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

ALABAMA DOE 1, ALABAMA DOE 2,
INDIANA DOE, MISSOURI DOE, AND
FLORIDA DOE, Individually and on Behalf
of All Others Similarly Situated,

Plaintiffs,

v.

GILEAD SCIENCES, INC., and LAHLOUH,
INC.,

Defendants.

Case No. 20-CIV-03699

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- (1) Cal. Civ. Code § 56, *et seq.*;
- (2) Negligence;
- (3) Breach Of Contract;
- (4) Invasion Of Privacy
- (5) Mo. Rev. Stat. § 191.656

JURY TRIAL DEMANDED

Action Filed: September 1, 2020
Trial Date: None Set

Assigned for All Purposes to
Hon. Danny Y. Chou, Dept. 22

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

6 **I. INTRODUCTION**

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

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

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

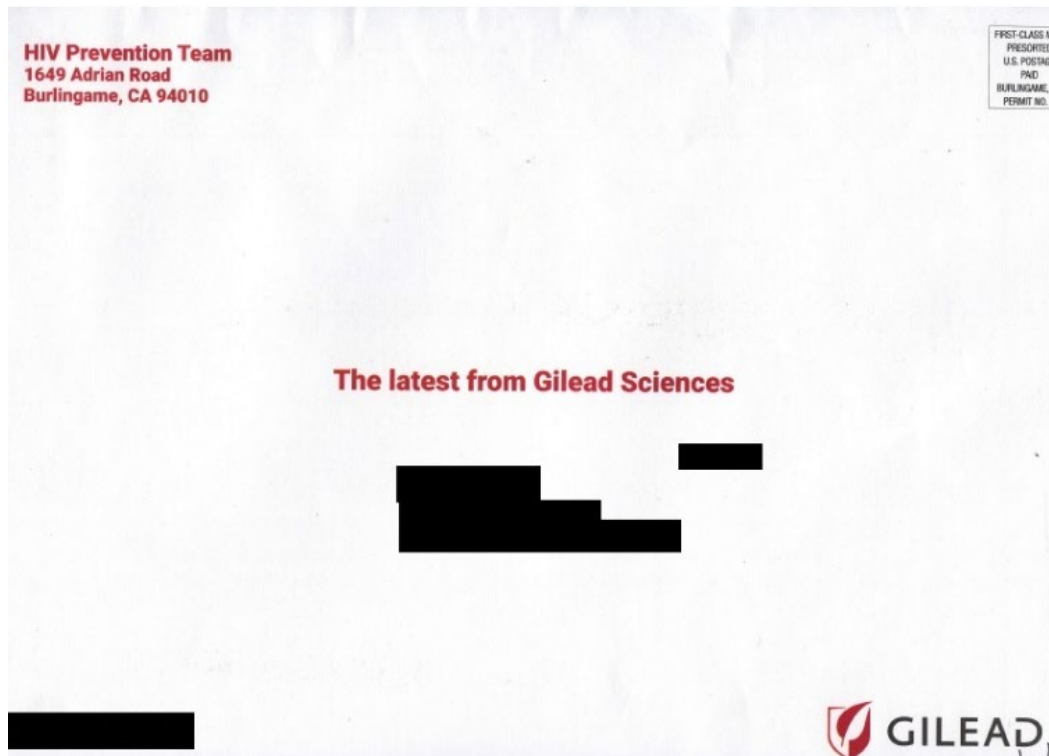
20 4. People who do not have HIV and who want to prevent acquisition of HIV
21 take a medication regimen known as pre-exposure prophylaxis (“PrEP”). According to the
22 Centers for Disease Control and Prevention (“CDC”), PrEP is “highly effective at
23 preventing HIV” and “reduces the risk of getting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

25 5. To enroll in Gilead’s Advancing Access Program, Plaintiffs and Class
26 Members completed an enrollment form (“Enrollment Form”), in which they provided
27 Gilead the name and dosage of the Gilead product they were prescribed, along with other
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1 personal information such as their mailing address, medical insurance provider, health care
2 prescriber, and diagnosis.

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

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



1 8. As first disclosed in Gilead’s discovery responses served in this matter on
2 May 21, 2021, Gilead contracted with vendor Lalouh, Inc. (“Lahlouh”) to mail the HIV
3 Prevention Team Letter.

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

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

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

21 **II. PARTIES**

22 12. To protect their privacy, all Plaintiffs are proceeding under pseudonyms.¹

23 _____
24 ¹ Plaintiffs may sue under pseudonyms in compliance with California Code of Civil
25 Procedure Section 367 in actions such as this one that involve legitimate privacy rights. *See,*
26 *e.g., Starbucks Corp. v. Super. Ct.*, 168 Cal. App. 4th 1436, 1452 n.7 (2008) (“The judicial
27 use of ‘Doe plaintiffs’ to protect legitimate privacy rights has gained wide currency,
28 particularly given the rapidity and ubiquity of disclosures over the World Wide Web.”);
Doe v. Lincoln Unified Sch. Dist., 188 Cal. App. 4th 758, 766 (2010) (“[T]here have been
countless published state court decisions where one or more of the parties have used
fictitious names.”).

1 13. Plaintiff Alabama Doe 1 is a resident of Alabama². At all relevant times
2 herein, Plaintiff Alabama Doe 1 was prescribed Gilead’s HIV-related medications and was
3 enrolled in Gilead’s Advancing Access Program.

4 14. Plaintiff Alabama Doe 2 is a resident of Tennessee, but at the time of the
5 mailing was a resident of Alabama. At all relevant times herein, Plaintiff Alabama Doe 2
6 was prescribed Gilead’s HIV-related medications and was enrolled in Gilead’s Advancing
7 Access Program.

8 15. Plaintiff Indiana Doe is a resident of Indiana. At all relevant times herein,
9 Plaintiff Indiana Doe was prescribed Gilead’s HIV-related medications and was enrolled in
10 Gilead’s Advancing Access Program.

11 16. Plaintiff Missouri Doe is a resident of Missouri. At all relevant times herein,
12 Plaintiff Missouri Doe was prescribed Gilead’s HIV-related medications and was enrolled
13 in Gilead’s Advancing Access Program.

14 17. Plaintiff Florida Doe is a resident of Florida. At all relevant times herein,
15 Plaintiff Florida Doe was prescribed Gilead’s HIV-related medications and was enrolled in
16 Gilead’s Advancing Access Program.

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

19 19. Defendant Lahlouh, Inc. is a California corporation headquartered in
20 Burlingame, California.

21 **III. JURISDICTION AND VENUE**

22 20. This Court has jurisdiction over this action pursuant to Article VI,
23 Section 10, of the California Constitution.

24 21. This is a class action brought pursuant to California Code of Civil Procedure
25 Section 382. The damages sought exceed the minimal jurisdictional limits of this Court and
26 will be established at trial.

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² Plaintiff Alabama Doe 1 was named as “Alabama Doe” in the original complaint filed in this action.

1 22. This Court has personal jurisdiction over Defendant Gilead Sciences, Inc.
2 because its principal place of business is located in California and, upon information and
3 belief, the acts complained of herein occurred in California.

4 23. Venue in this Court is proper pursuant to California Code of Civil Procedure
5 Section 395 because Defendant Gilead Sciences, Inc. and Defendant Lahlouh, Inc. reside in
6 this County.

7 **IV. BACKGROUND REGARDING HIV PRIVACY PROTECTIONS**

8 **A. The Ongoing Stigma of HIV**

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

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

24 26. As recently as 2012, more than half of Americans still reported they felt
25 some discomfort with people with HIV. *See* Henry J. Kaiser Family Foundation, The
26 Washington Post/Henry J. Kaiser Family Foundation 2012 Survey of Americans on

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1 HIV/AIDS (July 2012).³ In a national survey, 52% of respondents indicated they would be
2 less than “very comfortable” working with someone with HIV. *Id.* The same survey found
3 many Americans with misconceptions about how HIV is transmitted. *Id.*

4 27. A survey conducted in 2015 by the Kaiser Family Foundation found that
5 75% of survey respondents from Georgia believed that people living with HIV suffer from
6 a lot or some stigma and discrimination. *See* Henry J. Kaiser Family Foundation, *The Public*
7 *Attitudes and Knowledge about HIV/AIDS in Georgia* (Nov. 2015).⁴ Only 20% of
8 respondents said that they would be very comfortable personally with having their food
9 prepared by someone who is living with HIV, and only 30% said they would be very
10 comfortable having a roommate who is living with HIV. *Id.* Only 8% of individuals said
11 that they would be very or somewhat comfortable being in a sexual relationship with
12 someone who is living with HIV. *Id.*

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

18 29. “[F]ear of stigmatization” has reduced motivation of those at risk for HIV to
19 “seek or sustain” PrEP use.⁵

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24 ³ Available at <http://kff.org/hiv/aids/poll-finding/2012-survey-of-americans-on-hiv/aids>.

25 ⁴ Available at <http://www.kff.org/hiv/aids/poll-finding/public-attitudes-and-knowledge-about-hiv/aids-in-georgia/>.

26 ⁵ Sarah K. Calabrese & Kristen Underhill, *How Stigma Surrounding the Use of HIV*
27 *Preexposure Prophylaxis Undermines Prevention and Pleasure: A Call to Destigmatize*
28 *“Truvada Whores,”* *Am. J. Publ. Health* (Oct. 2015), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4566537/>.

1 **B. HIV Privacy Protections**

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

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

11 32. Federal laws, such as the Health Insurance Portability and Accountability
12 Act of 1996 (“HIPAA”), were also enacted to protect the privacy that individuals expect to
13 have regarding their sensitive medical information.

14 33. The problem of reckless disclosure of critical private medical information
15 resulting from commercial mailings has continued despite these protections.

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

22 35. Aetna was sued in numerous federal lawsuits and resolved the matter
23 through a nationwide class action settlement that was approved by the United States District
24 Court for the Eastern District of Pennsylvania and provided over \$17 million in relief to the
25 Settlement Class Members. *See Beckett, et al. v. Aetna, Inc.*, No. 17-cv-3864 (E.D. Pa.).
26 Some of the undersigned counsel, including Shanon Carson, Sarah R. Schalman-Bergen,
27 and John Albanese of Berger Montague, and Ronda B. Goldfein, Yolanda French Lollis,
28

1 and Adrian M. Lowe of the AIDS Law Project of Pennsylvania, were appointed as Co-Lead
2 Counsel for the Settlement Class in the *Aetna* litigation.

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

7 37. Despite these recent prominent examples of HIV-related privacy breaches
8 through the mail, Gilead recklessly used the return address “HIV Prevention Team” on the
9 envelope, wrongfully disclosing the letter recipients’ confidential HIV-related information.

10 **V. DEFENDANTS’ PRIVACY VIOLATIONS**

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

17 39. Gilead’s Advancing Access Program provides a co-pay coupon card for
18 eligible patients who need financial assistance to pay for their medications.

19 40. To enroll in the Advancing Access Program, patients are required to fill out
20 an Enrollment Form.⁶ On the Enrollment Form, Gilead states: “**Patient confidentiality is**
21 **of primary importance to us. All patient information will remain confidential.**”
22 (Emphasis added.)

23 41. The Enrollment Form provides Gilead with a limited authorization to obtain
24 the patient’s personal information from the patient’s healthcare provider. The authorization
25 provides that the personal information may be disclosed to “Gilead, including the third-
26 party administrator responsible for the administration of the Program and [Patient
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28 ⁶ https://services.gileadhiv.com/content/pdf/gilead_enrollment_form.pdf.

1 Assistance Program/Medication Assistance Program].” The authorization does not permit
2 the patient’s personal information to be disclosed to anyone else.

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

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

12 44. In a discovery response served in this matter on May 21, 2021, Gilead
13 disclosed for the first time that it had used vendor Lahlouh to send the mailing.

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

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

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

21 Sincerely,

22 Your HIV Prevention Team at Gilead

23 46. Gilead and Lahlouh recklessly failed to ensure that the highly sensitive
24 information that Plaintiffs and Class Members entrusted to Gilead was not illegally
25 disclosed.
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1 47. Gilead and Lahlouh easily could have avoided the disclosure of this private
2 information by using a return address that did not identify the sender as the HIV Prevention
3 Team.

4 48. As described below, Plaintiffs and Class Members have been harmed by
5 Gilead’s reckless exposure of Plaintiffs’ and Class Members’ HIV-related information.

6 49. All claims asserted herein are timely. Plaintiffs first learned of Lahlouh’s
7 involvement only through Gilead’s discovery responses first served on May 21, 2021 and
8 could not have reasonably discovered Lahlouh’s involvement prior to such date. Moreover,
9 the relevant statute of limitations are tolled by California’s Emergency Rule 9, issued in
10 response to the COVID-19 pandemic and through operation of class action tolling.

11 **VI. FACTS REGARDING GILEAD’S ILLEGAL DISCLOSURE**
12 **OF PLAINTIFFS’ HIV-RELATED INFORMATION**

13 50. All Plaintiffs and Class Members received Gilead’s HIV Prevention Team
14 Letter, which was sent by Lahlouh and at the direction of Gilead.

15 51. Plaintiff Alabama Doe 1 highly values his privacy. He is careful to avoid
16 disclosing his sexual orientation or sexual practices with others and has not disclosed his
17 sexual orientation to his family. He enrolled for the Advancing Access Program over the
18 phone and gave his workplace address, in order to avoid having any mail sent to his home.
19 His workplace has a mailroom and employs people to sort mail. He was appalled when he
20 walked into the mail room and found the envelope with the “HIV Prevention Team” return
21 address. The envelope was accessible to anybody who came into the mail room. Plaintiff
22 Alabama Doe 1 is worried and concerned about who may have seen the mail. He is angry
23 and upset about Defendants careless disregard for his privacy.

24 52. Plaintiff Alabama Doe 2 values her privacy and takes PrEP because her
25 partner is living with HIV. Other than her partner, she had not disclosed to anyone that she
26 was taking PrEP. The HIV Prevention Team Mailer was sent to her in the small Alabama
27 town she previously lived. The Mailer was forwarded to her new address, and appeared to
28 have been opened by the time it reached her. She is angry and upset that Defendants’

1 violated her privacy.

2 53. Plaintiff Indiana Doe is extremely guarded about his privacy. He has had a
3 successful career in the family entertainment center industry since 1996. He owns two
4 family entertainment centers in conservative suburban neighborhoods and is prominent in
5 the industry nationally. He is fearful that his business and standing in his professional
6 community will suffer if his sexual orientation or sexual practices are publicly known. In
7 order to avoid inadvertently revealing to others that he believes he is at risk for HIV and
8 therefore sought out HIV prevention, he sees a specialist for his PrEP prescription and fills
9 these prescriptions at a different pharmacy chain than all his other drugs. He was appalled
10 when he received the HIV Prevention Team Letter, as it identified him, in plain view, as
11 someone with a reason to be concerned with HIV prevention. Plaintiff Indiana Doe feels
12 vulnerable and is worried about who may have seen the mail. He is angry about Defendants'
13 careless disregard for his privacy.

14 54. Plaintiff Missouri Doe lives in a 22-unit apartment building. The mail is
15 delivered to individual small locked mailboxes. Envelopes too big to fit in individual
16 mailboxes are placed on top of the rows of mailboxes. Plaintiff Missouri was shocked to
17 see the large HIV Prevention Team Letter. The envelope revealed in plain view his status
18 as someone with a reason to be concerned with HIV prevention. Plaintiff Missouri Doe feels
19 vulnerable and is worried about who may have seen the mail. He is angry about Defendants'
20 careless disregard for his privacy.

21 55. Plaintiff Florida Doe had enrolled in Gilead's Advancing Access Program at
22 one time, but was no longer using the program. He was surprised and appalled when a year
23 after he last used the card, the Mailer arrived at the home he was living in with his parents.
24 He had not disclosed neither his sexual orientation nor that he was taking PrEP to his family.
25 On the day the Mailer arrived, Florida Doe's mother collected the mail with the return label
26 "HIV Prevention Team." She confronted him with it. He felt forced to disclose his sexual
27 orientation to her, although he was not yet ready to do so. He is angry at Gilead's careless
28 disregard for his privacy.

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

5 57. Plaintiffs and Class Members suffered a loss of value in their confidential
6 personal information when the envelope from the HIV Prevention Team was sent to their
7 mailing addresses.

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

17 **VII. CLASS ACTION ALLEGATIONS**

18 59. Plaintiffs bring this action individually and pursuant to California Code of
19 Civil Procedure Section 382 on behalf of the following proposed classes (collectively the
20 “Class”):

21 ***Nationwide Class***: All persons who received Gilead’s HIV Prevention Team
22 Letter at their mailing address.

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

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

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

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

1 60. Excluded from the Class are Defendants, any of its past or present officers,
2 directors, agents, or affiliates, any judge who presides over this action, and all counsel of
3 record in this action.

4 61. Plaintiffs reserve the right to expand, limit, modify, or amend the definitions
5 of the Class as may be desirable or appropriate during the course of this litigation.

6 62. The claims of the Indiana Class Members, Alabama Class Members,
7 Missouri Class Members, and Florida Class Members are brought in the alternative in the
8 event that the Court determines that California law (as Gilead and Lahlouh are
9 headquartered in California and the letter was sent from California) does not apply to all
10 Class members.

11 **Numerosity and Ascertainability**

12 63. The members of the Class are so numerous that joinder of all members is
13 impractical. Class members may be identified through objective means. The recipients of
14 Gilead’s HIV Prevention Team Letters can be quickly ascertained from Gilead’s and
15 Lahlouh’s records. Class members can be notified of this action by recognized notice
16 means, such as by mail, email, or publication in print or on the internet. Thus, the proposed
17 Class is ascertainable.

18 **Commonality and Predominance**

19 64. There are questions of fact and law common to the Class as all members of
20 the Class were subject to the same conduct under the same factual circumstances. These
21 common questions predominate over questions affecting only individual Class members.
22 Common questions of law and fact include:

23 a. whether Gilead and Lahlouh violated applicable confidentiality of
24 medical information statutes;

25 b. whether Gilead and Lahlouh had a duty to use reasonable care to
26 safeguard Class Members’ private information;

27 c. whether Gilead and Lahlouh breached the duty to use reasonable care
28 to safeguard Class Members’ medical information;

1 d. whether Gilead breached its contractual promise to safeguard Class
2 Members' medical information; and

3 e. The proper measure of damages.

4 **Typicality**

5 65. Plaintiffs' claims are typical of those of the members of the Class they seek
6 to represent because Plaintiffs suffered the same breach of privacy as that of Class
7 Members.

8 **Adequacy**

9 66. Plaintiffs will fairly and adequately protect the interests of the Class and have
10 hired experienced counsel that are free of any conflicts of interest and are prepared to
11 vigorously litigate this action on behalf of the Class.

12 **Superiority**

13 67. A class action is superior to other available methods for the fair and efficient
14 adjudication of this controversy. Gilead's and Lahlouh's conduct described in this
15 Complaint stems from a common course of conduct. The common questions of law and fact
16 regarding Defendant's conduct and responsibility predominate over any questions affecting
17 individual Class members.

18 68. A class action also is superior to other available methods for the fair and
19 efficient adjudication of this controversy because it eliminates the risk of inconsistent
20 judgments concerning Gilead's and Lahlouh's practices.

21 69. A class action also is superior because the expense and burden of individual
22 litigation would make it very difficult or impossible for individual Class members to redress
23 the wrongs done to each of them individually, such that most or all Class members would
24 have no rational economic interest in individually controlling the prosecution of specific
25 actions.

26 70. The adjudication of this action as a class action presents far fewer
27 management difficulties, far better conserves judicial and party resources, and far more
28 effectively protects the rights of each Class member than would piecemeal litigation.

1 Compared to the expense, burdens, inconsistencies, economic infeasibility, and
2 inefficiencies of individual litigation, any challenge of managing this action as a class action
3 is substantially outweighed by the benefits to the legitimate interests of the parties, the
4 Court, and the public of class treatment, making class adjudication superior to any other
5 alternative.

6 **VIII. CAUSES OF ACTION**

7 **FIRST CAUSE OF ACTION**

8 **Violation Of California Confidentiality Of Medical Information Act**
9 **Cal. Civ. Code § 56, *et seq.***
10 **On Behalf of all Plaintiffs and the Nationwide Class against Gilead**

11 71. Plaintiffs reallege and incorporate by reference the preceding allegations.

12 72. Gilead is a pharmaceutical company as defined in California Civil Code
13 § 56.05(l).

14 73. Gilead disclosed and/or released without authorization or legal basis medical
15 information regarding Plaintiffs and Class Members in violation of California Civil Code
16 §§56.101(a), 56.102(b), and 56.36.

17 74. Plaintiffs and Class Members have been harmed by Gilead's willful and
18 unauthorized disclosure and release of their personal medical information.

19 75. Plaintiffs and Class Members seek relief under California Civil Code
20 § 56.36, including but not limited to, actual damages, nominal damages of \$1,000, civil
21 penalties, injunctive relief and attorneys' fees and costs.

22 **SECOND CAUSE OF ACTION**

23 **Negligence**

24 **On Behalf of all Plaintiffs and the Nationwide Class against all Defendants**
25 **Or in the Alternative All Statewide Classes against all Defendants**

26 76. Plaintiffs reallege and incorporate by reference the preceding allegations.

27 77. Gilead and Lahlouh owed duties of care to protect the disclosure of
28 Plaintiffs' and Class Members' private medical information. Plaintiffs and Class Members
entrusted their private medical information to Gilead which provided such information to
Lahlouh.

1 Form to disclose Plaintiffs' and Class Members' confidential HIV-related information in
2 the manner described above.

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

7 **FOURTH CAUSE OF ACTION**

8 **Invasion Of Privacy**

9 **On Behalf of all Plaintiffs and the Nationwide Class against Gilead and Lahlouh
Or in the Alternative All Statewide Classes against Gilead and Lahlouh**

10 87. Plaintiffs reallege and incorporate by reference the preceding allegations.

11 88. Gilead and Lahlouh published private facts about Plaintiffs and Class
12 Members by sending Plaintiffs and Class Members envelopes with a large, red font return
13 address from its "**HIV Prevention Team**" to their mailing addresses.

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

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

19 91. As a direct and proximate result of Gilead and Lahlouh's conduct, Plaintiffs
20 and Class Members have been injured and are entitled to damages.

21 **FIFTH CAUSE OF ACTION**

22 **Mo. Rev. Stat. § 191.656**

23 **In the Alternative on Behalf of Missouri Doe and the Missouri Class**

24 92. Plaintiffs reallege and incorporate by reference the allegations in the
preceding paragraphs.

25 93. The information disclosed by Gilead and Lahlouh was protected because it
26 concerned an "individual's HIV infection status or the results of any individual's HIV
27 testing." Mo. Stat. Ann. § 191.656(1)(1).

28 94. Missouri law prohibits the disclosure of the protected information

1 concerning an individual's HIV infection status without statutorily enumerated
2 authorization. Mo. Stat. Ann. § 191.656.

3 95. Gilead and Lahlouh violated Mo. Stat. Ann. § 191.656 by disclosing Plaintiff
4 Missouri Doe's and Missouri Class Members' HIV infection status without authorization
5 to do so.

6 96. Missouri law provides that any person "aggrieved by a violation of this
7 section or regulations promulgated by the department of health and senior services may
8 bring a civil action for damages." Mo. Ann. Stat. § 191.656(6).

9 97. As a direct and proximate result of Defendant's negligent, willful, reckless,
10 and/or unlawful acts, Plaintiff Missouri Doe and Missouri Class Members suffered harm.

11 98. Plaintiff Missouri Doe and Missouri Class Members seek relief, including,
12 but not limited to, actual damages, liquidated damages of \$1,000 or \$5,000, exemplary
13 damages, injunctive relief, and attorneys' fees and costs.

14 **JURY TRIAL DEMANDED**

15 99. Plaintiffs, individually and on behalf of the Class, demand a jury trial as to
16 all claims so triable.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs, individually and on behalf of the Class, seek the
19 following relief:

- 20 a. Determining that this action may proceed as a class action pursuant to
21 California Code of Civil Procedure Section 382 on behalf of the Class;
- 22 b. Designating Plaintiffs as the class representatives for the Class;
- 23 c. Designating Plaintiffs' undersigned counsel as counsel for the Class;
- 24 d. Issuing proper notice to the Class at Defendants' expense;
- 25 e. Declaring that Gilead committed the violations of law set forth above;
- 26 f. Ordering appropriate injunctive relief, including cessation of the HIV
27 Prevention Team Letters and implementation of appropriate policies and
28 procedures to protect the confidentiality of HIV-related information;
- g. Awarding damages, including statutory and/or punitive damages;

- 1 h. Awarding reasonable attorneys' fees and costs and expenses;
2 i. Awarding prejudgment and post-judgment interest at the maximum legal
3 rate; and
4 j. Granting other and further relief, in law or equity, as this Court may deem
5 appropriate and just.

6 Dated: August 25, 2021

Respectfully submitted,

7 By: /s/ Sophia M. Rios

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