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10 *Settlement Class*

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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SAN MATEO**
14

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

19 Plaintiffs,

20 vs.

21 GILEAD SCIENCES, INC.,

22 Defendant.
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Case No.: 20-CIV-03699

**PLAINTIFFS' SUPPLEMENTAL
SUBMISSION IN SUPPORT OF
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Dept: 22
Judge: Hon. Danny Chou
Date: January 19, 2023
Time: 10:00 a.m.

CLASS ACTION

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

1 **I. INTRODUCTION**

2 Plaintiffs Alabama Doe 1, Alabama Doe 2, Indiana Doe, Missouri Doe, and Florida Doe
3 (collectively, “Plaintiffs”), individually and as proposed representatives of the Settlement Class,
4 submit this Supplemental Submission in support of Plaintiffs’ Unopposed Motion for Preliminary
5 Approval of Class Action Settlement filed on October 21, 2022. This Supplemental Submission
6 responds to the points raised in the Court’s Tentative Ruling provided to the parties on November 30,
7 2022 (“TR”). Filed concurrently with this Supplemental Submission are the Declaration of John G.
8 Albanese (“Albanese Decl.”), Declaration of Ronda Goldfein (“Goldfein Decl.”), Declaration of
9 Scott M. Fenwick of Kroll Settlement Administration (“Fenwick Decl.”), and Declaration of Naina
10 Khanna of the Positive Women’s Network (“Khanna Decl.”). Plaintiffs are also submitting an
11 Amended Settlement Agreement to address the Court’s concerns. (Albanese Decl. Ex. 1.).

12 **II. ISSUES RAISED IN THE COURT’S TENTATIVE RULING**

13 **A. Reasonableness of the Settlement.**

14 The Court’s Tentative Ruling requested that Plaintiffs “explain why the settlement is
15 reasonable in light of two similar class actions referenced in their First Amended Complaint that
16 settled for a significantly greater amount per class member than the settlement in this case.” (TR at
17 1.) The Tentative Ruling also requested that Plaintiffs “address the recovery available under the laws
18 of the states other than California.” (*Id.*) Finally, the Court also requested more analysis of how the
19 settlement amount of \$4 million was reached including an analysis of additional claims and damages
20 a class member may have, the number of additional class members who may assert additional claims,
21 the strengths and weaknesses of those claims, and the amount of additional damages that the class
22 members may be entitled to recover. (*Id.*) Plaintiffs will address each point in turn.

23 **1. Aetna and CVS are distinguishable in multiple respects.**

24 The two other class action settlements referred to in the Complaint are the settlements in
25 *Beckett v. Aetna*, Case No. 2:17-cv-3864 (E.D. Pa.), and *Doe One v. CVS Health Corporation*, Case
26 No. 2:18-cv-238 (S.D. Ohio).¹ The AIDS Law Project of Pennsylvania and Berger Montague PC were
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28 ¹The CVS matter was later restyled as *John Doe One v. Caremark, L.L.C.*

1 class counsel in the *Aetna* matter, but not involved in the *CVS* matter. The operative complaints at
2 the time of settlement in those matters are attached to the Albanese Declaration filed with this
3 Submission as Exhibits 2 and 3. There are numerous reasons why the settlements in *Aetna* and *CVS*
4 were higher on a per person basis than this matter.

5 In both *Aetna* and *CVS*, it was visible to all viewers that the offending mailers contained
6 instructions for the recipients to fill their prescriptions for HIV medications, leaving little doubt that
7 recipients had, in fact, been prescribed such HIV medications. Here, the envelope’s return address
8 was marked “HIV Prevention Team,” but did not have terms such as “prescription” or “medication,”
9 as appeared on the mailings at issue in *Aetna* (Albanese Decl., Ex. 2 ¶ 13) and *CVS* (Albanese Decl.,
10 Ex. 3 ¶ 15). Defendant has argued “HIV Prevention Team” does not disclose explicitly taking HIV-
11 related medication, and has taken the position that the envelope does not disclose any medical
12 information whatsoever. (Defendant’s Demurrer at 14 n.4 (filed Oct. 20, 2020) (“Demurrer”).) While
13 Plaintiffs disagree with Defendant’s characterization, Plaintiffs acknowledge that a letter that
14 discloses the recipient is taking HIV medication is more explicit than a letter with a return address of
15 “HIV Prevention Team.” (Goldfein Decl. ¶¶ 8a-b.)

16 Further, the alleged harms caused by the Gilead Mailer do not seem as egregious as they were
17 in *Aetna*.² As shown in the First Amended Complaint in *Aetna*, the 37 named plaintiffs in *Aetna*
18 alleged that friends, family, roommates, neighbors, and strangers saw the offending mailer, and
19 suffered adverse consequences, including a pastor who lost most of his congregation, a person who
20 was called a slur because of the mailer, and family members moving out because of the notice.
21 (Albanese Decl., Ex. 2 ¶¶ 103, 110, 111.) Similar allegations of harm have not been made in this
22 case. Furthermore, Plaintiffs’ counsel has not seen the level of harm or volume of outreach from
23 affected class members that was present in the *Aetna* matter. (Goldfein Decl. ¶¶ 7-8.)

24 Finally, the circumstances of the *Aetna* and *CVS* cases suggested that *Aetna* and *CVS* were
25 motivated to settle for reasons that extended beyond mere litigation risk. Neither *Aetna* nor *CVS* were
26 heavily litigated. The settlement in *Aetna* was reached before *Aetna* responded to the complaint. In
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28 ² The complaint in *CVS* does not contain a similar level of detail and Plaintiffs’ counsel here were
not involved in *CVS*.

1 CVS, a motion to dismiss was decided and the case settled soon thereafter without extensive
2 discovery. (See Albanese Decl., Ex. 4 at 5-6 (describing discovery taken).) The *Aetna* case, in
3 particular, generated an extensive amount of media attention and attention from regulators.³ Lastly,
4 around the time of the *CVS* and *Aetna* litigations, CVS and Aetna merged for \$69 billion, a merger
5 that underwent extensive scrutiny from the Department of Justice, which only resolved nearly a year
6 after the Department of Justice filed suit seeking to enjoin the merger.⁴ In other words, Aetna and
7 CVS may have had motivations beyond mere litigation risk to want to settle the matters expeditiously.

8 Here, by contrast, Gilead has actively and aggressively litigated and defended this matter,
9 raised arguments not raised in *CVS* or *Aetna*, and engaged in extensive discovery, including multiple
10 depositions and litigation of a motion to compel. The case resolved on the eve of further depositions
11 of the Named Plaintiffs and depositions of Defendant. Because the legal and factual issues in this
12 litigation were more developed than in *Aetna* or *CVS*, Plaintiffs faced substantial risk at both the
13 summary judgment and class certification stages, particularly with respect to their central cause of
14 action under the Confidentiality of Medical Information Act (“CMIA”). Cal. Civ. Code §§ 56, *et seq.*
15 Gilead aggressively litigated the issue of “actual viewing” under the standard set forth in *Sutter Health*
16 *v. Superior Ct.*, 227 Cal. App. 4th 1546, 1555, 174 Cal. Rptr. 3d 653, 659 (2014) and *Regents of Univ.*
17 *of California v. Superior Ct.*, 220 Cal. App. 4th 549, 570, 163 Cal. Rptr. 3d 205, 221 (2013), *as*
18 *modified on denial of reh'g* (Nov. 13, 2013). While the Court held that Plaintiffs had sufficiently
19 alleged actual viewing at the pleading stage (*see* Order Overruling in Part and Sustaining in Part
20 Defendant’s Demurrer and Denying Defendant’s Motion to Strike), the Court also opined that “maybe
21 . . . following discovery [Plaintiffs are] not go[ing to] be able to establish that any unauthorized person
22 actually saw that information.” (Albanese Decl., Ex. 10 (Tr. of Demurrer Hearing) at 27:23–26.)
23 While Plaintiffs believe they could overcome these arguments, they faced a risk that the Court would
24 find that they did not satisfy the actual viewing requirement on a class wide basis. These issues played

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26 ³ See [https://oag.ca.gov/news/press-releases/attorney-general-becerra-announces-935000-](https://oag.ca.gov/news/press-releases/attorney-general-becerra-announces-935000-settlement-aetna-over-allegations-it)
27 [settlement-aetna-over-allegations-it](https://ag.ny.gov/press-release/2018/ag-schneiderman-announces-settlement-aetna-over-privacy-breach-new-york-members); [https://ag.ny.gov/press-release/2018/ag-schneiderman-](https://ag.ny.gov/press-release/2018/ag-schneiderman-announces-settlement-aetna-over-privacy-breach-new-york-members)
28 [announces-settlement-aetna-over-privacy-breach-new-york-members](https://www.cnn.com/2017/08/24/health/aetna-hiv-status);
<https://www.cnn.com/2017/08/24/health/aetna-hiv-status>.

⁴ See [https://www.justice.gov/opa/pr/judge-decides-cvs-aetna-final-judgment-public-interest-and-](https://www.justice.gov/opa/pr/judge-decides-cvs-aetna-final-judgment-public-interest-and-grants-united-states-motion)
grants-united-states-motion.

1 out recently in *Vigil v. Muir Med. Grp. IPA, Inc.*, in which the Court of Appeal affirmed denial of
2 class certification because “each class member would have to show that his or her medical information
3 was viewed by an unauthorized party to recover under the CMIA.” 84 Cal. App. 5th 197, 220, 300
4 Cal. Rptr. 3d 32, 47 (2022), *review filed* (Nov. 18, 2022). The settlement under the terms the parties
5 have agreed to here avoids these risks while providing relief to the Settlement Class.

6 This case is different than the *Aetna* and *CVS* matters in many respects, and thus settled for a
7 different amount.

8 **2. Any Differences Among HIV Confidentiality Laws Do Not Impact the**
9 **Fairness of the Settlement.**

10 The Court has requested an analysis of the HIV Confidentiality laws in other states. As an
11 initial matter, under California law, there is no “requirement that the court expressly consider the law
12 of every state” before it can make a finding on fairness, and nor should a court “be inclined to suspect
13 unfairness due to differing laws in the absence of any showing such laws rendered the settlement
14 unfair as to a significant number of class members.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794,
15 1807 n. 18, 56 Cal. Rptr. 2d 483, 492 (1996); *see also Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 327–
16 28 (3d Cir. 2011) (en banc) (noting that in evaluating fairness of settlement “[w]e can find no support
17 in our case law for differentiating within a class based on the strength or weakness of the theories of
18 recovery” and finding that “it is noteworthy that each putative class member suffered the same alleged
19 injury as a result of [the illegal conduct], irrespective of the vagaries of applicable state laws”).

20 First, many states, like Alabama, do not have any laws that apply specifically to confidentiality
21 of HIV-related information. And, of the states that do have such laws, many of these laws do not
22 have any express private right of action. *See, e.g.*, Alaska Stat. § 18.05.042; Ark. Code Ann. § 20-
23 15-904 (c)(1); Colo. Rev. Stat. Ann. § 25-4-1404; Fla. Stat. Ann § 381.004 15(f); Ga. Code Ann. §
24 24-9-47(b); Idaho Code § 38-601; Ind. Code Ann. § 16-41-6-12; Kan. Stat. Ann § 65-6002-6009; Ky
25 Rev. Stat. § 214.625(5); La. Rev. Stat Ann. § 40:1300.14; Mass. Gen. Laws Ch. 111 section 70; Me.
26 Rev. Stat. tit. 5 § 19203; Md. Code Ann. § 18-338.1; Miss. Code Ann. § 41-34-7; Nev. Rev. Stat. §
27 441 A.335; N.M. Stat. Ann. § 24-2B-9; N.C. Gen. Stat. § 130A-143; N.Y. Pub. Health Law § 2782;
28 Ohio Rev. Code § 3701.244; Or. Rev. Stat. 443.045; 35 Pa. Stat. § 7610; R.I Gen. Law § 23-6.3-7;

1 S.C. Code § 44-29-135; S.D. Codified Laws § 34-22-12; Utah Code Ann. § 26-6-27; Tenn. Code
2 Ann. § 68-10-113.

3 For other state laws, like in California, the confidentiality provisions only apply to the results
4 of HIV testing or information that someone has tested positive for HIV. Cal. Health & Safety Code
5 § 120980;⁵ Del. Code Ann. tit 16 § 717; Haw. Rev. Stat. § 325-10; 410 ILCS 305/3; Iowa Code §
6 141.A; Tex. Health and Safety Code Ann. § 81.103. Defendant has argued that nothing about “HIV
7 Prevention Team” discloses a testing result or that someone has tested positive for HIV. For instance,
8 in Defendant’s demurrer to the initial complaint in this action, Defendant argued that Mo. Rev. Stat.
9 § 191.656—which, in relevant part, prohibits disclosure of information “concerning an individual’s
10 HIV infection status”—was not applicable because the Mailer did not reveal the results of a HIV test
11 or HIV infection status. Demurrer at 25-26. While the Court overruled Defendant’s demurrer with
12 regard to HIV infection status, any statutory claim where the claim was limited to prohibiting
13 disclosure only of HIV testing information would face an uphill battle. Indeed, it is for this reason
14 that Plaintiffs did not bring a claim under Cal. Health & Safety Code § 120980 here.

15 Some of these laws have a private right of action, but no liquidated damage amount. *See, e.g.*,
16 Ariz. Rev. Stat. § 20-448.01, Conn. Gen. Stat. § 19a-590 (2005; N.J. Stat. Ann. § 26:5C-14; N.D.
17 Cent. Code § 23-07-5-0; Ohio Rev. Code § 3701.244; Okla. Stat. 63 §1-502.2; 35 P.S. § 7601 *et seq.*
18 In states where the laws do allow for liquidated damages, the statutory damages for negligent (or strict
19 liability) violations generally range from \$1,000 to \$5,000 with reckless or intentional violations
20 providing potentially higher penalties. Cal. Health & Safety Code § 120980 (providing for a civil
21 penalty of \$2,500 for a negligent violation and \$5,000-\$10,000 for a willful or malicious violation for
22 each unlawful disclosure); Cal. Civil Code § 56.36 (providing for nominal damages of \$1,000); Tex.
23 Health and Safety Code Ann. § 81.104 (providing for a civil penalty of \$5,000 for a negligent
24 violation and \$5,000-\$10,000 for a willful violation for each unlawful disclosure); 410 ILCS 305/13
25 (providing for liquidated damages of \$2,000 for a negligent violation and \$10,000 for an intentional
26 or reckless violation); Wis. Stat. Ann § 252.15(8) (providing for statutory damages of \$2,000 for a
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⁵ Plaintiffs here did not bring a claim under Cal. Health & Safety Code § 120980 for this reason.

1 negligent violation and up to \$50,000 for an intentional violation); Me. Rev. Stat. tit. 5 § 19206
2 (providing for liquidated damages of \$1,000 for a negligent violation or \$5,000 for an intentional or
3 reckless violation); Mich. Comp. Laws § 333.5131 (providing for statutory damages of \$1,000);
4 Mont. Code Ann. § 50-16-1013 (providing for liquidated damages of \$5,000 for a negligent violation
5 or \$20,000 for an intentional or reckless violation); Del. Code Ann. tit 16 § 718 (providing for
6 liquidated damages of \$1,000 for a negligent violation or \$5,000 for an intentional or reckless
7 violation); Haw. Rev. Stat. Ann. § 325-102 (providing for a civil penalty of \$1,000 to \$10,000); 18
8 Vt. Stat. Ann. § 1001(e) (providing for a civil penalty of \$2,500 for a negligent violation or \$10,000-
9 \$25,000 for a willful or malicious disclosure); Va. Code Ann. §32.1-36.1 (\$100 for violation); W. Va.
10 Code Ann. § 16-3C-5 (providing for liquidated damages of \$1,000 for a negligent violation or \$10,000
11 for an intentional or malicious violation). After review of these statutes, Plaintiffs’ counsel here
12 concluded none of these laws are so significantly different from each other, either in substance or
13 relief provided, as to warrant any structure that provides for differing allocations based on the state
14 of Settlement Class Members.

15 For any particular state law, Defendant may argue that the representative plaintiff or class
16 member would have to show some cognizable harm beyond the violation of the statute itself. For
17 example, under Missouri law, only an “aggrieved” person has the right to obtain relief. Mo. Rev.
18 Stat. § 191.656 (6). Defendant would argue that Missouri Doe here was not aggrieved because he
19 would not be able to affirmatively identify anyone who he knew saw the Mailer.

20 Notably, the issue of differing state laws was also raised in *Aetna*, with a plaintiff from
21 Missouri threatening to oppose preliminary approval based on allegedly unique aspects of Missouri
22 law. (*See Albanese Decl. Ex. 5 at 4-5.*) The court ultimately approved the settlement and did not
23 require any differences in allocation based on state law.

24 3. Other Claims In the Case

25 Finally, other claims in the case do not provide any liquidated or statutory damages. In the
26 operative complaint, Plaintiffs have brought claims for negligence, invasion of privacy, breach of
27 contract, and under Mo. Rev. Stat. § 191.656. The potential issues with the Missouri and other state
28 statutory claims are discussed above. The common law claims presented challenges to recovery. To

1 recover Plaintiffs would have to present evidence of actual damages which would require individual
2 testimony. As it did in its motion to strike the class allegations, Defendant would argue that absent a
3 claim for liquidated or statutory damages, variation in individual damages would preclude class
4 certification because the case would not be manageable as individualized testimony would be needed
5 regarding everyone's experience of receiving the Mailer. (Defendant's Motion to Strike the Class
6 Allegations at 15 (Oct. 20, 2020).)

7 Further, providing such testimony can be difficult and retraumatizing. Based on Plaintiffs'
8 counsel's experience in representing people living with HIV or concerned about acquiring HIV,
9 people facing stigmatic harms are reluctant to step forward and testify in court regarding their
10 damages. Especially where, as is here, the class members are concerned about maintaining their
11 privacy and may simply have foregone the opportunity to seek relief rather than testify in court.

12 Finally, while Plaintiffs are confident that Gilead's negligence could be established,
13 establishing recklessness, willfulness, or any state of mind justifying punitive damages would present
14 significant challenges as the standard for punitive damages is high. *See, e.g.*, Ca. Civ. Code. § 3294
15 (requiring party to prove by "clear and convincing evidence that defendant has been guilty of
16 oppression, fraud, or malice"). And in any case that will eventually be decided by a fact finder, there
17 is always a risk that the fact finder does not award any damages, especially when the harms are non-
18 physical in nature.

19 For these reasons, Plaintiffs' counsel insisted on the settlement structure set forth here. As
20 reliving the experience of receiving the Mailer could have been traumatizing, Plaintiffs' counsel
21 sought to ensure that all Settlement Class Members would receive a meaningful automatic payment
22 without the need to submit any sort of claim form. As for an expected claims rate, the claims rates in
23 *Aetna* and *CVS* were 7.88% and 6.35%, respectively. (Albanese Decl. Ex. 6 at 1; Ex. 7 at 1.)
24 Plaintiffs' counsel would expect a claims rate here to be in that range. With a claims rate of 5%, the
25 maximum average payments would be \$581. With a claims rate of 10%, the maximum average
26 payment would be \$250. Based on their experience in this case and the differences in asserted harms
27 between this case and *Aetna*, Plaintiffs' counsel believes that the claims rate here will be closer to 5%
28 than 10%. Given all the risks of proceeding, Plaintiffs' counsel believes that the automatic \$100 base

1 payment to all Settlement Class Members, with the option to submit a claim form for additional
2 alleged harms, is a fair and reasonable settlement of the claims here and provides relief and closure
3 for the Settlement Class now rather than potentially years in the future. (Goldfein Decl. ¶ 9.) And
4 once again, if a Settlement Class Members believes these amounts are inadequate, the Settlement
5 Class Member is free to opt-out of the settlement and pursue their own claims.

6 In conclusion, the \$4,000,000 amount represents a fair and adequate settlement given the facts
7 of the case, the strengths and weaknesses of the claims of the Settlement Class, and all the other
8 attendant risks of litigation.

9 **B. Settlement Class Definition**

10 The Court expressed concern in the Tentative Ruling that the class was not ascertainable. The
11 parties have amended the settlement agreement to define the term Mailer and have clarified the use
12 of the term in the Notice. (Albanese Decl., Ex. 1, Amended Settlement Agreement § 1.N & Exs. C-
13 D.) Moreover, Defendant represents that it has gathered the list of Settlement Class Members.

14 **C. Adequacy and Typicality of the Proposed Class Representatives**

15 The Court’s Tentative Ruling asked for evidence that Plaintiffs “received the same Mailer
16 from Defendant as the Settlement Class” or that “they suffered the same or similar injuries as the rest
17 of the class members.” (TR at 17 (quoting Plaintiffs’ Motion for Preliminary Approval).)

18 All Plaintiffs received the Mailer and experienced similar injuries as Settlement Class
19 Members. (Albanese Decl., Ex. 1, Amended Settlement Agreement Recital B; Ex. 8.) The typicality
20 inquiry does not require that the named plaintiff incur the same amount of damages as other class
21 members. *See In re Wal-Mart Stores, Inc. Wage & Hour Litig.*, No. C 06-02069 SBA SMITH, 2008
22 WL 413749, at *11 (N.D. Cal. Feb. 13, 2008) (stating “[d]ifferences in the degree of harm suffered,
23 or even in the ability to prove damages, do not vitiate the typicality of a representative’s claims”).

24 **D. Qualifications of the Settlement Administrator**

25 With this filing, Plaintiffs submit the Declaration of Scott M. Fenwick from Kroll Settlement
26 Administration (“Kroll”), which lays out Kroll’s qualifications and its ability to comply with the
27 privacy protections of the settlement agreement. (*See generally* Fenwick Decl. & Ex. A.) Notably,
28

1 Kroll administered the CVS settlement, which as discussed above, involved the disclosure of HIV-
2 related information. (*Id.* ¶ 17.)

3 **E. Proposed Cy Pres Recipient**

4 With this filing, Plaintiffs submit the Declaration of Naina Khann from Positive Women’s
5 Network-USA (“PWN-USA”). As set forth in the Declaration, “PWN-USA is a national membership
6 body of women living with HIV and our allies that exists to strengthen the strategic power of women
7 living with HIV in the U.S.” (Khanna Decl. ¶ 3.) Further, their “members shape policy at the state
8 and federal level, fighting stigma and discrimination, and calling for full rights and dignity for all
9 people living with, and vulnerable to, HIV.” (*Id.* ¶ 8.) They are an appropriate *cy pres* recipient.

10 **F. Miscellaneous Issues**

11 **1. Email Notice**

12 The parties have submitted a proposed email notice with the Amended Settlement Agreement
13 as Exhibit D. The email notice is shorter than the full notice to avoid tripping spam filters. The email
14 notice links to the settlement website which contains the long form notice.

15 **2. Online Submission of Claim Forms**

16 The Amended Settlement Agreement states that claim forms may be submitted online.
17 (Albanese Decl., Ex. 1, Amended Settlement Agreement § 3.3.)

18 **3. Definition of Settlement Class in the Notice**

19 The revised notice matches the definition in the Amended Settlement Agreement. (*Id.*, Ex.
20 C.)

21 **4. Deidentification of opt-outs and objectors**

22 The revised notice informs class members who opt-out or object that their information will be
23 redacted and de-identified before distribution. (*Id.*)

24 **5. Objections**

25 The objection procedure in the revised notice now conforms to the Amended Settlement
26 Agreement. (*Id.*)

27 **6. Confidential Information**

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1 The revised notice informs Settlement Class Members of the measures being employed to
2 protect their confidentiality. (*Id.*)

3 **7. Challenges to Claims**

4 The revised Settlement Agreement provides a method for a Settlement Class Member to
5 respond to a challenge to a claim. (Albanese Decl., Ex. 1, Amended Settlement Agreement § 4.6.)

6 **8. Social Security Numbers and Claims Forms**

7 It is possible that claimant awards in this case could exceed \$600. Settlement payments over
8 \$600 for a case like this are considered taxable income and the settlement administrator must report
9 these payments to the IRS using a 1099-MISC.⁶ Social security numbers are necessary in order to
10 fill out the form 1099-MISC. (Fenwick Decl. ¶ 16.)

11 This issue arose in the *Aetna* matter. There, social security numbers were not required on the
12 claim form and Aetna did not have social security numbers for many class members. (Albanese Decl.,
13 Ex. 9.) The social security number requirement here is designed to prevent these problems.

14 **9. Contacting the AIDS Law Project of Pennsylvania**

15 Settlement Class Members are instructed to contact the AIDS Law Project of Pennsylvania in
16 addition to the settlement administrator because in Plaintiffs' counsel's experience, Settlement Class
17 Members will be more comfortable asking their questions or discussing their claims with an
18 experienced advocacy organization who is well-versed in the concerns of Settlement Class Members
19 rather than a settlement administrator who has no established cultural competency in issues
20 surrounding HIV. (Goldfein Decl. ¶ 5.)

21 Dated: December 23, 2022

Respectfully submitted,

22 /s/ John G. Albanese

23 John Albanese*

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27 Shanon J. Carson (PA 85957)*

28 ⁶ <https://www.lexology.com/library/detail.aspx?g=c595f7d7-4386-48b4-a04e-9fbcf8a33c0b>

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**pro hac vice*

Counsel for Plaintiffs and the Proposed Settlement Class

1 **PROOF OF SERVICE**

- 2
- 3 1. I am over eighteen years of age and not a party to this action. I am employed in the
- 4 County of Hennepin, State of Minnesota. My business address is 1229 Tyler Street NE,
- 5 Suite 205, Minneapolis, Minnesota 55413.
- 6 2. On December 23, 2022, I served the following document(s):

7 **PLAINTIFFS' SUPPLEMENTAL SUBMISSION**

8 **DECLARATION OF JOHN G. ALBANESE, WITH EXHIBITS 1-10**

9 **DECLARATION OF RONDA GOLDFEIN;**

10 **DECLARATION OF SCOTT FENWICK, WITH EXHIBIT A; and**

11 **DECLARATION OF NAINA KHANNA**

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

13 See attached Service List.

- 14 4. The documents were served by the following means:

- 15 **By U.S. Mail.** I enclosed the document(s) in a sealed envelope or package addressed to the
- 16 person(s) at the address(es) in Item 3 and (**check one**):
- 17 deposited the sealed envelope with the United States Postal Service, with the postage
- 18 fully prepaid.
- 19 placed the envelope for collection and mailing, following our ordinary business
- 20 practices. I am readily familiar with this business' practice for collecting and processing
- 21 correspondence for mailing. On the same day the correspondence is placed for collection
- 22 and mailing, it is deposited in the ordinary course of business with the United States Postal
- 23 Service, in a sealed envelope with postage fully prepaid.
- 24 I am employed in the county where the mailing occurred. The envelope or package was
- 25 placed in the mail at San Diego, California
- 26 **By Overnight Delivery/Express Mail.** I enclosed the documents and an unsigned copy of
- 27 this declaration in a sealed envelope or package designated by [**name of delivery company**
- 28 **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 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 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 regularly maintained by [**name of delivery company or U.S. Postal**
- Service for Express Mail**] or delivered to a courier or driver authorized by [**name of**
- delivery company**] to receive documents.

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- 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 professional messenger service for service. (*See* attached Declaration(s) of Messenger.)

- By Facsimile Transmission.** 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 unsigned copy of this declaration to the person(s) at the facsimile numbers listed in Item 3 on **[date]**, 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.

- 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 **[date]**.

- Via Court Notice of Electronic Filing.** The document(s) will be served by the court via NEF and hyperlink to the document(s). On **[date]**, 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 December 23, 2022 on the person(s) listed in Item 3 at the email addresses indicated on the attached service list.

- 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: December 23, 2022 /s/ Jean Hibray
Jean Hibray

1 **SERVICE LIST**

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