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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11
12 ALABAMA DOE and INDIANA DOE,
13 Individually and on Behalf of All
14 Others Similarly Situated,

15 Plaintiffs,

16 v.

17 GILEAD SCIENCES, INC.,

18 Defendant.
19

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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PRAYER FOR RELIEF19

1 Plaintiffs Alabama Doe and Indiana Doe (“Plaintiffs”), individually and
2 on behalf of the classes defined below (“Class Members”), through their
3 undersigned counsel, bring this Class Action Complaint against Defendant
4 Gilead Sciences, Inc. (“Gilead” or “Defendant”).

5 **I. INTRODUCTION**

6 1. Gilead is an American biopharmaceutical company
7 headquartered in Foster City, California, that researches, develops, and
8 commercializes drugs, including drugs used for the treatment and prevention
9 of the human immunodeficiency virus (“HIV”) that causes the acquired
10 immunodeficiency syndrome “AIDS.” As alleged in more detail below, Gilead
11 recklessly and illegally violated the Plaintiffs’ and Class Members’ privacy
12 rights by disclosing their confidential HIV-related information. As a result,
13 Plaintiffs and other Class Members have suffered embarrassment, emotional
14 distress, and financial and other damages.

15 2. Plaintiffs and Class Members are individuals who are prescribed
16 Gilead’s HIV-related medications and enrolled in Gilead’s Advancing Access
17 Program.

18 3. Gilead’s Advancing Access Program provides patient support
19 and a co-pay coupon card to eligible persons who are prescribed its
20 medications, including those taking medications to prevent HIV.

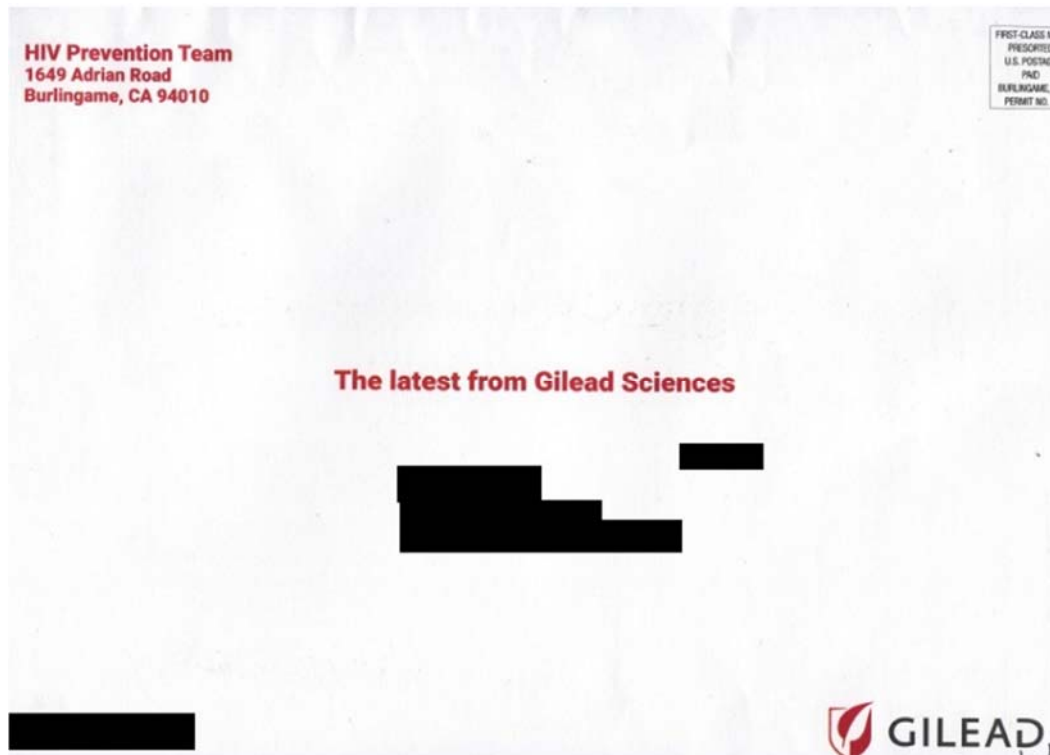
21 4. People who do not have HIV and who want to prevent acquisition
22 of HIV take a medication regimen known as pre-exposure prophylaxis
23 (“PrEP”). According to the Centers for Disease Control and Prevention
24 (“CDC”), PrEP is “highly effective at preventing HIV” and “reduces the risk
25 of getting HIV from sex by about 99% when taken daily.” *See* CDC, PrEP,
26 available at <https://www.cdc.gov/hiv/basics/prep.html>.

27 5. To enroll in Gilead’s Advancing Access Program, Plaintiffs and
28 Class Members completed an enrollment form (“Enrollment Form”), in which

1 they provided Gilead the name and dosage of the Gilead product they were
2 prescribed, along with other personal information such as their mailing
3 address, medical insurance provider, health care prescriber, and diagnosis.

4 6. The Enrollment Form contains a section titled “Patient
5 Confidentiality” that states: **“Patient confidentiality is of primary
6 importance to us. All patient information will remain confidential.”**
7 (Emphasis added.)

8 7. Despite this promise of confidentiality, in or around April 2020,
9 Gilead’s “HIV Prevention Team” sent Plaintiffs and Class Members who
10 enrolled in the Advancing Access Program a one-page letter titled “The Latest
11 from Gilead Sciences” (“HIV Prevention Team Letter”). As shown in the
12 photograph below, the letter was sent in an envelope which stated the name
13 and address of the recipient. On the outside of the envelope, in large, red font,
14 was the return address: “HIV Prevention Team, 1649 Adrian Road,
15 Burlingame, CA 94010.” The words **“HIV Prevention Team”** were in a larger
16 font than the mailing address causing it to stand out in relation to the address.



1 The envelope also had a banner in large, red font reading: “The latest from
2 Gilead Sciences.”

3 8. People living with HIV, people at risk for HIV, and people taking
4 medications to prevent HIV acquisition face extreme stigma. In fact, stigma is
5 widely recognized as a driver of the HIV epidemic. *See* The People Living
6 With HIV Stigma Index, at <http://www.stigmaindex.org/>.

7 9. In order to ensure that people feel safe enough to come forward
8 to be tested and treated for HIV, 39 states have enacted statutes that protect the
9 confidentiality of a person’s HIV-related information. HIV-related
10 information includes, among other things, whether a person is taking
11 medications to treat or prevent HIV.

12 10. Gilead’s actions, as described herein, carelessly, recklessly,
13 negligently, and impermissibly revealed confidential HIV-related information
14 of patients who were prescribed Gilead medications, including to their family,
15 friends, roommates, landlords, neighbors, mail carriers, and complete
16 strangers. This action seeks redress against Gilead for its unlawful exposure of
17 Plaintiffs’ and Class Members’ confidential HIV-related information.
18 Plaintiffs also seek injunctive and declaratory relief, including an order
19 requiring Gilead to cease disclosing—and implement appropriate policies and
20 procedures to protect the confidentiality of—confidential HIV-related
21 information.

22 **II. PARTIES**

23 11. To protect their privacy, all Plaintiffs are proceeding under
24 pseudonyms.¹

25
26 ¹ Plaintiffs will file a motion to proceed anonymously pursuant to the standards set forth in
27 *Does I Thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058 (9th Cir. 2000). Courts have
28 recognized that HIV status is entitled to protection from disclosure. *Doe v. City & Cty. of San Francisco*, No. 16-CV-06950-KAW, 2017 WL 1508982 (N.D. Cal. Apr. 27, 2017); *Roe v. City of New York*, 151 F. Supp. 2d 495, 510 (S.D.N.Y. 2001).

1 12. Plaintiff Alabama Doe is a resident of Alabama. At all relevant
2 times herein, Plaintiff Alabama Doe was prescribed Gilead’s HIV-related
3 medications and was enrolled in Gilead’s Advancing Access Program.

4 13. Plaintiff Indiana Doe is a resident of Indiana. At all relevant times
5 herein, Plaintiff Indiana Doe was prescribed Gilead’s HIV-related medications
6 and was enrolled in Gilead’s Advancing Access Program.

7 14. Defendant Gilead Sciences, Inc. is a Delaware corporation with
8 its worldwide corporate headquarters located in Foster City, California.

9 **III. JURISDICTION AND VENUE**

10 15. This Court has original jurisdiction over this action under
11 28 U.S.C. § 1332(d) of the Class Action Fairness Act because the amount in
12 controversy exceeds the sum or value of \$5,000,000, exclusive of interest and
13 costs, there are at least 100 members of each of the proposed Classes, and at
14 least one member of the proposed Classes is a citizen of a different state from
15 Gilead.

16 16. Venue is proper in this District as Gilead is headquartered in this
17 District and a substantial part of the events or omissions giving rise to the claim
18 occurred in this District.

19 **IV. INTRADISTRICT ASSIGNMENT**

20 17. Pursuant to L.R. 3-5(a), venue is proper in the San Francisco or
21 Oakland Division.

22 **V. THE ONGOING STIGMA OF HIV**

23 18. Since HIV first entered the public consciousness as an ongoing
24 public health crisis in the early 1980s, people living with HIV have been
25 subjected to social stigma and discrimination. The stigma of HIV is so
26 pervasive that it affects people living with HIV, people at risk for HIV, and
27 people taking HIV medications for prevention.

28

1 19. HIV-related stigma has a debilitating effect on people living with
2 HIV. The People Living with HIV Stigma Index is an international research
3 project spearheaded by the Global Network of People Living with HIV,
4 launched in 2008 to measure and detect changing trends in relation to stigma
5 and discrimination experienced by people living with HIV. *See* The People
6 Living With HIV Stigma Index, at <http://www.stigmaindex.org/>. While the
7 U.S. study is ongoing, the data from Michigan reveals sobering levels of HIV-
8 related stigma in the daily lives of Americans with HIV. For example, nearly
9 73% of participants experienced at least 1 of 11 forms of exclusion, stigma or
10 discrimination, including gossip, rejection by family or friends, exclusion from
11 religious organizations, or verbal and/or physical harassment. *See* UNIFIED-
12 HIV Health and Beyond, The U.S. People Living with HIV Stigma Index:
13 Michigan, Wave I Findings, 2014-2016, at 30.

14 20. As recently as 2012, more than half of Americans still reported
15 they felt some discomfort with people with HIV. *See* Henry J. Kaiser Family
16 Foundation, The Washington Post/Henry J. Kaiser Family Foundation 2012
17 Survey of Americans on HIV/AIDS (July 2012).² In a national survey, 52% of
18 respondents indicated they would be less than “very comfortable” working
19 with someone with HIV. *Id.* The same survey found many Americans with
20 misconceptions about how HIV is transmitted. *Id.*

21 21. A survey conducted in 2015 by the Kaiser Family Foundation
22 found that 75% of survey respondents from Georgia believed that people living
23 with HIV suffer from a lot or some stigma and discrimination. *See* Henry J.
24 Kaiser Family Foundation, The Public Attitudes and Knowledge about
25 HIV/AIDS in Georgia (Nov. 2015).³ Only 20% of respondents said that they

26 _____
27 ² Available at <http://kff.org/hiv/aids/poll-finding/2012-survey-of-americans-on-hiv/aids>.

28 ³ Available at <http://www.kff.org/hiv/aids/poll-finding/public-attitudes-and-knowledge-about-hiv/aids-in-georgia/>.

1 would be very comfortable personally with having their food prepared by
2 someone who is living with HIV, and only 30% said they would be very
3 comfortable having a roommate who is living with HIV. *Id.* Only 8% of
4 individuals said that they would be very or somewhat comfortable being in a
5 sexual relationship with someone who is living with HIV. *Id.*

6 22. In addition, stigma often prevents people living with HIV from
7 being able to turn to their families for support. The same Georgia survey found
8 that 91% of Georgians agree that having the support of family and loved ones
9 is “very important” to the health and well-being of people living with HIV.
10 Yet, comparatively only 38% say most people living with HIV in the state get
11 that support (44% say most do not and 18% do not know). *Id.*

12 23. “[F]ear of stigmatization” has reduced motivation of those at risk
13 for HIV to “seek or sustain” PrEP use.⁴

14 **VI. HIV PRIVACY PROTECTIONS**

15 24. To ensure that people feel safe to come forward to be tested and
16 treated for HIV, most states have enacted laws that protect the confidentiality
17 of a person’s HIV-related information.

18 25. Thirty-nine states have either HIV-specific privacy statutes or
19 general privacy provisions that expressly mention HIV. The remaining states
20 may protect its confidentiality under other statutes or provisions. *See*
21 Electronic Privacy Information Center, Lawrence O. Gostin, Legislative
22 Survey of State Confidentiality Laws, with Specific Emphasis on HIV and
23 Immunization, available at https://epic.org/privacy/medical/cdc_survey.html.

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25
26
27 ⁴ Sarah K. Calabrese & Kristen Underhill, *How Stigma Surrounding the Use of HIV*
28 *Preexposure Prophylaxis Undermines Prevention and Pleasure: A Call to Destigmatize*
“Truvada Whores,” Am. J. Publ. Health (Oct. 2015), available at
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4566537/>.

1 26. Federal laws, such as the Health Insurance Portability and
2 Accountability Act of 1996 (“HIPAA”), were also enacted to protect the
3 privacy that individuals expect to have in regard to their sensitive medical
4 information.

5 27. The problem of reckless disclosure of critical private medical
6 information resulting from commercial mailings has continued despite these
7 protections.

8 28. In 2017, in a highly publicized incident, health insurer Aetna,
9 utilizing a mail vendor, sent a mailing to over 12,000 of its insureds taking
10 HIV medications using a large-windowed envelope through which a portion
11 of Aetna’s letter to its customers was plainly visible. The visible portion of the
12 letter that could be viewed through the windowed envelope stated, “[t]he
13 purpose of this letter is to advise you of the options...Aetna health plan when
14 filling prescriptions for HIV Medic...”

15 29. Aetna was sued in numerous federal lawsuits and resolved the
16 matter through a nationwide class action settlement that was approved by the
17 United States District Court for the Eastern District of Pennsylvania and
18 provided over \$17 million in relief to the Settlement Class Members. *See*
19 *Beckett, et al. v. Aetna, Inc.*, No. 17-cv-3864 (E.D. Pa.). Some of the
20 undersigned counsel, including Shanon Carson, Sarah R. Schalman-Bergen,
21 and John Albanese of Berger Montague, and Ronda B. Goldfein, Yolanda
22 French Lollis, and Adrian M. Lowe of the AIDS Law Project of Pennsylvania,
23 were appointed as Co-Lead Counsel for the Settlement Class in the *Aetna*
24 litigation.

25 30. In 2017, CVS sent out a mailing to over 6,000 individuals in Ohio
26 which used the code “HIV” in the visible glassine window. That matter was
27 resolved for \$4.4 million in a class action settlement. *See Doe One, et al. v.*
28 *CVS Health Corp., et al.*, No. 2:18-cv-00238 (S.D. Ohio).

1 31. Despite these recent prominent examples of HIV-related privacy
2 breaches through the mail, Gilead recklessly used the return address “HIV
3 Prevention Team” on the envelope, wrongfully disclosing the letter recipients’
4 confidential HIV-related information.

5 **VII. GILEAD’S PRIVACY VIOLATIONS**

6 32. Gilead manufactures drugs used for the treatment and prevention
7 of HIV, including Truvada and Descovy. Truvada and Descovy are the only
8 drugs available for PrEP in the United States. Truvada has been on the market
9 since 2004 and Descovy was approved for sale in the United States in October
10 2019. These drugs are very expensive. Truvada has a list price of \$20,000 per
11 year, and Gilead makes billions of dollars per year from selling its PrEP
12 medications.

13 33. Gilead’s Advancing Access Program provides a co-pay coupon
14 card for eligible patients who need financial assistance to pay for their
15 medications.

16 34. To enroll in the Advancing Access Program, patients are required
17 to fill out an Enrollment Form.⁵ On the Enrollment Form, Gilead states:
18 **“Patient confidentiality is of primary importance to us. All patient**
19 **information will remain confidential.”** (Emphasis added.)

20 35. The Enrollment Form provides Gilead with a limited
21 authorization to obtain the patient’s personal information from the patient’s
22 healthcare provider. The authorization provides that the personal information
23 may be disclosed to “Gilead, including the third-party administrator
24 responsible for the administration of the Program and [Patient Assistance
25 Program/Medication Assistance Program].” The authorization does not permit
26 the patient’s personal information to be disclosed to anyone else.

27
28 ⁵ https://services.gileadhiv.com/content/pdf/gilead_enrollment_form.pdf.

1 36. Gilead entices the Advancing Access Program patients to “opt-
2 in” to authorize the disclosure of their personal HIV-related information by
3 promising to comply with the company’s Privacy Statements. Gilead does not
4 require all patients to “opt-in” to the authorization in order to enroll in the
5 Advancing Access Program.

6 37. Despite the strict limits of the authorization and Gilead’s promise
7 to respect confidentiality, Gilead sent the HIV Prevention Team Letter in an
8 envelope with a return address in large, red font indicating that the letter was
9 from an HIV Prevention Team. The HIV Prevention Team’s name, along with
10 the recipient’s name and address, were clearly visible from the face of the
11 envelope to anyone who came into contact with the mail.

12 38. The envelope contained a one-page letter titled “The Latest from
13 Gilead Sciences” (“HIV Prevention Team Letter”), stating:

14 When you signed up for the Gilead Advancing Access Co-pay Coupon
15 Program or the Gilead Advancing Access Patient Support Program, you
16 also opted into receiving marketing messages about the latest news from
Gilead Sciences.

17 Over the coming months, we’ll be sharing news about HIV prevention,
18 product information, and other updates via email. If you would like to
19 receive these emails, you can sign up by visiting the website or scanning
20 the code below with your smartphone camera . . .

21 Sincerely,

22 Your HIV Prevention Team at Gilead

23 39. Gilead recklessly failed to ensure that the highly sensitive
24 information that Plaintiffs and Class Members entrusted to Gilead was not
25 illegally disclosed.

26 40. Gilead easily could have avoided the disclosure of this private
27 information by using a return address that did not identify the sender as the
28 HIV Prevention Team.

1 41. As described below, Plaintiffs and Class Members have been
2 harmed by Gilead’s reckless exposure of Plaintiffs’ and Class Members’
3 HIV-related information.

4 **VIII. FACTS REGARDING GILEAD’S ILLEGAL DISCLOSURE**
5 **OF PLAINTIFFS’ HIV-RELATED INFORMATION**⁶

6 42. All Plaintiffs and Class Members received Gilead’s HIV
7 Prevention Team Letter, which was sent by and at the direction of Gilead.

8 43. Plaintiff Alabama Doe highly values his privacy. He is careful to
9 avoid disclosing his sexual orientation or sexual practices with others and has
10 not disclosed his sexual orientation to his family. He enrolled for the
11 Advancing Access Program over the phone and gave his workplace address,
12 in order to avoid having any mail sent to his home. His workplace has a
13 mailroom and employs people to sort mail. He was appalled when he walked
14 into the mail room and found the envelope with the “HIV Prevention Team”
15 return address. The envelope was accessible to anybody who came into the
16 mail room. Plaintiff Alabama Doe is worried and concerned about who may
17 have seen the mail. He is angry and upset about Gilead’s careless disregard for
18 his privacy.

19 44. Plaintiff Indiana Doe is extremely guarded about his privacy. He
20 is careful to avoid disclosing his sexual orientation or sexual practices with
21 others. In order to avoid inadvertently revealing to others that he is concerned
22 with HIV prevention, he sees a specialist for his PrEP prescription and fills his
23 prescriptions for PrEP at a different pharmacy chain than all his other drugs.
24 He was appalled when he received the HIV Prevention Team Letter as it
25 revealed in plain view that he is concerned with HIV prevention. Plaintiff
26 Indiana Doe feels vulnerable and is worried about who may have seen the mail.

27 _____
28 ⁶ Each of the Named Plaintiffs is a proposed Class Representative for the state law class(es)
in which they reside.

1 He is angry about Gilead’s careless disregard for his privacy.

2 45. Plaintiffs and Class Members have suffered and will continue to
3 suffer embarrassment, humiliation, frustration, anxiety, emotional distress, and
4 fear, and are at increased risk for losing employment, housing, access to health
5 care, and even violence or other trauma as a result of the disclosure of their
6 HIV-related information.

7 46. Plaintiffs and Class Members suffered a loss of value in their
8 confidential personal information when the envelope from the HIV Prevention
9 Team was sent to their mailing address.

10 47. Plaintiffs and Class Members have suffered and are entitled to
11 damages for the lost benefit of their bargain with Gilead. Plaintiffs and Class
12 Members provided Gilead with their confidential personal information when
13 they enrolled in Gilead’s Advancing Access Program. Their signed enrollment
14 forms authorized Gilead to use their personal information for its internal
15 business purposes and to send them marketing information related to their
16 medical condition. The lost benefit of the bargain is measured by the difference
17 between the value of what Plaintiffs and Class Members should have received
18 when they enrolled in Gilead’s Advancing Access Program, and the value of
19 what they did receive: marketing information without adequate privacy
20 safeguards.

21 **IX. CLASS ACTION ALLEGATIONS**

22 48. Plaintiffs bring this action individually and on behalf of the
23 following nationwide class and statewide classes defined below (together, the
24 “Classes”):

25 *Nationwide Class.* All persons who received Gilead’s HIV
26 Prevention Team Letter at their United States mailing address.

27 *Alabama Class.* All persons who received Gilead’s HIV
28 Prevention Team Letter at their Alabama mailing address.

Indiana Class. All persons who received Gilead’s HIV
Prevention Team Letter at their Indiana mailing address.

1 49. The claims of the Indiana Class Members and Alabama Class
2 Members are brought in the alternative in the event that the Court determines
3 that California law (as Gilead is headquartered in California) does not apply to
4 all Class members.

5 50. The members of the Classes are so numerous that the joinder of
6 all members is impractical. The recipients of Gilead's HIV Prevention Team
7 Letters are easily and quickly ascertained from Gilead's records. Thus, the
8 proposed Classes are ascertainable.

9 51. There are questions of fact and law common to the Classes as all
10 members of the Classes were subject to the same conduct under the same
11 factual circumstances. Common questions of law and fact include:

12 a. whether Gilead violated the confidentiality of applicable
13 medical information statutes;

14 b. whether Gilead had a duty to use reasonable care to
15 safeguard Class Members' private information;

16 c. whether Gilead breached the duty to use reasonable care to
17 safeguard Class Members' medical information;

18 d. whether Gilead breached its contractual promise to
19 safeguard Class Members' medical information;

20 e. whether Gilead was negligent *per se* in not complying with
21 federal and state privacy laws;

22 f. whether Gilead violated state unfair and deceptive
23 practices acts; and

24 g. The proper measure of damages.

25 52. Plaintiffs' claims are typical of those of the members of the
26 Classes they seek to represent because Plaintiffs suffered the same breach of
27 privacy as that of Class Members.

28 53. Plaintiffs will fairly and adequately protect the interests of the

1 Classes and have hired experienced counsel that are free of any conflicts of
2 interest and are prepared to vigorously litigate this action on behalf of the
3 Classes.

4 54. Class certification is appropriate under Fed. R. Civ. P. 23(b)(2)
5 because Gilead has acted or refused to act on grounds that apply generally to
6 the Classes, so that final injunctive relief or corresponding declaratory relief is
7 appropriate respecting the Classes as a whole.

8 55. Class certification is appropriate under Fed. R. Civ. P. 23(b)(3)
9 because questions of law and fact common to the Classes predominate over
10 any questions affecting only individual members of the Classes, and because
11 a class action is superior to other available methods for the fair and efficient
12 adjudication of this litigation. Gilead's conduct described in this Complaint
13 stems from a common course of conduct. Members of the Classes do not have
14 an interest in pursuing separate actions against Gilead, as the amount of each
15 Class Member's individual claim is small compared to the expense and burden
16 of individual prosecution. Class certification also will obviate the need for
17 unduly duplicative litigation that might result in inconsistent judgments
18 concerning Gilead's practices. Moreover, the management of this action as a
19 class action will not present any likely difficulties. In the interests of justice
20 and judicial efficiency, it would be desirable to concentrate the litigation of all
21 Class Members' claims in a single forum.

22 **X. CLAIMS FOR RELIEF**

23 **COUNT I**

24 **Violation Of California Confidentiality Of Medical Information Act**
25 **Cal. Civil Code § 56, *et seq.***
26 **On Behalf Of All Plaintiffs And The Nationwide Class**

27 56. Plaintiffs reallege and incorporate by reference the preceding
28 allegations.

1 57. Gilead is a pharmaceutical company as defined in Cal. Civil Code
2 § 56.05(1).

3 58. Gilead disclosed and released without authorization or legal basis
4 medical information regarding Plaintiffs and Class Members in violation of
5 Cal. Civil Code § 56.102.

6 59. Plaintiffs and Class Members have been harmed by Gilead's
7 willful and unauthorized disclosure and release of their personal medical
8 information.

9 60. Plaintiffs and Class Members seek relief under Cal. Civil Code
10 § 56.36, including but not limited to, actual damages, nominal damages of
11 \$1,000, civil penalties, injunctive relief and attorneys' fees and costs.

12 **COUNT II**

13 **Violation Of California Unfair Competition Law**
14 **Cal. Bus. Prof. Code § 17200, *et seq.***
On Behalf Of All Plaintiffs And The Nationwide Class

15 61. Plaintiffs reallege and incorporate by reference the preceding
16 allegations.

17 62. Gilead engaged in unlawful, unfair or fraudulent, and deceptive
18 acts and practices with respect to the sale and advertisement of the services
19 purchased by Plaintiffs and Class Members, in violation of Cal. Business and
20 Professions Code § 17200, *et seq.*, including by representing that Gilead would
21 adequately protect Plaintiffs' and Class Members' confidential medical
22 information from unauthorized disclosure and release. These injuries outweigh
23 any benefits to consumers or to competition.

24 63. The above unfair and deceptive practices and acts by Gilead were
25 immoral, unethical, oppressive, and unscrupulous.

26 64. Gilead knew or should have known that sending the HIV
27 Prevention Team Letter in the fashion in which it was sent was inadequate to
28 safeguard Plaintiffs' and the Class Members' medical information.

1 65. Gilead's actions were negligent, knowing, and willful, and/or
2 wanton and reckless with respect to the rights of Plaintiffs and Class Members.

3 66. As a direct and proximate result of Gilead's deceptive acts and
4 practices, Plaintiffs and Class Members suffered an ascertainable loss of
5 money or property, real or personal, as described above, including the loss of
6 their legally protected interest in the confidentiality and privacy of their
7 personal information.

8 67. Plaintiffs and Class Members seek relief under Cal. Bus. & Prof.
9 Code § 17200, *et seq.*, including, but not limited to injunctive relief, restitution,
10 and attorneys' fees and costs.

11 **COUNT III**

12 **Negligence**
13 **On Behalf Of All Plaintiffs And The Nationwide Class**
14 **Or In The Alternative All Statewide Classes**

15 68. Plaintiffs reallege and incorporate by reference the preceding
16 allegations.

17 69. Gilead owed duties of care to protect the disclosure of Plaintiffs'
18 and Class Members' private medical information. Plaintiffs and Class
19 Members entrusted their private medical information to Gilead.

20 70. Gilead knew or should have known of the risks inherent in
21 disseminating highly personal and confidential, HIV-related medical
22 information of Plaintiffs and Class Members in the manner set forth herein.

23 71. Gilead owed duties of care to Plaintiffs and Class Members
24 because Plaintiffs and Class Members were foreseeable and probable victims
25 of negligent mailing practices that involved their confidential medical
26 information.

27 72. By allowing its HIV Prevention Team Letter to be sent in an
28 envelope with a large, red font return address from the "HIV Prevention
Team," Gilead breached its duties to Plaintiffs and Class Members by failing

1 to exercise reasonable care in protecting Plaintiffs' and the Class Members'
2 medical information.

3 73. As a direct result of Gilead's negligence and/or negligent
4 supervision, Plaintiffs and Class Members have suffered or will suffer
5 damages, including embarrassment, humiliation, frustration, anxiety,
6 emotional distress, and fear, and are at increased risk for losing employment,
7 housing, access to health care, and even violence or other trauma.

8 **COUNT IV**

9 **Negligence *Per Se***
10 **On Behalf Of All Plaintiffs And The Nationwide Class**
11 **Or In The Alternative All Statewide Classes**

12 74. Plaintiffs reallege and incorporate by reference the preceding
13 allegations.

14 75. Pursuant to HIPAA (42 U.S.C. § 1320d, *et seq.*), Gilead had a
15 duty to implement reasonable safeguards to protect Plaintiffs' and Class
16 Members' medical information.

17 76. Pursuant to Cal. Civil. Code. § 56.102 and Cal. Health & Safety
18 Code § 120980, Gilead had a duty to Plaintiffs and Nationwide Class Members
19 to not disclose and to safeguard their confidential HIV-related medical
20 information.

21 77. Gilead breached its duties to Plaintiffs and Class Members under
22 the aforementioned statutes by allowing its HIV Prevention Team Letter to be
23 sent to Plaintiffs' and Class Members' mailing addresses in a manner that
24 disclosed their confidential HIV-related information.

25 78. Gilead's failure to comply with applicable laws and regulations
26 constitutes negligence *per se*.

27 79. But for Gilead's negligent breach of its duties and/or negligent
28 supervision, Plaintiffs and the Class Members would not have been injured.

80. The injury and harm suffered by Plaintiffs and the Class Members

1 was the reasonably foreseeable result of Gilead's breach of its duties. Gilead
2 knew or should have known that it was failing to meet its duties, and that
3 Gilead's breach would cause Plaintiffs and Class Members to experience the
4 foreseeable harms associated with the exposure of their confidential medical
5 information.

6 81. As a direct and proximate result of Gilead's negligent conduct
7 and/or negligent supervision, Plaintiffs and Class Members have been injured
8 and are entitled to damages.

9 **COUNT V**

10 **Breach Of Contract**
11 **On Behalf Of All Plaintiffs And The Nationwide Class**
12 **Or In The Alternative All Statewide Classes**

13 82. Plaintiffs reallege and incorporate by reference the preceding
14 allegations.

15 83. Plaintiffs and Class Members who enrolled in Gilead's
16 Advancing Access Program entered into binding and enforceable contracts
17 with Gilead, supported by consideration including Plaintiffs' and Class
18 Members' disclosure to Gilead of their personal health information for Gilead
19 to use for internal business purposes and to send marketing material.

20 84. Gilead stated on the Enrollment Form that it would keep
21 Plaintiffs' and Class Members' personal health information confidential.

22 85. It was a violation of Gilead's privacy policy as stated on the
23 Enrollment Form to disclose Plaintiffs' and Class Members' confidential
24 HIV-related information in the manner described above.

25 86. As a result of Gilead's breach of contract, Plaintiffs and Class
26 Members did not receive the full benefit of the bargain. Instead, they received
27 services provided by Gilead's Advancing Access Program that became less
28 valuable than Gilead advertised when Gilead provided those services without
adequate privacy safeguards.

COUNT VI

**Invasion Of Privacy
On Behalf Of All Plaintiffs And The Nationwide Class
Or In The Alternative All Statewide Classes**

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4 87. Plaintiffs reallege and incorporate by reference the preceding
5 allegations.

6 88. Gilead published private facts about Plaintiffs and Class
7 Members by sending Plaintiffs and Class Members envelopes with a large, red
8 font return address from its “**HIV Prevention Team**” to their mailing
9 addresses.

10 89. The disclosure of confidential HIV-related information,
11 especially information indicating a need for HIV prevention or treatment,
12 would be offensive to a reasonable person of ordinary sensibilities.

13 90. The fact that Plaintiffs and Class Members are receiving
14 information from an HIV Prevention Team is not a matter of legitimate public
15 concern.

16 91. As a direct and proximate result of Gilead’s conduct, Plaintiffs
17 and Class Members have been injured and are entitled to damages.

COUNT VII

**Unjust Enrichment
On Behalf Of All Plaintiffs And The Nationwide Class
Or In The Alternative All Statewide Classes**

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19
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21 92. Plaintiffs reallege and incorporate by reference the preceding
22 allegations.

23 93. Plaintiffs and Class Members conferred a monetary benefit on
24 Gilead in the form of amounts paid for HIV drugs.

25 94. Gilead appreciated or had knowledge of the benefits conferred
26 upon it by Plaintiffs and Class Members.

27 95. The amounts that Plaintiffs and Class Members paid to Gilead
28 should have been used, in part, to pay for the administrative costs of reasonable

1 privacy safeguards.

2 96. As a result of Gilead's conduct, Plaintiffs and Class Members
3 suffered actual damages in an amount equal to the difference in value with an
4 Advancing Access Program with reasonable privacy safeguards, and an
5 Advancing Access Program without reasonable privacy safeguards.

6 97. Under principals of equity and good conscience, Gilead should
7 not be permitted to retain the excess funds paid by Plaintiffs and Class
8 Members.

9 98. Gilead should be compelled to disgorge into a common fund for
10 the benefit of Plaintiffs and Class Members all inequitable proceeds received
11 by Gilead.

12 **JURY TRIAL DEMANDED**

13 99. Plaintiffs, individually and on behalf of the Classes, demand a
14 jury trial as to all claims so triable.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs, individually and on behalf of the Classes,
17 seek the following relief:

- 18 a. Determining that this action may proceed as a class action
19 under Fed. R. Civ. P. 23 on behalf of the Classes;
- 20 b. Designating Plaintiffs as the class representatives for the
21 Classes;
- 22 c. Designating Plaintiffs' undersigned counsel as counsel for the
23 Classes;
- 24 d. Issuing proper notice to the Classes at Gilead's expense;
- 25 e. Declaring that Gilead committed the violations of law set forth
26 above;
- 27 f. Ordering appropriate injunctive relief, including cessation of
28 the HIV Prevention Team Letters and implementation of
appropriate policies and procedures to protect the

1 confidentiality of HIV-related information;

2 g. Awarding damages, including statutory and/or punitive
3 damages;

4 h. Awarding reasonable attorneys' fees and costs and expenses;
5 and

6 i. Granting other and further relief, in law or equity, as this Court
7 may deem appropriate and just.

8 Dated: May 21, 2020

Respectfully submitted,

9
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