

1 DURIE TANGRI LLP
2 DARALYN J. DURIE (SBN 169825)
3 ddurie@durietangri.com
4 217 Leidesdorff Street
5 San Francisco, CA 94111
6 Telephone: (415) 362-6666
7 Facsimile: (415) 236-6300

8 HILLIARD & SHADOWEN LLP
9 STEVE D. SHADOWEN (*pro hac vice*)
10 steve@hilliardshadowenlaw.com
11 1135 W. 6th Street, Suite 125
12 Austin, TX 78703
13 Telephone: (855) 344-3298
14 Facsimile: (361) 882-3015

15 HAGENS BERMAN SOBOL SHAPIRO LLP
16 STEVE W. BERMAN (*pro hac vice*)
17 steve@hbsslaw.com
18 1301 Second Avenue, Suite 2000
19 Seattle, WA 98101
20 Telephone: (206) 623-7292
21 Facsimile: (206) 623-0594

22 *Proposed Interim Co-Lead Class Counsel*

23 (Additional Counsel for Plaintiffs Listed on Signature Page)

24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PETER STALEY, et al.,

Plaintiffs,

v.

GILEAD SCIENCES, INC., et al.,

Defendants.

Case No. 3:19-cv-02573-EMC

**CORRECTED CONSOLIDATED CLASS
ACTION COMPLAINT**

DEMAND FOR JURY TRIAL

TABLE OF CONTENTS

1

2 I. INTRODUCTION 3

3 II. JURISDICTION AND VENUE 7

4 III. INTRADISTRICT ASSIGNMENT 8

5 IV. THE PARTIES 8

6 V. SCIENCE BACKGROUND 16

7 VI. REGULATORY BACKGROUND 21

8 A. Approval of Generic Drugs and Substitution of Generics for Branded Drugs 21

9 B. The Hatch-Waxman Amendments 22

10 C. Paragraph IV Certifications 23

11 D. Approvals Under 21 U.S.C. § 355(b)(2) 25

12 E. New Chemical Entity Exclusivity 25

13 F. Effects of AB-Rated Generic Competition 26

14 VII. DEFENDANTS’ ANTICOMPETITIVE CONDUCT 27

15 A. Unlawful No-Generics Restraints: Gilead and Japan Tobacco 29

16 B. Unlawful No-Generics Restraints: Gilead and BMS 32

17 C. Unlawful No-Generics Restraints: Gilead and Janssen 36

18 D. Increased Prices and Reduced Innovation 43

19 1. The No-Generics Restraints increased prices. 43

20 2. The No-Generics Restraints reduced innovation. 47

21 E. Gilead’s Unlawful Degrading of Stribild 56

22 F. Gilead’s Unlawful Degrading of Standalone TAF 58

23 1. Gilead anticompetitively withheld standalone TAF in 2015-2016 59

24 2. Gilead anticompetitively withheld standalone TAF 10mg 60

25 3. Gilead anticompetitively withheld an HIV indication for standalone TAF 62

26 4. Gilead degraded standalone TAF with anticompetitive purpose and effect. 63

27 G. Gilead’s Unlawful Regulatory Gaming 65

28 1. TAF is vulnerable to generic competition in May 2023. 66

1 2. Gilead withheld an HIV indication in order to impair competition.....69

2 H. Gilead’s Anticompetitive Conduct to Delay Entry of Generic Viread, Truvada, and

3 Atripla71

4 1. Most-Favored-Entry and Most-Favored-Entry-Plus clauses delay generic

5 entry.71

6 2. Gilead used MFEs and MFEPs to delay generic entry.73

7 VIII. MARKET POWER.....80

8 IX. MARKET EFFECTS90

9 X. ANTITRUST IMPACT AND EFFECT ON INTERSTATE AND INTRASTATE

10 COMMERCE.....92

11 XI. CLASS ACTION ALLEGATIONS93

12 XII. ONGOING AND FUTURE HARM.....95

13 XIII. CLAIMS FOR RELIEF99

14 XIV. DEMAND FOR JUDGMENT.....134

15 XV. JURY DEMAND135

1 Plaintiffs, on behalf of themselves and all others similarly situated (the “Class,” as defined
2 below), on personal knowledge with respect to facts pertaining to them and upon information and belief
3 as to other matters, bring this class action complaint against Defendants Gilead Sciences, Inc., Gilead
4 Holdings, LLC, Gilead Sciences, LLC, Gilead Sciences Ireland UC (together, “Gilead”), Bristol-Myers
5 Squibb Company, E. R. Squibb & Sons, L.L.C. (together, “BMS”), Japan Tobacco, Inc. (“Japan
6 Tobacco”), Janssen R&D Ireland, and Johnson & Johnson (together, “Janssen”) (collectively,
7 “Defendants”) for damages, injunctive relief, and other relief pursuant to the federal antitrust laws and
8 state antitrust and consumer protection laws.

9 10 I. INTRODUCTION

11 1. Gilead and its coconspirators have engaged in a long-running scheme to restrain
12 competition with respect to some of the most important drugs used to treat Human Immunodeficiency
13 Virus (“HIV”) infection—a disease which, if left untreated, destroys the immune system, leading to
14 Acquired Immunodeficiency Syndrome (“AIDS”) and eventual death. Through an array of
15 anticompetitive practices—including horizontal agreements constituting per se violations of the antitrust
16 laws—Gilead has acquired and maintained a monopoly in the market for drugs that comprise the modern
17 HIV treatment regimen known as “combination antiretroviral therapy” (“cART”). The scheme has
18 enabled Gilead and its coconspirators to unlawfully extend patent protection for their drugs, impair entry
19 by would-be generic competitors, and charge exorbitant, supracompetitive prices for the drugs that
20 people living with HIV need to survive.

21 2. Gilead dominates the class of drugs that target HIV known as “antiretrovirals,” which are
22 essential to effective HIV therapy. Modern antiretroviral drug regimens comprise a combination or
23 “cocktail” of drugs, most often consisting of two nucleotide/nucleoside analogue reverse transcriptase
24 inhibitors (“NRTIs”) taken with at least one antiretroviral drug of another class, such as an integrase
25 inhibitor, commonly referred to as “third agents.” These antiretroviral cocktails are known as cART
26 regimens. During most of the relevant time, Gilead was the exclusive maker (and is still the dominant
27 maker) of one of the principal NRTIs used in cART regimens: Tenofovir. By controlling the market for
28 Tenofovir, and through its collusive agreements with its coconspirators, Gilead now dominates the

1 market for cART. Today more than 80% of patients starting an HIV regimen in the United States, and
2 more than 80% of continuing patients, take one or more of Gilead’s products every day. Gilead’s sales of
3 these products in the United States alone are more than \$11 billion annually.

4 3. Gilead maintains a stranglehold on the cART market even though Tenofovir was
5 discovered more than 30 years ago by researchers in the Czech Republic. In 2001, Gilead began
6 marketing its patented formulation of the compound known as tenofovir disoproxil (“TDF”), quickly
7 reaching sales in the hundreds of millions of dollars. Gilead expected that generic manufacturers would
8 challenge the validity of its Tenofovir patents and potentially enter the market as early as 2009. So, in
9 order to head off the threat of generic competition, Gilead and each of its coconspirators BMS, Janssen,
10 and Japan Tobacco entered into a series of collusive and illegal horizontal agreements providing that
11 each coconspirator would not compete against Gilead’s Tenofovir, and would effectively block other
12 companies from competing against Tenofovir, *even after Gilead’s Tenofovir patents expired.*

13 4. Gilead and its coconspirators coformulated TDF with the coconspirators’ third agents into
14 single pills known as fixed-dose-combination drugs (“FDCs”). Each of the joint development agreements
15 prevented the coconspirator from creating or marketing a competing version of the FDC formulated with
16 generic versions of Gilead’s TDF even after Gilead’s patents expired (hereinafter a “No-Generics
17 Restraint”). This gave Gilead an enormous financial incentive to move prescriptions from its standalone
18 version of TDF to the FDCs, which would be insulated from generic competition even after TDF’s
19 patents expired. And it meant that Gilead’s most likely competitors—the companies that could formulate
20 FDCs with generic alternatives to TDF—had instead promised not to compete with Gilead. In exchange,
21 the No-Generics Restraints and joint development agreements enabled Gilead and the coconspirator to
22 share the artificially inflated profits from each other’s sales.

23 5. As part of the unlawful scheme’s quid pro quo, Gilead also agreed to shield BMS and
24 Janssen’s HIV drugs from imminent generic competition by allowing them to coformulate FDCs that
25 combined their vulnerable products with a Gilead booster drug, Cobicistat, which enjoyed much longer
26 patent protection. Just as BMS and Janssen agreed not to market a competing FDC even after Gilead’s
27 patents expired, Gilead returned the favor by agreeing not to market a competing FDC after the BMS and
28 Janssen patents expired.

1 6. Collectively, the unlawful agreements between Gilead and each of its coconspirators
2 effectively foreclosed competition for drugs essential to cART regimens. In 2018, the agreements
3 covered more than 75% of all sales of NRTIs, more than 50% of all sales of third agents, and more than
4 75% of all sales of booster drugs for use in a cART regimen in the United States.

5 7. In a relentless effort to reap ever-more monopoly profits, Gilead engaged in further
6 anticompetitive conduct to reinforce the exclusionary effects of these illegal exclusion agreements. When
7 generic competition to TDF became imminent, Gilead amended the No-Generics pacts to preclude its
8 coconspirators from competing not only against Gilead's then-marketed TDF but also against a new
9 formulation of the compound, tenofovir alafenamide ("TAF"), and further extended the term of the No-
10 Generics Restraints. Gilead had been holding TAF in reserve for more than a decade to roll out later as
11 part of its scheme to impair competition once generic entry was imminent. With the extended No-
12 Generics Restraints in place, Gilead reformulated the original TDF-based FDCs with TAF and then used
13 anticompetitive tactics to drive patients towards the reformulated FDCs, which are shielded from
14 competition in some instances until at least 2032.

15 8. Gilead drove patients into treatment with TAF-based FDCs by intentionally degrading
16 some of its key products. Gilead knew before seeking FDA approval of its TDF-based FDC marketed as
17 Stribild that the dosage of TDF in it was much higher than needed and would subject patients to
18 increased risk of significant adverse side effects. But Gilead was already planning to eventually replace
19 that product with a TAF-based version. Refusing to reduce the dosage in the TDF version artificially
20 magnified the safety differences between it and the TAF-based version, helping Gilead to drive patients
21 to the TAF version and its much longer No-Generics Restraint.

22 9. Gilead also pressed patients to TAF-based FDCs by intentionally delaying and degrading
23 the standalone version of TAF. TAF has a substantially lower incidence than TDF of significant adverse
24 side effects. Beginning in 2015, Gilead intentionally steered patients to the TAF-based FDCs by
25 degrading standalone TAF in at least three ways:

- 26 (a) Gilead intentionally delayed applying for FDA approval of standalone TAF by a
27 year, ensuring that the new, safer version of Tenofovir was available during that
28 time only through purchase of a Gilead TAF-based FDC;

1 (b) When Gilead finally did make TAF available as a standalone product, Gilead
2 intentionally degraded its safety by making it available only in a much greater
3 dose—with consequent greater risk of side effects—than the dose that Gilead
4 used in its FDCs; and

5 (c) Gilead did not seek FDA approval for the use of standalone TAF to treat HIV
6 (getting it approved instead only for treatment of Hepatitis B), even while
7 seeking and obtaining FDA approval for its use in treating HIV when used as a
8 component of a Gilead FDC.

9 10. Gilead’s refusal to get an HIV indication for standalone TAF also imposed a regulatory
10 barrier to generic competition. Gilead did not seek that indication for standalone TAF despite designing
11 and intending the drug as an HIV treatment and submitting data to the FDA showing its safety and
12 efficacy in treating HIV. Gilead’s decision to forgo the HIV indication for standalone TAF forced would-
13 be competitors to re-perform time-consuming and expensive clinical trials that Gilead had already
14 performed. Forgoing this HIV indication costs Gilead hundreds of millions of dollars in sales of
15 standalone TAF every year, but blocking competitors’ entry into the market was even more valuable.

16 11. Timely competition from generic manufacturers could have complicated Gilead and its
17 coconspirators’ schemes. The world’s largest generic-pharmaceutical manufacturer, Teva
18 Pharmaceuticals, started challenging the validity of Gilead’s vulnerable patents covering its NRTIs in
19 2009. Instead of defending its portfolio, however, Gilead settled with Teva, inducing it to withdraw its
20 challenges and significantly delay entering the market with its generic version of the Gilead NRTIs.
21 Gilead induced Teva’s delay by including anticompetitive “Most Favored Entry” clauses in settlement
22 agreements with Teva and other generic manufacturers. Those pacts assured Teva that it would have an
23 exclusivity period with the only generic on the market, in exchange for which Teva agreed to delay
24 marketing its generic products.

25 12. This delay bought Gilead the time it needed to move its customers from TDF-based FDCs
26 (about to face generic competition) to TAF-based FDCs. By 2017, when TDF finally faced generic
27 competition, Gilead had switched more than 60% of its HIV product sales to the reformulated, TAF-
28 based FDCs protected from competition by its unlawful agreements with BMS, Janssen, and Japan

1 Tobacco.

2 13. The consequences of Gilead and its coconspirators' unlawful conduct have been, and
3 continue to be, burdensome to the government and catastrophic for many patients. The United States
4 federal government alone spends over \$20 billion annually on HIV treatment, most of it on these
5 Defendants' dramatically overpriced drugs. Even more of the costs of these unlawfully monopolized
6 drugs are borne by union health and welfare funds, other third-party payors, state and local governments,
7 and the patients themselves. Worse, the high cost of these life-saving medications prevents many patients
8 from gaining access to the drugs at all. Half of those in this country living with HIV are not accessing the
9 required medications, and fully 400,000 more Americans should be on HIV treatment. The high prices of
10 cART regimens contribute to that problem.

11 14. Defendants' anticompetitive conduct has also stifled innovation, causing tens of thousands
12 of people living with HIV to needlessly suffer debilitating side effects from inferior products. Gilead
13 delayed getting FDA approval of TAF for more than a decade while it used the illegal No-Generics
14 Restraints, rather than product innovations, to protect its market share. The unlawful restraints also
15 prohibited competing manufacturers from gaining access to the pharmaceutical compounds needed to
16 formulate new, innovative, superior, and substantially less expensive treatments—precluding the
17 development and marketing of more than two dozen specifically identifiable HIV treatments. Gilead's
18 unlawful scheme also altogether foreclosed the availability of an affordable method of pre-exposure
19 prophylaxis (PrEP) that would prevent HIV infection in the first place, crippling this nation's ability to
20 stop new HIV infections.

21 15. To remedy these and the other devastating effects of Defendants' anticompetitive conduct
22 set forth in detail below, Plaintiffs seek nationwide injunctive relief pursuant to Section 16 of the Clayton
23 Act, 15 U.S.C. § 26, because, unless enjoined, the Defendants' unlawful conduct will continue
24 unchecked and Plaintiffs and those similarly situated will continue to suffer. Plaintiffs also assert claims
25 for damages for Defendants' continuing violations of state antitrust and consumer protection laws.

26
27 **II. JURISDICTION AND VENUE**

28 16. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because this is

1 a class action in which the aggregate amount in controversy exceeds \$5,000,000 and at least one member
2 of the putative class is a citizen of a state different from that of one of the Defendants. The Court further
3 has jurisdiction over this action pursuant to 15 U.S.C. § 26 and 28 U.S.C. §§ 1331 and 1337 in that
4 Plaintiffs bring claims under Section 16 of the Clayton Act, 15 U.S.C. § 26, for injunctive and equitable
5 relief to remedy Defendants' violations of Sections 1 and 2 of the Sherman Antitrust Act, 15 U.S.C. §§ 1
6 and 2. The Court also has supplemental jurisdiction over the pendent state-law claims pursuant to 28
7 U.S.C. § 1367.

8 17. Defendants transact business within this district. Venue is appropriate within this district
9 under 28 U.S.C. §1391(b) and (c), and section 12 of the Clayton Act (15 U.S.C. § 22).

11 III. INTRADISTRICT ASSIGNMENT

12 Pursuant to Local Rule 3-2(c), this is an Antitrust Class Action to be assigned on a district-wide
13 basis.

15 IV. THE PARTIES

16 18. Plaintiff Peter Staley is an adult, individual consumer, residing in Shohola, Pennsylvania.
17 Mr. Staley purchased and/or paid for some or all of the purchase price for one or more of brand Viread,
18 Emtriva, Truvada, Atripla, Complera, Stribild, Odefsey, Genvoya, Descovy, Vemlidy, Reyataz, Evotaz,
19 Prezista, Prezcobix, Edurant, Symtuza, Tybost, or other cART drugs other than for re-sale, in
20 Pennsylvania and New York, at supracompetitive prices during the Class Period and has thereby been
21 injured. In addition, there is a substantial probability that Mr. Staley will in the future purchase one or
22 more of these products manufactured by the Defendants, and he has purchased and/or intends to purchase
23 generic versions of those drugs, other than for re-sale, once they become available.

24 19. Plaintiff Steve Fuller is an adult, individual consumer, residing in Cheverly, Maryland.
25 Mr. Fuller purchased and/or paid for some or all of the purchase price for one or more of brand Viread,
26 Emtriva, Truvada, Atripla, Complera, Stribild, Odefsey, Genvoya, Descovy, Vemlidy, Reyataz, Evotaz,
27 Prezista, Prezcobix, Edurant, Symtuza, Tybost, or other cART drugs other than for re-sale, in Maryland,
28 at supracompetitive prices during the Class Period and has thereby been injured. In addition, there is a

1 substantial probability that Mr. Fuller will in the future purchase one or more of these products
2 manufactured by the Defendants, and he has purchased and/or intends to purchase generic versions of
3 those drugs, other than for re-sale, once they become available.

4 20. Plaintiff Gregg S. Gonsalves, PhD is an adult, individual consumer, residing in New
5 Haven, Connecticut. Dr. Gonsalves purchased and/or paid for some or all of the purchase price for one or
6 more of brand Viread, Emtriva, Truvada, Atripla, Complera, Stribild, Odefsey, Genvoya, Descovy,
7 Vemlidy, Reyataz, Evotaz, Prezista, Prezcobix, Edurant, Symtuza, Tybost, or other cART drugs other
8 than for re-sale, in Connecticut, at supracompetitive prices during the Class Period and has thereby been
9 injured. In addition, there is a substantial probability that Dr. Gonsalves will in the future purchase one or
10 more of these products manufactured by the Defendants, and he has purchased and/or intends to purchase
11 generic versions of those drugs, other than for re-sale, once they become available.

12 21. Plaintiff Brenda Emily Goodrow is an adult, individual consumer, residing in Milford,
13 Pennsylvania. Ms. Goodrow purchased and/or paid for some or all of the purchase price for one or more
14 of brand Viread, Emtriva, Truvada, Atripla, Complera, Stribild, Odefsey, Genvoya, Descovy, Vemlidy,
15 Reyataz, Evotaz, Prezista, Prezcobix, Edurant, Symtuza, Tybost, or other cART drugs other than for re-
16 sale, in New York and Pennsylvania, at supracompetitive prices during the Class Period and has thereby
17 been injured. In addition, there is a substantial probability that Ms. Goodrow will in the future purchase
18 one or more of these products manufactured by the Defendants, and she has purchased and/or intends to
19 purchase generic versions of those drugs, other than for re-sale, once they become available.

20 22. Plaintiff Andrew R. Spieldenner, PhD is an adult, individual consumer, residing in San
21 Diego, California. Dr. Spieldenner purchased and/or paid for some or all of the purchase price for one or
22 more of brand Viread, Emtriva, Truvada, Atripla, Complera, Stribild, Odefsey, Genvoya, Descovy,
23 Vemlidy, Reyataz, Evotaz, Prezista, Prezcobix, Edurant, Symtuza, Tybost, or other cART drugs other
24 than for re-sale, in New York and California, at supracompetitive prices during the Class Period and has
25 thereby been injured. In addition, there is a substantial probability that Dr. Spieldenner will in the future
26 purchase one or more of these products manufactured by the Defendants, and he has purchased and/or
27 intends to purchase generic versions of those drugs, other than for re-sale, once they become available.

28 23. Plaintiff Robert J. Vazquez is an adult, individual consumer, residing in Brooklyn, New

1 York. Mr. Vazquez purchased and/or paid for some or all of the purchase price for one or more of brand
2 Viread, Emtriva, Truvada, Atripla, Complera, Stribild, Odefsey, Genvoya, Descovy, Vemlidy, Reyataz,
3 Evotaz, Prezista, Prezcobix, Edurant, Symtuza, Tybost, or other cART drugs other than for re-sale, in
4 New York, at supracompetitive prices during the Class Period and has thereby been injured. In addition,
5 there is a substantial probability that Mr. Vazquez will in the future purchase one or more of these
6 products manufactured by the Defendants, and he has purchased and/or intends to purchase generic
7 versions of those drugs, other than for re-sale, once they become available.

8 24. Plaintiff Jason Walker is an adult, individual consumer, residing in Brooklyn, New York.
9 Mr. Walker purchased and/or paid for some or all of the purchase price for one or more of brand Viread,
10 Emtriva, Truvada, Atripla, Complera, Stribild, Odefsey, Genvoya, Descovy, Vemlidy, Reyataz, Evotaz,
11 Prezista, Prezcobix, Edurant, Symtuza, Tybost, or other cART drugs other than for re-sale, in New York,
12 at supracompetitive prices during the Class Period and has thereby been injured. In addition, there is a
13 substantial probability that Mr. Walker will in the future purchase one or more of these products
14 manufactured by the Defendants, and he has purchased and/or intends to purchase generic versions of
15 those drugs, other than for re-sale, once they become available.

16 25. Plaintiff Michael Warner is an adult, individual consumer, residing in East Point, Georgia.
17 Mr. Warner purchased and/or paid for some or all of the purchase price for one or more of brand Viread,
18 Emtriva, Truvada, Atripla, Complera, Stribild, Odefsey, Genvoya, Descovy, Vemlidy, Reyataz, Evotaz,
19 Prezista, Prezcobix, Edurant, Symtuza, Tybost, or other cART drugs other than for re-sale, in Georgia, at
20 supracompetitive prices during the Class Period and has thereby been injured. In addition, there is a
21 substantial probability that Mr. Warner will in the future purchase one or more of these products
22 manufactured by the Defendants, and he has purchased and/or intends to purchase generic versions of
23 those drugs, other than for re-sale, once they become available.

24 26. Plaintiff Jacob Zydonis is an adult, individual consumer, residing in Grass Valley,
25 California. Mr. Zydonis purchased and/or paid for some or all of the purchase price for one or more of
26 brand Viread, Emtriva, Truvada, Atripla, Complera, Stribild, Odefsey, Genvoya, Descovy, Vemlidy,
27 Reyataz, Evotaz, Prezista, Prezcobix, Edurant, Symtuza, Tybost, or other cART drugs other than for re-
28 sale, in California, at supracompetitive prices during the Class Period and has thereby been injured. In

1 addition, there is a substantial probability that Mr. Zydonis will in the future purchase one or more of
2 these products manufactured by the Defendants, and he has purchased and/or intends to purchase generic
3 versions of those drugs, other than for re-sale, once they become available.

4 27. Plaintiff Michael Snipe is an adult, individual consumer, residing in New York, New
5 York. Mr. Snipe purchased and/or paid for some or all of the purchase price for one or more of brand
6 Viread, Emtriva, Truvada, Atripla, Complera, Stribild, Odefsey, Genvoya, Descovy, Vemlidy, Reyataz,
7 Evotaz, Prezista, Prezcobix, Edurant, Symtuza, Tybost, or other cART drugs other than for re-sale, in
8 New York, at supracompetitive prices during the Class Period and has thereby been injured. In addition,
9 there is a substantial probability that Mr. Snipe will in the future purchase one or more of these products
10 manufactured by the Defendants, and he has purchased and/or intends to purchase generic versions of
11 those drugs, other than for re-sale, once they become available.

12 28. Plaintiff John Carroll is an adult, individual consumer, residing in New York, New York.
13 Mr. Carroll purchased and/or paid for some or all of the purchase price for one or more of brand Viread,
14 Emtriva, Truvada, Atripla, Complera, Stribild, Odefsey, Genvoya, Descovy, Vemlidy, Reyataz, Evotaz,
15 Prezista, Prezcobix, Edurant, Symtuza, Tybost, or other cART drugs other than for re-sale, in New York,
16 at supracompetitive prices during the Class Period and has thereby been injured. In addition, there is a
17 substantial probability that Mr. Carroll will in the future purchase one or more of these products
18 manufactured by the Defendants, and he has purchased and/or intends to purchase generic versions of
19 those drugs, other than for re-sale, once they become available.

20 29. Plaintiff Josh McDonald is an adult, individual consumer, residing in New York, New
21 York. Mr. McDonald purchased and/or paid for some or all of the purchase price for one or more of
22 brand Viread, Emtriva, Truvada, Atripla, Complera, Stribild, Odefsey, Genvoya, Descovy, Vemlidy,
23 Reyataz, Evotaz, Prezista, Prezcobix, Edurant, Symtuza, Tybost, or other cART drugs other than for
24 resale, in New York, at supracompetitive prices during the Class Period and has thereby been injured. In
25 addition, there is a substantial probability that Mr. McDonald will in the future purchase one or more of
26 these products manufactured by the Defendants, and he has purchased and/or intends to purchase generic
27 versions of those drugs, other than for re-sale, once they become available.

28 30. Plaintiff John Doe is an adult, individual consumer, residing in Wayne, Pennsylvania. Mr.

1 Doe purchased and/or paid for some or all of the purchase price for one or more of brand Viread,
2 Emtriva, Truvada, Atripla, Complera, Stribild, Odefsey, Genvoya, Descovy, Vemlidy, Reyataz, Evotaz,
3 Prezista, Prezcobix, Edurant, Symtuza, Tybost, or other cART drugs other than for re-sale, in
4 Pennsylvania, at supracompetitive prices during the Class Period and has thereby been injured. In
5 addition, there is a substantial probability that Mr. Doe will in the future purchase one or more of these
6 products manufactured by the Defendants, and he has purchased and/or intends to purchase generic
7 versions of those drugs, other than for re-sale, once they become available.

8 31. Plaintiff Gabriel Molina is an adult, individual consumer, residing in Woodlynne, New
9 Jersey. Mr. Molina purchased and/or paid for some or all of the purchase price for one or more of brand
10 Viread, Emtriva, Truvada, Atripla, Complera, Stribild, Odefsey, Genvoya, Descovy, Vemlidy, Reyataz,
11 Evotaz, Prezista, Prezcobix, Edurant, Symtuza, Tybost, or other cART drugs other than for re-sale, in
12 New Jersey, at supracompetitive prices during the Class Period and has thereby been injured. In addition,
13 there is a substantial probability that Mr. Molina will in the future purchase one or more of these products
14 manufactured by the Defendants, and he has purchased and/or intends to purchase generic versions of
15 those drugs, other than for re-sale, once they become available.

16 32. Plaintiff Troy Vazquez-Cain is an adult, individual consumer, residing in New York, New
17 York. Mr. Vazquez-Cain purchased and/or paid for some or all of the purchase price for one or more of
18 brand Viread, Emtriva, Truvada, Atripla, Complera, Stribild, Odefsey, Genvoya, Descovy, Vemlidy,
19 Reyataz, Evotaz, Prezista, Prezcobix, Edurant, Symtuza, Tybost, or other cART drugs other than for
20 resale, in New York, at supracompetitive prices during the Class Period and has thereby been injured. In
21 addition, there is a substantial probability that Mr. Vazquez-Cain will in the future purchase one or more
22 of these products manufactured by the Defendants, and he has purchased and/or intends to purchase
23 generic versions of those drugs, other than for re-sale, once they become available.

24 33. Plaintiff Fraternal Order of Police, Miami Lodge 20, Insurance Trust Fund (“FOP”) is a
25 governmental plan established and funded through contributions from the City of Miami and the plan’s
26 members, who are current and retired sworn officers from the City of Miami Police Department and their
27 dependents. FOP was established pursuant to a Trust Agreement for the purpose of providing medical,
28 surgical, and hospital care or benefits, including prescription drug benefits, to its members. FOP

1 maintains its principal place of Miami, Florida. The FOP purchased and/or provided reimbursement for
2 some or all of the purchase price for one or more of brand Viread, Emtriva, Truvada, Atripla, Complera,
3 Stribild, Odefsey, Genvoya, Descovy, Vemlidy, Reyataz, Evotaz, Prezista, Prezcobix, Edurant, Symtuza,
4 Tybost, and other cART drugs other than for re-sale, in Florida, North Carolina, Pennsylvania, and
5 Tennessee, at supracompetitive prices during the Class Period and has thereby been injured. In addition,
6 there is a substantial probability that FOP will in the future purchase one or more of these products
7 manufactured by the Defendants, and it has purchased and/or intends to purchase generic versions of
8 those drugs, other than for re-sale, once they become available.

9 34. Plaintiff Local No. 1 Health Fund is Taft Hartley multi-employer plan, affiliated with
10 Service Employees International Union Local 1, and is operated primarily for the benefit of the union's
11 members and their families who are covered by a collective bargaining agreement between the union and
12 its contributing employer. Local No. 1 Health Fund maintains its principal place of business in Downers
13 Grove, Illinois. Local No. 1 Health Fund purchased and/or provided reimbursement for some or all of the
14 purchase price for one or more of brand Viread, Emtriva, Truvada, Atripla, Complera, Stribild, Odefsey,
15 Genvoya, Descovy, Vemlidy, Reyataz, Evotaz, Prezista, Prezcobix, Edurant, Symtuza, Tybost, and other
16 cART drugs other than for re-sale, in Illinois, Indiana, Michigan, and Wisconsin, at supracompetitive
17 prices during the Class Period and has thereby been injured. In addition, there is a substantial probability
18 that Local No. 1 Health Fund will in the future purchase one or more of these products manufactured by
19 the Defendants, and it has purchased and/or intends to purchase generic versions of those drugs, other
20 than for re-sale, once they become available.

21 35. Plaintiffs Teamsters Local 237 Welfare Fund and Teamsters Local 237 Retirees' Benefit
22 Fund (collectively "Local 237") are two related health and welfare benefit plans headquartered and with
23 a principal place of business in New, York, New York. Local 237 administers the assets of defined
24 contribution plans formed to provide certain benefits including prescription drug benefits. Local 237
25 provides health and welfare benefits to active and retired members and participants who reside in
26 numerous locations in the United States. Local 237 purchased and/or provided reimbursement for some
27 or all of the purchase price for one or more of brand Viread, Emtriva, Truvada, Atripla, Complera,
28 Stribild, Odefsey, Genvoya, Descovy, Vemlidy, Reyataz, Evotaz, Prezista, Prezcobix, Edurant, Symtuza,

1 Tybost, or other cART drugs other than for re-sale, in New York, Florida, North Carolina, Maryland,
2 New Jersey, Pennsylvania, Tennessee, and Virginia at supracompetitive prices during the Class Period
3 and has thereby been injured. In addition, there is a substantial probability that Local 237 will in the
4 future purchase one or more of these products manufactured by the Defendants, and it has purchased
5 and/or intends to purchase generic versions of those drugs, other than for re-sale, once they become
6 available.

7 36. Plaintiff Pipe Trades Services MN Welfare Fund (“Pipe Trades Fund”) is a Taft-Hartley
8 fund authorized under Section 302(c)(5) of the National Labor Relations Act, with its principal place of
9 business in White Bear Lake, Minnesota, and an employee welfare benefit plan as defined in Section 3(1)
10 of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 et seq. Pipe
11 Trades Fund is the sponsor of a plan of benefits which provides health benefits, including prescription-
12 drug benefits, to approximately 16,000 active participants and retirees, plus their spouses and dependents.
13 Pipe Trades Fund purchased and/or provided reimbursement for some or all of the purchase price for one
14 or more of brand Viread, Emtriva, Truvada, Atripla, Complera, Stribild, Odefsey, Genvoya, Descovy,
15 Vemlidy, Reyataz, Evotaz, Prezista, Prezcobix, Edurant, Symtuza, Tybost, or other cART drugs other
16 than for re-sale, in Minnesota, among other locations at supracompetitive prices during the Class Period
17 and has thereby been injured. In addition, there is a substantial probability that Pipe Trades Fund will in
18 the future purchase one or more of these products manufactured by the Defendants, and it has purchased
19 and/or intends to purchase generic versions of those drugs, other than for re-sale, once they become
20 available.

21 37. Defendant Gilead Sciences, Inc. is a corporation organized and existing under the laws of
22 the State of Delaware, with a principal place of business at 333 Lakeside Drive, Foster City, California
23 94404.

24 38. Defendant Gilead Holdings, LLC is a limited liability company organized and existing
25 under the laws of the State of Delaware, with a principal place of business at 333 Lakeside Drive, Foster
26 City, California 94404. Gilead Holdings, LLC is a wholly-owned subsidiary of Gilead Sciences, Inc.

27 39. Defendant Gilead Sciences, LLC (formerly known as Bristol-Myers Squibb & Gilead
28 Sciences, LLC) is a limited liability company organized and existing under the laws of the State of

1 Delaware, with a principal place of business at 333 Lakeside Drive, Foster City, California 94404. Gilead
2 Sciences, LLC is a wholly-owned subsidiary of Gilead Sciences, Inc.

3 40. Defendant Gilead Sciences Ireland UC (formerly known as Gilead Sciences Limited) is an
4 unlimited liability company organized and existing under the laws of Ireland, with a principal place of
5 business at IDA Business & Technology Park, Carrigtohill, Co. Cork, Ireland. Gilead Sciences Ireland
6 UC is a wholly-owned subsidiary of Gilead Sciences, Inc.

7 41. Gilead Sciences, Inc., Gilead Holdings, LLC, Gilead Sciences, LLC, and Gilead Sciences
8 Ireland UC are collectively referred to herein as “Gilead.”

9 42. Defendant Bristol-Myers Squibb Company is a corporation organized and existing under
10 the laws of the State of Delaware, with a principal place of business at 430 East 29th Street, 14th Floor,
11 New York, NY 10016.

12 43. Defendant E. R. Squibb & Sons, L.L.C. is a limited liability company organized and
13 existing under the laws of the State of Delaware, with a principal place of business at 430 East 29th
14 Street, 14th Floor, New York, NY 10016. E. R. Squibb & Sons, L.L.C. is a wholly-owned subsidiary of
15 Bristol-Myers Squibb Company.

16 44. Bristol-Myers Squibb Company and E. R. Squibb & Sons, L.L.C. are collectively referred
17 to herein as “BMS.”

18 45. Defendant Japan Tobacco, Inc. (“Japan Tobacco”) is a corporation organized and existing
19 under the laws of Japan, with a principal place of business at JT Building, 2-1 Toranomom, 2-chome,
20 Minato-ku, Tokyo 105-8422, Japan.

21 46. Defendant Johnson & Johnson is a corporation organized and existing under the laws of
22 the State of New Jersey, with a principal place of business at One Johnson & Johnson Plaza, New
23 Brunswick, New Jersey 08933.

24 47. Defendant Janssen R&D Ireland (formerly known as Tibotec Pharmaceuticals) is a private
25 unlimited company organized and existing under the laws of Ireland, with a principal place of business at
26 Eastgate Village, Eastgate, Little Island, County Cork, Ireland. Janssen R&D Ireland is a subsidiary of
27 Johnson & Johnson.

28 48. Janssen R&D Ireland and Johnson & Johnson are collectively referred to herein as

1 “Janssen.”

2 49. All of the Defendants’ wrongful actions described in this complaint are part of, and in
3 furtherance of, the illegal monopolization and restraints of trade alleged herein, and were authorized,
4 ordered, and undertaken by the Defendants’ various officers, agents, employees, or other representatives
5 while actively engaged in the management of the Defendants’ affairs (or that of their predecessors-in-
6 interest) within the course and scope of their duties and employment, and/or with the actual, apparent,
7 and ostensible authority of the Defendants.

8
9 **V. SCIENCE BACKGROUND**

10 50. HIV is one of the deadliest human pandemics in history. Since the first cases were
11 reported in the summer of 1981, more than 35 million people across the world, and more than 700,000 in
12 the United States, have perished from the disease. In the United States, the HIV epidemic is still ongoing.
13 The Centers for Disease Control and Prevention (“CDC”) reported that in 2017, the last year for which
14 data is available, an estimated 1.1 million people in the United States were living with HIV, nearly
15 40,000 people were newly diagnosed with it, and more than 5,000 Americans perished from it.

16 51. If left untreated, HIV infection severely weakens a patient’s immune system, leading to a
17 condition known as Acquired Immunodeficiency Syndrome (“AIDS”). AIDS prevents the immune
18 system from fighting diseases against which the body is normally able to protect itself. These AIDS-
19 defining illnesses are generally the direct cause of death in people who die from untreated AIDS.

20 52. Over time, untreated HIV infection almost always leads to AIDS, and untreated AIDS
21 almost always results in death. The FDA approved azidothymidine (“AZT”), the first drug to treat HIV
22 infection, in 1987, but effective therapy to treat the disease was not available until 1996.

23 53. Two innovations led to the introduction of effective therapy for HIV. The first innovation
24 was the development of novel classes of powerful drugs that target the HIV virus, known as “third
25 agents” or “core agents.” Protease inhibitors, introduced in 1996, were the original type of third agent.
26 The second innovation was the discovery that an effective HIV treatment must include a combination or
27 “cocktail” of at least two drugs (initially three or more drugs) that inhibit the viral life cycle through at
28 least two different mechanisms of action, an approach known as “combination antiretroviral therapy” or

1 “cART.”

2 54. Effective cART reduces HIV viral replication to such an extent that the concentration of
3 virus (known as the “viral load”) in treated patients drops to “undetectable” levels, generally defined as
4 less than 50 RNA copies of HIV per milliliter of blood or plasma. This protects the immune system, and,
5 in most cases, significantly restores immunologic function in people with advanced HIV infection or
6 AIDS. People on effective cART can live healthy lives with relatively manageable side effects and
7 normal life expectancy. Furthermore, access to cART is vital for public health efforts to reduce the
8 number of new HIV infections. A person living with HIV who maintains an undetectable viral load
9 durably cannot transmit the virus to others.

10 55. However, cART does not cure an individual living with HIV. People living with HIV
11 must continually take the drugs that make up a cART regimen for the rest of their lives. If a person stops
12 taking a cART regimen, viral replication will soon restart, resulting in viral rebound and the resumed
13 destruction of a patient’s immune system.

14 56. A modern cART regimen most often consists of two drugs of the nucleotide/nucleoside
15 analogue reverse transcriptase inhibitor (“NRTI”) class—often referred to as an “NRTI backbone”—
16 taken with a third agent of another class. For example, all “first line” regimens that the United States
17 government recommends for treatment-naïve patients, i.e. those not previously treated for HIV, consist of
18 two NRTIs (either (i) Tenofovir with emtricitabine or lamivudine or (ii) abacavir with emtricitabine or
19 lamivudine) taken with a third agent of the integrase strand transfer inhibitor (“INSTI”) class, specifically
20 dolutegravir, bictegravir, or raltegravir. The use of abacavir is recommended for only a select patient
21 population and only with a particular third agent, dolutegravir (see Section VIII below).

22 57. Tenofovir is the most common NRTI used in cART regimens in the United States.
23 Tenofovir is unique among NRTIs approved to treat HIV infection, in that it is a nucleotide analogue,
24 rather than a nucleoside analogue. All NRTIs must be “activated” by the patient’s cells for the drug to
25 inhibit viral replication. This activation process is known as phosphorylation, and it comprises the
26 chemical addition of a phosphate group to a drug molecule through specific human enzymes known as
27 kinases. As shown in detail below (see Sections VII and VIII), Tenofovir’s dominance among NRTIs,
28 and the need to use NRTIs in almost all cART regimens, allowed Gilead and its coconspirators to

1 monopolize the market for cART regimens.

2 58. With the exception of Tenofovir, all NRTIs approved to treat HIV need to be triple
3 phosphorylated, i.e. three phosphate groups need to be sequentially added to the drug molecule for the
4 drug to be activated. Tenofovir, however, already has a single phosphate group analogue, a phosphonate
5 moiety, attached to the drug molecule. Thus, Tenofovir needs to be phosphorylated only twice by host
6 enzymes to be converted into its activated form, tenofovir-diphosphate (“TFV-DP”). This allows
7 Tenofovir to skip the slowest or “rate limiting” step in the NRTI activation process, the addition of the
8 first phosphate group to the drug, allowing Tenofovir to have superior intracellular pharmacokinetics
9 (fundamentally, allowing a higher concentration and longer half-life of the activated molecule (TFV-DP)
10 in the cell).

11 59. But the presence of a phosphonate group also comes with a distinct disadvantage: it
12 prevents Tenofovir, by itself, from being developed as an orally administered drug. To combat this
13 problem, Gilead developed two different “prodrugs” of Tenofovir to allow it to be swallowed. Prodrugs
14 are pharmacologically inactive compounds that can be more efficiently absorbed and then converted into
15 the active form of the drug within the body. Gilead markets two different Tenofovir prodrugs: tenofovir
16 disoproxil fumarate (“TDF”) and tenofovir alafenamide fumarate (“TAF”).

17 60. Tenofovir is almost always used alongside another NRTI, specifically either lamivudine
18 (“3TC”) or emtricitabine (“FTC”). When an HIV virus becomes resistant to either 3TC or FTC, the
19 virus’s susceptibility to Tenofovir *increases*. Thus, the combination of Tenofovir with either 3TC or FTC
20 makes it more difficult for the virus to develop resistance to a cART regimen.

21 61. 3TC and FTC are remarkably similar, varying by the substitution of only a single
22 hydrogen atom in 3TC, with a fluorine atom in FTC in the 5-prime position of the cytosine ring. Both the
23 United States Department of Health and Human Services (“HHS”) and the World Health Organization
24 (“WHO”) guidelines stipulate that the drugs, when used for HIV treatment, can be used interchangeably.
25 Any cART regimen using FTC can use 3TC instead, and vice versa, with no reduction in therapeutic
26 efficacy.

27 62. The ability to use 3TC instead of FTC is important to the antitrust claims here. Gilead
28 owns and currently still has patent protection for FTC, but generic 3TC has been available in the United

1 States since 2012. Thus, when generic Tenofovir (specifically, generic TDF) became available in
2 December 2017, the price of cART regimens should have dropped precipitously because two generic
3 NRTIs—3TC and TDF—were available in the marketplace. This complaint outlines how Gilead and its
4 coconspirators prevented those price drops from occurring.

5 63. The need to use multiple drugs in cART regimens can be a barrier to patient compliance.
6 To reduce this possible burden, multiple antiretroviral drugs are often coformulated together into a single
7 pill. These are known as “fixed-dose combinations” or “FDCs.” An FDC that has all of the components
8 of a complete cART regimen in a single pill is known as a “single tablet regimen” or “STR.”

9 64. In addition to NRTIs and third agents, another class of drugs is sometimes used in cART
10 regimens. Pharmacokinetic enhancers, commonly referred to as “boosters,” are drugs that are not taken
11 for their anti-HIV properties, but rather for their ability to inhibit the breakdown of some third agents.
12 Boosters work by inhibiting enzymes of the Cytochrome P450 class, which break down some
13 antiretroviral drugs. All modern protease inhibitors, as well as one integrase inhibitor, elvitegravir, are
14 commonly used with boosters.

15 65. Two drugs are used as boosters—ritonavir (“RTV”) and cobicistat (“COBI”). Ritonavir is
16 an antiretroviral drug of the protease inhibitor class that can be used in lower doses as a booster alongside
17 third agents to inhibit their breakdown. Cobicistat has no anti-HIV properties itself, but rather works just
18 to inhibit the breakdown of other antiretroviral drugs. Gilead owns and currently still has patent
19 protection on COBI.

20 66. Eleven distinct active pharmaceutical ingredients (“APIs”) are most pertinent to this case.

API	Abbreviation	Class of Drug
Lamivudine	3TC	NRTI
Tenofovir Disoproxil Fumarate	TDF	NRTI
Emtricitabine	FTC	NRTI
Tenofovir Alafenamide Fumarate	TAF	NRTI
Efavirenz	EFV	Third Agent—Non-Nucleoside Reverse Transcriptase Inhibitor (NNRTI)
Rilpivirine	RPV	Third Agent—NNRTI
Elvitegravir	EVG	Third Agent—INSTI

Atazanavir Sulfate	ATV	Third Agent—Protease Inhibitor
Darunavir Ethanolate	DRV	Third Agent—Protease Inhibitor
Ritonavir	RTV	Booster
Cobicistat	COBI	Booster

67. The following table describes seventeen of the drug products discussed in this complaint:

<u>Drug Name/ NDA Holder/ Approval Date</u>	1st NRTI	2nd NRTI	Third Agent	Booster	Type
<u>Viread</u> Gilead Oct 26, 2001	TDF	--	--	--	Standalone
<u>Emtriva</u> Gilead Jul 2, 2003	--	FTC	--	--	Standalone
<u>Truvada</u> Gilead Aug 2, 2004	TDF	FTC	--	--	FDC
<u>Atripla</u> Gilead Jul 12, 2006	TDF	FTC	EFV	--	STR
<u>Complera</u> Gilead Aug 10, 2011	TDF	FTC	RPV	--	STR
<u>Stribild</u> Gilead Aug 27, 2012	TDF	FTC	EVG	COBI	STR
<u>Genvoya</u> Gilead Nov 5, 2015	TAF	FTC	EVG	COBI	STR
<u>Odefsey</u> Gilead Mar 1, 2016	TAF	FTC	RPV	--	STR
<u>Descovy</u>	TAF	FTC	--	--	FDC

1	Gilead					
2	Apr 4, 2016					
3	<u>Vemlidy</u>	TAF	--	--	--	Standalone
4	Gilead					
5	Nov 10, 2016					
6	<u>Prezista</u>	--	--	DRV	--	Standalone
7	Janssen					
8	Jun 23, 2006					
9	<u>Revataz</u>	--	--	ATV	--	Standalone
10	BMS					
11	Jun 20, 2003					
12	<u>Evotaz</u>	--	--	ATV	COBI	FDC
13	BMS					
14	Jan 29, 2015					
15	<u>Prezcobix</u>	--	--	DRV	COBI	FDC
16	Janssen					
17	Jan 29, 2015					
18	<u>Edurant</u>	--	--	RPV	--	Standalone
19	Janssen					
20	May 20, 2011					
21	<u>Symtuza</u>	TAF	FTC	DRV	COBI	STR
22	Janssen					
23	July 17, 2018					
24	<u>Tybost</u>	--	--	--	COBI	Standalone
25	Gilead					
26	Sep 24, 2014					

VI. REGULATORY BACKGROUND

A. Approval of Generic Drugs and Substitution of Generics for Branded Drugs

68. Under the Federal Food, Drug, and Cosmetic Act (“FD&C Act”), manufacturers that want to sell a new drug product must file a New Drug Application (“NDA”) in order to obtain approval from

1 the Food and Drug Administration (“FDA”). 21 U.S.C. §§ 301–392. An NDA must include specific data
2 concerning the safety and effectiveness of the drug, as well as any information on applicable patents. 21
3 U.S.C. §§ 355(a) & (b).

4 69. When the FDA approves a brand manufacturer’s NDA, that manufacturer may list in the
5 FDA’s book of Approved Drug Products with Therapeutic Equivalence Evaluations (commonly referred
6 to as the “Orange Book”) any patents that the manufacturer believes it could reasonably assert against a
7 generic manufacturer that makes, uses, or sells a generic version of the brand drug before the listed
8 patents expire. The manufacturer may list in the Orange Book within 30 days of issuance any such
9 patents issued after NDA approval. 21 U.S.C. §§ 355 (b)(1) & (c)(2).

10 70. The FDA relies completely on the brand manufacturer’s truthfulness about a patent’s
11 validity and applicability; the FDA has neither the authority nor the resources to check the
12 manufacturer’s representations for accuracy or trustworthiness.

13 14 **B. The Hatch-Waxman Amendments**

15 71. The Hatch-Waxman Amendments, enacted in 1984, simplified the regulatory hurdles for
16 prospective generic manufacturers by eliminating the need for them to file lengthy and costly NDAs. *See*
17 Drug Price Competition and Patent Term Restoration Act, Pub. L. No. 98-417, 98 Stat. 1585 (1984). A
18 manufacturer seeking approval to sell a generic version of a brand drug may file an Abbreviated New
19 Drug Application (“ANDA”). An ANDA relies on the scientific findings of safety and effectiveness
20 included in the brand manufacturer’s original NDA, but must show that the generic drug contains the
21 same active ingredient(s), dosage form, route of administration, and strength as the brand drug—that is,
22 that the generic drug is the pharmaceutical equivalent of the brand drug. The FDA assigns generic drugs
23 that are pharmaceutical equivalents of branded drugs an “AB” rating.

24 72. The FD&C Act and Hatch-Waxman Amendments operate on the presumption that
25 bioequivalent drug products containing identical amounts of the same active ingredients in the same
26 route of administration and dosage form, and meeting applicable standards of strength, quality, purity and
27 identity, are therapeutically equivalent and may be substituted for one another. Thus, bioequivalence
28 demonstrates that the active ingredient of the proposed generic drug would be present in the patient’s

1 blood to the same extent and for the same amount of time as the branded counterpart. 21 U.S.C. §
2 355(j)(8)(B).

3 73. Through the Hatch-Waxman Amendments, Congress sought to expedite the entry of
4 generic drugs into the marketplace, thereby reducing healthcare expenses nationwide. Congress also
5 wanted to maintain and refine pharmaceutical manufacturers' incentives to create new and innovative
6 products.

7 74. The Hatch-Waxman Amendments achieved both goals, substantially increasing the rate of
8 generic entry into the marketplace and ushering in an era of historic high profits for brand manufacturers.
9 In 1983, before the Hatch-Waxman Amendments, only 35% of the top-selling drugs with expired patents
10 had generic versions available; by 1998 nearly all did. In 1984, prescription drug revenue for brand and
11 generic drugs totaled \$21.6 billion, and generic drugs accounted for 18.6% of prescriptions. By 2009,
12 total prescription drug revenue had soared to \$300 billion and generic drugs accounted for 75% of all
13 prescriptions.

14 **C. Paragraph IV Certifications**

15 75. To obtain FDA approval of an ANDA, a manufacturer must certify that the generic drug
16 will not infringe any patents listed in the Orange Book. Under Hatch-Waxman, a generic manufacturer's
17 ANDA must contain one of four certifications, that:

- 18 i. no patent for the brand drug has been filed with the FDA (a "Paragraph I certification");
19 ii. the patent for the brand drug has expired (a "Paragraph II certification");
20 iii. the patent for the brand drug will expire on a particular date and the generic manufacturer
21 does not seek to market its generic product before that date (a "Paragraph III
22 certification"); or
23 iv. the patent for the brand drug is invalid or will not be infringed by the generic
24 manufacturer's proposed product (a "Paragraph IV certification").

25 76. If a generic manufacturer files a Paragraph IV certification, a brand manufacturer has the
26 ability to delay FDA approval of an ANDA simply by suing the ANDA applicant for patent
27 infringement. If the brand manufacturer brings a patent infringement action against the generic filer
28 within 45 days of receiving notification of the Paragraph IV certification, the FDA may not grant final

1 approval to the ANDA until the earlier of (a) the passage of 30 months, or (b) the issuance of a decision
2 by a court that the patent is invalid or not infringed by the generic manufacturer's ANDA product.

3 77. As an incentive for manufacturers to seek approval of generic alternatives to brand drugs,
4 the first generic manufacturer to file an ANDA containing a Paragraph IV certification gets a period of
5 protection from competition from other generic versions of the drug approved through the ANDA
6 process ("ANDA Exclusivity"). The first generic applicant is entitled to 180 days of ANDA Exclusivity,
7 i.e., subject to certain limitations the FDA is precluded from approving any other generic version of the
8 product through the ANDA process until 180 days after the first-filer enters the market.

9 78. An applicant that is otherwise eligible for the 180-day ANDA Exclusivity forfeits it by
10 failing to obtain tentative FDA approval for the product within 30 months of filing the application. 21
11 U.S.C. 355 § (j)(5)(D)(i)(I)(aa)(BB). And under the "failure to market" provision, a first-filer forfeits its
12 180-day ANDA Exclusivity if (among other grounds for forfeiture) it fails to market its generic drug
13 within 75 days after another manufacturer obtains a final decision that the brand manufacturer's patents
14 are invalid or not infringed. 21 U.S.C. 355 § (j)(5)(D)(i)(I)(bb).

15 79. Moreover, as noted in detail below (see Section VII(H)), the 180-day ANDA Exclusivity
16 does not prevent a brand manufacturer from marketing as an "authorized generic" the product for which
17 it got approval through the NDA process.

18 80. The high profit margins on brand drugs and the predictable effects of generic entry—sales
19 switch quickly from the brand to the generic—create powerful financial incentives for brand
20 manufacturers to sue any generic competitor that files an ANDA with a Paragraph IV certification, even
21 if the competitor's product does not actually infringe the listed patent(s) and/or the patent is invalid and
22 unenforceable. Simply by listing the patents in the Orange Book and filing the lawsuit the brand
23 manufacturer can delay final FDA approval of an ANDA for up to 30 months.

24 81. By creating a statutory mechanism to enable early infringement litigation following
25 Paragraph IV certifications, the Hatch-Waxman Amendments encourage generic manufacturers to test
26 the validity of pharmaceutical patents and invent around them. The notion is that *bona fide* litigation will
27 result in rulings that either confirm legitimate patent protection or ferret out invalid, unenforceable, or
28 narrow drug patents.

1
2 **D. Approvals Under 21 U.S.C. § 355(b)(2)**

3 82. In addition to allowing drug manufacturers to seek expedited FDA approval under the
4 ANDA process, the Hatch-Waxman Amendments permit streamlined approval under Section 505(b)(2)
5 of the FD&C Act, 21 U.S.C. § 355(b)(2). In contrast to an ANDA, a Section 505(b)(2) application allows
6 greater flexibility as to the characteristics of the proposed product, relaxing the otherwise applicable
7 requirements that the product be in the same route of administration, dosage form, and strength as the
8 referenced brand drug.

9 83. Consequently, a drug approved through the Section 505(b)(2) process will not necessarily
10 be rated therapeutically equivalent to the referenced brand drug, and thus might not be automatically
11 substitutable for it at the pharmacy counter. In some circumstances, however, the FDA will designate a
12 drug approved through the Section 505(b)(2) process as AB-rated to the brand drug.

13 84. Like an NDA, an application under Section 505(b)(2) contains full reports of
14 investigations of the drug's safety and effectiveness. Unlike in an NDA, however, some of the required
15 information to establish safety and effectiveness in a Section 505(b)(2) application may come from
16 studies not conducted by the applicant. Instead, that information may come, for example, from the FDA's
17 finding of safety and effectiveness of the referenced brand drug or from published literature. This can
18 result in a much less expensive and much faster route to FDA approval, compared with submitting a full
19 NDA. In essence, an application under Section 505(b)(2) is a hybrid between an NDA and an ANDA.

20 85. In addition to new indications and different dosage forms, routes of administration, or
21 salts of chemical compositions, Section 505(b)(2) can be used to seek approval of new combinations of
22 existing drugs. On a case-by-case basis, the FDA determines which clinical trials or other data the
23 applicant will need to submit in order to get approval to market the drug.

24
25 **E. New Chemical Entity Exclusivity**

26 86. The Hatch-Waxman Amendments provide periods of exclusivity that benefit branded
27 pharmaceutical manufacturers, one of which is a 5-year new chemical entity ("NCE") exclusivity. The
28 NCE exclusivity provision states that, where the FDA has approved a new chemical entity (a drug

1 substance that the FDA had not previously approved), no other manufacturer may seek FDA approval for
2 a product containing that drug substance until five years after the FDA first approved it. 21 U.S.C. § 355
3 (j)(5)(F)(ii) & (c)(3)(E)(ii).

4 87. Under the FDA’s implementing regulations, if a drug product contains a new chemical
5 entity, the FDA is precluded from accepting any ANDA or application under 21 U.S.C. § 355(b)(2), for a
6 drug product that contains the same chemical entity until the 5-year NCE exclusivity period has expired.
7 21 C.F.R. § 314.108(b)(2).

8 88. Pursuant to the FDA’s “umbrella policy,” after a drug substance becomes eligible for 5-
9 year NCE exclusivity, products subsequently developed that contain the same drug substance also benefit
10 from the original 5-year NCE exclusivity until the original exclusivity period has expired. For example,
11 the FDA might in year 1 approve standalone drug X, which contains new drug substance A, and grant it
12 NCE exclusivity that expires in year 6. If the FDA later, in year 4, approves an FDC that contains
13 composition A, then the existing NCE exclusivity also applies to the FDC and also runs until year 6.

14 89. An NCE exclusivity has a profound impact on the timing of generic approvals, generally
15 precluding an applicant from even filing an ANDA for the entire 5-year NCE exclusivity life span. As an
16 exception, the applicant may file an ANDA after the first four years of the 5-year exclusivity if the
17 ANDA contains a Paragraph IV certification. But filing a Paragraph IV certification also subjects the
18 ANDA to a 30-month stay of FDA approval, which does not commence until the 5-year NCE exclusivity
19 expires. Thus, obtaining NCE exclusivity over a patent-protected drug may prevent the FDA from
20 approving a generic applicant for as long as 7.5 years from the start the of NCE exclusivity.

21 22 **F. Effects of AB-Rated Generic Competition**

23 90. Typically, AB-rated generics cost much less than their branded counterparts. Over time,
24 as more generic equivalents enter the marketplace for a drug and compete with each other, prices decline
25 rapidly. Because generic products are commodities that cannot be differentiated, the primary basis for
26 generic competition is price.

27 91. Since passage of the Hatch-Waxman Amendments, every State has adopted substitution
28 laws that either require or permit pharmacies to substitute AB-rated generic equivalents for branded

1 prescriptions (unless the prescribing doctor has specifically ordered otherwise). As a result of substitution
2 laws and other institutional features of the pharmaceutical marketplace, the marketing of AB-rated
3 generics results both in rapid price decline and rapid sales shift from the brand to the generic product.
4 Once a generic equivalent enters the marketplace, the generic quickly captures sales of the branded drug,
5 often garnering 80% or more of unit sales within the first six months. The Federal Trade Commission
6 (“Commission”) found that on average, within a year of generic entry, generics had captured 90% of
7 brand unit sales and (with multiple generics in the marketplace) prices had dropped 85%. *See Staff*
8 *Study, Pay-for-Delay: How Drug Company Pay-Offs Cost Consumers Billions, January 2010 at*
9 <http://www.ftc.gov/os/2010/01/100112payfordelayrpt.pdf>.

10 92. Brand manufacturers are well aware of the generics’ rapid erosion of their sales. Brand
11 manufacturers thus seek to extend their exclusivity for as long as possible, sometimes resorting to
12 unlawful means.

13 VII. DEFENDANTS’ ANTICOMPETITIVE CONDUCT

14 93. FDCs can reduce the number of pills that patients must take, thereby possibly improving
15 patients’ compliance with their drug regimens. Plaintiffs do not contend that creating or marketing FDCs,
16 as such, is anticompetitive. Nor do Plaintiffs contend that any statutory or regulatory exclusivity that
17 FDCs may enjoy is anticompetitive; Plaintiffs’ claims take those exclusivities as a given.

18 94. But Gilead and its coconspirators entered into a series of agreements that preclude the use
19 of generic components instead of Gilead’s products *even after its patents and regulatory exclusivities*
20 *have expired*. The coconspirators created a private hiatus from competition that the public law does not
21 provide. Those agreements are illegal per se.

22 95. Anticipating the possibility of imminent generic competition to its NRTIs—Viread (TDF),
23 Emtriva (FTC), and Truvada (TDF/FTC)—Gilead agreed with each of BMS, Janssen, and Japan Tobacco
24 to create and market FDCs that combined their third agents with Gilead’s NRTIs. Each agreement
25 included a No-Generics Restraint by which BMS, Janssen, and Japan Tobacco agreed not to create or
26 market a competing FDC made with generic or comparable versions of Gilead’s NRTIs even after the
27 patents on them expired.

28 96. Gilead’s patents on TDF, FTC, and TDF/FTC were weak, and as of 2004 Gilead expected

1 to encounter generic competition to Viread (TDF), Emtriva (FTC), and Truvada (TDF/FTC) as early as
2 2009, 2011, and 2011, respectively, if generic manufacturers successfully challenged the patents. The
3 Viread NCE exclusivity expired on October 26, 2006, so any 30-month stay blocking FDA approval of
4 competing generics could have expired as early as April 26, 2009. The Emtriva and Truvada NCE
5 exclusivities expired on July 2, 2008, so any 30-month stay blocking FDA approval of competing
6 generics could have expired as early as January 2, 2011. Even in the best of circumstances for Gilead, the
7 Orange-Book-listed patents would expire by their own terms in January 2018 as to Viread, September
8 2021 as to Emtriva, and January 2024 as to Truvada.

9 97. Absent the unlawful No-Generics Restraints, untainted competitors in the position of
10 BMS, Janssen, and Japan Tobacco would have competed against Gilead by making competing, generic-
11 containing versions of the FDCs as soon as generic TDF was available, regardless of whether generic
12 FTC was also available. The HHS and the WHO have concluded that a very closely related drug,
13 lamuvidine (3TC), may be substituted for FTC, and vice-versa, when used for HIV treatment. *See, e.g.,*
14 HHS, “Guidelines for the Use of Antiretroviral Agents in Adults and Adolescents Living with HIV” at
15 F-1, <https://aidsinfo.nih.gov/contentfiles/lvguidelines/adultandadolescentgl.pdf>; WHO, “Technical
16 Update on Treatment Optimization -- Pharmacological Equivalence and Clinical Interchangeability of
17 Lamivudine and Emtricitabine: A Review of Current Literature,”
18 https://apps.who.int/iris/bitstream/handle/10665/70936/9789241503815_eng.pdf?sequence=1.

19 98. Generic 3TC became available in 2012. As described in detail below, generic TDF
20 became available in December 2017 and, absent Defendants’ unlawful conduct, would have become
21 available much earlier than that. Thus, untainted competitors in the position of BMS, Japan Tobacco, and
22 Janssen would have begun making competing versions of the FDCs in December 2017 at the latest.

23 99. Instead of competing, each of BMS, Japan Tobacco, and Janssen helped Gilead protect its
24 drugs from generic competition. In exchange, they each shared in the supracompetitive profits that the
25 impairment of competition made possible.

26 100. Recognizing these anticompetitive schemes, an industry analyst invoked the term “life-
27 cycle management,” a euphemism for a scheme designed to extend an older product’s market exclusivity
28 beyond its patent term. In impairing generic competition, the schemes provided Gilead “a very neat get-

1 out-of-jail card.” Seeking Alpha, “Johnson & Johnson / Gilead Deal Could Yield More Combinations in
2 HIV,” [https://seekingalpha.com/article/277464-johnson-and-johnson-gilead-deal-could-yield-more-](https://seekingalpha.com/article/277464-johnson-and-johnson-gilead-deal-could-yield-more-combinations-in-hiv)
3 [combinations-in-hiv](https://seekingalpha.com/article/277464-johnson-and-johnson-gilead-deal-could-yield-more-combinations-in-hiv).

4 101. Gilead and each of Janssen and Japan Tobacco renewed and extended the unlawful No-
5 Generics Restraints when Gilead reformulated many of the FDCs to include TAF rather than TDF. And
6 when Janssen and BMS had standalone products that faced imminent generic competition, Gilead
7 assisted them by creating more FDCs, this time with Gilead providing No-Generics Restraints.

8
9 **A. Unlawful No-Generics Restraints: Gilead and Japan Tobacco**

10 102. On October 26, 2001, Gilead received FDA approval for Viread, which contains only one
11 active pharmaceutical ingredient, TDF; on July 2, 2003 received approval for Emtriva, which contains
12 only one active pharmaceutical ingredient, FTC; and on August 2, 2004 received approval for Truvada,
13 an FDC containing only two active pharmaceutical ingredients, TDF and FTC.

14 103. In March 2005, Gilead and Japan Tobacco entered into a No-Generics Restraint pursuant
15 to which Japan Tobacco granted to Gilead exclusive rights—exclusive even as to Japan Tobacco—to
16 develop and commercialize elvitegravir (“EVG”) in all countries of the world, excluding Japan (where
17 Japan Tobacco retained such rights). This included an exclusive right for Gilead to make and sell in the
18 United States any product containing EVG in combination with any other HIV drug. The agreement
19 prevents Japan Tobacco or its licensees (except Gilead) from making and selling an EVG-containing
20 FDC with generic TDF or generic FTC (or comparable compositions such as generic 3TC) even after the
21 patents on TDF and/or FTC expire.

22 104. Under the agreement, Gilead was responsible for seeking regulatory approval in the
23 United States and was required to use diligent efforts to commercialize a product for the treatment of
24 HIV. Gilead bore all costs and expenses associated with the commercialization efforts. In addition,
25 Gilead paid to Japan Tobacco an up-front license fee of \$15 million and was obligated to make total
26 potential milestone payments of up to \$90 million upon the achievement of certain clinical, regulatory,
27 and commercial objectives. Gilead was also obligated to pay royalties based on net sales.

28 105. Under the agreement, Gilead sets the price in the United States for products that contain

1 EVG.

2 106. The agreement, including the No-Generics Restraint and obligation to pay royalties,
3 expires on a product-by-product basis, at the later of (1) the expiration of the last of Japan Tobacco's
4 patents providing exclusivity for the product or (2) the ten-year anniversary of marketing the product.

5 107. On August 27, 2012, Gilead received FDA approval for Stribild, an FDC containing TDF,
6 FTC, cobicistat ("COBI"), and EVG. On September 24, 2014, Gilead received FDA approval for both
7 Vitekta, a drug whose only active ingredient is EVG, and Tybost, a drug whose only active ingredient is
8 COBI.

9 108. When Gilead and Japan Tobacco entered into their No-Generics Restraint in early 2005,
10 Gilead expected to encounter competition from generic TDF as early as 2009. The principal patents that
11 protected EVG, however, were not scheduled to expire until October 26, 2026. Japan Tobacco's patent
12 claiming an FDC comprising TDF, FTC, and EVG is not scheduled to expire until April 24, 2030.

13 109. As contemplated by the unlawful No-Generics pact, in or about August 2012 Gilead
14 began to cannibalize TDF and/or FTC sales, encouraging doctors to switch their prescribing from those
15 products to Stribild. Defendants had unlawfully used the No-Generics Restraint to protect Stribild from
16 competition.

17 110. On November 5, 2015, Gilead received FDA approval for Genvoya, an FDC containing
18 TAF (rather than TDF), FTC, COBI, and EVG. Gilead listed a number of patents in the Orange Book for
19 Genvoya, including two that cover a hemifumarate form of TAF. These ostensibly expire on August 15,
20 2032, but they are invalid because they claim only the hemifumarate form of TAF, which is obvious in
21 light of the prior art, and in any event generic manufacturers can easily design around them.

22 111. By the time the FDA approved Genvoya for sale, the scheduled expiration of Gilead's
23 patents on TDF was less than 25 months away. As alleged in detail below (see Sections VII(E)&(F)),
24 Gilead used anticompetitive tactics, including making Stribild even less safe than its other TDF-
25 containing drugs, to cannibalize sales from Stribild to Genvoya. The unlawful No-Generics Restraint
26 protecting Genvoya from competition will not expire until April 2030.

27 112. After generic TDF became available in December 2017, purchasers and patients should
28 have benefitted because an untainted competitor in Japan Tobacco's position would have competed with

1 Gilead by marketing an FDC comprising EVG, generic TDF, generic 3TC, and generic RTV. The
2 combined price of those products would have plummeted due to competition that should have ensued
3 with the availability of generic TDF. That FDC would not have been subject to any NCE exclusivity, and
4 an untainted competitor in Japan Tobacco's position would have begun marketing it immediately upon
5 the availability of generic RTV in March 2018.

6 113. An untainted competitor in Japan Tobacco's position also would have offered a competing
7 FDC comprising EVG and generic RTV. Such an FDC is both technologically and commercially
8 feasible. Other manufacturers have successfully made FDCs comprising RTV and other third agents such
9 as lopinavir and atazanavir, and Gilead's own researchers concluded that using RTV to boost EVG
10 results in pharmacokinetic parameters similar to those observed with COBI boosting. Such an RTV-
11 containing FDC would not have been subject to any NCE exclusivity. This product would have competed
12 against both Stribild and Genvoya, because patients could have taken it together with Truvada
13 (TDF/FTC) or Descovy (TAF/FTC). An untainted competitor in Japan Tobacco's position would have
14 begun marketing that product immediately upon the availability of generic RTV in March 2018.

15 114. Moreover, an untainted competitor in Japan Tobacco's position would have challenged
16 Gilead's patents and entered the market with competing products even before March 2018. The NCE
17 exclusivity on Stribild expired on August 27, 2017. Absent the No-Generics Restraint, an untainted
18 competitor in Japan Tobacco's position would have challenged Gilead's patents, and it would have
19 avoided any exclusivity by obtaining from Gilead a waiver of any NCE exclusivity that Gilead might
20 have. Japan Tobacco's leverage to obtain such a contractual avoidance of any exclusivity is illustrated
21 by, among other indicia, its having obtained ownership of the patents on an FDC comprising
22 TDF/FTC/EVG.

23 115. Thus, an untainted competitor in Japan Tobacco's position would have submitted an
24 application for an FDC containing EVG and generic versions of TDF, FTC, and COBI as soon as the
25 FDA approved the NDA for Stribild. After waiting out the 30-month stay, an untainted competitor in
26 Japan Tobacco's position would have entered the market with an FDC comprising EVG and those
27 generic compositions as early as February 2015, on a date to be determined by the jury.

28 116. As a result of the unlawful No-Generics Restraint, however, drug purchasers will continue

1 to be deprived of competing versions of Stribild until at least April 24, 2030 when the parties' unlawful
2 No-Generics Restraint expires.

3 117. Unless enjoined by this Court, Gilead and Japan Tobacco's unlawful No-Generics
4 Restraint will have additional anticompetitive effects when generic versions of any of FTC, TAF, or
5 COBI become available. An untainted competitor in Japan Tobacco's position would make additional
6 FDCs that are substitutable for, or comparable to, Stribild and Genvoya. These additional anticompetitive
7 effects, and the need for injunctive relief to avoid them, are discussed below in Section XII.

8
9 **B. Unlawful No-Generics Restraints: Gilead and BMS**

10 118. In December 2004 Gilead and BMS entered into an agreement to develop and
11 commercialize a three-active-pharmaceutical-ingredient FDC comprising Gilead's TDF and FTC, and
12 BMS's efavirenz ("EFV"). BMS marketed EFV as a standalone product under the brand name Sustiva.
13 At that time, Gilead expected to encounter generic competition to Viread (TDF) as early as 2009, and to
14 Emtriva (FTC) and Truvada (TDF/FTC) as early as 2011.

15 119. Gilead and BMS structured the collaboration as a joint venture that operated as a limited
16 liability company named Bristol-Myers Squibb & Gilead Sciences, LLC. Gilead and BMS granted
17 royalty-free sublicenses to the joint venture for the use of the companies' respective technologies and, in
18 return, were granted a license by the joint venture to use intellectual property that results from the
19 collaboration. In 2006, the FDA approved the FDC, which Gilead and BMS marketed under the brand
20 name Atripla.

21 120. Gilead and BMS initially shared marketing and sales efforts, jointly marketing the product
22 in the United States from July 2006 through 2010. In 2011, except for a limited number of activities that
23 were jointly managed, the parties stopped coordinating detailing and promotional activities.

24 121. A Joint Pricing Committee, comprising representatives of Gilead and BMS, determined
25 the selling price of Atripla. In 2017 (before generic entry for Sustiva), the price for a 30-day supply of
26 Truvada was approximately \$1,600; the price of Sustiva was approximately \$1,010; and the price of
27 Atripla was approximately \$2,600.

28 122. The economic interests of the joint venture held by Gilead and BMS (including share of

1 revenues and out-of-pocket expenses) were based on the portion of the net selling price of Atripla
2 attributable to Sustiva and Truvada.

3 123. The Gilead/BMS agreement provided that BMS would supply its EFV exclusively to the
4 Gilead/BMS joint venture for use in an FDC with Gilead's TDF and FTC. The agreement thus prevented
5 BMS and every other manufacturer from competing against Atripla with an FDC comprising EFV and
6 generic TDF and/or FTC, even after Gilead's patents expired. Moreover, the agreement provided that the
7 only way for BMS to avoid this exclusivity was to terminate Gilead's participation in the joint venture
8 and thereby have BMS become the sole entity in the venture.

9 124. The conspirators provided that BMS could terminate Gilead's participation in the joint
10 venture if generic versions of both TDF and FTC became available. The agreement further provided,
11 however, that if BMS elected to terminate Gilead's interest on that ground, BMS would be required to
12 pay a substantial penalty to Gilead, comprising three years of additional royalty payments, at declining
13 percentages over the three years. The purpose and effect of the penalty provision was to dissuade BMS
14 from terminating Gilead's participation in the joint venture even after its patents on TDF and/or FTC
15 expired.

16 125. The coconspirators provided to Gilead a similar right of termination, with a similar
17 termination-penalty provision, permitting it to terminate the joint venture if a generic version of Sustiva
18 became available.

19 126. In addition, either party's terminating the joint venture would terminate the other's ability
20 to continue making and selling Atripla. Gilead and BMS thus conspired to arrange that, regardless of
21 whether or not one of the coconspirators terminated the agreement once generic versions of the other's
22 composition(s) became available, purchasers would never benefit from a marketplace in which two
23 versions of the Atripla FDC compete against each other. If neither party terminated the agreement, both
24 would continue to be bound by the exclusivity provision and could not make a competing *generic-*
25 *composition-based* version of the FDC; if a party did terminate, then the other would no longer have
26 access to the continuing party's composition(s) and could no longer make a version of Atripla.

27 127. When Gilead and BMS entered into their No-Generics Restraint in 2004, Gilead expected
28 to encounter competition from generic TDF and generic TDF/FTC as early as 2009 and 2011,

1 respectively. The principal patents that protected BMS’s EFV, however, were not scheduled to expire
2 until 2018. Although it was possible that EFV would also encounter generic competition before its
3 patents’ scheduled expiration dates, Gilead’s combining its TDF/FTC with EFV substantially increased
4 the probability that it could shield those products from generic competition.

5 128. As contemplated by the conspirators’ No-Generics scheme, Gilead cannibalized TDF
6 and/or FTC sales, encouraging doctors to switch their prescribing from those products to Atripla. As
7 described in detail below (see Section VII(D)(1)), this cannibalizing had significant anticompetitive
8 effects.

9 129. When generic TDF became available, purchasers and patients should have benefitted
10 because an untainted competitor in BMS’s position would market a competing version of the FDC, with
11 Gilead selling the original version of Atripla, and the untainted competitor selling an FDC comprising
12 generic TDF, generic FTC (once it becomes available), and EFV. The combined price of those three
13 products would plummet due to competition that should have ensued with the availability of generic
14 TDF. The Gilead/BMS noncompete scheme prevents purchasers from obtaining those competitive
15 benefits.

16 130. Absent the No-Generics Restraint, moreover, an untainted competitor in BMS’s position
17 would have challenged Gilead’s patents and entered the market with a competing FDC even before the
18 expiration of the FTC patents in 2021. The NCE exclusivity protecting Atripla expired on July 2, 2008.
19 Assuming that BMS were subject to that exclusivity, an untainted competitor in its position would have
20 challenged Gilead’s patents one year before expiration of the NCE exclusivity. If Gilead timely sued
21 BMS for patent infringement, an untainted competitor in its position would have entered the market as
22 early as the expiration of the 30-month stay in January 2011, on a date to be determined by the jury.

23 131. Gilead and BMS broadened the scope of their unlawful collusion to include protecting
24 from imminent generic competition a BMS product, atazanavir sulfate (“ATV”). ATV is a third agent—a
25 protease inhibitor—that BMS markets as Reyataz. Just as the scheme used some of BMS’s patents to
26 protect Gilead’s products from generic competition, so the conspirators also used some Gilead patents to
27 protect BMS’s ATV from generic competition. Gilead provided an exclusive license to BMS—exclusive
28 even as to Gilead—to use Gilead’s then-investigational new drug cobicistat (COBI) in combination with

1 BMS's ATV.

2 132. On February 17, 2010, BMS received notice that generic manufacturer Teva
3 Pharmaceuticals had submitted an ANDA with a Paragraph IV certification that the patents purportedly
4 covering BMS's ATV were invalid and not infringed. BMS could expect to encounter generic
5 competition to ATV (Reyataz) as early as August 17, 2012.

6 133. After BMS received notice of that challenge to its ATV patents, but before the generic
7 manufacturer could enter the market, BMS and Gilead announced a deal (on October 26, 2011) to jointly
8 develop an FDC that would combine BMS's vulnerable ATV with Gilead's COBI. Gilead and BMS
9 expected that, as a potential new drug, COBI's patents would extend far into the future; in fact, the latest
10 of them does not expire until September 3, 2029. On January 29, 2015, the FDA approved that FDC,
11 which BMS markets as Evotaz.

12 134. This deal was meant to protect BMS's product, not Gilead's, from generic competition.
13 So, the parties provided that BMS would be responsible for commercializing the FDC, and Gilead
14 provided a No-Generics Restraint to BMS. The license from Gilead to BMS for use of COBI in the FDC
15 is exclusive even as to Gilead, i.e., it prohibits Gilead from commercializing its own FDC that contains a
16 generic version of ATV. Gilead is prohibited from marketing an FDC with ATV even after generic
17 versions of it become available.

18 135. Under the agreement, BMS sets the price of the FDC for sales in the United States and
19 pays a royalty to Gilead based on sales. The agreement, including the No-Generics Restraint and
20 obligation to pay royalties, terminates after the expiration of the last of Gilead's patents providing
21 exclusivity for COBI.

22 136. As contemplated by the No-Generics scheme between BMS and Gilead with respect to
23 ATV, BMS cannibalized the sales of Reyataz, encouraging doctors to switch their prescribing from
24 Reyataz to Evotaz.

25 137. Generic ATV became available in the United States in December 2017. At that time,
26 purchasers and patients should have benefitted because: (1) doctors and patients could use generic ATV
27 in combination with Gilead's COBI or another booster, such as generic RTV; and (2) an untainted
28 competitor in Gilead's position would have competed with BMS by marketing an FDC comprising

1 generic ATV and COBI. The combined price of those products would have plummeted due to
2 competition that should have ensued with the availability of generic ATV. The BMS/Gilead No-Generics
3 Restraint was intended to prevent, and did in fact prevent, purchasers from obtaining those competitive
4 benefits.

5 138. Absent the No-Generics Restraint, an untainted competitor in Gilead's position would
6 have competed with an FDC containing COBI and generic ATV as soon as possible, and it would have
7 done so by December 2017. Under the unlawful No-Generics Restraint, however, drug purchasers will
8 continue to be deprived of a substitutable version of Evotaz until September 2029.

9 139. Gilead began in August 2011 to market an FDC, Complera (see Section VII(C)) below),
10 and began in August 2012 to market another FDC, Stribild (see Section VII(A) above), that compete
11 against Atripla. Gilead thereafter concentrated its marketing efforts in promoting those products rather
12 than Atripla. And when Gilead began developing its line of TAF-based FDCs to replace the TDF-based
13 FDCs, it did not amend the joint venture agreement with BMS to provide for the parties to commercialize
14 a TAF-based successor to Atripla. Nor did Gilead file an application for an NDA for such a TAF-based
15 successor product to Atripla.

16 140. The BMS/Gilead No-Generics Restraint with respect to Atripla prohibited BMS from
17 making a *generic* version of Atripla when generic TDF and generic FTC became available, but did *not*
18 prohibit BMS from making a *comparable* version comprising generic TDF, 3TC (instead of Gilead's
19 FTC), and EFV. When generic TDF became available, BMS licensed Mylan Pharmaceuticals to produce
20 that comparable version, which the FDA approved in February 2018. Mylan sells the generic
21 TDF/3TC/EFV version of the product at a 40% discount to the price of branded Atripla.

22 141. Gilead recently terminated BMS's participation in the Atripla joint venture, triggering
23 Gilead's obligation to make the penalty payments described above.

24 25 **C. Unlawful No-Generics Restraints: Gilead and Janssen**

26 142. On July 16, 2009, Gilead and Janssen entered into a collaboration agreement to develop
27 and commercialize an FDC whose active pharmaceutical ingredients would be those of Gilead's Truvada
28 (TDF/FTC) and Janssen's rilpivirine ("RPV").

1 143. Gilead submitted an NDA for the product on February 10, 2011. On August 10, 2011, the
2 FDA approved the NDA for Complera, the FDC containing TDF/FTC/RPV.

3 144. The FDA approved Janssen's Edurant, whose only active pharmaceutical ingredient is
4 RPV, on May 20, 2011.

5 145. Under the parties' agreement, with amendments through 2013, Janssen granted to Gilead a
6 No-Generics Restraint for use of RPV in an FDC comprising TDF/FTC/RPV. The agreement prevents
7 Janssen from marketing an FDC comprising generic TDF, generic FTC, and RPV. The agreement also
8 prohibits Janssen from selling any "Other Combination Product" comparable to TDF/FTC/RPV, which
9 precludes Janssen from selling a product made with generic TDF, 3TC (rather than FTC), and RPV.

10 146. The agreement provides that Gilead is responsible for manufacturing Complera and
11 distributing and commercializing it in the United States as well as in much of the rest of the world.
12 Janssen has the right to distribute it in other regions, including Japan and Russia.

13 147. Under the agreement, Gilead sets the price of Complera and the parties share revenues
14 based on the ratio of the net selling prices of the party's component(s), subject to certain restrictions and
15 adjustments. The coconspirators agreed that in the United States the selling price of Complera would be
16 the combined prices of Truvada (TDF/FTC) and Edurant (RPV) when sold separately. Gilead purchases
17 RPV from Janssen for use in Complera at approximately the market price of RPV, less a specified
18 percentage of up to 30%.

19 148. Janssen could not terminate the agreement until after the expiration of the last-to-expire
20 patent for RPV.

21 149. Through 2011, Gilead reimbursed Janssen approximately \$100 million in research and
22 development expenses, which was the maximum amount allowed under the agreement.

23 150. When Gilead and Janssen entered into their No-Generics Restraint in 2009, Gilead—
24 which had recently sued Teva in connection with Teva's first-to-file ANDA for Truvada—expected to
25 encounter generic competition as early as May 2011, the end of Teva's 30-month stay. The principal
26 patents that protected RPV, however, were not scheduled to expire until dates ranging from 2019 to
27 2025.

28 151. As contemplated by the No-Generics scheme, Gilead cannibalized TDF and/or FTC sales,

1 encouraging doctors to switch their patients from those products to Complera. Defendants had unlawfully
2 used the No-Generics Restraint to protect Complera from competition.

3 152. On December 23, 2014, Gilead and Janssen executed a restated and amended agreement.
4 The restated agreement expanded the parties' collaboration to include another FDC, which contains TAF
5 (instead of TDF), FTC, and Janssen's RPV. The FDA subsequently approved that product, marketed as
6 Odefsey, on March 1, 2016.

7 153. The restated agreement also confirmed that the license from Janssen to Gilead was
8 "exclusive" even as to Janssen, i.e., it prohibits Janssen from commercializing its own FDC that contains
9 either (1) generic versions of TDF and FTC and its own RPV or (2) generic versions of TAF and FTC
10 and its own RPV; only Gilead has the rights to FDCs with those ingredients, even after generic versions
11 of TDF, FTC and/or TAF become available. And again, the restated agreement further prohibits Janssen
12 from marketing any comparable product, including one made with TAF (or TDF), 3TC (rather than
13 FTC), and RPV.

14 154. Gilead is responsible for manufacturing Odefsey and has the lead role in registration,
15 distribution, and commercialization of it in the United States. Gilead sets the price of Odefsey, and the
16 parties share revenues based on the ratio of the net selling prices of the party's component(s), subject to
17 certain restrictions and adjustments. Gilead continues to retain a specified percentage of Janssen's share
18 of revenues, up to 30%.

19 155. The agreement, including the No-Generics Restraint and the obligation to pay royalties,
20 expires on a product-by-product basis, at the later of (1) the expiration of the last of Janssen's patents
21 providing exclusivity for the product or (2) the ten-year anniversary of marketing the product.

22 156. By the time the FDA approved Odefsey for sale in March 2016, the scheduled expiration
23 of Gilead's patents on TDF was less than 22 months away. As alleged in detail below (see Section
24 VII(F)), Gilead used anticompetitive tactics—including making standalone TAF less safe—to drive
25 patients to Odefsey, which the unlawful No-Generics Restraint protects from competition until March
26 2026.

27 157. When generic versions of TDF became available in 2017, purchasers and patients should
28 have benefitted because an untainted competitor in Janssen's position would have competed with Gilead

1 by marketing a competing version of Complera comprising generic TDF, 3TC, and RPV. The combined
2 price of those products would have plummeted due to the competition that should have ensued with the
3 availability of generic TDF. The Gilead/Janssen No-Generics Restraint prevented purchasers from
4 obtaining those competitive benefits.

5 158. Moreover, absent the No-Generics Restraint, an untainted competitor in Janssen's position
6 would have offered a competing product long before December 2017. Such a competitor would have
7 challenged Gilead's patents. No NCE exclusivity applicable to Complera would have barred Janssen
8 from timely seeking FDA approval for a competing FDC because Janssen controlled the NCE
9 exclusivity. The only NCE-protected ingredient in Complera at the time of its approval was Janssen's
10 RPV. And Janssen, not Gilead, owns the patents covering an FDC comprising TDF/FTC/RPV.

11 159. Accordingly, an untainted competitor in Janssen's position would have submitted its own
12 application for a product containing TDF/FTC/RPV as early as August 2011, and any 30-month stay
13 would have expired in February 2014. Thus, an untainted competitor in Janssen's position would have
14 competed against Gilead with an FDC comprising RPV and generic versions of TDF and FTC as early as
15 February 2014, on a date to be determined by the jury.

16 160. But the unlawful No-Generics Restraint resulted in Janssen's agreeing not to compete
17 until at least December 9, 2025, when the No-Generics Restraint expires.

18 161. Likewise, absent the No-Generics Restraint, an untainted competitor in Janssen's position
19 would have produced and marketed a substitutable version of Odefsey as soon as possible. The NCE
20 exclusivity that attached to TAF, and that protects Odefsey, does not expire until November 5, 2020. But
21 an untainted competitor in Janssen's position would have obtained from Gilead a contractual waiver of
22 that exclusivity (Janssen's leverage to do so is illustrated by, among other things, its having obtained co-
23 ownership of the patents on an FDC comprising TAF/FTC/RPV). Thus, an untainted competitor in
24 Janssen's position would have submitted its own application for a product containing RPV, generic TAF,
25 and generic FTC as soon as the FDA approved the NDA for Odefsey. After waiting out the 30-month
26 stay, such a competitor would have entered the market as early as September 2018.

27 162. In addition to their unlawful No-Generics Restraint involving RPV, Gilead and Janssen
28 entered into mutual No-Generics promises involving Janssen's product, darunavir ("DRV"), which

1 Janssen markets as Prezista. The agreements concerning DRV amount to a mutual nonaggression pact in
2 which both parties could have made the FDC with generic versions of the other’s compositions, but both
3 agreed not to do so even after the relevant patents expired.

4 163. In October 2010, a year after the announcement of the Complera deal, Janssen received
5 notice that generic manufacturer Mylan Pharmaceuticals had submitted an ANDA with a Paragraph IV
6 certification that the patents purportedly covering Janssen’s Prezista (DRV) were invalid and not
7 infringed. Janssen could expect to encounter generic competition to DRV as early as April 2013.

8 164. On June 28, 2011—less than nine months after receiving Mylan’s notice of intention to
9 challenge the Prezista patents—Janssen and Gilead announced a tentative deal to jointly develop an FDC
10 that would combine Janssen’s vulnerable Prezista (DRV) with Gilead’s then-investigational new drug
11 cobicistat (COBI). Gilead and Janssen expected that, as a potential new drug, COBI’s patents would
12 extend far into the future; in fact, the latest of them does not expire until September 3, 2029. The FDA
13 ultimately approved the DRV/COBI FDC on January 29, 2015, and Janssen now markets the product as
14 “Prezcobix.”

15 165. Gilead and Janssen, however, had made a *definitive* agreement as to Prezcobix subject to
16 reaching an even broader deal involving DRV. Their finalizing a Prezcobix deal was expressly
17 contingent on concluding a further agreement to coformulate Janssen’s DRV with Gilead’s TAF, FTC,
18 and COBI. The FDA ultimately approved that product on July 17, 2018, and Janssen now markets it as
19 “Symtuza.”

20 166. Without *mutual* No-Generics Restraints with respect to Symtuza, both Gilead and Janssen
21 were vulnerable to generic-composition-based competition from the other. Janssen’s DRV patents are
22 weak and can easily be designed around (see Section XII below). Thus, absent Gilead’s giving a No-
23 Generics Restraint to Janssen, an untainted competitor in Gilead’s position would begin in 2021 (at the
24 latest) to market a competing version of Symtuza comprising generic DRV and Gilead’s TAF, FTC, and
25 COBI.

26 167. On the other hand, absent Janssen’s giving a No-Generics Restraint to Gilead, Janssen
27 could have begun in July 2018 marketing an FDC that would compete with Symtuza, comprising DRV
28 and generic RTV. Patients could take that DRV/generic RTV pill together with an FDC comprising

1 generic TDF/3TC. Janssen could also begin competing in May 2023 with an additional comparable FDC,
2 comprising generic TAF, generic 3TC, generic RTV, and DRV.

3 168. Rather than face the competition to which consumers are entitled under the antitrust laws,
4 Gilead and Janssen entered into their mutual nonaggression pact in which each provided a No-Generics
5 Restraint to the other. Janssen agreed with respect to DRV, just as it had with respect to RPV, not to
6 produce or market a competing version of the FDC with compositions that were either generic versions
7 of, or comparable to, Gilead's compositions even after the relevant Gilead patents have expired.
8 Likewise, Gilead agreed that it would not produce a competing FDC comprising generic DRV and
9 Gilead's TAF, FTC, and COBI, even after Janssen's patents on DRV expired.

10 169. Gilead and Janssen entered into the Symtuza deal on December 29, 2014. The same day,
11 and in the same document, Gilead and Janssen finalized their agreement regarding Prezcobix. Also, on
12 the same day, Gilead and Janssen amended their Complera agreement to include Odefsey. All three
13 deals—for Complera/Odefsey, Prezcobix, and Symtuza—are part of a single conspiracy in which both
14 Janssen and Gilead unlawfully refrain from competing against the other's vulnerable-to-competition
15 compositions, even after the relevant patents expire.

16 170. The agreement regarding Prezcobix and Symtuza provides that Janssen is responsible for
17 marketing the products in the United States. The agreement also provides that: (1) Janssen sets the price
18 of Prezcobix and Symtuza; (2) the price will be the combined price of each of the separate compositions;
19 (3) the parties split the revenues based on the ratio of the net selling prices of the party's component(s);
20 and (4) the agreement, including the No-Generics Restraints, terminates at the later of the expiration of
21 the last of either party's patents providing exclusivity for the product or the ten-year anniversary of
22 marketing the product.

23 171. As contemplated by the No-Generics scheme, Janssen began in the first quarter of 2015 to
24 cannibalize the sales of Prezista, encouraging doctors to switch their prescribing from Prezista to
25 Prezcobix and, later, to Symtuza. As of 2017, Janssen had succeeded in shifting at least 40% of Prezista
26 prescriptions to Prezcobix.

27 172. After generic TDF became available (December 2017), generic RTV became available
28 (March 2018), and the FDA approved Symtuza (July 2018), purchasers and patients should have

1 benefitted because an untainted competitor in Janssen’s position would have competed with Symtuza by
2 marketing an FDC comprising DRV and generic RTV, which patients could take together with a pill
3 comprising generic TDF/3TC. Alternatively, patients could have taken the DRV/generic RTV pill
4 together with Descovy (TAF/FTC). The combined price of those products would have plummeted due to
5 competition that should have ensued with the availability of generic TDF and generic RTV. The
6 Janssen/Gilead No-Generics Restraints have prevented purchasers from obtaining those competitive
7 benefits.

8 173. Absent the No-Generics Restraint, an untainted competitor in Gilead’s position would
9 have competed with a substitutable version of Prezcobix as soon as possible. No unexpired NCE
10 exclusivity protected Prezcobix from competition from Gilead. An untainted competitor in Gilead’s
11 position would have filed an application for such a product by January 2015, and, after waiting out the
12 30-month stay, would have begun marketing it by July 2017. By that date, the only non-expired Orange
13 Book patents owned by Janssen were those covering certain pseudopolymorphic forms of DRV, which
14 expire on February 16, 2024 and December 26, 2026 (assuming no pediatric exclusivity is later
15 awarded). Those patents are invalid and can easily be designed around.

16 174. Absent this Court’s intervention, drug purchasers will continue to be deprived of a
17 substitutable version of Prezcobix until at least January 2025 when the parties’ unlawful No-Generics
18 Restraint with respect to Prezcobix expires.

19 175. Unless enjoined by this Court, Gilead and Janssen’s unlawful No-Generics Restraints will
20 have additional anticompetitive effects when generic versions of the following become available: FTC,
21 DRV, TAF, or COBI. Unrestrained by the unlawful No-Generics Restraints, an untainted competitor in
22 Janssen’s position would produce and market FDCs that are substitutable for, or comparable to,
23 Complera, Odefsey, and Symtuza. Unrestrained by the unlawful No-Generics Restraints, an untainted
24 competitor in Gilead’s position would produce and market FDCs that are substitutable for, or comparable
25 to, Prezcobix and Symtuza. These additional anticompetitive effects, and the need for injunctive relief to
26 avoid them, are discussed below in Section XII.

1 **D. Increased Prices and Reduced Innovation**

2 176. Gilead and its coconspirators' use of No-Generics Restraints, as alleged above, has had
3 myriad and very substantial anticompetitive effects.

4
5 **1. The No-Generics Restraints increased prices.**

6 177. For each of BMS, Janssen, and Japan Tobacco, agreeing not to market a competing,
7 generic-based FDC after Gilead's patents expired made no business sense unless: (a) the No-Generics
8 Restraints impaired competition; and (b) Gilead allowed the coconspirators to share in the
9 supracompetitive profits that the impairment produced. Unless the restraints generated supracompetitive
10 profits that the coconspirators got to share in, their economic interests would have been to market
11 generic-drug-based FDCs as soon as possible.

12 178. The agreements provided several means for Gilead's coconspirators to share in the
13 supracompetitive profits that the unlawful No-Generics Restraints generated. The restraints substantially
14 increased Gilead's incentive to move sales from TDF and/or FTC to the TDF-based FDCs. Those
15 switched sales resulted in the coconspirators' selling significantly more of their third agents than they
16 otherwise would have. The restraints also significantly dampened competition in the cART Market,
17 generating higher prices for the FDCs and therefore for the conspirators' third agents. And Gilead
18 directly paid the coconspirators through the royalty and other provisions of the joint-development
19 agreements. For example, Gilead paid Janssen a \$100 million fee under their original agreement.

20 179. Likewise, the No-Generics Restraints made no economic sense for Gilead unless they
21 impaired competition. Those restraints did not benefit Gilead in the period of time before it lost statutory
22 exclusivity (exclusivity from its patents or from NCE exclusivity); during that time Gilead already had
23 exclusivity and no one could make a competing FDC that contained Gilead's exclusivity-protected
24 products. Gilead benefitted from the No-Generics Restraints *only* during the period *after* its statutory
25 exclusivity expired. And that is precisely the period in which Gilead could not legitimately obtain
26 private, contractual relief from competition.

27 180. Gilead and the coconspirators win. Drug purchasers lose, in three principal ways (even
28 more ways are detailed below): Defendants' anticompetitive conduct (1) artificially reduced the

1 prescription base of Gilead’s Viread (TDF), Emtriva (FTC), and/or Truvada (TDF/FTC) available for
2 automatic generic substitution, much of that prescription base having been cannibalized to the TDF-
3 based FDCs; (2) robbed purchasers of competing FDCs made with generic or comparable versions of
4 those products; and (3) impaired price competition in the cART Market.

5 181. Defendants’ anticompetitive schemes exploited a substantial imperfection in the
6 prescription pharmaceuticals marketplace. Doctors who have switched patients from one HIV product or
7 HIV drug regimen to another are very reluctant to switch patients back to the original product or
8 regimen, even if a generic version of the original product becomes available at a much lower price.
9 Switching costs (e.g., the need for another visit to the doctor for a new prescription) impair a move back
10 to the original product. And pharmaceuticals are “experience” goods that consumers and physicians are
11 hesitant to change if they are working.

12 182. These and other factors make prescription pharmaceutical sales, especially of HIV drugs,
13 “sticky”—doctors and patients are much less likely than in fully competitive markets to switch
14 prescriptions back to the original product. Brand manufacturers can impair imminent generic competition
15 by using their sales force to cannibalize the sales of the brand drug—to move the prescription base from
16 the original product to one that does not face imminent generic competition—before the generic enters
17 the market. Once the generic becomes available, doctors might in theory begin prescribing it rather than
18 the new brand product. But having switched the patient from the old to the new product, the “stickiness”
19 in these markets means that doctors are unlikely to change the patient’s regimen back again. The timing
20 is critical. If the new product beats the generic onto the market, it makes as much as 10 times more sales
21 than it otherwise would have made.

22 183. Gilead’s No-Generics Restraint schemes exploited this market defect. Gilead and its
23 coconspirators switched much of the prescription base from TDF and/or FTC to the TDF-based FDCs
24 (Atripla, Stribild, and Complera). This scheme fundamentally impaired competition. Generic versions of
25 TDF and/or FTC are not AB-rated to, and therefore not automatically substitutable for, the TDF-based
26 FDCs. Automatic substitution at the pharmacy counter is a generic product’s most efficient means of
27 competing. Gilead and the coconspirators’ switching of the prescription base from TDF and/or FTC to
28 the TDF-based FDCs thus impaired the only effective means for standalone generic products to compete.

1 184. Moreover, the No-Generics Restraints—express non-competition pacts—prevent Gilead’s
2 coconspirators from making competing versions of the FDCs with generic or comparable versions of
3 TDF and/or FTC. The restraints thus ensured that Gilead and the coconspirators would not compete their
4 supracompetitive profits back to consumers through price competition on sales of the FDC.

5 185. Depending on the competing manufacturer’s regulatory strategy, generic-drug-containing
6 versions of the FDCs could be approved under the ANDA process of Section 505(j) of the FD&C Act
7 (21 U.S.C. § 355(j)), and the resulting product would be automatically substitutable at the pharmacy
8 counter for the original version of the FDC. Or the competing manufacturer could gain approval under
9 Section 505(b)(2) of the FD&C Act (21 U.S.C. § 355(b)(2)). Under either regulatory strategy, the
10 competing generic-drug-containing versions of the FDCs would sell at very substantial discounts to the
11 price of the original FDC.

12 186. Absent the No-Generics Restraints’ anticompetitive effects, untainted competitors in the
13 position of BMS, Janssen, and Japan Tobacco would have begun making the FDC with generic or
14 comparable versions of TDF and/or FTC as soon as they became available. Making the FDCs with low-
15 cost generic ingredients would have resulted in those manufacturers’ lowering the price of the FDC and
16 thereby increasing sales, while still maintaining at least the same profit margin.

17 187. The No-Generics Restraints thus artificially prop up the prices of those standalone
18 components, of the FDCs, and of other products in the cART Market that Gilead and its coconspirators
19 have unlawfully monopolized. FDCs that are originally formulated with a generic composition and a
20 brand composition sell for about 40% - 50% less than the combined prices of the brand versions of the
21 two compositions. As a result of the No-Generics Restraints, the Defendants’ FDCs continue to sell for
22 about 100% of the combined prices of the brand components, even after the relevant patents expire and
23 generic components are available.

24 188. Similarly, when an FDC made with comparable (but not substitutable) compositions
25 enters the market and competes against the incumbent FDC, the competitor’s price is about 40% - 50%
26 less than the incumbent’s price. As a result of the No-Generics Restraints, however, comparable versions
27 of all but one of the affected FDCs here (Atripla being the exception) are not available. For example, the
28 Gilead/Janssen FDC Complera (TDF/FTC/RPV) sells for \$35,000 for a yearly course of treatment. A

1 comparable version made with generic or comparable versions of Gilead's components (generic TDF and
2 generic 3TC) and Janssen's RPV would sell for half that amount.

3 189. Gilead, Janssen, and BMS moved sales from their standalone products to the FDCs that
4 they had unlawfully protected with No-Generics Restraints. Those switches ensured that drug purchasers
5 would not get the typical 80% price discounts on generic versions of the standalone products. And the
6 No-Generics Restraints ensured that purchasers would not get those price discounts indirectly through
7 lower pricing of generic-drug-based versions of the FDCs.

8 190. The No-Generics Restraints also delayed the dates that generic drugs became available.
9 The restraints anticompetitively reduced the incentives of generic manufacturers to challenge the patents
10 protecting the FDCs (including those protecting the individual components). Absent the No-Generics
11 Restraints, a generic manufacturer could assemble a substitutable version of the FDC by: (1) successfully
12 challenging the patents on one of the coconspirator's compositions and obtaining a license from the other
13 coconspirator to use its product in the FDC; or (2) successfully challenging the patents on both of the
14 coconspirators' compositions. The No-Generics Restraints eliminated the first possibility, forcing generic
15 manufacturers into an all-or-nothing venture to succeed against the patents on all of the compositions.
16 The No-Generics Restraints thus created formidable entry barriers to those seeking to compete against
17 the FDCs.

18 191. The No-Generics Restraints also incapacitated the manufacturers that were best situated to
19 challenge Gilead's patents—its coconspirators. Absent the No-Generics Restraints, untainted competitors
20 in the position of Japan Tobacco, BMS, and Janssen (either directly themselves or through a
21 collaboration with a generic manufacturer) would have challenged Gilead's patents in order to make
22 generic-drug-containing versions of the FDCs. The No-Generics Restraints sidelined the competitors best
23 able to challenge the patents. The same is true when Gilead granted No-Generics Restraints covering the
24 coconspirators' vulnerable drugs.

25 192. As described in Section XII below, Defendants are repeating this anticompetitive cycle
26 again with respect to the TAF-based FDCs. The revised No-Generic Restraints prevent Japan Tobacco
27 and Janssen from making generic-TAF-containing versions of the TAF-based FDCs. Those amended
28 unlawful restraints extend to as late as 2032.

1
2 **2. The No-Generics Restraints reduced innovation.**

3 193. Among the most pernicious of the unlawful pacts’ anticompetitive consequences are their
4 devastating effects on innovation. In this vitally important market, where innovation is necessary to save
5 lives and allow them to flourish, the No-Generics Restraints directly prohibit competitors from
6 developing and marketing more than two dozen identifiable FDCs. And rather than spurring innovation,
7 the No-Generics Restraints caused Gilead to intentionally delay developing products and deliberately
8 degrade the safety and efficacy of the products that it did develop.

9
10 **a. Reduced innovation by Gilead’s competitors**

11 194. Reducing “pill burden” is an important goal in cART regimens. Those regimens, by
12 definition, require patients to take multiple drugs to treat HIV, and before the development of FDCs
13 required patients to take a separate pill for each drug in their regimens. FDCs reduced this pill burden
14 significantly, often allowing a patient to take just a single pill once a day to effectively treat HIV.

15 195. Gilead and its coconspirators’ No-Generics Restraints, together with the additional
16 unlawful conduct detailed further below (see Sections VII(E)-(H)), have had a disastrous effect on
17 innovation in this vitally important market. That unlawful conduct has suppressed innovation by Gilead’s
18 competitors, directly and expressly prohibiting them from producing and marketing FDCs that would
19 enhance the lives of patients on cART regimens.

20 196. Defendants’ conduct has prevented competitors from developing at least 28 specifically
21 identifiable FDCs. Absent Defendants’ unlawful conduct, *the cART Market would have about twice as*
22 *many FDCs as are now available.*

23 197. Defendants’ unlawful conduct has delayed or prevented the development and marketing of
24 at least the following FDCs and other HIV drugs: genericTDF/genericFTC/RPV;
25 genericTAF/genericFTC/RPV; TAF/FTC/COBI/genericDRV; COBI/genericDRV;
26 genericTDF/3TC/genericCOBI/DRV; genericTDF/genericFTC/genericCOBI/DRV;
27 genericTAF/3TC/RTV/DRV; genericTAF/genericFTC/genericCOBI/RTV;
28 genericTAF/genericFTC/genericCOBI/genericRTV; DRV/genericRTV; TDF(reduced

1 dosage)/FTC/COBI/EVG; genericTDF(reduced dosage)/genericFTC/genericCOBI/EVG;
2 genericTDF/genericFTC/genericCOBI/EVG; genericTAF/genericFTC/genericCOBI/EVG;
3 genericTDF/genericFTC/EFV; COBI/genericATV; genericTDF/3TC/RPV; genericTAF/3TC/RPV;
4 genericRTV/EVG; genericTDF/3TC/EVG; genericTAF/3TC/EVG; TDF/FTC/Dolutegravir;
5 TDF/3TC/Dolutegravir; TAF/FTC/Dolutegravir; TAF/3TC/Dolutegravir; genericTDF/genericFTC;
6 genericTDF/genericFTC/genericATV; TAF/FTC; TAF 10mg; generic TAF 10mg; TAF indicated for
7 HIV treatment; generic TAF indicated for HIV treatment; generic TDF; generic FTC.

8 198. Unleashing this competition would have spurred competitors to innovate by creating even
9 more and better FDCs. Defendants' conduct instead stifled that competition, to the great detriment of
10 those living with HIV.

11
12 **b. Reduced innovation by Gilead**

13 199. Gilead and its coconspirators' conduct also dampened Gilead's own incentive to innovate.
14 The unlawful conduct substantially diminished the competitive pressures that force manufacturers to
15 introduce better products sooner. The No-Generics Restraints shielded Gilead from those competitive
16 pressures, with predictable consequences: Gilead produced markedly inferior products and chose to delay
17 introducing improved products until it had wrung as much profit as possible out of the substandard ones.
18 The No-Generics Restraints prevented the market from forcing Gilead to do what suppliers in
19 competitive markets must do in order to thrive—market better products as soon as possible.

20 200. Defendants' No-Generics Restraints allowed Gilead to make profits not principally by
21 innovating, but by impairing competition. This reality is seen in two stark facts: (1) from 2004 through
22 2017 Gilead generated more than \$59 billion in revenue from its HIV franchise in the United States; (2)
23 in that same timeframe, Gilead developed exactly one new pharmaceutical compound—COBI. And even
24 COBI did not debut until 2014, is merely a booster, and has a close substitute in RTV. Gilead has one of
25 the worst innovation track records of any major pharmaceutical manufacturer anywhere in the world.
26 Rather than innovate, Gilead used the No-Generics Restraints and other anticompetitive tactics to
27 continually wring profits out of the two compositions—TDF and TAF—that it developed more than 15
28 years ago.

1 208. In 2003 Gilead reported to investors regarding the TAF clinical trials that the “[i]nitial
2 data look promising,” and that Gilead was “excited” about TAF’s prospects. In January 2004 Gilead
3 again reported to investors that the TAF results were “promising,” and that it was “continuing the clinical
4 development of [TAF] ... based on favorable Phase I/II results.” In March 2004 Gilead reported that
5 “[b]ased on data from our Phase 1/2 clinical trials of [TAF], we have begun developing a Phase 2
6 program for the treatment of HIV infection....”

7 209. In May 2004 Gilead reported that the TAF clinical studies had confirmed that TAF gets
8 higher concentrations of Tenofovir into the blood than does TDF, thus allowing the patient to take a far
9 smaller dose, thereby significantly reducing the risk of negative side effects. Gilead told investors that
10 “we know that doses of [TAF], which are 1/6 or 1/2 of the [TDF] dose, can give greater antiviral
11 response. So, the theory holds that you can target and treat HIV differently using these kinds of prodrug
12 and targeting technologies.”

13 210. Gilead continued to praise TAF to investors through at least June 2004.

14 211. On October 21, 2004, however, Gilead abruptly announced that it had changed course and
15 decided to shelve further development of TAF. The announcement attributed the decision to “an internal
16 business review.” In fact, Gilead had concluded that it could use No-Generics Restraints in FDCs to
17 shield TDF and TDF-based products from competition and therefore could safely shelve the TAF project
18 to use much later as part of an anti-generic strategy once competition from generic TDF was imminent.

19 212. On December 17, 2004, Gilead formally entered into the unlawful No-Generics Restraint
20 with BMS for Atripla. Gilead’s December 2004 Press Release noted that Gilead and BMS’s joint work
21 on developing the project had “been ongoing throughout most of 2004.” Notably, in October 2004—the
22 same month that Gilead announced the shelving of its TAF project—the coconspirators announced
23 favorable results from an ongoing clinical trial of Atripla.

24 213. Throughout 2004 Gilead had also been negotiating and finalizing a No-Generics Restraint
25 with Japan Tobacco. Three months after signing the unlawful BMS pact, Gilead concluded the one with
26 Japan Tobacco. The prospect of that anticompetitive deal also led Gilead to shelve the TAF project.

27 214. These No-Generics Restraints fundamentally altered the competitive landscape that Gilead
28 faced. They gave Gilead the means to protect TDF from prospective generic competition, even if generic

1 manufacturers were to successfully challenge the TDF patents. Thus, it no longer made economic sense
2 for Gilead to do what competition would otherwise have forced it to do—to bring out TAF as soon as
3 possible in order to take sales from its rivals in the antiretroviral class. With the No-Generics Restraints
4 in place, the economic calculus changed: Gilead could make more profits by defeating generic
5 competition to TDF and then rolling out TAF much later as part of a line extension.

6 215. Gilead itself eventually made explicit the connection between the anticompetitive BMS
7 deal and the shelving of TAF. At an investor conference in March 2011, Kevin Young, the executive vice
8 president of Gilead’s commercial operations, admitted that in 2004 Gilead “didn’t bring TAF through
9 development because at the time we were launching Truvada, launching Atripla...”

10 216. Gilead’s patenting strategy also reveals its anticompetitive scheme. Despite having
11 allegedly abandoned TAF research in 2004, Gilead in fact filed seven applications for patents on TAF
12 from 2004 to 2005. Six years later, when it was finally time to prepare for the TAF-based line extension,
13 Gilead told investors in 2010 that “a new molecule” would replace its TDF-based sales and add “a great
14 deal of longevity” to its HIV franchise. In fact, the “new molecule” wasn’t new at all—it was the TAF
15 molecule that had been sitting on Gilead’s shelf, having been held in reserve to roll out later when needed
16 in the line extension.

17 217. As part of the line extension, Gilead told investors, doctors, and patients that TAF was
18 superior to TDF. In October 2010, Gilead told investors that “you can take a lower dose [of TAF], and
19 actually our clinical study would indicate 1/6th to 1/10th the Viread dose and you would actually get
20 higher efficacy with less exposure.” But this was not new information: Gilead’s statements were based
21 on the 2003 clinical study, not any new study or data.

22 218. Similarly, in March 2011 Gilead’s then-COO, John Milligan, told investors that “even at
23 low doses of 50 milligram, [TAF] is a more potent antiviral than Viread.” TAF provided “lower exposure
24 [of Tenofovir] to the rest of the body. So, the therapeutic index goes up by about 34, which is pretty
25 dramatic.” But again, this was not new information: Gilead’s statements were based on the 2003 studies.

26 219. And on May 3, 2011, Milligan confirmed why Gilead had sat on TAF for more than 10
27 years. Holding TAF in reserve to later reformulate the TDF-based FDCs would “bring quite a bit of
28 longevity to the Gilead portfolio,” securing an “important opportunity for Gilead long-term.” It allowed

1 Gilead to “have another wave of single tablets.”

2 220. COO Milligan admitted to analysts and others in June 2011 that the plan was to transition
3 the TDF-based franchise to a “new” TAF-based franchise. Gilead was specifically using the switch to
4 defeat generic competition: “our ability to develop and get [the TAF-based products] onto the market
5 prior to patent expiration will be key to us, to maintain the longevity.”

6 221. Gilead actively and effectively used TAF’s more favorable risk profile to encourage
7 doctors to switch their prescribing from the TDF-based to the TAF-based products. Gilead consistently
8 and aggressively presented doctors with head-to-head comparisons of TDF versus TAF with respect to
9 kidney function and bone density. Gilead then followed the presentations with direct appeals for doctors
10 to switch to the TAF-based products. For example, Gilead stated at a major doctors’ conference that TDF
11 “has been associated with an increased risk of [chronic kidney disease],” whereas “[d]ue to a 91% lower
12 plasma tenofovir level, [TAF] relative to TDF has demonstrated a significantly better renal safety profile
13” At another major conference Gilead told the assembled doctors that “[s]witching from TDF to TAF
14 may be an important treatment strategy to increase bone mineral density in those at the highest fracture
15 risk.” Gilead instructed its “detailers”—the sales force that calls on individual doctors—to make the same
16 pitch regarding the “new” TAF.

17 222. Gilead also used the TAF-is-superior sales message when marketing the TAF-based
18 products directly to patients. Gilead made the same case to clinical investigators and to the FDA itself
19 when Gilead sought approval of the TAF-based products.

20 223. Advising its investors of its marketing message, Gilead neatly summed it up: “if you’re a
21 new patient, start with a TAF-based single-tablet regimen, because that’s going to be highly efficacious
22 and very safe and very tolerable for long-term usage. And if you’re on a Viread-based regimen, it’s a
23 great idea to convert, switch, upgrade to a TAF-based regimen as soon as possible.”

24 224. Mr. Milligan characterized the switch of prescriptions to its TAF-based FDC, Genvoya, as
25 the most successful launch of an HIV product in history. And he concluded that the success resulted from
26 the “very strong medical rationale for TAF versus [TDF],” and doctors’ consequent “desire to move
27 patients from a TDF containing regimen to a TAF containing regimen.”

28 225. The problem is that TAF was not new. As a result of the No-Generics Restraints, Gilead

1 had been sitting on TAF for more than a decade, at enormous human cost to many HIV patients. From
2 2006 to 2015 tens of thousands of HIV patients using Gilead's TDF-based products unnecessarily
3 suffered life-impairing kidney and bone side effects. Gilead itself later sponsored research that concluded
4 that forcing patients to take TDF-based rather than TAF-based products could result in more than 16,000
5 excess deaths and 150,000 excess kidney, bone, and renal injuries over a nine-year period. *See Am J*
6 *Manag Care*. 2018;24 (Spec. Issue No. 8): SP322-SP328.

7 226. In addition to causing enormous, immediate human suffering, Defendants' unlawful
8 conduct also caused a delay in the ability of generic manufacturers and other competitors to challenge
9 Gilead's TAF-related patents. As noted in detail above, NCE exclusivity prohibits a generic manufacturer
10 from even filing an ANDA with respect to the branded product until a year before the end of the NCE
11 exclusivity. Moreover, the Hatch-Waxman automatic 30-month stay does not commence until after the
12 five-year NCE exclusivity expires. So, a generic version of an NCE-protected drug cannot realistically
13 launch until at least 7.5 years after the brand manufacturer first receives approval of the NCE-protected
14 drug.

15 227. Accordingly, Gilead's delay in marketing its TAF-based FDCs dramatically delayed the
16 date on which generic manufacturers can challenge those products' patents. For example, the NCE
17 exclusivity on Genvoya prohibits a generic manufacturer from filing an ANDA until November 5, 2019,
18 one year before the expiration of the NCE exclusivity. Gilead will timely sue the generic manufacturers,
19 with the result that the Hatch-Waxman automatic 30-month stay will prevent generic entry until May 5,
20 2023 at the earliest.

21 228. If Defendants' No-Generics Restraints had not resulted in Gilead's delay in marketing
22 TAF, these dates would have been much earlier. If Gilead had not shelved TAF development, an
23 untainted manufacturer in its position would have begun marketing TAF and TAF-based FDCs not later
24 than 2007.

25 229. Thus, instead of the NCE protection for the TAF-based products (Vimlidy, Descovy,
26 Genvoya, Odefsey, and Symtuza) expiring in November 2020, and the Hatch-Waxman 30-month stays
27 expiring in May 2023, the NCE exclusivity protecting those products would have expired in November
28 2011, and the Hatch-Waxman 30-month stays would have expired in May 2013. Those living with HIV

1 would already have generic versions of the TAF-based FDCs.

2
3 **ii. Forgoing Dolutegravir**

4 230. A second example confirms the No-Generics Restraints' innovation-killing effects.
5 Dolutegravir is a third agent—an integrase inhibitor—originally owned by Shionogi Inc. and later by
6 ViiV Healthcare. In 2012 an FDC comprising TDF (and, later, TAF), FTC, and Dolutegravir would have
7 been state-of-the-art, far and away the best available single-tablet regimen for HIV patients in that
8 timeframe.

9 231. Rather than create this much-needed FDC, however, Gilead was satisfied instead to obtain
10 FDA approval to market an FDC using TDF, FTC, COBI, and Japan Tobacco's EVG—what became
11 known as Stribild. An FDC comprising TDF/FTC/Dolutegravir would have been markedly superior to
12 Stribild. Among other things, Stribild requires a booster, COBI, in order to make EVG effective in a
13 single dose. Gilead knew at the time, however, that COBI also has the effect of boosting TDF and
14 thereby intensifying its risk of negative side effects, including kidney toxicity and loss of bone density.
15 Dolutegravir does not require a boosting agent, and an FDC made with it rather than EVG would not
16 have had the magnitude of side effects caused by Stribild.

17 232. Even disregarding negative side effects, Dolutegravir has a significant advantage as a third
18 agent as compared to EVG, because it has a higher genetic barrier to resistance. Thus, Dolutegravir's
19 efficacy is preserved for some strains of HIV that are resistant to EVG, and HIV has more difficulty
20 evolving resistance to Dolutegravir compared to EVG.

21 233. The anticompetitive incentives created by the No-Generics Restraints nevertheless
22 prompted Gilead to create an FDC formulated with the inferior third agent, EVG. Absent the No-
23 Generics Restraint, the only way for an FDC to make profits is by being substantially better than the
24 alternative therapies. But with a No-Generics Restraint and consequent impairment of generic
25 competition, an FDC can make profits by simply being employed to impair generic competition. With the
26 No-Generics Restraint covering Stribild, Gilead would make a substantial portion of profits simply by
27 impairing generic competition *regardless of the relative efficacy of EVG as compared to Dolutegravir.*

28 234. Moreover, unlike Japan Tobacco, ViiV would not have given Gilead a No-Generics

1 Restraint. ViiV owned 3TC as well as Dolutegravir, so it would be able to make a competing version of
2 the FDC as soon as generic TDF became available.

3 235. Creating a TDF/FTC/Dolutegravir in 2012 would have made good economic sense for
4 Gilead if its goal was to do what manufacturers in competitive markets must do: make the best possible
5 products as soon as possible. That FDC would have been state-of-the-art and would have been a boon to
6 patients living with HIV. But the No-Generics Restraint with Japan Tobacco ensured that Gilead was not
7 operating in a competitive market. Gilead's goal was not to make the best possible product, but only one
8 protected by a No-Generics Restraint that would impair competition. So Gilead chose to make the
9 inferior Stribild.

10 236. ViiV ultimately created its own FDC using Dolutegravir as the third agent, without access
11 to Gilead's TDF (and, later TAF) and FTC. ViiV now markets that product as Triumeq, comprising
12 abacavir, 3TC, and Dolutegravir.

13 237. Recognizing the medical superiority of Dolutegravir, Gilead searched for a manufacturer
14 of Dolutegravir who would not make a Tenofovir/3TC/Dolutegravir FDC with generic Tenofovir once it
15 became available. Gilead eventually found such a manufacturer: itself. On February 7, 2018, the FDA
16 approved a Gilead FDC comprising TAF, FTC, and *Bictegravir*, an integrase inhibitor that Gilead
17 produces itself. In an ongoing patent-infringement lawsuit, ViiV alleges that *Bictegravir* is merely a copy
18 of Dolutegravir—essentially, that Gilead simply stole Dolutegravir.

19
20 **iii. Degrading Products**

21 238. Gilead's delay in marketing TAF until 2015 illustrates that the No-Generics Restraints
22 incentivized and enabled it to intentionally delay introducing any innovations. Gilead's conduct when it
23 finally did make TAF-based products available illustrates that the pacts incentivized and enabled Gilead
24 to actually *degrade* the safety and efficacy of its products rather than improve them. The pacts allowed
25 Gilead to generate profits by impairing competition rather than creating the best possible products as
26 soon as possible.

27 239. As set forth in detail below (see Section VII(E)), Gilead intentionally degraded Stribild.
28 Gilead knew when seeking FDA approval of Stribild that Tenofovir in a regimen boosted with COBI

1 increased the probability of adverse side effects. Yet Gilead refused to reduce the strength of TDF in
2 Stribild to account for the booster. Gilead did so in order to magnify the safety differences between TDF-
3 based Stribild and its anticipated replacement product, TAF-based Genvoya. When formulating
4 Genvoya, Gilead *did* reduce the strength of TAF to account for the booster.

5 240. Similarly, as set forth in detail below (see Section VII(F)), Gilead intentionally delayed
6 seeking FDA approval to market standalone TAF (Vemlidy), altogether withholding it from the market
7 from November 2015 to November 2016. In addition, Gilead intentionally did not seek FDA approval to
8 market standalone TAF in a safer milligram strength (10mg), while seeking and receiving that approval
9 only for TAF used in Gilead's FDCs. Gilead likewise intentionally did not seek FDA approval for use of
10 standalone TAF in the treatment of HIV (instead getting only an indication for treatment of Hepatitis B),
11 while seeking and obtaining an HIV indication for all of the TAF-based FDCs.

12 241. Intentionally and substantially degrading Stribild and standalone TAF made economic
13 sense for Gilead only because doing so helped it to impair competition in the cART Market. The No-
14 Generics Restraints incentivized and enabled that anticompetitive conduct. Gilead's conduct in degrading
15 these products is discussed further below because it not only illustrates the No-Generics Restraints'
16 anticompetitive effects on innovation, but is also itself exclusionary conduct in furtherance of Gilead's
17 scheme to monopolize the cART Market.

18 19 **E. Gilead's Unlawful Degrading of Stribild**

20 242. As part of its scheme to move its TDF-based FDCs to TAF-based FDCs, Gilead
21 intentionally refused to reduce the toxicity of TDF-based Stribild. Making Stribild less safe than even the
22 other TDF products would help Gilead to later move prescriptions from TDF-based Stribild to TAF-
23 based Genvoya.

24 243. Gilead knew before it ever began marketing Viread that co-administering TDF with a
25 pharmacokinetic "booster" such as RTV very substantially increased the concentrations of Tenofovir in
26 the patient's blood. Gilead also knew that this increased exposure to Tenofovir concomitantly increased
27 the patient's risk of severe side effects, including kidney disorders and bone-density loss.

28 244. Stribild is EVG, FTC, and TDF, plus the booster COBI. Gilead's own clinical trials on

1 Stribild showed that it was even more toxic than unboosted TDF, resulting in more adverse events and
2 treatment discontinuations. Gilead nevertheless formulated Stribild with 300mg of TDF together with the
3 pharmacokinetic booster COBI. This is the same dosage in which Gilead sold TDF as a standalone
4 product, i.e., for use *without* a booster.

5 245. At the same time that Gilead was formulating TDF-based Stribild, Gilead was conducting
6 Phase I studies of TAF. Gilead knew from those studies that COBI, like RTV, significantly increased the
7 patient's exposure to Tenofovir and thereby substantially increased the risk of significant kidney and
8 bone side effects. A Phase I TAF dosing trial showed that TAF 25mg was the optimal dose to achieve
9 activity similar to a 300mg dose of TDF.

10 246. Based on that study and others, when formulating Genvoya—the TAF-based version of
11 Stribild—Gilead significantly reduced the dosage of TAF, from 25mg for standalone TAF to only 10mg
12 in the COBI-boosted Genvoya. Likewise, when later formulating COBI-boosted Symtuza, Gilead again
13 used TAF 10mg rather than TAF 25mg.

14 247. Despite already having the results of the TAF studies, Gilead sought FDA approval of
15 COBI-boosted Stribild with 300mg of TDF—the equivalent of 25mg of TAF—instead of reducing the
16 dose of TDF. With the No-Generics Restraints with Japan Tobacco in place, Gilead intended, when the
17 time was ripe, to transition the Stribild prescription base to Genvoya. Making Stribild even less safe than
18 its other TDF drugs would *help* Gilead transition the prescription base from Stribild to Genvoya, which
19 was protected by the longer No-Generics Restraint.

20 248. Gilead compounded the injury to Stribild purchasers by artificially raising Stribild's price.
21 Since first marketing Stribild in 2012, Gilead had consistently taken price increases on the drug once a
22 year, in the range of 5% to 7%. That was the product's profit-maximizing price level. In connection with
23 the switch to TAF-based Genvoya in 2016, however, Gilead took its usual annual price increase on
24 Stribild *plus* another mid-year price increase of an additional 7%. That increase boosted the wholesale
25 price of a 12-month supply of Stribild to \$34,686, substantially higher than the \$30,930 price of
26 Genvoya. Having withheld TAF from the market for a decade, Gilead now punished consumers who
27 stuck with TDF-based Stribild, making them pay even higher supracompetitive prices.

28 249. Gilead's intentional degradation of Stribild, and raising its price above the historical and

1 profit-maximizing level, made economic sense for Gilead only because that conduct was part of an
2 anticompetitive scheme to impair competition. Absent a purpose and effect of impairing competition,
3 Gilead’s economic incentive would have been to produce the best possible products as soon as possible,
4 and to sell them at the profit-maximizing price.

5
6 **F. Gilead’s Unlawful Degrading of Standalone TAF**

7 250. As part of its unlawful scheme, Gilead also intentionally degraded another product—
8 standalone TAF. From November 2015 to November 2016 Gilead made TAF available *only* as a
9 component of its FDCs, not as a standalone product. Thus, during that critical year, when Gilead was
10 aggressively moving prescriptions from the TDF-based products to its new line of TAF-based products,
11 doctors could not prescribe standalone TAF together with HIV drugs manufactured by Gilead’s
12 competitors in the cART Market. Any patient who wanted TAF could get it only by buying a Gilead
13 FDC. Gilead thus used its control over Tenofovir to impair competition from suppliers of 3TC, RTV,
14 substitute third agents, and substitute FDCs.

15 251. Even after it belatedly made standalone TAF available, Gilead sold it only in 25mg
16 strength while making TAF available in 10mg strength when purchased as part of a Gilead FDC. When
17 TAF is taken concurrently with a “booster” drug (such as COBI or RTV), it is safer to take only 10mg
18 rather than 25mg of TAF. By refusing to make TAF 10mg available as a standalone product, Gilead
19 forced the many patients who need a booster drug to buy Gilead FDCs rather than TAF plus a competing
20 third agent.

21 252. Gilead achieved the same anticompetitive result by refusing to seek from the FDA
22 approval of standalone TAF for use in the treatment of HIV. Gilead instead sought approval of the
23 standalone drug for use only in the treatment of chronic Hepatitis B. Thus, any patients who want to use
24 TAF in an approved regimen for treatment of HIV can obtain it only by purchasing one of Gilead’s
25 FDCs. Gilead has deprived patients of the choice of using standalone TAF as part of an FDA-approved
26 HIV treatment together with a competing HIV drug.

1 **1. Gilead anticompetitively withheld standalone TAF in 2015-2016.**

2 253. Tenofovir is an essential input in a cART regimen, and Gilead has control over Tenofovir.
3 And as described in detail above (see Section VII(D)(2)(b)), TDF carries a substantial risk of severe side
4 effects such as kidney toxicity and bone-density loss. TAF has a significantly better side-effects profile.

5 254. In 2014, Gilead began applying for FDA approval for TAF-based FDCs. On November 5,
6 2014, Gilead filed NDA 207561 for Genvoya (TAF/FTC/EVG/COBI); on June 1, 2015 filed NDA
7 208351 for Odefsey (TAF/FTC/RPV); and on April 7, 2015 filed NDA 208215 for Descovy (TAF/FTC).

8 255. At that time, Gilead did not, however, apply for FDA approval of a standalone TAF
9 product. Instead, Gilead intentionally delayed filing its application for that FDA approval, withholding
10 the application until January 11, 2016. Gilead knew and intended that in intentionally delaying the
11 application for standalone TAF by one year, the FDA would not grant approval to market standalone
12 TAF until about a year after approving Gilead's TAF-based FDCs.

13 256. The FDA approved Genvoya, the TAF-based analogue to Gilead's TDF-based FDC
14 Stribild, on November 5, 2015. Gilead then immediately began marketing Genvoya and cannibalizing the
15 sales of Stribild (as well as Viread, Truvada, and Atripla) to Genvoya.

16 257. The FDA approved Odefsey, the TAF-based analogue to Gilead's TDF-based FDC
17 Complera, on March 1, 2016. Gilead then immediately began marketing Odefsey and cannibalizing the
18 sales of Complera (as well as Viread, Truvada, and Atripla) to Odefsey.

19 258. The FDA approved Descovy, the TAF-based analogue to Gilead's TDF-based FDC
20 Truvada, on April 4, 2016. Gilead then immediately began marketing Descovy and cannibalizing the
21 sales of Truvada and Viread to Descovy.

22 259. As Gilead knew and intended, the FDA did not approve Vemlidy, Gilead's TAF
23 standalone pill, until November 10, 2016, just over a year after approving Genvoya. By then Gilead had
24 succeeded in converting more than half of all Stribild prescriptions to Genvoya, and of Complera
25 prescriptions to Odefsey. That pattern of rapid cannibalization continued through 2018.

26 260. Gilead intentionally withheld standalone TAF from the market in the critical timeframe of
27 November 2015 to November 2016. Had Gilead not done so, doctors and patients could have begun
28 using standalone TAF in combination with other HIV drugs marketed by Gilead's competitors, rather

1 than getting switched from their existing regimens to a Gilead TAF-based FDC. For example, widely
2 used prescribing guidelines suggest that doctors and patients use Tenofovir in combination with (1)
3 Gilead's FTC *or* generic 3TC; and (2) Japan Tobacco's EVG *or* ViiV's dolutegravir or Merck's
4 raltegravir.

5 261. By withholding Vemlidy from the market while moving the TDF-based prescription bases
6 to the TAF-based FDCs, Gilead used its control over Tenofovir to impair competition and maintain a
7 dominant position in the cART Market. Without a standalone TAF on the market, Gilead forced anyone
8 who wanted to buy TAF to also buy a Gilead TAF-based FDC. Those FDCs were unlawfully protected
9 from competition by the amended—broader and lengthier—No-Generics Restraints.

10
11 **2. Gilead anticompetitively withheld standalone TAF 10mg.**

12 262. As part of the same anticompetitive scheme, Gilead also refused to make TAF available in
13 10mg strength—continuing to the present day—as either a standalone product or an FDC coformulated
14 with FTC. In the United States, Gilead makes both standalone TAF and Descovy (TAF/FTC) only
15 formulated with 25mg of TAF rather than 10mg.

16 263. As noted in detail above, Genvoya and Stribild contain three of the same active
17 ingredients (FTC, COBI, and EVG), while Stribild contains TDF and Genvoya contains TAF. COBI, a
18 pharmacokinetic “booster” drug, increases the time that a component, EVG, stays in a patient's system
19 (i.e., the drug's pharmacokinetic “half-life”). This allows patients to take Stribild or Genvoya once a day,
20 rather than twice a day.

21 264. COBI, however, also increases the concentration of Tenofovir in the patient's blood.
22 Thus, a patient taking Tenofovir with COBI will have a higher plasma concentration of Tenofovir than a
23 patient who takes an equal dose of Tenofovir without COBI. This is true regardless of whether the
24 Tenofovir is TDF or TAF.

25 265. Gilead knew from its long experience with Stribild that the presence of a booster drug
26 such as COBI significantly increases the probability that Tenofovir will be more toxic to the patient's
27 kidneys and bones. Gilead knew when formulating its TAF-based products that: (1) TAF, like TDF, has
28 higher levels of toxicity when used together with a booster; and (2) when used together with a booster

1 TAF would be effective at a dosage of just 10mg. Thus, when formulating its new line of TAF-based
2 products, Gilead included only 10mg of TAF in its FDC, Genvoya, that contains COBI. Similarly, when
3 coformulating TAF, FTC, and COBI together with Janssen's DRV (marketed as Symtuza beginning in
4 July 2018), Gilead also used 10mg rather than 25mg of TAF. Gilead formulated all of its other TAF-
5 based products—those without a booster—with 25mg of TAF.

6 266. Despite this knowledge, Gilead chose to make both Vemlidy (standalone TAF) and
7 Descovy (TAF plus FTC) available only with 25mg of TAF. Gilead knew that, if Vemlidy and Descovy
8 were available with a dosage of 10mg of TAF, many doctors and patients would prefer to prescribe or
9 take Vemlidy or Descovy together with a booster other than Gilead's COBI and a non-Gilead third agent,
10 rather than Gilead's Genvoya (and, later, Symtuza).

11 267. The purpose and effect of Gilead's making 10mg TAF available only in its own boosted
12 FDCs was to force patients who want to avoid the increased risk of TAF when used with a booster to
13 purchase the Gilead FDCs. For example, such a patient must purchase Genvoya rather than Descovy plus
14 generic ATV plus generic RTV. Gilead is unlawfully putting patients who need to use boosters to an
15 untenable choice: either purchase Gilead's boosted FDCs or be forced to use an unnecessarily high dose
16 of TAF, with the accompanying risk of toxicity.

17 268. Notably, in other parts of the developed world—including Europe, Japan, and Canada—
18 Gilead makes available two versions of Descovy, one with 25mg of TAF and another with 10mg. The
19 official prescribing information for Descovy from the European Medicines Agency—the regulatory
20 agency covering all European Union countries, where the 10mg dose is available—makes clear that the
21 doctor should prescribe the 10mg version, rather than the 25mg version, when also prescribing a booster.
22 Authorities in these nations recommend that patients take the TAF 10mg version of Descovy as part of a
23 boosted regimen, and take the TAF 25mg version when not used as part of a boosted regimen.

24 269. As part of its scheme to impair competition in the cART Market in the United States,
25 Gilead has deprived American patients of that choice. Gilead has required American patients who want
26 to avoid the risk of kidney and bone toxicity from a boosted TAF-based regimen to purchase Gilead's
27 boosted FDCs.

1 **3. Gilead anticompetitively withheld an HIV indication for standalone TAF.**

2 270. Gilead similarly used its control over Tenofovir to impair competition in the cART
3 Market by refusing to seek from the FDA an indication for use of standalone TAF in the treatment of
4 HIV. Instead, Gilead sought FDA approval only for use in treatment of chronic Hepatitis B.

5 271. Gilead obviously knew that standalone TAF was active against HIV, as demonstrated by,
6 among many other facts, Gilead's having sought FDA approval of HIV indications for numerous TAF-
7 containing FDCs. Obtaining FDA approval of an HIV indication for standalone TAF would have been a
8 trivial undertaking for Gilead. In connection with its November 5, 2014 application for approval of
9 Genvoya, Gilead performed and submitted to FDA studies demonstrating the efficacy of both standalone
10 TAF and TAF/FTC in the treatment of HIV. FDA approval of standalone TAF for treatment of HIV
11 would have required, at most, that Gilead submit some bioequivalence data that would have been trivial
12 and inexpensive for Gilead to obtain.

13 272. Gilead nevertheless chose not to seek an HIV indication for standalone TAF. As in
14 Gilead's intentional delay in marketing TAF as a standalone product at all, and in its intentional refusal
15 to make TAF available as a 10mg pill, the purpose and effect of Gilead's continuing refusal to seek and
16 obtain FDA approval for use of standalone TAF in the treatment of HIV is to force patients to purchase
17 Gilead's FDCs rather than standalone TAF plus a competing HIV drug.

18 273. Gilead knew that if standalone TAF (Vemlidy) were indicated for use in treatment of HIV,
19 many doctors and patients would prefer Vemlidy together with other competing HIV drugs, rather than
20 Gilead's TAF-based FDCs. Those TAF-based FDCs are indicated for use in the treatment of HIV. So, if
21 doctors or patients want to use TAF that is indicated for use in the treatment of HIV, they must purchase
22 one of Gilead's TAF-based FDCs. (In theory, doctors could prescribe Vemlidy "off-label" for use in the
23 treatment of HIV, but in fact most doctors will not do so.)

24 274. Gilead's Descovy (TAF/FTC) has an HIV indication, so doctors can and do prescribe
25 Descovy together with non-Gilead third agents. That circumstance does not negate the anticompetitive
26 effect of Gilead's forcing patients who want TAF to take a Gilead TAF-based FDC (including Descovy).
27 The patents protecting the TAF molecule are set to expire in 2022. But Gilead has applied for patents that
28

1 claim the formulation of TAF with FTC. *See, e.g.*, United States Patent Application Publication
2 2018/0177734 A1. When granted, those patents will extend far beyond 2022.

3 275. Withholding an HIV indication made economic sense for Gilead only because it impaired
4 competition. Gilead in fact had already conducted the clinical trials necessary to get FDA approval for
5 use of standalone TAF in treating HIV.

6
7 **4. Gilead degraded standalone TAF with anticompetitive purpose and effect.**

8
9 276. Basic economic facts demonstrate that Gilead's conduct had anticompetitive purpose and
10 effect. Absent the intended effect of impairing and delaying competition, degrading standalone TAF
11 would have been economically irrational for Gilead. Notably, Gilead marketed other TAF-containing
12 products in 2015-2016, made TAF 10mg strength available in its FDCs that were to be boosted, and
13 obtained an HIV indication for *all* of its other five TAF-containing products.

14 277. If Gilead had not degraded standalone TAF, Gilead would have made more than an
15 additional \$200 million in standalone TAF sales annually. Gilead's forgoing more than \$200 million in
16 additional annual TAF sales makes economic sense for Gilead solely because that conduct impairs
17 competition. The \$200 million in annual lost standalone TAF sales is Gilead's investment in impairing
18 and delaying competition in the cART Market.

19 278. Competition in the cART Market was insufficient to mute the anticompetitive effects of
20 Gilead's degrading standalone TAF (i.e., Gilead's refusal to make available standalone TAF in 2015-
21 2016, to make it available in 10mg strength, and to make it available with an HIV indication).

22 279. Gilead's degrading of the product was a significant departure from Gilead's longstanding
23 practice. Gilead first acquired the rights to Tenofovir in the early 1990s. As explained above, however,
24 Tenofovir alone cannot be taken orally. To allow oral administration, Gilead formulated prodrugs of
25 Tenofovir, thus allowing it to be marketed in the form of a pill that patients can swallow. Immediately
26 upon marketing that form of Tenofovir—TDF—in 2001, Gilead made it available as a standalone
27 product and obtained FDA approval for its use in treatment of HIV.

28 280. Gilead continued this pattern when it began marketing Tenofovir-based FDCs, beginning

1 with Truvada in August 2004. At that time, TDF was the form of Tenofovir that Gilead used in its own
2 FDCs; it used the same milligram strength in Truvada that it made available in its standalone Tenofovir
3 (Viread); and it continued to make available for use in the treatment of HIV the same form of Tenofovir
4 that it used in its FDCs. Gilead continued this pattern without interruption throughout the introduction
5 and marketing of all of its other FDCs from 2004 through 2014.

6 281. Gilead had consistently and insistently cannibalized the sales of Viread (TDF) to the
7 unlawfully protected TDF-based FDCs, but at least Gilead had made available for purchase as a
8 standalone drug the same TDF that it used in its FDCs. Shortly after Gilead began marketing Tenofovir
9 as a standalone product (Viread), doctors began to co-prescribe and co-administer it as a “backbone”
10 drug for use with third agents. When developing and designing their third agents, Gilead’s competitors
11 relied on reasonable access to the best available form of Tenofovir as a backbone drug—with the same
12 form, strength, and indications as the Tenofovir that Gilead used in its own FDCs. Gilead thus profited
13 from Tenofovir’s use both by selling it as an ingredient in its FDCs and by permitting competitors to
14 market their third agents to be co-administered with the same form, strength, and indications of
15 Tenofovir that Gilead used in its FDCs.

16 282. In order to even further impair competition in the cART Market—beyond the impairment
17 wrought by the No-Generics Restraints—Gilead began degrading standalone TAF in 2015. This marked
18 an important change in Gilead’s prior, voluntary pattern of conduct that had persisted for more than a
19 decade. Gilead made a conscious choice to change this established pattern in order to impair competition.
20 Gilead has never offered a public justification for its conduct in degrading standalone TAF, and it has no
21 legitimate justification.

22 283. Competition within the cART Market has not been able to counter Gilead’s
23 anticompetitive conduct. Competitors had sunk substantial resources into promoting their third agents to
24 be co-administered with Tenofovir. It is not feasible for them to start over from scratch and develop their
25 own substitutes for Tenofovir. The high barriers to entry in the prescription pharmaceutical marketplace
26 mean that the market is locked into Tenofovir as a principal backbone drug in the cART regimen for the
27 foreseeable future.

28 284. Through its long-standing, voluntary course of dealing with its competitors, Gilead

1 permitted and facilitated the use of Tenofovir as a principal component of the cART regimen and caused
2 its competitors to anticipate and rely upon access to the best available form of Tenofovir, and the form
3 that Gilead uses in its own FDCs, just as those competitors made the best forms of their third agents
4 available for co-administration with Tenofovir. As a result, Gilead has a duty not to degrade standalone
5 TAF for the purpose of denying its rivals the ability to continue to “interoperate” practically with
6 Tenofovir.

7 285. Gilead refused to sell standalone TAF in 2015-16 and continues to refuse to sell
8 standalone TAF in 10mg strength and with an HIV indication not because of any lack of consumer
9 demand for that product, but precisely because there is a consumer demand for it. Gilead degraded
10 standalone TAF in order to shift the undeniable consumer demand for that product to Gilead’s TAF-
11 based FDCs.

12 286. In degrading standalone TAF while making non-degraded TAF available as a component
13 of Gilead FDCs, Gilead granted to purchasers of those FDCs a bundled discount that its rivals cannot
14 match. Gilead’s conduct impaired competition from equally efficient rivals who make less than all of the
15 components in Gilead’s exclusionary bundles, i.e., its TAF-based FDCs.

16 287. Gilead’s degrading TAF has also artificially reduced the prescription base of Vemlidy
17 (standalone TAF) and Descovy (TAF plus FTC) that will be available for generic substitution when the
18 principal patents on TAF and FTC expire in May 2022 and September 2023, respectively. Those artificial
19 reductions in the prescription bases will: (1) dramatically increase the prices that patients will pay for
20 TAF; and (2) reduce the pricing pressure that Gilead’s TAF-based FDCs would otherwise face in the
21 cART Market. Gilead has harmed the competitive process without a legitimate business justification.
22 Gilead’s conduct harmed competition on the merits, increased prices, limited the quality and availability
23 of products, and increased costs.

24
25 **G. Gilead’s Unlawful Regulatory Gaming**

26 288. Gilead’s intentionally withholding an HIV indication from standalone TAF has another
27 anticompetitive purpose and effect. That withholding triggers regulatory barriers to the timely and
28 effective entry into the market of generic standalone TAF with an HIV indication (“TAF-HIV”) and

1 generic-TAF-based FDCs.

2 289. With the fair and open competition that the antitrust laws provide, beginning (at the latest)
3 with the availability of generic TAF in May 2023, doctors and patients would have important competitive
4 alternatives to Gilead’s TAF-based FDCs. For example, doctors could begin prescribing generic TAF-
5 HIV together with another NRTI (e.g., 3TC), and a third agent. And competing manufacturers could
6 coformulate generic TAF-HIV with a large variety of antiretroviral agents to make FDCs for use in the
7 treatment of HIV.

8 290. Gilead has unlawfully manipulated the regulatory framework in order to impair and delay
9 that generic-TAF-based competition. Gilead is unlawfully maintaining its monopoly by refusing to get an
10 HIV indication for Vemlidy (standalone TAF). Gilead’s purpose in withholding an HIV indication is to
11 force competitors—those seeking to market generic TAF-HIV and those seeking to use it as a component
12 of competing FDCs—to conduct time-consuming and expensive clinical trials.

13 291. But for Gilead’s gaming of the regulatory system, it would be entirely unnecessary for
14 competitors to conduct those expensive and delay-inducing trials. Gilead in fact already conducted the
15 clinical trials that are necessary for FDA approval of use of Vemlidy in treating HIV. Gilead nevertheless
16 refused to ask the FDA for that indication, with a purpose of invoking this regulatory barrier to
17 competitors’ entry.

18 292. Forgoing the HIV indication causes Gilead to lose more than \$200 million in Vemlidy
19 sales every year. But impairing competitors’ entry into the marketplace is even more valuable to Gilead.
20 Withholding an HIV indication for Vemlidy makes economic sense for Gilead only because of its
21 anticompetitive effects, including impairing and delaying competition from generic-TAF-based
22 competitors.

23 293. This regulatory gaming will help Gilead to maintain its monopoly in the cART Market.
24 Unless enjoined by this Court, Gilead will succeed in preventing until as late as 2032 the flourishing of
25 price competition and FDC innovation that should begin no later than May 2023.

26
27 **1. TAF is vulnerable to generic competition in May 2023.**

28 294. Absent Gilead’s unlawful manipulation of the regulatory framework, generic TAF-HIV

could enter the market by May 2023 at the latest. Gilead has NCE exclusivity for standalone TAF, which expires on November 5, 2020. That exclusivity prevents any manufacturer from filing an application with the FDA to make generic TAF until November 5, 2019. When manufacturers file such an application, Gilead will sue them for patent infringement, eliciting the 30-month stay under the Hatch-Waxman Act. That stay will not begin to run until November 5, 2020 and will expire 30 months later, in or about May 2023. Absent Gilead’s unlawful manipulation described below, manufacturers could easily “design around” Gilead’s patents, get FDA approval, and begin marketing generic TAF-HIV, and use generic TAF as a component of a competing FDC, no later than May 2023.

295. Gilead’s patents protecting TAF can be divided into two groups:

Group	Patent No.	Patent Name	Patent Expiry	Description
Group One	7,390,791	“Prodrugs of phosphonate nucleotide analogues”	7 May 2022	Tenofovir Alafenamide Molecule
	7,803,789	“Prodrugs of phosphonate nucleotide analogues”	2 Feb 2022	Tenofovir Alafenamide Molecule
Group Two	8,754,065	“Tenofovir alafenamide hemifumarate”	15 Aug 2032	Hemifumarate Salt
	9,296,769	“Tenofovir alafenamide hemifumarate”	15 Aug 2031	Hemifumarate Salt

296. The first group consists of United States Patents Nos. 7,390,791 and 7,803,788. Those two patents protect the basic prodrug molecule design—the drug composition and drug product—and expire in 2022.

297. The second group consists of United States Patents Nos. 8,754,065 and 9,296,769. Those two patents claim the hemifumarate salt of tenofovir alafenamide, i.e. the salt in which the ratio of fumaric acid to tenofovir alafenamide is approximately 0.5, and protect its use in pharmaceutical

1 compositions. The hemifumarate salt is variously referred to as “GS-7340-03” or “TAF fumarate.” These
2 patents expire in 2032.

3 298. Manufacturers commonly use salts of pharmaceutical compositions to increase oral
4 solubility, thereby improving manufacturability and stability. When a soluble salt dissolves in water, the
5 positively charged component (e.g., tenofovir alafenamide) and the negatively charged component (the
6 fumarate) separate.

7 299. As long as the pharmacokinetics and safety profile of two different salts of the same
8 therapeutic moiety (e.g., tenofovir alafenamide) are bioequivalent, the different salts’ clinical efficacy is
9 identical. The FDA therefore permits manufacturers to use a streamlined process, under Section
10 505(b)(2) of the FD&C Act (21 U.S.C. § 355(b)(2)), to get approval for a drug that uses a salt different
11 than that used by the reference drug. (See Section VI(D) above.) The manufacturer usually need not
12 conduct any clinical trials, but must merely show that the salt that it proposes to use results in the same
13 safety profile as, and is bioequivalent to, the reference drug. The FDA may also assign an AB-rating to
14 the product, making it automatically substitutable for the reference drug at the pharmacy counter.

15 300. Thus, by making the drug with a different salt than the one used by the brand
16 manufacturer, other manufacturers can get FDA approval while avoiding infringing the brand
17 manufacturer’s patents. This is known as “designing around” the patents. Designing around a brand
18 manufacturer’s patents on particular salts prevents those manufacturers from using secondary patents to
19 extend their monopolies beyond the expiration of the basic patents that claim the therapeutic moiety
20 itself.

21 301. Manufacturers could easily design around Gilead’s later-expiring Group Two patents (i.e.,
22 the patents on the hemifumarate salt). That would allow generic entry in 2023 (when the NCE
23 exclusivity, plus the 30-month stay expire), not 2032.

24 302. All of Gilead’s current TAF-containing products use the hemifumarate salt of tenofovir
25 alafenamide. But Gilead originally started clinical development of its TAF product line with the
26 *monofumarate* salt where the ratio of fumaric acid to tenofovir alafenamide is approximately 1. The
27 monofumarate salt is variously referred to as “GS-7340-02” or “TAF monofumarate.” Gilead transitioned
28 to using the hemifumarate salt only during phase II and phase III development of many of its products

1 and for final development.

2 303. Gilead used the monofumarate salt in some of its own phase II clinical trials, and used
3 those studies to get FDA approval of the hemifumarate-containing final products. Based on Gilead’s own
4 data, the FDA concluded that “[the hemifumarate salt] is considered comparable to [the monofumarate
5 salt] based on physical/chemical properties and pharmacokinetic data.” FDA, “Pharmacology Review for
6 NDA 207-561,” [https://www.accessdata.fda.gov/drugsatfda_docs/nda/2015/207561Orig1s000PharmR](https://www.accessdata.fda.gov/drugsatfda_docs/nda/2015/207561Orig1s000PharmR.pdf)
7 [.pdf](https://www.accessdata.fda.gov/drugsatfda_docs/nda/2015/207561Orig1s000PharmR.pdf), at 12.

8 304. In fact, at least three of the initial clinical trials performed by Gilead to evaluate TAF, the
9 GS-120-1101, GS-US-120-0104, and GS-US-292-0101 trials, used the monofumarate rather than
10 hemifumarte salt. Gilead Sciences, Inc., “Protocol GS-US-320-0108, Amendment 2.1,”
11 https://clinicaltrials.gov/ProvidedDocs/36/NCT02836236/Prot_000.pdf, at 31.

12
13 **2. Gilead withheld an HIV indication in order to impair competition.**

14 305. Gilead’s intentional withholding of the HIV indication impaired the sale of generic TAF-
15 HIV for use in combination with other standalone NRTIs and third agents, in competition with Gilead’s
16 TAF-based FDCs. In order to obtain from the FDA an AB-rating to the reference drug, and thus to be
17 automatically substitutable at the pharmacy counter, the applicant must show that the proposed generic
18 drug is bioequivalent to the reference drug and has, among other requirements, the same *labeling* as the
19 reference drug.

20 306. Accordingly, a proposed generic TAF-HIV must have the same label as Vemlidy. Gilead
21 intentionally withheld an HIV indication from Vemlidy, so a manufacturer seeking an AB-rating for its
22 standalone TAF product must also omit an HIV indication from its label. The only generic standalone
23 TAF ANDA product—the only AB-rated ANDA product that will be automatically substitutable for
24 brand Vemlidy at the pharmacy—is one that is *not* indicated for use in the treatment of HIV.

25 307. When a generic Vemlidy—*without* an HIV indication—becomes available, doctors could
26 in theory prescribe it for “off-label” use. But, in fact, substantial numbers of doctors will not do so. And
27 federal law (21 C.F.R. § 202.1) makes it unlawful for a pharmaceutical manufacturer to actively
28 encourage doctors to prescribe the product for off-label use. The effect—intended by Gilead—will be to

1 shield Gilead's TAF-based FDCs from competition from combinations of standalone products that
2 include generic standalone TAF.

3 308. Gilead's conduct will also impair the sale of competing FDCs made with generic TAF.
4 When generic TAF becomes available, competing manufacturers would be able to formulate FDCs with
5 generic TAF and other antiretrovirals. But Gilead's withholding of the HIV indication for standalone
6 TAF will substantially complicate, delay, and increase the expense of the regulatory pathway for
7 competing manufacturers.

8 309. When all of the components of a proposed FDC have previously received FDA approval
9 for treatment of HIV, an applicant seeking FDA approval need provide only a study showing that the
10 drugs are safe and effective when used together, and some bioavailability data showing that the FDC
11 produces blood levels for each of the active ingredients adequate to achieve efficacy. Importantly, when
12 all of the components of a proposed FDC have previously received FDA approval for treatment of HIV,
13 the applicant need not provide to the FDA any new preclinical or safety and efficacy data.

14 310. In contrast, when all of the components of a proposed FDC have not previously received
15 FDA approval for treatment of HIV, the applicant *must* provide new preclinical and safety and efficacy
16 data. The cost and delays attendant upon obtaining and presenting that data to the FDA are substantial.
17 As intended by Gilead, those costs and delays will impair competition to Gilead's TAF-based FDCs.

18 311. Moreover, Gilead is currently taking steps to ensure that competitors cannot avoid these
19 costs and delays by formulating their FDCs with generic TAF/FTC once the FTC patents expire. As
20 noted above, Gilead is already in the process of patenting the formulation of any salt of tenofovir
21 alafenamide with FTC.

22 312. Absent the intended effect of impairing and delaying competition, Gilead's withholding of
23 an HIV indication for TAF made no economic sense for Gilead. Gilead's motive in withholding an HIV
24 indication from TAF was to impair and delay competition. Gilead's forgoing more than \$200 million in
25 annual standalone TAF sales is an investment in impairing and delaying competition.

1 **H. Gilead’s Anticompetitive Conduct to Delay Entry of Generic Viread, Truvada, and**
2 **Atripla**

3 313. Beginning in 2008, generic-drug manufacturer Teva Pharmaceuticals challenged the
4 patents on Gilead’s Viread, Truvada, and Atripla. Other generics manufacturers, including Mylan
5 Pharmaceuticals, Lupin Pharmaceuticals, Cipla Ltd., Hetero Drugs Ltd., Amneal Pharmaceuticals, and
6 Aurobindo Pharma, ultimately also challenged the patents on one or more of those products.

7 314. Viread, Truvada, and Atripla are formulated with TDF and/or FTC. Gilead had been
8 sitting on TAF, the successor product to TDF, since at least 2004. These challenges to the TDF and FTC
9 patents prompted Gilead to finally dust TAF off and prepare to switch all of its TDF-based franchise to a
10 TAF-based franchise.

11 315. Gilead’s plan to transition the TDF franchise to a TAF franchise would be disrupted,
12 however, if generic versions of Viread, Truvada, or Atripla entered the market before Gilead
13 accomplished the switch to TAF-based products, which were protected by the broader and longer No-
14 Generics Restraints. Gilead prevented the disruption of its anticompetitive schemes by enticing Teva and
15 the other generic manufacturers to delay entry into the market with their generic TDF-based products.

16
17 **1. Most-Favored-Entry and Most-Favored-Entry-Plus clauses delay generic**
18 **entry.**

19 316. Gilead compounded the anticompetitive effects of the No-Generics Restraints by
20 including Most-Favored-Entry (“MFE”) and Most-Favored-Entry-Plus (“MFEP”) clauses in patent-
21 settlement agreements with Teva and the other generics manufacturers. Gilead used these clauses to
22 entice Teva to delay entry into the market in return for assurance that no other generic manufacturer
23 would enter the market before Teva.

24 317. An agreement with an MFE clause arises when the brand manufacturer and the “first-
25 filer”—the generic manufacturer that filed the first ANDA with a Paragraph IV certification—settle the
26 patent litigation, with the generic manufacturer agreeing to delay entering the market until a specified
27 date. The MFE clause provides that if any other generic manufacturer (a “second-filer”) succeeds in
28 entering the market before that date, the first-filer may enter at the same time. An MFE can delay generic

1 entry by reducing a second-filer's incentive to try to enter the market before the first-filer.

2 318. A first-filer that is otherwise entitled to a 180-day period of ANDA Exclusivity can forfeit
3 it. When a second-filer gets a final court decision that the brand manufacturer's patents are invalid or not
4 infringed, the first-filer forfeits its ANDA Exclusivity if it does not enter the market within 75 days of the
5 court decision. 21 U.S.C. § 355 (j)(5)(D)(i)(I)(bb). The first-filer would forfeit the statutory exclusivity,
6 for example, if it agreed to delay entry until Year 7 and a second-filer got a final court decision of patent
7 invalidity in Year 5. Having agreed not to begin marketing until Year 7, the first-filer could not enter the
8 market within 75 days of the second-filer's favorable court decision in Year 5. So the first-filer would
9 forfeit its ANDA Exclusivity. The MFE allows the first-filer to circumvent this statutory provision.

10 319. Absent an MFE clause, a second-filer could enter in Year 5 and get a substantial period of
11 de facto (non-statutory) exclusivity in the generics sector of the market. The first-filer would be stuck on
12 the sidelines while the second-filer enjoyed de facto exclusivity. Because it is the prospect of obtaining
13 that period of de facto exclusivity that motivates a second-filer to incur the substantial costs and burdens
14 of trying to enter the market before the entry date to which the first-filer agreed, and because an MFE
15 would eliminate that possibility, an MFE would reduce the incentive for second-filers to try to enter the
16 market before the first-filer.

17 320. Like an MFE, an MFE-*Plus* (MFEP) dramatically reduces a second-filer's incentive to try
18 to enter the market before the first-filer. An MFEP provides that the brand manufacturer will not grant a
19 license to any second-filer to enter the market until a defined period of time after the first-filer enters.
20 The clause might provide, for example, that the brand manufacturer will not grant a license to any
21 second-filer to enter the market until 180 days after the first-filer enters.

22 321. Absent the MFEP, a second-filer could use its challenge to the patents as leverage to
23 negotiate from the brand manufacturer a license to enter the market before the first-filer. And the first-
24 filer's statutory ANDA Exclusivity would not prohibit that earlier entry if, for example, the first-filer
25 forfeited the ANDA Exclusivity by having failed to get tentative FDA approval within 30 months. 21
26 U.S.C. 355 § (j)(5)(D)(i)(I)(aa)(BB). The second-filer could thereby enjoy a substantial period of de facto
27 exclusivity in the generic sector of the market. An MFEP would eliminate that possibility by ensuring
28 that the second-filer could not successfully negotiate for an earlier licensed entry date.

1 322. In short, the Hatch-Waxman Amendments leave open at least two pathways for second-
2 filers to enter the market before a first-filer that has agreed to delay entry into the market. The second-
3 filer could win the patent litigation and trigger forfeiture of the first-filer’s ANDA Exclusivity when it
4 fails to enter the market within 75 days of the court decision; and the second-filer could negotiate an
5 earlier entry date from the brand manufacturer and enter the market if the first-filer has forfeited statutory
6 exclusivity by having failed to get FDA approval within 30 months. A brand manufacturer could use
7 MFEs and MFEPs to close the two pathways to earlier generic entry that Congress left open.

8 323. The anticompetitive effects of MFEs and MFEPs may be compounded by increasing the
9 number of generic manufacturers to which the clauses apply. When one second-filer is deciding whether
10 to initiate or continue a patent challenge, four other generic manufacturers might also have already
11 started a patent challenge or be poised to do so. Knowing that the brand manufacturer has already granted
12 an MFE to the first-filer and has offered to grant one to the second-filer himself, the second-filer knows
13 that the brand manufacturer will also likely grant one to the third, fourth, fifth, and sixth filers.

14 324. In these circumstances, the second-filer faces the prospect that, even if it expends
15 substantial resources to win the patent case, its “victory” would trigger simultaneous entry into the
16 market by the first-filer, possibly an “authorized generic” marketed by the brand manufacturer, and four
17 other generics. As shown in detail below, entry by that number of manufacturers would quickly compete
18 prices down to near marginal cost.

19 325. The use of MFEs and MFEPs may therefore mean that no other generic manufacturer can
20 profitably invest in using its patent challenge to try to get earlier entry than the first-filer.

21
22 **2. Gilead used MFEs and MFEPs to delay generic entry.**

23 326. Gilead used MFEPs and MFEs to delay the onset of generic competition to Viread,
24 Truvada, and Atripla. The MFE agreements set a date for initial generic entry and provided that the first-
25 filer, Teva, could enter sooner should a second-filer gain entry into the market by, for example, proving
26 the Gilead patents invalid. The MFEP clauses compounded the anticompetitive effects of these
27 provisions by promising that Gilead would not authorize further generic entry for a defined period after
28 the initial entry. These anticompetitive clauses, together with the unlawful No-Generics Restraints that

1 Gilead had already used, worked. All generic manufacturers agreed to stay out of the market for the
2 period of time that Gilead granted to Teva in the MFEP, and Teva agreed to delay entry into the market.

3
4 **a. Teva filed the first ANDAs with Paragraph IV certifications.**

5 327. On September 26, 2008, Teva filed the first ANDA seeking FDA approval to sell generic
6 Truvada. Teva's ANDA, which was assigned ANDA No. 90894, contained a Paragraph IV certification
7 as to Gilead's patents 6,642,245 and 6,703,396 that claim the FTC composition (the "FTC Enantiomer
8 Patents"), which were set to expire on May 4, 2021 and September 9, 2021, respectively. Teva asserted
9 that the patents were invalid, unenforceable, or not infringed by its proposed generic version of Truvada.

10 328. On the same day, Teva also filed the first ANDA seeking FDA approval to sell generic
11 Atripla. Teva's ANDA, which was assigned ANDA No. 91215, contained a Paragraph IV certification as
12 to the FTC Enantiomer Patents and to BMS's patents covering EFV. Teva also provided a Paragraph IV
13 certification as to Gilead's basic patents claiming TDF and certain methods of using it—patents
14 5,922,695; 5,935,946; 5,977,089; and 6,043,230 (the "TDF Patents"). Teva asserted that the TDF patents
15 were invalid, unenforceable, or not infringed.

16 329. On or about November 3, 2008, Teva notified Gilead that Teva had filed the ANDAs and
17 explained in detail why the patents were invalid and not infringed by Teva's ANDA products.

18 330. On December 12, 2008, Gilead filed suit in the United States District Court for the
19 Southern District of New York (No. 08-cv-10838), alleging that Teva's generic Truvada would infringe
20 the FTC Enantiomer Patents. On September 25, 2009, Gilead filed an amended complaint, adding
21 allegations that Teva's generic Atripla would infringe the FTC Enantiomer Patents. Gilead filed the
22 patent infringement lawsuit without regard to its merits. In fact, Gilead knew that there was a substantial
23 risk that it would lose the patent litigation.

24 331. On July 1, 2009, Teva filed the first ANDA seeking FDA approval to sell generic Viread.
25 Teva's ANDA, which was assigned ANDA No. 91692, contained a Paragraph IV certification as to the
26 TDF Patents, claiming that they were invalid, unenforceable, or not infringed. On or about January 25,
27 2010, Teva notified Gilead that Teva had filed ANDA No. 91692, detailing why the TDF Patents were
28 invalid and not infringed by Teva's ANDA product.

1 332. On March 5, 2010, Gilead filed suit in the United States District Court for the Southern
2 District of New York (No. 10-cv-01796) alleging that Teva’s generic Viread would infringe the TDF
3 Patents. Gilead filed the patent infringement lawsuit against Teva without regard to the lawsuit’s merits.
4 In fact, Gilead knew that there was a substantial risk that it would lose the patent litigation.

5 333. Thereafter, the litigation of the TDF patents, which affected Teva’s applications for
6 Viread, Truvada, and Atripla (all of which contain TDF) was conducted in Southern District of New
7 York (No. 10-cv-01796). The litigation of the FTC Enantiomer Patents, which affected Teva’s
8 applications for Truvada and Atripla (both of which contain FTC), was conducted in Southern District of
9 New York (No. 08-cv-10838).

10 334. Subsequent events set the stage for Gilead to use MFEPs and MFEs to elicit delayed entry
11 from Teva and all other generic manufacturers that sought to market generic Viread, Truvada, and
12 Atripla.

13
14 **b. Second-filers posed a threat to Teva.**

15 335. From March 2010 to February 2013 (when Gilead enticed Teva into a settlement on
16 Viread), six more generic-drug manufacturers—Lupin, Cipla, Hetero, Aurobindo, Strides Pharma, and
17 Macleods Pharmaceuticals—filed ANDAs seeking FDA approval to sell generic Viread. The first two of
18 those six manufacturers included Paragraph IV certifications with respect to the TDF Patents. Gilead and
19 Teva knew and understood that the other four of those six intended to enter the market as soon as
20 possible and would amend their ANDAs to include Paragraph IV certifications (as is common in the
21 industry) if it appeared that they had an opportunity for a period of de facto exclusivity.

22 336. These competitors posed a significant threat to Teva. The FD&C Act’s forfeiture
23 provisions (see Section VI(C) above) created the prospect that, if Teva agreed to a long delay in entry,
24 without the protection of an MFEP and MFE, a second-filer would: (a) obtain a judgment of invalidity or
25 noninfringement and enter the market years before Teva; or (b) would use the leverage of its patent
26 challenge to negotiate a better licensed-entry date from Gilead. Without those clauses, Teva faced a
27 substantial risk that it would be stuck on the sidelines while second-filers entered the market years in
28 advance and reaped the corresponding gains of being the first ANDA entrants.

1 337. Gilead enticed Teva to enter into the settlement for Viread in part by using MFE and
2 MFEP clauses to forestall generic competition to Teva after it entered the market. This reduction in
3 generic competition was enormously valuable to Teva. For every week that Teva was on the market as
4 the only generic manufacturer of a standalone product such as Viread, it could expect to sell all of the
5 generic units at about 90% of the price of branded Viread. Entry of other generics, however, would
6 significantly cut Teva's unit sales and the profits per sale. A third generic version would cut Teva's unit
7 share to a third and permit a price of only 44% of the branded price; entry of a seventh version would cut
8 Teva's unit share to one-seventh and permit a price of only 23% of the brand price.

9 338. In 2017 (the year that Teva eventually entered the market) Viread had United States sales
10 of \$591 million, or about \$11 million per week. Generics collectively (however many there were) could
11 expect to take 80% of Viread's unit sales. Thus, as the sole generic on the market Teva could expect to
12 make \$7.9 million for every week of sales; with seven generics on the market, Teva could expect to make
13 only \$289,000 for every week of sales.

14 339. Gilead's efforts to forestall generic competition increased Teva's sales by \$7.6 million for
15 every week in which it was the only generic Viread seller. Moreover, Teva's competitive advantage
16 would not be limited to just the period when no other manufacturer was selling the product. With a date-
17 certain, single-entrant launch date, Teva could ramp up its production and negotiate contracts with its
18 customers to effectively stuff the distribution channel with many more weeks of product before the
19 second-filers entered the market, and to lock in high prices with long-term sales contracts. The difference
20 between the single-generic price and the price with multiple generic competitors would translate into a
21 significant cost to consumers.

22
23 **c. Gilead gave Teva an MFEP and put MFEs in all Viread agreements.**

24 340. In order to delay entry of generic Viread, Gilead in fact gave Teva an MFEP and put MFE
25 clauses in all of its settlement agreements with the generic manufacturers. Those clauses caused Teva to
26 agree to delay entry, and they prompted all of the second-filers to agree to delay entry until at least six
27 weeks after Teva entered.
28

1 341. The first MFE appeared on November 27, 2012 in an interim agreement between Gilead
2 and Teva, in which Teva agreed that it would not enter the market with Viread or Truvada while the TDF
3 patent litigation was pending, until the earlier of (i) various events in the patent litigation (e.g., a finding
4 of invalidity), or (ii) a second-filer entered the market. Gilead and Teva put this MFE in the public
5 record, so all of the second-filers knew that any final agreement between Gilead and Teva was also very
6 likely to include an MFE.

7 342. In February 2013, Gilead and Teva agreed in principle to settle their litigation over the
8 TDF Patents, and they finalized the agreement in April 2013. Under the agreement, Teva agreed to delay
9 marketing its generic Viread and any TDF-containing product until December 15, 2017.

10 343. The MFE and MFEP allowed Gilead to extract an exceedingly late entry date—just six
11 weeks before the end of the patent term. The MFE provided that, if any second-filer entered the market
12 before December 15, 2017, Teva’s entry date would be moved up accordingly. The MFEP provided that
13 Gilead would not grant any other manufacturer a license to enter the market with generic Viread until at
14 least six weeks after Teva’s agreed entry date.

15 344. The MFE and MFEP caused allowed Gilead to obtain a later entry date than Teva
16 otherwise would have agreed to. Without the clauses, Teva faced the prospect of simultaneous entry by
17 as many as six other generic manufacturers. With the clauses, Teva was nearly guaranteed a period of
18 time as the only generic on the market, and was absolutely guaranteed that no other generic manufacturer
19 would enter before it.

20 345. When agreeing to the delayed December 15, 2017 entry date, Teva knew that: (1) Gilead
21 was willing to include the anticompetitive MFEs in settlement agreements with second-filers; (2) it was
22 in Gilead’s financial interest to include such clauses in agreements with all second-filers; (3) the second-
23 filers knew that the Gilead/Teva agreement included an MFE; (4) given the MFE and MFEP, it was not
24 in any second-filer’s interest to incur the costs of patent litigation to try to enter the market before Teva;
25 and (5) the MFEs’ deterrent effect would grow with every additional one that Gilead included in another
26 settlement.

27 346. Upon information and belief, Gilead advised the second-filers of the existence of the MFE
28 and MFEP in the Gilead/Teva agreement.

1 347. Teva concluded, correctly, that the MFE and MFEP would protect it from competition
2 from any other generic manufacturer until the end of the TDF Patent terms on January 26, 2018—six
3 weeks after Teva entered.

4 348. By the time that Gilead and Teva finalized their agreement in April 2013, Gilead had filed
5 patent infringement lawsuits against Lupin and Cipla, both of which had provided Paragraph IV
6 certifications with respect to the TDF Patents. On May 28, 2014 and July 29, 2014, Gilead settled those
7 patent litigations with Lupin and Cipla, respectively. Both generic manufacturers agreed under their
8 respective settlements not to launch generic Viread until six weeks after Teva. And Gilead included an
9 MFE clause in both of those settlement agreements.

10 349. Just as Gilead intended, the MFE and MFEP in the Teva agreement, and the MFEs in the
11 Lupin and Cipla agreements, caused the other ANDA filers—Hetero, Aurobindo, Strides, and
12 Macleods—to not amend their ANDAs to include Paragraph IV certifications. Absent Gilead’s
13 anticompetitive conduct, at least Hetero and Aurobindo would have done so; those manufacturers made
14 Paragraph IV certifications with respect to Truvada.

15 350. On January 26, 2018, six weeks to the day after Teva entered the market, five additional
16 generic manufacturers (Cipla, Hetero, Aurobindo, Strides, and Macleods) received final FDA approval,
17 and four of them immediately began marketing their generic Viread.

18 351. During the six weeks it had the only generic Viread on the market, Teva stuffed the supply
19 chain with product, selling at least 14 weeks’ supply of product and locking in high prices through long-
20 term sales contracts. Thus, Teva made at least \$106 million more than it would have absent the MFEP
21 and MFEs. Absent the MFEP and MFEs, Teva and the second-filers would have entered the market
22 much sooner than they did, on dates to be determined by the jury. The delay in generic entry protected
23 more than \$2 billion in Gilead’s Viread branded sales, all at the expense of Plaintiffs and other class
24 members.

25 352. Gilead’s delaying the entry of generic Viread also had the effect of delaying the entry of
26 Gilead’s TAF-based line of products. Gilead withheld those products from the market until the entry of
27 generic TDF was imminent. The delay in that generic entry caused Gilead to delay the introduction of its
28 TAF-based products.

1
2 **d. Gilead put MFEPs and MFEs in the Truvada and Atripla agreements.**

3 353. Having successfully delayed generic entry for Viread, Gilead then also used MFE/MFEP
4 clauses to delay generic entry for Truvada and Atripla.

5 354. Following various amendments and pretrial proceedings in Gilead's patent litigation
6 against Teva, only the FTC Enantiomer Patents, as they related to both Truvada and Atripla, were left for
7 trial. The trial, which began on October 8, 2013 and concluded on October 28, 2013, focused on Teva's
8 contention that the patents were invalid for obviousness-type double patenting because the (-)-enantiomer
9 "species" patents were anticipated by earlier expiring "genus" patents, which claimed all enantiomeric
10 forms of the FTC compound, and that the claimed (-)-enantiomer was disclosed as part of the genus
11 patents' claims. The parties settled the case in February 2014 while they were awaiting the trial court's
12 decision.

13 355. The '396 patent (the later of the two FTC Enantiomer Patents) does not expire (with
14 pediatric exclusivity) until September 9, 2021. As with Viread, a number of second-filers had lined up
15 behind Teva; by February 2014 Gilead had filed patent lawsuits on the FTC Enantiomer Patents against
16 Lupin, Mylan, Aurobindo, Hetero, and Amneal, all of which had provided Paragraph IV certifications
17 with respect to Truvada. And Gilead had filed a patent infringement lawsuit against other generic
18 manufacturers, including Lupin, that had provided Paragraph IV certifications with respect to Atripla.
19 (BMS's EFV patents expired before Gilead's FTC Enantiomer Patents, so BMS sued and settled with
20 Teva knowing that the generic entry date would be determined by resolution of Gilead's lawsuit against
21 Teva.)

22 356. Teva and these second-filers faced much the same economic dynamics that they did
23 regarding Viread: Teva's getting an MFE and MFEP would dissuade the second-filers from continuing to
24 litigate and would provide Teva a period of exclusivity. Moreover, *Teva had forfeited its 180-day ANDA*
25 *Exclusivity with respect to Truvada*, and may have forfeited it with respect to Atripla, by having failed to
26 obtain tentative FDA approval within 30 months of submitting its application. 21 U.S.C. 355 §
27 (j)(5)(D)(i)(I)(aa)(BB). (*See* Section VI(C) above).
28

1 power over Reyataz and its generic equivalents; and Janssen had market power over each of Edurant and
2 Prezitsa and their generic equivalents. The Defendants had the power to maintain the price of those brand
3 drugs at supracompetitive levels without losing sufficient sales to other products, except for AB-rated
4 generic versions of those brand drugs, to make the supracompetitive prices unprofitable.

5 362. A small but significant, non-transitory increase in the brand drugs' price above the
6 competitive level did not cause a loss of sales sufficient to make the price increase unprofitable. At
7 competitive prices, none of the brand drugs exhibits significant, positive cross-elasticity of demand with
8 respect to price with any product other than AB-rated generic versions of the brand drugs.

9 363. Each of the brand drugs is differentiated from all drug products other than AB-rated
10 generic versions. Due to, among other reasons, its use and varying ability to treat the conditions for
11 which it is prescribed, and its side-effects profile, each of the brand drugs is differentiated from all drug
12 products other than AB-rated generic versions.

13 364. Additionally, once the physician and patient find that one of these drugs is well tolerated,
14 at competitive prices the doctor and patient are very unlikely to switch to a different HIV drug based on
15 variations of price of 10% or less.

16 365. The Defendants' power to profitably raise these prices to the competitive level results in
17 substantial part from a significant imperfection in the United States marketplace for prescription
18 pharmaceuticals. Branded drug manufacturers can exploit this imperfection in order to obtain or maintain
19 market power.

20 366. Markets function best when the person responsible for paying for a product is also the
21 person who chooses which product to purchase. When the same person has both the product choice and
22 payment obligation, the product's price plays an appropriate role in the person's choice and,
23 consequently, manufacturers have an appropriate incentive to reduce their prices to the competitive level.

24 367. The pharmaceutical marketplace, however, is characterized by a "disconnect" between
25 product selection and the payment obligation. State laws prohibit pharmacists from dispensing many
26 pharmaceutical products, including all of those at issue in this complaint, to patients without a
27 prescription. The prohibition on dispensing certain products without a prescription creates this
28 disconnect. The patient's doctor chooses which product the patient will buy while the patient (and in

1 most cases his or her insurer) has the obligation to pay for it.

2 368. Brand manufacturers, including Gilead, BMS, and Janssen, exploit this price disconnect
3 by employing large sales forces that visit doctors' offices and persuade them to prescribe the brand
4 manufacturers' products. These sales representatives do not advise doctors of the cost of the branded
5 products. Moreover, studies show that doctors typically are not aware of the relative costs of brand
6 pharmaceuticals and, even when they are aware of costs, are largely insensitive to price differences
7 because they do not pay for the products. The result is a marketplace in which price plays a
8 comparatively unimportant role in product selection.

9 369. The relative unimportance of price in the pharmaceutical marketplace reduces the price
10 elasticity of demand—the extent to which unit sales go down when price goes up. This reduced price-
11 elasticity, in turn, gives brand manufacturers the ability to raise price substantially above marginal cost
12 without losing so many sales as to make the price increase unprofitable. The ability to profitably raise
13 prices substantially above marginal costs is market power. The result of these pharmaceutical
14 marketplace imperfections and marketing practices is that brand manufacturers gain and maintain market
15 power with respect to many branded prescription pharmaceuticals, including all of those at issue in this
16 complaint.

17 370. The existence of other branded HIV drugs has not constrained the price of Viread,
18 Emtriva, Tybost, Vemlidy, Truvada, Descovy, Atripla, Complera, Odefsey, Stribild, Genvoya, Reyataz,
19 Evotaz, Prezista, Prezcobix, Edurant, or Symtuza to the competitive level.

20 371. Each Defendant needed to control only each of its brand drugs and its AB-rated generic
21 equivalents, and no other products, in order to maintain the price of the brand drug profitably at
22 supracompetitive prices. Only the market entry of a competing, AB-rated version of the brand drug
23 would render the brand manufacturer unable to profitably maintain its brand-drug prices at
24 supracompetitive levels.

25 372. Defendants sold these brand drugs at prices well in excess of marginal costs, substantially
26 in excess of the competitive price, and enjoyed unusually high profit margins.

27 373. Defendants had the ability to control the prices of these drugs and exclude relevant
28 competitors. Among other things: (a) generic versions of each drug would have entered the market at

1 substantial discounts to the brands but for the Defendants' anticompetitive conduct; (b) the gross margin
2 on each drug was at all times at least 70%; and (c) Defendants never lowered the price of the drugs to the
3 competitive level in response to the pricing of other branded or generic drugs.

4 374. At all relevant times, Gilead's gross profit margin on its cART drugs, collectively, has
5 exceeded 75% and has reached as high as 91%. These margins are approximately 15 times those that
6 indicate substantial market power.

7 375. To the extent that Plaintiffs are required to prove market power through circumstantial
8 evidence by first defining a relevant product market, the relevant product market depends on the practice
9 that the court is examining.

10 376. At least two types of markets are relevant here: (a) the market for each of Viread, Emtriva,
11 Tybost, Vemlidy, Truvada, Descovy, Atripla, Complera, Odefsey, Stribild, Genvoya, Reyataz, Evotaz,
12 Prezista, Prezcobix, Edurant, and Symtuza and its AB-rated generic equivalent; and (b) the cART
13 Market.

14 377. As noted in detail above, the purpose and effect of Defendants' No-Generics Restraints
15 was to impair competition in multiple ways. To the extent that Plaintiffs are required to define a relevant
16 market in which that conduct is evaluated, it is properly evaluated in multiple markets.

17 378. One purpose and effect of Defendants' No-Generics Restraints was to impair competition
18 from generic versions of each of Viread, Emtriva, Tybost, Vemlidy, Truvada, Descovy, Atripla,
19 Complera, Odefsey, Stribild, Genvoya, Reyataz, Evotaz, Prezista, Prezcobix, Edurant, and Symtuza. A
20 relevant market for evaluating that conduct is the market for each of those products and its AB-rated
21 generic equivalent. As demonstrated by the indicia noted above:

- 22 • from October 2001 to December 17, 2017, Gilead had market power in the market
23 for Viread and its AB-rated generic equivalents, and during that time had 100% of
the shares of that market:
- 24 • from November 10, 2016 to the present Gilead has had market power in the
25 market for Vemlidy and its AB-rated generic equivalents, and during that time has
26 had 100% of the shares of that market;
- 27 • from April 4, 2016 to the present Gilead has had market power in the market for
28 Descovy and its AB-rated generic equivalents, and during that time has had 100%
of the shares of that market;

- 1 • from July 7, 2003 to the present Gilead has had market power in the market for
2 Emtriva and its AB-rated generic equivalents, and during that time has had 100%
3 of the shares of that market;
- 4 • from September 2014 to the present Gilead has had market power in the market
5 for Tybost and its AB-rated generic equivalents, and during that time has had
6 100% of the shares of that market;
- 7 • from August 2, 2004 to the present Gilead has had market power in the market for
8 Truvada and its AB-rated generic equivalents, and during that time has had 100%
9 of the shares of that market;
- 10 • from July 12, 2006 to the present Gilead and BMS have had market power in the
11 market for Atripla and its AB-rated generic equivalents, and during that time have
12 had 100% of the shares of that market;
- 13 • from August 10, 2011 to the present Gilead and Janssen have had market power
14 in the market for Complera and its AB-rated generic equivalents, and during that
15 time have had 100% of the shares of that market;
- 16 • from March 1, 2016 to the present Gilead and Janssen have had market power in
17 the market for Odefsey and its AB-rated generic equivalents, and during that time
18 have had 100% of the shares of that market;
- 19 • from August 27, 2012 to the present Gilead and Japan Tobacco have had market
20 power in the market for Stribild and its AB-rated generic equivalents, and during
21 that time have had 100% of the shares of that market;
- 22 • from November 5, 2015 to the present Gilead and Japan Tobacco have had market
23 power in the market for Genvoya and its AB-rated generic equivalents, and during
24 that time have had 100% of the shares of that market;
- 25 • from June 20, 2003 to December 2017 BMS had market power in the market for
26 Reyataz and its AB-rated generic equivalents, and during that time had 100% of
27 the shares of that market;
- 28 • from April 4, 2014 to the present Gilead and BMS have had market power in the
market for Evotaz and its AB-rated generic equivalents, and during that time have
had 100% of the shares of that market;
- from June 23, 2006 to the present Janssen has had market power in the market for
Prezista and its AB-rated generic equivalents, and during that time has had 100%
of the shares of that market;
- from March 31, 2014 to the present Gilead and Janssen have had market power in
the market for Prezcofix and its AB-rated generic equivalents, and during that
time have had 100% of the shares of that market;
- from May 20, 2011 to the present Janssen has had market power in the market for

1 Edurant and its AB-rated generic equivalents, and during that time has had 100%
2 of the shares of that market; and

- 3 • from September 22, 2017 to the present Gilead and Janssen have had market
4 power in the market for Symtuza and its AB-rated generic equivalents, and during
5 that time have had 100% of the shares of that market.

6 379. Defendants also had market power during relevant times in broader markets comprising
7 the branded drug and comparable versions of it. For example, Gilead and Janssen have market power in
8 the market for Complera and comparable versions made of genericTDF/3TC/RPV, and have market
9 power in the market for Symtuza and comparable versions made of genericTAF/genericFTC (or
10 3TC)/RTV/DRV.

11 380. Another purpose and effect of Defendants' No-Generics Restraints was to impair
12 competition among drugs used in the cART regimen. To the extent that Plaintiffs are required to define a
13 relevant market in which that purpose and effect is evaluated, it is properly evaluated in the market for
14 such drugs, i.e., the cART Market, and narrower markets therein.

15 381. As noted in detail above, a cART regimen is a course of treatment distinct from other
16 drugs and regimens that might be used to treat HIV. Effective cART reduces the concentration of HIV
17 virus in treated patients to undetectable levels. Patients on effective cART can live healthy lives and have
18 a normal life expectancy. And a patient living with HIV who maintains an undetectable viral load
19 durably cannot transmit the virus to others. Under the guidelines of the HHS, WHO, and all major HIV-
20 treatment organizations, every HIV treatment regimen, with inconsequential exceptions, is a cART
21 regimen.

22 382. Doctors and patients using a cART regimen almost always choose two NRTIs. For very
23 substantial medical reasons, doctors and patients overwhelmingly choose Tenofovir as one of those two
24 NRTIs. Among other reasons, all other NRTIs are triple phosphorylated by host kinases to be activated.
25 Tenofovir, by contrast, needs to be phosphorylated only twice by host kinases, into its active form,
26 tenofovir diphosphate (TFV-DP). (See Section V above.)

27 383. The following chart identifies all NRTIs that have been available in the United States
28 since 1987.

Drug Name	Symbol	Date of Approval	Manufacturer	Notes
<u>Zidovudine</u> (Retrovir)	AZT	Mar, 19 1987	ViiV (Burroughs Wellcome)	Used less commonly due to side effects.
<u>Didanosine</u> (Videx)	ddl	Oct, 9 1991	Bristol-Myers Squibb	Not used commonly due to side effects\inferiority
<u>Zalcitabine</u> (Hivid)	ddC	June 22, 1992	Roche	<u>DISCONTINUED in 2001 due to toxicity</u>
<u>Stavudine</u> (Zerit)	d4T	June 24, 1994	Bristol-Myers Squibb	<u>Usage strongly discouraged by WHO</u>
<u>Lamivudine</u> (EpiVir)	3TC	November 17, 1995	ViiV (Glaxo)	Interchangeable with FTC if used as HIV treatment
<u>Abacavir</u> (Ziagen)	ABC	December 18, 1998,	ViiV (Glaxo)	Cannot be used in patients in HLA-B*5701 + pts.
<u>Tenofovir Disoproxil Fumarate</u>	TDF	October 26, 2001	Gilead	
<u>Emtricitabine</u>	FTC	July 02, 2003	Gilead	Interchangeable with FTC if used as HIV treatment
<u>Tenofovir Alafenamide Fumarate</u>	TAF	November 5, 2015	Gilead	First approved as a single table regimen (Genvoya)

384. Zidovudine is not a significant competitor to Tenofovir because of Zidovudine’s impact on the bone marrow, gastrointestinal side effects, mitochondrial toxicity, and inferior antiviral potency when used with some third agents. In 2018, Zidovudine’s United States sales, including when coformulated with 3TC, were less than \$60 million.

385. Didanosine is not a significant competitor to Tenofovir because of Didanosine’s tendency to cause peripheral neuropathy and pancreatitis, the requirement that it be taken on an empty stomach, and its inferior antiviral potency when used with some third agents. In 2018, Didanosine’s sales in the United States were less than \$2 million.

386. In 2001, all United States sales of Zalcitabine were halted due to toxicity side effects.

387. The WHO strongly discourages doctors from prescribing Stavudine (d4T) due to lipodystrophy, peripheral neuropathy, and other severe side effects. Stavudine’s United States sales were less than \$3 million in 2018.

388. The principal NRTIs for use in a cART regimen are Tenofovir, abacavir, FTC, and 3TC. Tenofovir-containing cART regimens usually also contain either FTC or 3TC, because a common mutation associated with resistance to FTC and 3TC increases the susceptibility of the virus to Tenofovir. Taking Tenofovir together with either FTC or 3TC makes it more difficult for the virus to become

1 resistant to the cART regimen. Consequently, 3TC is a competitor to FTC, but is a complement to, not a
2 substitute for, the use of Tenofovir or abacavir in a cART regimen.

3 389. For many doctors and patients, abacavir is not a realistic substitute for Tenofovir in a
4 cART regimen. Gilead noted at a 2016 investors conference, for example, that “[a]bacavir is a molecule
5 that is the most difficult of the ... [NRTIs] to administer and has both short-term and long-term problems
6 associated with it.”

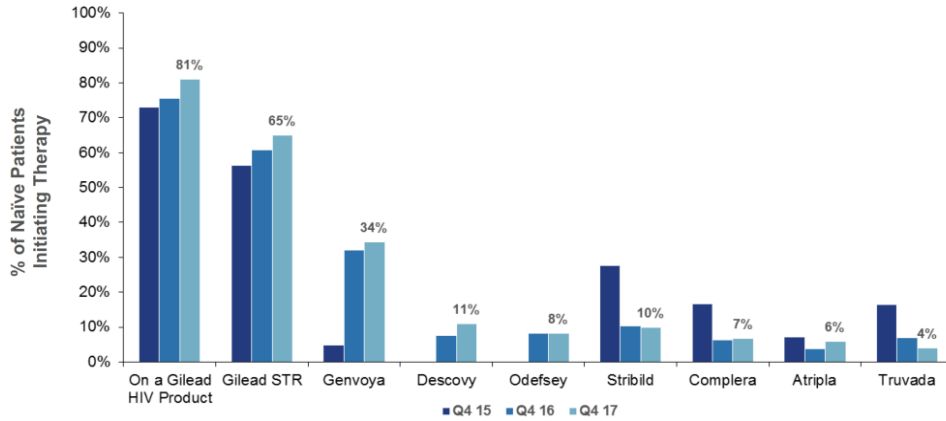
7 390. Specifically, a substantial number of patients are HLA-B*5701 positive, meaning that
8 they are at an increased risk of a hypersensitivity reaction to abacavir, resulting in a severe systemic
9 illness that can result in death. Consequently, doctors will not prescribe abacavir to patients without first
10 requiring that they get either a blood test or cheek-swab test to screen them for HLA-B*5701. This
11 dissuades many doctors from prescribing abacavir and prevents them altogether from starting patients on
12 abacavir without the required screening. This is a significant barrier to treatment. Most modern
13 treatments programs are based on the “test and treat” paradigm in which doctors encourage patients to
14 begin HIV treatment on the day they are diagnosed, so they will not subsequently be lost to follow up.

15 391. At all relevant times, Gilead’s dominance with respect to Tenofovir allowed it to exercise
16 market power in the cART Market. From October 26, 2001 through December 15, 2017, Gilead had
17 100% of the unit shares of all sales in the United States of Tenofovir. Even after the entry of generic TDF
18 in December 2017, Gilead has maintained at least 85% of all unit sales of Tenofovir in the United States.
19 At all relevant times, Gilead has maintained at least 70% of all unit sales of NRTIs in the United States.

20 392. At all relevant times, Gilead’s unit share of the cART Market has ranged from not less
21 than 70% to as much as 93%. Gilead has repeatedly acknowledged, indeed touted, its monopoly share in
22 the cART Market.

23 393. As early as 2007 Truvada and Atripla alone accounted for 82% of new starts in treatment-
24 naïve (those new to therapy) HIV patients. And as recently as 2018 a Gilead presentation to investors
25 highlighted the fact that 81% of treatment-naïve HIV patients regularly took at least one Gilead product.
26 Gilead provided this chart:

Gilead U.S. Share in HIV Treatment Naïve Patients



Base: All initiations within each quarter.
Source: Ipsos Healthcare HIV U.S. Scope Q4 2017.

35

STRICTLY CONFIDENTIAL

394. In the same presentation, Gilead touted the fact that it produced and marketed four of the top five cART drugs for treatment-naïve patients and all patients in the United States:

Top Prescribed HIV Regimens

U.S.

Rank	Naïve	All Patients
1	Genvoya	Genvoya
2	Other STR	Other STR
3	Stribild	Atripla
4	Odefsey	Stribild
5	Descovy + other 3 rd Agent	Complera

US Source: Ipsos Healthcare HIV U.S. Therapy Monitor/Scope Q4 2017.



Gilead STR



Regimen contains a Gilead product

32

1 395. As noted in detail above, a purpose and effect of Gilead’s degrading (and supra-profit-
2 maximizing pricing) of Stribild, degrading of standalone TAF, and regulatory gaming with respect to
3 standalone TAF was to impair competition among drugs used in the cART regimen. To the extent that
4 Plaintiffs are required to define a relevant market in which that conduct is evaluated, it is properly
5 evaluated in the cART Market and narrower markets therein.

6 396. As noted in detail above, another purpose and effect of Gilead’s degrading of standalone
7 TAF and regulatory gaming with respect to standalone TAF was to impair competition from generic
8 versions of standalone TAF and generic versions of TAF-containing FDCs. To the extent that Plaintiffs
9 are required to define a relevant market in which that conduct is evaluated, it is properly evaluated in the
10 markets for each of those products and their AB-rated equivalents.

11 397. As noted in detail above, the purpose and effect of Gilead’s delaying the entry of generic
12 versions of Viread, Truvada, and Atripla was to impair competition in multiple ways. To the extent that
13 Plaintiffs are required to define a relevant market in which that conduct is evaluated, it is properly
14 evaluated in: (1) the market for each of those products and its AB-rated generic equivalents; and (2) the
15 cART Market and narrower markets therein.

16 398. At all relevant times, the Defendants were protected by high barriers to entry with respect
17 to the above-defined relevant markets due to patent protection, the high cost of entry and expansion,
18 expenditures in marketing and physician detailing, and state statutes that require prescriptions for the
19 purchase of the products at issue and restrict substitution of those products at the pharmacy counter. The
20 products in these markets require significant investments of time and money to design, develop, and
21 distribute. In addition, the markets require government approvals to enter and/or may be covered by
22 patents or other forms of intellectual property. Defendants’ unlawful No-Generics Restraints and other
23 unlawful conduct further restricted entry. Thus, existing and potential market entrants lack the ability to
24 enter the market and/or expand output quickly in the short run in response to Defendants’ higher prices or
25 reductions in output.

26 399. The relevant geographic market for each of the drugs and each of the product markets is
27 the United States and its territories.
28

IX. MARKET EFFECTS

1
2 400. Defendants willfully and unlawfully engaged in schemes for the anticompetitive purpose
3 of delaying and impairing competition and thereby maintaining supracompetitive prices for their
4 products.

5 401. Each scheme had the purpose and effect of restraining competition unreasonably and
6 injuring competition by protecting the relevant products from competition. This exclusionary conduct in
7 fact enabled Defendants to sell their products free from vigorous price competition. But for Defendants'
8 unlawful conduct, each of the relevant drugs would already be facing competition from AB-rated drugs,
9 would be facing competition from comparable FDCs, or would face such competition sooner than it will;
10 competition in the cART Market would be substantially more vigorous than it is; Vemlidy and Stribild
11 would be better products; and Defendants would have marketed better products sooner.

12 402. Defendants' unlawful conduct caused Plaintiffs and the Class to pay more than they would
13 have paid for Defendants' drugs and other cART drugs absent that conduct.

14 403. Typically, AB-rated versions of branded drugs are initially priced significantly below the
15 corresponding branded drug to which they are AB-rated. As a result, upon entry of the AB-rated drug it
16 rapidly takes sales away from the originator drug. As more AB-rated versions of the branded drug enter
17 the market, prices predictably plunge even further. Competition from an FDC that is comparable to,
18 rather than AB-rated to, an FDC—e.g., one made with generic TDF and 3TC rather than TDF and FTC—
19 also would have substantially reduced the relevant prices.

20 404. Absent Defendants' unlawful conduct, Plaintiffs and members of the Class would have
21 paid less for the products by: (a) substituting purchases of less-expensive AB-rated versions of the
22 products for purchases of more-expensive branded versions; (b) receiving discounts on their remaining
23 branded purchases; (c) purchasing the AB-rated versions at lower prices sooner; (d) paying lower prices
24 for FDCs comparable to those marketed by Defendants; and (e) obtaining superior products at prices
25 similar to or lower than those of the inferior products they in fact purchased.

26 405. Given Gilead's dominance of the cART Market (see Section VIII above), the monopoly
27 prices on its products had the predictable effect of causing its competitors to raise prices on their cART
28 drugs. For example, from July 2011 to October 2017, Gilead raised its price on Complera by 45%.

1 During that same period, ViiV Healthcare raised the price of Selzentry (a CCR5 coreceptor antagonist)
2 by 47%. Likewise, until it encountered generic competition Boehringer Ingelheim's NNRTI, Viramune
3 XR, similarly followed Gilead's price increases up in lockstep. In fact, Defendants' unlawful
4 monopolization of the cART Market caused the price of every drug in the market to be higher than it
5 would have been absent that conduct.

6 406. Defendants' unlawful conduct has harmed Plaintiffs and the Class and deprived them of
7 the benefits of competition, and unless enjoined will further harm them by, among other things:

- 8 • Delaying and preventing competition from AB-rated competition to Defendants'
9 products, thereby causing Plaintiffs and the Class to pay overcharges on those
10 products;
- 11 • Delaying and preventing competition from FDCs comparable to Defendants'
12 FDCs, thereby causing Plaintiffs and the Class to pay overcharges on Defendants'
13 FDCs;
- 14 • Impairing generic competition to Viread, Emtriva, Truvada, Vemlidy, Descovy,
15 Reyataz, Prezista, Edurant, and the TDF-based FDCs, thereby causing Plaintiffs
16 and the Class to pay overcharges on those products and on Defendants' FDCs;
- 17 • Degrading and artificially raising the price of Stribild, thereby causing Plaintiffs
18 and the Class to pay inflated prices for that product;
- 19 • Causing Defendants to refrain from marketing superior FDCs, thereby denying to
20 Plaintiffs and the Class the benefits of those products and causing them to pay
21 overcharges on Defendants' FDCs;
- 22 • Causing Defendants to delay the introduction of TAF and TAF-based FDCs,
23 thereby denying to Plaintiffs and the Class the benefits of those products and
24 causing them to pay overcharges on Viread and Defendants' TDF-based FDCs;
- 25 • Intentionally degrading standalone TAF, thereby causing Plaintiffs and the Class
26 to pay overcharges on Viread, Vemlidy, and Defendants' FDCs;
- 27 • Delaying and impairing competition from standalone generic TAF and from
28 generic-TAF-based FDCs, thereby causing Plaintiffs and the Class to pay
overcharges on those products;
- Delaying and preventing competition from AB-rated competition to Viread,
Truvada, and Atripla, thereby causing Plaintiffs and the Class to pay overcharges
on those products and on Defendants' FDCs.

407. Defendants' unlawful conduct deprived Plaintiffs and the Class of the benefits of

1 competition that the antitrust laws were designed to ensure.

2
3 **X. ANTITRUST IMPACT AND EFFECT ON INTERSTATE AND INTRASTATE**
4 **COMMERCE**

5 408. During the relevant period, Plaintiffs and members of the Class purchased, or reimbursed
6 for purchases of, substantial amounts of Viread, Emtriva, Tybost, Vemlidy, Truvada, Descovy, Atripla,
7 Complera, Odefsey, Stribild, Genvoya, Reyataz, Evotaz, Prezista, Prezcobix, Edurant, Sumtuza, and/or
8 other cART drugs other than for resale. As a result of Defendants' unlawful conduct, Plaintiffs and
9 members of the Class were compelled to pay, and did pay, artificially inflated prices for these purchases.
10 Those prices were substantially greater than the prices that Plaintiffs and members of the Class would
11 have paid absent the unlawful conduct alleged herein, because: (1) the prices of the branded products
12 were artificially inflated by Defendants' unlawful conduct; (2) Plaintiffs and Class members were
13 deprived of the opportunity to purchase lower-priced generic or comparable versions of the branded
14 products sooner; and/or (3) the quality of the products was artificially reduced.

15 409. As a consequence, Plaintiffs and members of the Class have sustained substantial losses
16 and damage to their business and property in the form of overcharges. The full amount and forms and
17 components of such damages will be calculated after discovery and upon proof at trial.

18 410. Defendants' unlawful restraints on competition and exclusionary conduct have
19 substantially affected interstate and intrastate commerce.

20 411. At all material times, each Defendant manufactured, promoted, distributed, and sold
21 substantial amounts of the relevant products in a continuous and uninterrupted flow of commerce across
22 state lines and throughout the United States.

23 412. At all material times, each Defendant transmitted funds as well as contracts, invoices, and
24 other forms of business communications and transactions in a continuous and uninterrupted flow of
25 commerce across state lines in connection with the sale of the relevant products.

26 413. In furtherance of their efforts to restrain competition, Defendants employed the United
27 States mails and interstate and international telephone lines, as well as means of interstate and
28 international travel. Defendants' activities were within the flow of and have substantially affected

1 interstate and intrastate commerce.

2 414. Defendants' anticompetitive conduct has substantial intrastate effects in that, among other
3 things, retailers within each state were impaired in offering less expensive generic drugs and generic-
4 based FDCs to end-payors inside each respective state. This impairment of competition directly impacts
5 and disrupts commerce within each state.

6
7 **XI. CLASS ACTION ALLEGATIONS**

8 415. Plaintiffs, on behalf of themselves and all Class members, seek damages, measured as
9 overcharges, multiplied as provided by law, against Defendants, as well as injunctive and other equitable
10 relief, based on the anticompetitive conduct alleged above.

11 416. Plaintiffs bring this action on behalf of themselves and, under Fed. R. Civ. P. 23(a) and
12 (b)(2) and (b)(3), as representative of a class of end-payor purchasers defined as follows:

13 All persons or entities in the United States and its territories who indirectly
14 purchased, paid and/or provided reimbursement for some or all of the purchase
15 price for any drug for use in a cART regimen, for consumption by themselves,
16 their families, or their members, employees, insureds, participants, or
beneficiaries, other than for resale, during the period May 14, 2015 through
and until the anticompetitive effects of Defendants' unlawful conduct cease.

17 417. Excluded from the Class are:

18 a) Defendants and their officers, directors, management, employees, subsidiaries, or
19 affiliates;

20 b) All federal governmental entities;

21 c) All states (and sub-units of government and their entities) that, by law, preclude their
22 participation as plaintiffs in private class action litigation;

23 d) Persons who are asserting claims for personal injuries against Gilead Sciences, Inc. or
24 its affiliates alleged to be caused by the consumption of a TDF-containing product;
25 and

26 e) The judges in this case and any members of their immediate families.

27 418. Members of the Class are so numerous that joinder is impracticable. The Class numbers in
28 the many hundreds of thousands. Further, the Class is readily identifiable from information and records

1 in the possession of Defendants and of entities in the pharmacy chain of distribution.

2 419. Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs and all
3 members of the Class were damaged by the same wrongful conduct of Defendants, i.e., they paid
4 artificially inflated prices for the products and were deprived of earlier and more robust competition as a
5 result of Defendants' wrongful conduct.

6 420. Plaintiffs will fairly and adequately protect and represent the interests of the Class.
7 Plaintiff's interests are coincident with, and not antagonistic to, those of the Class.

8 421. Plaintiffs are represented by counsel with experience in the prosecution of class action
9 antitrust litigation, and with particular experience with class action antitrust litigation involving
10 pharmaceutical products.

11 422. Questions of law and fact common to the members of the Class predominate over
12 questions that may affect only individual Class members because Defendants have acted on grounds
13 generally applicable to the entire Class, thereby making overcharge damages with respect to the Class as
14 a whole appropriate. Such generally applicable conduct is inherent in Defendants' wrongful conduct.

15 423. Questions of law and fact common to the Class include:

- 16 • Whether the No-Generics Restraints entered into between Gilead and each of
17 BMS, Janssen, and Japan Tobacco were in unlawful restraint of trade;
- 18 • Whether Gilead unlawfully degraded Stribild;
- 19 • Whether Gilead unlawfully degraded standalone TAF;
- 20 • Whether Gilead unlawfully created artificial price differences between Stribild
21 and Genvoya;
- 22 • Whether Gilead unlawfully impaired competition through its regulatory gaming
23 with respect to standalone TAF;
- 24 • Whether Gilead anticompetitively delayed the entry of generic versions of Viread,
25 Truvada, and Atripla;
- 26 • Whether Gilead and its coconspirators unlawfully obtained or maintained a
27 monopoly in the cART Market;
- 28 • Whether the law requires definition of a relevant market when direct proof of
market power is available, and if so the definition of the relevant market;
- Whether Defendants' conduct as alleged herein substantially affected interstate

1 and intrastate commerce;

- 2 • Whether, and if so to what extent, Defendants' conduct caused antitrust injury
- 3 (i.e., overcharges) to Plaintiffs and the members of the Class; and
- 4 • The quantum of aggregate overcharge damages to the Class.

5 424. Defendants' anticompetitive conduct has imposed, and unless enjoined will continue to
6 impose, a common antitrust injury on Plaintiffs and all members of the Class. Defendants'
7 anticompetitive conduct and their relationships with the class members have been substantially uniform.
8 Defendants have acted and refused to act on grounds that apply generally to the class, and injunctive and
9 other equitable relief is appropriate respecting the class as a whole.

10 425. Class action treatment is a superior method for the fair and efficient adjudication of the
11 controversy. Such treatment will permit a large number of similarly situated persons to prosecute their
12 common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of
13 evidence, effort, or expense that numerous individual actions would engender. The benefits of
14 proceeding through the class mechanism, including providing injured persons or entities a method for
15 obtaining redress on claims that could not practicably be pursued individually, substantially outweigh
16 potential difficulties in management of this class action.

17 426. Plaintiffs know of no special difficulty to be encountered in the maintenance of this action
18 that would preclude litigating it as a class action.

19 20 **XII. ONGOING AND FUTURE HARM**

21 427. As noted in detail above, Defendants' unlawful No-Generics Restraints have already
22 caused massive anticompetitive effects by depriving drug purchasers of comparable FDCs once generic
23 TDF became available and, in the case of Evotaz, once generic ATV became available. Generic
24 compositions are already available in the marketplace that, absent the No-Generics Restraints, would
25 have prompted competitors untainted by the Defendants' unlawful conduct to make substitutable or
26 comparable versions of Stribild, Complera, Genvoya, Symtuza, and Evotaz. And such competitors would
27 have challenged the applicable patents and would already have entered the market with substitutable or
28 comparable versions of Atripla, Prezcofix, and Odefsey.

1 428. Unless enjoined by this Court, Defendants' unlawful conduct will have additional and
2 intensified anticompetitive effects once generic versions of any of FTC, TAF, COBI, or DRV become
3 available. Absent the No-Generics Restraints, an untainted competitor in Japan Tobacco's position would
4 produce and market a substitutable version of Stribild when generic FTC and generic COBI become
5 available; and such a competitor in Janssen's position would make a substitutable version of Complera
6 when generic FTC becomes available.

7 429. Absent the No-Generics Restraints, when generic TAF becomes available, an untainted
8 competitor in Japan Tobacco's position would produce and market a comparable version of Genvoya,
9 comprising generic TAF, generic 3TC, generic RTV, and EVG. Such a competitor would also make a
10 substitutable version of Genvoya once generic versions of TAF, FTC, and COBI become available.
11 Moreover, that competitor would have accelerated the availability of generic versions of those
12 compositions by challenging Gilead's patents on them. The competitor would have sought FDA approval
13 for a substitutable version of Genvoya as early as November 5, 2019 (when the applicable NCE
14 exclusivity expired), and if Gilead had timely sued, the 30-month stay would have expired on May 5,
15 2023, allowing the competitor to begin marketing the substitutable FDC. Unless enjoined by this Court,
16 however, the unlawful No-Generics Restraint will prevent that competition until the pact expires on April
17 24, 2030.

18 430. Absent the No-Generics Restraints, when generic TAF becomes available, an untainted
19 competitor in Janssen's position would produce and market a comparable version of Odefsey, comprising
20 generic TAF, generic 3TC, and RPV. Such a competitor would also make a substitutable version of
21 Odefsey once generic versions of TAF and FTC become available. Moreover, that competitor would
22 have accelerated the availability of generic versions of those compositions by challenging Gilead's
23 patents on them. Assuming that Janssen were subject to NCE exclusivity that protected Odefsey and did
24 not obtain a waiver of it (see Section VII(C) above), an untainted competitor in Janssen's position would
25 have sought FDA approval for a substitutable version of Odefsey as early as November 5, 2019, and,
26 after waiting out the 30-month stay, begun marketing the substitutable FDC on May 5, 2023. Unless
27 enjoined by this Court, however, the unlawful No-Generics Restraint will prevent that competition until
28 March 2026.

1 431. Absent the No-Generics Restraints, when generic TAF becomes available, an untainted
2 competitor in Janssen’s position would also produce and market a comparable version of Symtuza,
3 comprising generic TAF, generic FTC (or generic 3TC), generic RTV, and DRV. Such a competitor
4 would also make a substitutable version of Symtuza once generic versions of TAF, FTC, and COBI
5 become available. Moreover, that competitor would have accelerated the availability of generic versions
6 of those compositions by challenging Gilead’s patents on them. Assuming that Janssen were subject to
7 NCE exclusivity that protected Symtuza and did not obtain a waiver of it (see Section VII(C) above), an
8 untainted competitor in Janssen’s position would have sought FDA approval for a substitutable version
9 of Symtuza as early as November 5, 2019, and, after waiting out the 30-month stay, begun marketing the
10 substitutable FDC in May 2023. Unless enjoined by this Court, however, the unlawful No-Generics
11 Restraint will prevent that competition until 2026.

12 432. Absent the No-Generics Restraint, an untainted competitor in Gilead’s position would
13 have produced and marketed a substitutable version of Symtuza as soon as possible. Such a competitor
14 would have submitted an application for a product containing TAF, FTC, COBI, and generic DRV as
15 early as FDA approval of Symtuza’s NDA (Gilead controlled the NCE exclusivity for Symtuza). After
16 waiting out the 30-month stay, that competitor would have begun marketing the substitutable FDC on
17 January 17, 2021. By that date, the only non-expired Orange Book patents owned by Janssen will be
18 those covering certain pseudopolymorphic forms of DRV, which expire on February 16, 2024 and
19 December 26, 2026 (assuming no pediatric exclusivity is later awarded). Those patents are invalid and
20 can easily be designed around. But the unlawful No-Generics Restraint resulted in Gilead’s agreeing not
21 to compete until at least July 17, 2028. Unless enjoined by this Court, the unlawful pact will continue to
22 deprive drug purchasers of such a competing FDC.

23 433. Gilead’s unlawful degrading of Stribild and standalone TAF, and its regulatory gaming
24 with respect to TAF, also significantly distorted the market, are causing ongoing harm, and threaten
25 future harm. That unlawful conduct requires this Court’s intervention. Without affirmative relief from the
26 Court to help restore competitive conditions, that unlawful conduct will continue to deprive drug
27 purchasers of the benefits of competition to which they are entitled. For example, Gilead’s regulatory
28 gaming with respect to TAF, unless enjoined by this Court, will significantly delay and impair the

1 competition from generic standalone TAF and from generic-TAF-based FDCs that should flourish in or
2 about May 2023.

3 434. Gilead's anticompetitively delaying generic versions of Viread, Truvada, and Atripla is
4 similarly causing ongoing harm that requires this Court's intervention. Unless enjoined by this Court,
5 Gilead's anticompetitive conduct with respect to Truvada will cause Teva to delay entry until September
6 30, 2020, and cause all other generic manufacturers that are stacked up behind Teva to delay entry until
7 March 30, 2021. That delay will cost purchasers of Truvada more than \$1 billion in addition to the
8 billions that Defendants' other unlawful conduct has already caused on purchases of Truvada.

9 435. Those delays are particularly destructive because Truvada is the only FDA-approved drug
10 indicated for pre-exposure prophylaxis (PrEP), i.e., for *preventing* HIV in HIV-negative people. Gilead
11 currently sells a year supply of Truvada for about \$24,000. Generic Truvada will sell for a fraction of
12 that—less than \$7,000 after multiple generics enter the market. Gilead's anticompetitively delaying
13 generic Truvada will result in hundreds of thousands of people being unable to access PrEP and cause
14 tens of thousands of them to needlessly become infected with HIV.

15 436. Unless enjoined by this Court, Gilead's anticompetitive conduct will also cause Teva to
16 delay entry with generic Atripla until September 30, 2020, and cause all other generic manufacturers that
17 are stacked up behind Teva to delay entry until March 30, 2021. That delay will cost purchasers of
18 Atripla more than \$1 billion in addition to the billions that Defendants' other unlawful conduct has
19 already caused on purchases of Atripla.

20 437. Defendants' conduct is also continuing to unlawfully delay the entry of generic TAF. As
21 noted in detail above (see Section VII(D)(2)(b)), Defendants' conduct resulted in Gilead's delaying the
22 introduction of TAF and TAF-based FDCs from 2006 to 2015. Absent that delay, the NCE exclusivity
23 for TAF would have expired by 2011, and 30-month stays on generic entry would have expired by 2013.
24 But with Gilead's delaying the introduction of TAF to 2015, no generic has yet been able to challenge the
25 relevant TAF patents, because the NCE exclusivity does not expire until November 5, 2020.

26 438. In order to help restore competitive conditions, this Court should enjoin Gilead from
27 enforcing any of its TAF-related NCE exclusivities and 30-month stays. Other affirmative relief,
28 including compulsory licenses to the affected products, will also be required.

1 **XIII. CLAIMS FOR RELIEF**

2 **COUNT ONE**

3 **CONSPIRACY TO MONOPOLIZE IN VIOLATION OF SECTIONS**
4 **1 AND 2 OF THE SHERMAN ANTITRUST ACT (15 U.S.C. §§ 1, 2)**
5 **(Against All Defendants)**

6 439. Plaintiffs repeat and incorporate by reference all preceding allegations.

7 440. At all relevant times, Gilead has possessed substantial market power (i.e., monopoly
8 power) in the cART Market and narrower markets therein. More than 80% of patients starting an HIV
9 regimen in the United States, and more than 80% of continuing patients, take one or more of Gilead's
10 products every day. Gilead possesses the power to control prices in, prevent prices from falling in, and
11 exclude competitors from the cART Market.

12 441. That market power is coupled with strong regulatory and contractual barriers to entry into
13 the cART Market.

14 442. Through an overarching anticompetitive scheme, as alleged extensively above, Gilead
15 willfully maintained its monopoly power in the cART Market using restrictive or exclusionary conduct,
16 rather than by means of greater business acumen, and injured Plaintiffs and the Class thereby.

17 443. Gilead's conscious objective was to further its dominance in the cART Market by and
18 through the overarching anticompetitive scheme.

19 444. Each of Janssen, Japan Tobacco, and BMS consciously committed to the overarching
20 anticompetitive scheme.

21 445. As stated more fully above, Gilead and its coconspirator Defendants knowingly, willfully,
22 and wrongfully maintained Gilead's monopoly power and harmed competition by:

- 23 • Entering into and abiding by the illegal No-Generics Restraints;
- 24 • Degrading Stribild and artificially raising its price in order to drive patients to
25 TAF-based FDCs that were illegally protected from competition;
- 26 • Degrading standalone TAF, also in furtherance of the scheme to drive patients to
27 the illegally protected FDCs;
- 28 • Abusing the regulatory process, by withholding an HIV indication from
standalone TAF, in order to raise rivals' costs and delay their entry into the
market; and

- Causing delayed entry of generic versions of Viread, Truvada, and Atripla.

446. To the extent that Defendants are permitted to assert one, there is and was no cognizable, non-pretextual procompetitive justification for Defendants' conduct comprising the anticompetitive scheme that outweighs its harmful effects. Even if there were some conceivable such justification that Defendants were permitted to assert, the scheme is and was broader than necessary to achieve such a purpose.

447. Plaintiffs and the Class have been injured, and unless Defendants' unlawful conduct is enjoined will continue to be injured, in their business and property as a result of Defendants' continuing conspiracy in violation of Sections 1 and 2 of the Sherman Act.

COUNT TWO

CONSPIRACY TO MONOPOLIZE IN VIOLATION OF STATE ANTITRUST LAWS (Against All Defendants)

448. Plaintiffs repeat and incorporate by reference all preceding allegations.

449. At all relevant times, Gilead has possessed substantial market power (i.e., monopoly power) in the cART Market and narrower markets therein. More than 80% of patients starting an HIV regimen in the United States, and more than 80% of continuing patients, take one or more of Gilead's products every day. Gilead possessed the power to control prices in, prevent prices from falling in, and exclude competitors from the relevant market.

450. That market power is coupled with strong regulatory and contractual barriers to entry into the cART Market.

451. Through an overarching anticompetitive scheme, as alleged extensively above, Gilead willfully maintained its monopoly power in the cART Market using restrictive or exclusionary conduct, rather than by means of greater business acumen, and injured Plaintiffs and the Class thereby.

452. Gilead's conscious objective was to further its dominance in the cART Market by and through the overarching anticompetitive scheme.

453. Each of Janssen, Japan Tobacco, and BMS consciously committed to the overarching

1 anticompetitive scheme.

2 454. As stated more fully above, Gilead and its coconspirator Defendants knowingly, willfully,
3 and wrongfully maintained Gilead's monopoly power and harmed competition by:

- 4 • Entering into and abiding by the illegal No-Generics Restraints;
- 5 • Degrading Stribild and artificially raising its price in order to drive patients to
6 TAF-based FDCs that were illegally protected from competition;
- 7 • Degrading standalone TAF, also in furtherance of the scheme to drive patients to
8 the illegally protected FDCs;
- 9 • Abusing the regulatory process, by withholding an HIV indication from
10 standalone TAF, in order to raise rivals' costs and delay their entry into the
11 market; and
- Causing delayed entry of generic versions of Viread, Truvada, and Atripla.

12 455. To the extent that Defendants are permitted to assert one, there is and was no cognizable,
13 non-pretextual procompetitive justification for Defendants' conduct comprising the anticompetitive
14 scheme that outweighs its harmful effects. Even if there were some conceivable such justification that
15 Defendants were permitted to assert, the scheme is and was broader than necessary to achieve such a
16 purpose.

17 456. By engaging in the foregoing conduct, Defendants have intentionally and wrongfully
18 engaged in one or more combinations and conspiracies in restraint of trade in violation of the following
19 state laws:

- 20 (a) Ala. Code §8-10-3 with respect to purchases in Alabama by members of the
21 Class.
- 22 (b) Arizona Rev. Stat. §§ 44-1401, et seq., with respect to purchases in Arizona by
23 members of the Class.
- 24 (c) Cal. Bus. Code §§ 16700, et seq., and Cal. Bus. Code §§ 17200, et seq., with
25 respect to purchases in the United States by members of the Class.
- 26 (d) Conn. Gen. Stat. § 35-24, et seq., with respect to purchases in Connecticut by
27 members of the Class.

- 1 (e) D.C. Code Ann. §§ 28-4501, et seq., with respect to purchases in the District of
2 Columbia by members of the Class.
- 3 (f) Fla. Stat. §§ 501.201, et seq., with respect to purchases in Florida by members of
4 the Class.
- 5 (g) Hawaii Rev. Stat. §§ 480-1, et seq., with respect to purchases in Hawaii by
6 members of the Class.
- 7 (h) 740 Ill. Comp. Stat. 10/3, et seq., with respect to purchases in Illinois by members
8 of the Class.
- 9 (i) Iowa Code § 553.4, et seq., with respect to purchases in Iowa by members of the
10 Class.
- 11 (j) Kan. Stat. Ann. §§ 50-101, et seq., with respect to purchases in Kansas by
12 members of the Class.
- 13 (k) Md. Code, Com. Law § 11-201, et seq., with respect to purchases in Maryland by
14 members of the Class.
- 15 (l) Mass. Gen. L. Ch. 93A, et seq., with respect to purchases in Massachusetts by
16 members of the Class, with thousands of Massachusetts end-payors paying
17 substantially higher prices for the product in actions and transactions occurring
18 substantially within Massachusetts.
- 19 (m) Me. Rev. Stat. Ann. 10, § 1101, et seq., with respect to purchases in Maine by
20 members of the Class.
- 21 (n) Mich. Comp. Laws Ann. §§ 445.771, et seq., with respect to purchases in
22 Michigan by members of the Class.
- 23 (o) Minn. Stat. §§ 325D.49, et seq., with respect to purchases in Minnesota by
24 members of the Class.
- 25 (p) Miss. Code Ann. §§ 75-21-1, et seq., with respect to purchases in Mississippi by
26 members of the Class.
- 27 (q) Neb. Code Ann. §§ 59-801, et seq., with respect to purchases in Nebraska by
28 members of the Class.

- 1 (r) Nev. Rev. Stat. Ann. § 598A, et seq., with respect to purchases in Nevada by
2 members of the Class.
- 3 (s) N.M. Stat. Ann. §§ 57-1-1, et seq., with respect to purchases in New Mexico by
4 members of the Class.
- 5 (t) N.Y. Gen. Bus. Law §§ 340, et seq., with respect to purchases in New York by
6 members of the Class.
- 7 (u) N.C. Gen. Stat. §§ 75-1, et seq., with respect to purchases in North Carolina by
8 members of the Class.
- 9 (v) N.D. Cent. Code § 51-08.1-01, et seq., with respect to purchases in North Dakota
10 by members of the Class.
- 11 (w) Or. Rev. Stat. §§ 646.705, et seq., with respect to purchases in Oregon by
12 members of the Class.
- 13 (x) 10 L.P.R.A. § 251, et seq., with respect to purchases in Puerto Rico by members
14 of the Class.
- 15 (y) R.I. Gen. Laws §§ 6-36-4, et seq. with respect to purchases in Rhode Island by
16 members of the Class.
- 17 (z) S.D. Codified Laws Ann. § 37-1-3.1, et seq., with respect to purchases in South
18 Dakota by members of the Class.
- 19 (aa) Utah Code Ann. §§ 76-10-3101, et seq., with respect to purchases in Utah by
20 residents of Utah who are members of the Class.
- 21 (bb) Tenn. Code Ann. §§ 47-25-101, et seq., with respect to purchases in Tennessee by
22 members of the Class.
- 23 (cc) Vt. Stat. Ann. 9, § 2453, et seq., with respect to purchases in Vermont by
24 members of the Class.
- 25 (dd) W.Va. Code §§ 47-18-3, et seq., with respect to purchases in West Virginia by
26 members of the Class.
- 27 (ee) Wis. Stat. § 133.03, et seq., with respect to purchases in Wisconsin by members
28 of the Class.

1 457. By engaging in the foregoing conduct, Defendants have intentionally and wrongfully
2 maintained monopoly power in the relevant market in violation of the following state laws:

- 3 (a) Arizona Rev. Stat. §§ 44-1401, et seq., with respect to purchases in Arizona by
4 members of the Class.
- 5 (b) Cal. Bus. & Prof Code §§ 16720, et seq., and California common law with respect
6 to purchases in the United States by members of the Class.
- 7 (c) Conn. Gen. Stat. § 35-24, et seq., with respect to purchases in Connecticut by
8 members of the Class.
- 9 (d) D.C. Code §§ 28-4501, et seq., with respect to purchases in the District of
10 Columbia by members of the Class.
- 11 (e) Fla. Stat. §§ 501.201, et seq., with respect to purchases in Florida by members of
12 the Class.
- 13 (f) Hawaii Rev. Stat. §§ 480-1, et seq., with respect to purchases in Hawaii by
14 members of the Class.
- 15 (g) Iowa Code §§ 553.5, et seq., with respect to purchases in Iowa by members of the
16 Class.
- 17 (h) Kansas Stat. Ann. § 50-101, et seq., with respect to purchases in Kansas by
18 members of the Class.
- 19 (i) Me. Rev. Stat. Ann. 10, §§ 1102, et seq., with respect to purchases in Maine by
20 members of the Class.
- 21 (j) Md. Code, Com. Law § 11-201, et seq., with respect to purchases in Maryland by
22 members of the Class.
- 23 (k) Mass. Gen. L. Ch. 93A, et seq., with respect to purchases in Massachusetts by
24 members of the Class.
- 25 (l) Mich. Comp. Laws Ann. §§ 445.771, et seq., with respect to purchases in
26 Michigan by members of the Class.
- 27 (m) Minn. Stat. §§ 325D.49, et seq., and Minn. Stat. § 8.31, et seq., with respect to
28

1 purchases in Minnesota by members of the Class.

2 (n) Miss. Code Ann. §§ 75-21-1, et seq., with respect to purchases in Mississippi by
3 members of the Class.

4 (o) Neb. Code Ann. §§ 59-801, et seq., with respect to purchases in Nebraska by
5 members of the Class.

6 (p) Nev. Rev. Stat. Ann. §§ 598A, et seq., with respect to purchases in Nevada by
7 members of the Class.

8 (q) N.M. Stat. Ann. §§ 57-1-2, et seq., with respect to purchases in New Mexico by
9 members of the Class.

10 (r) N.Y. Gen. Bus. Law §§ 340, et seq., with respect to purchases in New York by
11 members of the Class.

12 (s) N.C. Gen. Stat. §§ 75-2.1, et seq., with respect to purchases in North Carolina by
13 members of the Class.

14 (t) N.D. Cent. Code §§ 51-08.1-01, et seq., with respect to purchases in North Dakota
15 by members of the Class.

16 (u) Or. Rev. Stat. §§ 646.705, et seq., with respect to purchases in Oregon by
17 members of the Class.

18 (v) 10 L.P.R.A. §§ 260, et seq., with respect to purchases in Puerto Rico by members
19 of the Class.

20 (w) R.I. Gen. Laws §§ 6-36-5 et seq., with respect to purchases in Rhode Island by
21 members of the Class.

22 (x) S.D. Codified Laws §§ 37-1-3, et seq., with respect to purchases in South Dakota
23 by members of the Class.

24 (y) Tenn. Code Ann §§ 47-25-101, et seq., with respect to purchases in Tennessee by
25 members of the Class.

26 (z) Utah Code Ann. §§ 76-10- 3101, et seq., with respect to purchases in Utah by
27 members of the Class.

28 (aa) Vt. Stat. Ann. 9, §§ 2453, et seq., with respect to purchases in Vermont by

1 members of the Class.

2 (bb) W.Va. Code §§ 47-18-3, et seq., with respect to purchases in West Virginia by
3 members of the Class.

4 (cc) Wis. Stat. §§ 133.03, et seq., with respect to purchases in Wisconsin by members
5 of the Class.

6
7 **COUNT THREE**

8 **MONOPOLIZATION IN VIOLATION OF SECTION 2**
9 **OF THE SHERMAN ANTITRUST ACT (15 U.S.C. § 2)**
10 **(Against Gilead)**

11 458. Plaintiffs repeat and incorporate by reference all preceding allegations.

12 459. At all relevant times, Gilead has possessed substantial market power (i.e. monopoly
13 power) in the cART Market and narrower markets therein. More than 80% of patients starting an HIV
14 regimen in the United States, and more than 80% of continuing patients, take one or more of Gilead's
15 products every day. Gilead possessed the power to control prices in, prevent prices from falling in, and
16 exclude competitors from the cART Market.

17 460. That market power is coupled with strong regulatory and contractual barriers to entry into
18 the cART Market.

19 461. As alleged extensively above, Gilead willfully maintained its monopoly power in the
20 cART Market using restrictive or exclusionary conduct, rather than by means of greater business
21 acumen, and injured Plaintiffs and the Class thereby.

22 462. Gilead's conscious objective was to further its dominance in the cART Market by and
23 through its exclusionary conduct.

24 463. As stated more fully above, Gilead knowingly, willfully, and wrongfully maintained its
25 monopoly power and harmed competition by:

- 26
- 27 • Entering into and abiding by the illegal No-Generics Restraints;
 - 28 • Degrading Stribild and artificially raising its price in order to drive patients to TAF-based FDCs that were illegally protected from competition;

- 1 • Degrading standalone TAF, also in furtherance of the scheme to drive patients to
2 the illegally protected FDCs;
- 3 • Abusing the regulatory process, by withholding an HIV indication from
4 standalone TAF, in order to raise rivals' costs and delay their entry into the
5 market; and
- 6 • Causing delayed entry of generic versions of Viread, Truvada, and Atripla.

7 464. Gilead's anticompetitive conduct identified above is exclusionary conduct the purpose and
8 effect of which is to willfully maintain Gilead's monopoly power, which harms the competitive process
9 and consumers, in violation of Section 2 of the Sherman Act.

10 465. To the extent that Gilead is permitted to assert one, there is and was no cognizable, non-
11 pretextual procompetitive justification for its exclusionary conduct that outweighs that conduct's harmful
12 effects. Even if there were some conceivable such justification that Gilead were permitted to assert, the
13 conduct is and was broader than necessary to achieve such a purpose.

14 466. Plaintiffs and the Class have been injured, and unless Gilead's unlawful conduct is
15 enjoined will continue to be injured, in their business and property as a result of Gilead's continuing
16 monopolization in violation of Section 2 of the Sherman Act.

17 **COUNT FOUR**

18 **MONOPOLIZATION IN VIOLATION OF STATE ANTITRUST LAWS** 19 **(Against Gilead)**

20 467. Plaintiffs repeat and incorporate by reference all preceding allegations.

21 468. At all relevant times, Gilead has possessed substantial market power (i.e., monopoly
22 power) in the cART Market and narrower markets therein. More than 80% of patients starting an HIV
23 regimen in the United States, and more than 80% of continuing patients, take one or more of Gilead's
24 products every day. Gilead possessed the power to control prices in, prevent prices from falling in, and
25 exclude competitors from the cART Market.
26

27 469. That market power is coupled with strong regulatory and contractual barriers to entry into
28

1 the cART Market.

2 470. As alleged extensively above, Gilead willfully maintained its monopoly power in the
3 cART Market using restrictive or exclusionary conduct, rather than by means of greater business
4 acumen, and injured Plaintiffs and the Class thereby.

5 471. Gilead's conscious objective was to further its dominance in the cART Market by and
6 through its exclusionary conduct.

7 472. As stated more fully above, Gilead knowingly, willfully, and wrongfully maintained its
8 monopoly power and harmed competition by:

- 9 • Entering into and abiding by the illegal No-Generics Restraints;
- 10 • Degrading Stribild and artificially raising its price in order to drive patients to
11 TAF-based FDCs that were illegally protected from competition;
- 12 • Degrading standalone TAF, also in furtherance of the scheme to drive patients to
13 the illegally protected FDCs;
- 14 • Abusing the regulatory process, by withholding an HIV indication from
15 standalone TAF, in order to raise rivals' costs and delay their entry into the
16 market; and
- 17 • Causing delayed entry of generic versions of Viread, Truvada, and Atripla.

18 473. Gilead's anticompetitive conduct identified above is exclusionary conduct the purpose and
19 effect of which is to willfully maintain Gilead's monopoly power, which harms the competitive process
20 and consumers.

21 474. Plaintiffs and the Class have been injured, and unless Gilead's unlawful conduct is
22 enjoined will continue to be injured, in their business and property, as a result of Gilead's continuing
23 monopolization.

24 475. By engaging in the foregoing conduct, Gilead has intentionally and wrongfully maintained
25 monopoly power in the relevant market in violation of the following state laws:

- 26 (a) Arizona Rev. Stat. §§ 44-1401, et seq., with respect to purchases in Arizona by
27 members of the Class.
- 28 (b) Conn. Gen. Stat. § 35-24, et seq., with respect to purchases in Connecticut by

1 members of the Class.

2 (c) D.C. Code §§ 28-4501, et seq., with respect to purchases in the District of
3 Columbia by members of the Class.

4 (d) Fla. Stat. §§ 501.201, et seq., with respect to purchases in Florida by members of
5 the Class.

6 (e) Hawaii Rev. Stat. §§ 480-1, et seq., with respect to purchases in Hawaii by
7 members of the Class.

8 (f) Iowa Code §§ 553.5, et seq., with respect to purchases in Iowa by members of the
9 Class.

10 (g) Kansas Stat. Ann. § 50-101, et seq., with respect to purchases in Kansas by
11 members of the Class.

12 (h) Me. Rev. Stat. Ann. 10, §§ 1102, et seq., with respect to purchases in Maine by
13 members of the Class.

14 (i) Md. Code, Com. Law § 11-201, et seq., with respect to purchases in Maryland by
15 members of the Class.

16 (j) Mass. Gen. L. Ch. 93A, et seq., with respect to purchases in Massachusetts by
17 members of the Class.

18 (k) Mich. Comp. Laws Ann. §§ 445.771, et seq., with respect to purchases in
19 Michigan by members of the Class.

20 (l) Minn. Stat. §§ 325D.49, et seq., and Minn. Stat. § 8.31, et seq., with respect to
21 purchases in Minnesota by members of the Class.

22 (m) Miss. Code Ann. §§ 75-21-1, et seq., with respect to purchases in Mississippi by
23 members of the Class.

24 (n) Neb. Code Ann. §§ 59-801, et seq., with respect to purchases in Nebraska by
25 members of the Class.

26 (o) Nev. Rev. Stat. Ann. §§ 598A, et seq., with respect to purchases in Nevada by
27 members of the Class.

28 (p) N.M. Stat. Ann. §§ 57-1-2, et seq., with respect to purchases in New Mexico by

1 members of the Class.

2 (q) N.Y. Gen. Bus. Law §§ 340, et seq., with respect to purchases in New York by
3 members of the Class.

4 (r) N.C. Gen. Stat. §§ 75-2.1, et seq., with respect to purchases in North Carolina by
5 members of the Class.

6 (s) N.D. Cent. Code §§ 51-08.1-01, et seq., with respect to purchases in North Dakota
7 by members of the Class.

8 (t) Or. Rev. Stat. §§ 646.705, et seq., with respect to purchases in Oregon by
9 members of the Class.

10 (u) 10 L.P.R.A. §§ 260, et seq., with respect to purchases in Puerto Rico by members
11 of the Class.

12 (v) R.I. Gen. Laws §§ 6-36-5 et seq., with respect to purchases in Rhode Island by
13 members of the Class.

14 (w) S.D. Codified Laws §§ 37-1-3, et seq., with respect to purchases in South Dakota
15 by members of the Class.

16 (x) Tenn. Code Ann §§ 47-25-101, et seq., with respect to purchases in Tennessee by
17 members of the Class.

18 (y) Utah Code Ann. §§ 76-10- 3101, et seq., with respect to purchases in Utah by
19 members of the Class.

20 (z) Vt. Stat. Ann. 9, §§ 2453, et seq., with respect to purchases in Vermont by
21 members of the Class.

22 (aa) W.Va. Code §§ 47-18-3, et seq., with respect to purchases in West Virginia by
23 members of the Class.

24 (bb) Wis. Stat. §§ 133.03, et seq., with respect to purchases in Wisconsin by members
25 of the Class.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COUNT FIVE

**ATTEMPTED MONOPOLIZATION IN VIOLATION OF SECTION 2
OF THE SHERMAN ANTITRUST ACT (15 U.S.C. § 2)
(Against Gilead)**

476. Plaintiffs repeat and incorporate by reference all preceding allegations.

477. At all relevant times, Gilead possessed substantial market power (i.e., monopoly power), or possessed a dangerous probability of achieving monopoly power, in the cART Market and narrower markets therein.

478. With the specific intent to achieve a monopoly, Gilead attempted to acquire and/or willfully maintain monopoly power in the cART Market by means of restrictive or exclusionary conduct, rather than by means of greater business acumen, and injured Plaintiffs and the Class thereby.

479. Gilead's conscious objective was to further its dominance in the cART Market by and through its exclusionary conduct.

480. As stated more fully above, Gilead knowingly, willfully, and wrongfully attempted to acquire and/or maintain monopoly power by:

- Entering into and abiding by the illegal No-Generics Restraints;
- Degrading Stribild and artificially raising its price in order to drive patients to TAF-based FDCs that were illegally protected from competition;
- Degrading standalone TAF, also in furtherance of the scheme to drive patients to the illegally protected FDCs;
- Abusing the regulatory process, by withholding an HIV indication from standalone TAF, in order to raise rivals' costs and delay their entry into the market; and
- Causing delayed entry of generic versions of Viread, Truvada, and Atripla.

481. Gilead's anticompetitive conduct identified above is exclusionary conduct the purpose and effect of which is to willfully attempt to acquire and/or maintain monopoly power through exclusionary means, in violation of Section 2 of the Sherman Act.

482. To the extent that Gilead is permitted to assert one, there is and was no cognizable, non-pretexual procompetitive justification for its exclusionary conduct that outweighs that conduct's harmful

1 effects. Even if there were some conceivable such justification that Gilead were permitted to assert, the
2 conduct is and was broader than necessary to achieve such a purpose.

3 483. Plaintiffs and the Class have been injured, and unless Gilead's unlawful conduct is
4 enjoined will continue to be injured, in their business and property as a result of Gilead's continuing
5 attempt to monopolize in violation of Section 2 of the Sherman Act.

6
7 **COUNT SIX**

8 **ATTEMPTED MONOPOLIZATION IN VIOLATION OF STATE ANTITRUST LAWS**
9 **(Against Gilead)**

10 484. Plaintiffs repeat and incorporate by reference all preceding allegations.

11 485. At all relevant times, Gilead possessed substantial market power (i.e., monopoly power),
12 or possessed a dangerous probability of achieving monopoly power, in the cART Market and narrower
13 markets therein.

14 486. With the specific intent to achieve a monopoly, Gilead attempted to acquire and/or
15 willfully maintain monopoly power in the cART Market by means of restrictive or exclusionary conduct,
16 rather than by means of greater business acumen, and injured Plaintiffs and the Class thereby.

17 487. Gilead's conscious objective was to further its dominance in the cART Market by and
18 through its exclusionary conduct.

19 488. As stated more fully above, Gilead knowingly, willfully, and wrongfully attempted to
20 acquire and/or maintain monopoly power by:

- 21
- 22 • Entering into and abiding by the illegal No-Generics Restraints;
 - 23 • Degrading Stribild and artificially raising its price in order to drive patients to
24 TAF-based FDCs that were illegally protected from competition;
 - 25 • Degrading standalone TAF, also in furtherance of the scheme to drive patients to
26 the illegally protected FDCs;
 - 27 • Abusing the regulatory process, by withholding an HIV indication from
28 standalone TAF, in order to raise rivals' costs and delay their entry into the
market; and
 - Causing delayed entry of generic versions of Viread, Truvada, and Atripla.

1 489. Gilead’s anticompetitive conduct identified above is exclusionary conduct the purpose and
2 effect of which is to willfully attempt to acquire and/or maintain monopoly power through exclusionary
3 means.

4 490. To the extent that Gilead is permitted to assert one, there is and was no cognizable, non-
5 pretextual procompetitive justification for its exclusionary conduct that outweighs that conduct’s harmful
6 effects. Even if there were some conceivable such justification that Gilead were permitted to assert, the
7 conduct is and was broader than necessary to achieve such a purpose.

8 491. Plaintiffs and the Class have been injured, and unless Gilead’s unlawful conduct is
9 enjoined will continue to be injured, in their business and property as a result of Gilead’s continuing
10 attempt to monopolize the cART Market.

11 492. By engaging in the foregoing misconduct, Gilead has violated the following state laws:

- 12 (a) Arizona Rev. Stat. §§ 44-1401, et seq., with respect to purchases in Arizona by
13 members of the Class.
- 14 (b) Conn. Gen. Stat. § 35-24, et seq., with respect to purchases in Connecticut by
15 members of the Class.
- 16 (c) D.C. Code §§ 28-4501, et seq., with respect to purchases in the District of
17 Columbia by members of the Class.
- 18 (d) Fla. Stat. §§ 501.201, et seq., with respect to purchases in Florida by members of
19 the Class.
- 20 (e) Hawaii Rev. Stat. §§ 480-1, et seq., with respect to purchases in Hawaii by
21 members of the Class.
- 22 (f) Iowa Code §§ 553.5, et seq., with respect to purchases in Iowa by members of the
23 Class.
- 24 (g) Kansas Stat. Ann. § 50-101, et seq., with respect to purchases in Kansas by
25 members of the Class.
- 26 (h) Me. Rev. Stat. Ann. 10, §§ 1102, et seq., with respect to purchases in Maine by
27 members of the Class.
- 28

- 1 (i) Md. Code, Com. Law § 11-201, et seq., with respect to purchases in Maryland by
2 members of the Class.
- 3 (j) Mass. Gen. L. Ch. 93A, et seq., with respect to purchases in Massachusetts by
4 members of the Class.
- 5 (k) Mich. Comp. Laws Ann. §§ 445.771, et seq., with respect to purchases in
6 Michigan by members of the Class.
- 7 (l) Minn. Stat. §§ 325D.49, et seq., and Minn. Stat. § 8.31, et seq., with respect to
8 purchases in Minnesota by members of the Class.
- 9 (m) Miss. Code Ann. §§ 75-21-1, et seq., with respect to purchases in Mississippi by
10 members of the Class.
- 11 (n) Neb. Code Ann. §§ 59-801, et seq., with respect to purchases in Nebraska by
12 members of the Class.
- 13 (o) Nev. Rev. Stat. Ann. §§ 598A, et seq., with respect to purchases in Nevada by
14 members of the Class.
- 15 (p) N.M. Stat. Ann. §§ 57-1-2, et seq., with respect to purchases in New Mexico by
16 members of the Class.
- 17 (q) N.Y. Gen. Bus. Law §§ 340, et seq., with respect to purchases in New York by
18 members of the Class.
- 19 (r) N.C. Gen. Stat. §§ 75-2.1, et seq., with respect to purchases in North Carolina by
20 members of the Class.
- 21 (s) N.D. Cent. Code §§ 51-08.1-01, et seq., with respect to purchases in North Dakota
22 by members of the Class.
- 23 (t) Or. Rev. Stat. §§ 646.705, et seq., with respect to purchases in Oregon by
24 members of the Class.
- 25 (u) 10 L.P.R.A. §§ 260, et seq., with respect to purchases in Puerto Rico by members
26 of the Class.
- 27 (v) R.I. Gen. Laws §§ 6-36-5 et seq., with respect to purchases in Rhode Island by
28 members of the Class.

- 1 (w) S.D. Codified Laws §§ 37-1-3, et seq., with respect to purchases in South Dakota
2 by members of the Class.
- 3 (x) Tenn. Code Ann §§ 47-25-101, et seq., with respect to purchases in Tennessee by
4 members of the Class.
- 5 (y) Utah Code Ann. §§ 76-10- 3101, et seq., with respect to purchases in Utah by
6 members of the Class.
- 7 (z) Vt. Stat. Ann. 9, §§ 2453, et seq., with respect to purchases in Vermont by
8 members of the Class.
- 9 (aa) W.Va. Code §§ 47-18-3, et seq., with respect to purchases in West Virginia by
10 members of the Class.
- 11 (bb) Wis. Stat. §§ 133.03, et seq., with respect to purchases in Wisconsin by members
12 of the Class.

13
14 **COUNT SEVEN**

15 **VIOLATION OF STATE CONSUMER PROTECTION LAWS**
16 **(Against All Defendants)**

17 493. Plaintiffs repeat and incorporate by reference all preceding allegations.

18 494. Defendants engaged in unfair competition or unfair, unconscionable, deceptive, or
19 fraudulent acts or practices in violation of the state consumer protection statutes listed below.

20 495. As a direct and proximate result of Defendants' unfair, unconscionable, deceptive, and
21 fraudulent conduct in violation of the state consumer protection statutes listed below, Plaintiffs and
22 members of the Class have paid more on their purchases of the brand and generic products than they
23 would otherwise have paid, and/or were prevented from substituting a less expensive, generic or
24 comparable alternative for their purchases of the more expensive brand and/or the more expensive
25 generic products.

26 496. There was a gross disparity between the price that Plaintiffs and the Class members paid
27 for the brand and generic products and the value received, given that a less expensive substitute generic
28

1 or comparable product should have been available.

2 497. By engaging in the foregoing conduct, Defendants have violated the following state unfair
3 trade practices and consumer protection laws:

4 (a) Arizona Rev. Stat. §§ 44-1522, et seq., with respect to purchases in
5 Arizona by members of the Class.

6 (b) Arkansas Code Annotated, § 4-88-101, et seq., with respect to purchases
7 in Arkansas by members of the Class.

8 (c) Cal. Bus. & Prof. Code §§ 17200, et seq., with respect to purchases in the
9 United States by members of the Class.

10 (d) D.C. Code §§ 28-3901, et seq., with respect to purchases in the District of
11 Columbia by members of the Class.

12 (e) Fla. Stat. §§ 501.201, et seq., with respect to purchases in Florida by
13 members of the Class.

14 (f) Haw. Rev. Stat. §§ 480, et seq., with respect to purchases in Hawaii by
15 members of the Class.

16 (g) Iowa Code §§ 714.16, et seq., with respect to purchases in Iowa by
17 members of the Class.

18 (h) Idaho Code Ann. §§ 48-601, et seq., with respect to purchases in Idaho by
19 members of the Class.

20 (i) 815 Ill. Comp. Stat. Ann. §§ 505/1, et seq., with respect to purchases in
21 Illinois by members of the Class.

22 (j) Kan. Stat. Ann. §§ 50-623, et seq., with respect to purchases in Kansas by
23 members of the Class.

24 (k) Me. Rev. Stat. tit. 5 §§ 207, et seq., with respect to purchases in Maine by
25 members of the Class.

26 (l) Mass. Gen. Laws ch. 93A, et seq., with respect to purchases in
27 Massachusetts by members of the Class.
28

- 1 (m) Mich. Comp. Laws Ann. §§ 445.901, et seq., with respect to purchases in
2 Michigan by members of the Class.
- 3 (n) Mo. Ann. Stat. §§ 407.010, et seq., with respect to purchases in Missouri
4 by members of the Class.
- 5 (o) Mont. Code Ann. §§ 30-14-101, et seq., with respect to purchases in
6 Montana by members of the Class.
- 7 (p) Neb. Rev. Stat. §§ 59-1601, et seq., with respect to purchases in Nebraska
8 by members of the Class.
- 9 (q) Nev. Rev. Stat. §§ 598.0903, et seq., with respect to purchases in Nevada
10 by members of the Class.
- 11 (r) N.H. Rev. Stat. Ann. §§ 358-A:1, et seq., with respect to purchases in New
12 Hampshire by members of the Class.
- 13 (s) N.M. Stat. Ann. §§ 57-12-1, et seq., with respect to purchases in New
14 Mexico by members of the Class.
- 15 (t) N.Y. Gen. Bus. Law §§ 349, et seq., with respect to purchases in New
16 York by members of the Class.
- 17 (u) N.C. Gen. Stat. §§ 75-1.1, et seq., with respect to purchases in North
18 Carolina by members of the Class.
- 19 (v) R.I. Gen. Laws §§ 6-13.1-1, et seq., with respect to purchases in Rhode
20 Island by members of the Class.
- 21 (w) Tenn. Code Ann. §§ 47-18-101, et seq., with respect to purchases in
22 Tennessee by members of the Class.
- 23 (x) Utah Code Ann. §§ 13-11-1, et seq., with respect to purchases in Utah by
24 members of the Class.
- 25 (y) Vt. Stat. Ann. tit. 9 §§ 2451 et seq., with respect to purchases in Vermont
26 by members of the Class.
- 27 (z) W. Va. Code §§ 46A-6-101, et seq. with respect to purchases in West
28 Virginia by members of the Class.

1 Prezcobix, Edurant, Symtuza, and competing cART drugs absent that unlawful conduct. But for Gilead
2 and Janssen's unlawful conduct, competitors would have begun marketing generic or comparable
3 versions of the brand products much sooner than they did and/or would have been able to market such
4 versions more successfully.

5 503. If Gilead and Janssen had competed in a full and timely fashion, Plaintiffs and other Class
6 members would have substituted lower-priced generic or comparable products for the higher-priced
7 brand products for some or all of their brand purchases, would have paid lower prices on some or all of
8 their remaining purchases, and/or would have received a superior product for the purchases that they
9 made.

10 504. During the relevant period, Plaintiffs and the other Class members purchased substantial
11 amounts of the products. As a result of Gilead and Janssen's unlawful conduct, Plaintiffs and the other
12 Class members were compelled to pay, and did pay, artificially inflated prices for their brand and generic
13 products. Plaintiffs and the Class members paid prices for their brand and generic products that were
14 substantially greater than the prices they would have paid absent the unlawful conduct alleged herein
15 because: (1) Plaintiffs and Class members were deprived of the opportunity to purchase lower-priced
16 generic and comparable products instead of expensive brand products; (2) Plaintiffs and Class members
17 were forced to pay artificially inflated prices for the brand products; and/or (3) the product was inferior to
18 what it would have been absent Gilead and Janssen's conduct.

19 505. Plaintiffs and the Class have been injured, and unless Defendants' unlawful conduct is
20 enjoined will continue to be injured, in their business and property as a result of Gilead and Janssen's
21 continuing conspiracy in violation of Section 1 of the Sherman Act.

22
23 **COUNT NINE**

24 **CONSPIRACY IN VIOLATION OF STATE ANTITRUST LAWS**
25 **(Against Gilead and Janssen)**

26 506. Plaintiffs repeat and incorporate by reference all preceding allegations.

27 507. Gilead and Janssen have engaged in continuing illegal contracts, combinations, and
28

1 conspiracies in restraint of trade by agreeing to and abiding by the No-Generics Restraints with respect to
2 Complera, Odefsey, Prezcobix, and Symtuza, the purpose and effect of which was to impair competition.
3 The agreements between Gilead and Janssen are horizontal market allocation agreements between actual
4 or potential competitors and are illegal per se. Alternatively, and at a minimum, they are unreasonable
5 restraints of trade.

6 508. By entering into these unlawful agreements, Gilead and Janssen unlawfully conspired in
7 restraint of trade and violated the following state laws:

- 8 (a) Ala. Code §8-10-3 with respect to purchases in Alabama by members of
9 the Class.
- 10 (b) Arizona Rev. Stat. §§ 44-1401, et seq., with respect to purchases in
11 Arizona by members of the Class.
- 12 (c) Cal. Bus. Code §§ 16700, et seq., and Cal. Bus. Code §§ 17200, et seq.,
13 with respect to purchases in the United States by members of the Class.
- 14 (d) Conn. Gen. Stat. § 35-24, et seq., with respect to purchases in Connecticut
15 by members of the Class.
- 16 (e) D.C. Code Ann. §§ 28-4501, et seq., with respect to purchases in the
17 District of Columbia by members of the Class.
- 18 (f) Fla. Stat. §§ 501.201, et seq., with respect to purchases in Florida by
19 members of the Class.
- 20 (g) Hawaii Rev. Stat. §§ 480-1, et seq., with respect to purchases in Hawaii by
21 members of the Class.
- 22 (h) 740 Ill. Comp. Stat. 10/3, et seq., with respect to purchases in Illinois by
23 members of the Class.
- 24 (i) Iowa Code § 553.4, et seq., with respect to purchases in Iowa by members
25 of the Class.
- 26 (j) Kan. Stat. Ann. §§ 50-101, et seq., with respect to purchases in Kansas by
27 members of the Class.

- 1 (k) Md. Code, Com. Law § 11-201, et seq., with respect to purchases in
2 Maryland by members of the Class.
- 3 (l) Mass. Gen. L. Ch. 93A, et seq., with respect to purchases in Massachusetts
4 by members of the Class.
- 5 (m) Me. Rev. Stat. Ann. 10, § 1101, et seq., with respect to purchases in Maine
6 by members of the Class.
- 7 (n) Mich. Comp. Laws Ann. §§ 445.771, et seq., with respect to purchases in
8 Michigan by members of the Class.
- 9 (o) Minn. Stat. §§ 325D.49, et seq., with respect to purchases in Minnesota by
10 members of the Class.
- 11 (p) Miss. Code Ann. §§ 75-21-1, et seq., with respect to purchases in
12 Mississippi by members of the Class.
- 13 (q) Neb. Code Ann. §§ 59-801, et seq., with respect to purchases in Nebraska
14 by members of the Class.
- 15 (r) Nev. Rev. Stat. Ann. § 598A, et seq., with respect to purchases in Nevada
16 by members of the Class.
- 17 (s) N.M. Stat. Ann. §§ 57-1-1, et seq., with respect to purchases in New
18 Mexico by members of the Class.
- 19 (t) N.Y. Gen. Bus. Law §§ 340, et seq., with respect to purchases in New
20 York by members of the Class.
- 21 (u) N.C. Gen. Stat. §§ 75-1, et seq., with respect to purchases in North
22 Carolina by members of the Class.
- 23 (v) N.D. Cent. Code § 51-08.1-01, et seq., with respect to purchases in North
24 Dakota by members of the Class.
- 25 (w) Or. Rev. Stat. §§ 646.705, et seq., with respect to purchases in Oregon by
26 members of the Class.
- 27 (x) 10 L.P.R.A. § 251, et seq., with respect to purchases in Puerto Rico by
28 members of the Class.

- 1 (y) R.I. Gen. Laws §§ 6-36-4, et seq. with respect to purchases in Rhode
2 Island by members of the Class.
- 3 (z) S.D. Codified Laws Ann. § 37-1-3.1, et seq., with respect to purchases in
4 South Dakota by members of the Class.
- 5 (aa) Utah Code Ann. §§ 76-10-3101, et seq., with respect to purchases in Utah
6 by residents of Utah who are members of the Class.
- 7 (bb) Tenn. Code Ann. §§ 47-25-101, et seq., with respect to purchases in
8 Tennessee by members of the Class.
- 9 (cc) Vt. Stat. Ann. 9, § 2453, et seq., with respect to purchases in Vermont by
10 members of the Class.
- 11 (dd) W.Va. Code §§ 47-18-3, et seq., with respect to purchases in West
12 Virginia by members of the Class.
- 13 (ee) Wis. Stat. § 133.03, et seq., with respect to purchases in Wisconsin by
14 members of the Class.

15 509. Plaintiffs and all members of the Class have been injured in their business and property by
16 reason of the unlawful contracts, combinations, and/or conspiracies. Plaintiffs and members of the Class
17 have paid more on their purchases of the brand and generic products than they would otherwise had paid,
18 and/or were prevented from substituting a less expensive, generic or comparable alternative for their
19 purchases of the more expensive brand and/or the more expensive generic products.

20 510. As a result of Defendants' unlawful conduct, Plaintiff and the Class paid more than they
21 would have paid for Viread, Emtriva, Tybost, Vemlidy, Truvada, Descovy, Complera, Odefsey, Prezista,
22 Prezcobix, Edurant, Symtuza, and competing cART drugs absent that unlawful conduct. But for Gilead
23 and Janssen's unlawful conduct, competitors would have begun marketing generic or comparable
24 versions of the brand products much sooner than they did and/or would have been able to market such
25 versions more successfully.

26 511. If Gilead and Janssen had competed in a full and timely fashion, Plaintiffs and other Class
27 members would have substituted lower-priced generic or comparable products for the higher-priced
28

1 brand products for some or all of their brand purchases, would have paid lower prices on some or all of
2 their remaining purchases, and/or would have received a superior product for the purchases that they
3 made.

4 512. During the relevant period, Plaintiffs and the other Class members purchased and/or
5 reimbursed for substantial amounts of the products. As a result of Gilead and Janssen's unlawful conduct,
6 Plaintiffs and the other Class members were compelled to pay, and did pay, artificially inflated prices for
7 their brand and generic products. Plaintiffs and the Class members paid prices for their brand and generic
8 products that were substantially greater than the prices they would have paid absent the unlawful conduct
9 alleged herein because: (1) Plaintiffs and Class members were deprived of the opportunity to purchase
10 lower-priced generic or comparable products instead of expensive brand products; (2) Plaintiffs and
11 Class members were forced to pay artificially inflated prices for the brand products; and/or (3) the
12 product was inferior to what it would have been absent Gilead and Janssen's conduct.

13 513. Plaintiffs and the Class have been injured, and unless Defendants' unlawful conduct is
14 enjoined will continue to be injured, in their business and property as a result of Gilead and Janssen's
15 continuing conspiracy.

17 **COUNT TEN**

18 **CONSPIRACY IN VIOLATION OF SECTION 1 OF THE SHERMAN ANTITRUST ACT** 19 **(Against Gilead and Japan Tobacco)**

20 514. Plaintiffs repeat and incorporate by reference all preceding allegations.

21 515. Gilead and Japan Tobacco have engaged in a continuing illegal contract, combination, and
22 conspiracy in restraint of trade by agreeing to and abiding by the No-Generics Restraints with respect to
23 Stribild and Genvoya, the purpose and effect of which was to impair competition. By entering into these
24 unlawful agreements, Gilead and Japan Tobacco unlawfully conspired in restraint of trade and violated
25 Section 1 of the Sherman Act, 15 U.S.C. § 1. The agreements between Gilead and Japan Tobacco are
26 horizontal market allocation agreements between actual or potential competitors and are illegal per se.
27 Alternatively, and at a minimum, they are unreasonable restraints of trade in violation of Section 1.
28

1 516. Plaintiffs and all members of the Class have been injured in their business and property by
2 reason of the unlawful contracts, combinations, and/or conspiracies. Plaintiffs and members of Class
3 have paid more on their purchases of the brand and generic products than they would otherwise had paid,
4 and/or were prevented from substituting a less expensive, generic or comparable alternative for their
5 purchases of the more expensive brand and/or the more expensive generic products.

6 517. As a result of Defendants' unlawful conduct, Plaintiffs and the Class paid more than they
7 would have paid for Viread, Emtriva, Tybost, Vemlidy, Truvada, Descovy, Stribild, Genvoya, and
8 competing cART drugs absent that unlawful conduct. But for Gilead and Japan Tobacco's unlawful
9 conduct, competitors would have begun marketing generic or comparable versions of the brand products
10 much sooner than they did and/or would have been able to market such versions more successfully.

11 518. If Gilead and Japan Tobacco had competed in a full and timely fashion, Plaintiffs and
12 other Class members would have substituted lower-priced generic or comparable products for the higher-
13 priced brand products for some or all of their brand purchases, would have paid lower prices on some or
14 all of their remaining purchases, and/or would have received a superior product for the purchases that
15 they made.

16 519. During the relevant period, Plaintiffs and the other Class members purchased and/or
17 reimbursed for substantial amounts of the products. As a result of Gilead and Japan Tobacco's unlawful
18 conduct, Plaintiffs and the other Class members were compelled to pay, and did pay, artificially inflated
19 prices for their brand and generic products. Plaintiffs and the Class members paid prices for their brand
20 and generic products that were substantially greater than the prices they would have paid absent the
21 unlawful conduct alleged herein because: (1) Plaintiffs and Class members were deprived of the
22 opportunity to purchase lower-priced generic or comparable products instead of expensive brand
23 products; (2) Plaintiffs and Class members were forced to pay artificially inflated prices for the brand
24 products; and/or (3) the product was inferior to what it would have been absent Gilead and Japan
25 Tobacco's conduct.

26 520. Plaintiffs and the Class have been injured, and unless Defendants' unlawful conduct is
27 enjoined will continue to be injured, in their business and property as a result of Gilead and Japan
28

1 Tobacco's continuing conspiracy in violation of Section 1 of the Sherman Act.

2
3 **COUNT ELEVEN**

4 **CONSPIRACY IN VIOLATION OF STATE ANTITRUST LAWS**
5 **(Against Gilead and Japan Tobacco)**

6 521. Plaintiffs repeat and incorporate by reference all preceding allegations.

7 522. Gilead and Japan Tobacco have engaged in a continuing illegal contract, combination, and
8 conspiracy in restraint of trade by agreeing to and abiding by the No-Generics Restraints with respect to
9 Stribild and Genvoya, the purpose and effect of which was to impair competition. The agreements
10 between Gilead and Japan Tobacco are horizontal market allocation agreements between actual or
11 potential competitors and are illegal per se. Alternatively, and at a minimum, they are unreasonable
12 restraints of trade.

13 523. By entering into these unlawful agreements, Gilead and Japan Tobacco unlawfully
14 conspired in restraint of trade and violated the following state laws:

- 15 (a) Ala. Code §8-10-3 with respect to purchases in Alabama by members of
16 the Class.
- 17 (b) Arizona Rev. Stat. §§ 44-1401, et seq., with respect to purchases in
18 Arizona by members of the Class.
- 19 (c) Cal. Bus. Code §§ 16700, et seq., and Cal. Bus. Code §§ 17200, et seq.,
20 with respect to purchases in the United States by members of the Class.
- 21 (d) Conn. Gen. Stat. § 35-24, et seq., with respect to purchases in Connecticut
22 by members of the Class.
- 23 (e) D.C. Code Ann. §§ 28-4501, et seq., with respect to purchases in the
24 District of Columbia by members of the Class.
- 25 (f) Fla. Stat. §§ 501.201, et seq., with respect to purchases in Florida by
26 members of the Class.
- 27 (g) Hawaii Rev. Stat. §§ 480-1, et seq., with respect to purchases in Hawaii by
28

1 members of the Class.

2 (h) 740 Ill. Comp. Stat. 10/3, et seq., with respect to purchases in Illinois by
3 members of the Class.

4 (i) Iowa Code § 553.4, et seq., with respect to purchases in Iowa by members
5 of the Class.

6 (j) Kan. Stat. Ann. §§ 50-101, et seq., with respect to purchases in Kansas by
7 members of the Class.

8 (k) Md. Code, Com. Law § 11-201, et seq., with respect to purchases in
9 Maryland by members of the Class.

10 (l) Mass. Gen. L. Ch. 93A, et seq., with respect to purchases in Massachusetts
11 by members of the Class.

12 (m) Me. Rev. Stat. Ann. 10, § 1101, et seq., with respect to purchases in Maine
13 by members of the Class.

14 (n) Mich. Comp. Laws Ann. §§ 445.771, et seq., with respect to purchases in
15 Michigan by members of the Class.

16 (o) Minn. Stat. §§ 325D.49, et seq., with respect to purchases in Minnesota by
17 members of the Class.

18 (p) Miss. Code Ann. §§ 75-21-1, et seq., with respect to purchases in
19 Mississippi by members of the Class.

20 (q) Neb. Code Ann. §§ 59-801, et seq., with respect to purchases in Nebraska
21 by members of the Class.

22 (r) Nev. Rev. Stat. Ann. § 598A, et seq., with respect to purchases in Nevada
23 by members of the Class.

24 (s) N.M. Stat. Ann. §§ 57-1-1, et seq., with respect to purchases in New
25 Mexico by members of the Class.

26 (t) N.Y. Gen. Bus. Law §§ 340, et seq., with respect to purchases in New
27 York by members of the Class.

28 (u) N.C. Gen. Stat. §§ 75-1, et seq., with respect to purchases in North

1 Carolina by members of the Class.

2 (v) N.D. Cent. Code § 51-08.1-01, et seq., with respect to purchases in North
3 Dakota by members of the Class.

4 (w) Or. Rev. Stat. §§ 646.705, et seq., with respect to purchases in Oregon by
5 members of the Class.

6 (x) 10 L.P.R.A. § 251, et seq., with respect to purchases in Puerto Rico by
7 members of the Class.

8 (y) R.I. Gen. Laws §§ 6-36-4, et seq. with respect to purchases in Rhode
9 Island by members of the Class.

10 (z) S.D. Codified Laws Ann. § 37-1-3.1, et seq., with respect to purchases in
11 South Dakota by members of the Class.

12 (aa) Utah Code Ann. §§ 76-10-3101, et seq., with respect to purchases in Utah
13 by residents of Utah who are members of the Class.

14 (bb) Tenn. Code Ann. §§ 47-25-101, et seq., with respect to purchases in
15 Tennessee by members of the Class.

16 (cc) Vt. Stat. Ann. 9, § 2453, et seq., with respect to purchases in Vermont by
17 members of the Class.

18 (dd) W.Va. Code §§ 47-18-3, et seq., with respect to purchases in West
19 Virginia by members of the Class.

20 (ee) Wis. Stat. § 133.03, et seq., with respect to purchases in Wisconsin by
21 members of the Class.

22 524. Plaintiffs and all members of the Class have been injured in their business and property by
23 reason of the unlawful contracts, combinations, and/or conspiracies. Plaintiffs and members of Class
24 have paid more on their purchases of the brand and generic products than they would otherwise had paid,
25 and/or were prevented from substituting a less expensive, generic or comparable alternative for their
26 purchases of the more expensive brand and/or the more expensive generic products.

27 525. As a result of Defendants' unlawful conduct, Plaintiffs and the Class paid more than they
28

1 would have paid for Viread, Emtriva, Tybost, Vemlidy, Truvada, Descovy, Stribild, Genvoya, and
2 competing cART drugs absent that unlawful conduct. But for Gilead and Japan Tobacco's unlawful
3 conduct, competitors would have begun marketing generic or comparable versions of the brand products
4 much sooner than they did and/or would have been able to market such versions more successfully.

5 526. If Gilead and Japan Tobacco had competed in a full and timely fashion, Plaintiffs and
6 other Class members would have substituted lower-priced generic or comparable products for the higher-
7 priced brand products for some or all of their brand purchases, would have paid lower prices on some or
8 all of their remaining purchases, and/or would have received a superior product for the purchases that
9 they made.

10 527. During the relevant period, Plaintiffs and the other Class members purchased and/or
11 reimbursed for substantial amounts of the products. As a result of Gilead and Japan Tobacco's unlawful
12 conduct, Plaintiffs and the other Class members were compelled to pay, and did pay, artificially inflated
13 prices for their brand and generic products. Plaintiffs and the Class members paid prices for their brand
14 and generic products that were substantially greater than the prices they would have paid absent the
15 unlawful conduct alleged herein because: (1) Plaintiffs and Class members were deprived of the
16 opportunity to purchase lower-priced generic or comparable products instead of expensive brand
17 products; (2) Plaintiffs and Class members were forced to pay artificially inflated prices for the brand
18 products; and/or (3) the product was inferior to what it would have been absent Gilead and Japan
19 Tobacco's conduct.

20 528. Plaintiffs and the Class have been injured, and unless Defendants' unlawful conduct is
21 enjoined will continue to be injured, in their business and property as a result of Gilead and Japan
22 Tobacco's continuing conspiracy.

23
24 **COUNT TWELVE**

25 **CONSPIRACY IN VIOLATION OF SECTION 1 OF THE**
26 **SHERMAN ANTITRUST ACT (15 U.S.C. § 1)**
27 **(Against Gilead and BMS)**

28 529. Plaintiffs repeat and incorporate by reference all preceding allegations.

1 530. Gilead and BMS have engaged in a continuing illegal contract, combination, and
2 conspiracy in restraint of trade by agreeing to and abiding by the No-Generics Restraints with respect to
3 Atripla and Evotaz the purpose and effect of which was to impair competition. By entering into these
4 unlawful agreements, Gilead and BMS unlawfully conspired in restraint of trade and violated Section 1
5 of the Sherman Act, 15 U.S.C. § 1. The agreements between Gilead and BMS are horizontal market
6 allocation agreements between actual or potential competitors and are illegal per se. Alternatively, and at
7 a minimum, they are unreasonable restraints of trade in violation of Section 1.

8 531. Plaintiffs and all members of the Class have been injured in their business and property by
9 reason of the unlawful contracts, combinations, and/or conspiracies. Plaintiffs and members of the Class
10 have paid more on their purchases of the brand and generic products than they would otherwise have
11 paid, and/or were prevented from substituting a less expensive, generic alternative for their purchases of
12 the more expensive brand and/or the more expensive generic products.

13 532. As a result of Defendants' unlawful conduct, Plaintiffs and the Class paid more than they
14 would have paid for Viread, Emtriva, Truvada, Atripla, Tybost, Reyataz, Evotaz, and competing cART
15 drugs absent that unlawful conduct. But for Gilead and BMS's unlawful conduct, competitors would
16 have begun marketing generic versions of the brand products much sooner than they did and/or would
17 have been able to market such versions more successfully.

18 533. If Gilead and BMS had competed in a full and timely fashion, Plaintiffs and other Class
19 members would have substituted lower-priced generic products for the higher-priced brand products for
20 some or all of their brand purchases, would have paid lower prices on some or all of their remaining
21 brand and/or generic purchases, and/or would have received a superior product for the purchases that
22 they made.

23 534. During the relevant period, Plaintiffs and the other Class members purchased and/or
24 reimbursed for substantial amounts of the products. As a result of Gilead and BMS's unlawful conduct,
25 Plaintiffs and the other Class members were compelled to pay, and did pay, artificially inflated prices for
26 their brand and generic products. Plaintiffs and the Class members paid prices for their brand and generic
27 products that were substantially greater than the prices they would have paid absent the unlawful conduct
28

1 alleged herein because: (1) Plaintiffs and Class members were deprived of the opportunity to purchase
2 lower-priced generic products instead of expensive brand products; (2) Plaintiffs and Class members
3 were forced to pay artificially inflated prices for the brand products; and/or (3) the product was inferior to
4 what it would have been absent Gilead and BMS's conduct.

5 535. Plaintiffs and the Class have been injured, and unless Defendants' unlawful conduct is
6 enjoined will continue to be injured, in their business and property as a result of Gilead and BMS's
7 continuing conspiracy in violation of Section 1 of the Sherman Act.

8
9 **COUNT THIRTEEN**
10 **CONSPIRACY IN VIOLATION OF STATE ANTITRUST LAWS**
11 **(Against Gilead and BMS)**

12 536. Plaintiffs repeat and incorporate by reference all preceding allegations.

13 537. Gilead and BMS have engaged in a continuing illegal contract, combination, and
14 conspiracy in restraint of trade by agreeing to and abiding by the No-Generics Restraints with respect to
15 Atripla and Evotaz, the purpose and effect of which was to impair competition. The agreements between
16 Gilead and BMS are horizontal market allocation and price agreements between actual or potential
17 competitors and are illegal per se. Alternatively, and at a minimum, they are unreasonable restraints of
18 trade.

19 538. By entering into these unlawful agreements, Gilead and BMS unlawfully conspired in
20 restraint of trade and violated the following state laws:

- 21 (d) Ala. Code §8-10-3 with respect to purchases in Alabama by members of
22 the Class.
- 23 (e) Arizona Rev. Stat. §§ 44-1401, et seq., with respect to purchases in
24 Arizona by members of the Class.
- 25 (f) Cal. Bus. Code §§ 16700, et seq., and Cal. Bus. Code §§ 17200, et seq.,
26 with respect to purchases in the United States by members of the Class.
- 27 (g) Conn. Gen. Stat. § 35-24, et seq., with respect to purchases in Connecticut
28

1 by members of the Class.

2 (h) D.C. Code Ann. §§ 28-4501, et seq., with respect to purchases in the
3 District of Columbia by members of the Class.

4 (i) Fla. Stat. §§ 501.201, et seq., with respect to purchases in Florida by
5 members of the Class.

6 (j) Hawaii Rev. Stat. §§ 480-1, et seq., with respect to purchases in Hawaii by
7 members of the Class.

8 (k) 740 Ill. Comp. Stat. 10/3, et seq., with respect to purchases in Illinois by
9 members of the Class.

10 (l) Iowa Code § 553.4, et seq., with respect to purchases in Iowa by members
11 of the Class.

12 (m) Kan. Stat. Ann. §§ 50-101, et seq., with respect to purchases in Kansas by
13 members of the Class.

14 (n) Md. Code, Com. Law § 11-201, et seq., with respect to purchases in
15 Maryland by members of the Class.

16 (o) Mass. Gen. L. Ch. 93A, et seq., with respect to purchases in Massachusetts
17 by members of the Class.

18 (p) Me. Rev. Stat. Ann. 10, § 1101, et seq., with respect to purchases in Maine
19 by members of the Class.

20 (q) Mich. Comp. Laws Ann. §§ 445.771, et seq., with respect to purchases in
21 Michigan by members of the Class.

22 (r) Minn. Stat. §§ 325D.49, et seq., with respect to purchases in Minnesota by
23 members of the Class.

24 (s) Miss. Code Ann. §§ 75-21-1, et seq., with respect to purchases in
25 Mississippi by members of the Class.

26 (t) Neb. Code Ann. §§ 59-801, et seq., with respect to purchases in Nebraska
27 by members of the Class.

28 (u) Nev. Rev. Stat. Ann. § 598A, et seq., with respect to purchases in Nevada

1 by members of the Class.

2 (v) N.M. Stat. Ann. §§ 57-1-1, et seq., with respect to purchases in New
3 Mexico by members of the Class.

4 (w) N.Y. Gen. Bus. Law §§ 340, et seq., with respect to purchases in New
5 York by members of the Class.

6 (x) N.C. Gen. Stat. §§ 75-1, et seq., with respect to purchases in North
7 Carolina by members of the Class.

8 (y) N.D. Cent. Code § 51-08.1-01, et seq., with respect to purchases in North
9 Dakota by members of the Class.

10 (z) Or. Rev. Stat. §§ 646.705, et seq., with respect to purchases in Oregon by
11 members of the Class.

12 (aa) 10 L.P.R.A. § 251, et seq., with respect to purchases in Puerto Rico by
13 members of the Class.

14 (bb) R.I. Gen. Laws §§ 6-36-4, et seq. with respect to purchases in Rhode
15 Island by members of the Class.

16 (cc) S.D. Codified Laws Ann. § 37-1-3.1, et seq., with respect to purchases in
17 South Dakota by members of the Class.

18 (dd) Utah Code Ann. §§ 76-10-3101, et seq., with respect to purchases in Utah
19 by residents of Utah who are members of the Class.

20 (ee) Tenn. Code Ann. §§ 47-25-101, et seq., with respect to purchases in
21 Tennessee by members of the Class.

22 (ff) Vt. Stat. Ann. 9, § 2453, et seq., with respect to purchases in Vermont by
23 members of the Class.

24 (gg) W.Va. Code §§ 47-18-3, et seq., with respect to purchases in West
25 Virginia by members of the Class.

26 (hh) Wis. Stat. § 133.03, et seq., with respect to purchases in Wisconsin by
27 members of the Class.

28 539. Plaintiffs and all members of the Class have been injured in their business and property by

1 reason of the unlawful contracts, combinations, and/or conspiracies. Plaintiffs and members of the Class
2 have paid more on their purchases of the brand and generic products than they would otherwise have
3 paid, and/or were prevented from substituting a less expensive, generic alternative for their purchases of
4 the more expensive brand and/or the more expensive generic products.

5 540. As a result of Defendants' unlawful conduct, Plaintiffs and the Class paid more than they
6 would have paid for Viread, Emtriva, Truvada, Atripla, Tybost, Reyataz, Evotaz, and competing cART
7 drugs absent that unlawful conduct. But for Gilead and BMS's unlawful conduct, competitors would
8 have begun marketing generic versions of the brand products much sooner than they did and/or would
9 have been able to market such versions more successfully.

10 541. If Gilead and BMS had competed in a full and timely fashion, Plaintiffs and other Class
11 members would have substituted lower-priced generic products for the higher-priced brand products for
12 some or all of their brand purchases, would have paid lower prices on some or all of their remaining
13 brand and/or generic purchases, and/or would have received a superior product for the purchases that
14 they made.

15 542. During the relevant period, Plaintiffs and the other Class members purchased and/or
16 reimbursed for substantial amounts of the products. As a result of Gilead and BMS's unlawful conduct,
17 Plaintiffs and the other Class members were compelled to pay, and did pay, artificially inflated prices for
18 their brand and generic products. Plaintiffs and the Class members paid prices for their brand and generic
19 products that were substantially greater than the prices they would have paid absent the unlawful conduct
20 alleged herein because: (1) Plaintiffs and Class members were deprived of the opportunity to purchase
21 lower-priced generic products instead of expensive brand products; (2) Plaintiffs and Class members
22 were forced to pay artificially inflated prices for the brand products; and/or (3) the product was inferior to
23 what it would have been absent Gilead and BMS's conduct.

24 543. Plaintiffs and the Class have been injured, and unless Defendants' unlawful conduct is
25 enjoined will continue to be injured, in their business and property as a result of Gilead and BMS's
26 continuing conspiracy.

1 **XIV. DEMAND FOR JUDGMENT**

2 544. WHEREFORE, Plaintiffs, on behalf of themselves and the Class, respectfully request that
3 the Court:

- 4 A. Determine that this action may be maintained as a class action pursuant to Fed. R. Civ. P.
5 23(a) and (b)(3), and Fed. R. Civ. P. 23(a) and (b)(2), and direct that reasonable notice of
6 this action, as provided by Fed. R. Civ. P. 23(c)(2), be given to the Class and declare the
7 Plaintiffs the representatives of the Class;
- 8 B. Enter judgment against each Defendant in favor of Plaintiffs and the Class;
- 9 C. Adjudge and decree the acts alleged herein, pursuant to Fed. R. Civ. P. 57 and 18 U.S.C. §
10 2201(a), to be unlawful restraints of trade and unlawful exclusionary conduct in violation
11 of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2;
- 12 D. Grant permanent injunctive relief pursuant to Section 16 of the Clayton Act and applicable
13 state law to remedy the ongoing anticompetitive effects of Defendants' unlawful conduct,
14 including but not limited to adjudging and decreeing that:
- 15 1) Defendants have forfeited any NCE exclusivity that they may otherwise have had
16 related to Vemlidy, Descovy, Odefsey, Genvoya, Symtuza, and any and all other
17 FDCs that contain TAF;
 - 18 2) Defendants have forfeited any 30-month stay under the Hatch-Waxman Act that
19 they may otherwise have had related to Vemlidy, Descovy, Odefsey, Genvoya,
20 Symtuza, and any and all other FDCs that contain TAF;
 - 21 3) Defendants shall not enforce the No-Generics Restraints that would otherwise
22 prohibit Janssen, Japan Tobacco, or BMS from making or marketing competing
23 FDCs after the expiration of Gilead's relevant patents;
 - 24 4) Defendants shall not enforce the No-Generics Restraints that would otherwise
25 prohibit Gilead from making or marketing competing FDCs to Evotaz after the
26 expiration of BMS's patents on ATV;
 - 27 5) Defendants shall not enforce the No-Generics Restraints that would otherwise
28 prohibit Gilead from making or marketing competing FDCs to Prezcobix or
Symtuza after the expiration of Janssen's patents on DRV;
 - 6) Gilead shall issue licenses to TAF, FTC, and COBI to any willing licensee, for
purposes of making and marketing competing versions of Evotaz, Prezcobix, and
Symtuza, on terms to be determined by the Court;
 - 7) Each of Janssen, Japan Tobacco, and BMS shall issue licenses to their third agents
to any willing licensee on terms to be determined by the Court;
 - 8) Gilead shall issue licenses to TDF, TAF, and FTC to any willing licensee on terms
to be determined by the Court;

1 9) The entry date of Teva, Lupin, Mylan, Aurobindo, Hetero, and Amneal under their
2 patent settlement agreements with Gilead concerning Truvada shall be a date to be
determined by the Court;

3 10) The entry date of Teva, Lupin, and Cipla under their patent settlement agreements
4 with Gilead concerning Atripla shall be a date to be determined by the Court; and

5 E. Award to Plaintiffs and the Class damages (and multiple damages as provided by law) in
amounts to be determined at trial;

6 F. Award to Plaintiffs and the Class their costs of suit, including reasonable attorneys' fees
7 as provided by law;

8 G. Grant such other further relief as is necessary to correct for the anticompetitive market
9 effects caused by Defendants' conduct, as the Court deems just.

10
11 **XV. JURY DEMAND**

12 545. Pursuant to Fed. Civ. P. 38, Plaintiffs on behalf of themselves and the proposed Class
13 demand a trial by jury on all issues so triable.

14
15 Dated: July 26, 2019

DURIE TANGRI LLP

16
17 By: /s/ Daralyn J. Durie

DARALYN J. DURIE
ddurie@durietangri.com
MARK A. LEMLEY (SBN 155830)
mlemley@durietangri.com
DAVID MCGOWAN (SBN 154289)
dmcgowan@durietangri.com
LAURA E. MILLER (SBN 271713)
lmiller@durietangri.com
W. HENRY HUTTINGER (SBN 312843)
hhuttinger@durietangri.com
217 Leidesdorff Street
San Francisco, CA 94111
Telephone: (415) 362-6666
Facsimile: (415) 236-6300

HILLIARD & SHADOWEN LLP
STEVE D. SHADOWEN (*pro hac vice*)
steve@hilliardshadowenlaw.com
ROBERT C. HILLIARD (*pro hac vice* pending)
bob@hilliardshadowenlaw.com
RICHARD BRUNELL (*pro hac vice* pending)
rbrunell@hilliardshadowenlaw.com
MATTHEW C. WEINER (*pro hac vice*)

1 matt@hilliardshadowenlaw.com
2 FRAZAR W. THOMAS (*pro hac vice* pending)
3 fraz@hilliardshadowenlaw.com
4 NICHOLAS W. SHADOWEN (*pro hac vice*)
5 nick@hilliardshadowenlaw.com
6 DONALD SEAN NATION (*pro hac vice*)
7 sean@hilliardshadowenlaw.com
8 1135 W. 6th Street, Suite 125
9 Austin, TX 78703
10 Telephone: (855) 344-3298
11 Facsimile: (361) 882-3015

7 HAGENS BERMAN SOBOL SHAPIRO LLP
8 STEVE W. BERMAN (*pro hac vice*)
9 steve@hbsslaw.com
10 THOMAS M. SOBOL (*pro hac vice*)
11 tom@hbsslaw.com
12 KRISTEN A. JOHNSON (*pro hac vice* pending)
13 kristenj@hbsslaw.com
14 GREGORY T. ARNOLD (*pro hac vice*)
15 grega@hbsslaw.com
16 55 Cambridge Parkway, Suite 301
17 Cambridge, MA 02142
18 Telephone: (617) 482-3700
19 Facsimile: (617) 482-3003

14 RADICE LAW FIRM, P.C.
15 JOHN RADICE (*pro hac vice*)
16 jradice@radicelawfirm.com
17 DAN RUBENSTEIN (*pro hac vice*)
18 drubenstein@radicelawfirm.com
19 475 Wall Street
20 Princeton, NJ 08540
21 Telephone: (646) 245-8502
22 Facsimile: (609) 385-0745

19 SHEPHERD, FINKELMAN, MILLER & SHAH, LLP
20 JAYNE A. GOLDSTEIN (*pro hac vice*)
21 jgoldstein@sfmslaw.com
22 1625 North Commerce Parkway, Suite 320
23 Fort Lauderdale, FL 33326
24 Telephone: (954) 515-0123
25 Facsimile: (866) 300-7367

23 SHEPHERD, FINKELMAN, MILLER & SHAH, LLP
24 NATALIE FINKELMAN BENNETT (*pro hac vice*)
25 nfinkelman@sfmslaw.com
26 MICHAEL OLS (*pro hac vice*)
27 mols@sfmslaw.com
28 35 E. State Street
Media, PA 19063
Telephone: (610) 891-9880
Facsimile: (866) 300-7367

SPERLING & SLATER, P.C.
PAUL E. SLATER (*pro hac vice*)

1 pes@sperling-law.com
2 EAMON P. KELLY (*pro hac vice*)
3 ekelly@sperling-law.com
4 ALBERTO RODRIGUEZ (*pro hac vice*)
5 arodriguez@sperling-law.com
6 DAVID P. GERMAINE (*pro hac vice*)
7 dgermaine@sperling-law.com
8 55 West Monroe, Suite 3200
9 Chicago, IL 60603
10 Telephone: (312) 641-3200
11 Facsimile: (312) 641-6492

12 Attorney for Plaintiffs
13 *Peter Staley, Steve Fuller, Gregg S. Gonsalves, PhD,*
14 *Brenda Emily Goodrow, Andrew R. Spieldenner, PhD,*
15 *Robert J. Vazquez, Jason Walker, Michael Warner, Jacob*
16 *Zydonis, Fraternal Order of Police, Miami Lodge 20,*
17 *Insurance Trust Fund, and Service Employees*
18 *International Union, Local No. 1 Health Fund*

19 Dated: July 26, 2019

20 GLANCY PRONGAY & MURRAY

21 By: */s/ Kevin F. Ruf*

22 KEVIN F. RUF
23 kruf@glancylaw.com
24 LIONEL Z. GLANCY (SBN 134180)
25 lglancy@glancylaw.com
26 1925 Century Park East, Suite 2100
27 Los Angeles, CA 90067
28 Telephone: (310) 201-9150
Facsimile: (310) 201-9160

NUSSBAUM LAW GROUP, P.C.
LINDA P. NUSSBAUM (*pro hac vice pending*)
lnussbaum@nussbaumpc.com
BART D. COHEN (*pro hac vice pending*)
bcohen@nussbaumpc.com
1211 Avenue of the Americas, 40th Floor
New York, NY 10036
Telephone: (917) 438-9189

MILBERG PHILLIPS GROSSMAN LLP
MICHAEL J. GALLAGHER, JR. (*pro hac vice*)
mgallagher@milberg.com
One Pennsylvania Plaza, 19th Floor
New York, New York 10119
Telephone: (212) 594-5300

Attorneys for Plaintiffs
Michael Snipe, John Carroll, Josh McDonald, John Doe,
Gabriel Molina, and Troy Vazquez-Cain

1 Dated: July 26, 2019

GLANCY PRONGAY & MURRAY LLP

2
3 By: /s/ Lee Albert

4 LEE ALBERT
lalbert@glancylaw.com
5 BRIAN P. MURRAY (*pro hac vice* pending)
bmurray@glancylaw.com
6 GREGORY B. LINKH (*pro hac vice* pending)
glinkh@glancylaw.com
7 230 Park Avenue, Suite 530
New York, NY 10169
8 Telephone: (212) 682-5340
Facsimile: (212) 884-0988

9 LIONEL Z. GLANCY (SBN 134180)
lglancy@glancylaw.com
10 KEVIN F. RUF (SBN 136901)
kruf@glancylaw.com
11 1925 Century Park East, Suite 2100
Los Angeles, CA 90067
12 Telephone: (310) 201-9150
13 Facsimile: (310) 201-9160

14 SPECTOR ROSEMAN & KODROFF P.C.
EUGENE SPECTOR (*pro hac vice* pending)
espector@srkattorneys.com
15 JEFFREY KODROFF (*pro hac vice* pending)
jkodroff@srkattorneys.com
16 WILLIAM CALDES (*pro hac vice* pending)
bcaldes@srkattorneys.com
17 JEFFREY SPECTOR (*pro hac vice* pending)
jspector@srkattorneys.com
18 2001 Market Street, Suite 3420
Philadelphia, Pennsylvania 19103
19 Telephone: (215) 496-0300
20 Facsimile: (215) 496-6611

21 Attorney for Plaintiffs
Teamsters Local 237 Welfare Fund and Teamsters Local
22 *237 Retirees' Benefit Fund*

23 Dated: July 26, 2019

LOCKRIDGE GRINDAL NAUEN PLLP

24
25 By: /s/ Heidi M. Silton

26 HEIDI M. SILTON
hmsilton@locklaw.com
27 KAREN H. RIEBEL (*pro hac vice*)
khriebel@locklaw.com
28 JESSICA N. SERVAIS (*pro hac vice*)
jnservais@locklaw.com
100 Washington Ave. S., Suite 2200

1 Minneapolis, MN 55401
2 Telephone: (612) 339-6900
3 Facsimile: (612) 339-0981

4 PRITZKER LEVINE LLP
5 ELIZABETH C. PRITZKER (SBN 146267)
6 ecp@pritzkerlevine.com
7 JONATHAN K. LEVINE (SBN 220289)
8 jkl@pritzkerlevine.com
9 BETHANY CARACUZZO (SBN 190687)
10 bc@pritzkerlevine.com
11 180 Grand Avenue, Suite 1390
12 Oakland, CA 94612
13 Telephone: (415) 692-0772
14 Facsimile: (415) 366-6110

15 GUSTAFSON GLUEK PLLC
16 DANIEL C. HEDLUND (*pro hac vice* pending)
17 dhedlund@gustafsongluek.com
18 MICHELLE J. LOOBY (*pro hac vice* pending)
19 mlooby@gustafsongluek.com
20 120 South 6th Street, Suite 2600
21 Minneapolis, MN 55402
22 Telephone: (612) 333-8844
23 Facsimile: (612) 339-6622

24 Attorneys for Plaintiff
25 *Pipe Trades Services MN Welfare Fund*
26
27
28

1
2 **FILER'S ATTESTATION**

3 Pursuant to Local Rule 5-1(i)(3) of the Northern District of California, regarding signatures, I,
4 Daralyn J. Durie, attest that concurrence in the filing of this document has been obtained.

5 Dated: July 26, 2019

/s/Daralyn J. Durie

DARALYN J. DURIE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2019 the within document was filed with the Clerk of the Court using CM/ECF which will send notification of such filing to the attorneys of record in this case.

/s/ Daralyn J. Durie

DARALYN J. DURIE