

1 [Submitting Counsel on Signature Page]

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

6 STALEY, *et al.*,
7 Plaintiffs,
8 v.
9 GILEAD SCIENCES, INC., *et al.*,
10 Defendants.

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

**STIPULATION AND ~~PROPOSED~~
ORDER TO MODIFY NOTICE PLAN
AND EXTEND DEADLINES RELATING
TO FINAL APPROVAL OF PROPOSED
CLASS ACTION SETTLEMENT**

11 This Document Relates to:
12 *KPH Healthcare Services, Inc. v. Gilead*
13 *Sciences, Inc. et al.*, 3:20-cv-06961-EMC

14 The undersigned parties have agreed, subject to the Court’s approval, to modify the notice
15 plan and extend all deadlines relating to final approval of the proposed settlement between (a) KPH
16 Healthcare Services, Inc. a/k/a Kinney Drugs, Inc. (“Plaintiff”); and (b) Defendants Bristol-Myers
17 Squibb Company and E.R. Squibb & Sons LLC (together, “BMS”).

18 WHEREAS, on June 3, 2022, the Court issued an order: (1) preliminarily approving the
19 proposed settlement between Plaintiff and BMS and the proposed form and manner of notice; (2)
20 setting deadlines for the provision of notice and the submission of claim forms, objections, opt-out
21 requests, and motions; and (3) scheduling the Final Approval Hearing (ECF 1159); and

22 WHEREAS, the court-appointed Claims Administrator, KCC Class Action Services LLC
23 (“KCC”), has advised that despite its best efforts, three elements of the publication notice plan,
24 which are due to be implemented by Monday, July 18, 2022, cannot be implemented as ordered
25 because: (1) the *Healthcare Distribution Alliance Weekly Digest* (“*HDA Weekly Digest*”) has
26 refused to accept KCC’s request to place the Header Banner, stating advertising opportunities are
27 limited to alliance members; (2) the *Journal of the American Medical Association* (“*JAMA*”) cannot
28 accept advertisements for any edition prior to August 9, 2022; and (3) *Pharmaceutical Commerce*
cannot accept advertisements for any edition prior to August 22, 2022;

1 WHEREAS, KCC has advised that it believes the best alternative plan of notice to resolve
2 the issues identified above is to: (1) place a Header Banner in *Becker's Pharmacy Report*, in lieu
3 of the Header Banner in the *HDA Weekly Digest*; (2) place publication notice in the August 9, 2022
4 edition of *JAMA*; and (3) place publication notice in the August 22, 2022 edition of *Pharmaceutical*
5 *Commerce*; and

6 WHEREAS, the parties have simultaneously filed the Declaration of Carla A. Peak
7 Regarding Proposed Notice Plan Modifications and Deadline Extensions ("Third Peak
8 Declaration"), which addresses each of the points listed above in greater detail; and

9 WHEREAS, in light of the above recommendations, counsel believe that all deadlines from
10 the preliminary approval order should be extended by 42 days to insure that class members will
11 have sufficient opportunity to receive publication notice before deciding whether to submit claim
12 forms, objections, and/or opt-out requests, and to insure that Class Counsel will be able to include
13 up-to-date information in its motions; and

14 WHEREAS, the parties agree that it would be to the benefit of the Court, the parties, and
15 class members to adopt this revised notice plan and extend all deadlines.

16 NOW THEREFORE, the parties, subject to the Court's approval, hereby stipulate that the
17 Court's Order of June 3, 2022 (ECF 1159) shall be modified as follows:

18 1. By August 29, 2022, KCC shall:

19 a. cause a Summary Notice substantially in the form attached as Exhibit B to
20 the Second Roberts Declaration and a pre-populated version of the Claim Form
21 substantially in the form attached as Exhibit A to the Joint Notice of Corrected Pre-
22 Populated Claim Form to be sent via certified mail to the last-known mailing address of
23 each known Class Member;

24 b. cause a Header Banner substantially in the form illustrated in ¶ 6 of the Third
25 Peak Declaration to appear in *Becker's Pharmacy Report*;

26 c. cause a Publication Notice substantially in the form attached as Exhibit E to
27

1 the Second Roberts Declaration to be published via press releases and advertisements
2 in *Pharmaceutical Commerce* and *The Journal of the American Medical Association*;
3 and

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

11 2. By September 28, 2022, KCC shall cause a Postcard Reminder Notice substantially
12 in the form attached as Exhibit C to the Second Roberts Declaration to be sent via U.S. First-Class
13 Mail to the last-known mailing address of each known Class Member that has not yet submitted a
14 Claim Form.

15 3. By October 13, 2022, KCC shall follow up by phone with any Class Member that
16 has not yet submitted a completed Claim Form.

17 4. The notices shall list October 28, 2022 as the deadline for filing a Claim Form, and
18 October 6, 2022 as the deadline to object to the settlement or requests for awards for litigation
19 expenses and a class representative service award or opt out of the Class.

20 5. The Final Approval Hearing shall be held before this Court at 1:30 PM on
21 **November 17, 2022** [a date on or after October 27, 2022, at the United States District Court
22 for the Northern District of California, San Francisco Courthouse, Courtroom 5 – 17th Floor, 450
23 Golden Gate Avenue, San Francisco, California 94102. The Final Approval Hearing may be
24 rescheduled or continued. In that event, the Court will furnish all counsel with appropriate notice.
25 Class Counsel shall be responsible for communicating any such notice promptly to the Class by
26 posting conspicuous notice on the settlement website.

1 6. By September 1, 2022 Class Counsel shall file a motion for approval of an award
2 for expenses to Class Counsel and a service award to the class representative.

3 7. By October 13, 2022, Class Counsel shall file a motion for final approval of the
4 settlement and plan of allocation.

5 8. All other aspects of the Court's Order of June 3, 2022 shall remain in full force and
6 effect.

7 Dated: July 14, 2022

8 Respectfully submitted,

9 By: /s/ Francis O. Scarpulla
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*Counsel for Defendants Bristol-Myers Squibb
Company and E.R. Squibb & Sons, LLC*

APPROVED BY THE COURT:

IT IS SO ORDERED THIS 20 DAY OF JULY, 2022


HONORABLE EDWARD M. CHEN
UNITED STATES DISTRICT JUDGE