opined
27 that the no-generic restraint clauses in Gilead's agreements with BMS and Janssen were not
28

1 reasonably necessary for the collaboration agreements, had no pro-competitive benefits, and were
2 anticompetitive.

3 k. ***W. David Bradford, Ph.D. (Rebuttal Only)***. The opinions of Dr. Bradford
4 were offered in response to the opinions of Defendants’ expert Dr. Jena. Dr. Bradford opined that
5 (i) there is no evidence the innovations cited by Dr. Jena would not have occurred absent the
6 challenged conduct; (ii) Dr. Jena’s conclusion that Gilead lacked sufficient incentives to develop
7 TAF in the early to mid-2000s is unsupported, contrary to available evidence, and ignores
8 materials showing that Gilead’s decision-making regarding TAF was tied to a long-term strategy
9 to maintain exclusivity and profits for its multibillion-dollar TDF-based franchise; and (iii) Dr.
10 Jena ignores the negative economic consequences and societal effects of the specific conduct at
11 issue.

12 l. ***Jur Strobos, M.D. (Rebuttal Only)***. In response to the report of Defendants’
13 expert Mr. Dormer, Dr. Strobos opined that the FDA’s authority is limited in reviewing drug
14 applications, that the FDA is required to make a yes or no decision on the overall safety and
15 effectiveness of a drug included in a New Drug Application (“NDA”), that in the absence of
16 confirmatory clinical trials on a putative “better” dosing regimen, the FDA’s decision must rest
17 on the dosing regimen selected by the sponsor and the data on that dosing regimen submitted by
18 the sponsor.

19 m. ***Raj Suryanarayanan, Ph.D (Rebuttal only)***. In response to the report of
20 Defendants’ expert Dr. Berkland, Dr. Suryanarayanan opined that the relevant claims of the
21 formulation patents are invalid as obvious and disagreed with Dr. Berkland’s assertions to the
22 contrary.

23 61. Defendants deposed each of Plaintiffs’ joint experts at least once, and some
24 experts were deposed multiple times, based in part on the number of reports those experts
25 submitted—McGuire (4), Lamb (4), Lentz (2), Rubinfeld (2). DPP Counsel were heavily
26 involved in preparing these experts for their depositions and took the lead in defending Dr. Lamb
27 and Dr. Rubinfeld during their depositions. The following chart summarizes the Plaintiffs’
28 experts’ depositions:

| Plaintiff Expert's Name | Deposition Date(s) |
|---------------------------|--------------------|
| Russell Lamb, Ph.D | 5/18/22 |
| Thomas G. McGuire, Ph.D | 7/13/22 |
| Daniel L. Rubinfeld, Ph.D | 7/13/22 |
| Edward Lentz | 7/15/22 |
| Thomas G. McGuire, Ph.D | 7/18/22 |
| Russell Lamb, Ph.D | 7/19/22 |
| Russell Lamb, Ph.D | 7/25/22 |
| Leemore Dafny, Ph.D | 8/19/22 |
| Raj Suryanarayanan, Ph.D | 8/25/22 |
| Daniel L. Rubinfeld, Ph.D | 8/26/22 |
| Todd Clark | 8/26/22 |
| Thomas G. McGuire, Ph.D | 8/30/22 |
| Russell Lamb, Ph.D | 8/31/22 |
| W. David Bradford, Ph.D | 9/1/22 |
| Edward Lentz | 9/1/22 |
| Thomas G. McGuire, Ph.D | 9/2/22 |
| W. David Hardy, M.D. | 9/2/22 |
| Jon E. Clark | 9/8/22 |
| Stephen Follansbee, M.D. | 9/8/22 |
| John Caldwell, Ph.D | 9/14/22 |
| Jur Strobos, M.D. | 9/14/22 |

62. In addition to the depositions of Dr. Lamb and all-plaintiff shared experts, DPP Counsel represented the DPP Classes at the depositions of the following other plaintiff experts where the testimony was anticipated to be relevant to DPPs' claims: EPP experts Richard Frank, Ph.D (5/18/22 and 8/31/22) and Laura Craft (5/13/22); Retailers' expert Keith Leffler, Ph.D (8/30/22); IHPPs' expert Brian Hoyt, Ph.D (8/22/22); and United's expert Ernst Berndt, Ph.D (7/20/22 and 8/31/22).

63. **Defendants' Experts.** The following is a summary of the topics/issues covered by each of Defendants' experts.

a. ***Cory J. Berkland, Ph.D.*** Dr. Berkland was offered as a pharmaceutical formulation expert to respond to Mr. Lentz's opinions regarding the strength of Gilead's FTC patents and Teva's chances of prevailing in the FTC patent litigation.

b. ***Lewis P. Berneman.*** Mr. Berneman was offered to respond to the opinions of Plaintiffs' expert Dan Rubinfeld, Ph.D., and opined that the NGR clauses in agreements between

1 Gilead and BMS/Janssen were analogous to those regularly included in pharmaceutical alliance
2 agreements and facilitated the execution of such agreements by regulating certain behavior by the
3 parties that had the potential to undermine the goals of the alliance.

4 c. **Leonard C. Chyall, Ph.D.** Dr. Chyall was offered as a chemistry expert to
5 rebut Plaintiffs' expert Dr. Caldwell's opinion that a POSA reviewing Gilead's '639 and '085
6 FTC patents would have recognized that the β -FTC molecule may exist as two enantiomers and
7 would have been capable of and motivated to isolate and evaluate the two β -FTC enantiomers to
8 determine whether a pharmaceutical compound that was substantially pure (-)- β -FTC or
9 substantially pure (+)- β -FTC would be better to use in treating HIV.

10 d. **Robert A. Dormer.** Mr. Dormer offered opinions in response to Plaintiffs'
11 allegations that Gilead should have reduced the amount of TDF in Stribild because the drug
12 contained a booster that increased the adverse side effects of TDF but failed to do so in order to
13 orchestrate a switch to its TAF-based drugs. Specifically, Mr. Dormer opined that the FDA was
14 involved in the development, testing, and approval of Gilead's HIV drugs Stribild, Genvoya,
15 Odefsey, and Descovy; Gilead's interactions with the FDA regarding these drugs were consistent
16 with ordinary regulatory practice; and that it is unlikely the FDA viewed Gilead's marketing or
17 public statements regarding these drugs as misleading.

18 e. **Thomas Hoxie.** In response to the opinion of Plaintiffs' expert Todd Clark,
19 Mr. Hoxie opined that the MFE/MFEP clauses in the FTC Settlement did not serve to restore
20 Teva's forfeited 180-day first-to-file exclusivity and did not disincentivize later-filing generic
21 manufacturers from challenging Gilead's FTC patents.

22 f. **Anupam B. Jena, M.D., Ph.D.** One of Defendants' economists, Dr. Jena
23 opined that available evidence does not support that Gilead shelved TAF development for patent
24 extension purposes, that Defendants' alleged misconduct did not stymie innovation in the overall
25 HIV drug space, and that Plaintiffs' expert economists relied on unsupported assumptions and
26 presented flawed damages calculations.

27
28

1 g. **Kathleen M. O'Malley**. Ms. O'Malley disagreed with the opinions of
2 Plaintiffs' expert Mr. Lentz that Teva had a 75-80% chance of prevailing in the FTC litigation
3 and a 80-95% chance of prevailing on each of the follow-on FTC patents.

4 h. **David Pitrak, M.D.** In response to the opinions of Plaintiffs' experts, Dr.
5 Pitrak opined that Gilead's decision to terminate development of TAF in 2004 was "correct from
6 [his] perspective as an infectious disease specialist treating HIV patients," Gilead's decision to
7 reconsider development of TAF years later made sense considering the aging HIV population,
8 TAF offers benefits to patients over TDF, and that physicians understand the benefits of TAF and
9 were not misled by Gilead's marketing of TAF.

10 i. **Celeste C. Saravia, Ph.D.** Another of Defendants' economists, Dr. Saravia
11 opined that the acceleration clauses in the FTC Settlement Agreement did not delay generic entry
12 and that the FTC Settlement between Gilead and Teva did not include a reverse payment.

13 j. **Edward A. Snyder, Ph.D.** Dr. Snyder is an economist who opined that the no-
14 generic restraint clauses in Gilead's agreements with BMS (Atripla, Evotaz) and Janssen
15 (Complera, Odefsey, Prezcobix, Symtuza) were pro-competitive because they were reasonably
16 necessary to persuade the parties to enter into the agreements and incentivized the parties to
17 invest in and promote the concerned drugs.

18 k. **Bruce Strombom, Ph.D.** In opposition to DPPs' motion for class certification,
19 Dr. Strombom opined that DPPs could not establish antitrust impact and aggregate damages with
20 evidence common to all DPP Class members.

21 l. **Joshua W. Wright, Ph.D.** Dr. Wright is an economist who opined that the FTC
22 Settlement did not include a payment that delayed generic entry, that the MFE/MFEP clauses in
23 the FTC Settlement operated to accelerate generic entry, and that the MFEP clause in the FTC
24 Settlement did not guarantee Teva 180-days of exclusivity.

25 m. **Lawrence Wu, Ph.D.** Dr. Wu is an economist who opined that Gilead's market
26 power could not be proven with direct evidence and that the relevant markets for analyzing the
27 potential anticompetitive effects of the FTC Settlement were broader than Truvada and its generic
28 equivalents and Atripla and its generic equivalents.

64. Plaintiffs deposed nine Defendant expert witnesses with testimony relevant to DPPs' claims. DPP Counsel represented the DPP Classes at each of these depositions, took the lead in questioning Dr. Strombom, and contributed to the strategy regarding and preparation of questions, outlines, and exhibits for the other Defendant expert depositions. The following chart summarizes the Defendants' experts' depositions:

| Defendant Expert's Name | Deposition Date |
|--------------------------------|------------------------|
| Bruce Strombom, Ph.D. | 6/24/22 |
| Cory Berkland, Ph.D. | 8/18/22 |
| Lawrence Wu, Ph.D. | 8/19/22 |
| Celeste Saravia, Ph.D. | 8/24/22 |
| Robert A. Dormer | 8/25/22 |
| Louis Berneman | 8/29/22 |
| Thomas Hoxie | 8/29/22 |
| Anupam B. Jena, M.D., Ph.D. | 9/13/22 |
| David Pitrak, M.D. | 9/15/22 |

K. Summary Judgment and Daubert Briefing

65. Defendants filed three motions for summary judgment as to Plaintiffs' claims on September 8, 2022. ECF Nos. 1376, 1377, and 1378. DPPs set to work on opposing those motions and drafting related *Daubert* motions. DPPs took the lead on certain briefs, while other plaintiff groups took the lead on others, with DPPs providing support in the form of research and revisions. DPPs also worked cooperatively with the other plaintiff groups in preparing a motion for partial summary judgment as to market power and as to the Plaintiffs' NGR claims under the Quick-Look Test. DPPs accomplished this herculean effort cooperatively and efficiently together with the other plaintiff groups.

66. On October 6, 2022, DPPs and the other plaintiff groups together filed the motion for partial summary judgment, the omnibus opposition, and the *Daubert* motions, which together included well over 200 exhibits in support, *see Daubert* Motions, ECF Nos. 1398 (Berneman), 1400 (Jena), 1401 (Wright), 1402 (Saravia, Hoxie, O'Malley, Dormer, Berneman, and Jena on state of mind), 1403 (Wu), 1404 (Saravia); Opposition to Motion for Summary Judgment and Motion for Partial Summary Judgment, ECF No. 1407. On the same date, Defendants filed an omnibus motion to exclude several of Plaintiffs' key experts. ECF No. 1406-3.

1 67. In response, DPPs again worked cooperatively with the other plaintiff groups
2 within a tight window to research and draft the oppositions to Defendants' omnibus *Daubert*
3 motion as to Plaintiffs' experts, again with DPPs taking the lead as to certain oppositions and
4 other plaintiff groups taking the lead as to others. Defendants filed their replies in support of their
5 motions for summary judgment and opposition to Plaintiffs' motion for partial summary
6 judgment on October 27, 2022. *See* ECF Nos. 1437, 1438, and 1439. The same day, Plaintiffs
7 filed their omnibus brief in opposition to Defendants' *Daubert* motion, ECF No. 1442, and
8 Defendants filed their omnibus opposition to Plaintiffs' *Daubert* motions, ECF No. 1443.
9 Plaintiffs filed their joint reply in support of partial summary judgment on November 3, 2022.
10 ECF No. 1455.

11 68. Working cooperatively with the other Plaintiff groups, DPPs were prepared to
12 argue a portion of the many summary judgment and *Daubert* motions on the docket for the
13 hearing held on November 17, 2022, during which the Court heard nearly three hours of
14 argument. ECF No. 1527. Given the amount of motions to be heard, the Court heard further oral
15 argument concerning the *Daubert* motions on February 16, 2023, ECF No. 1715, and DPPs again
16 were prepared to argue a portion of those motions.

17 69. On January 9, 2023, the Court granted Defendants' motion for summary judgment
18 as to the TAF claims, denied Plaintiffs' motion for partial summary judgment as to market power
19 and on the NGR claims, granted in part and denied in part Defendants' motion on the NGR
20 claims, and denied the Defendants' motion on the MFE/MFEP claims. ECF No. 1599. The Court
21 also denied a portion of Defendants' *Daubert* briefs and deferred ruling on the rest. *Id.*

22 **L. Additional Pretrial Submissions**

23 70. From the fall of 2022 to the spring of 2023, many DPP Counsel worked virtually
24 full-time as they prepared to present DPPs' case to a jury.

25 **i. Motions in Limine**

26 71. The parties exchanged seven motions in limine per side of no more than seven
27 pages each, per the Court's order, on January 26, 2023. *See* Joint Status Report, ECF No. 1610 at
28 2; Order, ECF No. 1612. The parties exchanged oppositions to the motions in limine just under

1 two weeks later, a day before filing them as paired sets along with other pretrial filings on
2 February 9, 2023. *Id.*

3 72. As with the *Daubert* motions, DPP Counsel were heavily involved in strategizing
4 as to the motions (in particular after the Court’s order limiting the number of motions and pages
5 per motion), and researching, drafting, and revising the motions in limine and the oppositions to
6 Defendants’ motions in limine. DPPs took the lead as to certain motions and oppositions, while
7 other plaintiff groups took the lead as to other motions and oppositions. DPPs contributed to all
8 motions and oppositions.

9 73. On March 19, 2023, the Court granted in part and denied in part the majority of the
10 motions in limine and deferred ruling on the rest. ECF No. 1716.

11 **ii. Trial Structure**

12 74. Even before filing the initial Class Action Complaint, DPPs were researching (a)
13 whether the reverse payment, NGR, and potentially other claims at issue should be tried together;
14 (b) which claims (if any) should be tried before a jury; (c) whether direct and indirect purchaser
15 plaintiff claims should be tried together (in full or in part) before a single jury or potentially
16 multiple juries; and (d) the format a trial could take in the event issues common to all plaintiff
17 groups were decided by a jury and DPP-specific issues were presented to a separate jury.

18 75. Based on extensive legal research and the facts and circumstances of the litigation,
19 DPPs concluded it would be most efficient and appropriate for (1) the reverse payment and NGR
20 claims to be tried separately, and (2) all plaintiff groups’ reverse payment claims to be tried
21 together before a single jury. While all parties ultimately agreed the reverse payment and NGR
22 claims should be tried separately, there was substantial disagreement among the plaintiff groups
23 as to whether the reverse payment claims should be tried in a non-bifurcated manner before a
24 single jury. The solid judgment and wisdom of DPP Counsel prevailed as to this strategy.

25 76. The parties exchanged trial structure briefs on January 26, 2023. In a joint
26 submission with EPPs and United, DPPs argued that the reverse payment claims for all plaintiff
27 groups should be decided before a single jury and opposed the Retailers’ request that the Court
28 empanel two juries—one to resolve “common issues” and the other to render a verdict on DPPs’

1 and Retailers' damages. The same views were set forth in the Plaintiffs' February 8, 2023, joint
2 response brief on trial structure. In their trial structure submissions, Defendants took the view that
3 the reverse payment claims of all plaintiff groups should be tried before a single jury and opposed
4 the Retailers' bifurcated trial request. After hearing argument on the issue, the Court ultimately
5 ordered all plaintiff groups' reverse payment claims to be tried together before a single jury.

6 **iii. Jury Instructions**

7 77. DPPs began researching jury instructions on behalf of the DPP Classes in the fall
8 of 2022, long before working together with the other plaintiff groups on a joint set of instructions.
9 This project was identified early on as extremely important to DPPs, and as a result, DPP Counsel
10 spent many hours researching how best to distill and communicate complex issues through jury
11 instructions. Much of the research was tested in jury exercises, as described below.

12 78. DPPs took important roles in researching and drafting the many sets of jury
13 instructions that were exchanged and submitted to the Court from the first draft exchange until
14 DPPs' settlement with Gilead. Given the incredible amount of information that needed to be
15 refined into jury instructions, the effort was a joint and cooperative one with the other plaintiff
16 groups, with DPPs researching and drafting certain topic areas, then reviewing, revising, and
17 continuing to research all the other instructions. Plaintiffs provided the first draft of jury
18 instructions to Defendants on November 23, 2022. *See* ECF No. 1415 at 4. Defendants provided
19 their "revisions," that is, an entirely new, separate draft, on December 7, 2022. *Id.* Plaintiffs
20 worked to revise their jury instructions consistent with the Court's summary judgment and other
21 orders, and in an effort to reach agreement with the Defendants on certain issues; Plaintiffs
22 provided an updated draft set of instructions to the Defendants on January 20, 2023. *See* Joint
23 Stipulation and Order regarding Pretrial Schedule, ECF No. 1613. Defendants responded with
24 their revisions a week later. *Id.* The parties met and conferred regarding the instructions in an
25 attempt to reach an agreement as to certain instructions and issues, formatting, filing, and other
26 topics before filing the proposed set of instructions, including any competing instructions and
27 supporting argument, on February 9, 2023.

28

1 79. Following this submission, the Court proposed jury instructions and ordered the
2 parties to meet and confer to attempt to agree on any proposed modifications to the Court's set of
3 instructions. ECF Nos. 1720, 1774 at 2.

4 80. DPPs worked with the other plaintiff groups to draft and research proposed
5 modifications, narrow their proposals to only the most important, and revise those proposals until
6 they were ready for exchange with the Defendants. Plaintiffs met and conferred with Defendants
7 regarding these proposals per the Court's order. DPPs, in addition to working on the other
8 proposed instructions, proposed specific instructions relating to their theory of liability based in
9 their proposed trial structure and DPP-focused trial strategy. *See* ECF Nos. 1764, 1800, 1801.
10 They continued to meet and confer and filed joint proposed modifications to the Court's proposed
11 instructions, many of which were agreed, on April 27, 2023. ECF No. 1817. The Court issued an
12 order concerning the parties' proposed modifications and directed the parties to file final
13 comments on the jury instructions by May 22, 2023. ECF No. 1861. DPPs continued to work
14 cooperatively with the other plaintiff groups as trial was gearing up, filing comments on a refined
15 set of three issues on May 22 (relevant market, but-for world, and pass-on). ECF No. 1870. The
16 Court issued its final jury instructions the following day, incorporating certain of the Plaintiffs'
17 proposed modifications. ECF No. 1881.

18 **iv. Verdict Form**

19 81. DPPs spent a significant amount of time researching, proposing, and conferring
20 with other Plaintiffs' counsel and Defendants regarding the appropriate verdict form.

21 82. On November 29, 2022, Plaintiffs emailed Defendants their initial proposed
22 verdict form, including reverse payment, no-generics restraint, and monopolization questions, as
23 well as certain state-law damage multiplier questions. On December 13, 2022, Defendants
24 emailed Plaintiffs their initial proposed verdict form.

25 83. Following the Court's summary judgment rulings, on January 20, 2023, Plaintiffs
26 emailed Defendants a revised proposed verdict form limited to the reverse payment claims. On
27 January 27, 2023, Defendants responded by emailing Plaintiffs their revised proposed verdict
28 form. The parties met and conferred regarding the competing verdict forms on January 30, 2023.

1 84. On February 7, 2023, following several telephone calls with the lead counsel for
2 the other plaintiff groups, DPPs proposed a simplified verdict form to the other plaintiff groups.
3 The simplified verdict form included one question regarding antitrust violation, one question
4 regarding causation, lines for the jury to indicate the amount of overcharge damages suffered by
5 each plaintiff group, and four questions relating solely to enhanced damages under certain state
6 laws.

7 85. On February 8, 2023, Plaintiffs emailed Defendants two proposed verdict forms—
8 one for a single trial and a second form for if the Court decided to adopt the Retailers’ trial
9 structure and have non-common direct purchaser issues decided by a second jury. Similar to the
10 verdict form DPP Counsel circulated on February 7, 2023, the single trial verdict form included
11 questions regarding antitrust violation and causation, lines for the jury to indicate the amount of
12 overcharge damages suffered by each plaintiff group, and questions relating solely to enhanced
13 damages under certain state laws.

14 86. On April 25, 2023, Plaintiffs emailed Defendants a revised verdict form containing
15 revisions addressing state law issues for IHPP and EPPs. After certain plaintiff groups disagreed
16 regarding the language and the ordering of parties in the verdict form, on April 26, 2023, DPP
17 Counsel circulated a revised verdict form prepared by DPPs and Retailers only. After weeks of
18 negotiations among the various plaintiff groups and between Plaintiffs and Defendants, on May 5,
19 2023, three separate proposed verdict forms were submitted to the Court: one on behalf of DPPs
20 and Retailers, one on behalf of EPPs, United, and IHPPs, and one on behalf of Defendants.

21 87. At the May 10, 2023 pretrial conference, the Court heard arguments from the
22 parties regarding their respective proposed verdict forms.

23 88. On May 12, 2023, the Court entered an Order attaching the “Court’s Proposed
24 Verdict Form” and directing the parties to submit final comments by May 18, 2023.

25 89. On May 18, 2023, EPPs and IHPPs requested that questions regarding state law
26 damages enhancements be added to the verdict form, while Defendants requested significant
27 revisions to the verdict form. On May 19, 2023, DPP Counsel worked with counsel for the other
28

1 plaintiff groups to draft and file a response to Defendants' submission requesting a substantially
2 reworked verdict form.

3 90. On May 23, 2023, the Court filed a revised verdict form and directed the parties to
4 submit final comments no later than the next day. DPP Counsel worked with counsel for the other
5 plaintiff groups in preparing comments and objections to the Court's revised verdict form, which
6 were filed with the Court on May 24, 2023.

7 **v. Pretrial Conference Statement**

8 91. DPP Counsel invested hours upon hours cooperatively working with the other
9 plaintiff groups to strategize as to the contents of the pretrial conference statement, and
10 researching, drafting, and revising those contents before exchanging with Defendants and
11 ultimately filing the statement, along with other pretrial filings.

12 92. Plaintiffs provided the first draft of the pretrial conference statement to Defendants
13 on December 22, 2022. *See* Joint Status Report, ECF No. 1598 at 8. Defendants sent their
14 comments to Plaintiffs' draft on January 5, 2023. Plaintiffs provided a revised statement on
15 January 18, 2023, in accordance with the Court's orders and in an effort to reach agreement on
16 certain topics with Defendants. *See* ECF No. 1613 at 2. Defendants provided their edits a week
17 later, after which the parties met and conferred in an effort to narrow the areas on which they
18 disagreed. *Id.* at 3. The pretrial conference statement was filed with the Court on February 9,
19 2023. ECF No. 1636.

20 93. Pursuant to the order of the Court, the parties filed a joint statement informing the
21 Court whether they agreed that the disputed legal issues would be resolved through various other
22 pretrial filings. ECF No. 1640. Plaintiffs agreed that the Court need not separately address the
23 legal disputes listed in the pretrial conference statement except with regard to market
24 power/market definition. ECF No. 1659.

25 **vi. Trial Brief**

26 94. Plaintiffs jointly prepared a trial brief and submitted it to the Court along with the
27 other pretrial filings on February 9, 2023. ECF No. 1638-3.
28

1 95. In preparing Plaintiffs' trial brief, DPP Counsel researched, drafted, edited, and
2 adjudicated edits and comments from other plaintiff groups with regard to certain portions of the
3 brief. Other plaintiff groups took the lead as to other portions of the brief; DPP Counsel reviewed,
4 researched, and revised those portions before the brief was finalized and filed.

5 **vii. Deposition Designations**

6 96. DPP Counsel spent a significant amount of time on deposition designations over
7 several months. Among the plaintiff groups, deposition designations relevant to all plaintiff
8 groups were the responsibility of subject matter teams. DPPs were well represented on each of
9 these teams and contributed extensively to the process of reviewing deposition transcripts and
10 videos, affirmatively designating testimony, reviewing Defendants' affirmative and counter-
11 designations and objections, designating counter-designations, and objecting to Defendants
12 designations and counter-designations.

13 97. Each plaintiff group was also responsible for designating testimony relevant to
14 their claims only (mainly, class representative deposition testimony). DPPs designated testimony
15 from the deposition of Charles Aquilina, who testified as a corporate representative of KPH.

16 98. On December 1, 2022, Plaintiffs jointly provided Defendants with their affirmative
17 deposition designations for 70 witnesses. This was a months-long process, as certain deposition
18 transcripts were more than 300 pages in length. DPPs contributed to the designations of
19 approximately 50 of these witnesses (the remaining 20 were plaintiff representatives from other
20 plaintiff groups), affirmatively designating testimony for certain witnesses and reviewing and
21 proposing additions and deletions to testimony designated by other plaintiff groups. While
22 working on this project, DPP Counsel were involved in numerous calls and emails regarding
23 additions and deletions to designations and the rationales for same.

24 99. Because of the magnitude of this project, to guard against the scenario in which
25 other plaintiff groups settled with Defendants, DPPs set up their own platform through which they
26 independently designated deposition testimony for 47 potential fact witnesses. DPPs'
27 designations were shared with the other plaintiff groups and integrated into the initial
28 designations provided to Defendants.

1 100. On December 22, 2022, Defendants provided all plaintiff groups with their
2 deposition designations, counter-designations, and objections to Plaintiffs' deposition
3 designations.

4 101. In response to the Court's Summary Judgment Order and Defendants' designations
5 and counter-designations, on January 26, 2023, Plaintiffs provided Defendants with revised and
6 additional designations, objections to Defendants' designations, and objections to Defendants'
7 counter-designations. The process of reviewing and providing objections to Defendants'
8 designations and counter-designations was a massive task, and several DPP Counsel were heavily
9 involved in this project in coordination with other plaintiff groups.

10 102. On February 6, 2023, Defendants emailed Plaintiffs their revised affirmative
11 designations, revised counter-designations, and objections to Plaintiffs' revised affirmative
12 designations and counter-designations. Two days later, Plaintiffs emailed Defendants their
13 objections to Defendants' revised designations and counter-designations.

14 103. The next day, on February 9, 2023, the parties filed their initial affirmative
15 deposition designations, counter-designations, and related objections with the Court.

16 104. In response to the Court's comments at the March 7, 2023 pretrial conference,
17 DPPs worked with other plaintiff groups to pare down the deposition designations (and objections
18 thereto) ultimately provided to the Court for review and in preparation for trial.

19 105. On March 29, 2023, the parties exchanged pared down affirmative designations for
20 witnesses likely to be presented at trial by way of deposition.

21 106. On March 31, 2023, the parties exchanged objections to the opposing parties'
22 pared down designations and additional designations.

23 107. On April 3rd and 4th, DPP Counsel and counsel for the plaintiff groups met-and-
24 conferred with Defendants to attempt to resolve objections to the pared down designations. These
25 discussions resulted in the parties' withdrawal or modification of many designations and
26 objections to designations. On April 6, 2023, the parties filed the pared down designations,
27 counter-designations, and objections with the Court.

28

1 108. On May 14, 2023, Plaintiffs provided the designations to their trial vendor to begin
2 making video clips for the witnesses they expected to present at trial via video. After receiving
3 the clips, DPPs and other Plaintiff groups continued to refine the videos until they were in trial-
4 ready form. DPPs and other plaintiff groups also continued to fine-tune the deposition testimony
5 that would be played at trial in response to being alerted by Defendants that certain witnesses
6 would not be testifying live at trial (for example, Greg Chopskie).

7 **viii. Trial Exhibits**

8 109. Like with the deposition designations, DPPs engaged in a months-long process in
9 coordination with the other plaintiff groups and Defendants to identify and narrow the exhibits for
10 trial and the parties' objections to such exhibits. DPPs were heavily represented on the subject
11 matter teams responsible for identifying trial exhibits relevant to all plaintiff groups' claims, as
12 well as the teams responsible for working in coordination with experts jointly retained by all
13 plaintiff groups to identify potential trial exhibits to be used by such experts and in cross-
14 examining Defendants' experts. DPPs were also responsible for identifying and designating trial
15 exhibits relevant to DPP Class member claims only, such as exhibits supporting the DPP class
16 representative's and expert economist's testimony at trial.

17 110. Plaintiffs and Defendants exchanged initial exhibit lists on December 1, 2022.
18 Plaintiffs' initial exhibit list identified 2,408 documents, data files, demonstratives, and other
19 materials by Bates number and deposition exhibit number (where applicable), included a short
20 description for each proposed exhibit, and designated each exhibit as "Expect to Offer" or "May
21 Offer." Defendants' initial exhibit list identified 1,823 potential exhibits for trial.

22 111. The parties exchanged objections to proposed trial exhibits on January 5, 2023.
23 DPP Counsel participated in the subject matter teams responsible for lodging these objections on
24 behalf of all plaintiff groups. To guard against a scenario in which all indirect purchaser claims
25 settled out of the case or were dismissed prior to trial—rendering pass-on evidence irrelevant—
26 DPP Counsel separately lodged objections to trial exhibits relating to pass-on evidence.

27 112. Plaintiffs and Defendants exchanged revised trial exhibit lists on January 25, 2023.
28 Similar to the initial trial exhibit list, Plaintiffs' revised exhibit list identified 2,259 documents,

1 data files, demonstratives, and other materials by Bates number and deposition exhibit number
2 (where applicable), included a short description for each proposed exhibit, and designated each
3 exhibit as “Expect to Offer” or “May Offer.” The revised exhibit list also “tiered” the potential
4 trial exhibits as follows: Tier 1 (will use), Tier 2 (most likely will use), Tier 3 (might use), Tier 4
5 (Plaintiffs do not plan to use this document, provided the trial aligns with the structure proposed
6 by Plaintiffs). The parties exchanged objections to the revised trial exhibits on February 6, 2023.

7 113. On March 29, 2023, Plaintiffs served a revised trial exhibit list on Defendants. For
8 each exhibit identified, the revised exhibit list included a trial exhibit number, document date,
9 document type (for example, email), Bates numbers, a short description, the purpose of the
10 document, possible witnesses (completed for most of the documents), a summary of Defendants’
11 objections, Plaintiffs’ response to Defendants’ objections, and a tier for the document (1-4). On
12 March 31, 2023, Defendants provided Plaintiffs with a combined exhibit list containing Plaintiffs’
13 revised exhibit list and their revised exhibit list into one document. On April 6, 2023, the parties
14 jointly submitted a revised trial exhibit list to the Court.

15 114. Between April 6, 2023, and April 24, 2023, the parties worked to clean up and
16 finalize the trial exhibit list by, among other things, withdrawing duplicate documents and
17 identifying incomplete versions of exhibits. On April 24, 2024, the parties jointly submitted an
18 updated trial exhibit list to the Court.

19 115. DPP Counsel continued to meet and confer with other plaintiff groups and
20 Defendants regarding trial exhibits and objections to same until the day DPPs reached an
21 agreement with Gilead on the materials terms of the Settlement.

22 **ix. Witness List**

23 116. As was the case with the exhibit list, the witness list was a months-long endeavor
24 that required the plaintiff groups to communicate and work cooperatively among the plaintiff
25 groups, as they met and conferred with Defendants, regarding witnesses to be called live at trial
26 and witnesses to be called via deposition, witness availability, and other such issues related to the
27 witness list.
28

1 117. DPP Counsel were heavily involved in preparation for and taking of depositions,
2 as well as in the review of the millions of documents from Defendants and non-parties. Therefore,
3 DPP Counsel naturally participated in the strategy discussions among the plaintiff groups
4 regarding which witnesses to call, and in which order. This strategy discussion began by fall 2022
5 and continued through DPPs' settlement with Gilead on the eve of trial just before opening
6 statements.

7 118. DPP Counsel, along with the other plaintiff groups, prepared detailed initial
8 witness disclosures that they provided to Defendants on December 1, 2023. *See* Plaintiffs'
9 Amended Trial Witness Summaries, ECF No. 1864. DPPs handled their client witnesses as well
10 as many of the witnesses in whose depositions they were deeply involved or in which subject
11 matter teams DPP Counsel had been deeply involved in preparing for depositions and trial.
12 Plaintiffs provided a short supplemental statement as to the substance of each witness's testimony
13 and a time estimate of that trial testimony on December 22, 2022. ECF No. 1864. Defendants
14 informed Plaintiffs whether the witnesses would appear live or by deposition video on January
15 27, 2023. *See* ECF No. 1613.

16 119. DPPs refined their witness summaries in light of the Court's summary judgment
17 order. Plaintiffs provided to Defendants a revised witness list on January 17, 2023. Defendants
18 agreed to disclose witnesses that they planned to bring to trial who were outside subpoena power
19 45 days before trial. ECF No. 1561. Plaintiffs filed further witness summaries as an exhibit to the
20 joint pretrial conference statement on February 9, 2023. ECF No. 1636-5. Plaintiffs filed an even
21 further refined witness list and summaries on March 28, 2023, as did Defendants, following the
22 Court's order on motions in limine. ECF No. 1722-1. The parties filed their final witness lists on
23 May 19, 2023. ECF No. 1864.

24 120. At each stage of the witness lists and summaries, DPP Counsel strategized as to
25 which witnesses should represent the class representative at trial from KPH, what testimony they
26 would provide, and how long that testimony would take. Furthermore, DPP Counsel strategized
27 as to the witnesses that should be called in litigating their reverse payment claims, in what order,
28 for how long, and regarding which topics; in light of the fact that most fact witnesses in this case

1 would be adverse and the rest were expert witnesses, these strategy discussions were extensive
2 and complex.

3 **x. Voir Dire Questionnaire**

4 121. The parties filed a joint set of proposed voir dire questions on February 9, 2023.
5 ECF No. 1637-11. DPP Counsel led the plaintiff groups in the drafting, consulting with trial
6 consultants, and meeting and conferring with Defendants as to the voir dire questions.

7 122. The parties first exchanged draft voir dire questions on January 24, 2023. ECF No.
8 1613. In preparation for that exchange, DPP Counsel drafted questions and requested feedback
9 from the plaintiff groups and trial consultants on those draft questions. DPP Counsel adjudicated
10 the edits and comments and finalized the draft set of questions for exchange with Defendants.

11 123. The parties exchanged objections to voir dire questions on January 27, 2023, after
12 which the parties met and conferred regarding their objections in an effort to narrow their
13 disagreements and file an agreed set of voir dire questions. ECF No. 1613. Through meeting and
14 conferring and exchanging revised drafts, the parties successfully narrowed their disagreements to
15 just a few questions, which were proposed separately by the parties, by the time they filed their
16 proposed questions with the Court. *See* ECF No. 1657-11.

17 124. At the pretrial conference on April 10, 2023, the Court instructed the parties to file
18 a proposed written jury questionnaire by April 27, 2023. ECF No. 1774. The questions posed by
19 this questionnaire would replace many of the previously proposed voir dire questions, given the
20 complex and sensitive nature of some topics in the litigation. As a result, the parties again
21 exchanged proposed drafts of the written questionnaire before meeting and conferring. Again,
22 DPP Counsel led the charge, drafting the questionnaire, seeking feedback from other plaintiff
23 groups and trial consultants for both DPPs and the other plaintiff groups, and working with
24 Defendants to refine the questions in an effort to reduce any disagreements. DPP Counsel filed a
25 jointly proposed questionnaire, with only a few questions that were not agreed proposed by each
26 side, with the Court on April 27, 2023. ECF No. 1818. For the questions that were not agreed,
27 DPP Counsel drafted and sought feedback from the other plaintiff groups as to Plaintiffs'
28

1 arguments in support of their proposed questions and in opposition to Defendants' proposed
2 questions. *Id.*

3 125. The parties submitted a slightly modified written juror questionnaire on May 11,
4 2023, incorporating the directives provided by the Court at the pretrial conference held the day
5 prior. ECF No. 1834. The written questionnaire was then electronically provided to the jury pool
6 through the Court's jury office and informed voir dire.

7 **M. Trial Preparation**

8 **i. Retention of Trial Consultants**

9 126. Knowing there was a likelihood (through past experience) that other plaintiff
10 groups may settle their cases before trial and leave DPPs to try the case on their own, DPPs
11 retained separate trial consultants (in addition to the trial consultants which were hired by the all-
12 plaintiffs groups) with deep experience in complex litigation in the Bay Area. These trial
13 consultants were retained in the fall of 2022 to advise on trial strategy, jury selection, and voir
14 dire, and to execute various jury focus groups and a two-day mock trial. The trial consultants
15 ultimately put on two jury focus exercises and one two-day mock trial, all taking place in the Bay
16 Area. The trial consultants provided their own thoughts as to the case and proposed tactics for
17 addressing anticipated trial issues.

18 127. DPPs also worked with consultants who ran a large-data survey study online.
19 DPPs assisted in preparing the survey, which posed a series of questions to a large pool of
20 potential jurors. The survey was designed to gather information about the jury pool and their
21 perception of issues in the litigation.

22 128. Additionally, in the spring of 2023, DPPs decided to retain the jury consultants
23 that the other plaintiff groups had hired to assist them with trial. These consultants participated in
24 the all-plaintiffs' mock trial as well as in the DPP-only mock trial. They provided invaluable
25 support in preparing for voir dire, jury selection, preparation of witnesses, and other trial strategy.

26 **ii. Mock Trial / Focus Groups**

27 129. In early December 2022, DPPs held a jury focus group exercise in the Bay Area to
28 better understand how juries perceive the reverse payment liability theory, DPPs, and other trial

1 issues. The exercise involved a significant amount of intense work by DPP Counsel, who drafted
2 a presentation and prepared a PowerPoint for the trial consultants to use in presenting the case to
3 the jurors. The presentation was drafted by multiple DPP Counsel and was revised continuously
4 by DPP Counsel and DPPs' trial consultants until it was presented to the jurors. During the
5 exercise, the trial consultants read the presentation for the jurors, then asked the jurors questions
6 intended to provide information about their understanding of the case. The exercise lasted slightly
7 over half a day. DPP Counsel worked collaboratively with the trial consultants to draft
8 appropriate questions. DPP Counsel tuned in remotely and reviewed recordings thereafter.

9 130. The EPPs and Retailers prepared a live jury focus group exercise in early January
10 2023 in the Bay Area. DPP Counsel represented the DPP Classes in person and remotely and
11 participated in strategy conversations with the other plaintiff groups and among themselves
12 following the exercise.

13 131. The DPPs held a second jury focus group exercise in the Bay Area in early
14 February 2023. This focus group differed from the first focus group in two main respects: this
15 group was shown a recorded presentation by one of DPP Counsel, who presented both Plaintiffs'
16 and Defendants' arguments regarding the reverse payment claims, and the presentation was
17 refined in light of the Court's summary judgment order. Again, DPP Counsel worked intensely to
18 prepare for the focus group and to provide the trial consultants with all of the information and
19 materials they needed to put on the exercise.

20 132. Finally, DPPs held a mock trial in the Bay Area in April 2023. The mock trial was
21 a two-day in-person event held on a weekend. The preparation for this event was grueling and
22 intense involving multiple DPP Counsel. DPP Counsel prepared drafts of the presentations in
23 advance, circulated the drafts among DPP Counsel, and revised the drafts multiple times. DPP
24 Counsel held practice mock presentations in Washington, D.C., where DPP Counsel collaborated
25 on mock trial and other case strategy. DPP Counsel prepared polished PowerPoint decks and clips
26 of deposition testimony and recorded faux deposition testimony to test the jury's perception of
27 certain witness testimony. DPP Counsel also prepared video presentations by some of their key
28 expert witnesses, along with matching PowerPoint presentations. Each of these parts of the mock

1 trial took dozens of hours to prepare, refine, and finalize. Most DPP Counsel attended the mock
2 trial in person in the Bay Area, while some were able to tune in remotely. During the exercise,
3 DPP Counsel presented Plaintiffs' and Defendants' openings, arguments (including video
4 testimony consisting of both deposition clips and video testimony prepared specifically for this
5 exercise), and closings. Following the presentation, the trial consultants met with the jurors in
6 smaller groups to discuss their impressions and understanding of the case. Then the jurors were
7 left to deliberate and come to a conclusion about liability and damages.

8 133. These exercises were extremely informative and helped DPPs adapt and fine-tune
9 their trial strategy. Following the mock trial, for example, DPP Counsel were convinced from the
10 jurors' responses to the presentations that the verdict form must be simplified and the jury
11 instructions must include certain wording regarding the definition of the reverse payment.
12 Following each exercise, the jury consultants provided reports including the results of the
13 exercise as well as the consultants' observations of case themes and problems and proposals for
14 how to move forward incorporating lessons learned. As a result of this mock trial as well as the
15 other jury focus group exercise, DPP Class Counsel were fully prepared to try this case without
16 any other plaintiff group in the event that the other plaintiff groups settled.

17 **iii. Trial Strategy / Order of Proof**

18 134. Preparation of an Order of Proof was a complex and multi-pronged task in this
19 case. DPP Counsel recognized that one or more of the other plaintiff groups could reach a
20 settlement with Defendants at any time—the fact that EPP lead counsel reached a settlement on
21 the eve of trial in pharmaceutical antitrust case *Zetia* in the spring of 2023 further served to
22 bolster that conclusion. As a result, to best protect Direct Purchaser Class Members' interests,
23 DPP Counsel prepared to try the case alongside all five plaintiff groups, some combination (but
24 not all) plaintiff groups, and by themselves without the involvement of any other plaintiff group.

25 135. Plaintiffs began working on a preliminary Order of Proof in late 2022. These early
26 drafts focused on the Order in which to call witnesses at trial, the subject matter of expected
27 testimony, the expected length of testimony, and whether a witness was subject to the Court's
28 jurisdiction for a trial subpoena. Early drafts of the Order of Proof anticipated that the reverse

1 payment, NGR, and TAF claims would be tried together. Following the Court's summary
2 judgment rulings, the Order of Proof was revised to focus only on the reverse payment claims.

3 136. Between January and late-May 2023 (when DPPs reached the Settlement with
4 Gilead), DPP Counsel participated in countless discussions with other plaintiffs' counsel
5 regarding the Order of Proof. These discussions focused on: (i) which witnesses to call during
6 Plaintiffs' case in chief; (ii) whether to call adverse witnesses as part of Plaintiffs' case in chief
7 (and if so, which witnesses); (iii) the order in which witnesses should be called during Plaintiffs'
8 case in chief; (iv) which of Plaintiffs' experts should be called during Plaintiffs' case in chief;
9 (v) which witnesses' deposition testimony should be played to the jury; and (vi) how much time
10 to allocate to the testimony of each witness. Underlying these discussions were Plaintiffs'
11 counsel's views regarding the facts and documents Plaintiffs needed to get into evidence to prove
12 their claims, and the most persuasive and convincing way for Plaintiffs to present their case to a
13 jury.

14 137. Not surprisingly, the five different plaintiff groups did not agree on all of these
15 items. Most notably, there was disagreement regarding whether to call adverse witnesses as part
16 of Plaintiffs' case-in-chief (and, if so, which witnesses), the order in which witnesses should be
17 called, and the plaintiff experts who needed to testify at trial. These discussions continued until
18 the day DPPs reached agreement on the material terms of the Settlement with Gilead.

19 **iv. Fact Witness Examinations**

20 138. DPP Counsel devoted significant time and effort crafting fact witness
21 examinations for trial, including identifying potential exhibits. Amongst the broader plaintiff
22 groups, preparation of initial fact witness examinations, including potential exhibit designations,
23 were assigned to an attorney or group of attorneys well-versed in the topics the witness was
24 expected to testify on. Examinations were then circulated for review and comment to counsel
25 with expertise in the subject matter the witness would be testifying on. DPP Counsel were
26 responsible for drafting certain witness examinations and were well represented on the teams
27 responsible for reviewing and commenting on witness examinations.
28

1 139. DPP Counsel separately drafted fact witness examinations (including identifying
2 potential exhibits) for trial to guard against a scenario in which one or more plaintiff groups
3 settled out of the case prior to or during the early stages of trial. These examinations were
4 assigned to DPP Counsel knowledgeable of the subject matter on which the witness was expected
5 to testify.

6 **v. Expert Witness Preparation and Examinations**

7 140. Expert preparation for trial was a time-intensive endeavor given the number of
8 experts expected to testify at trial.

9 141. To prepare DPPs' expert economist, Dr. Russell Lamb, DPP Counsel drafted an
10 outline of topics encompassing direct and anticipated cross-examination topics, identified
11 documents that they expected Dr. Lamb to see during his testimony, and scheduled multiple prep
12 sessions during which DPP Counsel discussed with Dr. Lamb the testimony topics and
13 documents.

14 142. DPP Counsel played a crucial role in preparing the experts who were jointly
15 retained by the plaintiff groups. As with other pretrial projects, DPP Counsel took the lead as to
16 certain shared experts or portions of expert testimony, which involved drafting outlines,
17 circulating those drafts for input from the expert and other plaintiff groups, and identifying
18 exhibits. As to the Plaintiffs' experts for whom DPP Counsel did not take the lead, DPP Counsel
19 actively participated in their preparation.

20 143. DPP Counsel actively participated in the preparation of the outline of topics for
21 direct and cross-examination for Professor McGuire and represented the DPP Classes in multiple
22 virtual meetings, as well as three full-day in-person meetings in Austin, Texas with Professor
23 McGuire with other plaintiff groups' counsel. DPP Counsel reviewed and discussed the strategy
24 as to Professor McGuire's testimony over the course of dozens of hours with the expert and other
25 plaintiff groups, commented on draft outlines and questions, including as to anticipated cross-
26 examination topics and questions.

27 144. DPP Counsel actively participated in developing, refining, and discussing the
28 outlines and documents for Mr. Lentz' and Dr. Caldwell's testimony, providing both technical

1 patent law advice and strategic trial guidance to the expert witnesses in cooperation with counsel
2 representing the other plaintiff groups.

3 145. DPP Counsel further participated in drafting, revising, researching, and finalizing
4 outlines, identifying exhibits, and discussing testimony and trial strategy with the experts and
5 counsel from the other plaintiff groups. This involved many hours of drafting and revising,
6 document review, and meetings both with and without the expert witnesses.

7 146. DPP Counsel also actively prepared for the cross-examinations of Defendants'
8 experts whom DPP Counsel expected to testify at trial. Those DPP Counsel who prepared the
9 Plaintiffs' shared experts on similar topics were typically the counsel to prepare the cross-
10 examinations for Defendants' experts. For example, the DPP Counsel that participated in the
11 preparation of Mr. Lentz and Dr. Caldwell also took the lead role in drafting a cross-examination
12 for one of the defense experts expected to testify as to the patent-related issues in the case. For
13 defense experts whose outlines were not primarily prepared by DPP Counsel, DPP Counsel were
14 actively involved in the review, refinement, and research to finalize those outlines before DPPs'
15 settlement with Gilead.

16 **vi. Client Witness Preparation**

17 147. DPP Counsel also worked extensively with Brian Scott, the KPH corporate
18 representative designated to testify at trial to prepare him for his trial testimony. These efforts
19 included drafting, researching, and revising an outline covering potential topics he might expect
20 to testify about at trial, providing copies of potential exhibits he could expect to or might see at
21 trial, and having several calls with Mr. Scott to discuss his direct examination and potential cross
22 examination topics. Mr. Scott dedicated over 40 hours to his preparation for trial.

23 148. Mr. Scott had booked his travel and was preparing to begin traveling from upstate
24 New York to San Francisco when DPPs reached a settlement with Gilead. Ready to testify, Mr.
25 Scott was literally awaiting his flight at the airport when he received the call that the DPPs had
26 settled with Gilead.

27
28

1 **vii. Jury Selection**

2 149. DPP Counsel began working with the trial consultants months in advance of trial
3 to prepare for jury selection. The trial consultants provided reports following those exercises and
4 independent of those exercises regarding the case and which jurors were likely to understand,
5 support, and/or not support Plaintiffs' claims.

6 150. As discussed, the jury consultants were actively involved in drafting and refining
7 the voir dire questions and the juror questionnaires. Once the juror questionnaire was finalized
8 and submitted to the Court, DPP Counsel worked closely with the trial consultants to review and
9 process the responses received from the jury pool as they came in. Those responses were
10 compiled by the trial consultants in a user-friendly spreadsheet that identified jurors, who were
11 likely to be excused for cause or for another reason, and that identified the jurors as very desirable
12 or undesirable. DPP Counsel built upon this spreadsheet and relied upon the analysis to inform
13 DPP Counsel's approach to the hearing preceding jury selection in which the parties' counsel
14 discussed jurors that would be excused. DPP Counsel then relied on the analysis to inform their
15 approach in discussions with the other plaintiff groups regarding the strategy for voir dire.

16 151. During jury selection, DPP Counsel had a solid understanding of which jurors
17 were likely to be adverse to their claims and friendly to the defenses, which were likely to be
18 friendly to their claims and adverse to the defenses, and which were likely to be relatively neutral.
19 This understanding and ongoing strategy discussions with the trial consultants, in cooperation
20 with the other plaintiff groups, informed their approach to the Plaintiffs' strategy during jury
21 selection.

22 **viii. Opening Statements**

23 152. DPP Counsel reached agreement with Gilead on the material terms of the
24 Settlement hours prior to opening statements. Had the Settlement not been reached, DPP Counsel
25 were fully prepared to make both a short and a full opening statement (in case the other plaintiffs
26 had settled).

27 153. With respect to the all-plaintiff group opening statement given by EPP Counsel,
28 DPP Counsel provided feedback regarding the topics to cover and reviewed and commented on

1 the outline and slides. DPP Counsel also coordinated with EPPs, Retailers, United, and IHPPs to
2 ensure each group's opening statements were consistent and non-duplicative.

3 154. Along with other plaintiff groups, DPP Counsel met and conferred with
4 Defendants' counsel regarding Defendants' objections to the slides Plaintiffs intended to show the
5 jury during opening statements and Plaintiffs' objections to the slides Defendants intended to
6 show the jury during opening statements.

7 **III. THE SETTLEMENT AND SETTLEMENT NEGOTIATIONS**

8 **A. Negotiations and Mediation**

9 155. The Settlement was reached after several rounds of hard-fought negotiations
10 assisted by Kenneth Feinberg, one of the nation's top mediators.

11 156. Mr. Feinberg was not the first mediator utilized by the parties in this matter. On
12 December 15, 2021, the parties participated in mediation assisted by Professor Eric Green. Those
13 efforts were unsuccessful.

14 157. With trial looming and the benefit of the Court's rulings on class certification,
15 summary judgment, and other pretrial issues in hand, the parties agreed to engage in a second
16 mediation to attempt to resolve the matter. On May 8, 2023, DPP Counsel participated in an in-
17 person mediation with Gilead in New York City, assisted by Mr. Feinberg.⁷ After several hours
18 of negotiations, the parties terminated the mediation session without having reached a settlement.

19 158. Negotiations between DPP Counsel and Gilead continued in the weeks following
20 the failed mediation session with the assistance of Mr. Feinberg. After exchanging innumerable
21 phone calls and emails with Mr. Feinberg, including throughout the late hours during the evening
22 of May 24 and early morning hours of May 25, DPP Counsel and Gilead finally reached
23 agreement on the material terms of a Settlement on the morning of May 25, 2023—just hours
24 before opening statements—and executed a Memorandum of Understanding shortly thereafter.

25 159. Prior to opening statements in the jury trial, counsel for DPPs and Gilead informed
26 the Court in-chambers that they had reached agreement on the terms of a Settlement.

27
28 ⁷ Counsel for various other plaintiff groups were also present at the May 8, 2023 mediation.

1 160. In the weeks that followed, DPP Counsel drafted and refined a long-form
2 Settlement Agreement and provided that draft to Gilead. DPPs and Gilead exchanged drafts and
3 revisions to the Settlement Agreement for more than six weeks (in part because counsel for
4 Gilead was still in trial), at which point the parties concluded they were at an impasse regarding
5 certain release language. They agreed to submit the dispute regarding that lone issue to binding
6 mediation before Mr. Feinberg. DPP Counsel prepared a mediation statement in support of their
7 position and submitted it to Mr. Feinberg in advance of the mediation.

8 161. The binding mediation before Mr. Feinberg occurred on July 18, 2023, and Mr.
9 Feinberg issued his opinion on the matter that same day. After exchanging additional drafts and
10 revisions, the parties executed the Settlement Agreement on July 24, 2023.

11 162. Neither DPP Counsel nor I discussed with Gilead the request for attorneys' fees,
12 costs, and expenses or a representative-plaintiff service award until after all substantive elements
13 of the Settlement were agreed upon.

14 **B. Benefits of the Settlement**

15 163. The Settlement provides for Gilead's payment of \$246,750,000 into an Escrow
16 Account for the benefit of the previously certified Classes. After Notice and Administration
17 Expenses⁸ and attorneys' fees, costs, and expenses, and any representative plaintiff service award
18 approved by the Court are deducted, all amounts remaining in the Escrow Account will be
19 distributed to Direct Purchaser Class Members that submit a valid Claim Form in accordance with
20 the Allocation Plan approved by the Court; no amount will revert to Gilead.

21 **C. Preliminary Approval**

22 164. While DPPs were negotiating the final long-form Settlement Agreement, DPP
23 Counsel were also drafting the motion for preliminary approval, supporting memorandum, and
24 exhibits in support, including the plan of allocation, the escrow agreement, and the notice
25 documents. DPP Counsel also consulted with Dr. Lamb and the claims administrator to obtain
26

27 ⁸ The Settlement Administrator's fees for notice and administration are capped at \$60,000, and
28 Dr. Lamb's office has advised me that they estimate fees of between \$15,000 and \$20,000 to
oversee the allocation in accordance with the Allocation Plan.

1 their declarations to be filed with the preliminary approval motion. DPP Counsel drafted the
2 motion, memorandum, and exhibits in support, then refined those documents based on feedback
3 from other DPP Counsel, the claims administrator, and or Dr. Lamb.

4 165. DPP Counsel worked to refine these documents until after the binding mediation
5 before Mr. Feinberg and after the final long-form Settlement Agreement was executed. The day
6 the agreement was executed, DPP Counsel sent Gilead all the exhibits to the Settlement
7 Agreement and a confidential side letter regarding diminution and termination of the Settlement.
8 The parties negotiated revisions to those documents until they were final.

9 166. KPH filed DPPs' motion for preliminary approval of the settlement with Gilead on
10 August 9, 2023. ECF No. 2086. The motion provided for notice similar to the notice plan in
11 connection with the BMS Settlement: direct mail notice, digital notice, and a settlement website,
12 as well as direct telephone calls from DPP Counsel to Class Members who have not submitted
13 claims. The motion also argued that another opportunity to opt out was unnecessary.

14 167. In response to the Court's order, DPPs provided supplemental briefing as to
15 several topics including the number of DPP Class Members, escrow expenses, evidence to
16 support the attorneys' fee amounts requested, whether a second opportunity to opt out should be
17 provided to Class Members, additional media notice, and language in the notices. Order re
18 Supplemental Briefing, ECF No. 2091; Supplemental Briefing, ECF No. 2095.

19 168. DPP Counsel presented unopposed argument in support of the motion for
20 preliminary approval on September 21, 2023.

21 169. The Court granted DPPs' motion for preliminary approval of its class action
22 settlement with Gilead on September 25, 2023. ECF Nos. 2109, 2110. In doing so, the Court
23 slightly modified language in the notices, did not order another opportunity for Class Members to
24 opt out, and required additional media notice to be provided.

25 **IV. NOTICE AND SETTLEMENT ADMINISTRATION**

26 **A. The Notice Program**

27 170. In accordance with the Court's order, DPPs immediately got to work
28 implementing the notice program. Within 14 days of the Court's preliminary approval order, the

1 claims administrator mailed the detailed notice and a pre-populated claim form to each identified
2 DPP Class Member, caused a press release to be published, and caused a case-specific settlement
3 website to go live. DPP Counsel worked closely with the claims administrator to ensure that the
4 notices complied with the Court's order and that all Class Members were accounted for in the
5 mailings.

6 171. Two weeks later, the claims administrator caused the digital notice to be published
7 as provided in the Court's order. Two weeks after that (42 days after the preliminary approval
8 order), the claims administrator caused reminder notices to be mailed to Class Members. DPP
9 Counsel again worked closely with the claims administrator to ensure that these steps complied
10 with the Court order.

11 172. Five mailed direct notices were returned as undeliverable to KCC. After
12 conducting an address search and finding no other addresses to re-mail the notice, KCC notified
13 DPP Counsel. DPP Counsel contacted four of those Class Members through their counsel, and
14 DPP counsel contacted the fifth Class Member via email and a follow-up telephone call to
15 confirm receipt of the email, providing Class Members with PDFs of both the long-form notice
16 and their specific pre-populated claim form.

17 173. In accordance with the preliminary approval order, DPP Counsel began calling
18 Class Members who have not submitted claim forms by November 20, 2023. Additionally, a
19 second reminder notice will be mailed by the claims administrator by December 4, 2023.

20 **B. DPP Class Members' Reaction to the Settlement**

21 174. As of this submission, counsel for DPPs have received no objections to the
22 Settlement, nor do DPPs expect to receive any objections to the Settlement, especially in light of
23 the monetary relief provided to the DPP Classes and the outcome of EPPs, IHPPs, and United's
24 trial.

1 **V. ATTORNEYS' FEES, COSTS, AND EXPENSES AND SERVICE AWARD**

2 **A. The Requested Attorneys' Fees Award**

3 175. The 39,091 hours DPP Counsel spent vigorously prosecuting this case in the face
4 of the skilled and exhaustive efforts of Gilead's counsel from three of the nation's largest law
5 firms resulted in the \$246,750,000 Settlement for the benefit of the DPP Class.

6 176. DPP Counsel prosecuted this novel and complex antitrust action on a contingency-
7 fee basis against some of the nation's largest and most-profitable pharmaceutical companies.
8 Since the filing of this litigation, Defendants have maintained (and continue to maintain) that they
9 did nothing wrong, and that DPPs' claims lack merit and are legally unsupported. Given
10 Defendants' deep pockets, the nature of the claims at issue, and the litigation record from similar
11 cases, DPP Counsel knew when taking this matter on that the outcome was uncertain and there
12 was a real chance they would receive no recovery on behalf of the Classes for their efforts.

13 177. Co-Lead Class Counsel and other DPP Counsel have significant experience
14 prosecuting complex antitrust class actions. Their skill is reflected in the excellent Settlement
15 they obtained on behalf of the Classes and the fact that they, in the face of stiff opposition,
16 defeated multiple motions to dismiss, prevailed on a motion for class certification, defeated
17 Gilead's request for appellate review of the Court's class certification ruling, and litigated this
18 case to the eve of opening statements before a jury.

19 178. While the Court-approved notice documents notified DPP Class Members of DPP
20 Counsel's intent to seek a fee award of up to 33 ⅓% of the Settlement Fund (or \$82,250,000),
21 DPP Counsel request an attorneys' fee award of \$75,000,000, which represents 30.39 percent of
22 the \$246,750,000 Settlement Fund (or 29.1% of the total benefits DPP Counsel secured in the
23 litigation).⁹ The DPP Class is comprised of sophisticated Class Members. None of the DPP Class
24 Members have objected to this request. Further, the DPP Class Members with whom I have
25 spoken directly regarding this request (including the 3 largest Class Members comprising over
26

27 ⁹ The percentage of recovery was calculated as follows: $\$75,000,000 / \$246,750,000 = .3039$.
28 Taking the BMS Settlement into account, the percentage of recovery for the entire litigation was
calculated as follows: $\$75,000,000 / (\$10,800,000 + \$246,750,000) = .291$.

1 90% of Truvada and Atripla sales, that is, the three largest national wholesalers) have informed us
2 they do not object to our fee petition.

3 179. A lodestar cross-check confirms the reasonableness of the requested award. In
4 accordance with the Court's September 18, 2019 Modified Order Re Protocol for Common
5 Benefit Work and Expenses (ECF 176), Ms. Nast and I mandated that all common benefit time
6 was approved by one of Co-Lead Class Counsel and required all DPP Counsel firms to submit
7 monthly common benefit time and expense submissions. As Co-Lead Class Counsel, I thoroughly
8 reviewed all DPP Counsel time submissions, and Ms. Nast and I made reductions and deletions of
9 time as appropriate. Excluding time spent administering the BMS Settlement, drafting this fee
10 petition, and time from attorneys with a lodestar of less than \$20,000 on the case, DPP Counsel
11 spent 39,091 hours advancing the litigation through October 31, 2023, for a collective lodestar of
12 \$34,281,869. As such, the requested fee award of \$75,000,000 represents a reasonable lodestar
13 multiplier of 2.19. The following chart details the collective lodestar of each of the DPP Counsel
14 firms:

| Firm | Hours | Lodestar |
|------------------------------------|------------------|---------------------|
| Roberts Law Firm US, PC | 21,339.4 | \$17,108,005 |
| Nastlaw LLC | 10,798.9 | \$9,430,081 |
| Hausfeld LLP | 5,535.1 | \$6,341,913 |
| Law Offices of Francis O Scarpulla | 1418.2 | \$1,401,870 |
| Total | 39,091.60 | \$34,281,869 |

19 180. As confirmed below (for Roberts Law Firm US, PC) and in the attached
20 declarations from each of the other DPP Counsel firms,¹⁰ the hourly rates reported and used to
21 determine the collective lodestar are the current usual and customary rates set for each individual,
22 reflect what would be charged to a fee-paying client in the private legal marketplace for complex
23 litigation, and in line with the rates charged by other firms that handle complex antitrust class
24 actions. The time submitted by DPP Counsel firms was also subject to an extensive audit and
25 review by Co-Lead Class Counsel.

26
27 _____
28 ¹⁰ See the Declarations of Dianne M. Nast, Michael D. Hausfeld, and Francis O. Scarpulla,
attached as Exhibits 3, 4, and 5, respectively.

1 **B. Unreimbursed Costs and Expenses**

2 181. DPP Counsel incurred \$5,387,478.45 in costs and expenses in advancing this
3 matter. They previously received reimbursement for \$2,500,000 of those costs and expenses in
4 connection with the BMS Settlement. They now request reimbursement for the remaining
5 \$2,887,478.45 in unreimbursed costs and expenses. These costs and expenses were advanced in
6 connection with travel to hearings, trial, and witness preparation; court reporting and
7 videographer services for hearings, depositions, and/or trial; expert witnesses; trials vendors and
8 consultants; legal research; mediation (with two separate mediators); copying and mailing;
9 service; court fees; and other customary litigation costs and expenses. As confirmed below (for
10 Roberts Law Firm, US PC) and in the attached declarations from each of the other DPP Counsel
11 firms, these costs and expenses are based on the books and records of the firms and represent an
12 accurate recordation of the costs and expenses incurred in connection with the litigation. Below is
13 a summary of the costs and expenses incurred:

| Description | Amount |
|--|----------------|
| Travel (airfare, ground transportation, parking, etc.) | \$96,918.43 |
| Hotels | \$130,076.91 |
| Meals | \$8,146.40 |
| Document Hosting / Review Platform | \$284,517.23 |
| Transcripts and Deposition Costs | \$119,616.04 |
| Experts / Consultant Fees | \$4,489,235.08 |
| Electronic Research | \$118,631.71 |
| Photocopies / Printing | \$15,819.83 |
| Mediation Costs | \$91,669 |
| Court Fees | \$5,668.63 |
| Service of Process | \$2,384.65 |
| Postage/FedEx/Messenger | \$2,203.92 |
| Miscellaneous Costs | \$22,590.62 |
| BMS Settlement Reimbursement | (\$2,500,000) |
| Total Unreimbursed Costs and Expenses | \$2,887,478.45 |

24 **C. The Class Representative Service Award**

25 182. KPH, as the only class representative for DPPs, relentlessly advocated for the
26 Classes throughout this litigation. In addition to the defensive document discovery and trial
27 preparation described in detail above, KPH worked with McKesson to obtain the assignment and
28

1 reviewed the complaint. *See* Excerpt of Charles Aquilina Deposition Transcript, ECF No. 1364-1
2 at 14-15.

3 183. A \$40,000 award for KPH's service to the DPP Classes is reasonable and
4 appropriate in light of its service to the DPP Classes.

5 **VI. ROBERTS LAW FIRM US, PC TIME, COSTS, AND EXPENSES**

6 184. As Co-Lead Class Counsel, I co-led all aspects of the litigation from its inception
7 through the Settlement. Attorneys from Roberts Law Firm US, PC ("RLF") and I actively
8 participated in all aspects of the litigation including, but not limited to, pre-filing research and
9 investigation, drafting complaints, managing DPP Counsel, coordinating with counsel from the
10 other plaintiff groups, responding to Defendants' motions to dismiss and to compel arbitration,
11 serving and responding to written discovery, reviewing documents, preparing and filing motions
12 to compel, taking and defending depositions, retaining and coordinating with experts, and briefing
13 class certification and various other pretrial submissions. RLF was also heavily involved in trial
14 preparation including, but not limited to, working with jury consultants on setting up two focus
15 group sessions and a mock trial and coordinating with other plaintiff groups on trial strategy, the
16 verdict form, jury instructions, deposition designations, trial exhibits, the order of proof, witness
17 examinations, preparing expert witnesses to testify at trial, and other trial-related matters. During
18 the prosecution of this case, there were multiple and lengthy periods of time where litigation was
19 so intense that a number of highly experienced attorneys from RLF were working full-time or
20 virtually full-time on this case alone. The resources required of this matter were so significant that
21 RLF was forced to turn down opportunities to work on other cases to devote the resources
22 required to effectively advance this matter.

23 185. RLF prosecuted this case on a contingent-fee basis with no guarantee of recovery.
24 From inception to October 31, 2023, excluding time spent administering the BMS settlement, on
25 the Fee Petition, and from attorneys with less than \$20,000 in lodestar, RLF spent 21,339.4 hours
26 advancing the litigation. The total lodestar for RLF is \$17,108,005. The summary below includes
27 the name, position, years of experience, current hourly rate, time expended, and total lodestar of
28 each person from RLF who worked on the litigation. The hourly rates shown are the current usual

1 and customary rates set by RLF and comparable to rates of similar firms who practice in the same
 2 area of law in the Bay Area. The information in this declaration regarding the time RLF attorneys
 3 and other professionals spent advancing the litigation was pulled from contemporaneous, daily
 4 time records maintained by the firm's timekeeping software. A summary including each
 5 timekeeper's name, position, current billing rate, and total lodestar broken down by activity code
 6 is attached as Exhibit 2. As Co-Lead Class Counsel, RLF will spend additional time responding
 7 to any objections to the Settlement, preparing for and participating in the final fairness hearing,
 8 addressing appeals (if any) regarding the Settlement, responding to DPP Class Members'
 9 inquiries regarding the Settlement, and overseeing administration of the Settlement, for which no
 10 further compensation will be paid.

| Name | Position | Years of Experience | Hourly Rate | Hours Expended | Lodestar |
|---------------------|-----------------|----------------------------|--------------------|-----------------------|-----------------|
| Michael Roberts | Partner | 33 | \$1040 | 3589.9 | \$3,733,496.00 |
| Karen Halbert | Partner | 22 | \$950 | 1277.5 | \$1,213,625.00 |
| Christopher Sanchez | Partner | 23 | \$975 | 1063.2 | \$1,036,620.00 |
| Stephanie Smith | Partner | 19 | \$900 | 1780.4 | \$1,602,360.00 |
| Erich Schork | Partner | 17 | \$860 | 3742.9 | \$3,218,894.00 |
| Sarah DeLoach | Partner | 8 | \$750 | 4042.4 | \$3,031,800.00 |
| Debra Josephson | Of Counsel | 21 | \$760 | 126.8 | \$96,368.00 |
| Rita Wang | Of Counsel | 15 | \$820 | 539.8 | \$442,636.00 |
| Kelly Rinehart | Associate | 6 | \$660 | 2005.3 | \$1,323,498.00 |
| Morgan Hunt | Associate | 4 | \$560 | 2203.6 | \$1,234,016.00 |
| April Burton | Paralegal | 23 | \$170 | 122.4 | \$20,808.00 |
| Angelicia Grissom | Paralegal | 8 | \$170 | 905.2 | \$153,884.00 |
| Total | | | | 21,339.4 | \$17,108,005 |

21 186. RLF incurred \$1,072,798.86 in unreimbursed out-of-pocket costs and litigation
 22 expenses in relation to the litigation. The summary below includes an itemized description of the
 23 costs and litigation expenses incurred by my firm. These costs and litigation expenses were
 24 necessary for the efficient and effective prosecution of the litigation. The costs and litigation
 25 expenses records were prepared from receipts, expense vouchers, check records, and other
 26 documents and are an accurate record of the costs and litigation expenses. The costs and litigation
 27
 28

1 expenses are all of a type that, in my view, would normally be charged to a fee-paying client in
2 the private legal marketplace.

| Description | Amount |
|--|----------------|
| Travel (airfare, ground transportation, parking, etc.) | \$43,081.50 |
| Hotels | \$61,027.94 |
| Meals (during travel) | \$4,012.89 |
| Document Hosting / Review Platform | \$23,520.40 |
| Electronic Research | \$66,339.20 |
| Transcripts and Deposition Costs | \$423.15 |
| Service of Process | \$1953.40 |
| Court Fees | \$4,559.00 |
| Postage/FedEx | \$51.37 |
| Litigation Fund Contributions ¹¹ | \$1,811,402.55 |
| Miscellaneous Costs | \$11,427.45 |
| BMS Settlement Reimbursement | (\$955,000) |
| Total | \$1,072,798.86 |

13 187. As the above summary indicates, RLF contributed \$1,811,402.55 to the DPP
14 Litigation Fund to cover shared DPP litigation expenses, such as fees for DPPs' expert economist
15 and fees for DPPs' trial consultants. An itemized summary of the costs and litigation expenses
16 paid by the DPP Litigation Fund is included in the Declaration of Dianne Nast attached as Exhibit
17 3. RLF also separately contributed \$500,000 directly to the All-Plaintiff-Group Litigation Fund
18 maintained by the EPPs. RLF was reimbursed \$955,000.00 in connection with the BMS
19 Settlement.

20 188. The All-Plaintiff-Group Litigation Fund was established to cover shared expenses
21 for the five plaintiff groups involved in the case, including the fees of shared experts and trial
22 consultants, the costs of a shared document review platform, and depositions costs (transcripts,
23 videographer, etc.). DPP Counsel contributed \$1,816,410.96 to the All-Plaintiff-Group Litigation
24 Fund. The DPPs' contributions were used to pay the following: shared expert / consultant fees
25 (\$1,546,700.39) document hosting / review platform fees (\$226,399.85), deposition costs
26 (transcripts, videographer, etc.) (\$43,310.72). These amounts are based on invoices, check

27 ¹¹ This figure includes RLF's contributions to the DPP Litigation Fund and the \$500,000 RLF
28 paid directly to the All-Plaintiff-Group Litigation Fund.

1 records, and other documents. These costs and litigation expenses were necessary for the efficient
2 and effective prosecution of the litigation and, in my view, all were the type that would normally
3 be charged to a fee-paying client in the private legal marketplace.

4 I declare under penalty of perjury that the foregoing is true and correct. Executed on
5 November 21, 2023, in Dallas, TX.

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/s/ Michael L. Roberts
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Classes*