

1 Francis O. Scarpulla (Cal. Bar 41059)
2 **LAW OFFICES OF FRANCIS O.**
3 **SCARPULLA**
4 3708 Clay Street
5 San Francisco, CA 94118
6 Telephone: (415) 751-4193
7 Facsimile: (415) 751-0889
8 fos@scarpullalaw.com
9 pbc@scarpullalaw.com

10 *Liaison Counsel for the Direct Purchaser Classes*

11 Michael L. Roberts
12 **ROBERTS LAW FIRM, P.A.**
13 1920 McKinney Avenue, Suite 700
14 Dallas, TX 75201
15 Telephone: (501) 952-8558
16 mikeroberts@robertslawfirm.us

17 Dianne M. Nast
18 **NASTLAW LLC**
19 1101 Market Street, Suite 2801
20 Philadelphia, PA 19107
21 Telephone: (215) 923-9300
22 Fax: (215) 923-9302
23 dnast@nastlaw.com

24 *Co-Lead Counsel for the Direct Purchaser*
25 *Classes*

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IN RE : HIV ANTITRUST LITIGATION

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

**[PROPOSED] ORDER GRANTING
DIRECT PURCHASER CLASS
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT WITH GILEAD AND
ATTORNEYS' FEES, COSTS AND
EXPENSES, AND SERVICE AWARD**

THIS DOCUMENT RELATES TO :

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

1 Upon review and consideration of the Settlement Agreement by and between Plaintiff KPH
2 Healthcare Services, Inc. a/k/a Kinney Drugs, Inc. (“KPH”), individually and on behalf of the
3 Direct Purchaser Classes (“DPPs”), and Defendants Gilead Sciences, Inc.; Gilead Holdings, LLC;
4 Gilead Sciences, LLC; Gilead Sciences Ireland UC (collectively, “Gilead”), dated July 24, 2023,
5 and the Direct Purchaser Plaintiffs’ Motion for Final Approval of Class Action Settlement with
6 Gilead and Attorneys’ Fees, Costs and Expenses, and Service Award (the “Motion”), along with its
7 supporting memorandum and exhibits, IT IS HEREBY ORDERED that the motion is GRANTED
8 as follows:

9 1. This Court incorporates by reference the definitions in the Settlement Agreement
10 between KPH, on behalf of itself and the Direct Purchaser Classes, and Gilead, filed with this Court
11 (ECF No. 2086-2, Ex. 1), and all capitalized terms used in this Order shall have the meaning set
12 forth in the Settlement Agreement.

13 2. This Court finds that the Settlement, including the Plan of Allocation attached as
14 Exhibit H thereto, is fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23.

15 3. This Court finds that notice of the Settlement has been given to the Direct Purchaser
16 Classes in substantially the manner approved by this Court in its Preliminary Approval Orders (ECF
17 Nos. 2108, 2109).

18 4. This Court finds that the manner and forms of notice given constituted the best
19 notice practicable under the circumstances. The manner and forms of notice were due, adequate,
20 and sufficient and met the requirements of due process and the Federal Rules of Civil Procedure.

21 5. This Court finds that the Members of the Direct Purchaser Classes had a full and fair
22 opportunity to exclude themselves from the Classes, object to the Settlement, and/or participate in
23 the Final Approval Hearing.

24 6. This Court finds that all Direct Purchaser Class Members that did not timely exclude
25 themselves from the Direct Purchaser Classes shall be bound by the Settlement Agreement and all
26 its terms.

27 ///

1 7. This Court finds that DPPs shall be bound by the release set forth in Paragraph 13 of
2 the Settlement and shall be forever barred from asserting any Released Claims, as defined in
3 Paragraph 1(o) of the Settlement, against Gilead Release Parties, as defined in Paragraph 1(l) of the
4 Settlement.

5 8. This Court finds that Gilead Release parties shall be bound by the release set forth in
6 Paragraph 13 of the Settlement and shall be forever barred from asserting any Released Claims
7 against DPPs.

8 9. This Court directs that this action be dismissed with prejudice as to Gilead, without
9 costs, as provided in the Settlement Agreement. This Court determines under Fed. R. Civ. P. 54(b)
10 that there is no just reason for delay, and thereby directs that the judgment of dismissal with
11 prejudice as to Gilead shall immediately be final and appealable in accordance with Fed. R. Civ. P.
12 54(b). The Clerk of the Court is directed to enter this Order and Final Judgment as to DPPs' claims
13 against Gilead.

14 10. This Court directs the parties to consummate the Settlement pursuant to its terms.

15 11. This Court authorizes Counsel for the Parties and the Settlement Administrator,
16 KCC, to use all reasonable procedures that are not materially inconsistent with this Order or the
17 Settlement Agreement to carry out all remaining aspects of the administration of the Settlement.

18 12. This Court retains exclusive jurisdiction over the Settlement, including
19 administration and consummation of the Settlement.

20 13. This Court approves and finds as fair and reasonable the allocation of \$75 million of
21 the Gilead Settlement Fund for attorneys' fees to be paid to Co-Lead Class Counsel, as requested in
22 the Motion, in accordance with the terms of the Settlement.

23 14. This Court approves and finds as fair and reasonable the allocation of \$2,887,478.45
24 million of the Gilead Settlement Fund for to be paid to Co-Lead Class Counsel for reimbursement
25 of their out-of-pocket costs, as requested in the Motion, in accordance with the terms of the
26 Settlement.

1 15. This Court approves and finds as fair and reasonable the allocation of \$40,000 of the
2 Gilead Settlement Fund to KPH for its service in litigating this case on behalf of the Direct
3 Purchaser Classes, as requested in the Motion, in accordance with the terms of the Settlement.

4 IT IS SO ORDERED.

5 Dated: _____

Hon. Edward M. Chen
United States District Judge

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CERTIFICATE OF SERVICE

I certify that on November 21, 2023, I electronically filed the following:

DIRECT PURCHASER CLASS PLAINTIFFS’ NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT WITH GILEAD AND ATTORNEYS’ FEES, COSTS AND EXPENSES, AND SERVICE AWARD;

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;

[PROPOSED] ORDER GRANTING DIRECT PURCHASER CLASS PLAINTIFFS’ MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT WITH GILEAD AND ATTORNEYS’ FEES, COSTS AND EXPENSES, AND SERVICE AWARD;

and

CERTIFICATE OF SERVICE

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

DATED this 21st day of November, 2023.

/s/ Francis O. Scarpulla
Francis O. Scarpulla