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

**PLAN OF ALLOCATION**

Judge: Honorable Edward M. Chen

This Document Relates to:

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

1 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 Fund<sup>1</sup> 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,  
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26 <sup>1</sup> “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.<sup>2</sup> The Claim Form will also make clear that data submitted by a person or entity based  
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27 <sup>2</sup> 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.

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] purchased<sup>3</sup> / 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.

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27 <sup>3</sup> 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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