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4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF CALIFORNIA  
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7 IN RE HIV ANTITRUST LITIGATION.

Case No. 19-cv-02573-EMC

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9 **ORDER RE TDF PATENT  
SETTLEMENT AGREEMENT**

10 Docket No. 1757  
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13 Previously, the Court rejected Defendants' contention (made in its Motion in Limine No.  
14 4) that all evidence or argument related to the TDF patent settlement agreement should be  
15 excluded. As the Court noted, "[t]here is evidence suggesting that negotiations related to the TDF  
16 patent settlement agreement informed what happened during negotiations related to the FTC  
17 patent settlement agreement." Docket No. 1716 (Order at 3). However, the Court added that it  
18 did "not intend there to be a mini-trial on the TDF patent settlement agreement, which is no longer  
19 part of the reverse payment claims." Docket No. 1716 (Order at 4). The Court further stated that  
20 it would not permit evidence or argument as to whether the Federal Trade Commission did or did  
21 not approve the TDF patent settlement agreement. This was consistent with the Court's earlier  
22 *Daubert* ruling that a defense expert (Dr. Wright) could not opine on whether the Federal Trade  
23 Commission implicitly approved of (*i.e.*, found no antitrust problem with) the FTC patent  
24 settlement agreement. The Court, however, asked the parties to "meet and confer to determine  
25 whether they can reach agreement on a stipulation of fact related to the TDF patent settlement  
26 agreement – including the removal of the no-authorized generic provision from the settlement  
27 agreement." Docket No. 1716 (Order at 4). That provision was removed based on the Federal  
28 Trade Commission's expressed concern about the inclusion of the provision.

United States District Court  
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1           The parties have reported back and stated that they were not able to reach agreement. In  
2 light of that fact, the Court stands by its earlier rulings. Neither party may present evidence or  
3 argument related to discussions with the Federal Trade Commission about either the TDF or FTC  
4 patent settlement agreements or about the agency’s responses to those agreements. Likewise, the  
5 parties may not present evidence or argument related to Gilead and Teva removing the no-  
6 authorized generics provision from the TDF patent settlement agreement because of the agency’s  
7 response. However, if Plaintiffs argue that the TDF or FTC patent settlement agreement was a  
8 “secret” (*e.g.*, an anticompetitive agreement secretly negotiated and/or concealed from any public  
9 view), then that may open the door to such evidence or argument.

10           To the extent the parties have raised issues about the TDF patent settlement agreement as  
11 related to bellwether exhibits and/or deposition testimony, the Court shall issue separate orders  
12 addressing such.

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14           **IT IS SO ORDERED.**

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16           Dated: April 12, 2023

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19           EDWARD M. CHEN  
20           United States District Judge