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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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8 PETER STALEY, et al.,
9 Plaintiffs,
10 v.
11 GILEAD SCIENCES, INC., et al.,
12 Defendants.
13

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

**SETTLEMENT AGREEMENT
BETWEEN THE DIRECT-
PURCHASER SETTLEMENT CLASS
AND BRISTOL-MYERS SQUIBB
COMPANY AND E.R. SQUIBB &
SONS, L.L.C.**

14 This Document Relates to:

15 *KPH Healthcare Services, Inc. a/k/a Kinney*
16 *Drugs, Inc. v. Gilead Sciences, Inc., et al.,*
17 *No. 3:20-cv-06961-EMC*
18

19 THIS SETTLEMENT AGREEMENT (“Settlement Agreement” or the “Settlement”) is
20 made and entered into as of March 30, 2022, by and between (a) Defendants Bristol-Myers Squibb
21 Company and E.R. Squibb & Sons, LLC (together, “BMS”); and (b) Plaintiff KPH Healthcare
22 Services, Inc. a/k/a/ Kinney Drugs, Inc., (“KPH” or “Plaintiff”), individually and on behalf of a
23 Direct-Purchaser Class (“Direct-Purchaser Settlement Class”) in this Action (*KPH Healthcare*
24 *Services, Inc. a/k/a Kinney Drugs, Inc. v. Gilead Sciences, Inc., et al., No. 3:20-cv-06961-EMC*
25 (N.D. Ca.)).

26 WHEREAS, Plaintiff filed a lawsuit alleging that Defendants Gilead Sciences, Inc.; Gilead
27 Holdings, LLC; Gilead Sciences, LLC; Gilead Sciences Ireland UC; Bristol-Myers Squibb
28

1 Company; and E. R. Squibb & Sons, L.L.C. (collectively, “Defendants”) have restrained
2 competition for antiretroviral drugs used to treat Human Immunodeficiency Virus (“HIV”) in
3 violation of federal antitrust laws and that Plaintiff and Class Members incurred damages as a
4 result, as detailed in Direct-Purchaser Plaintiffs’ First Amended Class Action Complaint, filed in
5 this Action on March 15, 2021 (ECF No. 559) (the Complaint);

6 WHEREAS, BMS has asserted defenses to Plaintiff’s claims, denies each and every one of
7 Plaintiff’s allegations of unlawful or wrongful conduct by BMS, denies that any conduct by BMS
8 challenged by Plaintiff caused any damage whatsoever, and denies all liability of any kind;

9 WHEREAS, pursuant to the Court’s Order Appointing Interim Co-Lead and Liaison
10 Counsel for the Direct-Purchaser Class, ECF Nos. 453 and 454, dated November 23, 2020, Dianne
11 M. Nast (NastLaw LLC) and Michael L. Roberts (Roberts Law Firm) (together, “Co-Lead
12 Settlement Class Counsel”) were appointed as Interim Co-Lead Counsel for the Direct-Purchaser
13 Class, and Francis O. Scarpulla (Scarpulla Law Firm) was appointed Interim Liaison Counsel for
14 the Direct-Purchaser Plaintiff Class;

15 WHEREAS, Co-Lead Settlement Class Counsel and counsel for BMS have engaged in
16 arm’s-length settlement negotiations, and have reached this Settlement Agreement, subject to Court
17 approval, which embodies all of the terms and conditions of the Settlement between Plaintiff, both
18 individually and on behalf of the Direct-Purchaser Settlement Class, and BMS;

19 WHEREAS, Co-Lead Settlement Class Counsel have concluded, after extensive fact
20 discovery, and after carefully considering the circumstances of this Action, including the claims
21 asserted in the Complaint and BMS’s defenses thereto, that the Settlement is fair, reasonable, and
22 adequate within the meaning of Fed. R. Civ. P. 23, and in the best interests of the Direct-Purchaser
23 Settlement Class;

24 WHEREAS, BMS has concluded, despite its belief that it is not liable for the claims asserted
25 and that it has good defenses thereto, that it would be in its best interests to enter into this
26 Settlement Agreement to avoid the risks and uncertainties inherent in complex litigation and also to
27 avoid additional costs of further litigation;

1 WHEREAS, Plaintiff and BMS agree that this Settlement Agreement shall not be deemed or
2 construed to be an admission or evidence of any violation of any statute or law or of any liability or
3 wrongdoing by BMS, or of the truth of any of the claims or allegations alleged in the Complaint;

4 WHEREAS, Plaintiff and BMS agree that this Settlement Agreement shall not be deemed or
5 construed to be an admission or evidence by Plaintiff of the absence of any violation of any statute
6 or law or of any absence of liability or wrongdoing by BMS, or of the lack of truth of any of the
7 claims or allegations alleged in the Complaint; and

8 WHEREAS, Plaintiff and BMS agree that BMS's consent to the Direct-Purchaser
9 Settlement Class shall not be deemed or construed as consent to the certification of this or any other
10 class for litigation purposes, and that, in the event the Agreement is terminated for any reason, BMS
11 may oppose the certification of any class.

12 NOW THEREFORE, it is agreed by Plaintiff, individually and on behalf of the Direct-
13 Purchaser Settlement Class, by and through Co-Lead Settlement Class Counsel, on the one hand,
14 and BMS on the other, that all claims brought by Plaintiff and the Direct-Purchaser Settlement
15 Class against BMS be fully, finally, and forever settled, compromised, discharged, and dismissed
16 with prejudice as to BMS, without costs as to Plaintiff except as otherwise provided herein, the
17 Direct-Purchaser Settlement Class or BMS, subject to Court approval, on the following terms and
18 conditions:

19 **1. Definitions**

20 a) “Action” means *KPH Healthcare Services, Inc. a/k/a/ Kinney Drugs, Inc., v. Gilead*
21 *Sciences, Inc., et al.*, No. 3:20-cv-06961-EMC (N.D. Cal.).

22 b) “BMS Payment” means Ten Million Eight Hundred Thousand Dollars
23 (\$10,800,000).

24 c) “BMS Settlement Fund” means the BMS Payment, plus interest accrued on the
25 Settlement Fund.

26 d) “Claims Administrator” means the entity appointed by the Court to provide notice to
27 the Direct-Purchaser Settlement Class, process the claims submitted by Settlement Class Members,
28 and carry out any other duties or obligations provided for by the Settlement.

- 1 e) “Class Members” means the members of the Direct-Purchaser Settlement Class.
- 2 f) “Co-Lead Settlement Class Counsel” means Dianne M. Nast and NastLaw LLC, and
3 Michael L. Roberts and the Roberts Law Firm.
- 4 g) “Effective Date” means the date on which all of the following have occurred: (i) the
5 Settlement is not terminated pursuant to Paragraph 18 below; (ii) the Settlement is approved by the
6 Court as required by Fed. R. Civ. P. 23(e); (iii) the Court enters a final approval order (the “Final
7 Approval Order”); and (iv) the period to appeal the Final Approval Order has expired and/or all
8 appeals have been finally resolved.
- 9 h) “Escrow Account” means the qualified settlement escrow account which holds the
10 BMS Settlement Fund.
- 11 i) “Escrow Agreement” means an agreement substantially similar to that annexed
12 hereto as Exhibit I.
- 13 j) “Expense Award” means award(s) by the Court to Co-Lead Settlement Class
14 Counsel for reimbursement of reasonable costs and expenses incurred in the prosecution of the
15 Action, including any interest accrued thereon.
- 16 k) “Notice Expenses” means expenses relating to providing notice including, without
17 limitation, the costs of printing and mailing direct notice and follow-up direct notice, publication
18 notice, telephone service (including but not limited to follow-up calls to non-responding class
19 members), and launching and maintaining the notice website.
- 20 l) “Released Claims” means all claims in law or equity with regard to cART Drugs that
21 were asserted against BMS or its affiliates in the Action, and all claims with regard to cART Drugs
22 that Plaintiffs could have asserted or could assert against BMS or its affiliates that arise out of the
23 facts, occurrences, transactions or other matters alleged or asserted in the Action, whether known or
24 unknown. In addition, for the avoidance of doubt, Released Claims include any claim that would be
25 barred as *res judicata* by the dismissal with prejudice of the Action. This release applies only to
26 direct-purchase claims. No party other than the Releasees or Releasers is intended to be, or is,
27 included within the scope of the release contained herein. For the avoidance of doubt, Released
28 Claims do not include claims for personal injury⁴ or any claims arising in the ordinary course of

1 business between the Releasors and Releasees arising under Article 2 of the Uniform Commercial
2 Code (pertaining to sales).

3 m) “Releasees” means BMS and its past, present, and future parents, subsidiaries,
4 affiliates, officers, managers, directors, employees, agents, servants, representatives (and as
5 applicable each of their past, present, and future parents, subsidiaries, affiliates, officers, managers,
6 directors, employees, agents, servants, and representatives), and the predecessors, successors, heirs,
7 executors, administrators, and representatives of each of the foregoing. No other party is intended to
8 be, or is, included within the scope of the release contained herein. For the avoidance of doubt,
9 despite any other language in this provision or anywhere else in this Settlement Agreement, the
10 following entities are not intended to be, and are not, included within the scope of this release:
11 neither Gilead Sciences, Inc.; Gilead Holdings, LLC; Gilead Sciences Ireland UC; Gilead Sciences,
12 LLC, nor any of their past, present, or future parents, subsidiaries, affiliates, officers, managers,
13 directors, employees, agents, servants, representatives (and as applicable each of their past, present,
14 or future parents, subsidiaries, affiliates, officers, managers, directors, employees, agents, servants,
15 or representatives), or the predecessors, successors, heirs, executors, administrators, or
16 representatives of each of the foregoing. Neither the joint venture of Bristol-Myers Squibb & Gilead
17 Sciences, LLC, nor any other joint venture between BMS and Gilead Sciences, LLC and/or any
18 company, person, and/or entity affiliated with Gilead Sciences, LLC, is intended to be, or is,
19 included within the scope of the release contained herein.

20 n) “Releasors” means Plaintiff and Direct-Purchaser Settlement Class Members and
21 their past, present and future parents, subsidiaries, affiliates, officers, directors, managers,
22 employees, agents, servants, representatives (and as applicable each of their past, present, and future
23 officers, directors, employees, agents, servants, and representatives), and the predecessors,
24 successors, heirs, executor, administrators, and representatives of each of the foregoing. “Releasors”
25 does not include the Retailer Plaintiffs.

26 o) “Retailer Plaintiffs” means Walgreen Co.; The Kroger Co.; Albertsons Companies,
27 Inc.; H-E-B, L.P.; Rite Aid Corporation; Rite Aid Hdqtrs. Corp.; and CVS Pharmacy, Inc.

1 p) “Direct-Purchaser Settlement Class,” to be certified under Fed. R. Civ. P. 23(a),
2 (b)(2) and (b)(3) for settlement purposes only, is defined as all persons or entities in the United
3 States and its territories who directly purchased Atripla, Evotaz, Reyataz, Sustiva, Truvada,
4 Complera or Stribild, or any of their generic equivalents, if any (together, “cART Drugs”) from any
5 Defendant or any brand or generic manufacturer from October 6, 2016 until October 19, 2021.

6 Excluded from the Direct-Purchaser Settlement Class are:

- 7 i. Defendants; Janssen R&D Ireland; Janssen Products, LP; Johnson &
8 Johnson, Inc.; and their officers, directors, managers, employees, agents,
9 servants, representatives, parents, subsidiaries, or affiliates;
- 10 ii. All government entities;
- 11 iii. Retailer Plaintiffs; and
- 12 iv. The judges in this case, court personnel, and any members of their
13 immediate families.

14 q) “Settling Parties” means BMS and the Direct-Purchaser Settlement Class.

15 **2. Reasonable Steps Necessary to Help Effectuate this Settlement.** The Settling
16 Parties agree to undertake all reasonable steps necessary to help effectuate the Settlement, including
17 undertaking all actions contemplated by and steps necessary to carry out the terms of this Settlement
18 and to secure the prompt, complete, and final dismissal with prejudice of all claims in this Action
19 against BMS. The Settling Parties also agree to the following:

- 20 a) BMS agrees not to oppose the Direct-Purchaser Settlement Class’s motions for
21 preliminary and final approval of the Settlement and agrees not to appeal any Court ruling granting
22 either of these motions.
- 23 b) Co-Lead Settlement Class Counsel represent that their named class representative
24 client, KPH, will support the Settlement and will not object to the Settlement or opt out of the
25 Direct-Purchaser Settlement Class.
- 26 c) BMS will serve notice of this Settlement on the appropriate federal and state officials
27 under the Class Action Fairness Act, 28 U.S.C. § 1715.

1 **3. Motion for Preliminary Approval of the Settlement.** Within 14 days of the
2 execution of the Settlement Agreement by the Settling Parties, Plaintiff, by and through Co-Lead
3 Settlement Class Counsel, shall prepare and file a motion requesting preliminary approval of the
4 Settlement, which includes a plan for dissemination of notice to the Direct-Purchaser Settlement
5 Class, subject to BMS’s review and comment. BMS agrees not to oppose preliminary approval of
6 the Settlement. The motion for preliminary approval shall include a proposed form of order
7 substantially similar to Exhibit A (the “Preliminary Approval Order”), requesting, among other
8 things:

9 a) a finding that the Court is likely to certify the Direct-Purchaser Settlement Class for
10 settlement purposes only at the final fairness hearing;

11 b) preliminary approval of the Settlement as within the range of fair, reasonable, and
12 adequate within the meaning of Fed. R. Civ. P. 23;

13 c) a finding that dissemination of notice to the Direct-Purchaser Settlement Class is
14 warranted;

15 d) a finding that the proposed plan of notice complies with Rule 23 and due process,
16 and approval of a one-page summary notice, a postcard summary “reminder” notice, a long-form
17 notice, a publication notice, and claim forms (blank and pre-populated versions) in the forms
18 substantially similar to Exhibits B, C, D, E, F, and G, respectively;

19 e) approval of the Plan of Allocation, in the form substantially as in Exhibit H hereto;

20 f) a provision that if final approval of the Settlement is not obtained, the Settlement
21 shall be null and void, and the Settling Parties will revert to their positions *ex ante* without prejudice
22 to their claims or defenses;

23 g) setting a date for a motion for final approval, a deadline for opt outs and objections,
24 and a fairness hearing.

25 **4. Stay of Proceedings and Cooperation.** The motion for preliminary approval shall
26 provide for a stay of Plaintiff’s proceedings against BMS pending final approval or termination of
27 the Settlement. In the event the case against any Gilead defendant proceeds to trial, BMS will
28 consult with Plaintiff regarding evidence or testimony needed to authenticate and meet the

1 requirements of the business records exception to the hearsay rule for any BMS business document
2 produced by BMS in this case that has been identified as a potential trial exhibit. BMS will (a)
3 provide a declaration and/or certification from a custodian of records, (b) if necessary, make
4 available a custodian of records for deposition, limited to the issue of authenticating and meeting
5 the requirements of the business record exception to the hearsay rule for documents created and
6 kept in the ordinary course of business and produced by BMS in the litigation that are listed as trial
7 exhibits, and if further necessary (c) make available a custodian of records for trial, limited to the
8 issue of authenticating and meeting the business record exception to the hearsay rule for documents
9 created and kept in the ordinary course of business and produced by BMS in the litigation that are
10 listed as trial exhibits.

11 **5. Motion for Final Approval and Entry of Final Judgment.** If the Court
12 preliminarily approves the Settlement, Co-Lead Settlement Class Counsel shall submit a motion for
13 final approval of the Settlement pursuant to the schedule provided for in the Preliminary Approval
14 Order. The motion and proposed order shall be subject to BMS's review and approval. BMS agrees
15 not to oppose final approval of the Settlement. The final approval motion shall seek entry of a final
16 approval order, ("Final Approval Order"), including:

- 17 a) a finding that the notice given constitutes due, adequate, and sufficient notice and
18 meets the requirements of due process and the Federal Rules of Civil Procedure;
- 19 b) a finding the Settlement is fair, reasonable, and adequate within the meaning of Fed.
20 R. Civ. P. 23;
- 21 c) an order directing consummation of the Settlement pursuant to its terms;
- 22 d) a finding that all Direct-Purchaser Settlement Class Members shall be bound by the
23 Settlement Agreement and all of its terms;
- 24 e) a finding that the Releasors shall be bound by the release set forth in Paragraphs 14
25 and 15 of this Settlement Agreement and shall be forever barred from asserting any claims or
26 liabilities, as defined under Released Claims, against any of the Releasees;
- 27 f) an order directing that the Action be dismissed with prejudice as to BMS and without
28 costs;

- 1 g) a determination under Fed. R. Civ. P. 54(b) that there is no just reason for delay;
- 2 h) an order directing that the judgment of dismissal with prejudice as to BMS be final;
- 3 i) an order that the Court retains exclusive jurisdiction over the Settlement, including
- 4 the administration and consummation of the Settlement; and
- 5 j) an order directing that, for a period of five years, the Clerk of the Court shall
- 6 maintain the record of the entities that have excluded themselves from the Direct-Purchaser
- 7 Settlement Class and that a certified copy of such records shall be provided to BMS.

8 **6. Finality of Settlement.** This Settlement Agreement shall become final upon the

9 Effective Date.

10 **7. Monetary Relief; Notice Fees and Costs**

11 a) Within 21 calendar days after the later of (1) entry of the Preliminary Approval

12 Order or (2) Co-Lead Settlement Class Counsel providing BMS counsel with wiring instructions,

13 BMS shall wire transfer the BMS Payment to the Escrow Account.

14 b) The payment provided for in subparagraph 7(a) above shall be held in the Escrow

15 Account subject to the terms and conditions of the Escrow Agreement, and in accordance with the

16 provisions of Paragraphs 9-11, 17-19 below.

17 c) The BMS Settlement Fund, to the extent permitted by the Court, shall be used to pay

18 valid claims submitted by Direct-Purchaser Settlement Class Members, administrative and Notice

19 Expenses to the extent they are not paid via the BMS Notice Fund described in Paragraph 7(d), the

20 amounts of any representative plaintiff service award, attorneys' fees, and costs and expenses

21 incurred or to be incurred in connection with litigating this Action, as approved by the Court.

22 d) Within 7 business days after the later of (1) the entry of an order granting Plaintiffs'

23 Motion for Preliminary Approval of the Settlement Agreement or (2) Co-Lead Settlement Class

24 Counsel providing BMS counsel with wiring instructions, BMS will transfer to the IOLTA Trust

25 Account of Roberts Law Firm US, PC the sum of \$200,000.00 (the "BMS Notice Fund") for

26 payment of Notice Expenses. Co-Lead Settlement Class Counsel may withdraw from the BMS

27 Notice Fund the amount equal to 50% of actual notice costs (i.e., costs that are incurred by Co-Lead

28 Settlement Class Counsel with regard to notice) relating to the approval process for this Settlement

1 Agreement. Co-Lead Settlement Class Counsel shall provide copies to BMS Counsel of any
2 invoices paid by Co-Lead Settlement Class Counsel for which money is withdrawn from the BMS
3 Notice Fund. BMS shall have no responsibility for Notice Expenses beyond the payment of
4 \$200,000.00. Any withdrawals from the BMS Notice Fund pursuant to this provision shall be non-
5 refundable in the event that the Settlement Agreement is terminated or not approved by the Court.
6 Co-Lead Settlement Class Counsel agree to arrange for provision of notice to the Direct-Purchaser
7 Settlement Class in accordance with Fed. R. Civ. P. 23 and any orders of the Court. Co-Lead
8 Settlement Class Counsel agree to provide BMS reasonable advanced notice of the notice plan and
9 costs. Any money left in the BMS Notice Fund as of the Effective Date or at the time the Settlement
10 Agreement is terminated will be returned to BMS by Co-Lead Settlement Class Counsel within 14
11 days of termination.

12 e) Aside from the payments specified in this Paragraph 7, BMS shall not pay any
13 additional amount at any time, whether for attorney fees or expenses, incentive awards, settlement
14 administration costs, escrow costs, taxes due from Escrow Account, or any other cost. BMS shall
15 not be liable for any monetary payments under the Settlement Agreement other than the BMS
16 Payment and the BMS Notice Fund specified in Paragraph 7(c) and 7(d).

17 **8. Injunctive Relief.** No later than 14 days after the Effective Date, BMS will forever
18 waive enforcement of Section 14.2(a) of the October 25, 2011 Duo License Agreement by and
19 among Gilead Sciences, Inc. and Gilead Sciences Limited and Bristol-Myers Squibb Company
20 (“Duo License Agreement”). BMS will effectuate this waiver by providing written notice to Gilead
21 Sciences, Inc. and Gilead Sciences Limited, pursuant to Sections 14.2(a) and 17.2 (“Notice”) of the
22 Duo License Agreement. BMS’s Notice will state:

23 “As provided for under the terms of the October 25, 2011 Duo License Agreement
24 by and among Gilead Sciences, Inc. and Gilead Sciences Limited (together,
25 “Gilead”) and Bristol-Myers Squibb Company, BMS hereby irrevocably consents to
26 Gilead’s manufacture, use, sale or import of the Combination Product, any Generic
27 Combination Product, or any Other Combination Product. Further, BMS consents to
28 Gilead’s granting of any rights to a Third Party to make, use, sell, have sold, offer
for sale, or import, the Combination Product, any Generic Combination Product, or
any Other Combination Product. This written consent is not intended to, and shall
not, modify any other rights and/or obligations of BMS and Gilead under the terms
of the Duo License Agreement, or any other agreement between the parties. All

capitalized terms are defined in accordance with the terms of the Duo License Agreement.”

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9. The BMS Settlement Fund. At all times prior to the Effective Date, the BMS Settlement Fund shall be invested as set forth in paragraph 3 of the Escrow Agreement, in instruments backed by the full faith and credit of the U.S. Government or fully insured by the U.S. Government or an agency thereof, including a U.S. Treasury Money Market Fund or a bank account insured by the FDIC up to the guaranteed FDIC limit. After the Effective Date, the BMS Settlement Fund shall be invested pursuant to paragraph 3 of the Escrow Agreement as directed in writing by Co-Lead Settlement Class Counsel. All interest earned on the BMS Settlement Fund shall become part of the BMS Settlement Fund.

10. Disbursements: After the Effective Date, the BMS Settlement Fund shall be distributed in accordance with the Plan of Allocation and the Court’s approval of subsequent request(s) for distribution.

11. Taxes

a) The Settling Parties and their counsel shall treat, and shall cause the Escrow Agent to treat, the Escrow Account as a “Qualified Settlement Fund” within the meaning of Treas. Reg. § 1.468B-1, and agree not to take any position inconsistent with such treatment. The Escrow Agent and, as required, the Settling Parties, shall timely make such elections as necessary or advisable to carry out the provisions of this paragraph, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1(j)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties and thereafter to cause the appropriate filing to occur. All provisions of this Settlement Agreement shall be interpreted in a manner that is consistent with the Escrow Account being a “Qualified Settlement Fund” within the meaning of Treas. Reg. § 1.468B-1.

b) Co-Lead Settlement Class Counsel shall be solely responsible for directing the Escrow Agent (as defined in the Escrow Agreement) to file all informational and other tax returns

1 necessary to report any taxable and/or net taxable income earned by the Escrow Account. Further,
2 Co-Lead Settlement Class Counsel shall be solely responsible for directing the Escrow Agent to
3 make any tax payments, including interest and penalties due, on income earned by the Escrow
4 Account. Subject to Paragraph 9 above, Co-Lead Settlement Class Counsel shall be entitled to
5 direct the Escrow Agent to pay customary and reasonable tax expenses, including professional fees
6 and expenses incurred in connection with carrying out the Escrow Agent's or tax preparer's
7 responsibilities as set forth in this paragraph, from the Escrow Account. The Escrow Agent shall
8 notify BMS regarding any payments or expenses paid from the Escrow Account upon receipt of a
9 request for such information from BMS. BMS shall have no responsibility to make any tax filings
10 relating to this Settlement Agreement, the Escrow Account, or the Settlement Payments, and shall
11 have no responsibility to pay taxes on any income earned by the Escrow Account.

12 c) For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and
13 the regulations promulgated thereunder, the Escrow Agent shall be designated as the
14 "Administrator" of the Escrow Account. The Escrow Agent shall timely and properly file or cause
15 to be filed on a timely basis, all tax returns necessary or advisable with respect to the Escrow
16 Account (including without limitation all income tax returns, all informational returns, and all
17 returns described in Treas. Reg. § 1.468B-2(1)). Such returns shall be consistent with this Section
18 and, in all events, reflect that all taxes (as defined below) on the income earned by the BMS Fund
19 shall be paid out of the BMS Fund as provided herein.

20 d) To the extent permitted by the Court, all: (i) taxes or other similar imposts or charges
21 (including any estimated taxes, interest, penalties, or additions to tax) arising with respect to the
22 income earned by the Escrow; (ii) other taxes imposed on or in connection with the Escrow
23 Account (collectively, "Taxes"); and (iii) expenses and costs incurred in connection with the
24 operation and implementation of Paragraph 11 (including, without limitation, expenses of tax
25 attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or
26 failing to file) the returns described herein ("Tax Expenses")), shall promptly be paid out of the
27 Escrow Account by the Escrow Agent. Taxes shall be treated as, and considered to be, a cost of
28 settlement administration, and the Escrow Agent shall be obligated (notwithstanding anything

1 herein to the contrary) to withhold from distribution to any claimants authorized by the Court any
2 funds necessary to pay such amounts including the establishment of adequate reserves for any
3 Taxes (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(l)
4 (2)). The Settling Parties agree to cooperate with the Escrow Agent, each other, and their tax
5 attorneys and accountants to the extent reasonably necessary to carry out the provisions of this
6 Section.

7 e) Neither the Settling Parties nor their counsel shall have any responsibility for or
8 liability whatsoever with respect to: (i) any act, omission, or determination of the Escrow Agent or
9 any other person, or any of their respective designees or agents in connection with the
10 administration of the Escrow Account; (ii) any plan of distribution approved by the Court; (iii) the
11 determination, administration, calculation, or payment of any claims asserted against the Escrow
12 Account; (iv) any losses suffered by, or fluctuations in the value of, the Escrow Account; or (v) the
13 payment or withholding of any Taxes and/or costs incurred in connection with the taxation of the
14 Escrow Account or the filing of any returns.

15 **12. Full Satisfaction; Limitation of Interest and Liability.** Plaintiff and Class
16 Members shall look solely to the BMS Payment for satisfaction for any and all Released Claims. If
17 the Settlement becomes final pursuant to Paragraph 6 above, BMS's payment of the BMS Payment
18 and adherence to the equitable relief provisions of Paragraph 8 above will fully satisfy any and all
19 Released Claims. Except as provided by Final Approval Order of the Court, no Class Member shall
20 have any interest in the BMS Payment, Escrow Account, or any portion thereof.

21 **13. Representative Plaintiff Service Award and Attorneys' Fees, Expenses, and**
22 **Costs.**

23 a) Co-Lead Settlement Class Counsel shall file any motion requesting a representative
24 plaintiff service award, an award of attorney's fees, and the reimbursement of expenses and costs in
25 accordance with the Court's Preliminary Approval Order. The representative plaintiff service
26 award, attorneys' fees, and reimbursement of expenses and costs, as approved by the Court, shall be
27 paid solely from the BMS Settlement Fund ("Fee and Expense Awards"). No portion of any Fee
28 and Expense Award shall be released from the BMS Settlement Fund prior to the Effective Date.

1 BMS is not obligated to take, does not take, and subject to the limitations in this paragraph will not
2 take, any position with respect to the application by Co-Lead Settlement Class Counsel for a
3 representative plaintiff service award, attorneys' fees, and reimbursement of expenses and costs.

4 b) The amount(s) of any representative plaintiff service award and award of attorneys'
5 fees, costs, and expenses is intended to be considered by the Court separately from the Court's
6 consideration of the fairness, reasonableness, and adequacy of the Settlement. Any order or
7 proceeding relating to the Fee and Expense Award, or any appeal from any such order, shall not
8 operate to modify or cancel this Settlement Agreement, or affect or delay the finality of the
9 judgment approving the Settlement. A modification or reversal on appeal of any amount of the Fee
10 and Expense Award shall not be deemed a modification of the terms of this Settlement Agreement
11 or Final Approval Order and shall not give rise to any right of termination.

12 **14. Release.**

13 a) On the Effective Date, the Releasors hereby release and forever discharge, and
14 covenant not to sue the Releasees, with respect to, in connection with, or relating to any and all of
15 the Released Claims.

16 **15. Additional Release.** In addition, each Releasor hereby expressly waives and
17 releases, upon the Effective Date, any and all provisions, rights, and/or benefits conferred by
18 Section 1542 of the California Civil Code, which reads:

19 Section 1542. Release. A general release does not extend to claims that the creditor
20 or releasing party does not know or suspect to exist in his or her favor at the time of
21 executing the release and that, if known by him or her, would have materially
22 affected his or her settlement with the debtor or released party;

23 or by any law of any state or territory of the United States, or principle of common law, which is
24 similar, comparable or equivalent to Section 1542 of the California Civil Code, notwithstanding that
25 the release in Paragraph 14 is not a general release and is of claims against Releasees only. Each
26 Releasor may hereafter discover facts other than or different from those which he, she, or it knows
27 or believes to be true with respect to the claims that are the subject matter of Paragraph 14.

28 Nonetheless, upon the Effective Date, each Releasor hereby expressly waives and fully, finally, and

1 forever settles and releases any known or unknown, foreseen or unforeseen, suspected or
2 unsuspected, contingent or non-contingent claim that is the subject matter of Paragraph 14, whether
3 or not concealed or hidden, without regard to the subsequent discovery or existence of such
4 different or additional facts, and which arise out of the facts, occurrences, transactions, or other
5 matters alleged or asserted in the Action. Each Releasor also hereby expressly waives and fully,
6 finally, and forever settles, releases, and discharges any and all claims it may have against the
7 Releasees under § 17200, *et seq.*, of the California Business and Professions Code or any similar
8 comparable or equivalent provision of the law of any other state or territory of the United States or
9 other jurisdiction, which claims are expressly incorporated into the definition of the Released
10 Claims.

11 **16. Effect of Disapproval.** If based on a determination that the Settlement is not fair,
12 reasonable, or adequate, and on this basis only, the Court (i) declines to approve this Settlement
13 Agreement; (ii) materially modifies the Agreement; (iii) does not enter the Preliminary Approval
14 Order containing the elements set forth in Paragraph 3 above; (iv) does not enter the Final Approval
15 Order containing the elements set forth in Paragraph 5 above; (v) enters the Final Approval Order
16 and appellate review is sought, and on such review, such Final Approval Order is not affirmed or is
17 affirmed with material modification, then Co-Lead Settlement Class Counsel or BMS may elect to
18 terminate this Settlement Agreement by sending written notice to the other party within 10 business
19 days of the event allowing for termination. For the avoidance of doubt, any order of the Court or the
20 Court of Appeals that is based on a determination that the Settlement is not fair, reasonable, or
21 adequate and that: (a) narrows or does not approve the scope of the releases and covenant not to sue
22 contemplated by this Settlement; (b) purports to impose additional material obligations on BMS or
23 the Direct-Purchaser Settlement Class; or (c) declines to enter a final judgment that meets the
24 requirements set forth in Paragraph 5 above, except as otherwise agreed in writing by Co-Lead
25 Settlement Class Counsel and BMS, constitutes a failure to grant final approval of this Agreement
26 and confers on Co-Lead Settlement Class Counsel and/or BMS the right to terminate the
27 Agreement. A modification or reversal on appeal of the Plan of Allocation shall not be deemed a
28

1 modification of the terms of this Agreement or Final Approval Order and shall not give rise to any
2 right of termination.

3 **17. Opt-Out Procedure.** Each person or entity intending to opt out of the Direct-
4 Purchaser Settlement Class shall sign and timely mail written notice of such intent to the address
5 established by the Settlement Administrator. The written notice must clearly manifest an intent to be
6 excluded from the Direct-Purchaser Settlement Class. To be effective, written notice must be
7 postmarked no later than the opt-out deadline set forth by the Court’s Preliminary Approval Order.
8 The claims of any person or entity that opts out of the Direct-Purchaser Settlement Class shall not
9 be governed by this Settlement Agreement or any of its terms.

10 **18. Opt-Out, Reduction in Settlement Amount, and Termination Rights.**

11 a) The Settlement Parties have agreed to certain confidential terms regarding reduction
12 of the Settlement Amount and termination of the Settlement Agreement. The parties will lodge the
13 termination and diminution agreement (Confidential Letter Agreement) with the Court for *in*
14 *camera* review, if so requested by the Court.

15 b) Should the BMS Settlement Fund be subject to reduction pursuant to the confidential
16 terms referenced in Paragraph 18(a) above, the Escrow Agent shall return to BMS the amount by
17 which the BMS Settlement Fund is to be reduced (the “Fund Reduction Amount”). Subject to
18 paragraph 7 of the Escrow Agreement, the Escrow Agent shall disburse to BMS the Fund Reduction
19 Amount in accordance with this paragraph within 15 calendar days after receipt of either (i) written
20 notice signed by Co-Lead Settlement Class Counsel and BMS’s counsel stating that the Fund
21 Reduction Amount is to be returned to BMS (such written notice will be signed by Co-Lead
22 Settlement Class Counsel within three days of receiving the written notice from BMS), or (ii) any
23 order of the Court so directing.

24 c) Any disputes regarding the application of this Paragraph 18, including any disputes
25 regarding the application of the Settlement Parties’ side letter referenced in Paragraph 18(a), may be
26 resolved by the Court, with Plaintiff, BMS, and the opt-out(s) all having the opportunity to be
27 heard.

1 **19. Objection Procedure.** Each Direct-Purchaser Settlement Class Member intending to
2 object to the Settlement must submit a timely written notice of his or her or its objection. Such
3 notice shall state: (i) the legal name, headquarters' address, and place of incorporation (if
4 applicable) of the objector; (ii) information identifying the objector as a Direct-Purchaser
5 Settlement Class Member, including proof that they are a member of the Settlement Class, (iii) a
6 written statement of all grounds for the objection, accompanied by any legal support for the
7 objection; (iv) the identity of all counsel representing the objector; (v) the identity of all counsel
8 representing the objector who may appear at the fairness hearing; (vi) a list of all persons who will
9 be called to testify at the Final Fairness Hearing in support of the objection; and (vii) the signature
10 of the objector's duly authorized attorney or other duly authorized representative. To be timely,
11 written notice of an objection in appropriate form must be filed with the Clerk of the United States
12 District Court for the Northern District of California at the address where filings are accepted by the
13 Clerk, no later than the objection deadline set forth by the Court's Preliminary Approval Order.

14 **20. Reimbursement of the BMS Settlement Fund upon Termination.** If the
15 Settlement Agreement is terminated pursuant to the provisions of Paragraph 18 above, the Escrow
16 Agent shall return to BMS the BMS Settlement Fund at the time of termination. Subject to
17 paragraph 8 of the Escrow Agreement, the Escrow Agent shall disburse the BMS Settlement Fund
18 to BMS in accordance with this paragraph within 15 calendar days after receipt of either (i) written
19 notice signed by Co-Lead Settlement Class Counsel and BMS's counsel stating that the Settlement
20 has been terminated (such written notice will be signed by the non-terminating party within three
21 days of receiving the written notice from the terminating party), or (ii) any order of the Court so
22 directing. If the Settlement Agreement is terminated pursuant to Paragraph 18, (1) any obligations
23 pursuant to this Settlement Agreement other than (i) disbursement of the BMS Settlement Fund to
24 BMS as set forth above and (ii) Paragraph 25 shall cease immediately and (2) the releases set forth
25 in Paragraphs 14 and 15 above shall be null and void.

26 **21. Preservation of Rights.** Except as expressly provided for in the Releases in
27 Paragraphs 14-15 above, this Settlement Agreement, whether the Settlement becomes final or not,
28 and any and all negotiations, documents, and discussions associated with it, shall be without

1 prejudice to the rights of any of the Settling Parties, shall not be deemed or construed to be an
2 admission or evidence of any violation of any statute or law or lack thereof, of any liability or
3 wrongdoing by BMS or lack thereof, or of the truth or lack thereof of any of the claims or
4 allegations contained in the Complaint or any other pleading, and evidence thereof shall not be
5 discoverable or used directly or indirectly, in any way other than to enforce the terms of this
6 Settlement Agreement. The Settling Parties expressly reserve all of their rights if the Settlement
7 does not become final in accordance with the terms of this Settlement Agreement. Upon the
8 Settlement becoming final, nothing in this Agreement shall prevent BMS from asserting any release
9 or citing this Settlement Agreement to offset any liability to any other parties not party to the
10 Action, including but not limited to, claims filed by federal and state governments or any
11 governmental entity.

12 **22. No Admission of Liability by BMS; No Admission of Absence of Merit by**
13 **Plaintiff.** This Settlement Agreement shall not be deemed or construed to be an admission of
14 BMS's liability in this Action. BMS denies any wrongdoing in relation to the claims brought by
15 Plaintiff in this Action. BMS's consent to the Direct-Purchaser Settlement Class shall not be
16 deemed consent to the certification of this or any other class for litigation purposes, and in the event
17 of Termination BMS may oppose the certification of any class. This Settlement Agreement shall not
18 be deemed or construed to be an admission that Plaintiff's claims in this Action lack merit as to
19 BMS.

20 **23. Resumption of Litigation in the Event of Termination.** The parties agree that in
21 the event that the Settlement Agreement is not approved by the Court, or if the Settlement does not
22 become final pursuant to Paragraph 6 above, or if the Settlement Agreement is terminated pursuant
23 to Paragraphs 16 or 18 above, litigation of the Action by Plaintiff against BMS will resume in a
24 reasonable manner to be approved by the Court upon a joint application by the Settling Parties, and
25 upon full reimbursement to BMS of the BMS Settlement Fund as provided for in Paragraph 20
26 above.

27 **24. Maintaining Confidentiality of Litigation Materials.** In the event that Plaintiff or
28 Co-Lead Settlement Class Counsel receive a subpoena or other legal process that would require

1 disclosure of material that BMS has designated confidential under any protective order entered in
2 the Action (the “Protective Order”), such Plaintiff or Co-Lead Settlement Class Counsel shall
3 promptly notify BMS and forward a copy of such subpoena or legal process so that BMS may seek
4 a protective order or otherwise seek to maintain the confidentiality of material covered by the
5 Protective Order; and such Plaintiff or Co-Lead Settlement Class Counsel shall object to the
6 production of such material unless and until any such motion filed by BMS is resolved. In addition,
7 Plaintiff and Co-Lead Settlement Class Counsel shall abide by the terms of the Protective Order in
8 this Action, including with respect to the destruction of materials and the limitations on the use of
9 any material covered by the Protective Order to this Action, unless otherwise ordered by a court of
10 competent jurisdiction.

11 **25. Binding Effect.** This Settlement Agreement shall be binding upon, and inure to the
12 benefit of, the Releasers and the Releasees. Without limiting the generality of the foregoing, each
13 and every covenant and agreement herein by Co-Lead Settlement Class Counsel shall be binding
14 upon Plaintiff and all Direct-Purchase Settlement Class Members.

15 **26. Integrated Agreement.** This Settlement Agreement, together with the exhibits
16 hereto and the documents referenced herein, and the terms included in the Confidential Letter
17 Agreement referenced in Paragraph 18 above, contain the complete and integrated statement of
18 every term in this Agreement, and supersedes all prior agreements or understandings, whether
19 written or oral, between the parties with respect to the subject matter hereof, including the
20 Memorandum of Understanding agreed to by the Settling Parties on October 20, 2021. This
21 Settlement Agreement shall not be modified except by a writing executed by Plaintiff and BMS.

22 **27. Independent Settlement.** This Settlement of the Action is not conditioned on the
23 disposition of the claims of any other Plaintiffs who have filed their own complaints. This
24 Settlement Agreement is not conditioned on the performance or disposition of any other settlement
25 agreement between Plaintiff and/or the Direct-Purchaser Settlement Class and any other Defendant.

26 **28. Headings.** The headings in this Settlement Agreement are intended only for the
27 convenience of the reader and shall not affect the interpretation of this Settlement Agreement.

28 **29. No Party is the Drafter.** None of the parties shall be considered the drafter of this

1 Settlement Agreement or any provision hereof for the purpose of any statute, case law, or rule of
2 construction that might cause any provision to be construed against the drafter hereof.

3 **30. Consent to Jurisdiction.** Each Class Member and BMS hereby irrevocably submits
4 to the exclusive jurisdiction of the United States District Court for the Northern District of
5 California for any suit, action, proceeding or dispute arising out of or relating to this Settlement
6 Agreement or the applicability of this Settlement Agreement, including, without limitation, any suit,
7 action, proceeding, or dispute relating to the release provisions herein provided that this consent to
8 jurisdiction shall not affect BMS's right or ability to assert this Settlement Agreement or the
9 releases contained herein as a defense in an action filed in any other jurisdiction asserting Released
10 Claims or concerning this Settlement Agreement or this Action.

11 **31. Choice of Law.** All terms of this Settlement Agreement shall be governed by and
12 interpreted according to federal common law or, where state law must apply, California law without
13 regard to conflicts of law principles.

14 **32. Representations and Warranties.** Each party represents and warrants that it has
15 the requisite authority to execute, deliver, and perform this Settlement Agreement and to
16 consummate the transactions contemplated herein.

17 **33. Notice.** Where this Agreement requires either Settling Party to provide notice or any
18 other communication or document to the other Settling Party, such notice shall be in writing and
19 provided by email and overnight delivery to the counsel set forth in the signature block below for
20 BMS or Co-Lead Settlement Class Counsel, respectively, or their designees.

21 **34. Publicity.** The Settling Parties agree that each party will ensure that its statements
22 relating to the Settlement Agreement, or notice to the Direct-Purchaser Settlement Class, will
23 comply with all laws and regulations governing prescription drug promotion.

24 **35. Execution in Counterparts.** This Settlement Agreement may be executed in
25 counterparts. A facsimile or .pdf signature shall be deemed an original signature for purposes of
26 executing this Settlement Agreement.

27 **36. Confidentiality.** While the fact of settlement of the Action has been disclosed in
28 open court, the terms of this Settlement Agreement shall remain confidential until Plaintiff moves

1 for preliminary approval of the Settlement, unless BMS and Co-Lead Settlement Class Counsel
2 agree otherwise, provided that BMS may disclose the terms of this Settlement Agreement to
3 accountants, lenders, auditors, legal counsel, tax advisors, or in response to a request by any
4 governmental, judicial, or regulatory authority or otherwise required by applicable law or court
5 order, and Plaintiff may disclose the terms of the Settlement Agreement to any entity that has
6 applied to serve as Notice and Claims Administrator or Escrow Agent, who shall abide by the terms
7 of this paragraph. Plaintiff shall not issue any press release or statement to any media outlet
8 regarding this Agreement prior to entry of the final approval order without obtaining a prior written
9 consent from BMS, which consent shall not be unreasonably withheld.

10 IN WITNESS WHEREOF, the parties hereto through their fully authorized representatives
11 have agreed to this Settlement Agreement as of the date first herein above written.

**For Defendants Bristol-Myers Squibb
Company and E. R. Squibb & Sons, L.L.C.:**

Date: 03/30/2022

Aileen Fair

Aileen Fair (Mar 30, 2022 07:01 EDT)

Aileen Fair
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and E. R. Squibb & Sons, L.L.C.*

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For the Direct-Purchaser Class:

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Interim Co-Lead Class Counsel for the Direct
Purchaser Plaintiffs

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For the Direct-Purchaser Class:



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Interim Co-Lead Class Counsel for the Direct
Purchaser Plaintiffs

Exhibit A

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

4 STALEY, *et al.*, : Case No. 3:19-cv-02573-EMC (lead case)
5 Plaintiffs, :
6 v. : **[PROPOSED] ORDER GRANTING**
7 GILEAD SCIENCES, INC., *et al.*, : **DIRECT PURCHASER PLAINTIFFS’**
8 Defendants, : **MOTION FOR PRELIMINARY**
9 : **APPROVAL OF CLASS ACTION**
10 : **SETTLEMENT WITH BMS**
11 :
12 : Judge: Honorable Edward M. Chen

13 This Document Relates To: :

14 *KPH Healthcare Services, Inc. v. Gilead* :
15 *Sciences, Inc., et al.*, 3:20-cv-06961-EMC :
16

17 Upon review and consideration of the Settlement Agreement by and between Plaintiff
18 KPH Healthcare Services, Inc. a/k/a Kinney Drugs, Inc. (“KPH” or “Plaintiff”), individually and
19 on behalf of the proposed Direct-Purchaser Settlement Class, and Defendants Bristol-Myers
20 Squibb Company and E.R. Squibb & Sons, LLC (together, “BMS”), dated March 30, 2022, and
21 the Direct Purchaser Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement with
22 BMS, along with its supporting memorandum and exhibits, IT IS HEREBY ORDERED that the
23 motion is GRANTED as follows:

24 **Jurisdiction**

25 1. This Court has subject matter jurisdiction over this action and personal jurisdiction
26 over Plaintiff KPH and Defendants BMS.

27 **Class Certification**

28 2. The following Direct-Purchaser Settlement Class (the “Class”) is certified under
Fed. R. Civ. P. 23(a), (b)(2) and (b)(3) for settlement purposes only:

All persons or entities in the United States and its territories who directly purchased Atripla, Evotaz, Reyataz, Sustiva, Truvada, Complera or Stribild, or any of their generic equivalents, if any (together, “cART Drugs”) from any Defendant or any brand or

1 generic manufacturer from October 6, 2016 until October 19, 2021.

2 3. Excluded from the Class are: (i) Defendants,¹ Janssen R&D Ireland, Janssen
3 Products, LP, and Johnson & Johnson, Inc., and the officers, directors, managers, employees,
4 agents, servants, representatives, parents, subsidiaries, or affiliates of the foregoing entities; (ii)
5 all government entities; (iii) Retailer Plaintiffs;² and (iv) the judges in this case, court personnel,
6 and any members of their immediate families.

7 **Preliminary Approval of the Proposed Settlement**

8 4. Federal Rule of Civil Procedure 23(e) provides that the claims of a certified class
9 may be settled only with the Court’s approval. As a first step, plaintiffs generally seek preliminary
10 approval of the proposed settlement. *Manual for Complex Litig. (Fourth)* (“*Manual*”), § 21.632
11 (2015). “A preliminary approval of a settlement and notice to the proposed class is appropriate if
12 ‘the proposed settlement appears to be the product of serious, informed, non-collusive
13 negotiations, has no obvious deficiencies, does not grant improper preferential treatment to class
14 representatives or segments of the class, and falls within the range of possible approval.’” *Cuzick*
15 *v. Zodiac U.S. Seat Shells, LLC*, No. 16-cv-03793, 2017 WL 4536255, at *5 (N.D. Cal. Oct. 11,
16 2017) (citing *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)).
17 Preliminary approval is not a dispositive assessment of the fairness of the proposed settlement,
18 but rather determines whether it falls within the “range of reasonableness.” *In re High-Tech Emp.*
19 *Antitrust Litig.*, No. 11-cv-02509, 2013 WL 6328811, at *1 (N.D. Cal. Oct. 30, 2013) (quoting
20 Alba Conte, *Newburg on Class Actions*, § 11.25 at 11-91 (4th ed. 2002)). Preliminary approval
21 establishes an “initial presumption” of fairness, such that notice may be given to the class and the
22 class may have a “full and fair opportunity to consider the proposed [settlement] and develop a
23 response.” *Tableware*, 484 F. Supp. 2d at 1079; *Manual*, § 21.631.

24
25 ¹ Defendants are Gilead Sciences, Inc.; Gilead Holdings, LLC; Gilead Sciences, LLC; Gilead
26 Sciences Ireland UC; Bristol-Myers Squibb Company; and E. R. Squibb & Sons, L.L.C.

27 ² Retailer Plaintiffs are Walgreen Co.; The Kroger Co.; Albertsons Companies, Inc.; H-E-B, L.P.;
28 Rite Aid Corporation; Rite Aid Hdqtrs. Corp.; and CVS Pharmacy, Inc.

1 directives regarding implementation.

2 11. The Court appoints KCC Class Action Services LLC (“KCC”) as Claims
3 Administrator to disseminate settlement notice to the Class, process and engage in follow-up
4 communications relating to the Claim Forms and Opt-Out requests of Class Members, and, if the
5 settlement is approved, administer distribution of the applicable portion of the Settlement Fund to
6 Class Members.

7 12. The Court appoints Computershare Trust Company, N.A. to serve as Escrow Agent
8 for the purpose of receiving and investing the Settlement Fund in accordance with the terms of
9 the Escrow Agreement attached as Exhibit I to the Settlement Agreement.

10 13. Within 10 days after the filing of Direct Purchaser Plaintiffs’ Motion for Preliminary
11 Approval of Class Action Settlement with BMS, BMS shall serve notice of the proposed
12 settlement on the appropriate federal and state officials as required by the Class Action Fairness
13 Act, 28 U.S.C. § 1715 (“CAFA Notice”), and contemporaneously provide an electronic copy of
14 the notice to Class Counsel.

15 14. By _____, 2022 (45 days after entry of this Order), KCC shall:

16 a. cause a Summary Notice substantially in the form attached as Exhibit B to
17 the Settlement Agreement and a pre-populated version of the Claim Form substantially
18 in the form attached as Exhibit G to the Settlement Agreement to be sent via certified
19 mail to the last-known mailing address of each known Class Member;

20 b. cause a Publication Notice substantially in the form attached as Exhibit E to
21 the Settlement Agreement to appear in the Healthcare Distribution Alliance Weekly
22 Digest; and

23 c. cause a Settlement Website to become live with links to copies of the
24 Settlement Agreement, a Detailed Notice substantially in the form attached as Exhibit
25 D to the Settlement Agreement, a blank Claim Form substantially in the form attached
26 as Exhibit F to the Settlement Agreement, the Allocation Plan attached as Exhibit H to

1 the Settlement Agreement, the Escrow Agreement attached as Exhibit I to the
2 Settlement Agreement, and instructions on how to submit a Claim Form online via the
3 website.

4 15. By _____, 2022 (75 days after entry of this Order), KCC shall cause a
5 Postcard Reminder Notice substantially in the form attached as Exhibit C to the Settlement
6 Agreement to be sent via U.S. First-Class Mail to the last-known mailing address of each known
7 Class Member that has not yet submitted a Claim Form.

8 16. By _____, 2022 (90 days after entry of this Order), KCC shall follow
9 up by phone with any Class Member that has not yet submitted a completed Claim Form.

10 17. The notices shall list _____, 2022 (105 days after entry of this Order) as
11 the deadline for filing a Claim Form, and _____, 2022 (21 days prior to the Final
12 Approval Hearing) as the deadline to object to the settlement or requests for awards for litigation
13 expenses and a class representative service award or opt out of the Class.

14 18. KCC shall review all submitted Claim Forms and determine whether each is timely,
15 properly completed, supported by appropriate documentation, or unsigned, and shall
16 communicate with the claimant via U.S. First-Class Mail, email, or telephone regarding any
17 deficiencies. The claimant will then have 28 days from the date it is contacted by KCC to cure the
18 deficiencies, and if it does not, KCC shall reject the claim and notify the claimant of the rejection
19 by letter. KCC's determination regarding the validity of a claim shall be final.

20 19. Plaintiff's expert economist, Dr. Russell Lamb, shall be responsible for using
21 available transactional data to prepare a separate, individualized, pre-populated Claim Form for
22 each known Class Member, with assistance from KCC, and using that available transactional data
23 and any additional documentation submitted by Class Members to calculate each Class Member's
24 percentage share of the Net Settlement Fund. The Net Settlement Fund is the BMS Settlement
25 Fund, plus any interest earned, less any named plaintiff incentive award and any litigation or
26 administration expenses approved by the Court and any amount returned to BMS as a result of

1 opt-outs (if applicable).

2 **Final Approval Hearing**

3 20. The Final Approval Hearing shall be held before this Court at _____[TIME] on
4 _____, 2022 [DATE] (at least 120 days after entry of this Order, at the United States
5 District Court for the Northern District of California, San Francisco Courthouse, Courtroom 5 –
6 17th Floor, 450 Golden Gate Avenue, San Francisco, California 94102. At the Final Approval
7 Hearing, the Court will consider, among other matters: (1) the fairness, reasonableness and
8 adequacy of the proposed settlement; (2) the proposed Allocation Plan; (3) the request for an
9 award for expenses to Class Counsel; (4) the request for an incentive award to KPH; (5) any
10 objections; and (6) whether to grant final approval to the proposed settlement.

11 21. The Final Approval Hearing may be rescheduled or continued. In that event, the
12 Court will furnish all counsel with appropriate notice. Class Counsel shall be responsible for
13 communicating any such notice promptly to the Class by posting conspicuous notice on the
14 settlement website.

15 22. Any persons or entities that fail to file a timely objection shall not be entitled to
16 contest any of the terms of the proposed settlement. They will not be heard at the Final Approval
17 Hearing; their objections (if any) shall not be considered; and they shall be deemed to have waived
18 any objections by appeal, collateral attack, or otherwise.

19 23. By _____, 2022 (56 days prior to the Final Approval Hearing), Class
20 Counsel shall file a motion for approval of an award for expenses to Class Counsel and a service
21 award to the class representative.

22 24. By _____, 2022 (14 days prior to the Final Approval Hearing), Class
23 Counsel shall file a motion for final approval of the settlement and plan of allocation.

24 25. Pending final approval of the settlement and the entry of final judgment in this
25 action against BMS, any and all proceedings in this action (other than those incident to the
26 settlement process) by the Class against BMS are stayed. The action by the Class against other
27

1 Defendants, and by other plaintiffs against BMS, shall continue as scheduled.

2 26. In the event the settlement is terminated in accordance with the Settlement
3 Agreement or the Court does not grant final approval to the settlement, the settlement shall
4 become null and void, the Class and BMS will revert to their positions *ex ante* without prejudice
5 to their claims and defenses, and the litigation of their claims will resume in a reasonable manner
6 to be approved by the Court upon joint application of the parties hereto, or upon application by
7 one party if a joint application is not forthcoming.

8 27. Nothing in the Settlement Agreement, any settlement-related document, or this
9 Order shall constitute, be construed as, or deemed to be evidence of, or an admission or concession
10 by BMS, as to the validity of, any claim that has been or could have been asserted against BMS
11 or any liability of BMS in relation to those claims. Nor shall any such matter constitute, be
12 construed as, or deemed to be evidence of, or an admission or concession by Plaintiff, as to the
13 absence of merit in any of their allegations or claims against BMS.

14

15 IT IS SO ORDERED

16

17 Dated: _____

18

HON. EDWARD M. CHEN
United States District Judge

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Exhibit B

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

**If you purchased HIV cART drugs directly
from the manufacturer, you may receive
a payment from a class action settlement.**

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

A proposed settlement has been reached in a class action lawsuit (*KPH Healthcare Services, Inc. v. Gilead Sciences, Inc.*). The lawsuit alleges that Defendants engaged in a variety of allegedly anticompetitive conduct that caused direct purchasers to pay too much for HIV cART drugs. The settlement resolves the claims against BMS; it does not resolve claims against Gilead. BMS denies any wrongdoing. The Court has not decided who is right.

WHO IS INCLUDED IN THE SETTLEMENT CLASS?

Generally, the Settlement Class includes persons and entities that purchased Atripla, Complera, Evotaz, Reyataz, Sustiva, Stribild, Truvada, or any of their generic equivalents directly from a brand or generic manufacturer from October 6, 2016 until October 19, 2021. You are receiving this notice because records show you may have made qualifying purchases.

WHAT DOES THE SETTLEMENT PROVIDE?

BMS agreed to pay \$10.8 million into a Settlement Fund, plus up to an additional \$200,000 for one-half of the costs of providing notice of this settlement. BMS also agreed to waive enforcement of a provision in its licensing agreement with Gilead that will remove a barrier to generic competition with Evotaz.

If the Court approves the settlement, Class Counsel will seek reimbursement for litigation expenses up to \$2.5 million and payment of a class representative service award in the amount of \$10,000. These amounts, if approved, will be paid from the Settlement Fund. Class Counsel is not seeking an award of attorneys' fees in connection with this settlement.

The full text of the Settlement is available for inspection at www.xxx.xxx.

HOW CAN YOU GET A PAYMENT?

If the Court approves the Settlement, to get paid, you must submit a Claim Form by **DATE**, either online (at **WEBSITE**) or by U.S. Mail. A personalized Claim Form with pre-populated information based on available transactional data is enclosed. See the Claim Form for instructions on how to make any corrections or supplements and submit the form. If the Court approves the settlement, claims will be paid after the conclusion of any appeals. .

WHAT ARE YOUR OTHER OPTIONS?

If you remain in the Class, you may write to the Court about why you do not like the Settlement. The objection deadline is **DATE**. Additionally, you may ask to go to the Final Approval Hearing and speak in Court about the fairness of the Settlement. If you object to the Settlement, you are still a member of the Settlement Class and you must file a claim to receive a payment. You may also write the settlement administrator, **xxxx**, and exclude yourself from (to opt out of) the Settlement Class. Exclusion allows you to file your own lawsuit. You will not receive any payment and will not be bound by the releases contained in the Settlement. The deadline for either option is **DATE**. Descriptions about the effects of these options, and instructions on how to exercise them, are in the detailed notice available at **WEBSITE**.

The Court scheduled a hearing for **DATE** at **TIME** to consider whether the settlement and allocations are fair, reasonable, and adequate, as well as any objections. You do not need to attend, but you or your attorney can do so at your own expense. See the detailed notice available at **WEBSITE** for the hearing location, where to find out if the date or time changes, and what you must do if you or your attorney wishes to speak at the hearing.

FOR MORE INFORMATION VISIT **WEBSITE OR CALL 1-###-###-####**

Exhibit C

Subject: HIV cART Drug Settlement – File a Claim

Name: <Name>

Claim ID: <ClaimID>

**Records indicate you may have received a settlement package.
You may receive a payment if you timely submit a claim.**

File Your Claim at WEBSITE

To receive a cash payment, you must submit a Claim Form online at WEBSITE. Or you can use the form that was mailed to you or print one from the website and mail it to the address on the form.

Claim Forms must be submitted online or postmarked or by DATE.

For more information about this settlement, *KPH Healthcare Services, Inc. v. Gilead Sciences, Inc.*, visit the settlement website at WEBSITE or contact Class Counsel at 1-###-###-####.

Exhibit D

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

**If you purchased HIV cART drugs
directly from the manufacturer,
you may receive a payment from a
class action settlement.**

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

- A proposed settlement (“Settlement”) has been reached in a class action lawsuit involving the alleged delay of generic competition for certain HIV cART drugs and the prices paid for those drugs. The lawsuit alleges that Defendants engaged in a variety of allegedly anticompetitive conduct that caused direct purchasers to pay too much for HIV cART drugs. Defendants deny any wrongdoing.
- Generally, the proposed settlement includes anyone who purchased Atripla, Complera, Evotaz, Reyataz, Sustiva, Stribild, Truvada, or any of their generic equivalents directly from a brand or generic manufacturer from October 6, 2016 until October 19, 2021 (“the Settlement Class”).
- This lawsuit and settlement concern only direct purchasers, which are typically pharmaceutical wholesalers.
- The lawsuit was filed against Gilead Sciences, Inc.; Gilead Holdings, LLC; Gilead Sciences, LLC; Gilead Sciences Ireland UC; Bristol-Myers Squibb Company; and E. R. Squibb & Sons, L.L.C. The proposed settlement is only with Bristol-Myers Squibb Company and E. R. Squibb & Sons, L.L.C. (collectively, “BMS”); it does not resolve any of the claims against the other defendants. The lawsuit remains ongoing against Gilead Sciences, Inc.; Gilead Holdings, LLC; Gilead Sciences, LLC; Gilead Sciences Ireland UC (collectively, “Gilead.”)
- If you are a member of the Settlement Class, your legal rights will be affected whether you act or don’t act. Please read this notice carefully.
- The full text of the Settlement is available for inspection at www.xxx.xxx. This notice is intended to provide a convenient summary of the Settlement. In the event of any inconsistency between this notice and the terms of the Settlement, the terms of the Settlement will control.

YOUR LEGAL RIGHTS AND OPTIONS	
SUBMIT A CLAIM	If you are a member of the Settlement Class, you may file a claim by obtaining and submitting a Claim Form. This is the only way to get a payment. The deadline is DATE .
OBJECT	<p>You may write to the Court about why you do not like the Settlement. The objection deadline is DATE.</p> <p>Additionally, you may ask to go to the Final Approval Hearing and speak in Court about the fairness of the Settlement.</p> <p>If you object to the Settlement, you are still a member of the Settlement Class and you must file a claim to receive a payment.</p>
OPT OUT	You may write the settlement administrator and exclude yourself from the Settlement Class. Exclusion allows you to file your own lawsuit. You will not receive any payment and will not be bound by the releases contained in the Settlement. The exclusion deadline is DATE .
DO NOTHING.	If you do nothing, you will not receive any payment. You will be bound by the releases contained in the Settlement and will not be able to your own lawsuit.

- These rights and options are explained in this notice.
- If you do not act by the deadline for an option, you will lose your right to exercise that option.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after the period to appeal has expired and/or all appeals have been resolved. Please be patient.

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BASIC INFORMATION

1. WHAT IS THIS LAWSUIT ABOUT?

This lawsuit is a class action known as *KPH Healthcare Services, Inc. v. Gilead Sciences, Inc., et al.*, Case No. 3:20-cv-06961 (“the Lawsuit” or “the Action”). Judge Edward M. Chen of the United States District Court for the Northern District of California is overseeing the lawsuit.

The Lawsuit alleges that BMS and Gilead violated federal antitrust laws by conspiring among themselves and with others to extend patent protection for their HIV cART Drugs, delay generic competition, and charge supracompetitive prices. Defendants deny these allegations.

No court or other authority has found that Defendants engaged in any wrongdoing.

2. WHAT IS A CLASS ACTION?

In a class action, one or more people or entities called “named plaintiffs” or “class representatives” (in this case, KPH Healthcare Services, Inc. a/k/a Kinney Drugs, Inc. or “KPH”) sue on behalf of people and entities with similar claims. These people and entities are called a “Class” or “Class Members.” One court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

3. ARE YOU PART OF THE SETTLEMENT CLASS?

You are part of the Settlement Class if you are a person or entity in the United States or its territories that purchased Atripla, Complera, Evotaz, Reyataz, Sustiva, Stribild, Truvada, or any of their generic equivalents directly from a brand or generic manufacturer of those drugs at any time from October 6, 2016 until October 19, 2021.

Excluded from the Class are certain BMS, Gilead, and Janssen entities; government entities; Retailer Plaintiffs (Walgreen Co.; The Kroger Co.; Albertsons Companies, Inc.; H-E-B, L.P.; Rite Aid Corporation; Rite Aid Hdqtrs. Corp.; and CVS Pharmacy, Inc.); and the judges in this case, their court personnel, and members of their immediate families.

THE SETTLEMENT

4. WHAT DOES THE SETTLEMENT PROVIDE?

To settle the Action, BMS agreed to pay \$10.8 million into a Settlement Fund, plus up to an additional \$200,000 to pay one-half of the costs of providing notice of the Settlement. BMS also agreed to waive enforcement of a provision in its licensing agreement with Gilead concerning Evotaz. The effect of this waiver is that Gilead may, but will not be required to, market or license a third party to market a fixed dose combination comprising Gilead’s drug Cobicistat and a generic version of the drug atazanavir (whose brand name is Reyataz).

In exchange, the Action against BMS will be dismissed with prejudice, and Settlement Class Members will release BMS from all claims that were asserted against BMS or its affiliates in the Action and all claims with regard to cART drugs that KPH or the Settlement Class could have asserted or could assert against BMS and its affiliates that arise out of the facts, occurrences, transactions or other matters alleged or asserted in the Action, whether known or unknown, and including but not limited to any claim that would be barred by *res judicata* as a result of the dismissal of the Action with prejudice. Settlement Class members will not release any personal injury claims or any claims arising in the ordinary course of their business with BMS arising under Article 2 of the Uniform Commercial Code (related to sales).

The Settlement Fund may be reduced or the Settlement may be terminated if a certain percentage of Settlement Class Members exclude themselves from the Class. The Settlement also may be terminated if the Court rejects the Settlement. If the Settlement is terminated, the lawsuit will proceed against BMS as if a settlement had not been reached.

The Settlement is only with BMS. It does not resolve or release any claims against Gilead. The lawsuit remains ongoing against Gilead.

5. WHY IS THERE A SETTLEMENT?

The Court has not decided in favor of Plaintiff or BMS. Instead, both sides have agreed to settle. If the Court approves the Settlement, the parties will avoid the costs and uncertainty of a trial, and Class Members will be eligible to receive a payment from the settlement. The Settlement does not mean that any law was broken or that BMS did anything wrong. BMS denies all legal claims in this case. Plaintiff and its lawyers think the Settlement is best for everyone who has been affected.

SETTLEMENT PAYMENTS

6. HOW CAN YOU GET A PAYMENT FROM THE SETTLEMENT?

To retain your right to seek a payment from this Settlement, you must submit a Claim Form on or before **DATE**.

If you have been identified as a Settlement Class Member based on available transactional data, you will receive a Claim Form with pre-populated information you can correct or supplement. If you believe you are a Settlement Class Member, but you do not receive such a Claim Form, you can obtain one from the settlement website (**WEBSITE**).

You may complete your Claim Form online, or you may print a copy, fill it out, and send it by U.S. Mail to the Claims Administrator. The Claim Form includes more detailed instructions.

7. HOW MUCH WILL YOU RECEIVE FROM THE SETTLEMENT?

The settlement funds will be allocated to Settlement Class Members based on their proportionate unit volume share of brand and generic purchases made during the Claim Period (October 6, 2016 – October 19, 2021), with greater weight assigned to brand purchases to reflect the fact that the alleged damages for brand purchases are significantly greater than those for generic purchases.

At this time, it is unknown how much money each Settlement Class Member will receive. It will depend on the number of Settlement Class Members that submit Claim Forms and the number of qualifying purchases made by each of those Settlement Class Members.

If the Court grants final approval to the Settlement, claims will be paid after the period to appeal has expired and/or all appeals have been resolved.

8. WHAT WILL YOU GIVE UP IN EXCHANGE FOR THE SETTLEMENT?

If you remain in the Settlement Class, you will be bound by all future orders in this case and will be bound by the release as described in Question 4.

More information about the release may be found in the Settlement Agreement, which is available on the settlement website ([WEBSITE](#)).

THE LAWYERS REPRESENTING THE CLASS

9. DO YOU HAVE A LAWYER IN THIS CASE?

The Court appointed the following attorneys as Co-Lead Settlement Class Counsel or “Class Counsel”:

Dianne M. Nast
NastLaw LLC
1101 Market Street, Suite 2801
Philadelphia, Pennsylvania 19107
Telephone: 215-923-9300
Email: dnast@nastlaw.com

Michael L. Roberts
Roberts Law Firm Us, PC
1920 McKinney Avenue, Suite 700
Dallas, Texas 75204
Telephone: 501-952-8558
Email: mikeroberts@robertslawfirm.us

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

10. HOW WILL THE LAWYERS BE PAID?

If the Court approves the Settlement, the lawyers will seek reimbursement for litigation expenses up to \$2.5 million and payment of \$10,000 as a service award to the class representative (KPH) in recognition of its assistance with developing and pursuing the case. The lawyers are not seeking an award of attorneys’ fees in connection with the Settlement.

If the Court grants the lawyers’ requests, these payments will be made from the Settlement Fund. You will not have to pay these lawyers out of your own pocket.

The lawyers’ motion for their expense award and the class representative service award will be filed with the Court and made available for download or viewing on or before [DATE](#) at [WEBSITE](#).

WHAT ARE YOUR OPTIONS?

As outlined on Page 1, and as described below, Settlement Class members have four options: (1) submit a claim; (2) object to the Settlement; (3) ask to be excluded from the Settlement Class; and/or (4) do nothing. The deadline for each option is listed in this notice. If you do not act by the deadline for an option, you will lose your legal right to exercise that option.

11. OPTION 1 – SUBMIT A CLAIM

You can request a payment from the Settlement by submitting a Claim Form. Information about how to do this, and the effect of doing this, is outlined in the “Settlement Payments” section on Pages 5-6.

Your Claim Form must be submitted online or postmarked by **DATE**. If your Claim Form is not submitted online or postmarked by that date, you will lose the ability to get a payment from this settlement.

12. OPTION 2 – OBJECT TO THE SETTLEMENT

If you are a member of the Settlement Class and do not opt out, you may tell the Court what, if anything, you do not like about the Settlement and/or Class Counsel’s requests for an expense award and the class representative service award by filing an objection. The Court will consider your views before making a decision.

To object to the Settlement, you must file a written objection with the Court. Your objection must include the following:

1. Case name and number:
KPH Healthcare Services, Inc. v. Gilead Sciences, Inc., Case No. 3:20-cv-06961.
2. Your legal name, headquarters address, and place of incorporation (if applicable).
3. Information identifying you as a Settlement Class Member.
4. The specific reasons why you object to the Settlement or any part of it, accompanied by legal support.
5. The identity of all counsel representing you and whether each may appear at the Final Approval Hearing.
6. Whether you are requesting permission to speak at the Final Approval Hearing.
7. A list of all persons who will be called to testify in support of the objection at the Final Approval Hearing.
8. Your signature, or the signature of your duly-authorized attorney or other duly-authorized representative.

9. All documents or writings you want the Court to consider.

You may file an objection by: (1) mailing the objection to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102; (2) filing the objection electronically via the Court's ECF system; or (3) filing the objection in person at any location of the United States District Court for the Northern District of California.

Your objection must be filed by **DATE**. If your written objection is not filed by that date, you will lose the ability to object to the Settlement.

If you object, you will remain a member of the Settlement Class, so in order to retain your right to seek a payment from the Settlement, you also must file a Claim Form by **DATE**, as addressed above.

13. OPTION 3 – OPT OUT

You can ask to exclude yourself from the Settlement Class. This is also known as opting out of the Class. This is the only way to avoid being bound by the court orders in this lawsuit, and the only way to keep any right you may have to be part of another lawsuit against BMS for any and all claims released by the Settlement.

If you exclude yourself from the Settlement Class, you will not be eligible to receive a payment from this settlement with BMS. You also will not be eligible to object to the Settlement or speak at the hearing.

If you wish to exclude yourself from the Settlement Class, you must mail a letter to the Claims Administrator (**ADDRESS**).

Your letter must include the following:

1. Case name and number:
KPH Healthcare Services, Inc. v. Gilead Sciences, Inc., Case No. 3:20-cv-06961.
2. Your legal name, headquarters address, and place of incorporation (if applicable).
3. Information identifying you as a Settlement Class Member.
4. Your intent to opt out of the Settlement Class.
5. Your signature, or the signature of your duly-authorized attorney or other duly-authorized representative.

To be effective, your written opt-out letter must be postmarked no later than **DATE**. If the opt-out letter is not postmarked by that date, you will lose the ability to exclude yourself from the Settlement Class.

14. OPTION 4 – DO NOTHING

If you are a Settlement Class Member and you do nothing, you will remain in the Settlement Class and be bound by all orders in this lawsuit. You will also give up the right to seek a share of the Settlement, to object to the Settlement, to speak at the hearing about the Settlement, or to be part of another lawsuit against BMS for any and all claims released by this Settlement Agreement.

FINAL APPROVAL HEARING

15. WHAT IS A FINAL APPROVAL HEARING?

At the Final Approval Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider Class Counsel's request for reimbursement of expenses and payment of the class representative's service award. If there are objections, the Court will consider them at that time.

After the hearing, the Court will decide whether to grant final approval to the Settlement. It is unknown how long this decision will take.

16. WHEN IS THE FINAL APPROVAL HEARING?

The Court will conduct the Final Approval Hearing at the United States District Court for the Northern District of California, San Francisco Courthouse, Courtroom 5 – 17th Floor, 450 Golden Gate Avenue, San Francisco, California 94102.

The Court has scheduled the Final Approval Hearing for **DATE** at **TIME**, but the date and time may change without further notice to the Settlement Class. For updated information on the hearing, you may check the settlement website, contact Class Counsel, or access the court docket for this case as described in the "Getting More Information" section on Page **10**.

17. DO YOU HAVE TO ATTEND THE HEARING?

You do not need to attend the Final Approval Hearing. Class Counsel will answer any questions the Court may have.

If you send an objection, you do not have to come to Court to talk about it. As long as you submitted your written objection on time, to the proper address, and it complies with the other requirements provided in this notice, the Court will consider it.

But if you want to attend, you are welcome to do so at your own expense. You may also pay another lawyer to attend for you, but you will be responsible for hiring and paying that lawyer.

18. MAY YOU SPEAK AT THE HEARING?

If you object to the Settlement, you may ask the Court for permission to speak at the hearing. Your objection must include a request to speak, be timely submitted, and comply with the other requirements provided in this notice.

Your objection submission must include information or materials responsive to all nine of the items listed in the “Option 2 - Object to the Settlement” section on Pages 7-8, including not only your identifying information and the reasons for your objection, but also the identification of all counsel representing you and all persons who may appear and/or testify at the hearing, as well as copies of all documents or writings you want the Court to consider.

Ultimately, the Court will decide who will be allowed to speak at the hearing.

GETTING MORE INFORMATION

19. HOW DO YOU GET MORE INFORMATION?

This notice summarizes the proposed Settlement. The precise terms and conditions of the Settlement are detailed in the Settlement Agreement. If there are any inconsistencies between this notice and the terms of the Settlement Agreement, the terms of the Settlement Agreement will control.

You can view the Settlement Agreement by: (1) visiting the settlement website (www.WEBSITE.com); (2) calling Class Counsel (1-###-###-####); or (3) accessing the Court docket for this case, for a fee, through the Court’s PACER system at <https://ecf.cand.uscourts.gov> or a visit to the Clerk of Court at the address listed above between 9:00 a.m. and 4:00 p.m. on Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

Exhibit E

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

If you purchased HIV cART drugs directly from the manufacturer, you may receive a payment from a class action settlement.

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

A settlement has been reached in a class action lawsuit (*KPH Healthcare Services, Inc. v. Gilead Sciences, Inc.*) alleging BMS and Gilead engaged in a variety of allegedly anticompetitive conduct that caused direct purchasers to pay too much for HIV cART drugs.

The settlement resolves the claims against BMS; it does not resolve claims against Gilead. BMS denies any wrongdoing. The Court has not decided who is right.

Who is included in the Settlement Class?

Generally, the proposed settlement includes persons and entities that purchased Atripla, Complera, Evotaz, Reyataz, Sustiva, Stribild, Truvada, or any of their generic equivalents directly from a brand or generic manufacturer from October 6, 2016 until October 19, 2021.

What does the settlement provide?

BMS agreed to pay \$10.8 million into a Settlement Fund, plus up to an additional \$200,000 for one-half of the costs of providing notice of this settlement. BMS also agreed to waive enforcement of a provision in its licensing agreement with Gilead that will remove a barrier to generic competition with Evotaz.

If the Court approves the settlement, Class Counsel will seek reimbursement for litigation expenses up to \$2.5 million and payment of a class representative service award in the amount of \$10,000. These amounts, if approved, will be

paid from the Settlement Fund. Class Counsel is not seeking an award of attorneys' fees in connection with this settlement.

How can you get a payment?

To get paid, you must submit a Claim Form by **DATE**, either online at **WEBSITE** or by U.S. Mail. See the Claim Form, available at **WEBSITE**, for instructions. If the Court approves the settlement, claims will be paid after the conclusion of any appeals.

What are your other options and rights?

If you remain in the Class, you can write to the Court about what, if anything, you do not like about the settlement, or you can exclude yourself from the Class. The deadline for either option is **DATE**. Descriptions about the effects of these options, and instructions on how to exercise them, are in the detailed notice available at **WEBSITE**.

The Court scheduled a hearing for **DATE** at **TIME** to consider whether the settlement and allocations are fair, reasonable, and adequate, as well as any objections. You do not need to attend, but you or your attorney can do so at your own expense. See the detailed notice available at **WEBSITE** for the hearing location, where to find out if the date or time changes, and what you must do if you or your attorney wishes to speak at the hearing.

FOR MORE INFORMATION VISIT **WEBSITE OR CALL 1-###-###-####**

Exhibit F

City

State

Zip Code

Email Address of Person Responsible

Telephone Number of Person Responsible

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3. Brand Purchase Information

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Total number of units of brand Atripla (NDC #####-####-#), brand Complera (NDC #####-####-#), brand Evotaz (NDC #####-####-#), brand Reyataz (NDC #####-####-#), brand Sustiva (NDC #####-####-#), brand Stribild (NDC #####-####-#), and brand Truvada (NDC #####-####-#) purchased directly from BMS or Gilead between October 6, 2016 and October 19, 2021, reduced to account for returns and assignments.

**** You must submit supporting purchase records. ****

If you are submitting this claim as an assignee, the data and supporting purchase records may be shared with the relevant assignor(s) during the claims administration process.

4. Generic Purchase Information

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Total number of units of generic Atripla (NDC #####-####-#), generic Reyataz (NDC #####-####-#), generic Sustiva (#####-####-#) and generic Truvada (NDC #####-####-#) purchased directly from the generic manufacturer between October 6, 2016 and October 19, 2021, reduced to account for returns and assignments.

**** You must submit supporting purchase records. ****

If you are submitting this claim as an assignee, the data and supporting purchase records may be shared with the relevant assignor(s) during the claims administration process.

5. Signature:

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge. I understand that the punishment for perjury varies by state, but perjury is a felony and carries a possible prison sentence of at least one year, plus fines and probation.

Signature: _____

Dated: _____

This Claim Form must be submitted online or postmarked no later than **Month __, 2022.**

The address for online submission is **WEBSITE.**

The address for mailed submission is:
 KPH Healthcare Services v. Gilead Sciences, Inc. Claims Administrator
P.O. Box XXXXX
City, ST XXXXX-XXXX

XXXXXXXXXXXX

FOR CLAIMS PROCESSING ONLY	OB	<input type="checkbox"/>	CB	<input type="checkbox"/>	<input type="radio"/> DOC	<input type="radio"/> RED
					<input type="radio"/> LC	<input type="radio"/> A
					<input type="radio"/> REV	<input type="radio"/> B

Exhibit G

City

State

Zip Code

Email Address of Company Representative

Telephone Number

Grid for Email Address of Company Representative

Grid for Telephone Number

2. Class Member Representative Information

Please list the contact information for the person responsible for overseeing the claims process and communicating about your claim and distribution of any settlement payments. If the information is the same as #1, check the box below and skip to #3.

Same as Class Member Information.

Grid for Company Name for Person Responsible

Company Name for Person Responsible

Grid for First Name of Person Responsible

First Name of Person Responsible

Grid for Last Name of Person Responsible

Last Name of Person Responsible

Grid for Street Address of Person Responsible - Line 1

Street Address of Person Responsible - Line 1

Grid for Street Address of Person Responsible - Line 2

Street Address of Person Responsible - Line 2

Grid for City

City

Grid for State

State

Grid for Zip Code

Zip Code

Grid for Email Address of Person Responsible

Email Address of Person Responsible

Grid for Telephone Number of Person Responsible

Telephone Number of Person Responsible

3. Brand Purchase Information (Pre-Populated)

Grid for Brand Purchase Information

Total number of units of brand Atripla, brand Complera, brand Stribild, and brand Truvada purchased directly from Gilead between October 6, 2016 and March 31, 2021, reduced to account for returns and known assignments.

Grid for Brand Purchase Information

Total number of units of brand Evotaz, brand Reyataz, and brand Sustiva purchased directly from BMS between October 6, 2016 and October 31, 2019, reduced to account for returns and known assignments.

** A list of relevant NDCs is included at the end of this Claim Form**

Brand Purchase Information (Corrected)

Please use this section to correct any information listed in the pre-populated Brand Purchase Information section above. If the information listed above is correct, check the box below and skip to #4.

The Brand Purchase Information listed above is correct.

Grid for Brand Purchase Information

Corrected total number of units of brand Atripla, brand Complera, brand Stribild, and brand Truvada purchased directly from Gilead between October 6, 2016 and March 31, 2021, reduced to account for returns and known assignments.

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Corrected number of units of brand Evotaz, brand Reyataz, and brand Sustiva purchased directly from BMS between October 6, 2016 and October 31, 2019, reduced to account for returns and known assignments.

**** You must submit supporting purchase records. ****

If you are submitting this claim as an assignee, the data and supporting purchase records may be shared with the relevant assignor(s) during the claims administration process.

4. Brand Purchase Information (Outside Time Periods Referenced in #3)

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Total number of units of brand Atripla, brand Complera, brand Stribild, and brand Truvada purchased directly from Gilead between April 1, 2021 and October 19, 2021, reduced to account for returns and known assignments.

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Total number of units of brand Evotaz, brand Reyataz, and brand Sustiva purchased directly from BMS between November 1, 2019 and October 19, 2021, reduced to account for returns and known assignments.

**** You must submit supporting purchase records. A list of relevant NDCs is included at the end of this Claim Form****

If you are submitting this claim as an assignee, the data and supporting purchase records may be shared with the relevant assignor(s) during the claims administration process.

5. Generic Truvada and Atripla Purchase Information – Producing Third-Party Generic Manufacturers (Pre-Populated)

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Total number of units of generic Atripla and generic Truvada purchased directly from the following Producing Third-Party Generic Manufacturers during the time frames identified below, reduced to account for returns and known assignments:

Anneal Pharmaceuticals, Inc.
(3/1/2021–10/19/2021)

Macleods Pharma USA Inc.
(4/8/2021 – 10/19/2021)

Aurobindo Pharma. USA Inc.
(3/30/2021–8/31/2021)

Mylan Pharmaceuticals, Inc.
(3/30/2021 – 9/27/2021)

Cipla USA Inc.
(3/30/2021 – 10/19/2021)

Strides Pharma Inc.
(3/24/2021 – 9/30/2021)

Laurus Generics, Inc.
(4/1/2021 – 10/19/2021)

Teva Pharmaceuticals USA, Inc.
(9/30/2020 – 6/30/2021)

Lupin Pharmaceuticals, Inc.
(6/23/2021 – 10/19/2021)

Zydus Pharmaceuticals (USA) Inc.
(3/30/2021 – 10/19/2021)

This information has been pre-populated based on transactional data produced by the Producing Third-Party Generic Manufacturers for generic Atripla and generic Truvada during the above-referenced time periods. This section does not include purchases from any other generic manufacturers or purchases from Producing Third-Party Generic Manufacturers outside the above-referenced time periods; those purchases will be addressed below.

**** A list of relevant NDCs is included at the end of this Claim Form ****

Generic Truvada and Atripla Purchase Information – Producing Third-Party Generic Manufacturers (Corrected)

Please use this section to correct any information listed in the pre-populated Generic Purchase Information – Producing Third-Party Generic Manufacturers section above. If the information listed above is correct, check the box below and skip to #6.

The Generic Purchase Information – Producing Third-Party Generic Manufacturers information listed above is correct.

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Corrected total number of units of generic Atripla and generic Truvada purchased directly from the Producing Third-Party Generic Manufacturers during the time periods referenced above, reduced to account for returns and assignments.

**** You must submit supporting purchase records. ****

If you are submitting this claim as an assignee, the data and supporting purchase records may be shared with the relevant assignor(s) during the claims administration process

6. Generic Truvada and Atripla Purchase Information – Producing Third-Party Generic Manufacturers (Outside of Time Periods Referenced in #5)

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Total number of units of generic Atripla and generic Truvada purchased directly from the following Producing Third-Party Generic Manufacturers during the time frames identified below, reduced to account for returns and known assignments:

Aurobindo Pharma. USA Inc.
(9/1/2021–10/19/2021)

Strides Pharma Inc.
(10/1/2021–10/19/2021)

Mylan Pharmaceuticals, Inc.
(9/28/2021–10/19/2021)

Teva Pharmaceuticals USA, Inc.
(7/1/2021–10/19/2021)

**** You must submit supporting purchase records. A list of relevant NDCs is included at the end of this Claim Form ****

If you are submitting this claim as an assignee, the data and supporting purchase records may be shared with the relevant assignor(s) during the claims administration process.

7. Generic Truvada and Atripla Purchase Information — Non-Producing Third-Party Generic Manufacturers

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Total number of units of generic Truvada and generic Atripla purchased directly from Non-Producing Third-Party Generic Manufacturers (i.e., any generic manufacturer other than Teva, Strides, Aurobindo, Amneal, Laurus, Cipla, Lupin, Macleods, Mylan, or Zydus) between October 6, 2016 and October 19, 2021, reduced to account for returns and assignments.

Do not include generic purchases from Teva, Strides, Aurobindo, Amneal, Laurus, Cipla, Lupin, Macleods, Mylan, or Zydus. Those should be included in 5 and 6 above.

**** You must submit supporting purchase records. A list of relevant NDCs is included at the end of this Claim Form ****

If you are submitting this claim as an assignee, the data and supporting purchase records may be shared with the relevant assignor(s) during the claims administration process

8. Generic Reyataz and Sustiva Purchase Information – All Manufacturers

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Total number of units of generic Reyataz and generic Sustiva purchased directly from any manufacturer between October 6, 2016 and October 19, 2021, reduced to account for returns and assignments.

**** You must submit supporting purchase records. A list of relevant NDCs is included at the end of this Claim Form ****

If you are submitting this claim as an assignee, the data and supporting purchase records may be shared with the relevant assignor(s) during the claims administration process

9. Signature: I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge. I understand that the punishment for perjury varies by state, but perjury is a felony and carries a possible prison sentence of at least one year, plus fines and probation.

Signature: _____ Dated: _____

This Claim Form must be submitted online or postmarked no later than **Month __, 2022.**

The address for online submission is **WEBSITE.**

The address for mailed submission is:
KPH Healthcare Services v. Gilead Sciences, Inc. Claims Administrator
P.O. Box XXXXX
City, ST XXXXX-XXXX

XXXXXXXXXXXX

1

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				<input type="checkbox"/> REV	<input type="checkbox"/> B



Exhibit H

1 Michael L. Roberts
2 **ROBERTS LAW FIRM US, PC**
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4 Dallas, TX 75201
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6 mikeroberts@robertslawfirm.us

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10 Philadelphia, PA 19107
11 Telephone: (215) 923-9300
12 Fax: (215) 923-9302
13 dnast@nastlaw.com

14 *Proposed Co-Lead Settlement Class Counsel for*
15 *the Direct-Purchaser Settlement Class*

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

29 STALEY, *et al.*,
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1 Plaintiff KPH Healthcare Services, Inc. a/k/a Kinney Drugs, Inc. (“Plaintiff”), individually
2 and on behalf of a proposed settlement class of similarly situated direct purchasers of Atripla,
3 Complera, Evotaz, Reyataz, Sustiva, Stribild, or Truvada or any of their generic equivalents from
4 October 6, 2016 to October 19, 2021 (“Direct-Purchaser Settlement Class”), submits this proposed
5 plan of allocation (“Allocation Plan”) to apportion the \$10,800,000 Settlement Fund that will be
6 created pursuant to Plaintiff’s Settlement Agreement with Defendant Bristol-Myers Squibb
7 Company and E.R. Squibb & Sons, LLC (together, “BMS”), together with any interest accrued
8 thereon (the “BMS Settlement Fund”).

9 1. Plaintiff’s expert economist, Dr. Russell Lamb, will calculate each Direct-Purchaser
10 Settlement Class Member’s percentage share of the Net BMS Settlement Fund¹ as a function of
11 (a) the amount (measured in units) of each Direct-Purchaser Settlement Class Member’s purchases
12 of Atripla, Complera, Evotaz, Reyataz, Sustiva, Stribild, and Truvada and their generic equivalents,
13 (b) the Relevant Share (explained below) assigned to each concerned drug, and (c) a multiplier
14 based on whether a drug is branded or generic (explained below).

15 2. Within 45 days of entry of the Court’s Order granting preliminary approval of the
16 Settlement, the Claims Administrator, in conjunction with Dr. Lamb, will prepare a separate,
17 individualized Claim Form for each known Direct-Purchaser Settlement Class Member. The Claim
18 Form will include each Direct-Purchaser Settlement Class Members’ name and address. The Claim
19 Form will also be pre-populated with each Direct-Purchaser Settlement Class Member’s total unit
20 volume of Atripla, Complera, Evotaz, Reyataz, Sustiva, Stribild, Truvada, and any of their generic
21 equivalents purchased directly from the following entities during the time periods for which
22 Plaintiff received transactional level data: Bristol-Myers Squibb Company, E. R. Squibb & Sons,
23 L.L.C. (together “BMS”), Gilead Sciences, Inc., Gilead Holdings, LLC, Gilead Sciences, LLC,
24 Gilead Sciences Ireland UC (collectively “Gilead”), and third parties Teva Pharmaceuticals USA,
25

26 ¹ “Net BMS Settlement Fund” means the BMS Settlement Fund (including any interest earned)
27 after deducting any named plaintiff incentive award and/or litigation and administration expenses
28 approved by the Court (including settlement administration expenses, 50% of notice expenses up
to the first \$200,000 of notice expenses, and 100% of all notice expenses thereafter).

1 Inc. (“Teva”), Strides Pharma Inc. (“Strides”), Aurobindo Pharma. USA Inc. (“Aurobindo”),
2 Amneal Pharmaceuticals, Inc. (“Amneal”), Laurus Generics, Inc. (“Laurus”), Cipla USA Inc.
3 (“Cipla”), Lupin Pharmaceuticals, Inc. (“Lupin”), Macleods Pharma USA Inc. (Macleods”), Mylan
4 Pharmaceuticals, Inc. (“Mylan”), and Zydus Pharmaceuticals (USA) Inc. (“collectively,
5 “Producing Third-Party Manufacturers”).

6 3. The Claim Form will be sent via certified mail to each known Direct-Purchaser
7 Settlement Class Member along with the Summary Notice of Settlement. The Claim Form will
8 explain that the pre-populated numbers were compiled from transactional sales data produced by
9 Gilead, BMS, and Producing Third-Party Generic Manufacturers for defined time periods. The
10 Claim Form will request that each Direct-Purchaser Settlement Class Member verify the accuracy
11 of the information contained in the Claim Form and will provide instructions for submitting
12 additional purchase records or challenging any of the figures or computations contained in the
13 Claim Form. If a Direct-Purchaser Settlement Class Member agrees that the information contained
14 in the Claim Form is accurate, it will be asked to sign the Claim Form verifying its accuracy and to
15 timely submit it to the Claims Administrator. If a Direct-Purchaser Settlement Class Member
16 believes that the information contained in its Claim Form is not accurate or would like to submit
17 additional or supplemental information, that Direct-Purchaser Settlement Class Member may
18 submit its own purchase records pursuant to the procedures described below.

19 4. The Claim Form will request the Claimant’s full name and mailing address
20 appropriate for correspondence regarding the distribution of the Net Settlement Fund and the
21 identity of and contact information for the person responsible for overseeing the claims process for
22 the Claimant. The Claim Form will also include the National Drug Codes (“NDCs”) for brand
23 Atripla, Complera, Evotaz, Reyataz, Sustiva, Stribild, and Truvada and any of their generic
24 equivalents.² The Claim Form will also make clear that data submitted by a person or entity based
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27 ² The NDCs are standard codes maintained by the FDA and used in the pharmaceutical industry to
28 identify specific pharmaceutical products and will allow Claimants to understand precisely which
purchases are eligible for purposes of allocation.

1 on an assignment may be shared with the relevant assignor(s) during the claims administration
2 process.

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

7 6. No later than 30 days prior to the Claim Form deadline, the Claims Administrator
8 shall follow up by U.S. First-Class mail with any Direct-Purchaser Settlement Class Member that
9 has not yet submitted a completed Claim Form. No later than 15 days prior to the Claim Form
10 deadline, the Claims Administrator shall follow up by phone with any Direct-Purchaser Settlement
11 Class Member that has not yet submitted a completed Claim Form. The Claims Administrator
12 and/or Co-Lead Settlement Class Counsel may engage in additional follow-up communications
13 beyond those outlined in this Allocation Plan.

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

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

25 9. Dr. Lamb and his staff will be responsible for determining the amount each Direct-
26 Purchaser Settlement Class Member who timely submitted a valid Claim Form will receive from
27 the Net BMS Settlement Fund.
28

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

3 (1) for each drug in which a generic was not available (Claimant’s total unit
4 volume of brand [drug] purchased³ / total brand [drug] purchases) x (share
5 allocated to [drug]); with

6 (2) for each brand drug in which a generic was available (Claimant’s total unit
7 volume of brand [drug] purchased / total brand [drug] purchases) x (share
8 allocated to [drug]) x (brand multiplier); and

9 (3) for each generic drug (Claimant’s total unit volume of generic [drug]
10 purchased / total generic [drug] purchases) x (share allocated to [drug]) x
11 (generic multiplier).

12 11. The relative share allocated to each concerned drug will be based on each drug’s
13 share of Extended Units (“EUs”) in the IQVIA National Sales Perspectives (“NSP”) data from
14 October 2016 through June 2021: Atripla (14%), Complera (5%), Evotaz (1%), Reyataz (7%),
15 Stribild (7%), Sustiva (3%), Truvada (63%).

16 12. To address the fact that alleged damages stemming from the purchases of brand
17 drugs are higher than those stemming from the purchases of generic drugs, where a generic
18 equivalent was available for a specific drug, a multiplier of .88 will be applied to brand purchases
19 and a multiplier of .12 will be applied to generic purchases.

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

22 14. The Claims Administrator and Dr. Lamb and his staff, in consultation with Co-Lead
23 Settlement Class Counsel, shall review all written challenges to Dr. Lamb’s conclusions regarding
24 applicable purchase volumes. If, upon review of a challenge and supporting documentation, Dr.

25
26 _____
27 ³ As used herein, the phrase “total unit volume” refers to the total unit volume of a Claimant’s direct
28 purchases of a concerned drug from BMS, Gilead, or a generic manufacturer between October 6,
2016 and October 19, 2021, reduced to account for returns and purchases for which the right to
damages has been assigned to another person or entity.

1 Lamb's office decides to amend its determination of the claimant's total qualifying purchases, the
2 Claims Administrator will send the claimant a letter notifying it of that fact.

3 15. The Claims Administrator shall be responsible for mailing each Direct-Purchaser
4 Settlement Class Member who timely submitted a valid Claim Form a check for its approved
5 distribution from the Net BMS Settlement Fund. Each check shall be valid for a period of 90 days.

6 16. No later than 14 days prior to the date for the Final Fairness Hearing set forth in the
7 Court's order granting preliminary approval of the Settlement, Co-Lead Settlement Class Counsel
8 shall cause to be filed with the Court declarations from the Claims Administrator and Dr. Lamb
9 summarizing their actions to effectuate this allocation. The declarations shall also include a
10 summary of all costs and expenses incurred and expected to be incurred in connection with this
11 Allocation Plan.

12 17. It is anticipated that the entire Net BMS Settlement Fund will be distributed at one
13 time. If amounts that are not *de minimis* remain in the fund 180 days after the initial distribution
14 date due to expired checks or any other reason, such amounts shall be distributed *pro rata* to
15 claimants that timely cashed their initial settlement checks based on the same formula used for the
16 initial distribution. If the amounts remaining in the fund are *de minimis* such that a second
17 distribution would not be economically feasible based on an assessment of the costs of distribution
18 as compared to the amounts remaining in the fund, such amounts will be held in the escrow account
19 to be included in any additional disbursements occurring in connection with this litigation. If no
20 such additional disbursements occur, at the conclusion of the litigation, Co-Lead Settlement Class
21 Counsel shall make an application with the Court, with notice to BMS, addressing the proposed
22 distribution of those funds.

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Respectfully submitted,

Dated: March 30, 2022

By: /s/ Michael L. Roberts
Michael L. Roberts (admitted *pro hac vice*)
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Kinney Drugs, Inc. and Interim Co-Lead Counsel for
the Direct Purchaser Class Plaintiffs*

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fos@scarpullalaw.com
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*Counsel for KPH Healthcare Services, Inc. a/k/a
Kinney Drugs, Inc. and Interim Liaison Counsel for
the Direct Purchaser Class Plaintiffs*

Exhibit I

ESCROW AGREEMENT

This Escrow Agreement dated March 30, 2022, is made among Michael L. Roberts of the Roberts Law Firm and Dianne M. Nast of Nastlaw LLC in their capacity as Settlement Class Counsel for the Direct-Purchaser Settlement Class (“Settlement Class Counsel”), Bristol-Myers Squibb Company and E.R. Squibb & Sons, LLC (together, “BMS”), by and through BMS’s counsel Arnold & Porter Kaye Scholer LLP, and Computershare Trust Company, N.A. (“Escrow Agent”) and KCC Class Action Services, LLC (“Settlement Administrator” and together with Escrow Agent, the “Administrator Parties”).

Recitals

A. This Escrow Agreement governs the deposit, investment and disbursement of the settlement funds that, pursuant to the Settlement Agreement dated March 30, 2022, attached hereto as Exhibit A, entered into by, among others, Settlement Class Counsel on behalf of the Direct-Purchaser Settlement Class, will be paid to settle the claims brought on behalf of the Direct-Purchaser Settlement Class against BMS in the class action captioned *KPH Healthcare Services, Inc. a/k/a Kinney Drugs, Inc. v. Gilead Sciences, Inc., et al.*, No. 3:20-cv-06961-EMC, pending in the United States District Court for the Northern District of California (the “Court”).

B. Pursuant to the terms of the Settlement Agreement, BMS has agreed to pay or cause to be paid the total amount of \$10,800,000.00 in cash (the “Settlement Amount”) in settlement of the claims brought against BMS in the Class Action.

C. The Settlement Amount, together with any interest accrued thereon, is to be deposited into Escrow and used to satisfy payments to Direct-Purchaser Settlement Class Members, payments for attorneys’ fees and expenses, payments for tax liabilities, and other costs pursuant to the terms of the Settlement Agreement.

D. Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed to them in the Settlement Agreement.

Agreement

1. Appointment of Escrow Agent. The Escrow Agent is hereby appointed to receive, deposit and disburse the Settlement Amount upon the terms and conditions provided in this Escrow Agreement.

2. The Escrow Account. The Escrow Agent shall establish and maintain an Escrow account titled as the BMS Direct-Purchaser Settlement Account (the “Escrow Account”). Pursuant to the Settlement Agreement, BMS shall cause to be deposited into the Escrow Account \$10,800,000.00 within 21 calendar days after the later of (1) entry of the preliminary approval order, and (2) receipt from Settlement Class Counsel of both wiring instructions on the Settlement Administrator’s letterhead that include the bank name and ABA routing number, account name, and account number, and a signed Form W-9 reflecting a valid taxpayer identification number for the qualified settlement account in which the funds are to be deposited. Escrow Agent shall receive the Settlement Amount into the Escrow Account; the Settlement Amount and all interest

accrued thereon shall be referred to herein as the “Settlement Fund.” The Settlement Fund shall be held and invested on the terms and subject to the limitations set forth herein and shall be released by Escrow Agent in accordance with the terms and conditions hereinafter set forth and set forth in the Settlement Agreement and in orders of the Court approving the disbursement of the Settlement Fund.

3. Investment of Settlement Amount. Escrow Agent shall invest the Settlement Fund exclusively in instruments or accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a Western Alliance Insured Deposit Solution (Insured Cash Sweep) or a bank account that is either (a) fully insured by the Federal Deposit Insurance Corporation (“FDIC”) or (b) secured by instruments backed by the full faith and credit of the United States Government. BMS and the Administrator Parties shall not bear any responsibility for or liability related to the investment of the Settlement Fund as set forth herein.

4. Escrow Funds Subject to Jurisdiction of the Court. The Settlement Fund shall remain subject to the jurisdiction of the Court until such time as the Fund shall be distributed, pursuant to the Settlement Agreement and on further order(s) of the Court.

5. Tax Treatment & Report. The Settlement Fund shall be treated at all times as a “Qualified Settlement Fund” within the meaning of Treasury Regulation §1.468B-1. Settlement Class Counsel and, as required by law, BMS, shall jointly and timely take such actions as necessary or advisable to qualify the Settlement Fund as a “Qualified Settlement Fund” within the meaning of Treas. Reg. §1.468B-1 and fulfill the requirements of such Treasury Regulation, including making a “relation-back election” under Treas. Reg. §1.468B-1(j)(2), if applicable, to the earliest permitted date. If applicable, the Settlement Administrator will prepare the “relation-back election” pursuant to Treas. Reg. §1.468B-1(j)(2) for execution by BMS and Settlement Class Counsel and attach to it the Settlement Fund’s first income tax return and will forward a copy to BMS promptly before filing the same. For purposes of §468B of the Internal Revenue Code of 1986, as amended (the “Code”), and the regulations promulgated thereunder, the “administrator” of the Settlement Fund shall be the Settlement Administrator and the Settlement Administrator shall take all actions to ensure that the Settlement Administrator qualifies as such. The Settlement Administrator shall timely and properly prepare, deliver to all necessary parties for signature, and file all necessary documentation for any elections required or advisable under Treas. Reg. §1.468B-1. The Settlement Administrator will obtain an employer identification number for the Settlement Fund and timely prepare a “Regulation Section 1.468B-3 Statement” pursuant to Treas. Reg. §1.468B-3(e) on behalf of BMS and provide copies to BMS’s counsel for review and approval. The Settlement Administrator shall timely and properly prepare and file any informational and other tax returns (including state, local or foreign) necessary or advisable with respect to the Settlement Fund and the distributions and payments therefrom including without limitation the returns described in Treas. Reg. §1.468B-2(k), and to the extent applicable Treas. Reg. §1.468B-2(1).

6. Tax Payments of Settlement Fund. To the extent permissible under the law and in accordance with prior orders of the Court, all Taxes with respect to the Settlement Fund, as defined in the Settlement Agreement, shall be treated as and considered to be a cost of administration of

the Settlement Fund and the Escrow Agent shall timely pay such Taxes out of the Settlement Fund. The Administrator Parties shall be responsible for the timely and proper preparation and delivery of any necessary documentation for signature by all necessary parties, and the timely filing of all tax returns and other tax reports required by law. The Administrator Parties may engage an accounting firm or tax preparer to assist in the preparation of any tax reports or the calculation of any tax payments due as set forth in Sections 5 and 6, and the expense of such assistance or other Tax Expenses as defined by the Settlement Agreement shall be paid from the Settlement Fund by the Escrow Agent subject to approval of the Court. The Escrow Agent, upon instruction from the Settlement Administrator, shall withhold from distribution to any Direct-Purchaser Settlement Class Members any funds necessary to pay such taxes including the establishment of adequate reserves for any taxes (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(l) (2)). If the Settlement Fund is returned to BMS pursuant to the terms of the Settlement Agreement, BMS shall provide Escrow Agent with a properly completed Form W-9.

7. Disbursement Instructions

(a) Except as provided in Paragraph 6, no disbursements shall be made from the BMS Direct-Purchaser Settlement Account until after the Effective Date as that term is defined in the Settlement Agreement.

(b) Disbursements, including disbursements for distribution of Class Settlement Funds, must be authorized by either (i) an order of the Court provided to Settlement Administrator, or (ii) the written direction of Michael L. Roberts of the Roberts Law Firm to Settlement Administrator.

(c) In the event funds transfer instructions are given (other than in writing at the time of execution of this Agreement), whether in writing, by facsimile, e-mail, telecopier or otherwise, Administrator Parties will seek confirmation of such instructions by telephone, call back when new wire instructions are established to the person or persons designated in subparagraph (b) above only if it is reasonably necessary, and may rely upon the confirmations of anyone purporting to be the person or persons so designated. It will not be reasonably necessary to seek confirmation if Administrator Parties receive written letters authorizing a disbursement from each of the law firms required in subparagraph (b), as applicable, on their letterhead and signed by one of the persons designated in subparagraph (b). To assure accuracy of the instructions it receives, Administrator Parties may record such call backs. If Administrator Parties are unable to verify the instructions, or are not satisfied with the verification received, they shall not execute the instruction until all issues have been resolved. The persons and telephone numbers for call backs may be validly changed only in a writing that (i) is signed by the party changing its notice designations, and (ii) is received and acknowledged by Administrator Parties. Settlement Class Counsel will notify Escrow Agent of any errors, delays or other problems within 30 days after receiving notification that a transaction has been executed. If it is determined that the transaction was delayed or erroneously executed as a result of Administrator Party error, Administrator Parties' sole obligation is to pay or refund the amount of such error and any amounts as may be required by applicable law. Any claim for interest payable will be at the then-published rate for United States Treasury Bills having a maturity of 91 days.

(d) Neither Administrator Parties shall be liable for any losses, costs or expenses arising directly or indirectly from the either Administrator Party's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The party providing electronic instructions agrees: (i) to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Administrator Parties, including, without limitation, the risk of the Administrator Parties acting on unauthorized instructions, and the risk or interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting instructions to the Administrator Parties and that there may be more secure methods of transmitting instructions than the method(s) selected by the Administrator Parties; and (iii) that the security procedures (if any) to be followed in connection with its transmission of instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances.

8. Termination of Settlement. If the Settlement Agreement terminates in accordance with its terms, Settlement Class Counsel and BMS shall jointly notify Administrator Parties of the termination of the Settlement Agreement. Upon such notification, the balance of the Settlement Fund, together with any interest earned thereon, and any unpaid Taxes due, as determined by Settlement Class Counsel and BMS, shall be returned to BMS in accordance with written instruction from BMS's Counsel.

9. Fees. The Escrow Agent shall be entitled to compensation for its services as stated in the fee schedule attached as Exhibit B. All fees and expenses of Escrow Agent shall be paid solely from the Settlement Fund. The Escrow Agent may pay itself such fees from the Settlement Fund only after such fees have been approved for payment by Settlement Class Counsel. If Escrow Agent is asked to provide additional services, such as the preparation and administration of payments to Authorized Claimants, a separate agreement and fee schedule will be entered into. Escrow Agent shall be entitled to retain for its own benefit, as partial compensation for its services hereunder, any benefits otherwise relating to the Fund including interest not accruing to the Settlement Fund hereunder. The foregoing sentence is not intended to, and does not, entitle the Escrow Agent to retain for its benefit any portion of the Settlement Fund or the interest accruing thereon.

10. Duties, Liabilities and Rights of Escrow Agent. This Escrow Agreement sets forth all of the obligations of Escrow Agent and Settlement Administrator with respect to the escrow and Settlement Fund, and no additional obligations shall be implied from the terms of this Escrow Agreement or any other agreement, instrument or document.

(a) Escrow Agent may act in reliance upon any instructions, notice, certification, demand, consent, authorization, receipt, power of attorney or other writing delivered to it by Settlement Class Counsel, as provided herein, without being required to determine the authenticity or validity thereof or the correctness of any fact stated therein, the propriety or validity of the service thereof, or the jurisdiction of the court issuing any judgment or order. Escrow Agent may act in reliance upon any signature which is reasonably believed by it to be genuine and may assume that such person has been properly authorized to do so.

(b) Administrator Parties may consult with legal counsel of its selection in the event of any dispute or question as to the meaning or construction of any of the provisions hereof or its duties hereunder, and it shall incur no liability and shall be fully protected to the extent Administrator Parties act in accordance with the reasonable opinion and instructions of counsel. Administrator Parties shall have the right to reimburse itself for reasonable legal fees and reasonable and necessary disbursements and expenses actually incurred from the Escrow Account only (i) upon approval by Settlement Class Counsel or (ii) pursuant to an order of the Court.

(c) Administrator Parties shall not bear any risks related to the investment of the Settlement Fund in accordance with the provisions of paragraph 3 of this Escrow Agreement. The Administrator Parties will each be indemnified by the Settlement Fund, and held harmless against, any and all claims, suits, actions, proceedings, investigations, judgments, deficiencies, damages, settlements, liabilities and expenses (including reasonable legal fees and expenses of attorneys chosen by the Escrow Agent) as and when incurred, arising out of or based upon any act, omission, alleged act or alleged omission by the Administrator Parties or any other cause, in any case in connection with the acceptance of, or performance or non-performance by the Administrator Parties of, any of the applicable Administrator Party's duties under this Escrow Agreement, except as a result of such party's bad faith, willful misconduct or gross negligence. Any liability of Escrow Agent and Settlement Administrator will be limited in the aggregate to (i) the amount of the Fund on deposit hereunder with the Escrow Agent at the time of the event or events that gave rise to such liability, plus (ii) the reasonable costs and expenses of enforcing this Agreement in connection with such liability. The Escrow Agent may execute any of its powers and perform any of its duties hereunder directly or through affiliates or agents.

(d) Upon distribution of all of the funds in the Escrow Account pursuant to the terms of this Escrow Agreement and any orders of the Court, Escrow Agent shall be relieved of any and all further obligations and released from any and all liability under this Escrow Agreement, except as otherwise specifically set forth herein.

(e) In the event any dispute shall arise between the parties with respect to the disposition or disbursement of any of the assets held hereunder, the Escrow Agent shall be permitted to interplead all of the assets held hereunder into a court of competent jurisdiction, and thereafter be fully relieved from any and all liability or obligation with respect to such interpleaded assets. The parties further agree to pursue any redress or recourse in connection with such a dispute, without making the Administrator Parties a party to same.

11. Non-Assignability by Escrow Agent. Escrow Agent's rights, duties and obligations hereunder may not be assigned or assumed without the written consent of Settlement Class Counsel and BMS.

12. Resignation of Escrow Agent. Escrow Agent may, in its sole discretion, resign and terminate its position hereunder at any time following 120 days prior written notice to the parties to the Escrow Agreement herein. On the effective date of such resignation, Escrow Agent shall deliver this Escrow Agreement together with any and all related instruments or documents and all funds in the Escrow Account to the successor Escrow Agent, subject to this Escrow Agreement. If

a successor Escrow Agent has not been appointed prior to the expiration of 120 days following the date of the notice of such resignation, then Escrow Agent may petition the Court for the appointment of a successor Escrow Agent, or other appropriate relief. Any such resulting appointment shall be binding upon all of the parties to this Escrow Agreement.

13. Notices. Notice to the parties hereto shall be in writing and delivered by hand delivery, electronic mail or overnight courier service, addressed as follows:

If to Settlement Class Counsel:

Michael L. Roberts
ROBERTS LAW FIRM
mikeroberts@robertslawfirm.us
1920 McKinney Avenue, Suite 700
Dallas, TX 75201
Telephone: (501) 952-8558

Dianne M. Nast
NASTLAW LLC
dnast@nastlaw.com
1101 Market Street, Suite 2801
Philadelphia, PA 19107
Telephone: (215) 923-9300

If to BMS's Counsel:

Daniel B. Asimow
ARNOLD & PORTER KAYE SCHOLER LLP
daniel.asimow@arnoldporter.com
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111-4024
Telephone: (415) 471-3100

James L. Cooper
ARNOLD & PORTER KAYE SCHOLER LLP
james.cooper@arnoldporter.com
601 Massachusetts Ave., NW
Washington, DC 20001-3743
Telephone: (202) 942-5000

If to Escrow Agent:

Computershare Trust Company, N.A.
6200 S. Quebec Street
Greenwood Village, CO 80111
Attention: Rose Stroud and Jay Ramos
Facsimile No. (303) 262-0608

If to Settlement Administrator:

KCC Class Action Services, LLC
1 McInnis Parkway
San Rafael, CA 94903
Attention: Drake Foster and Lara McDermott
Telephone: (310) 776-7334

14. Patriot Act Warranties. Section 326 of the USA Patriot Act (Title III of Pub. L. 107-56), as amended, modified or supplemented from time to time (the “Patriot Act”), requires financial institutions to obtain, verify and record information that identifies each person or legal entity that opens an account (the “Identification Information”). The parties to this Escrow Agreement agree that they will provide the Administrator Parties with such Identification Information as the Escrow Agent may request in order for the Escrow Agent to satisfy the requirements of the Patriot Act.

15. Entire Agreement. This Escrow Agreement, including all Schedules and Exhibits hereto, constitutes the entire agreement and understanding of the parties hereto. Any modification of this Escrow Agreement or any additional obligations assumed by any party hereto shall be binding only if evidenced by a writing signed by each of the parties hereto. To the extent this Escrow Agreement conflicts in any way with the Settlement Agreement, other than with respect to the rights, obligations and protections of the Administrator Parties hereunder, the provisions of the Settlement Agreement shall govern.

16. Governing Law. This Escrow Agreement shall be governed by federal common law or, where state substantive law must apply, California law, in all respects. The parties hereto submit to the jurisdiction of the Court, in connection with any proceedings commenced regarding this Escrow Agreement, including, but not limited to, any interpleader proceeding or proceeding Escrow Agent may commence pursuant to this Escrow Agreement for the appointment of a successor Escrow agent, and all parties hereto submit to the jurisdiction of such Court for the determination of all issues in such proceedings, without regard to any principles of conflicts of laws, and irrevocably waive any objection to venue or inconvenient forum.

17. Termination of Escrow Account. The Escrow Account will terminate after all funds deposited in it, together with all interest earned thereon, are disbursed in accordance with the provisions of the Settlement Agreement and this Escrow Agreement.

18. Miscellaneous Provisions.

(a) Counterparts. This Escrow Agreement may be executed in one or more counterparts, each of which counterparts shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Escrow Agreement.

(b) Further Cooperation. The parties hereto agree to do such further acts and things and to execute and deliver such other documents as Administrator Parties may request from time to time in connection with the administration, maintenance, enforcement or adjudication of this Escrow Agreement in order (a) to give Escrow Agent confirmation and assurance of Escrow Agent's rights, powers, privileges, remedies and interests under this Agreement and applicable law, (b) to better enable Escrow Agent to exercise any such right, power, privilege or remedy, or (c) to otherwise effectuate the purpose and the terms and provisions of this Escrow Agreement, each in such form and substance as may be acceptable to Escrow Agent.


(c) Non-Waiver. The failure of any of the parties hereto to enforce any provision hereof on any occasion shall not be deemed to be a waiver of any preceding or succeeding breach of such provision or any other provision.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Computershare Trust Company, N.A., as Escrow Agent

By: 
Name, Title Rose Stroud, Trust Officer

KCC Class Action Services, LLC, as Settlement Administrator

By: 
Name, Title Gerry Mullins, President

Settlement Class Counsel

By: _____
Michael L. Roberts
Roberts Law Firm US, PC

By: _____
Dianne M. Nast
Nastlaw LLC

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Settlement Class Counsel

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Name, Title

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By: _____
Name, Title

Settlement Class Counsel

By: 

Michael L. Roberts
Roberts Law Firm US, PC

By: _____
Dianne M. Nast
NastLaw LLC

Bristol-Myers Squibb Company and E.R. Squibb & Sons, LLC


By: 
James L. Cooper
Arnold & Porter Kaye Scholer LLP

Exhibit A
Settlement Agreement

Exhibit B

Fees of Escrow Agent

Acceptance Fee:

Waived

The Acceptance Fee includes the review of the Escrow Agreement, acceptance of the role as Escrow Agent, establishment of Escrow Account(s), and receipt of funds.

Annual Administration Fee:

Waived

The Annual Administration Fee includes the performance of administrative duties associated with the Escrow Account including daily account management, generation of account statements to appropriate parties, and disbursement of funds in accordance with the Escrow Agreement. Administration Fees are payable annually in advance without proration for partial years.

Out-of-Pocket Expenses:

Waived

Out-of-pocket expenses include postage, courier, overnight mail, wire transfer, and travel fees.