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9 *Attorneys for Defendant*  
GILEAD SCIENCES, INC.

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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **FOR THE COUNTY OF SAN MATEO**

14  
15 ALABAMA DOE, INDIANA DOE, and  
16 MISSOURI DOE, Individually, and on Behalf of  
All Others Similarly Situated,

17 Plaintiffs,

18 vs.

19 GILEAD SCIENCES, INC.,

20 Defendant.

Case No.: 20-CIV-03699

**DEFENDANT GILEAD SCIENCES,  
INC.'S GENERAL DENIAL AND  
AFFIRMATIVE DEFENSES TO  
PLAINTIFFS' CLASS ACTION  
COMPLAINT**

Complaint Filed: September 1, 2020

1 Defendant GILEAD SCIENCES, INC. (“Gilead”), by and through counsel undersigned, files  
2 its General Denial and Affirmative Defenses to Plaintiffs’ Class Action Complaint (“Complaint”) and  
3 states as follows:

4 **GENERAL DENIAL**

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

10 **AFFIRMATIVE DEFENSES**

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

14 **FIRST AFFIRMATIVE DEFENSE**

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

18 **SECOND AFFIRMATIVE DEFENSE**

19 2. Plaintiffs’ claims for economic loss in tort are barred by the economic loss doctrine.

20 **THIRD AFFIRMATIVE DEFENSE**

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

24 **FOURTH AFFIRMATIVE DEFENSE**

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

1 **FIFTH AFFIRMATIVE DEFENSE**

2 5. Plaintiffs' claims are barred to the extent Plaintiffs and putative class members did  
3 not sustain any legal injury.

4 **SIXTH AFFIRMATIVE DEFENSE**

5 6. Plaintiffs' 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. Plaintiffs' claims are barred by the equitable doctrine of estoppel.

14 **EIGHTH AFFIRMATIVE DEFENSE**

15 8. Plaintiffs' 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. Plaintiffs' breach of contract claims are barred based upon a failure of consideration.

19 **TENTH AFFIRMATIVE DEFENSE**

20 10. Plaintiffs' claims are barred or reduced under the principles of assumption of the risk  
21 and/or informed consent.

22 **ELEVENTH AFFIRMATIVE DEFENSE**

23 11. Plaintiffs' alleged damages were not proximately caused by any act or omission of  
24 Gilead and/or were caused or proximately caused by some person or third party other than Gilead  
25 for whom Gilead is not legally responsible.

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: /s/ Kenneth L. Chernof  
21 Kenneth L. Chernof  
22 Angel Tang Nakamura  
23 Stephanie N. Kang  
24 Hannah R. Coleman

25 *Attorneys for Defendant*  
26 GILEAD SCIENCES, INC.  
27  
28

**PROOF OF SERVICE**

1  
2 1. I am over eighteen years of age and not a party to this action. I am employed in the County  
3 of Los Angeles, State of California. My business address is 777 South Figueroa Street,  
4 Forty-Fourth Floor, Los Angeles, California 90017-5844.

5 2. On **January 25, 2021**, I served the following document(s):

6 **DEFENDANT GILEAD SCIENCES, INC.’S GENERAL DENIAL AND**  
7 **AFFIRMATIVE DEFENSES TO PLAINTIFFS’ CLASS ACTION COMPLAINT**

8 3. I served the document(s) on the following person(s):

9 **Benjamin Galdston** *Attorneys for Plaintiffs*  
10 **BERGER MONTAGUE PC** *and the Proposed Class*  
11 **12544 High Bluff Drive, Suite 340**  
12 **San Diego, CA 92130**  
13 **Tel: (619) 489-0300**  
14 [bgaldston@bm.net](mailto:bgaldston@bm.net)

15 **Shanon J. Carson**  
16 **Sarah R. Schalman-Bergen**  
17 **BERGER MONTAGUE PC**  
18 **1818 Market Street, Suite 3600**  
19 **Philadelphia, PA 19103**  
20 **Tel: (215) 875-4656**  
21 [scarson@bm.net](mailto:scarson@bm.net)  
22 [sschalman-bergen@bm.net](mailto:sschalman-bergen@bm.net)


23 **John Albanese**  
24 **BERGER MONTAGUE PC**  
25 **43 SE Main Street, Suite 505**  
26 **Minneapolis, MN 55414**  
27 **Tel: (612) 594-5997**  
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- 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**.
- Via Court Notice of Electronic Filing.** The document(s) will be served by the court via 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]**.
- Via Electronic Notification.** 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]**.
- STATE:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- FEDERAL:** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Dated: January 25, 2021. Signature:   
Type or Print Name: Kathryn Jensen  
E-Service Address: kathryn.jensen@arnoldporter.com