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

22 PETER STALEY, et al.,
23 Plaintiff,
24 v.
25 GILEAD SCIENCES, INC., et al.,
26
27 Defendants.

Case No. 3:19-cv-2573-EMC

**ORDER GRANTING END-PAYOR CLASS
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF SETTLEMENT WITH
BRISTOL-MYERS SQUIBB COMPANY
AND E.R. SQUIBB & SONS L.L.C.**

28 This Document Relates to:

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

1 Upon review and consideration of the Settlement Agreement by and between the End-
2 Payor Class Plaintiffs Peter Staley, Ivy Kwan Arce, Gregg S. Gonsalves, PhD, Brenda Emily
3 Goodrow, Michael Snipe, Andrew R. Spieldenner, PhD, Troy Vazquez-Cain, Fraternal Order of
4 Police, Miami Lodge 20, Insurance Trust Fund, Local No. 1 Health Fund, Teamsters Local 237
5 Welfare Fund and Teamsters Local 237 Retirees' Benefit Fund, and Pipe Trades Services MN
6 Welfare Fund (together, "Plaintiffs"), individually and on behalf of the End-Payor Classes (the
7 "EPPs" or "Class Members") and Defendants Bristol-Myers Squibb Company and E.R. Squibb
8 & Sons, LLC (together, "BMS"); along with EPPs' Motion for Preliminary Approval of
9 Settlement, Certification of the Settlement Classes, Approval of Form and Manner of Notice,
10 Appointment of Settlement Administrator, of Escrow Agent, and of Settlement Class Counsel,
11 and Approval of Final Settlement Schedule and Date for Final Approval Hearing and the
12 supporting memorandum and exhibits; and EPPs' Motion for Final Approval of Settlement and
13 supporting memorandum and exhibits, IT IS HEREBY ORDERED, ADJUDGED, AND
14
15 DECREED that:

16
17 1. This Order incorporates by reference the definitions in the Settlement Agreement
18 between the EPPs and Defendant BMS filed with this Court, and all capitalized terms used and
19 not otherwise defined herein shall have the meanings set forth in the Settlement Agreements.

20 2. This Court has subject matter jurisdiction over the above captioned litigation (the
21 "Action") and personal jurisdiction over each of the Plaintiffs Peter Staley, Ivy Kwan Arce,
22 Gregg S. Gonsalves, PhD, Brenda Emily Goodrow, Michael Snipe, Andrew R. Spieldenner,
23 PhD, Troy Vazquez-Cain, Fraternal Order of Police, Miami Lodge 20, Insurance Trust Fund,
24 Local No. 1 Health Fund, Teamsters Local 237 Welfare Fund and Teamsters Local 237 Retirees'
25 Benefit Fund, and Pipe Trades Services MN Welfare Fund, and over the Defendant BMS.
26

1 Damages States or which purchased, paid and/or provided reimbursement in the
2 Damages States for some or all of the purchase price for brand or generic
3 Truvada, sold by Gilead Sciences, Inc. or its affiliates or by Teva Pharmaceutical
4 Industries Ltd. or its affiliates, for consumption by their members, employees,
5 insureds, participants, citizens, residents, or beneficiaries, other than for resale,
6 during the period May 14, 2015 through and until October 13, 2021.

7
8 d. Complera Settlement Damages Class includes all Third-Party Payors in
9 the United States and its territories with either a principal place of business in the
10 Damages States or which purchased, paid and/or provided reimbursement in the
11 Damages States for some or all of the purchase price for Complera, for
12 consumption by their members, employees, insureds, participants, citizens,
13 residents, or beneficiaries, other than for resale, during the period May 14, 2015
14 through and until October 13, 2021.

15
16 e. Stribild Settlement Damages Class includes all Third-Party Payors in the
17 United States and its territories with either a principal place of business in the
18 Damages States or which purchased, paid and/or provided reimbursement in the
19 Damages States for some or all of the purchase price for Stribild, for consumption
20 by their members, employees, insureds, participants, citizens, residents, or
21 beneficiaries, other than for resale, during the period May 14, 2015 through and
22 until October 13, 2021.

23
24 4. Excluded from all of the foregoing Settlement Damages Classes are Defendants
25 and their officers, directors, management, employees, subsidiaries, or affiliates; all federal
26 governmental entities; all states (and sub-units of government and their entities) that, by law, are

1 precluded from participation as plaintiffs in private class action litigation (for purposes of this
2 Order, those states are the Excluded States as defined in the Settlement Agreement); pharmacy
3 benefit managers; health plans that purchased insurance covering 100% of their reimbursement
4 obligation to members such that the health plan itself did not purchase, pay or reimburse for the
5 relevant drugs; and the judges in this case and any members of their immediate families.

6 5. As used in the foregoing Class definitions, the “Damages States” are the
7 following states, territories, and/ or districts: Alabama, Arizona, Arkansas, California,
8 Connecticut, District of Columbia, Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Maryland,
9 Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska,
10 Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon,
11 Rhode Island, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wisconsin.

12 6. As set forth in this Court’s Order dated December 14, 2021 (ECF No. 782),
13 certifying the End-Payor Classes pursuant to Federal Rules of Civil Procedure 23(a) and (b)(2)
14 for settlement purposes only, the End-Payor Settlement Injunctive-Relief Classes are defined as
15 follows:
16

17 a. The Prezcofix Settlement Injunctive-Relief Class includes all persons or
18 entities in the United States and its territories who purchased, paid and/or
19 provided reimbursement for some or all of the purchase price for Prezcofix, for
20 consumption by themselves, their families, or their members, employees,
21 insureds, participants, citizens, residents, or beneficiaries, other than for resale,
22 during the period May 14, 2015 through and until October 13, 2021. Excluded
23 from the class are the Defendants and their officers, directors, management,
24 employees, subsidiaries, or affiliates; all federal and state governmental entities;
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1 pharmacy benefit managers; health plans that purchased insurance covering 100%
2 of their reimbursement obligation to members such that the health plan itself did
3 not purchase, pay or reimburse for Prezcoibix; and the judges in this case and any
4 members of their immediate families.

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

3 **Final Approval of Settlement**

4 11. The deadline for Class Members to postmark objections to the Settlements was
5 April 6, 2022. The Court has received one objection to the Settlement and finds that the
6 objector's sole credible concern, regarding assurances of class members' anonymity, was
7 adequately addressed with the EPPs' Modified Long-Form Notice approved by the Court (ECF
8 No. 870-3) and the extension of the opt-out and objection deadline by 22 days, from its original
9 date of March 15, 2022.
10

11 12. The Court has held a Final Approval Hearing to consider the fairness,
12 reasonableness, and adequacy of the Settlement.

13 13. Pursuant to Federal Rule of Civil Procedure 23, this Court hereby approves the
14 Settlement, as set forth in the Settlement Agreement, and finds that the Settlement is in all
15 respects fair, reasonable, and adequate to the End-Payor Classes; that it contains terms that
16 responsible and experienced attorneys could accept considering all relevant risks and factors; and
17 is in full compliance with all applicable requirements of the Federal Rules of Civil Procedure, the
18 United States Constitution, including the Due Process Clause, and the Class Action Fairness Act,
19 including 28 U.S.C. § 1715.
20

21 14. Specifically, the Court finds the Settlements are fair, reasonable, and adequate
22 under Federal Rule of Civil Procedure 23(e)(2), which requires consideration of some or all of
23 the following factors:
24

25 (1) the strength of plaintiffs' case; (2) the risk, expense, complexity, and likely
26 duration of further litigation; (3) the risk of maintaining class action status
27 throughout the trial; (4) the amount offered in settlement; (5) the extent of
28 discovery completed, and the stage of the proceedings; (6) the experience and

1 views of counsel; (7) the presence of a governmental participant; and (9) the
2 reaction of the class members to the proposed settlement.¹

3 Specifically, as follows and for the reasons set forth in the Memorandum of Law in Support of
4 EPPs' Motion for Final Approval of Settlement, the Court finds:

5 a. The litigation was highly complex, expensive, and of long duration, and
6 would have continued to be so had these parties not settled;

7 b. Class Counsel and the EPPs would have faced risks in class certification
8 and establishing liability, causation, and damages had they decided to continue
9 litigating rather than settling;

10 c. The Settlement amounts are reasonable in light of the best possible
11 recovery against BMS and the attendant risks of this litigation;

12 d. The case settled after the parties had completed extensive investigation
13 and discovery, had the benefit of the detailed briefing and decisions on motions to
14 dismiss and of extensive expert analysis, so Class Counsel had a full appreciation
15 of the strengths and weaknesses of their case in negotiating the Settlements;

16 e. The Settlements were the result of arm's-length negotiation among
17 sophisticated, experienced counsel; and

18 f. All the Plaintiffs support the Settlement and just one Class Member (out of
19 tens of thousands) has objected.
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25 ¹ *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 963 (9th Cir. 2009) (quoting *Molski v.*
26 *Gleich*, 318 F.3d 937, 953 (9th Cir. 2003)); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th
27 Cir. 1998).

1 is intended to be, or is, included within the scope of this release. This Settlement is as to
2 Releasees only and is not intended to, and does not, release any claims other than those specified
3 herein.

4 **15. Additional Release.** In addition, each Releasor hereby expressly waives and releases,
5 upon the Effective Date, any and all provisions, rights, and/or benefits conferred by Section 1542
6 of the California Civil Code, which reads:

7
8 Section 1542. Release. A general release does not extend to claims that the
9 creditor or releasing party does not know or suspect to exist in his or her
10 favor at the time of executing the release and that, if known by him or her,
11 would have materially affected his or her settlement with the debtor or
12 released party;

13 or by any law of any state or territory of the United States, or principle of common law, which is
14 similar, comparable or equivalent to Section 1542 of the California Civil Code, notwithstanding
15 that the release in Paragraph 14 is not a general release and is of claims against Releasees only.
16 Each Releasor may hereafter discover facts other than or different from those which he, she, or it
17 knows or believes to be true with respect to the claims that are the subject matter of Paragraph
18 14. Nonetheless, upon the Effective Date, each Releasor hereby expressly waives and fully,
19 finally, and forever settles and releases any known or unknown, foreseen or unforeseen,
20 suspected or unsuspected, contingent or non-contingent claim that is the subject matter of
21 Paragraph 14, whether or not concealed or hidden, without regard to the subsequent discovery or
22 existence of such different or additional facts. Each Releasor also hereby expressly waives and
23 fully, finally, and forever settles, releases, and discharges any and all claims it may have against
24 the Releasees under § 17200, *et seq.*, of the California Business and Professions Code or any
25 similar comparable or equivalent provision of the law of any other state or territory of the United
26 States or other jurisdiction, which claims are expressly incorporated into the definition of the
27 Released Claims.
28

1 Settlement Fund, plus interest and net of the Court-approved expense reimbursement for the cost
2 of claims administration and litigation expenses.

3 21. The Court approves and finds as fair and reasonable the allocation of \$2.5 million
4 of the Settlement Fund for reimbursement to Class Counsel for reasonable litigation expenses.
5 Class Counsel shall make application to the Court for the disbursement of these amounts from
6 the Settlement Fund.

7 22. Lead Class Counsel and A.B. Data, the Court-appointed settlement administrator
8 for the Settlement, are authorized to begin administration and distribution of the net proceeds of
9 the Settlement in accordance with the Plan of Allocation.
10

11 **Final Order Approving Settlement**

12 IT IS HEREBY ADJUDGED AND DECREED AS FOLLOWS:

13 23. Having found the Settlement to be fair, reasonable, and adequate within the
14 meaning of Rule 23(e) of the Federal Rules of Civil Procedure as to the End-Payor Plaintiff
15 Class, and that due, adequate, and sufficient notice has been provided to all persons or entities
16 entitled to receive notice satisfying the requirements of the United States Constitution, including
17 the Due Process Clause, Rule 23 of the Federal Rules of Civil Procedure, and any other
18 applicable law, the EPPs' motion for final approval is hereby GRANTED and the Settlement
19 shall be consummated in accordance with its terms as set forth in the Settlement Agreement.
20

21 24. The EPPs' claims against BMS in this matter are hereby dismissed with prejudice.

22 25. Releasors' Released Claims with respect to Releasees are hereby released, with
23 such release being effective as of the Effective Date.
24

25 26. Releasors are permanently enjoined and barred from instituting, commencing, or
26 prosecuting any action or other proceeding asserting any Released Claims against the Releasees.
27

1 27. With respect to any non-released claim, no rulings, orders, or judgments in this
2 Action shall have any res judicata, collateral estoppel, or offensive collateral estoppel effect.

3 28. This Court retains exclusive jurisdiction over the Settlement and the Settlement
4 Agreement, including its administration and consummation.

5 29. There being no just reason for delay, the Court directs that judgment of dismissal
6 of all the Plaintiffs' and EPP Class's claims against BMS shall be final and appealable in
7 accordance with Federal Rule of Civil Procedure 54(b). The Clerk of this Court is requested to
8 enter this Order and Final Judgment as to the EPPs' claims against BMS.
9

10 30. Lead Class Counsel and A.B. Data, the Court-appointed settlement administrator,
11 are authorized to begin administration and distribution of the Settlement Funds.

12 31. Neither this Order, nor the Settlement Agreement, nor any other Settlement-
13 related documents, nor anything contained herein or therein or contemplated hereby or thereby,
14 nor any proceeding undertaken in accordance with the terms set forth in the Settlement
15 Agreement or herein or in any other Settlement-related documents, shall constitute, be construed
16 as, or be deemed to be evidence of or an admission, concession, or waiver of any defense in any
17 action or proceeding of any kind whatsoever, civil, criminal, or otherwise, before any court,
18 administrative agency, regulatory body, or any other body or authority, present or future, by
19 BMS including, without limitation, that BMS has engaged in any conduct or practices that
20 violate any antitrust statute or other law. Likewise, neither this Order, nor the Settlement
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1 Agreement nor any actions taken in furtherance of either the Settlement Agreements or the
2 Settlement shall be deemed or construed to be an admission or evidence of any lack of merit in
3 or of the absence of the truth of Plaintiffs' claims or allegations against BMS.

4 This Order disposes of Docket No. 998.

5
6 IT IS SO ORDERED.

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9 Dated: May 6, 2022

