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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PETER STALEY, et al.,  
  
Plaintiffs,  
  
v.  
  
GILEAD SCIENCES, INC., et al.,  
  
Defendants.

Case No. 3:19-cv-2573-EMC (Lead Case)

**SETTLEMENT AGREEMENT  
BETWEEN THE END-PAYOR  
CLASSES AND BRISTOL-MYERS  
SQUIBB COMPANY AND E.R.  
SQUIBB & SONS L.L.C.**

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This Document Relates to:

*Staley, et al., v. Gilead Sciences, Inc., et al.,*  
No. 3:19-cv-02573-EMC

THIS SETTLEMENT AGREEMENT (“Settlement Agreement” or the “Settlement”) is made and entered into as of October 13, 2021, by and between (a) defendants Bristol-Myers Squibb Company and E.R. Squibb & Sons, LLC (together, “BMS”); and (b) plaintiffs Peter Staley, Ivy Kwan Arce, Gregg S. Gonsalves, PhD, Brenda Emily Goodrow, Andrew R. Spieldenner, PhD, Michael Snipe, Josh McDonald, Troy Vazquez-Cain, Fraternal Order of Police, Miami Lodge 20, Insurance Trust Fund, Local No. 1 Health Fund, Teamsters Local 237 Welfare Fund and Teamsters Local 237 Retirees’ Benefit Fund, and Pipe Trades Services MN Welfare Fund (together, “Plaintiffs”), individually and on behalf of the End-Payor Classes (the “Settlement Classes” or the “Settlement End-Payor Classes,” as defined in Paragraph 1 below) in this Action (*Staley v. Gilead Sciences, Inc. et al.*, Case No. 3:19-cv-02573-EMC (N.D. Cal.)).

1 WHEREAS, Plaintiffs filed a lawsuit alleging that Defendants Gilead Sciences, Inc., Gilead  
2 Holdings, LLC, Gilead Sciences, LLC, Gilead Sciences Ireland UC, Bristol-Myers Squibb  
3 Company, E. R. Squibb & Sons, L.L.C., Johnson & Johnson, Janssen Products LP, and Janssen  
4 R&D Ireland (collectively, “Defendants”)<sup>1</sup> have restrained competition for antiretroviral drugs used  
5 to treat Human Immunodeficiency Virus (“HIV”) in violation of federal and state antitrust laws and  
6 state consumer protection laws, and that Plaintiffs and Settlement Class Members incurred damages  
7 as a result, as detailed in End-Payor Plaintiffs’ First Amended Consolidated Class Action  
8 Complaint, filed in this Action on May 28, 2020 (ECF No. 347) (the “Complaint”) and as  
9 subsequently amended;

10 WHEREAS, BMS has asserted defenses to Plaintiffs’ claims, denies each and every one  
11 of Plaintiffs’ allegations of unlawful or wrongful conduct by BMS, denies that any conduct by BMS  
12 challenged by Plaintiffs caused any damage whatsoever, and denies all liability of any kind;

13 WHEREAS, BMS has consented to the appointment of Daralyn Durie, Steve Berman, Steve  
14 Shadowen and their respective law firms as Settlement Class Counsel (“Settlement Class Counsel”);

15 WHEREAS, Settlement Class Counsel and counsel for BMS have engaged in arm’s-length  
16 settlement negotiations, and have reached this Settlement Agreement, subject to Court approval,  
17 which embodies all of the terms and conditions of the Settlement between Plaintiffs, both  
18 individually and on behalf of the End-Payor Classes, and BMS;

19 WHEREAS, Settlement Class Counsel have concluded, after extensive fact discovery, and  
20 after carefully considering the circumstances of this Action, including the claims asserted in the  
21 Complaint and BMS’s defenses thereto, that it would be in the best interests of the End-Payor  
22 Classes to enter into this Settlement Agreement and assure a benefit to the End-Payor Classes, and  
23 further, that Settlement Class Counsel consider the Settlement to be fair, reasonable, and adequate  
24 within the meaning of Fed. R. Civ. P. 23, and in the best interests of the End-Payor Classes;

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25 <sup>1</sup> Japan Tobacco, Inc., Japan Tobacco International U.S.A., Inc., and Akros Pharma Inc., a subsidiary of  
26 Japan Tobacco, Inc., were named as defendants in Plaintiffs’ original Class Action Complaint. Plaintiffs filed  
27 a notice of voluntary dismissal without prejudice of Japan Tobacco International U.S.A., Inc. and Akros  
28 Pharma Inc. on July 1, 2019 (ECF No. 95). The Court then dismissed the antitrust claims based on the  
agreement between Gilead and Japan Tobacco, Inc. (ECF No. 273 at 33), and Japan Tobacco, Inc. was not  
named as a defendant in End-Payor Plaintiffs’ First Amended Consolidated Class Action Complaint.

1 WHEREAS, BMS has concluded, despite its belief that it is not liable for the claims asserted  
2 and that it has good defenses thereto, that it would be in its best interests to enter into this  
3 Settlement Agreement to avoid the risks and uncertainties inherent in complex litigation and also to  
4 avoid additional costs of further litigation;

5 WHEREAS, Plaintiffs and BMS agree that this Settlement Agreement shall not be deemed  
6 or construed to be an admission or evidence of any violation of any statute or law or of any liability  
7 or wrongdoing by BMS, or of the truth of any of the claims or allegations alleged in the Complaint;

8 WHEREAS, Plaintiffs and BMS agree that this Settlement Agreement shall not be deemed  
9 or construed to be an admission or evidence by Plaintiffs of the absence of any violation of any  
10 statute or law or of any absence of liability or wrongdoing by BMS, or of the lack of truth of any of  
11 the claims or allegations alleged in the Complaint; and

12 WHEREAS, Plaintiffs and BMS agree that BMS's consent to the Settlement Classes shall  
13 not be deemed or construed as consent to the certification of these or any other classes for litigation  
14 purposes, and that, in the event the Agreement is terminated for any reason, BMS may oppose the  
15 certification of any class.

16 NOW THEREFORE, it is agreed by the undersigned Settlement Class Counsel, on behalf of  
17 Plaintiffs and the End-Payor Classes, on the one hand, and BMS on the other, that all claims  
18 brought by Plaintiffs and the End-Payor Classes against BMS be fully, finally, and forever settled,  
19 compromised, discharged, and dismissed with prejudice as to BMS, without costs as to Plaintiffs,  
20 the End-Payor Classes or BMS, subject to Court approval, on the following terms and conditions:

21  
22 **1. Definitions**

23 a) "Action" means *Staley v. Gilead Sciences, Inc. et al.*, Case No. 3:19-cv-02573-EMC  
24 (N.D. Cal.), and includes the following actions consolidated by the Court on June 28, 2019 (ECF  
25 No. 92): *Snipe, et al. v. Gilead Sciences, Inc., et al.*, 3:19-cv-02734 (N.D. Cal); *Teamsters Local*  
26 *237 Welfare Fund, et al. v. Gilead Sciences, Inc., et al.*, 3:19-cv-03142 (N.D. Cal); and *Pipe Trade*  
27 *Services MN Welfare Fund v. Gilead Sciences, Inc., et al.*, 3:19-cv-03311 (N.D. Cal.).

28 b) "BMS Payment" means Ten Million Dollars (\$10,000,000).

1 c) “BMS Settlement Fund” means the BMS Payment, plus interest accrued on the  
2 Settlement Fund.

3 d) “Claims Administrator” means the entity appointed by the Court to provide notice to  
4 the End-Payor Classes, process the claims submitted by Class Members, and carry out any other  
5 duties or obligations provided for by the Settlement.

6 e) “Settlement Classes” or “Settlement End-Payor Classes” means the following (i)  
7 “Damages and Injunctive Classes” and (ii) “Injunctive Relief Only Classes”:

8 i. Damages and Injunctive Classes, means the following settlement-only  
9 monetary and injunctive relief classes of Plaintiffs, which permit the  
10 potential class members to opt out:

11 1. Atripala Settlement Damages Class, to be certified under Fed. R. Civ. P.  
12 23(a), (b)(2) and (b)(3) for settlement purposes only, shall include all  
13 persons or entities residing in the United States and its territories who  
14 purchased, paid and/or provided reimbursement in (which shall include,  
15 with respect to TPPs, the state in which the TPP has its principal place  
16 of business) any of the Damages States for some or all of the purchase  
17 price for brand or generic Atripala, sold by Bristol-Myers Squibb  
18 Company or its affiliates, by Gilead Sciences, Inc. or its affiliates, or by  
19 Teva Pharmaceutical Industries Ltd. or its affiliates, for consumption by  
20 themselves, their families, or, with respect to TPPs, by their members,  
21 employees, insureds, participants, citizens, residents, or beneficiaries,  
22 other than for resale, during the period May 14, 2015 through and until  
23 the date of this Agreement. Excluded from the class are:

- 24 a. Defendants and their officers, directors, management, employees,  
25 subsidiaries, or affiliates;
- 26 b. All federal governmental entities;
- 27 c. All states (and sub-units of government and their entities) that, by  
28 law, are precluded from participation as plaintiffs in private class

1 action litigation (for purposes of this Agreement, those states are the  
2 Excluded States as defined below);

- 3 d. Pharmacy Benefit Managers;
- 4 e. Health plans that purchased insurance covering 100% of their  
5 reimbursement obligation to members such that the health plan  
6 itself did not purchase, pay or reimburse for Atripla; and
- 7 f. The judges in this case and any members of their immediate  
8 families.

9 2. Evotaz Settlement Damages Class, to be certified under Fed. R. Civ. P.  
10 23(a), (b)(2) and (b)(3) for settlement purposes only, shall include all  
11 persons or entities residing in the United States and its territories who  
12 purchased, paid and/or provided reimbursement in (which shall include,  
13 with respect to TPPs, the state in which the TPP has its principal place  
14 of business) any of the Damages States for some or all of the purchase  
15 price for Evotaz, for consumption by themselves, their families, or, with  
16 respect to TPPs, by their members, employees, insureds, participants,  
17 citizens, residents, or beneficiaries, other than for resale, during the  
18 period May 14, 2015 through and until the date of this Agreement.

19 Excluded from the class are:

- 20 a. Defendants and their officers, directors, management, employees,  
21 subsidiaries, or affiliates;
- 22 b. All federal governmental entities;
- 23 c. All states (and sub-units of government and their entities) that, by  
24 law, are precluded from participation as plaintiffs in private class  
25 action litigation (for purposes of this Agreement, those states are the  
26 Excluded States as defined below);
- 27 d. Pharmacy Benefit Managers;

- e. Health plans that purchased insurance covering 100% of their reimbursement obligation to members such that the health plan itself did not purchase, pay or reimburse for Evotaz; and
- f. The judges in this case and any members of their immediate families.

3. Truvada Settlement Damages Class, to be certified under Fed. R. Civ. P. 23(a) and (b)(2) and (b)(3) for settlement purposes only, shall include all Third-Party Payors in the United States and its territories with either a principal place of business in the Damages States or which purchased, paid and/or provided reimbursement in the Damages States for some or all of the purchase price for brand or generic Truvada, sold by Gilead Sciences, Inc. or its affiliates or by Teva Pharmaceutical Industries Ltd. or its affiliates, for consumption by their members, employees, insureds, participants, citizens, residents, or beneficiaries, other than for resale, during the period May 14, 2015 through and until the date of this Agreement. Excluded from the class are:

- a. Defendants and their officers, directors, management, employees, subsidiaries, or affiliates;
- b. All federal governmental entities;
- c. All states (and sub-units of government and their entities) that, by law, are precluded from their participation as plaintiffs in private class action litigation (for purposes of this Agreement, those states are the Excluded States as defined below);
- d. Pharmacy Benefit Managers;
- e. Health plans that purchased insurance covering 100% of their reimbursement obligation to members such that the health plan itself did not purchase, pay or reimburse for Truvada; and

1 f. The judges in this case and any members of their immediate  
2 families.

3 4. Complera Settlement Damages Class, to be certified under Fed. R. Civ.  
4 P. 23(a), (b)(2) and (b)(3) for settlement purposes only, shall include all  
5 Third-Party Payors in the United States and its territories with either a  
6 principal place of business in the Damages States or which purchased,  
7 paid and/or provided reimbursement in the Damages States for some or  
8 all of the purchase price for Complera, for consumption by their  
9 members, employees, insureds, participants, citizens, residents, or  
10 beneficiaries, other than for resale, during the period May 14, 2015  
11 through and until the date of this Agreement. Excluded from the class  
12 are:

- 13 a. Defendants and their officers, directors, management, employees,  
14 subsidiaries, or affiliates;
- 15 b. All federal governmental entities;
- 16 c. All states (and sub-units of government and their entities) that, by  
17 law, are precluded from their participation as plaintiffs in private  
18 class action litigation (for purposes of this Agreement, those states  
19 are the Excluded States as defined below);
- 20 d. Pharmacy Benefit Managers;
- 21 e. Health plans that purchased insurance covering 100% of their  
22 reimbursement obligation to members such that the health plan  
23 itself did not purchase, pay or reimburse for Complera; and
- 24 f. The judges in this case and any members of their immediate  
25 families.

26 5. Stribild Settlement Damages Class, to be certified under Fed. R. Civ. P.  
27 23(a), (b)(2) and (b)(3) for settlement purposes only, shall include all  
28 Third-Party Payors in the United States and its territories with either a

1 principal place of business in the Damages States or which purchased,  
2 paid and/or provided reimbursement in the Damages States for some or  
3 all of the purchase price for Stribild, for consumption by their members,  
4 employees, insureds, participants, citizens, residents, or beneficiaries,  
5 other than for resale, during the period May 14, 2015 through and until  
6 the date of this Agreement. Excluded from the class are:

- 7 a. Defendants and their officers, directors, management, employees,  
8 subsidiaries, or affiliates;
- 9 b. All federal governmental entities;
- 10 c. All states (and sub-units of government and their entities) that, by  
11 law, are precluded from their participation as plaintiffs in private  
12 class action litigation (for purposes of this Agreement, those states  
13 are the Excluded States as defined below);
- 14 d. Pharmacy Benefit Managers;
- 15 e. Health plans that purchased insurance covering 100% of their  
16 reimbursement obligation to members such that the health plan  
17 itself did not purchase, pay or reimburse for Stribild; and
- 18 f. The judges in this case and any members of their immediate  
19 families.

20 ii. Injunctive Relief Only Classes, means the following settlement-only non-  
21 opt out classes of Plaintiffs:

- 22 1. Prezcoibix Settlement Injunctive-Relief Class, to be certified under Fed.  
23 R. Civ. P. 23(a) and (b)(2) for settlement purposes only, shall include  
24 all persons or entities in the United States and its territories who  
25 purchased, paid and/or provided reimbursement for some or all of the  
26 purchase price for Prezcoibix, for consumption by themselves, their  
27 families, or their members, employees, insureds, participants, citizens,  
28 residents, or beneficiaries, other than for resale, during the period May



1 14, 2015 through and until the date of this Agreement. Excluded from  
2 the class are:

- 3 a. Defendants and their officers, directors, management, employees,  
4 subsidiaries, or affiliates;
- 5 b. All federal and state governmental entities;
- 6 c. Pharmacy Benefit Managers;
- 7 d. Health plans that purchased insurance covering 100% of their  
8 reimbursement obligation to members such that the health plan  
9 itself did not purchase, pay or reimburse for Prezcofix; and
- 10 e. The judges in this case and any members of their immediate  
11 families.

- 12 2. cART Foundation Settlement Injunctive-Relief Class, to be certified  
13 under Fed. R. Civ. P. 23(a) and (b)(2) for settlement purposes only,  
14 shall include all persons or entities in the United States and its  
15 territories who purchased, paid and/or provided reimbursement for  
16 some or all of the purchase price for cART Foundation drugs made by  
17 one or more of Bristol-Myers Squibb Company or its affiliates, Gilead  
18 Sciences, Inc. or its affiliates, and Johnson & Johnson, Janssen Products  
19 LP or their affiliates, for consumption by themselves, their families, or  
20 their members, employees, insureds, participants, or beneficiaries, other  
21 than for resale, during the period May 14, 2015 through and until the  
22 date of this Agreement. For purposes of this Agreement, the cART  
23 Foundation drugs made by the entities identified above are any of one  
24 or more of Atripla, Biktarvy, Complera, Descovy, Genvoya, Odefsey,  
25 Stribild, Symtuza, Truvada, and Viread. Excluded from the class are:
- 26 a. Defendants and their officers, directors, management, employees,  
27 subsidiaries, or affiliates;
- 28 b. All federal and state governmental entities;

- c. Pharmacy Benefit Managers;
- d. Health plans that purchased insurance covering 100% of their reimbursement obligation to members such that the health plan itself did not purchase, pay or reimburse for any of Atripla, Biktarvy, Complera, Descovy, Genvoya, Odefsey, Stribild, Symtuza, Truvada, and Viread; and
- e. The judges in this case and any members of their immediate families.

f) “Class Members” means the members of the Settlement End-Payor Classes.

g) “Damages States” means the following states, territories, and/ or districts: Alabama, Arizona, Arkansas, California, Connecticut. District of Columbia, Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Maryland, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wisconsin.

h) “Effective Date” means the date on which all of the following have occurred: (i) the Settlement is not terminated pursuant to Paragraphs 16 or 17 below; (ii) the Settlement is approved by the Court as required by Fed. R. Civ. P. 23(e); (iii) the Court enters a final approval order; and (iv) the period to appeal the final approval order has expired and/or all appeals have been finally resolved.

i) “Escrow Account” means the qualified settlement escrow account which holds the BMS Settlement Fund.

j) “Escrow Agreement” means the agreement annexed hereto as Exhibit F.

k) “Expense Award” means award(s) by the Court to Settlement Class Counsel for reimbursement of reasonable costs and expenses incurred in the prosecution of the Action, including any interest accrued thereon.

l) “Excluded States” means the state governments of Alabama, Alaska, Arkansas, California, Connecticut, Delaware, Florida, Hawaii, Idaho, Kansas, Kentucky, Maryland,

1 Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, Oklahoma,  
2 Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Virginia, West Virginia, and  
3 Wyoming.

4 m) “Notice Expenses” means expenses relating to providing notice, including the cost of  
5 publications and the cost of maintaining the notice website.

6 n) “Consumer Damages Classes Released Claims” means: (a) all claims in law or  
7 equity that were asserted against BMS or its affiliates in the Action with regard to (i) branded  
8 Atripla, (ii) generic Atripla sold by Teva, or (iii) Evotaz; and (b) all claims with regard to (i)  
9 branded Atripla, (ii) generic Atripla sold by Teva, or (iii) Evotaz, that arise out of the facts,  
10 occurrences, transactions, or other matters alleged or asserted in this Action, whether known or  
11 unknown. For the avoidance of doubt, the Released Claims do not include claims seeking relief on  
12 the basis of any tort claim for personal injury, and BMS represents and warrants that it will not  
13 assert in any litigation in which any Class Member asserts a personal injury claim against BMS, that  
14 the Class Member has impermissibly split his or her claims by having been a member of any Class  
15 in this litigation.

16 o) “Third-Party Payor Damages Classes Released Claims” means: all claims in law or  
17 equity (i) that were asserted against BMS or its affiliates in the Action with regard to branded or  
18 generic Atripla, Evotaz, Complera, Stribild, or Truvada and (ii) that arise out of the facts,  
19 occurrences, transactions, or other matters alleged or asserted in this Action, whether known or  
20 unknown, with regard to branded or generic Atripla, Evotaz, Complera, Stribild, or Truvada. For the  
21 avoidance of doubt, the Released Claims do not include claims seeking relief on the basis of any  
22 tort claim for personal injury, and BMS represents and warrants that it will not assert in any  
23 litigation in which any Class Member asserts a personal injury claim against BMS, that the Class  
24 Member has impermissibly split his or her claims by having been a member of any Class in this  
25 litigation.

26 p) “Injunctive Relief Only Classes Released Claims” means all claims in equity (i) that  
27 were asserted against BMS or its affiliates in the Action with regard to branded or generic Atripla,  
28 Biktarvy, Complera, Descovy, Genvoya, Odefsey, Prezcoibix, Stribild, Symtuza, Truvada, and

1 Viread; and (ii) that arise out of the facts, occurrences, transactions, or other matters alleged or  
2 asserted in this Action, whether known or unknown, with regard to branded or generic Atripla,  
3 Biktarvy, Complera, Descovy, Genvoya, Odefsey, Prezcobix, Stribild, Symtuza, Truvada, and  
4 Viread. For the avoidance of doubt, the Released Claims do not include claims seeking relief on the  
5 basis of any tort claim for personal injury, and BMS represents and warrants that it will not assert in  
6 any litigation in which any Class Member asserts a personal injury claim against BMS, that the  
7 Class Member has impermissibly split his or her claims by having been a member of any Class in  
8 this litigation.

9 q) “Releasees” means BMS and its past, present, and future parents, subsidiaries,  
10 affiliates, officers, directors, employees, agents, attorneys, servants, representatives (and as  
11 applicable each of their past, present, and future officers, directors, employees, agents, attorneys,  
12 servants, and representatives), and the predecessors, successors, heirs, executors, administrators,  
13 and representatives of each of the foregoing.

14 r) “Consumer Releasers” means all Plaintiffs and Class Members, excluding Third-  
15 Party Payors, and those Plaintiffs’ and Class Members’ respective past, present, and future parents,  
16 subsidiaries, affiliates, officers, directors, employees, agents, attorneys, servants, representatives  
17 (and as applicable each of their past, present, and future officers, directors, employees, agents,  
18 attorneys, servants, and representatives), and the predecessors, successors, heirs, executors,  
19 administrators, and representatives of each of the foregoing.

20 s) “Third-Party Payor Releasers” means all Third-Party Payor Plaintiffs and Class  
21 Members, including their respective past, present, and future parents, subsidiaries, affiliates,  
22 officers, directors, employees, agents, attorneys, servants, representatives (and as applicable each of  
23 their past, present, and future officers, directors, employees, agents, attorneys, servants, and  
24 representatives), and the predecessors, successors, heirs, executors, administrators, and  
25 representatives of each of the foregoing.

26 t) “Injunctive Relief Only Class Member Releasers” means all members of the  
27 Injunctive Relief Only Classes, including their respective past, present, and future parents,  
28 subsidiaries, affiliates, officers, directors, employees, agents, attorneys, servants, representatives

1 (and as applicable each of their past, present, and future officers, directors, employees, agents,  
2 attorneys, servants, and representatives), and the predecessors, successors, heirs, executors,  
3 administrators, and representatives of each of the foregoing. “Releasers” means the Consumer  
4 Releasers, the Third-Party Payor Releasers, and the Injunctive Relief Only Class Member  
5 Releasers.

6 u) “Released Claims” means the claims released by the Consumer Releasers, Third-  
7 Party Payor Releasers, and Injunctive Relief Only Class Member Releasers described in the  
8 Consumer Damages Classes Released Claims, Third-Party Payor Damages Classes Released  
9 Claims, and Injunctive Relief Only Classes Released Claims respectively.

10 v) “Settlement Class Counsel” means Daralyn Durie, Steve Berman, Steve Shadowen,  
11 and their law firms Durie Tangri LLP; Hagens Berman Sobol Shapiro LLP; and Hilliard &  
12 Shadowen LLP, or such other counsel as shall be appointed by the Court for the effectuation of this  
13 Settlement Agreement.

14 w) “Settling Parties” means BMS and Settlement End-Payor Classes.

15 x) “Third-Party Payor” or “TPP” means any entity in the United States and its  
16 territories that purchased, paid and/or provided reimbursement for some or all of the purchase price  
17 for a brand or generic drug at issue for consumption by their members, employees, insureds,  
18 participants, citizens, residents, or beneficiaries, other than for resale; the term Third-Party Payor  
19 specifically does not include individual consumers.

20 **2. Reasonable Steps Necessary to Help Effectuate this Settlement.** The Settling  
21 Parties agree to undertake all reasonable steps necessary to help effectuate the Settlement, including  
22 undertaking all actions contemplated by and steps necessary to carry out the terms of this Settlement  
23 and to secure the prompt, complete, and final dismissal with prejudice of all claims in this Action  
24 against BMS. The Settling Parties also agree to the following:

25 a) BMS agrees not to oppose the Settlement End-Payor Classes’ motions for  
26 preliminary or final approval of the Settlement, and agrees not to appeal any Court ruling granting  
27 either of these motions.

1           b) Settlement Class Counsel represent that their named class representative clients in  
2 this Action will support the Settlement and will not object to the Settlement or opt out of the  
3 Settlement Class. Those clients are: Peter Staley, Ivy Kwan Arce, Gregg S. Gonsalves, PhD, Brenda  
4 Emily Goodrow, Andrew R. Spieldenner, PhD, Michael Snipe, Josh McDonald, Troy Vazquez-  
5 Cain, Fraternal Order of Police, Miami Lodge 20, Insurance Trust Fund, Local No. 1 Health Fund,  
6 Teamsters Local 237 Welfare Fund and Teamsters Local 237 Retirees' Benefit Fund, and Pipe  
7 Trades Services MN Welfare Fund.

8           c) BMS will serve notice of this Settlement on the appropriate federal and state officials  
9 under the Class Action Fairness Act, 28 U.S.C. § 1715.

10           d) This Settlement is reached with Settlement Class Counsel who represent all  
11 Settlement End-Payor Classes and is intended to be binding on all Settlement End-Payor Classes,  
12 save for any Class Members who opt out and pursue individual litigation.

13           **3. Motion for Preliminary Approval of the Settlement.** Within 21 days of the  
14 execution of the Settlement Agreement by the Settling Parties, Settlement Class Counsel shall  
15 prepare and file a motion requesting preliminary approval of the Settlement, and providing a plan  
16 for dissemination of notice to the Settlement Classes, subject to BMS's review and comment. The  
17 motion for preliminary approval shall include a proposed form of order substantially similar to  
18 Exhibit A, including:

19           a) requesting preliminary approval of the Settlement as fair, reasonable, and adequate  
20 within the meaning of Fed. R. Civ. P. 23, and finding that dissemination of notice to the End-Payor  
21 Classes is warranted;

22           b) finding that the proposed plan of notice complies with Rule 23 and due process, and  
23 seeking approval of short- and long-form notices in the forms substantially as in Exhibits B and C  
24 hereto;

25           c) approving the Plan of Allocation, in the form substantially as in Exhibit D hereto;

26           d) providing that if final approval of the Settlement is not obtained, the Settlement shall  
27 be null and void and the Settling Parties will revert to their positions ex ante without prejudice to  
28 their claims or defenses;

1 e) setting a date for a motion for final approval, a deadline for objections, and a fairness  
2 hearing.

3 **4. Stay of Proceedings; Subsequent Litigation Class.** The motion for preliminary  
4 approval shall provide for a stay of the Settlement Classes' proceedings against BMS pending final  
5 approval or termination of the Settlement. BMS agrees not to oppose preliminary approval of the  
6 Settlement. Plaintiffs represent that the class definitions in Paragraph 1 of this Settlement  
7 Agreement are at least as broad as those for which the Plaintiffs will seek certification in their  
8 Motion for Class Certification against the remaining defendants in the Action. In the event that  
9 Settlement Class Counsel seek to certify classes in their Motion for Class Certification against the  
10 remaining defendants that include any class members not included in the class definitions in  
11 Paragraph 1 herein, Class Counsel agree that this Settlement Agreement shall be amended to  
12 include such additional class members and that in the event an Amended Motion for Preliminary  
13 Approval of this Settlement Agreement or any amended notices must be provided to the classes,  
14 Settlement Class Counsel will file such amendments and provide such notice at their own expense.

15 **5. Motion for Final Approval and Entry of Final Judgment.** If the Court  
16 preliminarily approves the Settlement, Settlement Class Counsel shall submit a motion for final  
17 approval of the Settlement pursuant to the schedule provided for in the Preliminary Approval Order.  
18 The motion shall be subject to BMS's review and approval. BMS agrees not to oppose final  
19 approval of the Settlement. The final approval motion shall seek entry of a final approval order,  
20 substantially similar to Exhibit E, including:

21 a) finding that notice given constitutes due, adequate, and sufficient notice and meets  
22 the requirements of due process and the Federal Rules of Civil Procedure;

23 b) finding the Settlement to be fair, reasonable, and adequate within the meaning of  
24 Fed. R. Civ. P. 23 and directing consummation of the Settlement pursuant to its terms;

25 c) finding that all Class Members shall be bound by the Settlement Agreement and all  
26 of its terms;

27 d) finding that the Consumer Releasors, Third-Party Payor Releasors, and Injunctive  
28 Relief Only Class Member Releasors shall be bound by the respective releases set forth in

1 Paragraphs 14 and 15 of this Settlement Agreement, and shall be forever barred from asserting any  
2 claims or liabilities against BMS covered by the respective Released Claims against any of the  
3 Releasees;

4 e) directing that the Action be dismissed with prejudice as to BMS and without costs;

5 f) determining under Fed. R. Civ. P. 54(b) that there is no just reason for delay and  
6 directing that the judgment of dismissal with prejudice as to BMS be final;

7 g) retaining exclusive jurisdiction over the Settlement, including the administration and  
8 consummation of the Settlement; and

9 h) directing that, for a period of five years, the Clerk of the Court shall maintain the  
10 record of the entities that have excluded themselves from the End-Payor Classes and that a certified  
11 copy of such records shall be provided to BMS.

12 **6. Finality of Settlement.** This Settlement Agreement shall become final upon the  
13 Effective Date.

14 **7. Monetary Relief; Notice Fees and Costs**

15 a) Within 30 calendar days after entry of the preliminary approval order, BMS shall pay  
16 the BMS Payment.

17 b) The payment provided for in subparagraph 7(a) above shall be held in the Escrow  
18 Account subject to the terms and conditions of the Escrow Agreement, and in accordance with the  
19 provisions of Paragraphs 9-11, 17, and 18 below.

20 c) On or before the 14<sup>th</sup> day after the entry of an order granting Plaintiffs' Motion for  
21 Preliminary Approval of the Settlement Agreement, BMS will transfer to Hilliard & Shadowen LLP  
22 \$200,000.00 (the "BMS Notice Fund") for payment of Notice Expenses. Settlement Class Counsel  
23 may withdraw from the BMS Notice Fund the amount equal to 50% of actual notice costs (i.e. costs  
24 that are incurred by Settlement Class Counsel with regard to notice) relating to the approval process  
25 for this Settlement Agreement. Settlement Class Counsel shall provide copies to BMS Counsel of  
26 any invoices paid by Settlement Class Counsel for which money is withdrawn from the BMS Notice  
27 Fund. BMS shall have no responsibility for Notice Expenses beyond \$200,000.00. Any withdrawals  
28 from the BMS Notice Fund pursuant to this provision shall be non-refundable in the event that the



1 Settlement Agreement is terminated or not approved by the Court. Settlement Class Counsel agree  
2 to arrange for provision of notice to the Classes in accordance with Fed. R. Civ. P. 23 and any  
3 orders of the Court. Settlement Class Counsel agree to provide BMS reasonable advanced notice of  
4 the notice plan and costs. Any money left in the BMS Notice Fund as of the Effective Date or at the  
5 time the Settlement Agreement is terminated will be returned to BMS by Settlement Class Counsel  
6 within 14 days.

7 d) Aside from the payments specified in this Paragraph 7, BMS shall not pay any  
8 additional amount at any time, whether for attorney fees or expenses, incentive awards, settlement  
9 administration costs, escrow costs, taxes due from Escrow Account, or any other cost. BMS shall  
10 not be liable for any monetary payments under the Settlement Agreement other than the BMS  
11 Payment and the BMS Notice Fund specified in Paragraph 7(c).

12 **8. Injunctive Relief.** Within 14 days of the Effective Date, BMS will forever waive  
13 enforcement of Section 14.2(a) of the October 25, 2011 Duo License Agreement by and among  
14 Gilead Sciences, Inc. and Gilead Sciences Limited and Bristol-Myers Squibb Company (“Duo  
15 License Agreement”). BMS will effectuate this waiver by providing written notice to Gilead  
16 Sciences, Inc. and Gilead Sciences Limited, pursuant to Sections 14.2(a) and 17.2 (“Notice”) of the  
17 Duo License Agreement. BMS’s Notice will state:

18 a) “As provided for under the terms of the October 25, 2011 Duo License Agreement  
19 by and among Gilead Sciences, Inc. and Gilead Sciences Limited (together, “Gilead”) and Bristol-  
20 Myers Squibb Company, BMS hereby irrevocably consents to Gilead’s manufacture, use, sale or  
21 import, of the Combination Product, any Generic Combination Product, or any Other Combination  
22 Product. Further, BMS consents to Gilead’s granting of any rights to a Third Party to make, use,  
23 sell, have sold, offer for sale, or import, the Combination Product, any Generic Combination  
24 Product, or any Other Combination Product. This written consent is not intended to, and shall not,  
25 modify any other rights and obligations of BMS and Gilead under the terms of the Duo License  
26 Agreement, or any other agreement between the parties. All capitalized terms are defined in  
27 accordance with the terms of the Duo License Agreement.”

1           **9. The BMS Settlement Fund.** At all times prior to the Effective Date, the BMS  
2 Settlement Fund shall be invested as set forth in paragraph 3 of the Escrow Agreement, in  
3 instruments backed by the full faith and credit of the U.S. Government or fully insured by the U.S.  
4 Government or an agency thereof, including a U.S. Treasury Money Market Fund or a bank account  
5 insured by the FDIC up to the guaranteed FDIC limit. After the Effective Date, the BMS Settlement  
6 Fund shall be invested pursuant to paragraph 3 of the Escrow Agreement as directed in writing by  
7 Settlement Class Counsel. All interest earned on the BMS Settlement Fund shall become part of the  
8 BMS Settlement Fund.

9           **10. Disbursements:** After the Effective Date, the BMS Settlement Fund shall be  
10 distributed in accordance with the Plan of Allocation and the Court’s approval of subsequent  
11 request(s) for distribution.

12           **11. Taxes**

13           a) Settlement Class Counsel shall be solely responsible for directing the Escrow Agent  
14 (as defined in the Escrow Agreement) to file all informational and other tax returns necessary to  
15 report any taxable and/or net taxable income earned by the Escrow Account. Further, Settlement  
16 Class Counsel shall be solely responsible for directing the Escrow Agent to make any tax payments,  
17 including interest and penalties due, on income earned by the Escrow Account. Subject to  
18 Paragraph 9 above, Settlement Class Counsel shall be entitled to direct the Escrow Agent to pay  
19 customary and reasonable tax expenses, including professional fees and expenses incurred in  
20 connection with carrying out the Escrow Agent’s or tax preparer’s responsibilities as set forth in this  
21 paragraph, from the Escrow Account. Settlement Class Counsel shall notify BMS regarding any  
22 payments or expenses paid from the Escrow Account upon receipt of a request for such information  
23 from BMS. BMS shall have no responsibility to make any tax filings relating to this Settlement  
24 Agreement, the Escrow Account, or the Settlement Payments, and shall have no responsibility to  
25 pay taxes on any income earned by the Escrow Account.

26           b) For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and  
27 the regulations promulgated thereunder, the “Administrator” of the Escrow Account shall be  
28 Settlement Class Counsel, who shall timely and properly file or cause to be filed on a timely basis,

1 all tax returns necessary or advisable with respect to the Escrow Account (including without  
2 limitation all income tax returns, all informational returns, and all returns described in Treas. Reg. §  
3 1.468B-2(1)).

4 c) The Settling Parties and their counsel shall treat, and shall cause the Escrow Agent to  
5 treat, the Escrow Account as being at all times a “qualified settlement fund” within the meaning of  
6 Treas. Reg. § 1.468B-1. The Settling Parties, their counsel, and the Escrow Agent agree that they  
7 will not ask the Court to take any action inconsistent with the treatment of the Escrow Account in  
8 this manner. In addition, the Escrow Agent and, as required, the Settling Parties, shall timely make  
9 such elections as necessary or advisable to carry out the provisions of this paragraph, including the  
10 “relation-back election” (as defined in Treas. Reg. § 1.468B-1(j)) back to the earliest permitted date.  
11 Such elections shall be made in compliance with the procedures and requirements contained in such  
12 regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and  
13 deliver the necessary documentation for signature by all necessary parties and thereafter to cause  
14 the appropriate filing to occur. All provisions of this Settlement Agreement shall be interpreted in a  
15 manner that is consistent with the Escrow Account being a “qualified settlement fund” within the  
16 meaning of Treas. Reg. § 1.468B-1.

17 **12. Full Satisfaction; Limitation of Interest and Liability.** Plaintiffs and Class  
18 Members shall look solely to the BMS Payment for satisfaction for any and all Released Claims. If  
19 the Settlement becomes final pursuant to Paragraph 6 above, BMS’s payment of the BMS Payment  
20 and adherence to the equitable relief provisions of Paragraph 8 above will fully satisfy any and all  
21 Released Claims. Except as provided by order of the Court, no Class Member shall have any  
22 interest in the BMS Payment, Escrow Account, or any portion thereof.

23 **13. Attorneys’ Fees, Expenses, and Costs.**

24 a) Settlement Class Counsel will not seek the payment of any attorneys’ fees or  
25 incentive awards for class representatives from BMS or the BMS Settlement Fund. Settlement Class  
26 Counsel shall file any motion for reimbursement of expenses and costs (“Expense Award”) in  
27 accordance with the Court’s preliminary approval order. Settlement Class Counsel shall receive any  
28 Expense Award solely from the BMS Settlement Fund. No portion of any Expense Award shall be

1 released from the BMS Settlement Fund prior to the Effective Date. BMS is not obligated to take,  
2 does not take, and subject to the limitations in this paragraph will not take, any position with respect  
3 to the application by Settlement Class Counsel for reimbursement of expenses and costs.

4 b) The procedures for and the allowance or disallowance by the Court of Settlement  
5 Class Counsel's application for an Expense Award to be paid from the BMS Settlement Fund are  
6 not part of this Agreement, and are to be considered by the Court separately from consideration of  
7 the fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding relating to  
8 the Expense Award, or any appeal from any such order, shall not operate to modify or cancel this  
9 Settlement Agreement, or affect or delay the finality of the judgment approving the Settlement. A  
10 modification or reversal on appeal of any amount of the Expense Award shall not be deemed a  
11 modification of the terms of this Settlement Agreement or final approval order, and shall not give  
12 rise to any right of termination.

13 **14. Release.**

14 a) Upon the occurrence of the Effective Date, (i) the Consumer Releasors hereby  
15 release and forever discharge, and covenant not to sue the Releasees only, with respect to, in  
16 connection with, or relating to any and all of the Consumer Damages Classes Released Claims; (ii) ,  
17 the Third-Party Payor Releasors hereby release and forever discharge, and covenant not to sue the  
18 Releasees only, with respect to, in connection with, or relating to any and all Third Party Payor  
19 Damages Classes Released Claims; and (iii) the Injunctive Relief Only Class Member Releasors  
20 hereby release and forever discharge, and covenant not to sue the Releasees only, with respect to, in  
21 connection with, or relating to any and all Injunctive Relief Only Classes Released Claims.

22 Notwithstanding the foregoing, and for avoidance of doubt:

23 b) This Release shall have no effect on any Releasor's claim arising in the ordinary  
24 course of business between Releasors and the Releasees arising under Article 2 of the Uniform  
25 Commercial Code (pertaining to sales) or the laws of breach of contract or express warranty, the  
26 laws of negligence, product liability, implied warranty, or personal or bodily injury.

27 c) No party other than the Releasees is intended to be, or is, included within the scope  
28 of the release contained herein. For the avoidance of doubt: (a) neither Gilead Sciences, Inc., Gilead

1 Holdings, LLC, Gilead Sciences Ireland UC, Gilead Sciences, LLC (formerly known as Bristol-  
2 Myers Squibb & Gilead Sciences, LLC), nor any of its or their past or future parent(s) or  
3 successor(s) in interest is intended to be, or is, included within the scope of this release; and (b)  
4 neither Johnson & Johnson, Janssen Products LP, Janssen R&D Ireland (formerly known as Tibotec  
5 Pharmaceuticals), nor any of their or its past or future parent(s) or successor(s) in interest is  
6 intended to be, or is, included within the scope of this release. This Settlement is as to Releasees  
7 only and is not intended to, and does not, release any claims other than those specified herein.

8 **15. Additional Release.** In addition, each Releasor hereby expressly waives and  
9 releases, upon the Effective Date, any and all provisions, rights, and/or benefits conferred by  
10 Section 1542 of the California Civil Code, which reads:

11 Section 1542. Release. A general release does not extend to claims that the creditor  
12 or releasing party does not know or suspect to exist in his or her favor at the time of  
13 executing the release and that, if known by him or her, would have materially  
affected his or her settlement with the debtor or released party;

14 or by any law of any state or territory of the United States, or principle of common law, which is  
15 similar, comparable or equivalent to Section 1542 of the California Civil Code, notwithstanding that  
16 the release in Paragraph 14 is not a general release and is of claims against Releasees only. Each  
17 Releasor may hereafter discover facts other than or different from those which he, she, or it knows  
18 or believes to be true with respect to the claims that are the subject matter of Paragraph 14.

19 Nonetheless, upon the Effective Date, each Releasor hereby expressly waives and fully, finally, and  
20 forever settles and releases any known or unknown, foreseen or unforeseen, suspected or  
21 unsuspected, contingent or non-contingent claim that is the subject matter of Paragraph 14, whether  
22 or not concealed or hidden, without regard to the subsequent discovery or existence of such  
23 different or additional facts. Each Releasor also hereby expressly waives and fully, finally, and  
24 forever settles, releases, and discharges any and all claims it may have against the Releasees under §  
25 17200, *et seq.*, of the California Business and Professions Code or any similar comparable or  
26 equivalent provision of the law of any other state or territory of the United States or other  
27 jurisdiction, which claims are expressly incorporated into the definition of the Released Claims.

1           **16. Effect of Disapproval.** If based on a determination that the Settlement is not fair,  
2 reasonable, or adequate, and on this basis only, the Court (i) declines to approve this Settlement  
3 Agreement; (ii) materially modifies the Agreement; (iii) does not enter the preliminary approval  
4 order containing the elements set forth in Paragraph 3 above; (iv) does not enter the final approval  
5 order containing the elements set forth in Paragraph 5 above; (v) enters the final approval order and  
6 appellate review is sought, and on such review, such final approval order is not affirmed or is  
7 affirmed with material modification, then Settlement Class Counsel or BMS may elect to terminate  
8 this Settlement Agreement by sending written notice to the other party within 10 business days of  
9 the event allowing for termination. For the avoidance of doubt, any order of the Court or the Ninth  
10 Circuit Court of Appeals that is based on a determination that the Settlement is not fair, reasonable,  
11 or adequate and that: (a) narrows or does not approve the scope of the releases and covenant not to  
12 sue contemplated by this Settlement; (b) purports to impose additional material obligations on  
13 BMS; or (c) declines to enter a final judgment that meets the requirements set forth in Paragraph 5  
14 above, except as otherwise agreed in writing by Settlement Class Counsel and BMS, constitutes a  
15 failure to grant final approval of this Agreement and confers on Settlement Class Counsel and/or  
16 BMS the right to terminate the Agreement. A modification or reversal on appeal of the Plan of  
17 Allocation shall not be deemed a modification of the terms of this Agreement or Final Approval  
18 Order and shall not give rise to any right of termination.

19           **17. Opt-Out, Reduction in Settlement Amount, and Termination Rights.**

20           a) Any valid opt-out by a member of the Damages and Injunctive Classes shall be  
21 deemed to be an opt-out by that party from each of the Damages and Injunctive Classes.

22           b) The Settlement Parties have agreed to certain confidential terms regarding reduction  
23 of the Settlement Amount and termination of the Settlement Agreement. The parties will lodge the  
24 termination and diminution agreement with the Court for *in camera* review, if so requested by the  
25 Court.

26           c) Should the BMS Settlement Fund be subject to reduction pursuant to the confidential  
27 terms referenced in Paragraph 17(b) above, the Escrow Agent shall return the amount by which the  
28 BMS Settlement Fund is to be reduced (the “Fund Reduction Amount”) to BMS. Subject to

1 paragraph 7 of the Escrow Agreement, the Escrow Agent shall disburse to BMS the Fund Reduction  
2 Amount in accordance with this paragraph within 15 calendar days after receipt of either (i) written  
3 notice signed by Settlement Class Counsel and BMS's counsel stating that the Fund Reduction  
4 Amount is to be returned to BMS (such written notice will be signed by Settlement Class Counsel  
5 within three days of receiving the written notice from BMS), or (ii) any order of the Court so  
6 directing.

7 d) Any disputes regarding the application of this Paragraph 17, including any disputes  
8 regarding the application of the Settlement Parties' side letter referenced in Paragraph 17(b), may be  
9 resolved by the Court, with Plaintiffs, BMS, and the opt-out(s) all having the opportunity to be  
10 heard.

11 **18. Reimbursement of the BMS Settlement Fund upon Termination.** If the  
12 Settlement Agreement is terminated pursuant to the provisions of Paragraphs 16 or 17 above, the  
13 Escrow Agent shall return to BMS the BMS Settlement Fund at the time of termination. Subject to  
14 paragraph 8 of the Escrow Agreement, the Escrow Agent shall disburse the BMS Settlement Fund  
15 to BMS in accordance with this paragraph within 15 calendar days after receipt of either (i) written  
16 notice signed by Settlement Class Counsel and BMS's counsel stating that the Settlement has been  
17 terminated (such written notice will be signed by the non-terminating party within three days of  
18 receiving the written notice from the terminating party), or (ii) any order of the Court so directing.  
19 If the Settlement Agreement is terminated pursuant to Paragraphs 16 or 17, (1) any obligations  
20 pursuant to this Settlement Agreement other than (i) disbursement of the BMS Settlement Fund to  
21 BMS as set forth above and (ii) Paragraph 23 shall cease immediately and (2) the releases set forth  
22 in Paragraphs 14 and 15 above shall be null and void.

23 **19. Preservation of Rights.** Except as expressly provided for in the Releases in  
24 Paragraphs 14-15 above, this Settlement Agreement, whether the Settlement becomes final or not,  
25 and any and all negotiations, documents, and discussions associated with it, shall be without  
26 prejudice to the rights of any of the Settling Parties, shall not be deemed or construed to be an  
27 admission or evidence of any violation of any statute or law or lack thereof, of any liability or  
28 wrongdoing by BMS or lack thereof, or of the truth or lack thereof of any of the claims or

1 allegations contained in the Amended Complaint or any other pleading, and evidence thereof shall  
2 not be discoverable or used directly or indirectly, in any way other than to enforce the terms of this  
3 Settlement Agreement. The Settling Parties expressly reserve all of their rights if the Settlement  
4 does not become final in accordance with the terms of this Settlement Agreement. Upon the  
5 Settlement becoming final, nothing in this Agreement shall prevent BMS from asserting any release  
6 or citing this Settlement Agreement to offset any liability to any other parties not party to the  
7 Action, including but not limited to, claims filed by federal and state governments or any  
8 governmental entity.

9 **20. No Admission of Liability by BMS; No Admission of Absence of Merit by**  
10 **Plaintiffs.** This Settlement Agreement shall not be deemed or construed to be an admission of  
11 BMS's liability in this Action. BMS denies any wrongdoing in relation to the claims brought by  
12 Plaintiffs in this Action. BMS's consent to the Settlement Classes shall not be deemed consent to  
13 the certification of these or any other classes for litigation purposes, and in the event of Termination  
14 BMS may oppose the certification of any class. This Settlement Agreement shall not be deemed or  
15 construed to be an admission that Plaintiffs' claims in this Action lack merit as to BMS.

16 **21. Temporary Stay of Litigation.** Once the Settlement Agreement is executed,  
17 Plaintiffs shall join with BMS in informing the Court of the Settlement Agreement and in requesting  
18 an immediate temporary stay of the End-Payor Classes' litigation as to BMS, including a stay of all  
19 deadlines applicable to BMS.

20 **22. Resumption of Litigation in the Event of Termination.** The parties agree that in  
21 the event that the Settlement Agreement is not approved by the Court, or if the Settlement does not  
22 become final pursuant to Paragraph 6 above, or if the Settlement Agreement is terminated pursuant  
23 to Paragraphs 16 or 17 above, litigation of the Action by Plaintiffs against BMS will resume in a  
24 reasonable manner to be approved by the Court upon a joint application by the Settling Parties, and  
25 upon full reimbursement to BMS of the BMS Settlement Fund as provided for in Paragraph 18  
26 above.

27 **23. Maintaining Confidentiality of Litigation Materials.** In the event that Plaintiffs or  
28 Settlement Class Counsel receive a subpoena or other legal process that would require disclosure of



1 material covered by any protective order entered in the Action (the “Protective Order”), such  
2 Plaintiff or Settlement Class Counsel shall promptly notify BMS and forward a copy of such  
3 subpoena or legal process so that BMS may seek a protective order or otherwise seek to maintain  
4 the confidentiality of material covered by the Protective Order; and such Plaintiff or Settlement  
5 Class Counsel shall object to the production of such material unless and until any such motion filed  
6 by BMS is resolved. In addition, Plaintiffs and Settlement Class Counsel shall abide by the terms of  
7 the Protective Order in this Action, including with respect to the destruction of materials and the  
8 limitations on the use of any material covered by the Protective Order to this Action, unless  
9 otherwise ordered by a court of competent jurisdiction.

10 **24. Binding Effect.** This Settlement Agreement shall be binding upon, and inure to the  
11 benefit of, the Releasers and the Releasees. Without limiting the generality of the foregoing, each  
12 and every covenant and agreement herein by Settlement Class Counsel shall be binding upon  
13 Plaintiffs and all Class Members.

14 **25. Integrated Agreement.** This Settlement Agreement, together with the exhibits  
15 hereto and the documents referenced herein, contains the complete and integrated statement of  
16 every term in this Agreement, and supersedes all prior agreements or understandings, whether  
17 written or oral, between the parties with respect to the subject matter hereof. This Settlement  
18 Agreement shall not be modified except by a writing executed by Plaintiffs and BMS.

19 **26. Independent Settlement.** This Settlement of the Action is not conditioned on the  
20 disposition of the claims of the putative class of direct purchaser plaintiffs, who filed their own  
21 complaint and whose claims are set forth in ECF No. 559. This Settlement Agreement is not  
22 conditioned on the performance or disposition of any other settlement agreement between the End-  
23 Payor Classes and any other Defendant.

24 **27. Headings.** The headings in this Settlement Agreement are intended only for the  
25 convenience of the reader and shall not affect the interpretation of this Settlement Agreement.

26 **28. No Party is the Drafter.** None of the parties shall be considered the drafter of this  
27 Settlement Agreement or any provision hereof for the purpose of any statute, case law, or rule of  
28 construction that might cause any provision to be construed against the drafter hereof.

1           **29. Consent to Jurisdiction.** Each Class Member and BMS hereby irrevocably submits  
2 to the exclusive jurisdiction of the United States District Court for the Northern District of  
3 California for any suit, action, proceeding or dispute arising out of or relating to this Settlement  
4 Agreement or the applicability of this Settlement Agreement, including, without limitation, any suit,  
5 action, proceeding, or dispute relating to the release provisions herein provided that this consent to  
6 jurisdiction shall not affect BMS's right or ability to assert this Settlement Agreement or the  
7 releases contained herein as a defense in an action filed in any other jurisdiction asserting Released  
8 Claims or concerning this Settlement Agreement or this Action.

9           **30. Choice of Law.** All terms of this Settlement Agreement shall be governed by and  
10 interpreted according to federal common law or, where state law must apply, California law without  
11 regard to conflicts of law principles.

12           **31. Representations and Warranties.** Each party represents and warrants that it has  
13 the requisite authority to execute, deliver, and perform this Settlement Agreement and to  
14 consummate the transactions contemplated herein.

15           **32. Notice.** Where this Agreement requires either Settling Party to provide notice or any  
16 other communication or document to the other Settling Party, such notice shall be in writing and  
17 provided by email or overnight delivery to the counsel set forth in the signature block below for  
18 BMS or Settlement Class Counsel, respectively, or their designees.

19           **33. Publicity.** The Settling Parties agree that each party will ensure that its statements  
20 relating to the Settlement Agreement, or notice to the Settlement Class, will comply with all laws  
21 and regulations governing prescription drug promotion.

22           **34. Execution in Counterparts.** This Settlement Agreement may be executed in  
23 counterparts. A facsimile or .pdf signature shall be deemed an original signature for purposes of  
24 executing this Settlement Agreement.

25           **35. Confidentiality.** While the fact of settlement of the Action has been disclosed in  
26 open court, the terms of this Settlement Agreement shall remain confidential until Plaintiffs move  
27 for preliminary approval of the Settlement, unless BMS and Settlement Class Counsel agree  
28 otherwise, provided that BMS may disclose the terms of this Settlement Agreement to accountants,

1 lenders, auditors, legal counsel, tax advisors, or in response to a request by any governmental,  
2 judicial, or regulatory authority or otherwise required by applicable law or court order, and  
3 Plaintiffs may disclose the terms of the Settlement Agreement to any entity that has applied to serve  
4 as Notice and Claims Administrator or Escrow Agent, who shall abide by the terms of this  
5 paragraph. Plaintiffs shall not issue any press release or statement to any media outlet regarding this  
6 Agreement prior to entry of the final approval order without obtaining a prior written consent from  
7 the other Settling Party, which consent shall not be unreasonably withheld. For the avoidance of  
8 doubt, statements in Settlement Class Counsel’s website, court filings, statements made in  
9 connection with providing notice of the Settlement to the End-Payor Classes, or responses to  
10 inquiries from media outlets do not constitute a “press release or statement to any media outlet.”  
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2 IN WITNESS WHEREOF, the parties hereto through their fully authorized representatives  
3 have agreed to this Settlement Agreement as of the date first herein above written.  
4

5 **For Defendants Bristol-Myers Squibb**  
6 **Company and E. R. Squibb & Sons, L.L.C.:**

7 

8 \_\_\_\_\_  
9 Aileen M. Fair  
10 Senior Corporate Counsel  
11 Litigation & Government Investigations  
12 Bristol-Myers Squibb Company  
13 3551 Lawrenceville Road  
14 Princeton, NJ 08540  
15 Aileen.Fair@bms.com

16 ARNOLD & PORTER KAYE SCHOLER LLP  
17 Daniel B. Asimow (SBN 165661)  
18 daniel.asimow@arnoldporter.com  
19 Three Embarcadero Center, 10th Floor  
20 San Francisco, CA 94111-4024

21 ARNOLD & PORTER KAYE SCHOLER LLP  
22 Laura S. Shores (*pro hac vice*)  
23 laura.shores@arnoldporter.com  
24 James L. Cooper (*pro hac vice*)  
25 james.cooper@arnoldporter.com  
26 Anne P. Davis (*pro hac vice*)  
27 anne.davis@arnoldporter.com  
28 601 Massachusetts Ave. NW  
Washington, DC 20001

*Attorneys for Defendants*  
*Bristol-Myers Squibb Company*  
*and E. R. Squibb & Sons, L.L.C.*

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**For the End-Payor Classes:**



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HILLIARD & SHADOWEN LLP  
Steve D. Shadowen (*pro hac vice*)  
steve@hilliardshadowenlaw.com  
1135 W. 6th Street, Suite 125  
Austin, TX 78703  
Telephone: (855) 344-3298  
Facsimile: (361) 882-3015

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DURIE TANGRI LLP  
Daralyn J. Durie (SBN 169825)  
ddurie@durietangri.com  
217 Leidesdorff Street  
San Francisco, CA 94111  
Telephone: (415) 362-6666  
Facsimile: (415) 236-6300

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HAGENS BERMAN SOBOL SHAPIRO LLP  
Steve W. Berman (*pro hac vice*)  
steve@hbsslw.com  
1301 Second Avenue, Suite 2000  
Seattle, WA 98101  
Telephone: (206) 623-7292  
Facsimile: (206) 623-0594

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**For the End-Payor Classes:**

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HILLIARD & SHADOWEN LLP  
Steve D. Shadowen (*pro hac vice*)  
steve@hilliardshadowenlaw.com  
1135 W. 6th Street, Suite 125  
Austin, TX 78703  
Telephone: (855) 344-3298  
Facsimile: (361) 882-3015



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DURIE TANGRI LLP  
Daralyn J. Durie (SBN 169825)  
ddurie@durietangri.com  
217 Leidesdorff Street  
San Francisco, CA 94111  
Telephone: (415) 362-6666  
Facsimile: (415) 236-6300

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HAGENS BERMAN SOBOL SHAPIRO LLP  
Steve W. Berman (*pro hac vice*)  
steve@hbsslw.com  
1301 Second Avenue, Suite 2000  
Seattle, WA 98101  
Telephone: (206) 623-7292  
Facsimile: (206) 623-0594

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**For the End-Payor Classes:**

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HILLIARD & SHADOWEN LLP  
Steve D. Shadowen (*pro hac vice*)  
steve@hilliardshadowenlaw.com  
1135 W. 6th Street, Suite 125  
Austin, TX 78703  
Telephone: (855) 344-3298  
Facsimile: (361) 882-3015

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DURIE TANGRI LLP  
Daralyn J. Durie (SBN 169825)  
ddurie@durietangri.com  
217 Leidesdorff Street  
San Francisco, CA 94111  
Telephone: (415) 362-6666  
Facsimile: (415) 236-6300



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HAGENS BERMAN SOBOL SHAPIRO LLP  
Steve W. Berman (*pro hac vice*)  
steve@hbsslw.com  
1301 Second Avenue, Suite 2000  
Seattle, WA 98101  
Telephone: (206) 623-7292  
Facsimile: (206) 623-0594