

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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By: _____
Name, Title

KCC Class Action Services, LLC, as Settlement Administrator

By: _____
Name, Title

Settlement Class Counsel

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

By: 

Dianne M. Nast
NastLaw LLC

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By: _____
Name, Title

KCC Class Action Services, LLC, as Settlement Administrator

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.