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

STALEY, *et al.*,
 Plaintiffs,
 v.
 GILEAD SCIENCES, INC., *et al.*,
 Defendants.

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

**NOTICE OF MOTION AND MOTION
 FOR APPROVAL OF EXPENSE AND
 SERVICE AWARDS**

Date: November 17, 2022
 Time: 1:30 p.m.
 Courtroom: 5, 17th Floor
 Before: Honorable Edward M. Chen

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

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 17, 2022, at 1:30 p.m., or as soon thereafter as the matter may be heard, before the Honorable Edward M. Chen, United States District Judge, in Courtroom 5 of the United States District Court for the Northern District of California in San Francisco, California, Plaintiff KPH Healthcare Services, Inc. a/k/a Kinney Drugs, Inc., on behalf of itself and a proposed Direct Purchaser Settlement Class, will move the Court pursuant to Federal Rule of Civil Procedure 23(e) for entry of an Order approving an expense award to Class Counsel and a service award to KPH.

This motion is based on the Notice of Motion, the Supporting Memorandum of Points and Authorities, the supporting declarations and exhibits, all papers and records on file in this matter, and the arguments of counsel.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Direct Purchaser Plaintiffs (“DPPs”) have paid millions of dollars in overcharges for HIV cART drugs as a result of Gilead¹ and BMS² conspiring together and with others to substantially delay or foreclose less expensive generic drugs from entering the United States market in violation of antitrust laws. After almost two years of hard-fought litigation and several months of arm’s-length negotiations, Plaintiff, on behalf of DPPs, entered into a Settlement Agreement with BMS (“Settlement”) that requires BMS to pay \$10.8 million in cash, contribute up to an additional \$200,000 toward notice costs, and provide injunctive relief.³ Now, after having secured preliminary approval of the Settlement,⁴ Class Counsel seek an expense award of \$2.5 million for reimbursement of some of their out-of-pocket costs and a service award of \$10,000 for named plaintiff and class representative KPH.⁵ In the meantime, KPH and Class Counsel are continuing to litigate their remaining claims against Gilead.

II. BACKGROUND

“Antitrust cases are particularly risky, challenging, and widely acknowledge[d] to be among the most complex actions to prosecute.” *In re Lithium Ion Batteries Antitrust Litig.*, 13-md-02420-YGR-DMR, 2020 WL 7264559, at *15 (N.D. Cal. Dec. 10, 2020). This case is no exception, where Class Counsel have dedicated thousands of hours of their time and spent more than \$2.6 million of their money litigating this case without any guarantee of payment of fees or reimbursement for their expenses.⁶

¹ “Gilead” means collectively Defendants Gilead Sciences, Inc.; Gilead Holdings, LLC; Gilead Sciences, LLC; and Gilead Sciences Ireland UC.

² “BMS” means collectively Bristol Myers Squibb Company and E.R. Squibb & Sons, LLC.

³ See ECF 1002-1 at Exhibit 1 (Settlement Agreement).

⁴ See ECF 1159 (Preliminary Approval Order), ECF 1234 (Stipulation and Order Modifying Notice Plan and Deadlines).

⁵ “KPH” means KPH Healthcare Services, Inc., which also will be referenced as “Plaintiff” in his brief.

⁶ See Third Declaration of Michael L. Roberts (“Third Roberts Declaration”), attached as Exhibit 1 to this brief, at ¶¶ 3-4. Unless otherwise noted, all exhibit references in this brief are to exhibits to the Third Roberts Declaration.

1 By the time Plaintiff and BMS executed their Memorandum of Understanding (“MOU”) on
 2 October 20, 2021, Class Counsel had defeated arbitration and dismissal motions, evaluated extensive
 3 briefings and rulings on motions to dismiss other actions, reviewed millions of pages of discovery
 4 documents along with other Plaintiff groups, participated in depositions of dozens of fact witnesses,
 5 prepared and nearly finalized expert reports and a memorandum in support of class certification, and
 6 began working with experts to support their case-in-chief.⁷ Following execution of the MOU, Class
 7 Counsel continued actively litigating the claims that these same settlement class members still have
 8 pending against Gilead. Class Counsel, among other things, prepared additional briefing and
 9 presented argument in further support of class certification, finalized initial and rebuttal merit and
 10 damage expert reports, pursued and obtained third-party discovery, and participated in additional
 11 depositions of fact and expert witnesses.⁸ Class Counsel anticipate dedicating thousands of additional
 12 hours, and anticipate incurring millions of dollars in additional out-of-pocket expenses, actively
 13 working on this case until the remaining claims against Gilead are resolved.⁹

14 Class Counsel and BMS continued to meet, confer, and edit their Settlement Agreement and
 15 its many attachments, negotiating for an additional five months after executing the MOU until they
 16 finally came to a meeting of the minds on important matters such as the scope of the Settlement Class,
 17 the terms of the release, timing for funding, and cooperation that could materially impact the ongoing
 18 litigation against the Gilead Defendants.¹⁰ The parties then signed the Settlement Agreement and
 19 related documents on March 30, 2002.¹¹ Plaintiff submitted its Motion for Preliminary Approval of
 20 Class Action Settlement on April 13, 2022,¹² and filed a Joint Supplemental Brief in Support of
 21 Preliminary Approval of Class Action Settlement on April 29, 2022.¹³ The Court granted the motion
 22

23 ⁷ ECF 1002-1 (Roberts Declaration) at ¶ 5.

24 ⁸ Third Roberts Declaration at ¶ 2.

25 ⁹ *Id.* at ¶¶ 3-4.

26 ¹⁰ ECF 1002-1 at ¶ 6.

27 ¹¹ *Id.*

28 ¹² ECF 1002 (Preliminary Approval Motion).

¹³ ECF 1033 (Supplemental Approval Brief).

on June 3, 2022,¹⁴ and, at the request of counsel, subsequently modified the notice plan and its related deadlines on July 20, 2022.¹⁵

Class Counsel advised in their preliminary approval motion that they would not seek a fee award from the Settlement Fund, and that they instead would seek only to recover out-of-pocket expenses incurred in litigating this case for an amount not to exceed \$2.5 million (despite now having incurred in excess of this amount), as well as payment of a service award of \$10,000 to KPH in recognition of its assistance with developing and pursuing this case against BMS.¹⁶ Class Counsel advised that both would be paid from the Settlement Fund, as contemplated by the Settlement.¹⁷ Class Counsel also advised that the parties had agreed that these awards should be considered separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement, and that their resolution would not affect the Settlement.¹⁸ Class Counsel now move for approval of these awards.¹⁹

III. ARGUMENT

A. Class Counsel Should Be Reimbursed for Reasonable Out-of-Pocket Expenses Incurred in Pursuing this Litigation

"In common fund cases, the Ninth Circuit has stated that the reasonable expenses of acquiring the fund can be reimbursed to counsel who has incurred the expense." *In re High-Tech Employee Antitrust Litig.*, No. 11-cv-02509-LHK, 2015 WL 5158730, at *16 (N.D. Cal. Sept. 2, 2015) (citing *Vincent v. Hughes Air W., Inc.*, 557 F.2d 759, 769 (9th Cir. 1997)). This is because "litigation expenses make the entire action possible," *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934,

¹⁴ ECF 1159.

¹⁵ ECF 1234.

¹⁶ See ECF 1002 at 20, 22.

¹⁷ ECF 1002 at 20, 22; ECF 1002-1 at Exhibit A, ¶ 13(a).

¹⁸ ECF 1002 at 20, 22; ECF 1002-1 at Exhibit A, ¶ 13(b).

¹⁹ This motion does not address payment for the costs of notice and settlement administration incurred by the Claims Administrator, KCC Class Action Services LLC ("KCC"). All of those costs, except one-half of notice expenses, also will be paid from the Settlement Fund, but separate and apart from Class Counsel's litigation expenses and KPH's service award. See ECF 1002-1 at Exhibit A, ¶ 7(c); see also ECF 1002-1 at Exhibit H (Plan of Allocation), n.1. A request for payment of those costs will be addressed in the motion for final approval. KCC initially estimated those costs at \$22,278, see ECF 1002 at 17, then increased the estimate by an additional \$13,605 to accommodate additional media coverage. See ECF 1033 at 7.

953 (9th Cir. 2015), and “[t]o allow the others to obtain full benefit from the plaintiff’s efforts without contributing equally to the litigation expenses would be to enrich the others unjustly at the plaintiff’s expense.” *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 392 (1970).

Class Counsel are entitled to recover “those out-of-pocket expenses that would normally be charged to a fee paying client.” *McLeod v. Bank of Am, N.A.*, No. 16-cv-03294-EMC, 2019 WL 1170487, at *7 (N.D. Cal. Mar. 13, 2019) (quoting *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994)). Reasonable expenses include expert witness fees, document hosting costs, electronic research, court reporting and videographer services, mediators’ fees, service of process, filing fees, photocopies, postage, messenger and overnight delivery services, and case-related meals, hotels, and transportation. *See High-Tech*, 2015 WL 5158730, at * 16; *In re Immune Response Secs. Litig.*, 497 F. Supp. 2d 1166, 1177 (S.D. Cal. May 31, 2007).

As of July 31, 2022, Class Counsel paid reasonable litigation expenses totaling \$2,617,916.97.²⁰ At this time, Class Counsel seeks reimbursement of only \$2.5 million of those expenses, which is the amount identified in the class notices.²¹

Expenses for experts and the IQVIA data used by experts constitute the vast majority of these expenditures, totaling \$2,281,759.08, and representing 87% of all out-of-pocket expenses paid during that period.²² The next highest expenditure is for the document review platform, totaling \$181,424.53, and representing 7% of all litigation expenses paid during that period.²³ The cumulative total of all remaining expenditures represents only 6% of all litigation expenses paid during that period, as

²⁰ See Exhibit A (DPP Litigation Expenses). Some of these expenses were paid after the Settlement was executed, but these payments were still made for the benefit of these settlement class members, given that almost all of them are also members of the proposed classes that are continuing to litigate claims against Gilead. Compare ECF 1002-1 at Exhibit 2, ¶ 2 with ECF 1033 at 1-2 (adding only three class members when the initial list of 73 purchasers of Truvada, Atripla, and Complera was expanded to include purchasers of the additional drugs subject only to the BMS settlement.)

²¹ See *supra* at § III(C).

²² This represents the payment of invoices submitted by two experts for DPP-only opinions through June 30, 2022, as well as DPPs’ portion of payments made to five joint experts and IQVIA through February 9, 2022. *Id.* Class Counsel will soon pay additional amounts toward additional invoices for past services provided by these and additional experts.

²³ See *id.* This represents payment for DPPs’ portion of expenses for this platform through February 9, 2022. Class Counsel will soon pay additional amounts toward additional invoices for past services provided by this platform vendor.

1 follows in descending order: \$67,412.02 for computerized research; \$55,716.92 for court reporter,
 2 videographer, and deposition transcript fees; \$12,250.00 for mediation fees; \$9,253.65 for process
 3 server fees; \$4,299.00 for court costs; \$2,720.47 for reproduction costs; \$2,138.43 for the costs of
 4 travel, hotels, and meals; \$480.75 for postage and messenger fees; and \$462.12 for external hard
 5 drives used to store productions.²⁴

6 All of these expenses fall within the categories recognized as generally recoverable from fee-
 7 paying clients and class action settlements. *See High-Tech*, 2015 WL 5158730, at * 16; *Immune*
 8 *Response*, 497 F. Supp. 2d at 1177. They were reasonably incurred and necessary to litigate this action
 9 and achieve this settlement.²⁵ Indeed, if Class Counsel had not advanced these expenses, there would
 10 have been no litigation, and, consequently, no settlement. *See Online DVD-Rental*, 779 F.3d at 953.
 11 Now that there is a Settlement Fund, justice dictates that Class Counsel be reimbursed for these
 12 expenses, *see Mills*, 396 U.S. at 392, especially considering that Class Counsel has and will continue
 13 to advance additional funds for additional out-of-pocket expenses, likely millions of dollars, while
 14 litigating the remaining claims against Gilead without any guarantee of repayment.²⁶

15 **B. KPH Should Be Granted a Service Award**

16 The Ninth Circuit has recognized that service awards, also known as incentive awards, “are
 17 fairly typical in class action cases.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009).
 18 Service awards “are intended to compensate class representatives for work done on behalf of the class,
 19 to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to
 20 recognize their willingness to act as a private attorney general.” *Id.* at 958-59.

21 To determine if a requested award is “reasonable,” the Court “must evaluate their awards
 22 individually, using ‘relevant factors includ[ing] the actions the plaintiff has taken to protect the
 23 interests of the class, the degree to which the class has benefitted from those actions, ... the amount
 24 of time and effort the plaintiff expended in pursuing the litigation ... and the reasonabl[e] fears of ...
 25 retaliation.’” *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003) (quoting *Cook v. Niedert*, 142

26 ²⁴ *See id.*

27 ²⁵ Third Roberts Declaration at ¶ 4.

28 ²⁶ *See id.*

1 F.3d 1004, 1016 (7th Cir. 1998)).

2 In this case, the service award is well-deserved. This Court already has acknowledged the
3 benefits of the Settlement by preliminarily approving its terms, and this is due in part to the actions,
4 time, and efforts expended by KPH. From before the filing of this action, KPH worked with
5 McKesson to obtain the assignment and then reviewed the complaint.²⁷ KPH continues to review
6 court filings and other items counsel brings to its attention, and continues to be updated by and work
7 with its counsel.²⁸ KPH also searched through hard-copy documents and electronically-stored
8 information to collect documents and data requested by Defendants, worked with others at McKesson
9 regarding its collection of documents and data, and signed off on document productions.²⁹ In all, KPH
10 made six productions comprised of 11,152 documents totaling 26,345 pages.³⁰ KPH then had its
11 30(b)(6) witness spend eight to ten hours reviewing documents and meeting with counsel to prepare
12 to testify at deposition,³¹ and an additional five hours participating in that deposition.³² KPH has not
13 received any compensation related to its work on the assignment, the deposition, or any other aspect
14 of this litigation.³³

15 Service awards in excess of the “presumptively reasonable” amount of \$5,000 have been
16 entered in other class actions involving similar efforts by the class representatives. *See, e.g.,*
17 *O’Connor v. Uber Techs., Inc.*, No. 13-cv-03826-EMC, 2019 WL 4394401, at *9 (N.D. Cal. Sept.
18 13, 2019) (awarding \$7,500 each to four named plaintiffs who spent over ten hours working on the
19 case, plus \$5,000 each to two named plaintiffs who spent six hours working on the case, which
20 involved providing documents and information, responding to discovery requests, and sitting for
21

22
23 ²⁷ *See* Exhibit B (Charles Aquilina Deposition Transcript) at 47:12-48:13.

24 ²⁸ *Id.* at 51:2-53:6.

25 ²⁹ *Id.* at 41:17-43:8, 94:10-95:24.

26 ³⁰ *See* Third Roberts Declaration at ¶ 5.

27 ³¹ *See* Exhibit B at 14:8-18, 15:10-14.

28 ³² *Id.* at 4:1-4 (9:34 a.m. start time); 194:4-6 (2:46 p.m. end time). Breaks were included in that five-hour period.

³³ *Id.* at 15:15-18, 103:16-104:2.

depositions), *aff'd*, 19-17073, 2019 WL 7602362 (9th Cir. Dec. 20, 2019);³⁴ *In re Animation Workers Antitrust Litig.*, No. 14-cv-04062-LHK, slip op., at 14-15 (N.D. Cal. Nov. 11, 2016) (awarding \$10,000 each to three named plaintiffs who responded to discovery, produced documents, were deposed, and reviewed pleadings and the settlement); *Garner v. State Farm Mut. Auto. Ins. Co.*, No. 08-cv-01365-CW-EMC, 2010 WL 1687832, at *17 (N.D. Cal. Apr. 22, 2010) (awarding \$20,000 to the named plaintiff who met with counsel, reviewed major pleadings, repeatedly responded to discovery and document requests, sat for depositions, and attended a hearing).

That KPH is the only class representative for this DPP settlement class, and thus the only entity entitled to receive a service award, further justifies an increased service award. *See McLeod*, 2019 WL 1170487, at 8 (quoting *Garner*, 2010 WL 1687832, at *17) (“[U]nlike many class actions, where there are several class representatives, each of whom are entitled to incentive awards, here there was just one.”). Payment of a \$10,000 service award is appropriate considering the significant work performed so far by this lone class representative.

A service award in this amount is likewise appropriate relative to the settlement amount obtained from BMS. This minimal amount represents less than 0.093% of the BMS Settlement Fund, and is not indicative of counsel allowing “the self-interests [of] certain class members to infect negotiations. *See Cuzick v. Zodiac U.S. Seat Shells, LLC*, No. 16-cv-03793-HSG, 2017 WL 4536255, at *6 (N.D. Cal. Oct. 11, 2017) (quoting *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011)).

C. Class Members Received Appropriate Notice of this Application

The court-approved detailed settlement notice advises that “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,” and explains that “[i]f the Court grants the lawyers’ requests, these payments will be made

³⁴ If five hours of work justifies a service award of \$5,000 and over ten hours of work justifies a service award of \$7,500, the work performed by KPH should justify an award of \$10,000, given that KPH spent up to fifteen hours preparing for and participating in its deposition, on top of additional hours spent obtaining the assignment, reviewing the complaint and other documents, searching for and collecting documents and data, working with McKesson regarding its collection of documents and data, and otherwise communicating with Class Counsel.

from the Settlement Fund.”³⁵ Similar language is included in the court-approved summary and publication notices,³⁶ as well as in the press release.³⁷

Additionally, Class Counsel have provided class members with thirty-five days to assess this motion before the October 6, 2022 objection deadline, as contemplated by Fed. R. Civ. P. 23(h) (requiring motion and opportunity to object), *In re Mercury Interactive Corp. Secs. Litig.*, 618 F.3d 988, 993-94 (9th Cir. 2010) (confirming need to have access to motion before objection deadline), and Section 9 of the Northern District of California’s *Procedural Guidance for Class Action Settlements* (setting 35-day timeline to object to motion). And, although not required by Court Order, Class Counsel intend to have a copy of this motion posted on the Settlement Website on the day of filing to increase accessibility.

Class members have received appropriate notice of and an opportunity to object to this motion and its related requests for expense and service awards. Any comments or objections they provide in response to this motion will be addressed in the final approval motion.

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court award \$2.5 million to Class Counsel as reimbursement for some of their out-of-pocket costs and \$10,000 to KPH for its service in litigating this case so far on behalf of the Settlement Class.

Dated: September 1, 2022

Respectfully submitted,

By: /s/ Francis O. Scarpulla
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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*

³⁵ See Exhibit C (Detailed Notice) at § 10.

³⁶ See “What Does the Settlement Provide?” in Exhibit D (Summary Notice), Exhibit E (JAMA Notice), and Exhibit F (Pharmaceutical Commerce Notice).

³⁷ See Exhibit G (PR Newswire Press Release) at ¶ 4.

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*Counsel for KPH Healthcare Services, Inc. a/k/a
Kinney Drugs, Inc. and Interim Co-Lead Counsel for
the Direct Purchaser Class Plaintiffs*

CERTIFICATE OF SERVICE

I certify that on September 1, 2022, I served a true and correct copy of the Motion for Approval of Expense and Service Awards by ECF to all counsel of record.

By: /s/ Francis O. Scarpulla

Francis O. Scarpulla

EXHIBIT 1

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

STALEY, *et al.*,
Plaintiffs,
v.
GILEAD SCIENCES, INC., *et al.*,
Defendants.

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

**THIRD DECLARATION OF
MICHAEL L. ROBERTS IN SUPPORT
OF MOTION FOR APPROVAL OF
EXPENSE AND SERVICE AWARDS**

Judge: Honorable Edward M. Chen

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

I, Michael L. Roberts, declare as follows:

1. I am the managing partner of Roberts Law Firm US, PC. The Court appointed me as Interim Co-Lead Counsel for the Direct Purchaser Class in this case. I submit this declaration in support of Plaintiff's Motion for Approval of Expense and Service Awards. I have personal knowledge of the information set forth in this declaration.

2. After finalizing the Settlement Agreement, Class Counsel, among other things, prepared additional briefing and presented argument in further support of class certification, finalized initial and rebuttal merit and damage expert reports, Pursued and obtained third-party discovery, and participated in additional depositions of fact and expert witnesses.

3. Through July 31, 2022, Class Counsel have devoted thousands of hours to litigating this action. Class Counsel anticipate dedicating thousands of additional hours while they continue actively working on this case until the remaining claims against Gilead are resolved.

4. Through July 31, 2022, Class Counsel have paid \$2,617,916.97 in out-of-pocket expenses, all of which were reasonably incurred and necessary for the litigation of this action and the settlement with BMS. Since July 31, 2022, additional sizable expenses have been incurred. Class Counsel anticipate spending millions of dollars in additional out-of-pocket expenses while they continue actively working on this case until the remaining claims against Gilead are resolved.

5. So far in this litigation, KPH has made six productions comprised of 11,152 documents totaling 26,345 pages.

1 6. Attached as Exhibit A is a chart of expenses paid by Class Counsel through July 31,
2 2022.

3 7. Attached as Exhibit B are excerpts from the Charles Aquilina Deposition Transcript.

4 8. Attached as Exhibit C is the Detailed Notice posted on the Settlement Website.

5 9. Attached as Exhibit D is the Summary Notice mailed to known class members.

6 10. Attached as Exhibit E is the Publication Notice appearing in the August 23, 2022 edition
7 of the Journal of American Medical Association ("JAMA").

8 11. Attached as Exhibit F is the Publication Notice appearing in the August 19, 2022 online
9 edition and the August 22, 2022 print edition of Pharmaceutical Commerce.

10 12. Attached as Exhibit G is the Publication Notice sent via the PR Newswire on August
11 18, 2022.

12
13 Executed on September 1, 2022 in Dallas,
14 TX.



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*Counsel for KPH Healthcare Services, Inc.
a/k/a Kinney Drugs, Inc. and
Interim Co-Lead Counsel for the Proposed
Direct Purchaser Class*

EXHIBIT A

EXHIBIT A***KPH Healthcare Services, Inc. v. Gilead Sciences, Inc., Case No. 3:20-cv-06961-EMC*****Direct Purchaser Plaintiffs' Litigation Expense Payments by Category
Paid from Inception Through July 31, 2022**

DESCRIPTION	TOTAL INCURRED
Experts + IQVIA Data <ul style="list-style-type: none"> • Payments for two DPP-only expert invoices • Payments for five joint expert invoices and IQVIA invoices * 	\$2,281,759.08
Document Review Platform <ul style="list-style-type: none"> • Payments for joint platform * 	\$181,424.53
Computerized Research	\$67,412.02
Court Reporter, Videographer, and Transcript Fees <ul style="list-style-type: none"> • Payments for DPP-only expenses • Payments for joint expenses * 	\$55,716.92
Mediation Fees	\$12,250.00
Process Server Fees	\$9,253.65
Court Costs	\$4,299.00
Photocopying	\$2,720.47
Travel Costs, Hotels, Meals	\$2,138.43
Postage, Messenger Fees	\$480.75
External Hard Drives	\$462.12
TOTAL	\$2,617,916.97

* These payments were made on or before 02/09/22. DPPs will soon submit contributions for additional invoices received after that date.

EXHIBIT B

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

PETER STALEY, et al.

Plaintiffs, Case No.

3:19-cv-02573-EMC

v.

GILEAD SCIENCES, INC., et al. (Master Docket)

Defendants.

* * * HIGHLY CONFIDENTIAL * * *

* * Attorneys' Eyes Only * *

REMOTE 30(b)(6) DEPOSITION OF
KPH HEALTHCARE SERVICES, INCORPORATED
by CHARLES "CHIP" AQUILINA

November 19, 2021

9:34 a.m.

Reported by: BONNIE PRUSZYNSKI, RMR, RPR, CLR

JOB NO. 202274

1 THE VIDEOGRAPHER: We are going on
2 the record. The time is now 9:34 a.m.
3 Eastern time where the witness is
4 located. Today's date is November 19,
5 2021.

6 This begins the 30(b)(6) deposition
7 of KPH Healthcare Services, Incorporated
8 and Chip Aquilina in the matter of Peter
9 Staley, et al., versus Gilead Sciences,
10 et al., filed in the United States
11 District Court, Northern District of
12 California, San Francisco Division.

13 I will be recording this deposition
14 remotely, and the reporter will swear in
15 the witness remotely, pursuant to Federal
16 Rules of Civil Procedure and the
17 stipulated deposition protocol in this
18 case.

19 My name is Chris Gibson, and I am
20 with BlueBear Solutions. Our court
21 reporter is Bonnie Pruszyński with
22 TSG Reporting.

23 Could counsel please identify
24 yourselves and state who you represent.

25 MR. ROBERTS: Yes. This is Michael

1 A. Yes.

2 Q. Okay. You can put that to the side
3 for now.

4 A. Okay. I will try to keep
5 everything neat and organized.

6 Q. Sure.

7 A. Okay.

8 Q. Now, more generally, did you have
9 an opportunity to prepare for today's
10 deposition?

11 A. Yes.

12 Q. Okay. And what did you do,
13 generally speaking, to prepare for today?

14 A. I read the document that we just
15 reviewed. I read the Notice of Deposition.
16 I read the claim, and I had multiple
17 conversations with attorneys, with my
18 attorneys.

19 Q. Did you speak with anyone other
20 than your attorneys about the deposition?

21 A. No. Just to tell the folks who --
22 well, my direct manager, and then the folks
23 who work for me, that I am giving a
24 deposition. That's the extent to which I
25 said -- I just said the word "deposition,"

1 went into no details, so that they knew that
2 I would be unavailable today.

3 Q. Sure.

4 And you just mentioned your direct
5 manager. Who is that?

6 A. David Warner.

7 Q. Is that the CEO of KPH?

8 A. Yes. He is the CEO and president
9 of KPH Healthcare Services.

10 Q. And in reviewing the documents and
11 speaking with your attorneys, approximately
12 how long did you prepare for today?

13 A. Oh, I probably spent a range of
14 eight to ten hours, I would think.

15 Q. Okay. And other than your standard
16 salary at KPH, are you being compensated in
17 any way specific to this deposition?

18 A. No.

19 Q. Did you -- in preparing for this
20 deposition, did you review any documents from
21 Gilead?

22 A. I'm sorry. You broke up there,
23 Adam. I could not hear you.

24 Q. I will reask it.

25 In preparing for today's

1 retirement was in early January, but he did
2 accompany me to a couple other events after
3 that, you know, trade events.

4 Q. Okay. Is there anyone else
5 involved with procurement and management of
6 HIV treatments at KPH?

7 A. No. Nobody else other than who we
8 have spoken about. Just the pharmacists and
9 technicians.

10 Q. And Patricia and Tim would be the
11 main ones in addition to yourself; correct?

12 A. Yeah, that would be correct.

13 Q. Okay. I'm going to shift gears a
14 little bit. You are aware that KPH has
15 produced documents in this case; right?

16 A. Yes.

17 Q. Were you involved in that process
18 of responding to document requests from the
19 defendants?

20 A. Yes.

21 Q. Maybe I should take a step back.
22 Have you seen or reviewed the document
23 requests that the defendants served in this
24 case?

25 A. Yes.

1 Q. In terms of collecting and
2 responding to those document requests, what
3 steps did KPH take to ensure that it was
4 collecting all the documents that it needed
5 to collect?

6 A. Yeah. We worked internally with --

7 THE WITNESS: Sorry, Mike. Were
8 you going to say something?

9 MR. ROBERTS: No.

10 THE WITNESS: Oh. I thought I
11 heard you. Sorry.

12 A. We worked internally with those who
13 could provide the data that was requested,
14 either internally or with McKesson.

15 Q. Did that include searching for hard
16 copies of documents in addition to
17 electronically stored information?

18 A. Yes, if they were available at that
19 time.

20 Q. Does KPH primarily store records
21 electronically?

22 A. Yes.

23 Q. For each of the -- I know we spoke
24 of several divisions. Would all of their
25 electronic information be stored in a single

1 location that you searched for, or did you
2 need to go search multiple locations or
3 servers?

4 A. I don't know the exact specifics
5 around that, if they were on separate servers
6 or not, but we searched everywhere that we
7 needed to, to find documents related to each
8 of the divisions.

9 Q. Are you familiar with KPH
10 Healthcare's document management and
11 retention policies?

12 A. Yes.

13 Q. And generally, what do you
14 understand to be those retention policies?

15 A. That we maintain approximately
16 six years of electronic records, and when I
17 say "six years," for right now, it would go
18 back into January 1st of 2014, and then every
19 year we would go and purge the file for the
20 previous -- for that last year. So, suffice
21 to say on or around, you know, sometime in
22 January 2022, we will go ahead and purge the
23 file for 2014.

24 Q. Was any type of policy issued in
25 terms of this litigation and preserving

1 Q. Okay. So, when KPH learned about
2 the allegations that are at issue in this
3 case, did KPH conduct any type of
4 investigation?

5 A. Yes, through counsel.

6 Q. Through counsel you said?

7 A. Correct.

8 Q. Okay. Has anyone at KPH had any
9 communications about this case with direct
10 purchasers of HIV treatments?

11 A. No, not that I'm aware of.

12 Q. Has anyone at KPH had any
13 communications with any indirect purchasers
14 about this case?

15 A. I think just McKesson, as it
16 pertains to obtaining the assignment and to
17 collect any data that we were asked to
18 gather.

19 Q. And who would have reviewed KPH's
20 complaint that was filed in this case? Or
21 let me strike that. Let me rephrase it.

22 Who at KPH would have reviewed the
23 complaint that KPH filed in this case?

24 A. I would have. I did.

25 Q. Anyone other than yourself?

1 A. It may have been reviewed by
2 counsel, our internal coun- -- our -- well,
3 at the time, we -- sorry. We hired in-house
4 counsel recently. I don't think she would
5 have been on board when it was filed. So, it
6 would have gone to maybe outside counsel, and
7 perhaps David or Bridget-ann Hart, who
8 preceded David as the CEO, depending on the
9 timing. I'm trying to think. So, if it
10 would have been in '19, that would have been
11 after Dave. So, no, it wouldn't have been
12 Bridget. It would have been probably David
13 Warner and outside counsel, Warren Wolfson.

14 Q. Okay. And do you know the
15 approximate --

16 A. I don't recollect timing in all of
17 that. Sorry.

18 Q. Sure.
19 Do you know the approximate dates
20 that you reviewed the complaint? I think you
21 just mentioned, was it 2019?

22 A. Yes, I believe so.

23 Q. Okay. And did you have an
24 opportunity to review the complaint in its
25 entirety?

1 Q. Sure, sure.

2 And internally within KPH, who is
3 responsible for monitoring this lawsuit?

4 A. Well, I am.

5 Q. And since the complaint was filed,
6 to the best of your knowledge, can you
7 describe what has happened in this case, just
8 generally speaking, procedurally?

9 A. You know, our complaint was filed.
10 I'm -- procedurally, I understand that there
11 is some negotiations going on right now from
12 a settlement standpoint, the terms of which
13 have not yet -- have remained undisclosed and
14 confidential, with, I think it's BMS, Bristol
15 Meyers, and we are collecting depositions
16 now. And of course we, you know, collected
17 data per requests through this process.

18 Q. Is anyone at KPH monitoring the
19 court docket regularly, or how are you
20 staying -- how is -- strike that.

21 How is KPH staying up-to-date on
22 the developments in this case? Is it through
23 counsel?

24 A. Yes.

25 Q. Okay. And generally speaking, how

1 frequent are those communications, are those
2 updates?

3 A. As warranted by developments in the
4 case, I would say.

5 Q. Okay. And have you been regularly
6 reviewing some of the court filings in the
7 case?

8 A. I review those things that counsel
9 brings to my attention.

10 Q. Okay. And is it your understanding
11 that KPH seeks to serve as a class
12 representative in this case?

13 A. Yes.

14 Q. Who do you understand to be
15 included in the class that KPH seeks to
16 represent?

17 A. The only member I'm aware of is
18 McKesson.

19 Q. As a proposed class representative,
20 what does KPH understand its obligations to
21 be?

22 A. We need to represent the class
23 members, consider their interests. We don't
24 necessarily have to be knowledgeable about
25 the subject of the lawsuit, but be interested

1 in the progress of the lawsuit, by working
2 with counsel; participate actively in the
3 lawsuit; keep our attorneys advised of our
4 place of residence; and things along those
5 lines. We have a fiduciary responsibility to
6 the class.

7 Q. Is KPH currently under
8 investigation by any government entity?

9 A. No, not outside just normal audits
10 and things along those lines that we -- that
11 are regular course of business.

12 Q. Any criminal or civil charges
13 pending against KPH right now?

14 A. I believe there are some lawsuits.
15 One is revolving around opioids.

16 Q. Do you know any more about what
17 that's about?

18 A. I just know that there are
19 municipalities, perhaps tribal nations, and
20 other government entities who are seeking
21 damages as it relates to the ongoing opioid
22 crisis in America.

23 Q. They are seeking damages against
24 KPH?

25 A. Yes, I believe they are. We have

1 agreement or assist the other in the
2 prosecution of their respective claims,
3 including providing all reasonably available
4 relevant records related to the claims
5 assigned to customer herein which customer
6 does not already have in its possession and
7 control."

8 Do you see that?

9 A. I do.

10 Q. Okay. Has anyone at KPH contacted
11 McKesson and requested any reasonably
12 available relevant records related to the
13 claims assigned to customer?

14 A. Yes, we did.

15 Q. And who at McKesson was contacted?

16 A. Ooh, I'm not sure specifically who
17 was contacted. It would have been -- in
18 general, it would have been our account
19 manager in our -- our national account
20 manager in customer service. I'm just not
21 sure who served in that capacity at the time.
22 It probably was Sabrina Nelson, but I am not
23 positive of that.

24 Q. Sabrina is an account manager at
25 McKesson?

1 A. Yeah. She serviced our account
2 during this time.

3 Q. And do you recall what relevant
4 records were requested?

5 A. I believe it was information that
6 was requested to answer questions that were
7 raised as part of the litigation, such as
8 purchase history, things along those lines
9 probably.

10 Q. And if you flip to the last page,
11 do you see the signatures there?

12 A. I do.

13 Q. Okay. And in fact, you are the one
14 who signed for KPH; correct?

15 A. I am.

16 Q. And then Michael Gallagher signed
17 for McKesson.

18 A. That is correct.

19 Q. Okay. And Mr. Gallagher signed in
20 August 2019?

21 A. Yes.

22 Q. And you signed in May 2020;
23 correct?

24 A. That is correct.

25 Q. Why was there a difference between

1 look it up. It's a reasonably well-known
2 term.

3 Q. Okay. Has anyone at KPH contacted
4 McKesson to try to determine if any such
5 tracking information exists?

6 A. No.

7 Q. Okay. Other than the assignment
8 and addendum we just discussed, have McKesson
9 and KPH entered into any other assignments
10 related to this litigation?

11 A. Not that I'm aware of, no.

12 Q. The acronym we were just
13 discussing, Drug Supply Chain Security Act,
14 does that sound right?

15 A. Yes, that does sound correct.

16 Q. Has KPH been compensated in any way
17 for serving as an assignee of McKesson?

18 A. No, we haven't been compensated in
19 any way.

20 Q. Will KPH be compensated in any way
21 for serving as an assignee of McKesson?

22 MR. ROBERTS: Object to form.

23 A. No.

24 Q. Is KPH receiving any financial
25 assistance from McKesson with respect to this

1 litigation?

2 A. No.

3 Q. Okay. And more generally, does
4 McKesson have any financial interest in
5 KPH Healthcare Services?

6 A. Just that we are a customer of
7 theirs.

8 Q. McKesson doesn't own any part of
9 KPH Healthcare Services?

10 A. No.

11 Q. Does KPH Healthcare Services have
12 any financial interest in McKesson other than
13 being a customer?

14 A. Not that I'm aware of, no.

15 Q. KPH Healthcare Services doesn't own
16 any McKesson stock?

17 A. I don't know the answer to that.

18 Q. Mr. Aquilina, as VP of pharmacy
19 supply chain optimization, in what ways are
20 you involved with the purchase and sale of
21 HIV treatments?

22 A. The only way I'm really involved is
23 that I've negotiated the terms and conditions
24 under which those products can be purchased.

25 Q. I think we discussed earlier that

1 then.

2 MR. ROBERTS: Thank you,
3 Mr. Acosta.

4 THE VIDEOGRAPHER: This concludes
5 today's deposition, and the time is
6 2:46 p.m.

7 oOo

8 I, CHARLES "CHIP" AQUILINA, the witness
9 herein, do

10 hereby certify that the foregoing testimony
11 of the pages of this deposition to be a true and
12 correct transcript, subject to the corrections,
13 if any, shown on the attached page.

14 _____

15
16 Subscribed and sworn to before me this
17 _____day of _____, _____.
18 _____

19 NOTARY PUBLIC

20
21
22
23
24
25

EXHIBIT C

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 (*KPH Healthcare Services, Inc. v. Gilead Sciences, Inc.*, No. 3:20-cv-06961-EMC (N.D. Cal.), coordinated with *Staley v. Gilead Sciences, Inc.*, No. 3:19-cv-02573-EMC (N.D. Cal.)). The lawsuit involves 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.HIVcARTDirectPurchaserSettlement.com. 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 October 28, 2022 .
OBJECT	<p>You may write to the Court about why you do not like the Settlement. The objection deadline is October 6, 2022.</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 Claims Administrator or submit an Opt-Out Form online to 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 October 6, 2022 .
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 pursue 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-EMC (N.D. Cal.) (“the Lawsuit” or “the Action”). The lawsuit has been coordinated with *Staley v. Gilead Sciences, Inc.*, No. 3:19-cv-02573-EMC (N.D. Cal.). 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 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 **October 28, 2022**.

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 (www.HIVcARTDirectPurchaserSettlement.com).

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 Fund 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 (www.HIVcARTDirectPurchaserSettlement.com).

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, PA 19107
Telephone: (215) 923-9300
Email: dnast@nastlaw.com

Michael L. Roberts
Roberts Law Firm Us, PC
1920 McKinney Avenue, Suite 700
Dallas, TX 75201
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 **September 1, 2022** at www.HIVcARTDirectPurchaserSettlement.com.

WHAT ARE YOUR OPTIONS?

As outlined on Page 2, 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 page 5.

Your Claim Form must be submitted online or postmarked by **October 28, 2022**. 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-EMC (N.D. Cal.), coordinated with *Staley v. Gilead Sciences, Inc.*, No. 3:19-cv-02573-EMC (N.D. Cal.).
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 **October 6, 2022**. 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 **October 28, 2022**, 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 (Direct Purchaser cART Drug Antitrust Settlement Claims Administrator, P.O. Box 990, Corte Madera, CA 94976-099) or submit an Opt-Out Form online at the settlement website (www.HIVcARTDirectPurchaserSettlement.com).

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-EMC (N.D. Cal), coordinated with *Staley v. Gilead Sciences, Inc.*, No. 3:19-cv-02573-EMC (N.D. Cal.).
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 or submitted online no later than **October 6, 2022**. If the opt-out letter is not postmarked or submitted online 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, CA 94102.

The Court has scheduled the Final Approval Hearing for **November 17, 2022** at 1:30 p.m. PT, 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 8.

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 Page 6, 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.HIVcARTDirectPurchaserSettlement.com); (2) calling Class Counsel (1-501-821-5575); 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 visiting the Clerk of the 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 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 has been reached in a class action lawsuit (*KPH Healthcare Services, Inc. v. Gilead Sciences, Inc.*, No. 3:20-cv-06961-EMC (N.D. Cal.), coordinated with *Staley v. Gilead Sciences, Inc.*, No. 3:19-cv-02573-EMC (N.D. Cal.)). 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.HIVcARTDirectPurchaserSettlement.com.

HOW CAN YOU GET A PAYMENT?

If the Court approves the Settlement, to get paid, you must submit a Claim Form by **October 28, 2022**, either online (at www.HIVcARTDirectPurchaserSettlement.com) or postmarked 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 postmarked by **October 6, 2022**. 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 Claims Administrator, Direct Purchaser cART Drug Antitrust Settlement Claims Administrator, P.O. Box 990, Corte Madera, CA 94976-0990, or submit an Opt-Out Form online to 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 **October 6, 2022**. Descriptions about the effects of these options, and instructions on how to exercise them, are in the detailed notice available at www.HIVcARTDirectPurchaserSettlement.com.

The Court scheduled a hearing for **November 17, 2022** at 1:30 p.m. PT 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 www.HIVcARTDirectPurchaserSettlement.com 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 WWW.HIVCARTDIRECTPURCHASERSETTLEMENT.COM
OR CALL 1-501-821-5575.**

EXHIBIT E

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

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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 **October 28, 2022**, either online at www.HIVcARTDirectPurchaserSettlement.com or by U.S. Mail. See the Claim Form, available at www.HIVcARTDirectPurchaserSettlement.com, 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 **October 6, 2022**. Descriptions about the effects of these options, and instructions on how to exercise them, are available in the detailed notice available at www.HIVcARTDirectPurchaserSettlement.com.

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FOR MORE INFORMATION, VISIT

www.HIVcARTDirectPurchaserSettlement.com OR CALL 1-501-821-5575

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EXHIBIT F

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development and manufacturing and finding ways of doing things sooner, earlier, faster. And we have proved to ourselves that things can be done more quickly."

GREATER MSP's Frosch identifies three "macro forces" that are reinforcing the momentum in the region's bio sector. "There is more capital flowing into the space because of the pandemic," he says. "There is increased concern about the security of American food and drug production, which is encouraging more manufacturing in the US. And, third, the enhanced real and perceived supply chain risks are driving the idea of locating, or at least diversifying, production in the US, as opposed to outside it."

In Texas, says Cruz, as well as the Texas A&M University System and Fujifilm Diosynth Biotechnologies mass-producing a COVID vaccine, many other companies in the state "were able to pivot their operations to help manufacture personal protective equipment and other supplies for their communities." Thus, the growth of the biotech industry continued apace. "In 2021," says Cruz, "our team tracked 58 biotech-related relocation or expansion projects in Texas, expected to create more than \$1 billion in capital investment and more than 4,700 new jobs in areas across the state."

While Wisconsin has seen a lot of "the same benefits and challenges as other states from the shift to remote work created by the pandemic," WEDC's Hughes says that increased remote work "has opened a broader pool of talent beyond Wisconsin's borders." She explains, "For certain positions, Wisconsin-based life sciences companies' employees can work from anywhere across the US or even the world, giving employers a larger pool of talent to choose from." Of course, this has also led to increased competition for talent, but businesses in the state are addressing this challenge by working with the University of Wisconsin-Madison to develop specialist training programs. "These help students to develop valuable skills and encourage them to stay in Wisconsin to put those skills to use," she adds. In addition, notes Hughes, "more individuals are starting their own businesses—and in the biohealth industry, entrepreneurial spirit is very much coveted."

Encouragingly, there is no shortage of this entrepreneurial spirit in Texas, Wisconsin, Minnesota, and any number of their neighboring states. It is a spirit that seems to be flowing through these regions, just as healthily as it does through those high-flying clusters on the East and West Coasts. 

Reference

1. *Wisconsin: Outpacing Employment Growth in Biotechnology*, University of Wisconsin, 2021.

FOR MORE INFORMATION, VISIT
www.HIVcARTDirectPurchaserSettlement.com
OR CALL 1-501-821-5575

EXHIBIT G

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NEWS PROVIDED BY

NastLaw LLC and Roberts Law Firm Us, PC →

Aug 18, 2022, 08:00 ET

SAN FRANCISCO, Aug. 18, 2022 /PRNewswire/ -- NastLaw LLC and Roberts Law Firm Us, PC announce a proposed settlement has been reached in a class action lawsuit (*KPH Healthcare Services, Inc. v. Gilead Sciences, Inc.*, No. 3:20-cv-06961-EMC (N.D. Cal.), coordinated with *Staley v. Gilead Sciences, Inc.*, No. 3:19-cv-02573-EMC (N.D. Cal.)). The lawsuit alleges that 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.

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For more information, visit www.HIVcARTDirectPurchaserSettlement.com or call 1-501-821-5575.

SOURCE NastLaw LLC and Roberts Law Firm Us, PC