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Electronically
FILED
by Superior Court of California, County of San Mateo
ON 9/1/2020
By /s/ Wai Shan Lee
Deputy Clerk

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

9 ALABAMA DOE, INDIANA DOE, and
10 MISSOURI DOE, Individually and on Behalf
11 of All Others Similarly Situated,

12 Plaintiffs,

13 v.

14 GILEAD SCIENCES, INC.,

15 Defendant.

Case No. 20-CIV-03699

CLASS ACTION COMPLAINT FOR:

- 16 (1) Cal. Civ. Code § 56, *et seq.*;
17 (2) Cal. Bus. & Prof. Code § 17200,
18 *et seq.*;
19 (3) Negligence;
20 (4) Negligence *Per Se*;
21 (5) Breach Of Contract;
22 (6) Invasion Of Privacy; and
23 (7) Unjust Enrichment

JURY TRIAL DEMANDED

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

5 **I. INTRODUCTION**

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

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

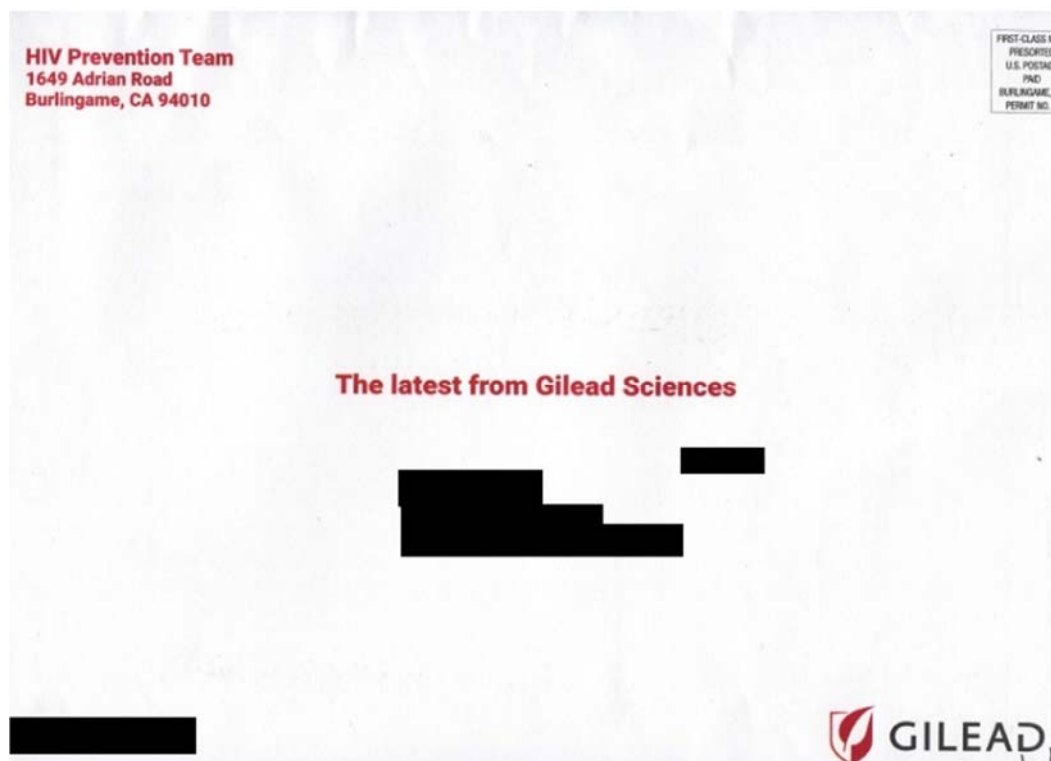
16 3. Gilead’s Advancing Access Program provides patient support and a co-pay
17 coupon card to eligible persons who are prescribed its medications, including those taking
18 medications to prevent HIV.

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

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

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

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



26 8. People living with HIV, people at risk for HIV, and people taking
27 medications to prevent HIV acquisition face extreme stigma. In fact, stigma is widely
28

1 recognized as a driver of the HIV epidemic. *See* The People Living With HIV Stigma Index,
2 at <http://www.stigmaindex.org/>.

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

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

15 **II. PARTIES**

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

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

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

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

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

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

6 **III. JURISDICTION AND VENUE**

7 16. This Court has jurisdiction over this action pursuant to Article VI,
8 Section 10, of the California Constitution.

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

12 18. This Court has personal jurisdiction over Defendant Gilead Sciences, Inc.
13 because its principal place of business is located in California and, upon information and
14 belief, the acts complained of herein occurred in California.

15 19. Venue in this Court is proper pursuant to California Code of Civil Procedure
16 Section 395 because Defendant Gilead Sciences, Inc. resides in this County.

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

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

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

23 21. HIV-related stigma has a debilitating effect on people living with HIV. The
24 People Living with HIV Stigma Index is an international research project spearheaded by
25 the Global Network of People Living with HIV, launched in 2008 to measure and detect
26 changing trends in relation to stigma and discrimination experienced by people living with
27 HIV. *See* The People Living With HIV Stigma Index, at <http://www.stigmaindex.org/>.
28 While the U.S. study is ongoing, the data from Michigan reveals sobering levels of HIV-

1 related stigma in the daily lives of Americans with HIV. For example, nearly 73% of
2 participants experienced at least 1 of 11 forms of exclusion, stigma or discrimination,
3 including gossip, rejection by family or friends, exclusion from religious organizations, or
4 verbal and/or physical harassment. *See* UNIFIED-HIV Health and Beyond, The U.S. People
5 Living with HIV Stigma Index: Michigan, Wave I Findings, 2014-2016, at 30.

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

12 23. A survey conducted in 2015 by the Kaiser Family Foundation found that
13 75% of survey respondents from Georgia believed that people living with HIV suffer from
14 a lot or some stigma and discrimination. *See* Henry J. Kaiser Family Foundation, The Public
15 Attitudes and Knowledge about HIV/AIDS in Georgia (Nov. 2015).³ Only 20% of
16 respondents said that they would be very comfortable personally with having their food
17 prepared by someone who is living with HIV, and only 30% said they would be very
18 comfortable having a roommate who is living with HIV. *Id.* Only 8% of individuals said
19 that they would be very or somewhat comfortable being in a sexual relationship with
20 someone who is living with HIV. *Id.*

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

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

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

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

3 **B. HIV Privacy Protections**

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

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

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

16 29. The problem of reckless disclosure of critical private medical information
17 resulting from commercial mailings has continued despite these protections.

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

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

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

9 32. In 2017, CVS sent out a mailing to over 6,000 individuals in Ohio which
10 used the code “HIV” in the visible glassine window. That matter was resolved for \$4.4
11 million in a class action settlement. *See Doe One, et al. v. CVS Health Corp., et al.*, No.
12 2:18-cv-00238 (S.D. Ohio).

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

16 **V. GILEAD’S PRIVACY VIOLATIONS**

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

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

25 36. To enroll in the Advancing Access Program, patients are required to fill out
26 an Enrollment Form.⁵ On the Enrollment Form, Gilead states: “**Patient confidentiality is**

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

1 **of primary importance to us. All patient information will remain confidential.”**

2 (Emphasis added.)

3 37. The Enrollment Form provides Gilead with a limited authorization to obtain
4 the patient’s personal information from the patient’s healthcare provider. The authorization
5 provides that the personal information may be disclosed to “Gilead, including the third-
6 party administrator responsible for the administration of the Program and [Patient
7 Assistance Program/Medication Assistance Program].” The authorization does not permit
8 the patient’s personal information to be disclosed to anyone else.

9 38. Gilead entices the Advancing Access Program patients to “opt-in” to
10 authorize the disclosure of their personal HIV-related information by promising to comply
11 with the company’s Privacy Statements. Gilead does not require all patients to “opt-in” to
12 the authorization in order to enroll in the Advancing Access Program.

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

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

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

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

25 Sincerely,

26 Your HIV Prevention Team at Gilead
27
28

1 41. Gilead recklessly failed to ensure that the highly sensitive information that
2 Plaintiffs and Class Members entrusted to Gilead was not illegally disclosed.

3 42. Gilead easily could have avoided the disclosure of this private information
4 by using a return address that did not identify the sender as the HIV Prevention Team.

5 43. As described below, Plaintiffs and Class Members have been harmed by
6 Gilead's reckless exposure of Plaintiffs' and Class Members' HIV-related information.

7 **VI. FACTS REGARDING GILEAD'S ILLEGAL DISCLOSURE**
8 **OF PLAINTIFFS' HIV-RELATED INFORMATION**

9 44. All Plaintiffs and Class Members received Gilead's HIV Prevention Team
10 Letter, which was sent by and at the direction of Gilead.

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

20 46. Plaintiff Indiana Doe is extremely guarded about his privacy. He has had a
21 successful career in the family entertainment center industry since 1996. He owns two
22 family entertainment centers in conservative suburban neighborhoods and is prominent in
23 the industry nationally. He is fearful that his business and standing in his professional
24 community will suffer if his sexual orientation or sexual practices are publicly known. In
25 order to avoid inadvertently revealing to others that he believes he is at risk for HIV and
26 therefore sought out HIV prevention, he sees a specialist for his PrEP prescription and fills
27 these prescriptions at a different pharmacy chain than all his other drugs. He was appalled
28 when he received the HIV Prevention Team Letter, as it identified him, in plain view, as

1 someone with a reason to be concerned with HIV prevention. Plaintiff Indiana Doe feels
2 vulnerable and is worried about who may have seen the mail. He is angry about Gilead's
3 careless disregard for his privacy.

4 47. Plaintiff Missouri Doe lives in a 22-unit apartment building. The mail is
5 delivered to individual small locked mailboxes. Envelopes too big to fit in individual
6 mailboxes are placed on top of the rows of mailboxes. Plaintiff Missouri was shocked to
7 see the large HIV Prevention Team Letter. The envelope revealed in plain view his status
8 as someone with a reason to be concerned with HIV prevention. Plaintiff Missouri Doe feels
9 vulnerable and is worried about who may have seen the mail. He is angry about Gilead's
10 careless disregard for his privacy.

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

15 49. Plaintiffs and Class Members suffered a loss of value in their confidential
16 personal information when the envelope from the HIV Prevention Team was sent to their
17 mailing addresses.

18 50. Plaintiffs and Class Members have suffered and are entitled to damages for
19 the lost benefit of their bargain with Gilead. Plaintiffs and Class Members provided Gilead
20 with their confidential personal information when they enrolled in Gilead's Advancing
21 Access Program. Their signed enrollment forms authorized Gilead to use their personal
22 information for its internal business purposes and to send them marketing information
23 related to their medical condition. The lost benefit of the bargain is measured by the
24 difference between the value of what Plaintiffs and Class Members should have received
25 when they enrolled in Gilead's Advancing Access Program, and the value of what they did
26 receive: marketing information without adequate privacy safeguards.

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1 **VII. CLASS ACTION ALLEGATIONS**

2 51. Plaintiffs bring this action individually and pursuant to California Code of
3 Civil Procedure Section 382 on behalf of the following proposed classes (collectively the
4 “Class”):

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

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

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

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

13 52. Excluded from the Class is Defendant, any of its past or present officers,
14 directors, agents, or affiliates, any judge who presides over this action, and all counsel of
15 record in this action.

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

18 54. The claims of the Indiana Class Members, Alabama Class Members, and
19 Missouri Class Members are brought in the alternative in the event that the Court determines
20 that California law (as Gilead is headquartered in California and the letter was sent from
21 California) does not apply to all Class members.

22 **Numerosity and Ascertainability**

23 55. The members of the Class are so numerous that joinder of all members is
24 impractical. Class members may be identified through objective means. The recipients of
25 Gilead’s HIV Prevention Team Letters can be quickly ascertained from Gilead’s records.
26 Class members can be notified of this action by recognized notice means, such as by mail,
27 email, or publication in print or on the internet. Thus, the proposed Class is ascertainable.

28 **Commonality and Predominance**

56. There are questions of fact and law common to the Class as all members of
the Class were subject to the same conduct under the same factual circumstances. These

1 common questions predominate over questions affecting only individual Class members.

2 Common questions of law and fact include:

3 a. whether Gilead violated applicable confidentiality of medical
4 information statutes;

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

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

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

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

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

14 g. The proper measure of damages.

15 **Typicality**

16 57. Plaintiffs' claims are typical of those of the members of the Class they seek
17 to represent because Plaintiffs suffered the same breach of privacy as that of Class
18 Members.

19 **Adequacy**

20 58. Plaintiffs will fairly and adequately protect the interests of the Class and have
21 hired experienced counsel that are free of any conflicts of interest and are prepared to
22 vigorously litigate this action on behalf of the Class.

23 **Superiority**

24 59. A class action is superior to other available methods for the fair and efficient
25 adjudication of this controversy. Gilead's conduct described in this Complaint stems from
26 a common course of conduct. The common questions of law and fact regarding Defendant's
27 conduct and responsibility predominate over any questions affecting individual Class
28 members.

1 60. A class action also is superior to other available methods for the fair and
2 efficient adjudication of this controversy because it eliminates the risk of inconsistent
3 judgments concerning Gilead's practices.

4 61. A class action also is superior because the expense and burden of individual
5 litigation would make it very difficult or impossible for individual Class members to redress
6 the wrongs done to each of them individually, such that most or all Class members would
7 have no rational economic interest in individually controlling the prosecution of specific
8 actions.

9 62. The adjudication of this action as a class action presents far fewer
10 management difficulties, far better conserves judicial and party resources, and far more
11 effectively protects the rights of each Class member than would piecemeal litigation.
12 Compared to the expense, burdens, inconsistencies, economic infeasibility, and
13 inefficiencies of individual litigation, any challenge of managing this action as a class action
14 is substantially outweighed by the benefits to the legitimate interests of the parties, the
15 Court, and the public of class treatment, making class adjudication superior to any other
16 alternative.

17 **VIII. CAUSES OF ACTION**

18 **FIRST CAUSE OF ACTION**

19 **Violation Of California Confidentiality Of Medical Information Act
20 Cal. Civ. Code § 56, *et seq.***

21 **On Behalf of all Plaintiffs and the Nationwide Class**

22 63. Plaintiffs reallege and incorporate by reference the preceding allegations.

23 64. Gilead is a pharmaceutical company as defined in California Civil Code
24 § 56.05(1).

25 65. Gilead disclosed and released without authorization or legal basis medical
26 information regarding Plaintiffs and Class Members in violation of California Civil Code
27 § 56.102.

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

1 67. Plaintiffs and Class Members seek relief under California Civil Code
2 § 56.36, including but not limited to, actual damages, nominal damages of \$1,000, civil
3 penalties, injunctive relief and attorneys' fees and costs.

4 **SECOND CAUSE OF ACTION**
5 **Violation Of California Unfair Competition Law**
6 **Cal. Bus. & Prof. Code § 17200, *et seq.***
7 **On Behalf of all Plaintiffs and the Nationwide Class**

8 68. Plaintiffs reallege and incorporate by reference the preceding allegations.

9 69. Gilead engaged in unlawful, unfair or fraudulent, and deceptive acts and
10 practices with respect to the sale and advertisement of the services purchased by Plaintiffs
11 and Class Members, in violation of California Business and Professions Code § 17200,
12 *et seq.*, including by representing that Gilead would adequately protect Plaintiffs' and Class
13 Members' confidential medical information from unauthorized disclosure and release.
14 These injuries outweigh any benefits to consumers or to competition.

15 70. The above unfair and deceptive practices and acts by Gilead were immoral,
16 unethical, oppressive, and unscrupulous.

17 71. Gilead knew or should have known that sending the HIV Prevention Team
18 Letter in the fashion in which it was sent was inadequate to safeguard Plaintiffs' and the
19 Class Members' medical information.

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

22 73. As a direct and proximate result of Gilead's deceptive acts and practices,
23 Plaintiffs and Class Members suffered an ascertainable loss of money or property, real or
24 personal, as described above, including the loss of their legally protected interest in the
25 confidentiality and privacy of their personal information.

26 74. Plaintiffs and Class Members seek relief under California Business &
27 Professions Code § 17200, *et seq.*, including, but not limited to injunctive relief, restitution,
28 and attorneys' fees and costs.

1 **THIRD CAUSE OF ACTION**

2 **Negligence**

3 **On Behalf of all Plaintiffs and the Nationwide Class**
4 **Or in the Alternative All Statewide Classes**

5 75. Plaintiffs reallege and incorporate by reference the preceding allegations.

6 76. Gilead owed duties of care to protect the disclosure of Plaintiffs' and Class
7 Members' private medical information. Plaintiffs and Class Members entrusted their private
8 medical information to Gilead.

9 77. Gilead knew or should have known of the risks inherent in disseminating
10 highly personal and confidential, HIV-related medical information of Plaintiffs and Class
11 Members in the manner set forth herein.

12 78. Gilead owed duties of care to Plaintiffs and Class Members because
13 Plaintiffs and Class Members were foreseeable and probable victims of negligent mailing
14 practices that involved their confidential medical information.

15 79. By allowing its HIV Prevention Team Letter to be sent in an envelope with
16 a large, red font return address from the "HIV Prevention Team," Gilead breached its duties
17 to Plaintiffs and Class Members by failing to exercise reasonable care in protecting
18 Plaintiffs' and the Class Members' medical information.

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

24 **FOURTH CAUSE OF ACTION**

25 **Negligence *Per Se***

26 **On Behalf of all Plaintiffs and the Nationwide Class**
27 **Or in the Alternative All Statewide Classes**

28 81. Plaintiffs reallege and incorporate by reference the preceding allegations.

82. Pursuant to California Civil Code § 56.102 and California Health & Safety
Code § 120980, Gilead had a duty to Plaintiffs and Nationwide Class Members to not

1 disclose and to safeguard their confidential HIV-related medical information.

2 83. Gilead breached its duties to Plaintiffs and Class Members under the
3 aforementioned statute by allowing its HIV Prevention Team Letter to be sent to Plaintiffs'
4 and Class Members' mailing addresses in a manner that disclosed their confidential HIV-
5 related information.

6 84. Gilead's failure to comply with applicable laws and regulations constitutes
7 negligence *per se*.

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

10 86. The injury and harm suffered by Plaintiffs and the Class Members was the
11 reasonably foreseeable result of Gilead's breach of its duties. Gilead knew or should have
12 known that it was failing to meet its duties, and that Gilead's breach would cause Plaintiffs
13 and Class Members to experience the foreseeable harms associated with the exposure of
14 their confidential medical information.

15 87. As a direct and proximate result of Gilead's negligent conduct and/or
16 negligent supervision, Plaintiffs and Class Members have been injured and are entitled to
17 damages.

18 **FIFTH CAUSE OF ACTION**
19 **Breach Of Contract**
20 **On Behalf of all Plaintiffs and the Nationwide Class**
21 **Or in the Alternative All Statewide Classes**

22 88. Plaintiffs reallege and incorporate by reference the preceding allegations.

23 89. Plaintiffs and Class Members who enrolled in Gilead's Advancing Access
24 Program entered into binding and enforceable contracts with Gilead, supported by
25 consideration including Plaintiffs' and Class Members' disclosure to Gilead of their
26 personal health information for Gilead to use for internal business purposes and to send
27 marketing material.

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

1 91. It was a violation of Gilead’s privacy policy as stated on the Enrollment
2 Form to disclose Plaintiffs’ and Class Members’ confidential HIV-related information in
3 the manner described above.

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

8 **SIXTH CAUSE OF ACTION**
9 **Invasion Of Privacy**
10 **On Behalf of all Plaintiffs and the Nationwide Class**
11 **Or in the Alternative All Statewide Classes**

12 93. Plaintiffs reallege and incorporate by reference the preceding allegations.

13 94. Gilead published private facts about Plaintiffs and Class Members by
14 sending Plaintiffs and Class Members envelopes with a large, red font return address from
15 its “**HIV Prevention Team**” to their mailing addresses.

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

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

21 97. As a direct and proximate result of Gilead’s conduct, Plaintiffs and Class
22 Members have been injured and are entitled to damages.

23 **SEVENTH CAUSE OF ACTION**
24 **Unjust Enrichment**
25 **On Behalf of all Plaintiffs and the Nationwide Class**
26 **Or in the Alternative All Statewide Classes**

27 98. Plaintiffs reallege and incorporate by reference the preceding allegations.

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

100. Gilead appreciated or had knowledge of the benefits conferred upon it by

1 Plaintiffs and Class Members.

2 101. The amounts that Plaintiffs and Class Members paid to Gilead should have
3 been used, in part, to pay for the administrative costs of reasonable privacy safeguards.

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

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

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

12 **EIGHTH CAUSE OF ACTION**

13 **Mo. Rev. Stat. § 191.656**

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

15 105. Plaintiffs reallege and incorporate by reference the allegations in the
16 preceding paragraphs.

17 106. The information disclosed by Gilead was protected because it concerned an
18 "individual's HIV infection status or the results of any individual's HIV testing." Mo. Stat.
19 Ann. § 191.656(1)(1).

20 107. Missouri law prohibits the disclosure of the protected information
21 concerning an individual's HIV infection status without statutorily enumerated
22 authorization. Mo. Stat. Ann. § 191.656.

23 108. Gilead violated Mo. Stat. Ann. § 191.656 by disclosing Plaintiff Missouri
24 Doe's and Missouri Class Members' HIV infection status without authorization to do so.

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

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

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

4 **NINTH CAUSE OF ACTION**
5 **Missouri Merchandising Practices Act**
6 **Mo. Stat. § 407.010, *et seq.***
7 **In the Alternative on Behalf of Missouri Doe and the Missouri Class**

8 112. Plaintiffs reallege and incorporate by reference the allegations in the
9 preceding paragraphs.

10 113. Gilead engaged in unlawful, unfair, and deceptive acts and practices, with
11 respect to the sale and advertisement of the services provided to Plaintiff Missouri Doe and
12 Missouri Class Members, in violation of Mo. Stat. § 407.020(1), including by representing
13 that Gilead would adequately protect Plaintiff's and Missouri Class Members' highly
14 confidential medical information from unauthorized disclosure and release. These injuries
15 outweigh any benefits to consumers or to competition.

16 114. The above unfair and deceptive practices and acts by Gilead were immoral,
17 unethical, oppressive, and unscrupulous.

18 115. Gilead knew or should have known that sending its mailings in the fashion
19 in which they were sent was inadequate to safeguard Plaintiff Missouri Doe's and the
20 Missouri Class Members' medical information.

21 116. Gilead's actions were negligent, knowing and willful, and/or wanton and
22 reckless with respect to the rights of Plaintiff Missouri Doe and the Missouri Class.

23 117. As a direct and proximate result of Gilead's deceptive acts and practices,
24 Plaintiff Missouri Doe and Missouri Class Members suffered an ascertainable loss of money
25 or property, real or personal, as described above, including the loss of their legally protected
26 interest in the confidentiality and privacy of their personal information.

27 118. Plaintiff Missouri Doe and Missouri Class Members seek relief under Mo.
28 Stat. § 407.025, including, but not limited to injunctive relief, actual damages, punitive
damages, and attorneys' fees and costs.

1 **JURY TRIAL DEMANDED**

2 119. Plaintiffs, individually and on behalf of the Class, demand a jury trial as to
3 all claims so triable.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs, individually and on behalf of the Class, seek the
6 following relief:

- 7 a. Determining that this action may proceed as a class action pursuant to
- 8 California Code of Civil Procedure Section 382 on behalf of the Class;
- 9 b. Designating Plaintiffs as the class representatives for the Class;
- 10 c. Designating Plaintiffs’ undersigned counsel as counsel for the Class;
- 11 d. Issuing proper notice to the Class at Gilead’s expense;
- 12 e. Declaring that Gilead committed the violations of law set forth above;
- 13 f. Ordering appropriate injunctive relief, including cessation of the HIV
- 14 Prevention Team Letters and implementation of appropriate policies and
- 15 procedures to protect the confidentiality of HIV-related information;
- 16 g. Awarding damages, including statutory and/or punitive damages;
- 17 h. Awarding reasonable attorneys’ fees and costs and expenses;
- 18 i. Awarding prejudgment and post-judgment interest at the maximum legal
- 19 rate; and
- 20 j. Granting other and further relief, in law or equity, as this Court may deem
- 21 appropriate and just.

21 Dated: September 1, 2020

Respectfully submitted,

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**pro hac vice forthcoming*

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