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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

PETER STALEY, et al.,

Plaintiffs,

v.

GILEAD SCIENCES, INC., et al.,

Defendants.

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

~~[PROPOSED]~~ ORDER GRANTING END-PAYOR CLASS PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT WITH BMS, APPROVAL OF FORM AND MANNER OF NOTICE, APPOINTMENT OF SETTLEMENT ADMINISTRATOR, OF ESCROW AGENT, AND OF SETTLEMENT CLASS COUNSEL, AND FINAL SETTLEMENT SCHEDULE AND DATE FOR FINAL APPROVAL HEARING

This Document Relates to:
Staley, et al., v. Gilead Sciences, Inc., et al.,
No. 3:19-cv-02573-EMC

[Modifications in yellow highlight]

1 Upon review and consideration of the Settlement Agreement by and between plaintiffs Peter
 2 Staley, Ivy Kwan Arce, Gregg S. Gonsalves, PhD, Brenda Emily Goodrow, Andrew R. Spieldenner,
 3 PhD, Michael Snipe, Josh McDonald, Troy Vazquez-Cain, Fraternal Order of Police, Miami Lodge
 4 20, Insurance Trust Fund, Local No. 1 Health Fund, Teamsters Local 237 Welfare Fund and
 5 Teamsters Local 237 Retirees' Benefit Fund, and Pipe Trades Services MN Welfare Fund
 6 ("Plaintiffs), individually and on behalf of the End-Payor classes to be certified under Fed. R. Civ.
 7 P. 23(a), (b)(2) and (b)(3) for settlement purposes only (the "End-Payor Classes"), and defendants
 8 Bristol-Myers Squibb Company and E. R. Squibb & Sons, L.L.C., (together, "BMS") dated
 9 September 30, 2021 and End-Payor Class Plaintiffs' Motion for Preliminary Approval of Proposed
 10 Settlement, Approval of Form and Manner of Notice to the Class, Appointment of Settlement
 11 Administrator and Escrow Agent, appointment of Interim Co-Lead Counsel as Settlement Class
 12 Counsel, and Final Settlement Schedule and Date for Final Approval Hearing and the supporting
 13 memorandum, declarations, and exhibits, IT IS HEREBY ORDERED that the motion is GRANTED
 14 as follows:

15 **Jurisdiction**

16 1. This Court has subject matter jurisdiction over this this action and personal
 17 jurisdiction over each of the representative class plaintiffs Peter Staley, Ivy Kwan Arce, Gregg S.
 18 Gonsalves, PhD, Brenda Emily Goodrow, Andrew R. Spieldenner, PhD, Michael Snipe, Josh
 19 McDonald, Troy Vazquez-Cain, Fraternal Order of Police, Miami Lodge 20, Insurance Trust Fund,
 20 Local No. 1 Health Fund, Teamsters Local 237 Welfare Fund and Teamsters Local 237 Retirees'
 21 Benefit Fund, and Pipe Trades Services MN Welfare Fund, and defendant BMS.

22 **Class Certification**

23 2. End-Payor Settlement Damages Classes are to be certified under Fed. R. Civ. P.
 24 23(a), (b)(2) and (b)(3) for settlement purposes only:
 25 a. Atripa Settlement Damages Class, to be certified under Fed. R. Civ. P. 23(a),
 26 (b)(2) and (b)(3) for settlement purposes only, shall include all persons or entities
 27 residing in the United States and its territories who purchased, paid and/or
 28 provided reimbursement in (which shall include, with respect to TPPs, the state

1 in which the TPP has its principal place of business) any of the Damages States
2 for some or all of the purchase price for brand or generic Atripla, sold by Bristol-
3 Myers Squibb Company or its affiliates, by Gilead Sciences, Inc. or its affiliates,
4 or by Teva Pharmaceutical Industries Ltd. or its affiliates, for consumption by
5 themselves, their families, or, with respect to TPPs, by their members,
6 employees, insureds, participants, citizens, residents, or beneficiaries, other than
7 for resale, during the period May 14, 2015 through and until October 13, 2021.

8 b. Evotaz Settlement Damages Class, to be certified under Fed. R. Civ. P. 23(a),
9 (b)(2) and (b)(3) for settlement purposes only, shall include all persons or entities
10 residing in the United States and its territories who purchased, paid and/or
11 provided reimbursement in (which shall include, with respect to TPPs, the state
12 in which the TPP has its principal place of business) any of the Damages States
13 for some or all of the purchase price for Evotaz, for consumption by themselves,
14 their families, or, with respect to TPPs, by their members, employees, insureds,
15 participants, citizens, residents, or beneficiaries, other than for resale, during the
16 period May 14, 2015 through and until October 13, 2021.

17 c. Truvada Settlement Damages Class, to be certified under Fed. R. Civ. P. 23(a)
18 and (b)(2) and (b)(3) for settlement purposes only, shall include all Third-Party
19 Payors in the United States and its territories with either a principal place of
20 business in the Damages States or which purchased, paid and/or provided
21 reimbursement in the Damages States for some or all of the purchase price for
22 brand or generic Truvada, sold by Gilead Sciences, Inc. or its affiliates or by
23 Teva Pharmaceutical Industries Ltd. or its affiliates, for consumption by their
24 members, employees, insureds, participants, citizens, residents, or beneficiaries,
25 other than for resale, during the period May 14, 2015 through and until October
26 13, 2021.

27 d. Complera Settlement Damages Class, to be certified under Fed. R. Civ. P. 23(a),
28 (b)(2) and (b)(3) for settlement purposes only, shall include all Third-Party

1 Payors in the United States and its territories with either a principal place of
2 business in the Damages States or which purchased, paid and/or provided
3 reimbursement in the Damages States for some or all of the purchase price for
4 Complera, for consumption by their members, employees, insureds, participants,
5 citizens, residents, or beneficiaries, other than for resale, during the period May
6 14, 2015 through and until October 13, 2021.

7 e. Stribild Settlement Damages Class, to be certified under Fed. R. Civ. P. 23(a),
8 (b)(2) and (b)(3) for settlement purposes only, shall include all Third-Party
9 Payors in the United States and its territories with either a principal place of
10 business in the Damages States or which purchased, paid and/or provided
11 reimbursement in the Damages States for some or all of the purchase price for
12 Stribild, for consumption by their members, employees, insureds, participants,
13 citizens, residents, or beneficiaries, other than for resale, during the period May
14 14, 2015 through and until October 13, 2021.

15 f. Excluded from all of the foregoing Settlement Damages Classes are Defendants
16 and their officers, directors, management, employees, subsidiaries, or affiliates;
17 all federal governmental entities; all states (and sub-units of government and
18 their entities) that, by law, are precluded from participation as plaintiffs in private
19 class action litigation (for purposes of this Order, those states are the Excluded
20 States as defined in the Settlement Agreement); pharmacy benefit managers;
21 health plans that purchased insurance covering 100% of their reimbursement
22 obligation to members such that the health plan itself did not purchase, pay or
23 reimburse for the relevant drugs; and the judges in this case and any members of
24 their immediate families.

25 g. As used in the foregoing Class definitions, the “Damages States” are the
26 following states, territories, and/ or districts: Alabama, Arizona, Arkansas,
27 California, Connecticut, District of Columbia, Florida, Hawaii, Idaho, Illinois,
28 Iowa, Kansas, Maryland, Maine, Massachusetts, Michigan, Minnesota,

1 Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New
2 Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South
3 Dakota, Tennessee, Utah, Vermont, West Virginia, and Wisconsin.

4 3. End-Payor Settlement Injunctive-Relief Classes are to be certified under Fed. R. Civ.
5 P. 23(a), and (b)(2) for settlement purposes only:

6 4. The Prezcobix Settlement Injunctive-Relief Class shall include all persons or entities
7 in the United States and its territories who purchased, paid and/or provided reimbursement for some
8 or all of the purchase price for Prezcobix, for consumption by themselves, their families, or their
9 members, employees, insureds, participants, citizens, residents, or beneficiaries, other than for
10 resale, during the period May 14, 2015 through and until October 13, 2021. Excluded from the class
11 are the Defendants and their officers, directors, management, employees, subsidiaries, or affiliates;
12 all federal and state governmental entities; pharmacy benefit managers; health plans that purchased
13 insurance covering 100% of their reimbursement obligation to members such that the health plan
14 itself did not purchase, pay or reimburse for Prezcobix; and the judges in this case and any members
15 of their immediate families.

16 5. The cART Foundation Settlement Injunctive-Relief Class shall include all persons or
17 entities in the United States and its territories who purchased, paid and/or provided reimbursement
18 for some or all of the purchase price for cART Foundation drugs made by one or more of Bristol-
19 Myers Squibb Company or its affiliates, Gilead Sciences, Inc. or its affiliates, and Johnson &
20 Johnson, Janssen Products LP or their affiliates, for consumption by themselves, their families, or
21 their members, employees, insureds, participants, citizens, residents, or beneficiaries, other than for
22 resale, during the period May 14, 2015 through and until October 13, 2021. For purposes of this
23 Order, the cART Foundation drugs made by the entities identified above are any of one or more of
24 Atripla, Biktarvy, Complera, Descovy, Genvoya, Odefsey, Stribild, Symtuza, Truvada, and Viread.
25 Excluded from the class are the Defendants and their officers, directors, management, employees,
26 subsidiaries, or affiliates; all federal and state governmental entities; pharmacy benefit managers;
27 health plans that purchased insurance covering 100% of their reimbursement obligation to members
28 such that the health plan itself did not purchase, pay or reimburse for any of Atripla, Biktarvy,

1 Complera, Descovy, Genvoya, Odefsey, Stribild, Symtuza, Truvada, and Viread; and the judges in
2 this case and any members of their immediate families.

3 **Preliminary Approval of the Proposed Settlement**

4 6. Federal Rule of Civil Procedure 23(e) provides that the claims of a certified class may
5 be settled only with the Court’s approval. As a first step, plaintiffs generally seek preliminary
6 approval of the proposed settlement.¹ “A preliminary approval of a settlement and notice to the
7 proposed class is appropriate if ‘the proposed settlement appears to be the product of serious,
8 informed, non-collusive negotiations, has no obvious deficiencies, does not grant improper
9 preferential treatment to class representatives or segments of the class, and falls within the range of
10 possible approval.’”² Preliminary approval is not a dispositive assessment of the fairness of the
11 proposed settlement, but rather determines whether it falls within the “range of reasonableness.”³
12 Preliminary approval, however, establishes an “initial presumption” of fairness, such that notice
13 may be given to the class and the class may have a “full and fair opportunity to consider the
14 proposed [settlement] and develop a response.”⁴

15 7. All the relevant factors weigh in favor of preliminarily approving the settlement
16 between Plaintiffs, individually and on behalf of the End-Payor Classes, and BMS (the
17 “Settlement”). First, the Settlement follows extensive briefing and considerations of Defendants’
18 motions to dismiss the complaint, substantial fact discovery, and prolonged and intensive settlement
19 negotiations. Consequently, the parties have access to a discovery record and rulings of the Court
20 that permit a fully informed evaluation of the case. Second, the Settlement is the result of arm’s-
21 length negotiation among sophisticated counsel.

22 8. Third, the agreed-upon consideration to be paid by BMS pursuant to the Settlement
23 Agreement, in exchange for, *inter alia*, dismissal of the litigation with prejudice by Plaintiffs and
24

25 ¹ *Manual for Complex Litigation (Fourth)* § 21.632 (2015).

26 ² *Cuzick v. Zodiac U.S. Seat Shells, LLC*, No. 16-cv-03793, 2017 WL 4536255, at *5 (N.D. Cal.
Oct. 11, 2017) (citing *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)).

27 ³ *In re High-Tech Emp. Antitrust Litig.*, No. 11-cv-2509, 2013 WL 6328811, at *1 (N.D. Cal.
Oct. 30, 2013) (quoting Alba Conte et al., *Newberg on Class Actions* § 11.25 at 11–91 (4th ed. 2002)).

28 ⁴ *Tableware*, 484 F. Supp. 2d at 1079; see *Manual for Complex Litigation (Fourth)* § 21.631 (2015).

1 the End-Payor Classes as set forth in the Settlement Agreement, is, upon preliminary view, within
2 the range of reasonableness based on the circumstances. The settlement provides that BMS will
3 forever waive the enforcement of contractual provisions that prohibit Defendant Gilead from
4 making, or licensing others to make, a version of Evotaz formulated with generic atazanavir (a
5 generic version of BMS's Reyataz). Plaintiffs refer to these contractual provisions as a No-Generics
6 Restraint. In addition, BMS agrees to pay \$10 million into a Settlement Fund for the benefit of the
7 Classes, and to pay up to \$200,000 toward the costs of providing notice of the proposed settlement
8 to the Classes. Based on the Settlement Administrator's estimate of the likely number of consumer
9 claimants, the average payout to eligible consumer members of the settlement classes for Atripla
10 and Evotaz may range from \$70.50 to \$282.00.

11 **Approval of Form and Manner of Notice**

12 9. The Court finds that the proposed form of notice to End-Payor Class members of the
13 proposed Settlement (revised as requested by the Court) and the proposed method of dissemination
14 of notice by publication, and by U.S. First-Class Mail to the TPPs, **as supplemented by the use of**
15 **digital media as described in the Young Declaration (Docket No. 711-8)** satisfy Federal Rule of
16 Civil Procedure 23(e) and due process and are otherwise fair and reasonable and are, therefore,
17 approved.

18 10. Co-Lead Class Counsel shall also ensure that copies of the notice and the Settlement
19 Agreement are available to End-Payor Class members online at the litigation website identified in
20 the notice to allow End-Payor Class members to become and remain reasonably apprised of the
21 progress of this action.

22 11. Class Counsel shall cause the notice substantially in the form attached as Exhibit B to
23 the Settlement Agreement to be disseminated by December 30, 2021 (within 15 days after entry of
24 this Order) via publication as outlined in the Notice Plan provided by A.B. Data, Ltd. and to the
25 TPP members by U.S. First-Class Mail to the last known mailing addresses of each TPP member of
26 the End-Payor Class. **In addition, A.B. Data, Ltd. shall promptly take action to provide additional**
27 **notice through the use of digital media as described in the Young Declaration (Docket No. 711-8).**
28

1 12. Pursuant to the Class Action Fairness Act of 2005 (“CAFA”), BMS shall serve notice
2 of the proposed Settlement as required under CAFA within 10 days after the date Plaintiffs file for
3 preliminary approval of the proposed Settlement. BMS shall contemporaneously provide Class
4 Counsel with copies of the notice.

5 13. The Court appoints A.B. Data, Ltd. as Settlement Administrator to assist in
6 disseminating the Settlement notice to the End-Payor Classes and, if the Settlement is approved,
7 administration of the distribution of the relevant portion of the Settlement Fund to the consumer
8 members of the Atripala Settlement Damages Class and the Evotaz Settlement Damages Class. All
9 expenses incurred by the Settlement Administrator must be reasonable, are subject to Court
10 approval, and shall be payable solely from the Settlement Fund.

11 14. The Court appoints The Huntington National Bank to serve as Escrow Agent for the
12 purpose of receiving and investing the Settlement Fund in accordance with the terms of the Escrow
13 Agreement attached as Exhibit D to the Settlement Agreement. All expenses incurred by the Escrow
14 Agent must be reasonable, are subject to the Court approval, and shall be payable from the
15 Settlement Fund.

16 15. As Settlement Class Counsel, the Court appoints Daralyn Durie of Durie Tangri LLP,
17 Steve Shadowen of Hilliard & Shadowen LLP, and Steve Berman of Hagens Berman Sobol Shapiro
18 LLP.

19 **Final Approval Hearing**

20 16. A hearing on final approval of the Settlement (the “Final Approval Hearing”) shall be
21 held before this Court on **April 28**, 2022 (within 120 days after entry of this Order) in the courtroom
22 assigned to the Honorable Edward M. Chen, at the United States District Court for the Northern
23 District of California, United States Courthouse, 450 Golden Gate Avenue, San Francisco, CA
24 94102. At the Final Approval Hearing, the Court will consider, among other matters: (a) the
25 fairness, reasonableness, and adequacy of the Settlement; (b) the proposed plan of allocation of the
26 Settlement Fund among End-Payor Classes members; (c) Class Counsel’s request that a portion of
27 the Settlement Fund be used to reimburse and pay for litigation expenses; and (d) whether a final
28 judgment terminating this litigation should be entered.

1 17. The Final Approval Hearing may be rescheduled or continued; in that event, the
2 Court will furnish all counsel with appropriate notice. Co-Lead Class Counsel shall be responsible
3 for communicating any such notice promptly to the End-Payor Settlement Classes by posting
4 conspicuous notice on the website identified in the notice.

5 18. End-Payor Settlement Class members that wish to object to the proposed Settlement
6 or the plan of allocation must submit to the Court a written objection and any supporting papers,
7 clearly identifying the case name and number, either by mailing them to the Class Action Clerk,
8 United States District Court for the Northern District of California, 450 Golden Gate Avenue, San
9 Francisco, CA 94102, or by filing them in person at any location of the United States District Court
10 for the Northern District of California. To be valid, any such objection must be postmarked or filed
11 on or before March 15, 2022 (within 90 days after entry of this Order and within 75 days after the
12 date notice is disseminated). Except as herein provided, no person or entity shall be entitled to
13 contest the terms of the proposed Settlement. All persons and entities who fail to file an objection
14 shall be deemed to have waived any such objections by appeal, collateral attack, or otherwise and
15 will not be heard at the Final Approval Hearing. Persons or entities who file an objection do not
16 need to appear in order to have their objections considered.

17 19. All briefs and materials in support of the final approval of the Settlement, the plan of
18 allocation (including the use of some portion of the funds to reimburse and pay for litigation
19 expenses), and the entry of final judgment proposed by the parties to the Settlement shall be filed
20 with the Court by April 5, 2022 (within 111 days after entry of this Order and within 21 days after
21 the deadline for End-Payor Classes members to object to the Settlement and/or the plan of
22 allocation).

23 20. The deadline to file claims shall be 60 days after entry of this Court's Order giving
24 final approval to the settlement.

25 21. Pending final approval of the Settlement and the entry of final judgment, any and all
26 proceedings in this action (other than those incident to the settlement process) by the End-Payor
27 Class against BMS are stayed. The action by the End-Payor Class against other defendants, and by
28 other plaintiffs against BMS, shall continue as scheduled.

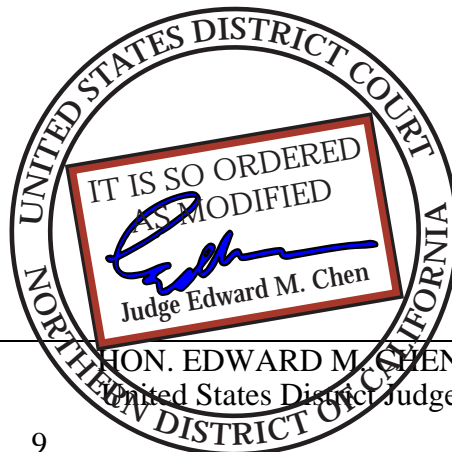
1 22. In the event that the Settlement does not become final, litigation of the action by the
2 End-Payor Class against BMS will resume in a reasonable manner to be approved by the Court
3 upon joint application by the parties hereto (or application by one party if a joint application is not
4 forthcoming) as provided for in the Settlement Agreement.

5 23. In the event that the Settlement is terminated in accordance with the Settlement
6 Agreement, the terminated Settlement and all related proceedings shall, except as expressly
7 provided to the contrary in the Settlement Agreement, become null and void and shall have no
8 further force and effect, Plaintiffs shall retain full rights to assert any and all causes of action against
9 BMS, and any released party affiliated with BMS shall retain any and all defenses and
10 counterclaims thereto. The action with respect to BMS shall hereupon revert forthwith to its
11 respective procedural and substantive status before the date of execution of the Settlement
12 Agreement and shall proceed as if the Settlement Agreement and all other papers had not been
13 executed by Plaintiffs and the End-Payor Class and BMS.

14 24. Neither this Order nor the Settlement Agreement nor any other Settlement-related
15 document nor anything contained herein or therein or contemplated hereby or thereby nor any
16 proceedings undertaken in accordance with the terms set forth the Settlement Agreement or herein
17 or in any other Settlement-related document, shall constitute, be construed as, or be deemed to be
18 evidence of or an admission or concession by BMS as to the validity of any claim that has been or
19 could have been asserted against BMS or as to any liability by BMS as to any matter set forth in this
20 Order; nor shall any such matter constitute, be construed as, or be deemed to be evidence of or an
21 admission or concession by Plaintiffs as to the absence of merit in any of their allegations or claims
22 against BMS.

23
24 IT IS SO ORDERED.

25
26 Dated: December 14, 2021



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28 HON. EDWARD M. CHEN
United States District Judge