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12 Humana Inc.

13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 HUMANA INC.,
16 Plaintiff,

17 v.

18 GILEAD SCIENCES, INC.; GILEAD
HOLDINGS, LLC; GILEAD SCIENCES, LLC
19 (f/k/a BRISTOL-MYERS SQUIBB &
GILEAD SCIENCES, LLC); GILEAD
20 SCIENCES IRELAND UC (f/k/a GILEAD
SCIENCES LIMITED); BRISTOL-MYERS
21 SQUIBB COMPANY; E.R. SQUIBB &
SONS, L.L.C.; JANSSEN PRODUCTS, L.P.;
22 and JANSSEN R&D IRELAND (f/k/a
TIBOTEC PHARMACEUTICALS),

23 Defendants.
24

Case No.

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

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27
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1 Plaintiff Humana Inc. (“Plaintiff”) brings this civil action against Defendants Gilead
2 Sciences, Inc., Gilead Holdings, LLC, Gilead Sciences, LLC (f/k/a Bristol-Myers Squibb &
3 Gilead Sciences, LLC), Gilead Sciences Ireland UC (f/k/a Gilead Sciences Limited) (collectively,
4 “Gilead”), Bristol-Myers Squibb Company, E.R. Squibb & Sons, L.L.C. (collectively, “BMS”),
5 Janssen Products, L.P., and Janssen R&D Ireland (f/k/a Tibotec Pharmaceuticals) (collectively,
6 “Janssen”) (collectively, “Defendants”) under United States antitrust laws and the laws of various
7 states. Plaintiff alleges as follows:

8 INTRODUCTION

9 1. Since 1981, more than 35 million people worldwide and 700,000 people in the
10 U.S. have died from Human Immunodeficiency Virus (“HIV”) infection. Despite the advent of
11 numerous drugs over the past twenty years, the disease continues to affect millions of Americans.
12 As of 2017, more than 1.1 million people in the U.S. were living with HIV and nearly 40,000 new
13 patients are diagnosed with the disease each year.

14 2. Gilead dominates the market for antiretroviral drugs, which are essential to
15 effective HIV treatment. It manufactures three of the four best-selling HIV drugs on the market,
16 as well as many other drugs that are used in HIV combination antiretroviral therapy (“cART”).
17 Presently, more than 80% of U.S. patients starting an HIV drug treatment regimen take one or
18 more of Gilead’s products every day.

19 3. Several of Gilead’s HIV medications cost less than \$10 to produce; yet for nearly
20 20 years, Gilead has charged health plans like Plaintiff thousands of dollars for a 30-day supply.
21 With yearly sales in the U.S. exceeding \$13 billion, Gilead has extracted enormous profits from
22 its HIV drugs.

23 4. Gilead’s ability to sustain supracompetitive profits in its multi-billion-dollar HIV
24 treatment franchise has been engineered through a comprehensive, illegal scheme to blockade
25 competition. Beginning in 2004, Gilead entered into a series of anticompetitive agreements with
26 competing cART drug makers to:

- 27 • Create branded combination drugs, with express bans on using generic
28 components to create competitive drugs even after patents on the combination
drugs expired; and

1 • Delay market entry by competing generic manufacturers for years beyond the date
2 that Gilead’s patents would have been invalidated, in exchange for protecting the
3 generic manufacturers from competition at the point of delayed entry.

4 5. In addition, Gilead engaged in an array of improper, anticompetitive actions to
5 preserve and extend its monopoly cART franchise, including:

- 6 • Intentionally delaying the introduction of safer cART drugs it had developed, so it
7 could fully monetize its less-safe drugs while they were insulated from
8 competition via Gilead’s anticompetitive agreements;
- 9 • Switching doctors and patients away from patent-vulnerable drugs while Gilead’s
10 delayed generic entry agreements were in effect, leaving doctors and patients with
11 no generic alternatives;
- 12 • Degrading the efficacy of certain of its products that were more vulnerable to
13 competition to induce patients to switch to Gilead’s monopoly products; and
- 14 • Otherwise using false and misleading marketing and treatment indications to
15 impede competition and perpetuate Gilead’s monopoly positions.

16 6. All of these anticompetitive agreements and actions combined to insulate Gilead’s
17 product portfolio from the drastic price erosion that would have occurred with effective
18 competition, and resulted in billions of dollars in annual excess profits that accrued (and continue
19 to accrue) to Gilead and its co-conspirators.

20 7. As further explained below, Defendants’ anticompetitive schemes involved
21 unlawful contracts, combinations and restraints of trade in the markets for cART regimen drugs
22 and unlawful monopolization in violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C.
23 Sections 1 and 2, and various states’ laws.

24 8. As a result of Defendants’ anticompetitive conduct, Plaintiff paid more for cART
25 regimen drugs than it otherwise would have paid in the absence of Defendants’ unlawful conduct
26 and has sustained, and continues to sustain, damages in the form of overcharges paid for its
27 members’ prescriptions of cART regimen drugs.

28 9. Plaintiff seeks redress for the economic harm it has sustained as a result of
29 Defendants’ violations of Sections 1 and 2 of the Sherman Act, 15 U.S.C. Sections 1 and 2, and
30 various states’ laws. Plaintiff also seeks injunctive relief pursuant to Section 16 of the Clayton
31 Act, 15 U.S.C. Section 26.

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