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9 *Attorneys for Defendant*  
GILEAD SCIENCES, INC.

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

14  
15 ALABAMA DOE 1, ALABAMA DOE 2,  
INDIANA DOE, MISSOURI DOE, and  
16 FLORIDA DOE, Individually, and on Behalf of  
All Others Similarly Situated,

17 Plaintiffs,

18 vs.

19 GILEAD SCIENCES, INC., and LAHLOUH,  
20 INC.,

21 Defendants.

Case No.: 20-CIV-03699

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

Action Filed: September 1, 2020

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

4 **GENERAL DENIAL**

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

11 **AFFIRMATIVE DEFENSES**

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

15 **FIRST AFFIRMATIVE DEFENSE**

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

19 **SECOND AFFIRMATIVE DEFENSE**

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

21 **THIRD AFFIRMATIVE DEFENSE**

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

25 **FOURTH AFFIRMATIVE DEFENSE**

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

1 **FIFTH AFFIRMATIVE DEFENSE**

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

4 **SIXTH AFFIRMATIVE DEFENSE**

5 6. Plaintiffs' claims are barred by the equitable doctrine of waiver. Plaintiffs' claims  
6 alleging invasion of privacy, breach of contract, violation of the California Confidentiality of  
7 Medical Information Act ("CMIA"), and violation of Missouri Revised Statutes Section 191.656 are  
8 barred against those Plaintiffs and putative class members who waived any alleged confidentiality  
9 or privacy regarding their medical or personal information by disclosing to third parties the nature,  
10 details and/or substance of their medical treatment, medical condition, and/or medical products  
11 received or used.

12 **SEVENTH AFFIRMATIVE DEFENSE**

13 7. Plaintiffs' claims are barred by the equitable doctrine of estoppel.

14 **EIGHTH AFFIRMATIVE DEFENSE**

15 8. Plaintiffs' and putative class members' damages or losses, if any, are speculative  
16 and/or uncertain, and therefore, not compensable.

17 **NINTH AFFIRMATIVE DEFENSE**

18 9. Plaintiffs' breach of contract claims are barred based upon a failure of consideration.

19 **TENTH AFFIRMATIVE DEFENSE**

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

22 **ELEVENTH AFFIRMATIVE DEFENSE**

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

2 12. Gilead is entitled to the benefit of all defenses and presumptions contained in, or  
3 arising from, California and Missouri law. Gilead reserves its right to assert all applicable defenses  
4 under California and Missouri law governing the claims of any particular plaintiff.

5 **THIRTEENTH AFFIRMATIVE DEFENSE**

6 13. Gilead gives notice that it intends to rely upon such other defenses as may become  
7 available or apparent during the course of discovery and thus reserves the right to amend this  
8 General Denial and assert additional affirmative defenses.

9 **GILEAD'S PRAYER FOR RELIEF**

10 **WHEREFORE**, Gilead denies all liability to Plaintiffs and putative class members, and  
11 requests that the Court enter judgment in favor of Gilead and against Plaintiffs, and award Gilead  
12 costs and other relief as the Court deems just and proper, including Gilead's costs of suit and  
13 reasonable attorneys' fees.

14  
15 **DEMAND FOR JURY TRIAL**

16 Gilead hereby demands a trial by jury.

17  
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19 Dated: September 17, 2021

**ARNOLD & PORTER KAYE SCHOLER LLP**

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

*Attorneys for Defendant*  
GILEAD SCIENCES, INC.

**PROOF OF SERVICE**

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

4 2. On **September 17, 2021**, I served the following document(s): **DEFENDANT GILEAD**  
5 **SCIENCES, INC.’S GENERAL DENIAL AND AFFIRMATIVE DEFENSES TO**  
**PLAINTIFFS’ FIRST AMENDED CLASS ACTION COMPLAINT**

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

7 Sophia M. Rios *Attorneys for Plaintiffs*  
8 BERGER MONTAGUE PC *and the Proposed Class*  
9 401 B Street Suite 2000  
10 San Diego, CA 92101  
Tel: (619) 489-0300  
srios@bm.net

11 Shanon J. Carson  
12 BERGER MONTAGUE PC  
13 1818 Market Street, Suite 3600  
Philadelphia, PA 19103  
14 Tel: (215) 875-4656  
scarson@bm.net

15 John Albanese  
16 BERGER MONTAGUE PC  
17 1229 Tyler Street NE, Suite 205  
Minneapolis, MN 55413  
18 Tel: (612) 594-5997  
emdrake@bm.net  
jalbanese@bm.net

19 Ronda B. Goldfein  
20 Yolanda French Lollis  
21 Adrian M. Lowe  
22 AIDS LAW PROJECT OF PENNSYLVANIA  
1211 Chestnut Street, Suite 600  
23 Philadelphia, PA 19107  
24 Tel: (215) 587-9377  
goldfein@aidslawpa.org  
alowe@aidslawpa.org  
25 lollis@aidslawpa.org

1 John J. Grogan  
2 LANGER, GROGAN & DIVER PC  
3 1717 Arch Street, Suite 4020  
4 Philadelphia, PA 19103  
5 Tel: (215) 320-5660  
6 jgrogan@langergrogan.com

7 Dept. 22 of San Mateo Superior Court  
8 dept22@sanmateocourt.org

*Courtesy copy*

9 4. The documents were served by the following means:

10  **By U.S. Mail.** I enclosed the document(s) in a sealed envelope or package addressed to the person(s) at the address(es) in Item 3 and (**check one**):

11  deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

12  placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

13 I am employed in the county where the mailing occurred. The envelope or package was placed in the mail at Los Angeles, California.

14  **By Overnight Delivery/Express Mail.** I enclosed the documents and an unsigned copy of this declaration in a sealed envelope or package designated by [name of delivery company or U.S. Postal Service for Express Mail] addressed to the persons at the address(es) listed in Item 3, with [Express Mail postage or, if not Express Mail, delivery fees] prepaid or provided for. I placed the sealed envelope or package for collection and delivery, following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for express delivery. On the same day the correspondence is collected for delivery, it is placed for collection in the ordinary course of business in a box regularly maintained by [name of delivery company or U.S. Postal Service for Express Mail] or delivered to a courier or driver authorized by [name of delivery company] to receive documents.

15  **By Messenger Service.** I served the documents by placing them in an envelope or package addressed to the persons at the address(es) listed in Item 3 and providing them to a professional messenger service for service. (*See* attached Declaration(s) of Messenger.)

16  **By Facsimile Transmission.** Based on an agreement between the parties to accept service by facsimile transmission, which was confirmed in writing, I faxed the document(s) and an unsigned copy of this declaration to the person(s) at the facsimile numbers listed in Item 3 on **September 17, 2021**, at [type time]. The transmission was reported as complete without error by a transmission report issued by the facsimile machine that I used immediately following the transmission. A true and correct copy of the facsimile transmission report, which I printed out, is attached hereto.

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- By Electronic Service (E-mail).** Based on California Rule of Court 2.251(c)(3), or on a court order, or on an agreement of the parties to accept service by electronic transmission, I transmitted the document(s) to the person(s) at the electronic notification address(es) listed in Item 3 on **September 17, 2021**.
- Via Court Notice of Electronic Filing.** The document(s) will be served by the court via NEF and hyperlink to the document(s). On **September 17, 2021**, I checked the CM/ECF docket for this case or adversary proceeding and determined that the person(s) listed in Item 3 are on the Electronic Mail Notice List to receive NEF transmission at the email addresses indicated in Item 3 **[or on the attached service list, if applicable]**.
- Via Electronic Notification.** The document(s) will be served via electronic notification on **September 17, 2021** on the person(s) listed in Item 3 at the email addresses indicated in Item 3 **[or on the attached service list, if applicable]**.
- STATE:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- FEDERAL:** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Dated: September 17, 2021

Signature: *Vicky Apodaca*  
Type or Print Name: Vicky Apodaca  
E-Service Address: vicky.apodaca@arnoldporter.com