

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 IN AND FOR THE COUNTY OF SAN MATEO

3 ALABAMA DOE, INDIANA DOE, and  
4 MISSOURI DOE, individually and on behalf of  
5 all others similarly situated;

6 Plaintiffs,

7 v.

8 GILEAD SCIENCES, INC.,

9 Defendant.

) Case No.: 20-CIV-03699

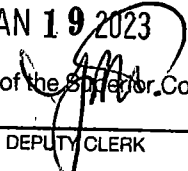
) Assigned for All Purposes to Hon. Danny Y. Chou

) **ORDER GRANTING PLAINTIFFS' MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

**FILED**  
SAN MATEO COUNTY

JAN 19 2023

Clerk of the Superior Court

By  DEPUTY CLERK

11  
12 Plaintiffs' unopposed Motion for Preliminary Approval of Class Action Settlement (Motion)  
13 came for hearing before this Court on January 19, 2023 at 10:00 a.m. Counsel for both parties appeared.  
14 Having considered all papers filed in support of and in opposition to the Motion, oral arguments of the  
15 parties, all testimony and evidence presented at the hearing, and all other pleadings and papers on file  
16 herein, the Court GRANTS the Motion pursuant to rule 3.769, subdivision (c) of the California Rules of  
17 Court.

18 On December 1, 2022, the Court denied without prejudice Plaintiffs' unopposed Motion for  
19 Preliminary Approval of Class Action Settlement. In doing so, the Court found that: (1) "Plaintiffs have  
20 not provided sufficient analysis or supporting evidence for the Court to determine whether 'the class  
21 settlement is within the 'ballpark' of reasonableness' "; (2) "[t]he proposed settlement class . . . does not  
22 appear to be ascertainable"; (3) "Plaintiffs have not provided sufficient evidence to demonstrate their  
23 adequacy and typicality to be appointed as class representatives"; (4) "Plaintiff have not presented  
24 sufficient evidence to support the appointment of Kroll Settlement Administration LLC (Kroll) as  
25 settlement administrator"; and (5) "Plaintiffs have not present sufficient evidence to establish the  
26 qualification of the proposed *cy pres* recipient Positive Women's Network-USA." (Dec. 1, 2022 Minute  
27 Order.) The Court also identified various "defects in the proposed forms and procedures" and asked  
28 Plaintiffs to address some additional miscellaneous issues. (See *ibid.*) Rather than have the parties refile

1 their initial moving papers, the Court allowed Plaintiffs to rely in on their initial moving papers and to  
2 file supplemental papers addressing the issues raised in the Court's Minute Order denying their initial  
3 motion without prejudice.

4 Based on Plaintiffs' supplemental papers and their initial moving papers, the Court finds that the  
5 terms of the class action settlement as set forth in the Amended Settlement Agreement (Settlement  
6 Agreement) attached as Exhibit 1 to the Declaration of John G. Albanese (Albanese Declaration) to be  
7 within the range of reasonableness of a settlement that ultimately could be approved by the Court at the  
8 final fairness hearing. (See *North County Contractors Assn. v. Touchstone Ins. Services* (1994) 27  
9 Cal.App.4th 1085, 1089-1090.) Plaintiffs' counsel is experienced in privacy litigation, and the  
10 settlement was reached after arms-length negotiations following arms-length negotiations conducted  
11 with the assistance of an experienced mediator. Plaintiffs' counsel has conducted sufficient investigation  
12 to evaluate Plaintiffs' class claims and has provided an analysis of the strengths and weaknesses of the  
13 case. The Court finds that analysis persuasive, including counsel's assessment of the uncertainty of class  
14 certification, and therefore finds that "the class settlement is within the 'ballpark' of reasonableness."  
15 (*Kullar v. Goot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) Finally, the Court finds no  
16 obvious deficiencies in the class action settlement.

17 The Court also finds that preliminary approval of the settlement class is appropriate. For  
18 settlement purposes, the settlement class sufficiently meets the requirements for class certification,  
19 including ascertainability, numerosity, predominance of common questions of law and fact, typicality,  
20 and adequacy. Defendant has preliminarily identified 18,192 class members, and those putative class  
21 members appear to share a well-defined community of interest. Plaintiffs appear to be adequate class  
22 representatives who understand their fiduciary duties and have participated in the litigation. Class  
23 certification therefore appears to be a superior way to resolve the issues raised in this case rather than  
24 joinder of the approximately 18,192 members of the putative class.

25 In granting preliminary approval of the class action settlement, however, the Court does not  
26 conditionally approve the proposed Class Representative Enhancement Payment or the proposed  
27 payment of an attorney fee and costs award. Instead, the Court will consider an enhanced payment of up  
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1 to \$5,000 to each Plaintiff for his/her/their participation in this action, attorney fees up to \$1,333,333.33,  
2 and costs up to \$60,000 at the final fairness hearing.

3 Based on the foregoing, IT IS HEREBY ORDERED THAT:

- 4 1. The Motion is GRANTED.
- 5 2. For settlement purposes only, the following Settlement Class is CONDITIONALLY  
6 CERTIFIED: “all persons to whom a mailer was sent by Gilead between April 15, and April  
7 30, 2020, and that was not returned as undeliverable to the United States Postal Service.”
- 8 3. For purposes of settlement, Alabama Doe 1, Alabama Doe 2, Indiana Doe, Missouri Doe,  
9 and Florida Doe are CONDITIONALLY DESIGNATED as the Class Representatives.
- 10 4. For purposes of settlement, John G. Albanese, Sophia M. Rios, and Shanon J. Caron of  
11 Berger Montague PC, Ronda B. Goldfein, Yolanda French Lollis, and Adrian M. Loweo f  
12 the AIDS Law Project of Pennsylvania, and John J. Grogan and Kevin Trainor of Langer,  
13 Grogan & Diver PC are DESIGNATED as Class Counsel.
- 14 5. Kroll Settlement Administration LLC (Kroll) is CONFIRMED as the Settlement  
15 Administrator. Payment to Kroll of fees up to \$160,856.66 is CONDITIONALLY  
16 APPROVED.
- 17 6. The Court finds good cause and a compelling need for the disclosure of the Class List—i.e.,  
18 the names and mailing and email addresses of the members of the Settlement Class) to the  
19 Settlement Administrator for purposes of providing notice of the Settlement and  
20 administering the Settlement, and for the adjudication of this case. The Court further finds  
21 that there is no alternative to implementing the Settlement that would involve the disclosure  
22 of more limited information to the Settlement Administrator. Accordingly, within three (3)  
23 business days after this Order is entered, the Settlement Administrator shall execute the  
24 agreement attached hereto as Exhibit A.
- 25 7. A final fairness hearing on the question of whether the Settlement should be approved as fair,  
26 reasonable, and adequate is scheduled in Department 22 for **June 29, 2023 at 9:00 a.m.**  
27 Zoom appearances are permitted but not required. The Zoom log-in information for  
28 Department 22 can be found at:

1 <[http://www.sanmateocourt.org/court\\_divisions/civil/dept22.php](http://www.sanmateocourt.org/court_divisions/civil/dept22.php)> [as of Oct. 27, 2022].

2 Video appearances are REQUIRED. If this hearing date is inconvenient for the parties, they  
3 should meet and confer about alternative dates and provide the Court with those dates at the  
4 hearing.

- 5 8. At the final fairness hearing, the Court will consider: (1) whether the Settlement should be  
6 approved as fair, reasonable, and adequate for the Settlement Class; (2) whether judgment  
7 granting approval of the Settlement and dismissing this action with prejudice should be  
8 granted; and (3) whether Plaintiffs' motion for attorney fees, costs, and class representative  
9 enhancement awards should be granted.
- 10 9. The parties MUST file all memoranda, declarations, or other statements and materials in  
11 support of their motion for final approval **no later than 14 days after the deadline for class**  
12 **members to object to the Settlement or request exclusion from the Settlement Class.**
- 13 10. Class Counsel MUST file a motion for attorney fees and costs and class representative  
14 service award **no later than 14 days after the deadline for class members to object to the**  
15 **Settlement or request exclusion from the Settlement Class.** Class counsel MUST provide  
16 enough evidence, such as billing records or comparable evidence, for the Court to perform a  
17 lodestar cross-check. The evidence should identify which attorneys or staff worked on each  
18 task, and provide support for the hourly rate sought and a multiplier, if warranted. Costs must  
19 also be sufficiently identified so the Court can determine their reasonableness. Finally,  
20 evidence detailing the specific work that each Plaintiff performed during the litigation MUST  
21 be provided.
- 22 11. The Notice of Class Action Settlement (Notice) attached as Exhibit C to Exhibit 1 of the  
23 Albanese Declaration, the Email Notice of Settlement (Email Notice) attached as Exhibit D  
24 to Exhibit 1 of the Albanese Declaration, the Claim Form attached as Exhibit A to Exhibit 1  
25 of the Albanese Declaration, and the Notice of Deficiency attached as Exhibit B to Exhibit 1  
26 of the Albanese Declaration are APPROVED as to form and content.
- 27 12. The procedure for class members to object to or opt out of the Settlement as set forth in the  
28 Settlement Agreement, Notice, and Email Notice is APPROVED.

1 13. The Court FINDS that mailing the Notice or sending the Email Notice in accordance with the  
 2 implementation schedule set forth in the Settlement Agreement and the dates selected for the  
 3 mailing and distribution of the mailing of the Notice, Email Notice, and Claim Form as set  
 4 forth therein meets the requirements of due process and provides the best notice practicable  
 5 under the circumstances and shall constitute due and sufficient notice to all persons entitled  
 6 thereto. Accordingly, the following Implementation Schedule for further proceedings is  
 7 ORDERED:

DATE	EVENT
January 24, 2023	Deadline for Settlement Administrator to execute agreement attached as Exhibit A
January 26, 2023	Deadline for Gilead to provide Class List to Settlement Administrator
January 30, 2023	Deadline for Settlement Administrator to establish Settlement Website and automated telephone system
February 23, 2023	Deadline for Settlement Administrator to send out Notice and Email Notice
April 24, 2023 or 60 days after Settlement Administrator sends the Notice or Email Notice	Deadline for objections or to opt out
April 24, 2023 or 60 days after Settlement Administrator sends the Notice or Email Notice	Deadline for submission of Claim Forms
May 8, 2023	Deadline for filing: (1) Motion for Final Approval; and (2) Motion for Attorney Fees, Costs, and Class Representative Service Fees
June 8, 2023	Deadline to file notice of intent to appear at Fairness Hearing
June 29, 2023 at 9:00 a.m.	Fairness Hearing


25 14. The sending of any uncashed or returned settlement amounts to the Positive Women's  
 26 Network – United States of America, as the *cy pres* recipient as suggested by the parties, is  
 27 CONDITIONALLY APPROVED. (Code Civ. Proc., § 384.)  
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1 15. Pending the fairness hearing, all proceedings in this action, other than proceedings necessary  
2 to carry out or enforce the terms and conditions of the Settlement Agreement and this Order,  
3 are STAYED.

4 16. Counsel for the parties are AUTHORIZED to use all reasonable procedures in connection  
5 with the administration of the Settlement that are not materially inconsistent with this Order  
6 or the terms of the Settlement Agreement.

7 17. The date and time of the fairness hearing and the related deadlines set forth above, from time  
8 to time and without further notice to the Settlement Class (except those who have filed timely  
9 and valid objections), may be continued or adjourned by order of this Court.

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13 Dated: Jan. 19, 2023

  
14 Danny Y. Chou  
15 Judge of the Superior Court  
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