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*Counsel for Humana, Inc., and Kaiser Foundation Health Plan, Inc.*

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

*IN RE HIV ANTITRUST LITIGATION*

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

**JOINT STIPULATION AND [PROPOSED]  
ORDER REGARDING WITHDRAWAL  
OF REQUESTS FOR EXCLUSION FROM  
THE DIRECT PURCHASER CLASSES**

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

This Document Relates to:

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

1 WHEREAS, following the February 3, 2023 deadline for Class Members to request exclusion from  
2 the Direct Purchaser Classes, Co-Lead Counsel for the Direct Purchaser Classes were informed by the  
3 Settlement Administrator, KCC, that the Retailer Plaintiffs<sup>1</sup> and United Healthcare Services, Inc. (“UHS”)  
4 were the only entities that had timely requested exclusion from the Direct Purchaser Classes;

5 WHEREAS, following the February 3, 2023 deadline for Class Members to request exclusion from  
6 the Direct Purchaser Classes, counsel for Gilead asked Co-Lead Counsel for the Direct Purchaser Classes  
7 to confirm the identity of all Class Members that had requested exclusion, and on February 21, 2023, Co-  
8 Lead Counsel for the Direct Purchaser Classes represented to counsel for Gilead that the Retailer Plaintiffs  
9 and UHS were the only entities that had timely requested exclusion from the Direct Purchaser Classes;

10 WHEREAS, the July 24, 2023 Settlement Agreement between KPH Healthcare Services, Inc.,  
11 individually and on behalf of the Direct Purchaser Classes, and Gilead Sciences, Inc., Gilead Holdings,  
12 LLC, Gilead Sciences, LLC, and Gilead Sciences Ireland (collectively, “Gilead”), identifies the Retailer  
13 Plaintiffs and UHS as the only opt-outs from the Direct Purchaser Classes;

14 WHEREAS, on January 5, 2024, counsel for Kaiser Foundation Health Plan, Inc. and Humana Inc.  
15 forwarded Co-Lead Counsel for the Direct Purchaser Classes copies of letters they had emailed and mailed  
16 KCC on February 3, 2023, requesting that claims held by them and certain of their affiliates be excluded  
17 from the Direct Purchaser Classes.

18 WHEREAS, specifically, on February 3, 2023, Kaiser Foundation Health Plan, Inc., requested  
19 exclusion on behalf of the following entities: Kaiser Foundation Health Plan, Inc.; Kaiser Foundation  
20 Health Plan of the Northwest; Kaiser Foundation Health Plan of Georgia, Inc.; Kaiser Foundation Health  
21 Plan of Colorado; Kaiser Foundation Health Plan of Washington; Kaiser Foundation Health Plan of the  
22 Mid-Atlantic States, Inc.; Kaiser Foundation Health Plan of Washington Options, Inc.; Kaiser Permanente  
23 Insurance Company; and Kaiser Foundation Hospitals. All of the foregoing entities—and any other  
24 affiliate of Kaiser Foundation Health Plan, Inc., that may be within the scope of the February 3, 2023,  
25 exclusion request—are herein referred to collectively as “Kaiser.”

26  
27  
28 <sup>1</sup> The Retailer Plaintiffs are Walgreen Co.; The Kroger Co.; Albertsons Companies, Inc.; H-E-B, L.P.; Rite Aid Corporation; Rite Aid Hdqtrs. Corp.; and CVS Pharmacy, Inc.

1 WHEREAS, similarly, on February 3, 2023, Humana Inc., requested exclusion of “all direct  
2 purchaser claims in relation to the above-captioned litigation for purchases of HIV cART drugs” that were  
3 assigned “to Humana and/or its affiliates” by Amerisource Bergen Drug Corporation on May 6, 2022.  
4 Humana Inc., and all of its affiliates that are within the scope of the February 3, 2023, exclusion request  
5 are herein referred to collectively as “Humana.” For the avoidance of any doubt, “Humana” includes,  
6 without limitation, Humana Pharmacy Inc.

7 WHEREAS, on January 5, 2024, Co-Lead Counsel for the Direct Purchaser Classes were first made  
8 aware of Kaiser and Humana’s requests to be excluded from the Direct Purchaser Classes;

9 WHEREAS, KCC did not communicate the existence of the Kaiser and Humana exclusion requests  
10 to Co-Lead Counsel for the Direct Purchaser Classes or counsel for Gilead. Prior to this past week, Co-  
11 Lead Counsel for the Direct Purchaser Classes and counsel for Gilead were under the impression that  
12 Kaiser and Humana were members of the Direct Purchaser Classes;

13 WHEREAS, Kaiser and Humana have requested to rescind their exclusion requests to maintain the  
14 *status quo* and for the benefit of the Direct Purchaser Classes and for Gilead;

15 WHEREAS, this Stipulation shall be posted on the settlement website, providing notice to the  
16 Classes;

17 THE PARTIES HEREBY STIPULATE, SUBJECT TO COURT APPROVAL, THAT:

18 1. The requests of Humana and Kaiser for exclusion from the Direct Purchaser Classes are  
19 hereby withdrawn and rescinded.

20 2. As Members of the Direct Purchaser Classes, Humana and Kaiser shall be bound by the  
21 terms of the July 24, 2023 Settlement Agreement between Gilead and KPH.

22 3. Because the Release set forth in the July 24, 2023 Settlement Agreement pertains to direct  
23 purchaser claims only, in withdrawing their requests for exclusion and agreeing to be bound by the terms  
24 of the Settlement Agreement, Kaiser and Humana, on behalf of themselves and all of their past, present  
25 and future assignors, parents, subsidiaries, associates, affiliates, officers, directors, managers, employees,  
26 general or limited partners, divisions, agents, servants, trustees, joint ventures, heirs, executors,  
27 administrators, representatives (and as applicable each of their past, present, and future officers, directors,  
28 managers, employees, general or limited partners, divisions, agents, servants, trustees, joint ventures, heirs,

1 executors, administrators, and representatives), and the predecessors, successors, heirs, executors,  
2 administrators, and representatives of each of the foregoing, release all their direct purchaser claims  
3 (whether held directly or by assignment) and do not release any claims that are not within the scope of the  
4 release provisions of the Settlement Agreement, including indirect purchaser claims they may have against  
5 Gilead relating to the above-captioned matter.

6 4. If the terms of this Stipulation are not approved in their entirety by the Court, or are  
7 otherwise in any respect set aside, held invalid, or fail to become fully effective, for any reason whatsoever,  
8 the parties to this Stipulation reserve all rights to seek any remedy that may be available to them.

9 5. Consistent with the foregoing paragraph, and for the avoidance of any doubt, if any of the  
10 events in Paragraph 4 occur, Gilead reserves its rights to seek a reduction of the Gilead Settlement Fund  
11 and/or to terminate the Settlement Agreement pursuant to Paragraph 16 of the Settlement Agreement and  
12 the confidential termination and diminution agreement referred to therein.

13  
14 Respectfully submitted,

15  
16 Dated: January 13, 2024 \_\_\_\_\_ LAW OFFICES OF FRANCIS O. SCARPULLA

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1 Dated: January 13, 2024 \_\_\_\_\_

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1 Dated: January 13, 2024 \_\_\_\_\_ KIRKLAND & ELLIS LLP

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*Sciences, LLC, and Gilead Sciences Ireland UC*

**FILER'S ATTESTATION**

Pursuant to Local Rule 5-1(i)(3) of the Northern District of California, regarding signatures, I,  
Francis O. Scarpulla, attest that concurrence in the filing of this document has been obtained.

Dated: January 13, 2024 /s/ Francis O. Scarpulla  
Francis O. Scarpulla

**CERTIFICATE OF SERVICE**

On January 13, 2024, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all persons registered for ECF. All copies of documents required to be served by Fed. R. Civ. P. 5(a) and L.R. 5-1 have been so served.

Dated: January 13, 2024

/s/ Francis O. Scarpulla  
Francis O. Scarpulla



**[PROPOSED] ORDER**

Based on the stipulation of the Parties, and good cause appearing therefore, IT IS HEREBY ORDERED that the Stipulation is approved.

Dated:

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Honorable Edward M. Chen  
United States District Judge