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FILED

SEP 27 2023

SHASTA COUNTY SUPERIOR COURT
BY: A. WADDLE, DEPUTY CLERK

Attorneys for Plaintiffs and Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SHASTA

DEBORAH FUST, INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, AND, EDWARD PIMENTEL, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

PLAINTIFFS,

VS.

GILEAD SCIENCES, INC., A DELAWARE CORPORATION REGISTERED TO DO BUSINESS AND HEADQUARTERED IN CALIFORNIA,

DEFENDANT.

Case No.: 203316

CLASS ACTION

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

1. **Violations of the Consumers Legal Remedies Act Cal. Civ. Code §§ 1750 et seq.**
2. **Violations of the False Advertising Law Cal. Bus. & Prof. Code §§ 17500 et seq**
3. **Violations of the Unfair Competition Law Cal. Bus. & Prof. Code §§ 17200 et seq**
4. **Money Had and Received.**
5. **Negligent Misrepresentation.**
6. **Unjust Enrichment.**

JURY TRIAL DEMANDED

REMOTE APPEARANCE REQUESTED

Date:
Time:
Dept:
JUDGE: HON.

COMPLAINT

Plaintiffs bring their suit for damages for consumer protection law violations, false advertising, deceptive promotion, negligent misrepresentation, violations of Cal. Business and

Professional Code §17500, the Consumer Legal Remedies Act ("CLRA"), and the Unfair Competition Law ("UCL") as well as for injunctive relief from and disgorgement and damages for false advertising and deceptive promotion, personal injuries, and wrongful death. Claimants in this case act in their individual capacities and as a class pursuant to California Code of Civil Procedure § 382, on behalf of themselves and all similarly situated consumers of Remdesivir (also known as "Veklury" hereinafter "Remdesivir) during the applicable statute of limitations period in California, because "the question is one of a common or general interest, of many persons". California Code of Civil Procedure § 382. There is a well-defined community of interest among the many persons who comprise the readily ascertainable class. The ordeal of many members within the organization has been marked by emotional distress as their earnest attempts to raise awareness and prevent mass death were stymied by obstructive censorship and suppression.

JURISDICTION AND VENUE

1. The Court has personal jurisdiction over Plaintiffs' claims because Defendant maintains its principal place of business within the State of California, and transacts business within the County of Shasta and within the State of California.[1]

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[1] The undersigned counsel have chosen to file this suit in response to compelling appeals from members of the FormerFedsGroup Freedom Foundation. FormerFedsGroup.Org is a recognized IRS Code Section 501(c)(3) organization, primarily staffed by hundreds of volunteer widows and relatives who have tragically lost loved ones due to hospital treatment protocols and MRNA vaccines for COVID-19. In numerous cases, these treatments were administered without proper "informed consent."

The Foundation has meticulously documented over 1,000 eyewitness accounts of hospital mistreatment and vaccine-related injuries, which regrettably often resulted in fatalities. These accounts are accessible at formerfedsgroup.org/cases (http://formerfedsgroup.org/cases) and CHBMP.org (http://chbmp.org/). The group's formation and organization of these victims became essential following extensive efforts by both government agencies and social media companies to censor and suppress information warning about the risks associated with hospital treatment protocols. These protocols were often used when alternative treatments, such as vitamins C and D3, hydroxychloroquine, zinc, and ivermectin, could have potentially prevented hospitalization.

2. Further, the Court has general subject matter jurisdiction over Plaintiffs' claims including claims for false advertising, the False Advertising Law ("FAL"), Bus. & Prof. Code §§ 17500, the Consumer Legal Remedies Act ("CLRA"), Civil Code §§ 1750, et seq., the Unfair Competition Law ("UCL"), Bus. & Prof. Code §§ 17200, et seq., deceptive promotion, negligent misrepresentation, negligence, negligence *per se*, unjust enrichment, failure to warn, and equitable and injunctive relief from false advertising and deceptive promotion, because a substantial part of the events giving rise to the Plaintiffs' claims occurred in the County of Shasta and in the State of California.

3. Venue is proper in this jurisdiction under California Code of Civil Procedure sections 392-403, as a substantial part of the events giving rise to the Plaintiffs' claims occurred in the County of Shasta and in the State of California.

4. The amount in controversy is in excess of $25,000, exclusive of interest and costs.

PARTIES

5. Plaintiffs are residents of the County of Shasta and other counties in the State of California, and from other states, all of whom (or those for whom they act as personal representatives) were prescribed, purchased, and ingested the drug Remdesivir (Veklury) while hospitalized for COVID-19. Remdesivir (Veklury) was manufactured, advertised, and promoted as a safe and effective COVID-19 treatment by Defendant. However, all of the Plaintiffs herein either died or suffered serious physical injury as a result of the administration of Remdesivir

(Veklury) to the Plaintiffs herein.

6. The current named Plaintiffs are Deborah Fust, surviving spouse of Michael Fust who died after receiving Remdesivir, and Edward Pimentel who suffered injury following Remdesivir administration.

7. Defendant is Gilead Sciences, Inc., a Delaware pharmaceutical corporation with its principal place of business located in Foster City, California.

CLASS ALLEGATIONS

8. Plaintiffs bring their claims for false advertising, the False Advertising Law ("FAL"), Bus. & Prof. Code §§ 17500, the Consumer Legal Remedies Act ("CLRA"), Civil Code §§ 1750, et seq., the Unfair Competition Law ("UCL"), Bus. & Prof. Code §§ 17200, et seq., deceptive promotion, negligent misrepresentation, negligence, negligence *per se*, unjust enrichment, failure to warn, and equitable and injunctive relief from false advertising and deceptive promotion, all claims in this case brought in their individual capacities and as a class action pursuant to California Code of Civil Procedure § 382, on behalf of themselves and all similarly situated consumers of Remdesivir (Veklury) during the applicable statute of limitations period in California, because "the question is one of a common or general interest, of many persons". California Code of Civil Procedure § 382. There is a well-defined community of interest among the many persons who comprise the readily ascertainable class.

9. The putative class that the Plaintiffs seek to certify is composed of and defined as follows:

1) "All individuals who were given Remdesivir (Veklury) while hospitalized for Covid-19 and who, as a result of its administration, survived and suffered serious physical injury," and,

2) "All individuals who were given Remdesivir (Veklury) while hospitalized for Covid-19 and who, as a result of its administration, died and are survived by their aggrieved family members who now represent them in their capacities as personal representatives."

10. Plaintiffs reserve the right under Rule 3.765 of the California Rules of Court to amend or modify the class description with greater specificity or further division into subclasses or with limitations to particular issues.

11. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure § 382 because there is a well-defined community of interest among the many persons who comprise the readily ascertainable class.

12. Numerosity and Ascertainability. The number of members in the class identified herein are so numerous that joinder of all members is impracticable. On information and belief, the quantity and identity of the members of the class are readily ascertainable via inspection of Defendant's records.

13. Superiority. The nature of this action and the nature of the laws available to Plaintiffs make use of the class action format particularly efficient and appropriate. By establishing a technique whereby the claims of many individuals can be resolved at the same time, the class suit both eliminates the possibility of repetitious litigation and provides claimants with a method of obtaining redress for claims that would otherwise be too difficult or small to warrant individual litigation. Class action treatment will allow a large number of similarly situated persons to prosecute their common claims in a single forum, simultaneously, efficiently, and without the unnecessary duplication of effort, expense, and proof that numerous individual actions would require. The burden and expense of individual litigation could make it prohibitive

for individual putative class members to seek relief. A class action will serve an important public interest by permitting such individuals to effectively pursue recovery of the sums owed to them. Class litigation prevents the potential for inconsistent or contradictory judgments if individual putative class members were to litigate separately. Further, individual joinder of all class members as parties to this action is not practicable.

14. Well-Defined Community of Interest. Plaintiffs also meet the established standards for class certification as follows:

15. Typicality. Named Plaintiffs' claims are typical of the claims of the class. Plaintiffs and class members sustained injuries arising out of and caused by Defendant's common course of conduct in violation of the law as alleged herein.

16. Adequacy. Plaintiffs will fairly and adequately represent and protect the interests of the class. Plaintiffs have retained counsel who is competent and experienced in complex class actions, California's consumer protection laws, claims for false advertising, the False Advertising Law ("FAL"), Bus. & Prof. Code §§ 17500, the Consumer Legal Remedies Act ("CLRA"), Civil Code §§ 1750, et seq., the Unfair Competition Law ("UCL"), Bus. & Prof. Code §§ 17200, et seq., deceptive promotion, negligent misrepresentation, negligence, negligence *per se*, unjust enrichment, failure to warn, and equitable and injunctive relief from false advertising and deceptive promotion, and the intersection thereof.

17. Predominant Common Questions of Law or Fact. There are questions of law and fact common to the class, and these questions predominate over any questions affecting only individual members. Common questions include, at a minimum: (a) Whether Remdesivir (Veklury) was deceptively promoted as "safe"; (b) Whether Remdesivir (Veklury) was deceptively promoted as "effective"; (c) Whether Remdesivir (Veklury) is more dangerous and

unsafe than promoted to be; (d) Whether administration of Remdesivir (Veklury) to Plaintiffs resulted in unacceptably high fatality rates among Plaintiffs; (e) Whether administration of Remdesivir (Veklury) to Plaintiffs resulted in unacceptably high personal injuries to Plaintiffs; (f) Whether the probabilities of unacceptably high levels of injuries and deaths from the administration of Remdesivir (Veklury) were known to the Defendant but were undisclosed to Plaintiffs; (g) Whether the undisclosed probability of unacceptably high levels of injuries and deaths from the administration of Remdesivir (Veklury) nullified any "informed consent" on the part of Plaintiffs; (h) Whether Remdesivir (Veklury) was deceptively promoted by the Defendant; (i) Whether the Defendant's conduct is "unlawful," "unfair," or "fraudulent" under California Business & Professions Code § 17200 et seq. (j) Whether the Defendant is liable to the class; (k) Whether the class can be made whole by equitable and injunctive relief; and (l) Whether injunctive relief, restitution and other equitable remedies, and penalties for Plaintiffs and the class are warranted.

STATEMENT OF FACTS

18. Remdesivir, the first FDA approved drug for the treatment of Covid-19, was developed by Gilead Sciences, Inc. and marketed under the brand name Veklury.

19. Remdesivir is an investigational antiviral drug that the Food and Drug Administration hastily authorized on March 20, 2020, for emergency use for hospitalized patients with severe COVID-19 during the first year of the pandemic. The emergency use was authorized based predominantly on one study conducted by the NIAID (ACTT-1) where the endpoint was changed midstream to ensure a positive result.

See: https://www.nejm.org/doi/full/10.1056/NEJMoa2007764

20. Remdesivir has engendered an extraordinarily large number of patient

adverse events, many of which have proven to be acutely serious, and all too often deadly.

21. Strangely, the FDA did not consult with the Antimicrobial Drugs Advisory Committee ("AMDAC") in granting Remdesivir's Emergency Use Authorization ("EUA"). AMDAC consists of outside experts that the FDA has at the ready precisely to weigh in on antiviral drug matters.

22. Later, in October that year, the FDA issued a full approval which was subsequently expanded to include pediatric and outpatient use.

23. GS-5734™ (Remdesivir) was originally identified and added to Gilead's library of investigational molecules in 2009 to potentially treat Hepatitis C and RSV. See https://en.wikipedia.org/wiki/Remdesivir

24. The Ebola virus outbreak in West Africa accelerated efforts to identify and develop antiviral drugs to combat the disease. GS-5734™ (Remdesivir) then re-emerged as a result of a collaborative screening among Gilead, the U.S. Centers for Disease Control and Prevention (CDC) and the U.S. Army Medical Research Institute of Infectious Diseases (USAMRIID) to identify small molecules with promising antiviral activity against RNA viruses with global pandemic potential.

25. "Then, on October 15, 2020, in this month's decidedly unfavorable news for Gilead—the fourth and largest controlled study delivered what some believed was a *coup de grâce*, problems with Remdesivir: The World Health Organization's (WHO's) Solidarity trial showed that Remdesivir does not reduce mortality or the time COVID-19 patients take to recover." The 'very, very bad look' of Remdesivir, the first FDA-approved COVID-19 drug". | Science | AAAS https://www.science.org/content/article/very-very-bad-look-Remdesivir-first-fda-approved-covid19-drug

26. In November 2020, more problems with Remdesivir surfaced. The World Health Organization (WHO) issued the following recommendation against the use of Remdesivir: "WHO has issued a conditional recommendation against the use of Remdesivir in hospitalized patients, regardless of disease severity, as there is currently no evidence that Remdesivir improves survival and other outcomes in these patients." WHO recommends against the use of Remdesivir in COVID-19 patients. https://www.who.int/news-room/feature-stories/detail/who-recommends-against-the-use-of-Remdesivir-in-Covid-19-patients

27. It was not until April 22, 2022, that WHO upgraded its recommendation to a "conditional recommendation" for Remdesivir use in patients with non-severe Covid-19. Therapeutics and COVID-19: living guideline, "conditional recommendation for the use of Remdesivir in patients with non-severe COVID-19 at the highest risk of hospitalization" (first published 20 November 2020, updated 22 April 2022). https://www.who.int/publications/i/item/WHO-2019-nCoV-therapeutics-2022.4

28. There is a plethora of peer-reviewed papers (both before and since the onset of the pandemic) questioning the safety of Remdesivir, especially for patients ill to the point of requiring hospitalization. This extensive documentation predominantly involves three organs: the kidneys, the liver and the heart and vascular system.

29. There are a number of studies over several years showing heightened safety risks including the Ebola Study referred to above and NCT 0429 2899, the clinical trial of those with serious COVID-19, which was one of several used to support FDA approval. 21% of those in the 5-day study had serious adverse events and 35% in the 10-day study had serious adverse events. See: https://www.nejm.org/doi/10.1056/NEJMoa2015301

30. Safety risks increased and efficacy decreased for those treated for serious

COVID-19 and those administered the 10-day protocol.

31. “But the published data late[r] showed that "Remdesivir was not associated with statistically significant clinical benefits [and] the numerical reduction in time to clinical improvement in those treated earlier requires confirmation in larger studies." The Strange Story of Remdesivir, A Covid Drug That Doesn’t Work https://www.forbes.com/sites/jvchamary/2021/01/31/remdesivir-covid-coronavirus/?sh=ed79c1866c27

32. During a 2020 RCT performed in ten hospitals in Hubei, China reported in The Lancet Journal and relied on by the FDA as part of its predicate for granting the Remdesivir EUA on May 1, 2020, Remdesivir administration was stopped early for 12% of severe COVID-19 patients because of adverse events. See: https://www.thelancet.com/journals/lancet/article/PIIS0140-6(20)31022-9/fulltext

33. “Remdesivir’s lackluster results in patients with advanced Covid-19 in the NIAID-sponsored trial and the finding that it provided no statistically significant benefit in a clinical trial conducted in China among patients with severe Covid-19 symptoms are likely due to the suboptimal level of active GS-441524 triphosphate in the lungs.” Gilead should ditch Remdesivir and focus on its simpler and safer ancestor”, see: https://www.statnews.com/2020/05/14/gilead-should-ditch-Remdesivir-and-focus-on-its-simplersafer-ancestor/

34. A 2020 prospective clinical study, conducted in Milan, Italy compared Remdesivir use between ICU and non-ICU patients. Investigators had to discontinue the 10-day course of Remdesivir treatment after five doses for 23% of the patients due to “toxicities”. The most frequent of the severe adverse events observed were Hypertransaminasemia (liver) and

acute kidney injury - 42.8 % and 22.8 % of the cases, respectively. See: https://www.sciencedirect.com/science/article/pii/S104366182031207X?via%3Dihub

35. The alarming findings from clinical trials are further substantiated by case studies. As reported from France in a June 2020 study of the first five COVID-19 patients treated with Remdesivir in the country, the course was "interrupted before the initially planned duration in four patients, two because of alanine aminotransferase elevations (3 to 5 normal range) and two because of renal failure requiring renal replacement." The authors note that "particular attention should be paid to hepatic and kidney function when administering this treatment." See: -3- https://www.sciencedirect.com/science/article/pii/S1201971220305282#bbib0065

36. Global repositories of real-world post-marketing safety reports provide an important opportunity to confirm signals derived from the clinical context. The FDA maintains its Adverse Event Reporting System (FAERS) while its European counterpart Vigibase is kept by the WHO.

37. Tragically, analysis of these vast collections of data only serves to corroborate the signal of multi-organ toxicity that was already established. A team of researchers in France performed a pharmacovigilance analysis of the WHO's adverse drug reactions database - Vigibase - for signals of hepatotoxicity from Remdesivir. They found 130 reports of hepatic adverse events and determined that Remdesivir was the "sole suspected drug" in the majority of cases.

38. Furthermore, noting "most cases were serious", requiring prolonged hospitalization or in some cases hepatic failure or hepatitis. The study concluded an increased risk of liver impairment with Remdesivir, compared with other drugs. See: https://www.cghjournal.org/article/S1542-3565(20)31060-0/fulltext

39. An additional pharmacovigilance study of Vigibase looked for a disproportional signal of acute renal failure in cases treated with Remdesivir, as opposed to other COVID-19 treatments. The investigators reported an alarming 20-fold increase; which was recently corrected by the investigators to 30-fold. See: https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.2145

40. Another recent pharmacovigilance analysis of US FAERS real-world data to determine the association of acute kidney injury (AKI) with Remdesivir treatment uncovered even more startling results. Utilizing the reporting odds ratio method, an international team determined that there is "a significant association between Remdesivir use and AKI adverse events…especially in older, male COVID-19 inpatients." Furthermore, it was gravely noted that "more than one-third of the COVID-19 cases with AKI events reported in the FAERS eventually passed away." https://www.frontiersin.org/articles/10.3389/fphar.2022.692828/full

41. Concerned with kidney injuries in animal studies during Gilead's development of Remdesivir, another group of scientists performed a subsequent pharmacovigilance review. Their results confirmed the earlier studies and determined that based on real-life data from more than 5000 COVID-19 patients, acute kidney injury (AKI) represents "a serious, early, and potentially fatal adverse drug reaction of Remdesivir." See: https://www.kidney-international.org/article/S0085-2538(21)00210-6/fulltext

42. More recently (March 2022) a team of researchers searched for a pharmacovigilance signal for kidney-related ADRs with an emphasis on diabetics in the FDA's FAERS database. They found that compared to other anti-COVID drugs, Remdesivir recipients were 4-fold more likely to sustain AKIs (acute kidney injuries), and almost 6-fold for DM (diabetes mellitus) patients. The investigators determined that based on their assessment of the

nephrotoxicity spectrum of Remdesivir, the association emerging between Remdesivir and AKI through a multitude of pre-clinical and clinical trial results was supported. See: https://www.frontiersin.org/articles/10.3389/fphar.2022.833679/full

43. Defendant Gilead repeatedly marketed and promoted Remdesivir as being both safe and efficacious against COVID-19.

44. Despite the above documented serious adverse events including numerous fatalities, and so many others documented in "real life", Defendant Gilead continued to market Remdesivir as safe and effective. Defendant Gilead failed to disclose this growing history of adverse events to patients who agreed to Remdesivir use without this crucial information, thus falsely advertising Remdesivir and nullifying their informed consent.

45. Gilead announced and advertised its use to everyone regardless of their COVID-19 condition or age (subject to certain required liver and kidney function readings).

46. Further, it is well established in the medical community that, as a whole, antivirals to be effective must be administered early (as close as possible to the onset of symptoms as possible). Fauci commented on Remdesivir's lack of potency, noting as reported in the Washington Post "that Remdesivir is not a knockout drug that will change the trajectory of the coronavirus pandemic." See: https://www.trialsitenews.com/a/not-a-knockout-drug-but-knocking-it-out-of-the-ballpark-gilead-windfall-as-remdesivir-Covid-19-sales-to-hit-1-to-3-billion-in-2020

47. On April 23, 2022, in response to the FDA's expanded approval to babies older than 28 days old, Gilead proclaimed "indication for Veklury for the treatment of children is a testament to the safety, tolerability and efficacy profile of this therapy, which has remained the foundational antiviral for COVID-19 treatment," said Merdad Parsey, MD, PhD, Chief Medical

Officer, Gilead Sciences. See: https://www.gilead.com/news-and-press/press-room/press-releases/2022/4/veklury-Remdesivir-is-first-and-only-approved-treatment-for-pediatric-patients-under-12-years-of-age-with-covid19.

48. Clearly, Gilead knew hepatic and renal complications would be caused by Remdesivir. Furthermore, it knew, based on the mechanism of action alone, that whatever efficacy Veklury had, it was only within the window of rising viral replication – i.e., early treatment, **within the first 7 days**.

49. Defendant Gilead failed to disclose these crucial details regarding the dangers of Remdesivir in its marketing and advertising campaign to patients who agreed to use of Remdesivir without knowledge of this crucial information; thus Gilead falsely advertising Remdesivir and nullifying their informed consent.

50. Gilead knew of these numerous limitations on safety and efficacy, particularly for more serious cases, as well as the "potential" availability of a better, safer, and cheaper drug (GS 441524), [Gilead should withdraw Remdesivir and focus on its simpler and safer ancestor, see: https://www.statnews.com/2020/05/14/gilead-should-ditch-Remdesivir-and-focus-on-its-simplersafer-ancestor], Gilead recklessly continued on this course despite WHO's conditional recommended use of Remdesivir only for those with "non-severe Covid at risk for hospitalization." See: https://app.magicapp.org/#/guideline/nBkO1E

51. Gilead's April 21, 2022 press release, in particular the second paragraph, misrepresents the clinical findings as to efficacy, and omits material facts as to safety which likewise constitutes a misrepresentation: “We welcome today’s updated guideline as affirmation of the importance of early treatment of COVID-19 with an antiviral. We will continue to share data from clinical trials and real-world evidence supporting the use of Veklury across a spectrum

of disease severity with the WHO for future updates of its living guidance. The updated WHO guideline recognizes the important role of Veklury in helping people at high risk of COVID-19 disease progression but do not currently reflect the broad body of evidence supporting Veklury's effectiveness across a broad spectrum of disease severity, as do several other global treatment guidelines. We anticipate the WHO will continue to consider robust evidence from multiple randomized, controlled trials, including ACTT-1 and independent meta-analysis, which demonstrate the efficacy of Veklury in later-stage COVID-19 disease, and update their recommendation for patients with severe or critical illness." See: https://www.gilead.com/news-and-press/company-statements/gilead-statement-on-w%20ho-recommendation-of-veklury-Remdesivir-and-acceleration-of-prequalification-submission

52. Indeed, a review of the Gilead press releases, corporate statements, and statements to investors concerning Remdesivir shows a pattern of downplaying or omitting altogether the clinical dangers experienced by patients from Remdesivir use, instead emphasizing its supposed benefits, safety and efficacy. The adverse reaction of nausea is typically discussed. The adverse reactions of severe injuries and death are conveniently omitted

53. The initial longstanding WHO recommendation against the use of Remdesivir is only mentioned in the context of disputing and criticizing the WHO recommendation. The subsequent WHO "conditional recommendation" almost a year and a half later is portrayed as not having gone far enough.

54. Gilead's pattern of publicly promoting Remdesivir's alleged positive efficacy while omitting the discussion regarding negative data on efficacy or adverse reactions continued. See "Gilead touts 'positive data' on drug as coronavirus treatment"

https://thehill.com/policy/healthcare/495210-gilead-touts-positive-data-on-drug-as-coronavirus-treatment/

55. Again, Gilead deceptively promotes Remdesivir by portraying an incomplete picture. "Remdesivir Sharply Cuts COVID Hospitalization Risk, Gilead Says" https://www.webmd.com/covid/news/20210922/Remdesivir-cuts-covid-hospitalizations

56. Gilead publicly promoted Remdesivir's alleged ability to maintain efficacy despite mutating types of coronavirus. "Gilead Sciences has new data showing COVID drug Veklury maintained efficacy despite changes in a coronavirus structure it targets." "Gilead touts Veklury resilience against mutated coronavirus, plots phase 3 for new COVID oral antiviral" https://www.fiercepharma.com/pharma/gilead-touts-veklury-resilience-against-mutated-coronavi rus-plots-phase-3-new-covid-oral

57. The deceptively flawed and one-sided marketing plan continued, now targeted to children. "Veklury® (Remdesivir) is First and Only Approved Treatment for Pediatric Patients Under 12 Years of Age with COVID-19" https://www.gilead.com/news-and-press/press-room/press-releases/2022/4/veklury-Remdesivir-isfirst-and-only-approved-treatment-for-pediatric-patients-under-12-years-of-age-with-covid19

58. Again, no discussions by Gilead are had in their promotional publicity of serious adverse reactions such as the acute kidney injuries and deaths suffered by Remdesivir patients as reported in FAERS. "Acute Kidney Injury Associated With Remdesivir: A Comprehensive Pharmacovigilance Analysis of COVID-19 Reports in FAERS" https://www.frontiersin.org/articles/10.3389/fphar.2022.692828/full

59. Instead of transparency regarding the risks of serious injuries and deaths associated with Remdesivir administration, Gilead emphasized the alleged reduced risk of deaths

from Remdesivir administration. "Gilead says Remdesivir coronavirus treatment reduces risk of death" https://www.cnbc.com/2020/07/10/gilead-says-Remdesivir-coronavirus-treatment-reduces-risk-of -death.html

60. Another example of Gilead not discussing the risks of serious injuries and deaths associated with Remdesivir administration, and instead emphasizing the alleged reduced risk of deaths from Remdesivir administration can be found here: "Gilead says Remdesivir slashes coronavirus deaths. But it's complicated" https://fortune.com/2020/07/10/Remdesivir-covid-treatment-coronavirus-drug-treatment-gilead-dr ug-treatment-mortality-deaths/

61. During this period Gilead increased its donation of the number of doses to the federal government from 607,000 doses of Remdesivir to around 940,000 doses of Remdesivir, while touting its long-term profitability to investors. "Gilead Increases Its Remdesivir Donation To U.S. As Executives Tout Drug's Long-Term Profit Potential" "Stat: Gilead Ups Its Donation Of The Covid-19 Drug Remdesivir" https://khn.org/morning-breakout/gilead-increases-its-Remdesivir-donation-to-u-s-as-executives-t out-drugs-long-term-profit-potential/

62. Citing an improvement in clinical recovery and a reduction in the risk of mortality compared with the standard of care, and reporting an analysis of the safety and efficacy of Remdesivir across different racial and ethnic groups with no safety signals, Gilead continued to emphasize positive results while not mentioning negative data from FAERS and others to the press. "Remdesivir: Gilead Touts Promising Coronavirus Outcomes Across Race & Ethnicity https://www.contagionlive.com/view/Remdesivir-gilead-touts-promising-coronavirus-outcomes-race-ethnicity

63. Gilead continued to report in a one-sided manner that its experimental

drug Remdesivir "improved symptoms when given for five days to moderately ill, hospitalized patients with COVID-19. Gilead Sciences gave few details on Monday but said full results would soon be published in a medical journal." Thus the stage was set for widespread acceptance of Remdesivir, with little mention of the serious known adverse reactions. "Gilead touts drug" https://www.pressreader.com/usa/antelope-valley-press/20200602/281676847130629

64. In a 2022 appearance on CNBC's Squawk on the Street, Gilead's CEO, Daniel O'Day even went so far as promoting their demonstrably unsafe and ineffective drug, Remdesivir, as having "...a major impact upon this pandemic." Without mention of any potential harms, O'Day depicts Remdesivir as so safe and effective that it's "...making a big difference for patients. It's getting patients out of the hospital sooner, five to seven days sooner, and stopping them from going on to more severe consequences of the disease." https://www.cnbc.com/2022/01/10/cnbc-excerpts-gilead-sciences-chairman-ceo-daniel-oday-and-novavax-president-ceo-stanley-erck-speak-with-cnbcs-squawk-on-the-street-today.html; https://www.cnbc.com/video/2022/01/10/gilead-ceo-oral-version-of-covid-drug-Remdesivir-in-early-testing.html

65. Gilead's less than forthcoming safety information for patients enumerates side effects of Veklury as including allergic reactions, an increase in liver enzymes or nausea but neglects any indication of more serious conditions like acute kidney injury or renal failure, hepatoxicity or acute liver failure and atrial fibrillation or cardiac arrest denoted in the literature. https://www.gilead.com/-/media/files/pdfs/medicines/Covid-19/veklury/veklury_pi.pdf https://www.veklury.com/important-safety-information/

66. Furthermore, Gilead authored and provided a two-page information sheet to hospitals for discretionary release to patients when, in fact, it had additionally prepared a

thirty-six-page document with much more detail about the drug for hospitals and doctors which patients were not given. https://www.gilead.com/-/media/files/pdfs/medicines/covid19/veklury/veklury_patient_pi.pdf; https://www.gilead.com/-/media/files/pdfs/medicines/Covid-19/veklury/veklury_pi.pdf

67. In effect, Gilead constructively withheld from recipients of Remdesivir copious material information contained in the above-referenced 36-page document that discloses both potential known and unknown adverse effects of Remdesivir administration, including but not limited to, renal complications, hepatic complications, increased risk of transaminase elevations and unknown, admittedly unstudied effects in specific populations such as geriatric, pediatric and pregnant and nursing women.

68. The named plaintiffs and others in the class received Remdesivir at various medical facilities across the country.

69. Plaintiffs implicitly or explicitly agreed to the treatment protocol in reliance upon incomplete and misleading published information as to the drug's safety and efficacy.

70. The administration of Remdesivir at the various medical facilities at which Plaintiffs and the Class were administered the drug was in accordance with Gilead's protocol.

71. Plaintiffs suffered serious injuries and/or deaths as a result of the administration of Remdesivir.

72. Plaintiffs and others in the Class were aware of representations by Gilead as to the "safety and efficacy" of Remdesivir. To the extent they even had a say in the matter, Plaintiffs and the Class agreed, albeit without informed consent, to taking the drug.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
VIOLATIONS OF THE CONSUMERS LEGAL REMEDIES ACT
CAL.CIV.CODE §§ 1750 ET SEQ.

73. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth in full herein.

74. Plaintiffs bring this claim individually and on behalf of members of the proposed California Class against Defendant.

75. The CLRA prohibits unfair or deceptive practices in connection the sale of goods or services to a consumer.

76. Moreover, the CLRA is meant to be "liberally construed and applied to promote its underlying purposes, which are to protect consumers against unfair and deceptive business practices and to provide efficient and economical procedures to secure such protection." Cal. Civ. Code § 1760.

77. The drug, Remdesivir, that Defendant advertises, sells and provides constitutes "Goods" as defined by the CLRA. Cal. Civ. Code § 1761(a). Access to Defendant's drug that Plaintiffs and Class Members were administered and for which they paid, thereby resulting in profit to Defendant, is a "Service" as defined by the CLRA. Cal. Civ. Code § 1761(b).

78. Plaintiffs and Class Members are "consumers" who paid for medical treatment inclusive of Remdesivir administration.

79. Each of the purchases made by the Plaintiffs and the Class Members from the Defendant were "Transactions" as defined by the CLRA. Cal. Civ. Code § 1761(e).

80. Defendant's actions, representations, and conduct have violated, and continue to violate the CLRA, because they extend to transactions that intended to result, or which have resulted in, the sale of goods and services to consumers.

81. Defendant's advertising that its pharmaceutical drug, Remdesivir, is safe and effective as well as omission of material information to consumers when prior and continuing studies in Defendant's possession demonstrated the drug was dangerous and resulted in organ damage and death in over fifty percent of the trial participants for example, is false and misleading to a reasonable consumer, including Plaintiffs, because Defendant in fact knew that Remdesivir was ineffective and a dangerous drug with a high risk of organ damage and death.

82. Cal. Civ. Code § 1770(a)(5), prohibits "[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have." By engaging in the conduct set forth herein, Defendant violated and continues to violate Section 1770(a)(5) of the CLRA because Defendant's conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices in that Defendant misrepresented the particular characteristics, benefits, and quantities of the goods and services.

83. Cal. Civ. Code § 1770(a)(7) also prohibits "[r]epresenting that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another." By engaging in the conduct set forth herein, Defendant violated and continues to violate Section 1770(a)(7) of the CLRA because Defendant's conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices in that Defendant misrepresented the particular standard, quality or grade of the goods and services.

84. Cal. Civ. Code § 1770(a)(9) further prohibits "[a]dvertising goods or services with intent not to sell them as advertised." By engaging in the conduct set forth herein, Defendant violated and continues to violate Section 1770(a)(9), because Defendant's conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices in that Defendant advertises services with the intent not to sell the goods and services as advertised.

85. Cal. Civ. Code § 1770(a)(14) further prohibits "[r]epresenting that a transaction confers or involves rights, remedies, or obligations that it does not have or involve, or that are prohibited by law." By engaging in the conduct set forth herein, Defendant violated and continues to violate Section 1770(a)(14), because Defendant's conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices in that Defendant is representing that Remdesivir confers or involves rights, remedies, or obligations that it does not have which was intended to result in the sale of goods and services.

86. Plaintiffs and the Class acted reasonably when they purchased Defendant's drug on the belief that Defendant's misrepresentations were true and lawful.

87. Plaintiffs and the Class suffered tangible, concrete, injuries in fact caused by Defendant because: (a) they would not have purchased or paid for Defendant's drug absent Defendant's misrepresentations and omissions of a warning that Remdesivir causes organ failure and/or death; (b) they would not have purchased or paid for Defendant's drug absent Defendant's misrepresentations and omissions of a warning that Remdesivir causes organ failure and death; (c) they would not have purchased or paid for Defendant's drug, on the same terms absent Defendant's misrepresentations and omissions; (d) they paid a price premium for Defendant's drug based on Defendant's misrepresentations and omissions; (e) Defendant's drug did not have

the characteristics, benefits, or quantities as promised; and (f) Defendant never intended that the drug would promote plaintiffs' health or save their lives.

88. On information and belief, Defendant's violations of the CLRA discussed above were done with the actual knowledge, intent, and awareness that the conduct alleged was wrongful.

89. On information and belief, Defendant committed these acts with reckless indifference to Plaintiffs and Class Members.

90. Plaintiffs and Class Members were harmed as a direct and proximate result of Defendant's violations of the CLRA and are thus entitled to a declaration that Defendant violated the CLRA.

91. Plaintiffs, on behalf of herself and Class Members, seek injunctive relief under Civil Code § 1782(d). 75. Under California Civil Code § 1780(a), Plaintiffs and members of the Class seek injunctive and equitable relief for Defendant's violations of the CLRA. Plaintiffs will mail an appropriate demand letter consistent with California Civil Code § 1782(a). If Defendant fails to take corrective action within 30 days of receipt of the demand letter, Plaintiffs will amend their complaint to include a request for damages as permitted by Civil Code § 1782(d). 76. Upon satisfaction of any conditions precedent, Plaintiffs and the Class Members will request the Court enter an order awarding them mandatory restitution, and that they are entitled to recover its reasonable attorneys' fees. Plaintiff and the Class Members also seek pre-and-post-judgment interest and attorneys' fees and costs as allowed by statute, including without limitation those recoverable under Cal. Code Civ. Proc. § 1021.5, any common law "private attorney general" equitable doctrine, any "common fund" doctrine, any "substantial benefit"

doctrine, and/or any equitable principles of contribution and/or other methods of awarding attorneys' fees and costs.

SECOND CAUSE OF ACTION
VIOLATIONS OF THE FALSE ADVERTISING LAW
CAL. BUS. & PROF. CODE §§ 17500 ET SEQ.

92. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth in full herein.

93. Plaintiffs bring this claim individually and on behalf of the members of the proposed California Class against Defendant.

94. . Cal. Bus. & Prof. Code §§ 17500, et seq., makes it "unlawful for any person to make or disseminate or cause to be made or disseminated before the public in this state, ... in any advertising device ... or in any other manner or means whatever, including over the Internet, any statement, concerning ... personal property or services, professional or otherwise, or performance or disposition thereof, which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading."

95. Defendant engaged in a scheme of selling consumers the pharmaceutical drug Remdesivir, representing it as safe and effective for the treatment of Covid-19 when Defendant knew or should have known of the prior studies and data demonstrating it was ineffective and dangerous with a high risk for organ failure and death. Defendant's advertising and marketing of Remdesivir as safe and effective misrepresented and/or omitted the true content and nature of the drug. Defendant knew or should have known that these statements were unauthorized, inaccurate, and misleading.

96. Defendant's advertising that Remdesivir is a safe and effective treatment for Covid-19 is false and misleading to a reasonable consumer, including Plaintiffs, because Defendant in fact knew or should have known, based upon prior studies and data on Remdesivir, that it was unsafe and posed a high risk of severe adverse effects and death to Plaintiffs and the Class.

97. Defendant violated § 17500, et seq. by misleading Plaintiff and the Class to believe that they were being treated with Remdesivir, a safe and effective drug for the treatment of Covid-19.

98. Defendant knew or should have known through the exercise of reasonable care, that its advertising Remdesivir as a safe and effective drug for the treatment of Covid-19 is false and misleading. Further, Defendant knew or should have known that it was breaking its promise to Plaintiffs and the Class that they were receiving a safe and effective medical treatment.

99. Plaintiffs and the Class lost money as well as health and, in many cases, their lives as a result of Defendant's False Advertising Law (FAL) violations because: (a) they would not have purchased or paid for Defendant's drug absent Defendant's misrepresentations and omissions of a warning that the administration of Remdesivir had a high risk of organ failure and death; (b) they would not have purchased or paid for Defendant's drug absent Defendant's misrepresentations and omissions of a warning that the administration of Remdesivir had a high risk of organ failure and death and absent Defendant's misrepresentations and omissions; (d) they paid a price premium for Defendant's drug packages based upon Defendant's misrepresentations and omissions; (e) Defendant's drug did not have the

characteristics, benefits, or quantities as promised; and (f) Defendant never intended to provide Plaintiffs and the Class with a safe and effective drug for the treatment of Covid-19.

100. Under the FAL, "[i]t is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services" to disseminate any statement "which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading." Cal. Bus. & Prof. Code § 17500.

101. Plaintiffs and the Class suffered tangible, concrete injuries in fact as a result of Defendant's actions as set forth herein because they purchased Remdesivir in reliance on Defendant's false and misleading marketing claims that they would receive a safe and effective treatment for Covid-19

102. Plaintiffs and the Class suffered tangible, concrete injuries in fact as a result of Defendant's actions as set forth herein because they purchased Remdesivir as a treatment for Covid-19 in reliance on Defendant's false and misleading marketing claims that they would receive a safe and effective treatment for Covid-19.

103. Defendant's business practices as alleged herein constitute unfair, deceptive, untrue, and misleading advertising pursuant to the FAL because Defendant advertised its Remdesivir in a manner that is untrue and misleading, which Defendant knew or reasonably should have known.

104. Defendant profited from the sales of the falsely and deceptively advertised Remdesivir to unwary and believing consumers.

105. As a result, pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiffs and Class Members are entitled to injunctive and equitable relief and restitution. Plaintiffs and the

Class Members have suffered damages in an amount to be determined at trial. Plaintiffs and the Class Members request the Court enter an order awarding Plaintiffs and the Class Members compensatory and punitive damages.

106. Plaintiffs and the Class Members request the Court enter an order awarding them mandatory restitution and that they are entitled to recover its reasonable attorneys' fees. Plaintiffs and the Class Members therefore also seek pre-and-post-judgment interest and attorneys' fees and costs as allowed by statute, including without limitation those recoverable under Cal. Code Civ. Proc. § 1021.5, any common law "private attorney general" equitable doctrine, any "common fund" doctrine, any "substantial benefit" doctrine, and/or any equitable principles of contribution and/or other methods of awarding attorneys' fees and costs.

THIRD CAUSE OF ACTION
VIOLATIONS OF THE UNFAIR COMPETITION LAW
CAL. BUS. & PROF. CODE §§ 17200 ET SEQ.

107. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth in full herein.

108. Plaintiffs bring this claim individually and on behalf of the members of the proposed California Class against Defendant.

109. Defendant is subject to California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq. The UCL provides, in pertinent part: "Unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising ...."

110. Defendant's advertising that customers would receive a safe and effective treatment for Covid-19, is false and misleading to a reasonable consumer, including Plaintiffs,

because Defendant in fact knew or should have known that Remdesivir was ineffective, dangerous, and posed a high risk for organ failure and death when administered.

111. 105. Unlawful: The acts alleged herein are "unlawful" under the UCL in that they violate as described herein at least the following laws: The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 et seq.; and The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 et seq.

112. Fraudulent: A statement or practice is fraudulent under the UCL if it is likely to deceive the public, applying a reasonable consumer test.

113. As set forth herein, Defendant's claims relating to the safety and effectiveness of Remdesivir are likely to deceive reasonable consumers and the public. Defendant violated the "fraudulent" prong of the UCL by misleading Plaintiffs and the Class to believe that they would receive a safe and effective treatment for Covid-19.

114. Unfair: Defendant's conduct with respect to the advertising and sale of Remdesivir is unfair because its conduct was immoral, unethical, unscrupulous, or substantially injurious to consumers, and the utility of its conduct, if any, does not outweigh the gravity of the harm to its victims.

115. Defendant's business practices, described herein, violated the "unfair" prong of the UCL in that its conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous, as the gravity of the conduct outweighs any alleged benefits. Defendant's advertising and promise they would provide a safe and effective treatment for Covid-19 when it knew or should have known its drug was ineffective, dangerous, and posed a high risk of organ failure and death is of no benefit to consumers.

116. Defendant's conduct with respect to the advertising and sale of Remdesivir was also unfair because it violated public policy as declared by specific statutory or regulatory provisions, including but not limited to the FAL and CLRA.

117. Defendant's conduct with respect to the advertising and sale of Remdesivir was also unfair because the consumer injury was substantial, not outweighed by benefits to consumers or competition, and not one a consumer could reasonably have avoided.

118. Plaintiffs and the Class acted reasonably when they purchased Remdesivir based upon the belief that they would receive a safe and effective treatment for Covid-19.

119. Defendant profited from the sale of its falsely, deceptively, and unlawfully advertised Remdesivir.

120. Plaintiffs and the Class lost money or property as a result of Defendant's UCL violations because: (a) they would not have purchased or paid for Defendant's Remdesivir absent Defendant's misrepresentations and omissions of a warning that they would face organ failure and/or death; (b) they would not have purchased or paid for Defendant's Remdesivir absent Defendant's misrepresentations and omissions of a warning that administration of Remdesivir carries a high risk of organ failure and death; (c) they would not have purchased or paid for Defendant's Remdesivir on the same terms absent Defendant's misrepresentations and omissions; (d) they paid a price premium for Defendant's Remdesivir based upon Defendant's misrepresentations and omissions; (e) Defendant's Remdesivir did not have the characteristics, benefits, or quantities as promised; and (f) Defendant never intended to provide Plaintiff and the Class a safe and effective drug for the treatment of Covid-19.

121. Plaintiffs and Class Members are likely to be damaged by Defendant's deceptive trade practices, as Defendant continues to disseminate, and are otherwise free to

continue to disseminate, misleading information. Thus, injunctive relief enjoining this deceptive practice is proper.

122. Defendant's conduct caused and continues to cause substantial injury to Plaintiffs and the other Class Members, who have suffered concrete tangible injury in fact as a result of Defendant's fraudulent, unlawful, and unfair conduct.

123. In accordance with Bus. & Prof. Code § 17203, Plaintiffs, on behalf of themselves, Class Members, and the general public, seek an order enjoining Defendant continuing to conduct business through unlawful, unfair, and/or fraudulent acts and practices, and to commence a corrective advertising campaign.

124. Plaintiffs, on behalf of themselves and Class Members, also seek an order for the restitution of all monies from the sale of the falsely advertised Remdesivir that Defendant unjustly acquired through acts of unlawful competition.

125. Plaintiffs and the Class Members have suffered damages in an amount to be determined at trial. Plaintiffs and the Class Members request the Court enter an order awarding them compensatory and punitive damages.

126. Plaintiffs and the Class Members request the Court enter an order awarding them mandatory restitution and that they are entitled to recover its reasonable attorneys' fees. Plaintiffs and the Class Members therefore also seek pre-and-post-judgment interest and attorneys' fees and costs as allowed by statute, including without limitation those recoverable under Cal. Code Civ. Proc. § 1021.5, any common law "private attorney general" equitable doctrine, any "common fund" doctrine, any "substantial benefit" doctrine, and/or any equitable principles of contribution and/or other methods of awarding attorneys' fees and costs.

FOURTH CAUSE OF ACTION
MONEY HAD AND RECEIVED

127. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth in full herein.

128. Plaintiffs bring this claim individually and on behalf of the members of the proposed Class against Defendant.

129. Plaintiffs and the Class seek restitution from Defendant for money had and received.

130. Defendant received money from Plaintiffs and the Class that was intended to be used for its benefit.

131. Defendant did not use the money received from Plaintiffs and the Class for its benefit and has not returned or refunded the money to them. As a matter of equity and good conscience that money should be returned to Plaintiffs and the Class Members.

132. Plaintiffs and the Class Members request the Court enter an order awarding them mandatory restitution and that they are entitled to recover its reasonable attorneys' fees. Plaintiffs and the Class Members therefore also seek pre-and-post-judgment interest and attorneys' fees and costs as allowed by statute, including without limitation those recoverable under Cal. Code Civ. Proc. § 1021.5, any common law "private attorney general" equitable doctrine, any "common fund" doctrine, any "substantial benefit" doctrine, and/or any equitable principles of contribution and/or other methods of awarding attorneys' fees and costs.

FIFTH CAUSE OF ACTION
NEGLIGENT MISREPRESENTATION

133. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth in full herein.

134. Plaintiffs bring this claim individually and on behalf of the members of the proposed Nationwide Class against Defendant. Plaintiffs also bring this claim individually and on behalf of the members of the proposed California Class against Defendant.

135. As set forth herein, Defendant misrepresented that customers would receive a safe and effective treatment for Covid-19. However, Defendant did not in fact provide Plaintiffs and the Class of customers a safe and effective treatment for Covid-19

136. At the time Defendant made these misrepresentations, Defendant knew or should have known that these misrepresentations were false. Defendant negligently misrepresented and or negligently omitted material facts about Remdesivir and prior studies and data showing that it is ineffective as a treatment for Covid-19 and causes organ failure and death

137. In providing its services and goods to Plaintiffs and the Class Members, Defendant owed a duty to exercise reasonable care to make full, fair, and adequate disclosure in connection with the characteristics, uses, benefits, standards, quality, attributes, and nature of its Remdesivir. This duty included, among other things, taking reasonable measures to protect the rights of Class Members in compliance with applicable law, including, but not limited to, procedures and policies to supervise, restrict, limit, and determine the accuracy and truthfulness of its representations, materials, and advertising in connection with its goods and services.

138. In providing Remdesivir to Plaintiffs and the Class Members, Defendant owed a duty to exercise reasonable care regarding and when making its representations about Remdesivir in connection with the characteristics, uses, benefits, standards, quality, attributes, and nature of its goods and services. It was foreseeable that if Defendant did not take reasonable measures to ascertain and ensure the accuracy and truthfulness of its representations Plaintiffs and the Class Members would rely on its representations and be administered Remdesivir.

Defendant should have known to take precautions to ensure its advertising, materials, and representations were accurate.

139. The negligent misrepresentations and omissions made by Defendant, upon which Plaintiffs and Class Members reasonably and justifiably relied, were intended to induce and actually induced Plaintiffs and Class Members to purchase Defendant's Remdesivir. Plaintiffs and Class Members would not have purchased Defendant's drug or would not have purchased it on the same terms if the true facts had been known. The negligent actions of Defendant caused damage to Plaintiffs and Class Members, who are entitled to damages and other legal and equitable relief as a result.

140. Defendant's negligence was a substantial factor in causing harm to Plaintiffs and Class Members. As a direct and proximate cause and result of Defendant's failure to exercise reasonable care and use reasonable measures to ensure the accuracy of its representations and advertising, Plaintiffs and Class Members have suffered actual injury-in-fact and economic damages, including severe physical injury, death, and expense that they would not have otherwise incurred and/or paid.

141. Neither Plaintiffs nor other Class Members contributed to the unlawful conduct set forth herein, nor did they contribute to Defendant's procedures, and measures which were omitted and led to the failure to ensure the accuracy and truthfulness of Defendant's claims in connection with the nature of its goods and services.

142. Plaintiffs and the Class Members request the Court enter an order awarding Plaintiffs and the Class Members mandatory restitution and damages, and that they are entitled to recover its reasonable attorneys' fees. Plaintiffs and the Class Members therefore also seek pre-and-post-judgment interest and attorneys' fees and costs as allowed by statute,

including without limitation those recoverable under Cal. Code Civ. Proc. § 1021.5, any common law "private attorney general" equitable doctrine, any "common fund" doctrine, any "substantial benefit" doctrine, and/or any equitable principles of contribution and/or other methods of awarding attorneys' fees and costs.

SIXTH CAUSE OF ACTION
UNJUST ENRICHMENT

143. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth in full herein.

144. Plaintiffs bring this claim individually and on behalf of the members of the Nationwide Class against Defendant. Plaintiffs also bring this claim individually and on behalf of members of the proposed California Class against Defendant.

145. "Under California law, the elements of unjust enrichment are: (a) receipt of a benefit; and (b) unjust retention of the benefit at the expense of another." Valencia v. Volkswagen Grp. of Am. Inc., No. 15-CV-00887-HSG, 2015 WL 4747533, at *8 (N.D. Cal. Aug. 11, 2015). See also, Munoz v. MacMillan, 195 Cal. App. 4th 648, 661 (2011) ("Common law principles of restitution require a party to return a benefit when the retention of such benefit would unjustly enrich the recipient; a typical cause of action involving such remedy is 'quasi-contract.")

146. "When a plaintiff alleges unjust enrichment, a court may construe the cause of action as a quasi-contract claim seeking restitution." Astiana v. Hain Celestial Grp., Inc., 783 F.3d 753, 762 (9th Cir. 2015). "Whether termed unjust enrichment, quasi-contract, or quantum meruit, the equitable remedy of restitution when unjust enrichment has occurred "is an obligation (not a true contract [citation]) created by the law without regard to the intention of the

parties, and is designed to restore the aggrieved party to her or her former position by return of the thing or its equivalent in money." F.D.I.C. v. Dintino, 167 Cal. App. 4th 333, 346 (2008).

147. Plaintiffs and Class Members conferred non-gratuitous benefits upon Defendant by purchasing treatment with Remdesivir, significantly and materially increasing Defendant's revenues, profit margins, and profits, and unjustly enriching Defendant at the expense of and to the detriment of Plaintiffs and the Class Members.

148. Defendant's retention of any benefit collected indirectly from Plaintiffs and Class Members' payments for treatment with Remdesivir violated principles of justice, equity, and good conscience. As a result, Defendant has been unjustly enriched. Plaintiffs and Class Members are entitled to recover from Defendant all amounts that Defendant has wrongfully and improperly obtained, and Defendant should be required to disgorge to Plaintiffs and Class Members the benefits they have unjustly obtained.

149. Defendant accepted or retained such benefits with the knowledge that Plaintiffs' and Class Members' rights were being violated for financial gain. Defendant has been unjustly enriched in retaining the revenues and profits from Plaintiffs and Class Members' payments, which retention under these circumstances is unjust and inequitable.

150. As a direct and proximate result of Defendant's unlawful practices and the retention of Plaintiffs' and the Class Members' payments, Plaintiffs and Class Members have suffered concrete harm and injury, including, but not limited to, monetary loss in connection with its payments made from which Defendant profited and purchases of its good and services, serious physical injuries and death as alleged herein.

151. Defendant's retention of the non-gratuitous benefits conferred on it by Plaintiffs and Class Members would be unjust and inequitable. Plaintiffs and Class Members are

entitled to seek disgorgement and restitution of wrongful profits, revenue, and benefits conferred upon Defendant in a manner established by this Court.

152. Plaintiffs and the Class Members request the Court enter an order awarding Plaintiffs and the Class Members restitution and damages, and that they are entitled to recover their reasonable attorneys' fees. Plaintiffs and the Class Members therefore also seek pre and-post-judgment interest and attorneys' fees and costs as allowed by statute, including without limitation those recoverable under Cal. Code Civ. Proc. § 1021.5, any common law "private attorney general" equitable doctrine, any "common fund" doctrine, any "substantial benefit" doctrine, and/or any equitable principles of contribution and/or other methods of awarding attorneys' fees and costs.

PRAYER FOR RELIEF

Wherefore, Plaintiffs, on behalf of themselves, all others Class Members similarly situated, and the general public, pray for judgment against Defendant as to each and every cause of action, and the following remedies: (a) An Order declaring this action to be a proper class action, appointing Plaintiffs as class representatives, and appointing their undersigned counsel as class counsel; (b) An Order requiring Defendant to bear the cost of class notice(s); (c) An Order declaring Defendant's conduct unlawful; (d) An Order enjoining Defendant from engaging in the unfair, unlawful, and deceptive business practices and false advertising complained of herein; (e) An Order compelling Defendant to conduct a corrective advertising campaign; (f) An Order compelling Defendant to recall and destroy all misleading and deceptive advertising materials; (g) An Order requiring Defendant to disgorge all monies, revenues, and profits obtained by means of any wrongful act or practice; (h) An Order requiring Defendant to pay restitution to restore all funds acquired by means of any act or practice declared by this Court to be an

unlawful, unfair, or fraudulent business act or practice, untrue or misleading advertising, plus pre-and post-judgment interest thereon; (i) An Order requiring Defendant to pay all actual and statutory damages permitted under the causes of action alleged herein; (j) An Order requiring Defendant to pay punitive and exemplary damages permitted under the causes of action alleged herein; (k) An award of pre-and-post-judgment interest and attorneys' fees and costs as allowed by statute, including without limitation those recoverable under Cal. Code Civ. Proc. § 1021.5, any common law "private attorney general" equitable doctrine, any "common fund" doctrine, any "substantial benefit" doctrine, and/or any equitable principles of contribution and/or other methods of awarding attorneys' fees and costs; and (l) Any other and further relief that Court deems necessary, just, or proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues so triable.

Respectfully submitted September 27, 2023.

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