

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

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

12 This Document Relates To:

13 *KPH Healthcare Services, Inc. v. Gilead*

14 *Sciences, Inc., et al.*, 3:20-cv-06961-EMC

15 Upon review and consideration of the Settlement Agreement by and between Plaintiff

16 KPH Healthcare Services, Inc. a/k/a Kinney Drugs, Inc. (“KPH” or “Plaintiff”), individually and

17 on behalf of the proposed Direct-Purchaser Settlement Class, and Defendants Bristol-Myers

18 Squibb Company and E.R. Squibb & Sons, LLC (together, “BMS”), dated March 30, 2022, and

19 the Direct Purchaser Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement with

20 BMS, along with its supporting memorandum and exhibits, IT IS HEREBY ORDERED that the

21 motion is GRANTED as follows:

Jurisdiction

22 1. This Court has subject matter jurisdiction over this action and personal jurisdiction

23 over Plaintiff KPH and Defendants BMS.

Class Certification

24 2. The following Direct-Purchaser Settlement Class (the “Class”) is certified under

25 Fed. R. Civ. P. 23(a), (b)(2) and (b)(3) for settlement purposes only:

26 All persons or entities in the United States and its territories who

27 directly purchased Atripla, Evotaz, Reyataz, Sustiva, Truvada,

28 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.;
Rite Aid Corporation; Rite Aid Hdqtrs. Corp.; and CVS Pharmacy, Inc.

1 d. cause a Settlement Website to become live with links to copies of the
2 Settlement Agreement, a Detailed Notice substantially in the form attached as Exhibit
3 D to the Second Roberts Declaration, a blank Claim Form substantially in the form
4 attached as Exhibit F to the Second Roberts Declaration, the Allocation Plan attached
5 as Exhibit H to the Settlement Agreement, the Escrow Agreement attached as Exhibit I
6 to the Settlement Agreement, and instructions on how to submit a Claim Form or an
7 Opt-Out Form online via the website.

8 15. By August 17 __, 2022 (75 days after entry of this Order), KCC shall cause a
9 Postcard Reminder Notice substantially in the form attached as Exhibit C to the Second Roberts
10 Declaration to be sent via U.S. First-Class Mail to the last-known mailing address of each known
11 Class Member that has not yet submitted a Claim Form.

12 16. By September 1 __, 2022 (90 days after entry of this Order), KCC shall follow
13 up by phone with any Class Member that has not yet submitted a completed Claim Form.

14 17. The notices shall list September 16 __, 2022 (105 days after entry of this Order) as
15 the deadline for filing a Claim Form, and August 25 __, 2022 (21 days prior to the Final
16 Approval Hearing) as the deadline to object to the settlement or requests for awards for litigation
17 expenses and a class representative service award or opt out of the Class.

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

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

6 **Final Approval Hearing**

7 20. The Final Approval Hearing shall be held before this Court at 1:30PM[TIME] on
8 September 15 __, 2022 [DATE] (at least 120 days after entry of this Order, at the United States
9 District Court for the Northern District of California, San Francisco Courthouse, Courtroom 5 –
10 17th Floor, 450 Golden Gate Avenue, San Francisco, California 94102. At the Final Approval
11 Hearing, the Court will consider, among other matters: (1) the fairness, reasonableness and
12 adequacy of the proposed settlement; (2) the proposed Allocation Plan; (3) the request for an
13 award for expenses to Class Counsel; (4) the request for an incentive award to KPH; (5) any
14 objections; and (6) whether to grant final approval to the proposed settlement.

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

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

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

26 24. By September 1 __, 2022 (14 days prior to the Final Approval Hearing), Class
27

1 Counsel shall file a motion for final approval of the settlement and plan of allocation.

2 25. Pending final approval of the settlement and the entry of final judgment in this
3 action against BMS, any and all proceedings in this action (other than those incident to the
4 settlement process) by the Class against BMS are stayed. The action by the Class against other
5 Defendants, and by other plaintiffs against BMS, shall continue as scheduled.

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

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

18
19 IT IS SO ORDERED

20 Dated: June 3, 2022

21 
22 HON. EDWARD M. CHEN
23 United States District Judge