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28UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE HIV ANTITRUST LITIGATION.

Case No. [19-cv-02573-EMC](#)**ORDER RE VERDICT FORM**

Docket Nos. 1859-60

The parties have submitted comments on the Court's proposed verdict form. The Court inadvertently failed to include questions on "flagrant" and "willful." Those questions have now been included.

This leaves the main dispute between the parties the issue of whether there should be a verdict form more general in nature (as proposed by Plaintiffs) or more special in nature. The Court previously sided with Plaintiffs. Defendants have asked that the Court reconsider this position, noting, *inter alia*, that other courts have used more special interrogatories in reverse payment cases and that legal treatises have endorsed the use of special interrogatories in complex cases.

The Court is not persuaded that special interrogatories are needed for antitrust injury, although it has modified the wording of the question on antitrust injury to make clear that Plaintiffs must prove the alleged anticompetitive conduct caused the delay of generic entry.

However, the Court is persuaded that special interrogatories on anticompetitive conduct would assist the jury, especially as the instructions are complex. That being said, Defendants' proposed questions for anticompetitive conduct are skewed in its favor. The Court therefore has

1 proposed its own special interrogatories for anticompetitive conduct.

2 Final comments on the verdict form shall be filed by May 24, 2023, at 8:00 a.m.

3

4 **IT IS SO ORDERED.**

5

6 Dated: May 23, 2023

7



EDWARD M. CHEN  
United States District Judge

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United States District Court  
Northern District of California

COURT’S PROPOSED VERDICT FORM

Element (1): Anticompetitive Conduct

1. At step one of the rule of reason, did the plaintiffs prove that Gilead had market power within the relevant market(s) that included Truvada and/or Atripla?

a. Truvada Yes \_\_\_\_\_ No \_\_\_\_\_

b. Atripla Yes \_\_\_\_\_ No \_\_\_\_\_

If you answered “yes” to either of the above, proceed to Question 2. If you answered “no” to both of the above, skip the remaining questions, and sign and date the form.

2. At step one of the rule of reason, did the plaintiffs prove that the April 25, 2014, patent settlement agreement between Gilead and Teva included a “reverse payment” from Gilead to Teva so that Teva would delay its entry into the market and Gilead could thereby avoid the risk of generic competition?

Yes \_\_\_\_\_ No \_\_\_\_\_

If you answered “yes” to the above, proceed to Question 3. If you answered “no,” skip the remaining questions, and sign and date the form.

3. At step two of the rule of reason, did the defendants come forward with evidence that their conduct had procompetitive effects?

Yes \_\_\_\_\_ No \_\_\_\_\_

If you answered “yes” to the above, proceed to Question 4. If you answered “no,” skip Question 4 and proceed to Question 5.

4. At step three of the rule of reason, did the plaintiffs prove at least one of the following?:

(a) the procompetitive effects claimed by defendants were pretextual;

(b) the procompetitive effects claimed by defendants could have been reasonably achieved in a substantially less restrictive manner; or

United States District Court Northern District of California

1 (c) the anticompetitive effect of the defendants’ conduct substantially outweighed the  
2 procompetitive benefits claimed by the defendants.

3 Yes \_\_\_\_\_ No \_\_\_\_\_

4 *If you answered “yes” to the above, proceed to Question 5. If you answered “no,” skip*  
5 *the remaining questions, and sign and date the form.*

6

7 **Element (2): Antitrust Injury**

8 5. Did the plaintiffs prove that the defendants’ conduct caused entry of generic Truvada or  
9 generic Atripla to be delayed, thereby causing any one or more of the below plaintiffs to  
10 pay some amount more for the drug than they would have paid if generic entry had not  
11 been delayed?

12 **a. Direct Purchaser Classes (DPPs)**

13 Truvada Yes \_\_\_\_\_ No \_\_\_\_\_

14 Atripla Yes \_\_\_\_\_ No \_\_\_\_\_

15

16 **b. Walgreen (Retailer)**

17 Truvada Yes \_\_\_\_\_ No \_\_\_\_\_

18 Atripla Yes \_\_\_\_\_ No \_\_\_\_\_

19

20 **c. Kroger (Retailer)**

21 Truvada Yes \_\_\_\_\_ No \_\_\_\_\_

22 Atripla Yes \_\_\_\_\_ No \_\_\_\_\_

23

24 **d. HEB (Retailer)**

25 Truvada Yes \_\_\_\_\_ No \_\_\_\_\_

26 Atripla Yes \_\_\_\_\_ No \_\_\_\_\_

27

28 **e. Albertsons (Retailer)**

United States District Court  
Northern District of California

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Truvada Yes \_\_\_\_\_ No \_\_\_\_\_

Atripla Yes \_\_\_\_\_ No \_\_\_\_\_

**f. CVS Pharmacy (Retailer)**

Truvada Yes \_\_\_\_\_ No \_\_\_\_\_

Atripla Yes \_\_\_\_\_ No \_\_\_\_\_

**g. Rite Aid (Retailer)**

Truvada Yes \_\_\_\_\_ No \_\_\_\_\_

Atripla Yes \_\_\_\_\_ No \_\_\_\_\_

**h. United**

Truvada Yes \_\_\_\_\_ No \_\_\_\_\_

Atripla Yes \_\_\_\_\_ No \_\_\_\_\_

**i. End-Payor Purchaser Classes (EPPs)**

Truvada Yes \_\_\_\_\_ No \_\_\_\_\_

Atripla Yes \_\_\_\_\_ No \_\_\_\_\_

**j. Florida Blue (IHPP)**

Truvada Yes \_\_\_\_\_ No \_\_\_\_\_

Atripla Yes \_\_\_\_\_ No \_\_\_\_\_

**k. Centene (IHPP)**

Truvada Yes \_\_\_\_\_ No \_\_\_\_\_

Atripla Yes \_\_\_\_\_ No \_\_\_\_\_

**l. HCSC (IHPP)**

United States District Court  
Northern District of California

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Truvada Yes \_\_\_\_\_ No \_\_\_\_\_

Atripla Yes \_\_\_\_\_ No \_\_\_\_\_

**m. Triple-S Salud (IHPP)**

Truvada Yes \_\_\_\_\_ No \_\_\_\_\_

Atripla Yes \_\_\_\_\_ No \_\_\_\_\_

**n. Kaiser (IHPP)**

Truvada Yes \_\_\_\_\_ No \_\_\_\_\_

Atripla Yes \_\_\_\_\_ No \_\_\_\_\_

**o. Blue KC (IHPP)**

Truvada Yes \_\_\_\_\_ No \_\_\_\_\_

Atripla Yes \_\_\_\_\_ No \_\_\_\_\_

**p. Humana (IHPP)**

Truvada Yes \_\_\_\_\_ No \_\_\_\_\_

Atripla Yes \_\_\_\_\_ No \_\_\_\_\_

*If you answered “yes” to one or more of the above, then for those plaintiffs/drugs for which you answered “yes” proceed to Question 6 below. If you answered “no” for all the plaintiffs and all the drugs above, skip the remaining questions, and sign and date the form.*

6. Please indicate the amount of overcharges for those plaintiffs/drugs for which you answered “yes” above. Do not fill in the below for any plaintiffs/drugs that you answered “no” to above.

**a. Direct Purchaser Classes (DPPs)**

Truvada \$\_\_\_\_\_

United States District Court  
Northern District of California

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Atripla \$ \_\_\_\_\_

**b. Walgreen (Retailer)**

Truvada \$ \_\_\_\_\_

Atripla \$ \_\_\_\_\_

**c. Kroger (Retailer)**

Truvada \$ \_\_\_\_\_

Atripla \$ \_\_\_\_\_

**d. HEB (Retailer)**

Truvada \$ \_\_\_\_\_

Atripla \$ \_\_\_\_\_

**e. Albertsons (Retailer)**

Truvada \$ \_\_\_\_\_

Atripla \$ \_\_\_\_\_

**f. CVS Pharmacy (Retailer)**

Truvada \$ \_\_\_\_\_

Atripla \$ \_\_\_\_\_

**g. Rite Aid (Retailer)**

Truvada \$ \_\_\_\_\_

Atripla \$ \_\_\_\_\_

**h. United**

Truvada \$ \_\_\_\_\_

United States District Court  
Northern District of California

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Atripla \$\_\_\_\_\_

**i. End-Payor Purchaser Classes (EPPs)**

|                      | Truvada | Atripla |
|----------------------|---------|---------|
| Alabama              | \$_____ | \$_____ |
| Arizona              | \$_____ | \$_____ |
| California           | \$_____ | \$_____ |
| Connecticut          | \$_____ | \$_____ |
| District of Columbia | \$_____ | \$_____ |
| Florida              | \$_____ | \$_____ |
| Hawaii               | \$_____ | \$_____ |
| Iowa                 | \$_____ | \$_____ |
| Kansas               | \$_____ | \$_____ |
| Maine                | \$_____ | \$_____ |
| Maryland             | \$_____ | \$_____ |
| Massachusetts        | \$_____ | \$_____ |
| Michigan             | \$_____ | \$_____ |
| Minnesota            | \$_____ | \$_____ |
| Mississippi          | \$_____ | \$_____ |
| Missouri             | \$_____ | \$_____ |
| Nebraska             | \$_____ | \$_____ |
| Nevada               | \$_____ | \$_____ |
| New Hampshire        | \$_____ | \$_____ |
| New Mexico           | \$_____ | \$_____ |
| New York             | \$_____ | \$_____ |
| North Carolina       | \$_____ | \$_____ |
| North Dakota         | \$_____ | \$_____ |
| Oregon               | \$_____ | \$_____ |



United States District Court  
Northern District of California

|   |               |          |          |
|---|---------------|----------|----------|
| 1 | Rhode Island  | \$ _____ | \$ _____ |
| 2 | South Dakota  | \$ _____ | \$ _____ |
| 3 | Tennessee     | \$ _____ | \$ _____ |
| 4 | Utah          | \$ _____ | \$ _____ |
| 5 | Vermont       | \$ _____ | \$ _____ |
| 6 | West Virginia | \$ _____ | \$ _____ |
| 7 | Wisconsin     | \$ _____ | \$ _____ |
| 8 | TOTAL:        | \$ _____ | \$ _____ |

9

10 **j. Florida Blue (IHPP)**

|    |                      |          |          |
|----|----------------------|----------|----------|
|    |                      | Truvada  | Atripla  |
| 11 |                      |          |          |
| 12 | Alabama              | \$ _____ | \$ _____ |
| 13 | Arizona              | \$ _____ | \$ _____ |
| 14 | California           | \$ _____ | \$ _____ |
| 15 | Connecticut          | \$ _____ | \$ _____ |
| 16 | District of Columbia | \$ _____ | N/A      |
| 17 | Florida              | \$ _____ | \$ _____ |
| 18 | Hawaii               | \$ _____ | N/A      |
| 19 | Illinois             | \$ _____ | \$ _____ |
| 20 | Iowa                 | \$ _____ | \$ _____ |
| 21 | Kansas               | \$ _____ | N/A      |
| 22 | Louisiana            | \$ _____ | \$ _____ |
| 23 | Maine                | \$ _____ | \$ _____ |
| 24 | Maryland             | \$ _____ | N/A      |
| 25 | Massachusetts        | \$ _____ | N/A      |
| 26 | Michigan             | \$ _____ | \$ _____ |
| 27 | Minnesota            | \$ _____ | N/A      |
| 28 | Mississippi          | \$ _____ | N/A      |

United States District Court  
Northern District of California

|    |                          |          |          |
|----|--------------------------|----------|----------|
| 1  | Missouri                 | \$ _____ | N/A      |
| 2  | Montana                  | N/A      | \$ _____ |
| 3  | Nebraska                 | \$ _____ | \$ _____ |
| 4  | Nevada                   | \$ _____ | \$ _____ |
| 5  | New Hampshire            | \$ _____ | N/A      |
| 6  | New Mexico               | \$ _____ | N/A      |
| 7  | New York                 | \$ _____ | \$ _____ |
| 8  | North Carolina           | \$ _____ | \$ _____ |
| 9  | Oregon                   | \$ _____ | N/A      |
| 10 | Rhode Island             | \$ _____ | N/A      |
| 11 | South Carolina           | \$ _____ | \$ _____ |
| 12 | South Dakota             | \$ _____ | N/A      |
| 13 | Tennessee                | \$ _____ | \$ _____ |
| 14 | Utah                     | \$ _____ | N/A      |
| 15 | Vermont                  | \$ _____ | N/A      |
| 16 | Wisconsin                | \$ _____ | \$ _____ |
| 17 | TOTAL:                   | \$ _____ | \$ _____ |
| 18 |                          |          |          |
| 19 | <b>k. Centene (IHPP)</b> |          |          |
| 20 |                          | Truvada  | Atripla  |
| 21 | Alabama                  | \$ _____ | \$ _____ |
| 22 | Arizona                  | \$ _____ | \$ _____ |
| 23 | California               | \$ _____ | \$ _____ |
| 24 | Connecticut              | \$ _____ | \$ _____ |
| 25 | District of Columbia     | \$ _____ | \$ _____ |
| 26 | Florida                  | \$ _____ | \$ _____ |
| 27 | Hawaii                   | \$ _____ | \$ _____ |
| 28 | Illinois                 | \$ _____ | \$ _____ |

United States District Court  
Northern District of California

|    |                |          |          |
|----|----------------|----------|----------|
| 1  | Iowa           | \$ _____ | \$ _____ |
| 2  | Kansas         | \$ _____ | \$ _____ |
| 3  | Louisiana      | \$ _____ | \$ _____ |
| 4  | Maine          | \$ _____ | \$ _____ |
| 5  | Maryland       | \$ _____ | \$ _____ |
| 6  | Michigan       | \$ _____ | \$ _____ |
| 7  | Minnesota      | \$ _____ | \$ _____ |
| 8  | Mississippi    | \$ _____ | \$ _____ |
| 9  | Missouri       | \$ _____ | \$ _____ |
| 10 | Montana        | \$ _____ | \$ _____ |
| 11 | Nebraska       | \$ _____ | \$ _____ |
| 12 | Nevada         | \$ _____ | \$ _____ |
| 13 | New Hampshire  | \$ _____ | \$ _____ |
| 14 | New Mexico     | \$ _____ | \$ _____ |
| 15 | New York       | \$ _____ | \$ _____ |
| 16 | North Carolina | \$ _____ | \$ _____ |
| 17 | North Dakota   | \$ _____ | \$ _____ |
| 18 | Oregon         | \$ _____ | \$ _____ |
| 19 | Rhode Island   | \$ _____ | \$ _____ |
| 20 | South Carolina | \$ _____ | \$ _____ |
| 21 | South Dakota   | \$ _____ | N/A      |
| 22 | Tennessee      | \$ _____ | \$ _____ |
| 23 | Utah           | \$ _____ | \$ _____ |
| 24 | Vermont        | \$ _____ | \$ _____ |
| 25 | West Virginia  | \$ _____ | \$ _____ |
| 26 | Wisconsin      | \$ _____ | \$ _____ |
| 27 | TOTAL:         | \$ _____ | \$ _____ |

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United States District Court  
Northern District of California

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**I. HCSC (IHPP)**

|                      | Truvada  | Atripla  |
|----------------------|----------|----------|
| Alabama              | \$ _____ | \$ _____ |
| Arizona              | \$ _____ | \$ _____ |
| California           | \$ _____ | \$ _____ |
| Connecticut          | \$ _____ | N/A      |
| District of Columbia | \$ _____ | \$ _____ |
| Florida              | \$ _____ | \$ _____ |
| Hawaii               | \$ _____ | \$ _____ |
| Illinois             | \$ _____ | \$ _____ |
| Iowa                 | \$ _____ | \$ _____ |
| Kansas               | \$ _____ | \$ _____ |
| Louisiana            | \$ _____ | \$ _____ |
| Maine                | \$ _____ | \$ _____ |
| Maryland             | \$ _____ | \$ _____ |
| Massachusetts        | \$ _____ | N/A      |
| Michigan             | \$ _____ | \$ _____ |
| Minnesota            | \$ _____ | \$ _____ |
| Mississippi          | \$ _____ | \$ _____ |
| Missouri             | \$ _____ | \$ _____ |
| Montana              | \$ _____ | \$ _____ |
| Nebraska             | \$ _____ | \$ _____ |
| Nevada               | \$ _____ | \$ _____ |
| New Hampshire        | \$ _____ | N/A      |
| New Mexico           | \$ _____ | \$ _____ |
| New York             | \$ _____ | \$ _____ |
| North Carolina       | \$ _____ | \$ _____ |
| North Dakota         | \$ _____ | N/A      |

United States District Court  
Northern District of California

|    |                |          |          |
|----|----------------|----------|----------|
| 1  | Oregon         | \$ _____ | \$ _____ |
| 2  | Rhode Island   | \$ _____ | \$ _____ |
| 3  | South Carolina | \$ _____ | \$ _____ |
| 4  | South Dakota   | \$ _____ | \$ _____ |
| 5  | Tennessee      | \$ _____ | \$ _____ |
| 6  | Utah           | \$ _____ | \$ _____ |
| 7  | Vermont        | \$ _____ | N/A      |
| 8  | West Virginia  | \$ _____ | \$ _____ |
| 9  | Wisconsin      | \$ _____ | \$ _____ |
| 10 | TOTAL:         | \$ _____ | \$ _____ |

**m. Triple-S Salud (IHPP)**

|    |                |          |         |
|----|----------------|----------|---------|
| 13 |                | Truvada  | Atripla |
| 14 | Connecticut    | \$ _____ | N/A     |
| 15 | Illinois       | \$ _____ | N/A     |
| 16 | New York       | \$ _____ | N/A     |
| 17 | North Carolina | \$ _____ | N/A     |
| 18 | TOTAL:         | \$ _____ | N/A     |

**n. Kaiser (IHPP)**

|    |                      |          |          |
|----|----------------------|----------|----------|
| 21 |                      | Truvada  | Atripla  |
| 22 | California           | \$ _____ | \$ _____ |
| 23 | District of Columbia | \$ _____ | \$ _____ |
| 24 | Hawaii               | \$ _____ | \$ _____ |
| 25 | Maryland             | \$ _____ | \$ _____ |
| 26 | Oregon               | \$ _____ | \$ _____ |
| 27 | TOTAL:               | \$ _____ | \$ _____ |

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United States District Court  
Northern District of California

|    |                          |          |          |
|----|--------------------------|----------|----------|
| 1  | <b>o. Blue KC (IHPP)</b> |          |          |
| 2  |                          | Truvada  | Atripla  |
| 3  | Alabama                  | \$ _____ | \$ _____ |
| 4  | Arizona                  | \$ _____ | \$ _____ |
| 5  | California               | \$ _____ | \$ _____ |
| 6  | Connecticut              | \$ _____ | N/A      |
| 7  | District of Columbia     | \$ _____ | N/A      |
| 8  | Florida                  | \$ _____ | \$ _____ |
| 9  | Hawaii                   | \$ _____ | N/A      |
| 10 | Illinois                 | \$ _____ | \$ _____ |
| 11 | Iowa                     | \$ _____ | N/A      |
| 12 | Kansas                   | \$ _____ | \$ _____ |
| 13 | Louisiana                | \$ _____ | N/A      |
| 14 | Maryland                 | \$ _____ | N/A      |
| 15 | Massachusetts            | \$ _____ | N/A      |
| 16 | Michigan                 | \$ _____ | N/A      |
| 17 | Minnesota                | \$ _____ | N/A      |
| 18 | Missouri                 | \$ _____ | \$ _____ |
| 19 | Nebraska                 | \$ _____ | N/A      |
| 20 | Nevada                   | \$ _____ | \$ _____ |
| 21 | New York                 | \$ _____ | N/A      |
| 22 | North Carolina           | \$ _____ | N/A      |
| 23 | Oregon                   | \$ _____ | N/A      |
| 24 | South Carolina           | \$ _____ | N/A      |
| 25 | Tennessee                | \$ _____ | \$ _____ |
| 26 | Utah                     | \$ _____ | N/A      |
| 27 | Wisconsin                | \$ _____ | N/A      |
| 28 | TOTAL:                   | \$ _____ | \$ _____ |

United States District Court  
Northern District of California

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**p. Humana (IHPP)**

|                      | Truvada  | Atripla  |
|----------------------|----------|----------|
| Alabama              | \$ _____ | \$ _____ |
| Arizona              | \$ _____ | \$ _____ |
| California           | \$ _____ | \$ _____ |
| Connecticut          | \$ _____ | \$ _____ |
| District of Columbia | \$ _____ | \$ _____ |
| Florida              | \$ _____ | \$ _____ |
| Hawaii               | \$ _____ | \$ _____ |
| Illinois             | \$ _____ | \$ _____ |
| Iowa                 | \$ _____ | \$ _____ |
| Kansas               | \$ _____ | \$ _____ |
| Louisiana            | \$ _____ | \$ _____ |
| Maine                | \$ _____ | \$ _____ |
| Maryland             | \$ _____ | \$ _____ |
| Michigan             | \$ _____ | \$ _____ |
| Minnesota            | \$ _____ | \$ _____ |
| Mississippi          | \$ _____ | \$ _____ |
| Missouri             | \$ _____ | \$ _____ |
| Montana              | \$ _____ | \$ _____ |
| Nebraska             | \$ _____ | \$ _____ |
| Nevada               | \$ _____ | \$ _____ |
| New Hampshire        | \$ _____ | \$ _____ |
| New Mexico           | \$ _____ | \$ _____ |
| New York             | \$ _____ | \$ _____ |
| North Carolina       | \$ _____ | \$ _____ |
| North Dakota         | \$ _____ | \$ _____ |

United States District Court  
Northern District of California

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| Oregon         | \$ _____ | \$ _____ |
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| South Dakota   | \$ _____ | \$ _____ |
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| Utah           | \$ _____ | \$ _____ |
| Vermont        | \$ _____ | \$ _____ |
| West Virginia  | \$ _____ | \$ _____ |
| Wisconsin      | \$ _____ | \$ _____ |
| TOTAL:         | \$ _____ | \$ _____ |

*Proceed to Question 7 below.*

7. Was the defendants' antitrust violation(s) that you found flagrant?

Yes \_\_\_\_\_ No \_\_\_\_\_

*Proceed to Question 8 below.*

8. Was the defendants' antitrust violation(s) that you found willful?

Yes \_\_\_\_\_ No \_\_\_\_\_

*Please sign and date the form.*

\_\_\_\_\_  
Presiding Juror

\_\_\_\_\_  
Date