1 2 3 4 5 6 7 8 9 10 11 12	KENNETH L. CHERNOF (SBN 156187) Kenneth.Chernof@arnoldporter.com ARNOLD & PORTER KAYE SCHOLER LLP 601 Massachusetts Avenue, NW Washington, DC 20001 Telephone: 202.942.5000 Facsimile: 202.942.5999 ANGEL TANG NAKAMURA (SBN 205396) Angel.Nakamura@arnoldporter.com ARNOLD & PORTER KAYE SCHOLER LLP 777 South Figueroa Street, 44th Floor Los Angeles, CA 90017 Telephone: 213.243.4000 Facsimile: 213.243.4199 Attorneys for Defendant GILEAD SCIENCES, INC.	STATE OF CALIFORNIA
	FOR THE COUNTY	OF SAN MATEO
13	FOR THE COULT	OF SALMATEO
14		
15	ALABAMA DOE, INDIANA DOE, and MISSOURI DOE, Individually, and on Behalf of	Case No.: 20-CIV-03699 DEFENDANT GILEAD SCIENCES,
16	All Others Similarly Situated,	INC.'S GENERAL DENIAL AND
17	Plaintiffs,	AFFIRMATIVE DEFENSES TO PLAINTIFFS' CLASS ACTION COMPLAINT
18	VS.	
19	GILEAD SCIENCES, INC.,	Complaint Filed: September 1, 2020
20	Defendant.	
21 22		
22		
23		
25		
26		
27		
28		
	DEFENDANT GILEAD'S GENERAL DEN	IIAL AND AFFIRMATIVE DEFENSES
	TO PLAINTIFFS' CLASS	

Defendant GILEAD SCIENCES, INC. ("Gilead"), by and through counsel undersigned, files its General Denial and Affirmative Defenses to Plaintiffs' Class Action Complaint ("Complaint") and states as follows:

GENERAL DENIAL

Pursuant to California Code of Civil Procedure § 431.30(d), Gilead hereby denies each and every allegation of Plaintiffs' Complaint, and further denies that Plaintiffs are entitled to the relief prayed for or any relief whatsoever. This General Denial is filed without prejudice to Gilead's right to file an amended answer or further response after conducting discovery. Gilead also reserves the right to move for judgment on the pleadings and/or summary judgment.

AFFIRMATIVE DEFENSES

Based on the facts and information known to date, and subject to amendment following further investigation of the facts, and without waiver of any rights, privileges, or defenses, Gilead states the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

1. Plaintiffs' claims, and those claims Plaintiffs purport to bring on behalf of members of the putative class, are barred in whole or in part because Plaintiffs and the putative class members lack standing to assert the alleged claims.

SECOND AFFIRMATIVE DEFENSE

2.

Plaintiffs' claims for economic loss in tort are barred by the economic loss doctrine.

THIRD AFFIRMATIVE DEFENSE

3. To the extent that Plaintiffs suffered damages, such alleged damages were aggravated by the failure of Plaintiffs to mitigate the same. Plaintiffs' recovery should therefore be barred or decreased by reason of their failure to mitigate damages.

FOURTH AFFIRMATIVE DEFENSE

4. Plaintiffs' claims are barred, in whole or in part, under the doctrines of contributory negligence and/or comparative fault and/or other applicable common law or statutory doctrine.

1		FIFTH AFFIRMATIVE DEFENSE
2	5. Pla	intiffs' claims are barred to the extent Plaintiffs and putative class members did
3	not sustain any leg	gal injury.
4		SIXTH AFFIRMATIVE DEFENSE
5	6. Pla	intiffs' claims are barred by the equitable doctrine of waiver. Plaintiffs' claims
6	alleging invasion	of privacy, breach of contract, violation of the California Confidentiality of
7	Medical Information Act ("CMIA"), and violation of Missouri Revised Statutes Section 191.656 are	
8	barred against those Plaintiffs and putative class members who waived any alleged confidentiality	
9	or privacy regarding their medical or personal information by disclosing to third parties the nature,	
10	details and/or substance of their medical treatment, medical condition, and/or medical products	
11	received or used.	
12		SEVENTH AFFIRMATIVE DEFENSE
13	7. Pla	intiffs' claims are barred by the equitable doctrine of estoppel.
14		EIGHTH AFFIRMATIVE DEFENSE
15	8. Pla	intiffs' and putative class members' damages or losses, if any, are speculative
16	and/or uncertain,	and therefore, not compensable.
17		NINTH AFFIRMATIVE DEFENSE
18	9. Pla	intiffs' breach of contract claims are barred based upon a failure of consideration.
19		TENTH AFFIRMATIVE DEFENSE
20	10. Pla	intiffs' claims are barred or reduced under the principles of assumption of the risk
21	and/or informed c	onsent.
22		ELEVENTH AFFIRMATIVE DEFENSE
23	11. Pla	intiffs' alleged damages were not proximately caused by any act or omission of
24	Gilead and/or wer	re caused or proximately caused by some person or third party other than Gilead
25	for whom Gilead	is not legally responsible.
26		
27		
28		
		- 3 -
	DEF	FENDANT GILEAD'S GENERAL DENIAL AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' CLASS ACTION COMPLAINT

1	TWELFTH AFFIRMATIVE DEFENSE	
2	12. Gilead is entitled to the benefit of all defenses and presumptions contained in, or	
3	arising from, California and Missouri law. Gilead reserves its right to assert all applicable defenses	
4	under California and Missouri law governing the claims of any particular plaintiff.	
5	THIRTEENTH AFFIRMATIVE DEFENSE	
6	13. Gilead gives notice that it intends to rely upon such other defenses as may become	
7	available or apparent during the course of discovery and thus reserves the right to amend this	
8	General Denial and assert additional affirmative defenses.	
9	GILEAD'S PRAYER FOR RELIEF	
10	WHEREFORE, Gilead denies all liability to Plaintiffs and putative class members, and	
11	requests that the Court enter judgment in favor of Gilead and against Plaintiffs, and award Gilead	
12	costs and other relief as the Court deems just and proper, including Gilead's costs of suit and	
13	reasonable attorneys' fees.	
14		
15	DEMAND FOR JURY TRIAL	
16	Gilead hereby demands a trial by jury.	
17		
18		
19	Dated: January 25, 2021 ARNOLD & PORTER KAYE SCHOLER LLP	
20	By: <u>/s/ Kenneth L. Chernof</u>	
21	Kenneth L. Chernof Angel Tang Nakamura	
22	Stephanie N. Kang Hannah R. Coleman	
23		
24	Attorneys for Defendant GILEAD SCIENCES, INC.	
25		
26		
27		
28		
	- 4 -	
	DEFENDANT GILEAD'S GENERAL DENIAL AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' CLASS ACTION COMPLAINT	

		PROOF OF SERVICE	
2	1.	I am over eighteen years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 777 South Figueroa Street, Forty-Fourth Floor, Los Angeles, California 90017-5844.	
.	2.	On January 25, 2021, I served the following document(s):	
5		DEFENDANT GILEAD SCIENCES, INC.'S GENERAL DENIAL AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' CLASS ACTION COMPLAINT	
5	3.	I served the document(s) on the following person(s):	
3		Benjamin GaldstonAttorneys for PlaintiffsBERGER MONTAGUE PCand the Proposed Class	
,		12544 High Bluff Drive, Suite 340 San Diego, CA 92130	
		Tel: (619) 489-0300 bgaldston@bm.net	
		Shanon J. Carson	
		Sarah R. Schalman-Bergen BERGER MONTAGUE PC	
		1818 Market Street, Suite 3600 Philadelphia, PA 19103	
		Tel: (215) 875-4656 scarson@bm.net	
		sschalman-bergen@bm.net	
,		John Albanese BERGER MONTAGUE PC	
3		43 SE Main Street, Suite 505 Minneapolis, MN 55414	
,		Tel: (612) 594-5997 emdrake@bm.net	
		jalbanese@bm.net	
		Ronda B. Goldfein Valanda Franch Lallia	
		Yolanda French Lollis Adrian M. Lowe	
-		AIDS LAW PROJECT OF PENNSYLVANIA 1211 Chestnut Street, Suite 600	
		Philadelphia, PA 19107 Tel: (215) 587-9377	
5		<u>goldfein@aidslawpa.org</u> <u>alowe@aidslawpa.org</u> <u>lollis@aidslawpa.org</u>	
,			
3			
		- 5 -	

Ш

1 2 3 4 5		John J. Grogan David A. Nagdeman* LANGER, GROGAN & DIVER PC 1717 Arch Street, Suite 4020 Philadelphia, PA 19103 Tel: (215) 320-5660 jgrogan@langergrogan.com dnagdeman@langergrogan.com
6		Dept. 22 of San Mateo Superior CourtCourtesy copy
7		dept22@sanmateocourt.org
8	4.	The documents were served by the following means:
9 10		<u>By U.S. Mail</u> . I enclosed the document(s) in a sealed envelope or package addressed to the person(s) at the address(es) in Item 3 and (check one):
10		\Box deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
12		□ placed the envelope for collection and mailing, following our ordinary business
13		practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day the correspondence is placed for collection
14		and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
15		I am employed in the county where the mailing occurred. The envelope or package was placed in the mail at Los Angeles, California.
16 17 18		By Overnight Delivery/Express Mail . I enclosed the documents and an unsigned copy of this declaration in a sealed envelope or package designated by [name of delivery company or U.S. Postal Service for Express Mail] addressed to the persons at the address(es) listed in Item 3, with [Express Mail postage or, if not Express Mail, delivery fees] prepaid or provided for. I
19		placed the sealed envelope or package for collection and delivery, following our ordinary business practices. I am readily familiar with this business' practice for collecting and
20		processing correspondence for express delivery. On the same day the correspondence is collected for delivery, it is placed for collection in the ordinary course of business in a box
21		regularly maintained by [name of delivery company or U.S. Postal Service for Express Mail] or delivered to a
22		courier or driver authorized by [name of delivery company] to receive documents.
23		By Messenger Service . I served the documents by placing them in an envelope or package addressed to the persons at the address(es) listed in Item 3 and providing them to a
24		professional messenger service for service. (See attached Declaration(s) of Messenger.)
25		<u>By Facsimile Transmission</u> . Based on an agreement between the parties to accept service by facsimile transmission, which was confirmed in writing, I faxed the document(s) and an
26 27 28		unsigned copy of this declaration to the person(s) at the facsimile numbers listed in Item 3 on January 25, 2021 , at [type time] . The transmission was reported as complete without error by a transmission report issued by the facsimile machine that I used immediately following the transmission. A true and correct copy of the facsimile transmission report, which I printed out, is attached hereto.
		- 6 - DEFENDANT GILEAD'S GENERAL DENIAL AND AFFIRMATIVE DEFENSES

1 2		By Electronic Service (E-mail) . Based on California Rule of Court 2.251(c)(3), or on a court order, or on an agreement of the parties to accept service by electronic transmission, I transmitted the document(s) to the person(s) at the electronic notification address(es) listed in Item 3 on January 25, 2021.
3		Via Court Notice of Electronic Filing. The document(s) will be served by the court via
4 5		NEF and hyperlink to the document(s). On January 25, 2021 , I checked the CM/ECF docket for this case or adversary proceeding and determined that the person(s) listed in Item 3 are on the Electronic Mail Notice List to receive NEF transmission at the email addresses indicated in Item 3 [or on the attached service list, if applicable] .
6		
7		<u>Via Electronic Notification</u> . The document(s) will be served via electronic notification on January 25, 2021 on the person(s) listed in Item 3 at the email addresses indicated in Item 3 [or on the attached service list, if applicable] .
8 9	\boxtimes	STATE : I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
10		FEDERAL : I declare that I am employed in the office of a member of the bar of this court
11		at whose direction the service was made.
12		12 ± 1
13	Dated:	<u>January 25, 2021</u> . Signature: Kathy Jensen
14		Type or Print Name:Kathryn JensenE-Service Address:kathryn.jensen@arnoldporter.com
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		
		7
		- 7 - DEFENDANT GILEAD'S GENERAL DENIAL AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' CLASS ACTION COMPLAINT
		TO LEAD THIS CLASS ACTION COMPLAINT