

FILED

SEP 27 2023

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

1 Jacob Levin Esq. (SBN 333724)
2 Jacob Levin Law
3 1308 Placer Street
4 Redding, CA 96001
5 Email: jacob@jacoblevinlaw.com
6 T: 530-248-2700
7 F: 530-248-2701

8 Bradford L. Geyer, Esq.
9 FormerFedsGroup.Com LLC
10 141 "i" Route 130 S., 303
11 Cinnaminson, NJ 08077
12 T: 856-607-5708
13 bradford.geyer@formerfedsgroup.com
14 *Pro Hac Vice Pending*

15 Melissa Jacobs, Esq.
16 Affiliate Attorney
17 Myer and Scher, LLP
18 377B South Oyster Bay Road
19 Plainview, NY 11803
20 T: 270-510-0107
21 Email: melissahealth1@gmail.com
22 *Pro Hac Vice Pending*

23 David A. Dalia, Esq.
24 830 Union Street, Suite 302
25 New Orleans, LA. 70112
26 T: 504-524-5541
27 Email: davidadalia@gmail.com
28 *Pro Hac Vice Pending*

Jamie Scher, Esq.
Myer and Scher, LLP
377B South Oyster Bay Road
Plainview, NY 11803
T: 516-713-0655
Email: Jamie@myerandscher.com

Stephen Scher, Esq.
Myer and Scher, LLP
377B South Oyster Bay Road
Plainview, NY 11803
T: 516-312-0518
Email: Stephen@myerandscher.com

1 Attorneys for Plaintiffs and Class

2
3
4 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

5 **FOR THE COUNTY OF SHASTA**

6 **203316**

7 DEBORAH FUST, INDIVIDUALLY, AND
8 ON BEHALF OF ALL OTHERS SIMILARLY
9 SITUATED, AND, EDWARD PIMENTEL,
10 INDIVIDUALLY AND ON BEHALF OF ALL
11 OTHERS SIMILARLY SITUATED,

12 PLAINTIFFS,

13 VS.

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

18 DEFENDANT.

Case No.: _____

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.

24
25 **COMPLAINT**

26
27 Plaintiffs bring their suit for damages for consumer protection law violations, false
28 advertising, deceptive promotion, negligent misrepresentation, violations of Cal. Business and

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

13
 14
 15 **JURISDICTION AND VENUE**

16
 17 1. The Court has personal jurisdiction over Plaintiffs’ claims because
 18 Defendant maintains its principal place of business within the State of California, and transacts
 19 business within the County of Shasta and within the State of California.¹

20
 21
 22
 23 ¹ The undersigned counsel have chosen to file this suit in response to compelling appeals from
 24 members of the FormerFedsGroup Freedom Foundation. FormerFedsGroup.Org is a recognized IRS Code Section
 25 501(c)(3) organization, primarily staffed by hundreds of volunteer widows and relatives who have tragically lost
 26 loved ones due to hospital treatment protocols and MRNA vaccines for COVID-19. In numerous cases, these
 27 treatments were administered without proper "informed consent."

28 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.

1 (Veklury) to the Plaintiffs herein.

2 6. The current named Plaintiffs are Deborah Fust, surviving spouse of
3 Michael Fust who died after receiving Remdesivir, and Edward Pimentel who suffered injury
4 following Remdesivir administration.
5

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

8 **CLASS ALLEGATIONS**

9 8. Plaintiffs bring their claims for false advertising, the False Advertising
10 Law (“FAL”), Bus. & Prof. Code §§ 17500, the Consumer Legal Remedies Act (“CLRA”), Civil
11 Code §§ 1750, et seq., the Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, et
12 seq., deceptive promotion, negligent misrepresentation, negligence, negligence *per se*, unjust
13 enrichment, failure to warn, and equitable and injunctive relief from false advertising and
14 deceptive promotion, all claims in this case brought in their individual capacities and as a class
15 action pursuant to California Code of Civil Procedure § 382, on behalf of themselves and all
16 similarly situated consumers of Remdesivir (Veklury) during the applicable statute of limitations
17 period in California, because “the question is one of a common or general interest, of many
18 persons”. California Code of Civil Procedure § 382. There is a well-defined community of
19 interest among the many persons who comprise the readily ascertainable class.
20
21

22 9. The putative class that the Plaintiffs seek to certify is composed of and
23 defined as follows:
24

- 25 1) “All individuals who were given Remdesivir (Veklury) while hospitalized for
26 Covid-19 and who, as a result of its administration, survived and suffered serious
27 physical injury,” and,
28

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

5
6 10. Plaintiffs reserve the right under Rule 3.765 of the California Rules of
7 Court to amend or modify the class description with greater specificity or further division into
8 subclasses or with limitations to particular issues.

9
10 11. This action has been brought and may be maintained as a class action
11 pursuant to California Code of Civil Procedure § 382 because there is a well-defined community
12 of interest among the many persons who comprise the readily ascertainable class.

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

17
18 13. Superiority. The nature of this action and the nature of the laws available
19 to Plaintiffs make use of the class action format particularly efficient and appropriate. By
20 establishing a technique whereby the claims of many individuals can be resolved at the same
21 time, the class suit both eliminates the possibility of repetitious litigation and provides claimants
22 with a method of obtaining redress for claims that would otherwise be too difficult or small to
23 warrant individual litigation. Class action treatment will allow a large number of similarly
24 situated persons to prosecute their common claims in a single forum, simultaneously, efficiently,
25 and without the unnecessary duplication of effort, expense, and proof that numerous individual
26 actions would require. The burden and expense of individual litigation could make it prohibitive
27
28

1 for individual putative class members to seek relief. A class action will serve an important public
2 interest by permitting such individuals to effectively pursue recovery of the sums owed to them.
3 Class litigation prevents the potential for inconsistent or contradictory judgments if individual
4 putative class members were to litigate separately. Further, individual joinder of all class
5 members as parties to this action is not practicable.
6

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

9 15. Typicality. Named Plaintiffs' claims are typical of the claims of the class.
10 Plaintiffs and class members sustained injuries arising out of and caused by Defendant's
11 common course of conduct in violation of the law as alleged herein.
12

13 16. Adequacy. Plaintiffs will fairly and adequately represent and protect the
14 interests of the class. Plaintiffs have retained counsel who is competent and experienced in
15 complex class actions, California's consumer protection laws, claims for false advertising, the
16 False Advertising Law ("FAL"), Bus. & Prof. Code §§ 17500, the Consumer Legal Remedies
17 Act ("CLRA"), Civil Code §§ 1750, et seq., the Unfair Competition Law ("UCL"), Bus. & Prof.
18 Code §§ 17200, et seq., deceptive promotion, negligent misrepresentation, negligence,
19 negligence *per se*, unjust enrichment, failure to warn, and equitable and injunctive relief from
20 false advertising and deceptive promotion, and the intersection thereof.
21

22 17. Predominant Common Questions of Law or Fact. There are questions of
23 law and fact common to the class, and these questions predominate over any questions affecting
24 only individual members. Common questions include, at a minimum: (a) Whether Remdesivir
25 (Veklury) was deceptively promoted as "safe"; (b) Whether Remdesivir (Veklury) was
26 deceptively promoted as "effective"; (c) Whether Remdesivir (Veklury) is more dangerous and
27
28

1 unsafe than promoted to be; (d) Whether administration of Remdesivir (Veklury) to Plaintiffs
2 resulted in unacceptably high fatality rates among Plaintiffs; (e) Whether administration of
3 Remdesivir (Veklury) to Plaintiffs resulted in unacceptably high personal injuries to Plaintiffs;
4 (f) Whether the probabilities of unacceptably high levels of injuries and deaths from the
5 administration of Remdesivir (Veklury) were known to the Defendant but were undisclosed to
6 Plaintiffs; (g) Whether the undisclosed probability of unacceptably high levels of injuries and
7 deaths from the administration of Remdesivir (Veklury) nullified any “informed consent” on the
8 part of Plaintiffs; (h) Whether Remdesivir (Veklury) was deceptively promoted by the
9 Defendant; (i) Whether the Defendant’s conduct is “unlawful,” “unfair,” or “fraudulent” under
10 California Business & Professions Code § 17200 et seq. (j) Whether the Defendant is liable to
11 the class; (k) Whether the class can be made whole by equitable and injunctive relief; and (l)
12 Whether injunctive relief, restitution and other equitable remedies, and penalties for Plaintiffs
13 and the class are warranted.
14
15

16 **STATEMENT OF FACTS**

17
18 18. Remdesivir, the first FDA approved drug for the treatment of Covid-19,
19 was developed by Gilead Sciences, Inc. and marketed under the brand name Veklury.

20 19. Remdesivir is an investigational antiviral drug that the Food and Drug
21 Administration hastily authorized on March 20, 2020, for emergency use for hospitalized
22 patients with severe COVID-19 during the first year of the pandemic. The emergency use was
23 authorized based predominantly on one study conducted by the NIAID (ACTT-1) where the
24 endpoint was changed midstream to ensure a positive result.
25

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

27 20. Remdesivir has engendered an extraordinarily large number of patient
28

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

2 21. Strangely, the FDA did not consult with the Antimicrobial Drugs
3 Advisory Committee (“AMDAC”) in granting Remdesivir’s Emergency Use Authorization
4 (“EUA”). AMDAC consists of outside experts that the FDA has at the ready precisely to weigh
5 in on antiviral drug matters.
6

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

9 23. GS-5734™ (Remdesivir) was originally identified and added to Gilead’s
10 library of investigational molecules in 2009 to potentially treat Hepatitis C and RSV. See
11 <https://en.wikipedia.org/wiki/Remdesivir>
12

13 24. The Ebola virus outbreak in West Africa accelerated efforts to identify and
14 develop antiviral drugs to combat the disease. GS-5734™ (Remdesivir) then re-emerged as a
15 result of a collaborative screening among Gilead, the U.S. Centers for Disease Control and
16 Prevention (CDC) and the U.S. Army Medical Research Institute of Infectious Diseases
17 (USAMRIID) to identify small molecules with promising antiviral activity against RNA viruses
18 with global pandemic potential.
19

20 25. “Then, on October 15, 2020, in this month's decidedly unfavorable news
21 for Gilead—the fourth and largest controlled study delivered what some believed was a *coup de*
22 *grâce*, problems with Remdesivir: The World Health Organization's (WHO's) Solidarity trial
23 showed that Remdesivir does not reduce mortality or the time COVID-19 patients take to
24 recover.” The ‘very, very bad look’ of Remdesivir, the first FDA-approved COVID-19 drug”. |
25 Science | AAAS [https://www.science.org/content/article/very-very-bad-look-Remdesivir-first-](https://www.science.org/content/article/very-very-bad-look-Remdesivir-first-fda-approved-covid19-drug)
26 [fda-approved-covid19-drug](https://www.science.org/content/article/very-very-bad-look-Remdesivir-first-fda-approved-covid19-drug)
27
28

1 26. In November 2020, more problems with Remdesivir surfaced. The World
2 Health Organization (WHO) issued the following recommendation against the use of
3 Remdesivir: “WHO has issued a conditional recommendation against the use of Remdesivir in
4 hospitalized patients, regardless of disease severity, as there is currently no evidence that
5 Remdesivir improves survival and other outcomes in these patients.” WHO recommends against
6 the use of Remdesivir in COVID-19 patients. [https://www.who.int/news-room/feature-
7 stories/detail/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)
8

9 27. It was not until April 22, 2022, that WHO upgraded its recommendation to
10 a “conditional recommendation” for Remdesivir use in patients with non-severe Covid-19.
11 Therapeutics and COVID-19: living guideline, “conditional recommendation for the use of
12 Remdesivir in patients with non-severe COVID-19 at the highest risk of hospitalization” (first
13 published 20 November 2020, updated 22 April 2022).
14 <https://www.who.int/publications/i/item/WHO-2019-nCoV-therapeutics-2022.4>
15

16 28. There is a plethora of peer-reviewed papers (both before and since the
17 onset of the pandemic) questioning the safety of Remdesivir, especially for patients ill to the
18 point of requiring hospitalization. This extensive documentation predominantly involves three
19 organs: the kidneys, the liver and the heart and vascular system.
20

21 29. There are a number of studies over several years showing heightened
22 safety risks including the Ebola Study referred to above and NCT 0429 2899, the clinical trial of
23 those with serious COVID-19, which was one of several used to support FDA approval. 21% of
24 those in the 5-day study had serious adverse events and 35% in the 10-day study had serious
25 adverse events. See: <https://www.nejm.org/doi/10.1056/NEJMoa2015301>
26

27 30. Safety risks increased and efficacy decreased for those treated for serious
28

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

2 31. “But the published data late[r] showed that "Remdesivir was not
3 associated with statistically significant clinical benefits [and] the numerical reduction in time to
4 clinical improvement in those treated earlier requires confirmation in larger studies." The Strange
5 Story of Remdesivir, A Covid Drug That Doesn't Work

6 [https://www.forbes.com/sites/jvchamary/2021/01/31/remdesivir-covid-
7 coronavirus/?sh=ed79c1866c27](https://www.forbes.com/sites/jvchamary/2021/01/31/remdesivir-covid-coronavirus/?sh=ed79c1866c27)

9 32. During a 2020 RCT performed in ten hospitals in Hubei, China reported in
10 The Lancet Journal and relied on by the FDA as part of its predicate for granting the Remdesivir
11 EUA on May 1, 2020, Remdesivir administration was stopped early for 12% of severe COVID-
12 19 patients because of adverse events. See:

13 [https://www.thelancet.com/journals/lancet/article/PIIS0140-6\(20\)31022-9/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6(20)31022-9/fulltext)

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

19 [https://www.statnews.com/2020/05/14/gilead-should-ditch-Remdesivir-and-focus-on-its-
20 simplersafer-ancestor/](https://www.statnews.com/2020/05/14/gilead-should-ditch-Remdesivir-and-focus-on-its-simplersafer-ancestor/)

21 34. A 2020 prospective clinical study, conducted in Milan, Italy compared
22 Remdesivir use between ICU and non-ICU patients. Investigators had to discontinue the 10-day
23 course of Remdesivir treatment after five doses for 23% of the patients due to “toxicities”. The
24 most frequent of the severe adverse events observed were Hypertransaminasemia (liver) and
25
26
27
28

1 acute kidney injury - 42.8 % and 22.8 % of the cases, respectively. See:

2 <https://www.sciencedirect.com/science/article/pii/S104366182031207X?via%3Dihub>

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

9
10 -3- <https://www.sciencedirect.com/science/article/pii/S1201971220305282#bbib0065>

11
12 36. Global repositories of real-world post-marketing safety reports provide an
13 important opportunity to confirm signals derived from the clinical context. The FDA maintains
14 its Adverse Event Reporting System (FAERS) while its European counterpart Vigibase is kept
15 by the WHO.

16
17 37. Tragically, analysis of these vast collections of data only serves to
18 corroborate the signal of multi-organ toxicity that was already established. A team of researchers
19 in France performed a pharmacovigilance analysis of the WHO’s adverse drug reactions
20 database - Vigibase - for signals of hepatotoxicity from Remdesivir. They found 130 reports of
21 hepatic adverse events and determined that Remdesivir was the “sole suspected drug” in the
22 majority of cases.

23
24 38. Furthermore, noting “most cases were serious”, requiring prolonged
25 hospitalization or in some cases hepatic failure or hepatitis. The study concluded an increased
26 risk of liver impairment with Remdesivir, compared with other drugs. See:

27 [https://www.cghjournal.org/article/S1542-3565\(20\)31060-0/fulltext](https://www.cghjournal.org/article/S1542-3565(20)31060-0/fulltext)

1 39. An additional pharmacovigilance study of Vigibase looked for a
2 disproportional signal of acute renal failure in cases treated with Remdesivir, as opposed to other
3 COVID-19 treatments. The investigators reported an alarming 20-fold increase; which was
4 recently corrected by the investigators to 30-fold. See:
5
6 <https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.2145>

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

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

21 42. More recently (March 2022) a team of researchers searched for a
22 pharmacovigilance signal for kidney-related ADRs with an emphasis on diabetics in the FDA’s
23 FAERS database. They found that compared to other anti-COVID drugs, Remdesivir recipients
24 were 4-fold more likely to sustain AKIs (acute kidney injuries), and almost 6-fold for DM
25 (diabetes mellitus) patients. The investigators determined that based on their assessment of the
26
27
28

1 nephrotoxicity spectrum of Remdesivir, the association emerging between Remdesivir and AKI
2 through a multitude of pre-clinical and clinical trial results was supported. See:
3 <https://www.frontiersin.org/articles/10.3389/fphar.2022.833679/full>
4

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

7 44. Despite the above documented serious adverse events including numerous
8 fatalities, and so many others documented in "real life", Defendant Gilead continued to market
9 Remdesivir as safe and effective. Defendant Gilead failed to disclose this growing history of
10 adverse events to patients who agreed to Remdesivir use without this crucial information, thus
11 falsely advertising Remdesivir and nullifying their informed consent.
12

13 45. Gilead announced and advertised its use to everyone regardless of their
14 COVID-19 condition or age (subject to certain required liver and kidney function readings).
15

16 46. Further, it is well established in the medical community that, as a whole,
17 antivirals to be effective must be administered early (as close as possible to the onset of
18 symptoms as possible). Fauci commented on Remdesivir's lack of potency, noting as reported in
19 the Washington Post "that Remdesivir is not a knockout drug that will change the trajectory of
20 the coronavirus pandemic." See: [https://www.trialsitenews.com/a/not-a-knockout-drug-but-](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)
21 [knocking-it-out-of-the-ballpark-gilead-windfall-as-remdesivir-Covid-19-sales-to-hit-1-to-3-](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)
22 [billion-in-2020](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)
23

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

1 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-](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)
2 [under-12-years-of-age-with-covid19.](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)
3

4
5 48. Clearly, Gilead knew hepatic and renal complications would be caused by
6 Remdesivir. Furthermore, it knew, based on the mechanism of action alone, that whatever
7 efficacy Veklury had, it was only within the window of rising viral replication – i.e., early
8 treatment, **within the first 7 days.**

9
10 49. Defendant Gilead failed to disclose these crucial details regarding the
11 dangers of Remdesivir in its marketing and advertising campaign to patients who agreed to use
12 of Remdesivir without knowledge of this crucial information; thus Gilead falsely advertising
13 Remdesivir and nullifying their informed consent.

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

22
23 51. Gilead's April 21, 2022 press release, in particular the second paragraph,
24 misrepresents the clinical findings as to efficacy, and omits material facts as to safety which
25 likewise constitutes a misrepresentation: "We welcome today's updated guideline as affirmation
26 of the importance of early treatment of COVID-19 with an antiviral. We will continue to share
27 data from clinical trials and real-world evidence supporting the use of Veklury across a spectrum
28

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

12
13 52. Indeed, a review of the Gilead press releases, corporate statements, and
14 statements to investors concerning Remdesivir shows a pattern of downplaying or omitting
15 altogether the clinical dangers experienced by patients from Remdesivir use, instead emphasizing
16 its supposed benefits, safety and efficacy. The adverse reaction of nausea is typically discussed.
17 The adverse reactions of severe injuries and death are conveniently omitted

18
19 53. The initial longstanding WHO recommendation against the use of
20 Remdesivir is only mentioned in the context of disputing and criticizing the WHO
21 recommendation. The subsequent WHO “conditional recommendation” almost a year and a half
22 later is portrayed as not having gone far enough.

23
24 54. Gilead’s pattern of publicly promoting Remdesivir’s alleged positive
25 efficacy while omitting the discussion regarding negative data on efficacy or adverse reactions
26 continued. See “Gilead touts ‘positive data’ on drug as coronavirus treatment”
27
28

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

2
3 55. Again, Gilead deceptively promotes Remdesivir by portraying an
4 incomplete picture. “Remdesivir Sharply Cuts COVID Hospitalization Risk, Gilead Says”

5 <https://www.webmd.com/covid/news/20210922/Remdesivir-cuts-covid-hospitalizations>

6
7 56. Gilead publicly promoted Remdesivir’s alleged ability to maintain
8 efficacy despite mutating types of coronavirus. “Gilead Sciences has new data showing COVID
9 drug Veklury maintained efficacy despite changes in a coronavirus structure it targets.” “Gilead
10 touts Veklury resilience against mutated coronavirus, plots phase 3 for new COVID oral
11 antiviral” [https://www.fiercepharma.com/pharma/gilead-touts-veklury-resilience-against-](https://www.fiercepharma.com/pharma/gilead-touts-veklury-resilience-against-mutated-coronavirus-plots-phase-3-new-covid-oral)
12 [mutated-coronavirus-plots-phase-3-new-covid-oral](https://www.fiercepharma.com/pharma/gilead-touts-veklury-resilience-against-mutated-coronavirus-plots-phase-3-new-covid-oral)

13
14 57. The deceptively flawed and one-sided marketing plan continued, now
15 targeted to children. “Veklury® (Remdesivir) is First and Only Approved Treatment for
16 Pediatric Patients Under 12 Years of Age with COVID-19” [https://www.gilead.com/news-and-](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)
17 [press/press-room/press-releases/2022/4/veklury-Remdesivir-isfirst-and-only-approved-treatment-](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)
18 [for-pediatric-patients-under-12-years-of-age-with-covid19](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)

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

25
26 59. Instead of transparency regarding the risks of serious injuries and deaths
27 associated with Remdesivir administration, Gilead emphasized the alleged reduced risk of deaths
28

1 from Remdesivir administration. “Gilead says Remdesivir coronavirus treatment reduces risk of
2 death” [https://www.cnn.com/2020/07/10/gilead-says-Remdesivir-coronavirus-treatment-](https://www.cnn.com/2020/07/10/gilead-says-Remdesivir-coronavirus-treatment-reduces-risk-of-death.html)
3 [reduces-risk-of -death.html](https://www.cnn.com/2020/07/10/gilead-says-Remdesivir-coronavirus-treatment-reduces-risk-of-death.html)

4
5 60. Another example of Gilead not discussing the risks of serious injuries and
6 deaths associated with Remdesivir administration, and instead emphasizing the alleged reduced
7 risk of deaths from Remdesivir administration can be found here: “Gilead says Remdesivir
8 slashes coronavirus deaths. But it’s complicated” [https://fortune.com/2020/07/10/Remdesivir-](https://fortune.com/2020/07/10/Remdesivir-covid-treatment-coronavirus-drug-treatment-gilead-drug-treatment-mortality-deaths/)
9 [covid-treatment-coronavirus-drug-treatment-gilead-drug-treatment-mortality-deaths/](https://fortune.com/2020/07/10/Remdesivir-covid-treatment-coronavirus-drug-treatment-gilead-drug-treatment-mortality-deaths/)

10
11 61. During this period Gilead increased its donation of the number of doses to
12 the federal government from 607,000 doses of Remdesivir to around 940,000 doses of
13 Remdesivir, while touting its long-term profitability to investors. "Gilead Increases Its
14 Remdesivir Donation To U.S. As Executives Tout Drug’s Long-Term Profit Potential" “Stat:
15 Gilead Ups Its Donation Of The Covid-19 Drug Remdesivir” [https://khn.org/morning-](https://khn.org/morning-breakout/gilead-increases-its-Remdesivir-donation-to-u-s-as-executives-tout-drugs-long-term-profit-potential/)
16 [breakout/gilead-increases-its-Remdesivir-donation-to-u-s-as-executives-tout-drugs-long-term-](https://khn.org/morning-breakout/gilead-increases-its-Remdesivir-donation-to-u-s-as-executives-tout-drugs-long-term-profit-potential/)
17 [profit-potential/](https://khn.org/morning-breakout/gilead-increases-its-Remdesivir-donation-to-u-s-as-executives-tout-drugs-long-term-profit-potential/)

18
19 62. Citing an improvement in clinical recovery and a reduction in the risk of
20 mortality compared with the standard of care, and reporting an analysis of the safety and efficacy
21 of Remdesivir across different racial and ethnic groups with no safety signals, Gilead continued
22 to emphasize positive results while not mentioning negative data from FAERS and others to the
23 press. “Remdesivir: Gilead Touts Promising Coronavirus Outcomes Across Race & Ethnicity
24 [https://www.contagionlive.com/view/Remdesivir-gilead-touts-promising-coronavirus-outcomes-](https://www.contagionlive.com/view/Remdesivir-gilead-touts-promising-coronavirus-outcomes-race-ethnicity)
25 [race-ethnicity](https://www.contagionlive.com/view/Remdesivir-gilead-touts-promising-coronavirus-outcomes-race-ethnicity)

26
27 63. Gilead continued to report in a one-sided manner that its experimental
28

1 drug Remdesivir “improved symptoms when given for five days to moderately ill, hospitalized
2 patients with COVID-19. Gilead Sciences gave few details on Monday but said full results
3 would soon be published in a medical journal.” Thus the stage was set for widespread acceptance
4 of Remdesivir, with little mention of the serious known adverse reactions. “Gilead touts drug”
5 <https://www.pressreader.com/usa/antelope-valley-press/20200602/281676847130629>
6

7 64. In a 2022 appearance on CNBC’s Squawk on the Street, Gilead’s CEO,
8 Daniel O’Day even went so far as promoting their demonstrably unsafe and ineffective drug,
9 Remdesivir, as having “...a major impact upon this pandemic.” Without mention of any potential
10 harms, O’Day depicts Remdesivir as so safe and effective that it’s “...making a big difference
11 for patients. It’s getting patients out of the hospital sooner, five to seven days sooner, and
12 stopping them from going on to more severe consequences of the disease.”
13

14 [https://www.cnbc.com/2022/01/10/cnbc-excerpts-gilead-sciences-chairman-ceo-daniel-oday-](https://www.cnbc.com/2022/01/10/cnbc-excerpts-gilead-sciences-chairman-ceo-daniel-oday-and-novavax-president-ceo-stanley-erck-speak-with-cnbc-squawk-on-the-street-today.html)
15 [and-novavax-president-ceo-stanley-erck-speak-with-cnbc-squawk-on-the-street-today.html](https://www.cnbc.com/2022/01/10/cnbc-excerpts-gilead-sciences-chairman-ceo-daniel-oday-and-novavax-president-ceo-stanley-erck-speak-with-cnbc-squawk-on-the-street-today.html);
16 [https://www.cnbc.com/video/2022/01/10/gilead-ceo-oral-version-of-covid-drug-Remdesivir-in-](https://www.cnbc.com/video/2022/01/10/gilead-ceo-oral-version-of-covid-drug-Remdesivir-in-early-testing.html)
17 [early-testing.html](https://www.cnbc.com/video/2022/01/10/gilead-ceo-oral-version-of-covid-drug-Remdesivir-in-early-testing.html)
18

19 65. Gilead’s less than forthcoming safety information for patients enumerates
20 side effects of Veklury as including allergic reactions, an increase in liver enzymes or nausea but
21 neglects any indication of more serious conditions like acute kidney injury or renal failure,
22 hepatotoxicity or acute liver failure and atrial fibrillation or cardiac arrest denoted in the literature.
23

24 https://www.gilead.com/-/media/files/pdfs/medicines/Covid-19/veklury/veklury_pi.pdf
25 <https://www.veklury.com/important-safety-information/>

26 66. Furthermore, Gilead authored and provided a two-page information sheet
27 to hospitals for discretionary release to patients when, in fact, it had additionally prepared a
28

1 thirty-six-page document with much more detail about the drug for hospitals and doctors which
2 patients were not given. [https://www.gilead.com/-](https://www.gilead.com/-/media/files/pdfs/medicines/covid19/veklury/veklury_patient_pi.pdf)
3 [/media/files/pdfs/medicines/covid19/veklury/veklury_patient_pi.pdf](https://www.gilead.com/-/media/files/pdfs/medicines/covid19/veklury/veklury_patient_pi.pdf); [https://www.gilead.com/-](https://www.gilead.com/-/media/files/pdfs/medicines/Covid-19/veklury/veklury_pi.pdf)
4 [/media/files/pdfs/medicines/Covid-19/veklury/veklury_pi.pdf](https://www.gilead.com/-/media/files/pdfs/medicines/Covid-19/veklury/veklury_pi.pdf)
5

6 67. In effect, Gilead constructively withheld from recipients of Remdesivir
7 copious material information contained in the above-referenced 36-page document that discloses
8 both potential known and unknown adverse effects of Remdesivir administration, including but
9 not limited to, renal complications, hepatic complications, increased risk of transaminase
10 elevations and unknown, admittedly unstudied effects in specific populations such as geriatric,
11 pediatric and pregnant and nursing women.
12

13 68. The named plaintiffs and others in the class received Remdesivir at
14 various medical facilities across the country.
15

16 69. Plaintiffs implicitly or explicitly agreed to the treatment protocol in
17 reliance upon incomplete and misleading published information as to the drug's safety and
18 efficacy.
19

20 70. The administration of Remdesivir at the various medical facilities at which
21 Plaintiffs and the Class were administered the drug was in accordance with Gilead's protocol.
22

23 71. Plaintiffs suffered serious injuries and/or deaths as a result of the
24 administration of Remdesivir.
25

26 72. Plaintiffs and others in the Class were aware of representations by Gilead
27 as to the "safety and efficacy" of Remdesivir. To the extent they even had a say in the matter,
28 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).

1 80. Defendant’s actions, representations, and conduct have violated, and
2 continue to violate the CLRA, because they extend to transactions that intended to result, or
3 which have resulted in, the sale of goods and services to consumers.
4

5 81. Defendant’s advertising that its pharmaceutical drug, Remdesivir, is safe
6 and effective as well as omission of material information to consumers when prior and
7 continuing studies in Defendant’s possession demonstrated the drug was dangerous and resulted
8 in organ damage and death in over fifty percent of the trial participants for example, is false and
9 misleading to a reasonable consumer, including Plaintiffs, because Defendant in fact knew that
10 Remdesivir was ineffective and a dangerous drug with a high risk of organ damage and death.
11

12 82. Cal. Civ. Code § 1770(a)(5), prohibits “[r]epresenting that goods or
13 services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities
14 which they do not have or that a person has a sponsorship, approval, status, affiliation, or
15 connection which he or she does not have.” By engaging in the conduct set forth herein,
16 Defendant violated and continues to violate Section 1770(a)(5) of the CLRA because
17 Defendant’s conduct constitutes unfair methods of competition and unfair or fraudulent acts or
18 practices in that Defendant misrepresented the particular characteristics, benefits, and quantities
19 of the goods and services.
20

21 83. Cal. Civ. Code § 1770(a)(7) also prohibits “[r]epresenting that goods or
22 services are of a particular standard, quality, or grade, or that goods are of a particular style or
23 model, if they are of another.” By engaging in the conduct set forth herein, Defendant violated
24 and continues to violate Section 1770(a)(7) of the CLRA because Defendant’s conduct
25 constitutes unfair methods of competition and unfair or fraudulent acts or practices in that
26 Defendant misrepresented the particular standard, quality or grade of the goods and services.
27
28

1 84. Cal. Civ. Code § 1770(a)(9) further prohibits “[a]dvertising goods or
2 services with intent not to sell them as advertised.” By engaging in the conduct set forth herein,
3 Defendant violated and continues to violate Section 1770(a)(9), because Defendant’s conduct
4 constitutes unfair methods of competition and unfair or fraudulent acts or practices in that
5 Defendant advertises services with the intent not to sell the goods and services as advertised.
6

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

15 86. Plaintiffs and the Class acted reasonably when they purchased
16 Defendant’s drug on the belief that Defendant’s misrepresentations were true and lawful.
17

18 87. Plaintiffs and the Class suffered tangible, concrete, injuries in fact caused
19 by Defendant because: (a) they would not have purchased or paid for Defendant’s drug absent
20 Defendant’s misrepresentations and omissions of a warning that Remdesivir causes organ failure
21 and/or death; (b) they would not have purchased or paid for Defendant’s drug absent Defendant’s
22 misrepresentations and omissions of a warning that Remdesivir causes organ failure and death;
23 (c) they would not have purchased or paid for Defendant’s drug, on the same terms absent
24 Defendant’s misrepresentations and omissions; (d) they paid a price premium for Defendant’s
25 drug based on Defendant’s misrepresentations and omissions; (e) Defendant’s drug did not have
26
27
28

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

3 88. On information and belief, Defendant's violations of the CLRA discussed
4 above were done with the actual knowledge, intent, and awareness that the conduct alleged was
5 wrongful.
6

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

9 90. Plaintiffs and Class Members were harmed as a direct and proximate
10 result of Defendant's violations of the CLRA and are thus entitled to a declaration that
11 Defendant violated the CLRA.
12

13 91. Plaintiffs, on behalf of herself and Class Members, seek injunctive relief
14 under Civil Code § 1782(d). 75. Under California Civil Code § 1780(a), Plaintiffs and members
15 of the Class seek injunctive and equitable relief for Defendant's violations of the CLRA.
16 Plaintiffs will mail an appropriate demand letter consistent with California Civil Code § 1782(a).
17 If Defendant fails to take corrective action within 30 days of receipt of the demand letter,
18 Plaintiffs will amend their complaint to include a request for damages as permitted by Civil Code
19 § 1782(d). 76. Upon satisfaction of any conditions precedent, Plaintiffs and the Class Members
20 will request the Court enter an order awarding them mandatory restitution, and that they are
21 entitled to recover its reasonable attorneys' fees. Plaintiff and the Class Members also seek pre-
22 and-post-judgment interest and attorneys' fees and costs as allowed by statute, including without
23 limitation those recoverable under Cal. Code Civ. Proc. § 1021.5, any common law "private
24 attorney general" equitable doctrine, any "common fund" doctrine, any "substantial benefit"
25
26
27
28

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

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

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

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

10 94. Cal. Bus. & Prof. Code §§ 17500, et seq., makes it “unlawful for any
11 person to make or disseminate or cause to be made or disseminated before the public in this
12 state, ... in any advertising device ... or in any other manner or means whatever, including over
13 the Internet, any statement, concerning ... personal property or services, professional or
14 otherwise, or performance or disposition thereof, which is untrue or misleading and which is
15 known, or which by the exercise of reasonable care should be known, to be untrue or
16 misleading.”
17

18
19 95. Defendant engaged in a scheme of selling consumers the pharmaceutical
20 drug Remdesivir, representing it as safe and effective for the treatment of Covid-19 when
21 Defendant knew or should have known of the prior studies and data demonstrating it was
22 ineffective and dangerous with a high risk for organ failure and death. Defendant’s advertising
23 and marketing of Remdesivir as safe and effective misrepresented and/or omitted the true content
24 and nature of the drug. Defendant knew or should have known that these statements were
25 unauthorized, inaccurate, and misleading.
26
27
28

1 96. Defendant’s advertising that Remdesivir is a safe and effective treatment
2 for Covid-19 is false and misleading to a reasonable consumer, including Plaintiffs, because
3 Defendant in fact knew or should have known, based upon prior studies and data on Remdesivir,
4 that it was unsafe and posed a high risk of severe adverse effects and death to Plaintiffs and the
5 Class.
6

7 97. Defendant violated § 17500, et seq. by misleading Plaintiff and the Class
8 to believe that they were being treated with Remdesivir, a safe and effective drug for the
9 treatment of Covid-19.
10

11 98. Defendant knew or should have known through the exercise of reasonable
12 care, that its advertising Remdesivir as a safe and effective drug for the treatment of Covid-19 is
13 false and misleading. Further, Defendant knew or should have known that it was breaking its
14 promise to Plaintiffs and the Class that they were receiving a safe and effective medical
15 treatment.
16

17 99. Plaintiffs and the Class lost money as well as health and, in many cases,
18 their lives as a result of Defendant’s False Advertising Law (FAL) violations because: (a) they
19 would not have purchased or paid for Defendant’s drug absent Defendant’s misrepresentations
20 and omissions of a warning that the administration of Remdesivir had a high risk of organ
21 failure and death; (b) they would not have purchased or paid for Defendant’s drug absent
22 Defendant’s misrepresentations and omissions of a warning that the administration of
23 Remdesivir had a high risk of organ failure and death and absent Defendant’s misrepresentations
24 and omissions; (d) they paid a price premium for Defendant’s drug packages based upon
25 Defendant’s misrepresentations and omissions; (e) Defendant’s drug did not have the
26
27
28

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

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

8
9 101. Plaintiffs and the Class suffered tangible, concrete injuries in fact as a
10 result of Defendant’s actions as set forth herein because they purchased Remdesivir in reliance
11 on Defendant’s false and misleading marketing claims that they would receive a safe and
12 effective treatment for Covid-19

13
14 102. Plaintiffs and the Class suffered tangible, concrete injuries in fact as a
15 result of Defendant’s actions as set forth herein because they purchased Remdesivir as a
16 treatment for Covid-19 in reliance on Defendant’s false and misleading marketing claims that
17 they would receive a safe and effective treatment for Covid-19.

18
19 103. Defendant’s business practices as alleged herein constitute unfair,
20 deceptive, untrue, and misleading advertising pursuant to the FAL because Defendant advertised
21 its Remdesivir in a manner that is untrue and misleading, which Defendant knew or reasonably
22 should have known.

23
24 104. Defendant profited from the sales of the falsely and deceptively advertised
25 Remdesivir to unwary and believing consumers.

26 105. As a result, pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiffs and
27 Class Members are entitled to injunctive and equitable relief and restitution. Plaintiffs and the
28

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

4
5 106. Plaintiffs and the Class Members request the Court enter an order
6 awarding them mandatory restitution and that they are entitled to recover its reasonable
7 attorneys' fees. Plaintiffs and the Class Members therefore also seek pre-and-post-judgment
8 interest and attorneys' fees and costs as allowed by statute, including without limitation those
9 recoverable under Cal. Code Civ. Proc. § 1021.5, any common law "private attorney general"
10 equitable doctrine, any "common fund" doctrine, any "substantial benefit" doctrine, and/or any
11 equitable principles of contribution and/or other methods of awarding attorneys' fees and costs.
12

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

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

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

20 109. Defendant is subject to California's Unfair Competition Law, Cal. Bus. &
21 Prof. Code §§ 17200, et seq. The UCL provides, in pertinent part: "Unfair competition shall
22 mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue
23 or misleading advertising"
24

25 110. Defendant's advertising that customers would receive a safe and effective
26 treatment for Covid-19, is false and misleading to a reasonable consumer, including Plaintiffs,
27
28

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

3 111. 105. Unlawful: The acts alleged herein are “unlawful” under the UCL in
4 that they violate as described herein at least the following laws: The False Advertising Law, Cal.
5 Bus. & Prof. Code §§ 17500 et seq.; and The Consumers Legal Remedies Act, Cal. Civ. Code §§
6 1750 et seq.
7

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

10 113. As set forth herein, Defendant’s claims relating to the safety and
11 effectiveness of Remdesivir are likely to deceive reasonable consumers and the public.
12 Defendant violated the “fraudulent” prong of the UCL by misleading Plaintiffs and the Class to
13 believe that they would receive a safe and effective treatment for Covid-19.
14

15 114. Unfair: Defendant’s conduct with respect to the advertising and sale of
16 Remdesivir is unfair because its conduct was immoral, unethical, unscrupulous, or substantially
17 injurious to consumers, and the utility of its conduct, if any, does not outweigh the gravity of the
18 harm to its victims.
19

20 115. Defendant’s business practices, described herein, violated the “unfair”
21 prong of the UCL in that its conduct is substantially injurious to consumers, offends public
22 policy, and is immoral, unethical, oppressive, and unscrupulous, as the gravity of the conduct
23 outweighs any alleged benefits. Defendant’s advertising and promise they would provide a safe
24 and effective treatment for Covid-19 when it knew or should have known its drug was
25 ineffective, dangerous, and posed a high risk of organ failure and death is of no benefit to
26 consumers.
27
28

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

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

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

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

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

22 121. Plaintiffs and Class Members are likely to be damaged by Defendant’s
23 deceptive trade practices, as Defendant continues to disseminate, and are otherwise free to
24
25
26
27
28

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

3 122. Defendant's conduct caused and continues to cause substantial injury to
4 Plaintiffs and the other Class Members, who have suffered concrete tangible injury in fact as a
5 result of Defendant's fraudulent, unlawful, and unfair conduct.
6

7 123. In accordance with Bus. & Prof. Code § 17203, Plaintiffs, on behalf of
8 themselves, Class Members, and the general public, seek an order enjoining Defendant
9 continuing to conduct business through unlawful, unfair, and/or fraudulent acts and practices,
10 and to commence a corrective advertising campaign.
11

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

15 125. Plaintiffs and the Class Members have suffered damages in an amount to
16 be determined at trial. Plaintiffs and the Class Members request the Court enter an order
17 awarding them compensatory and punitive damages.
18

19 126. Plaintiffs and the Class Members request the Court enter an order
20 awarding them mandatory restitution and that they are entitled to recover its reasonable
21 attorneys' fees. Plaintiffs and the Class Members therefore also seek pre-and-post-judgment
22 interest and attorneys' fees and costs as allowed by statute, including without limitation those
23 recoverable under Cal. Code Civ. Proc. § 1021.5, any common law "private attorney general"
24 equitable doctrine, any "common fund" doctrine, any "substantial benefit" doctrine, and/or any
25 equitable principles of contribution and/or other methods of awarding attorneys' fees and costs.
26
27
28

FOURTH CAUSE OF ACTION
MONEY HAD AND RECEIVED

1
2
3 127. Plaintiffs reallege and incorporate the allegations elsewhere in the
4 Complaint as if set forth in full herein.

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

7 129. Plaintiffs and the Class seek restitution from Defendant for money had and
8 received.
9

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

12 131. Defendant did not use the money received from Plaintiffs and the Class for
13 its benefit and has not returned or refunded the money to them. As a matter of equity and good
14 conscience that money should be returned to Plaintiffs and the Class Members.
15

16 132. Plaintiffs and the Class Members request the Court enter an order
17 awarding them mandatory restitution and that they are entitled to recover its reasonable
18 attorneys' fees. Plaintiffs and the Class Members therefore also seek pre-and-post-judgment
19 interest and attorneys' fees and costs as allowed by statute, including without limitation those
20 recoverable under Cal. Code Civ. Proc. § 1021.5, any common law "private attorney general"
21 equitable doctrine, any "common fund" doctrine, any "substantial benefit" doctrine, and/or any
22 equitable principles of contribution and/or other methods of awarding attorneys' fees and costs.
23
24

FIFTH CAUSE OF ACTION
NEGLIGENT MISREPRESENTATION

25
26 133. Plaintiffs reallege and incorporate the allegations elsewhere in the
27 Complaint as if set forth in full herein.
28

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

4 135. As set forth herein, Defendant misrepresented that customers would
5 receive a safe and effective treatment for Covid-19. However, Defendant did not in fact provide
6 Plaintiffs and the Class of customers a safe and effective treatment for Covid-19
7

8 136. At the time Defendant made these misrepresentations, Defendant knew or
9 should have known that these misrepresentations were false. Defendant negligently
10 misrepresented and or negligently omitted material facts about Remdesivir and prior studies and
11 data showing that it is ineffective as a treatment for Covid-19 and causes organ failure and death
12

13 137. In providing its services and goods to Plaintiffs and the Class Members,
14 Defendant owed a duty to exercise reasonable care to make full, fair, and adequate disclosure in
15 connection with the characteristics, uses, benefits, standards, quality, attributes, and nature of its
16 Remdesivir. This duty included, among other things, taking reasonable measures to protect the
17 rights of Class Members in compliance with applicable law, including, but not limited to,
18 procedures and policies to supervise, restrict, limit, and determine the accuracy and truthfulness
19 of its representations, materials, and advertising in connection with its goods and services.
20

21 138. In providing Remdesivir to Plaintiffs and the Class Members, Defendant
22 owed a duty to exercise reasonable care regarding and when making its representations about
23 Remdesivir in connection with the characteristics, uses, benefits, standards, quality, attributes,
24 and nature of its goods and services. It was foreseeable that if Defendant did not take reasonable
25 measures to ascertain and ensure the accuracy and truthfulness of its representations Plaintiffs
26 and the Class Members would rely on its representations and be administered Remdesivir.
27
28

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

3 139. The negligent misrepresentations and omissions made by Defendant, upon
4 which Plaintiffs and Class Members reasonably and justifiably relied, were intended to induce
5 and actually induced Plaintiffs and Class Members to purchase Defendant's Remdesivir.
6 Plaintiffs and Class Members would not have purchased Defendant's drug or would not have
7 purchased it on the same terms if the true facts had been known. The negligent actions of
8 Defendant caused damage to Plaintiffs and Class Members, who are entitled to damages and
9 other legal and equitable relief as a result.
10

11 140. Defendant's negligence was a substantial factor in causing harm to
12 Plaintiffs and Class Members. As a direct and proximate cause and result of Defendant's failure
13 to exercise reasonable care and use reasonable measures to ensure the accuracy of its
14 representations and advertising, Plaintiffs and Class Members have suffered actual injury-in-fact
15 and economic damages, including severe physical injury, death, and expense that they would not
16 have otherwise incurred and/or paid.
17

18 141. Neither Plaintiffs nor other Class Members contributed to the unlawful
19 conduct set forth herein, nor did they contribute to Defendant's procedures, and measures which
20 were omitted and led to the failure to ensure the accuracy and truthfulness of Defendant's claims
21 in connection with the nature of its goods and services.
22

23 142. Plaintiffs and the Class Members request the Court enter an order
24 awarding Plaintiffs and the Class Members mandatory restitution and damages, and that they are
25 entitled to recover its reasonable attorneys' fees. Plaintiffs and the Class Members therefore also
26 seek pre-and-post-judgment interest and attorneys' fees and costs as allowed by statute,
27
28

1 including without limitation those recoverable under Cal. Code Civ. Proc. § 1021.5, any common
2 law "private attorney general" equitable doctrine, any "common fund" doctrine, any "substantial
3 benefit" doctrine, and/or any equitable principles of contribution and/or other methods of
4 awarding attorneys' fees and costs.
5

6 **SIXTH CAUSE OF ACTION**
7 **UNJUST ENRICHMENT**

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

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

13 145. "Under California law, the elements of unjust enrichment are: (a) receipt
14 of a benefit; and (b) unjust retention of the benefit at the expense of another." Valencia v.
15 Volkswagen Grp. of Am. Inc., No. 15-CV-00887-HSG, 2015 WL 4747533, at *8 (N.D. Cal.
16 Aug. 11, 2015). See also, Munoz v. MacMillan, 195 Cal. App. 4th 648, 661 (2011) ("Common
17 law principles of restitution require a party to return a benefit when the retention of such benefit
18 would unjustly enrich the recipient; a typical cause of action involving such remedy is 'quasi-
19 contract.'")
20
21

22 146. "When a plaintiff alleges unjust enrichment, a court may construe the
23 cause of action as a quasi-contract claim seeking restitution." Astiana v. Hain Celestial Grp.,
24 Inc., 783 F.3d 753, 762 (9th Cir. 2015). "Whether termed unjust enrichment, quasi-contract, or
25 quantum meruit, the equitable remedy of restitution when unjust enrichment has occurred "is an
26 obligation (not a true contract [citation]) created by the law without regard to the intention of the
27
28

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

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

7
8 148. Defendant’s retention of any benefit collected indirectly from Plaintiffs
9 and Class Members’ payments for treatment with Remdesivir violated principles of justice,
10 equity, and good conscience. As a result, Defendant has been unjustly enriched. Plaintiffs and
11 Class Members are entitled to recover from Defendant all amounts that Defendant has
12 wrongfully and improperly obtained, and Defendant should be required to disgorge to Plaintiffs
13 and Class Members the benefits they have unjustly obtained.

14
15 149. Defendant accepted or retained such benefits with the knowledge that
16 Plaintiffs’ and Class Members’ rights were being violated for financial gain. Defendant has been
17 unjustly enriched in retaining the revenues and profits from Plaintiffs and Class Members’
18 payments, which retention under these circumstances is unjust and inequitable.

19
20 150. As a direct and proximate result of Defendant’s unlawful practices and the
21 retention of Plaintiffs’ and the Class Members’ payments, Plaintiffs and Class Members have
22 suffered concrete harm and injury, including, but not limited to, monetary loss in connection
23 with its payments made from which Defendant profited and purchases of its good and services,
24 serious physical injuries and death as alleged herein.

25
26 151. Defendant’s retention of the non-gratuitous benefits conferred on it by
27 Plaintiffs and Class Members would be unjust and inequitable. Plaintiffs and Class Members are
28

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

3 152. Plaintiffs and the Class Members request the Court enter an order
4 awarding Plaintiffs and the Class Members restitution and damages, and that they are entitled to
5 recover their reasonable attorneys' fees. Plaintiffs and the Class Members therefore also seek pre
6 and-post-judgment interest and attorneys' fees and costs as allowed by statute, including without
7 limitation those recoverable under Cal. Code Civ. Proc. § 1021.5, any common law "private
8 attorney general" equitable doctrine, any "common fund" doctrine, any "substantial benefit"
9 doctrine, and/or any equitable principles of contribution and/or other methods of awarding
10 attorneys' fees and costs.
11
12

13 **PRAYER FOR RELIEF**

14 Wherefore, Plaintiffs, on behalf of themselves, all others Class Members similarly
15 situated, and the general public, pray for judgment against Defendant as to each and every cause
16 of action, and the following remedies: (a) An Order declaring this action to be a proper class
17 action, appointing Plaintiffs as class representatives, and appointing their undersigned counsel as
18 class counsel; (b) An Order requiring Defendant to bear the cost of class notice(s); (c) An Order
19 declaring Defendant's conduct unlawful; (d) An Order enjoining Defendant from engaging in the
20 unfair, unlawful, and deceptive business practices and false advertising complained of herein; (e)
21 An Order compelling Defendant to conduct a corrective advertising campaign; (f) An Order
22 compelling Defendant to recall and destroy all misleading and deceptive advertising materials;
23 (g) An Order requiring Defendant to disgorge all monies, revenues, and profits obtained by
24 means of any wrongful act or practice; (h) An Order requiring Defendant to pay restitution to
25 restore all funds acquired by means of any act or practice declared by this Court to be an
26
27
28

1 unlawful, unfair, or fraudulent business act or practice, untrue or misleading advertising, plus
2 pre-and post-judgment interest thereon; (i) An Order requiring Defendant to pay all actual and
3 statutory damages permitted under the causes of action alleged herein; (j) An Order requiring
4 Defendant to pay punitive and exemplary damages permitted under the causes of action alleged
5 herein; (k) An award of pre-and-post-judgment interest and attorneys' fees and costs as allowed
6 by statute, including without limitation those recoverable under Cal. Code Civ. Proc. § 1021.5,
7 any common law "private attorney general" equitable doctrine, any "common fund" doctrine,
8 any "substantial benefit" doctrine, and/or any equitable principles of contribution and/or other
9 methods of awarding attorneys' fees and costs; and (l) Any other and further relief that Court
10 deems necessary, just, or proper.
11
12

13 **JURY DEMAND**

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

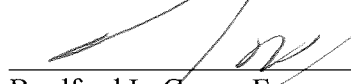
15 Respectfully submitted September 27, 2023.
16

17 **Jacob Levin Law**

18 

19 Jacob Levin
20 1308 Elmer Street
21 Redding, CA 96001
22 Attorney for Plaintiffs and Class

23 **FormerFedsGroup.Com LLC**

24 

25 Bradford L. Geyer, Esq.
26 141 "i" Route 130 S., 303
27 Cinnaminson, NJ 08077
28 Attorney for Plaintiffs and Class

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Myer and Scher, LLP

Melissa Jacobs

Melissa Jacobs, Esq.
377B South Oyster Bay Road
Plainview, NY 11803
Attorney for Plaintiff and Class

David A. Dalia

David A. Dalia, Esq.
830 Union Street, Suite 302
New Orleans, LA. 70112
Attorney for Plaintiffs and Class

Myer and Scher, LLP

Jamie Scher

Jamie Scher, Esq.
377B South Oyster Bay Road
Plainview, NY 11803
Attorney for Plaintiff and Class

Myer and Scher, LLP

Stephen Scher

Stephen Scher, Esq.
377B South Oyster Bay Road
Plainview, NY 11803
Attorney for Plaintiff and Class

Document Title:

RemClas 03142023 Cal Complaint final 9-27-23.docx

Status:

Out for signature

Package ID:

3cbce3bc-e058-4ec0-aaa3-c2e27741322c

ACTION	RECIPIENT	TIME	IP
Signed	Melissa Jacobs, Esq. (melissahealth1@gmail.com)	2023-09-27 11:29:05 -0700	IP: 136.34.104.226
Signed	Stephen Scher, Esq. (stephen@myerandscher.com)	2023-09-27 10:48:15 -0700	IP: 69.118.226.10
Viewed	Melissa Jacobs, Esq. (melissahealth1@gmail.com)	2023-09-27 10:13:25 -0700	IP: 136.34.104.226
Signed	David A. Dalia, Esq. (davidadalia@gmail.com)	2023-09-27 09:40:30 -0700	IP: 99.95.77.8
Signed	Jamie Scher, Esq. (jamie@myerandscher.com)	2023-09-27 09:35:32 -0700	IP: 69.118.226.10
Viewed	Jamie Scher, Esq. (jamie@myerandscher.com)	2023-09-27 09:33:43 -0700	IP: 69.118.226.10
Viewed	David A. Dalia, Esq. (davidadalia@gmail.com)	2023-09-27 09:32:36 -0700	IP: 99.95.77.8
Viewed	Stephen Scher, Esq. (stephen@myerandscher.com)	2023-09-27 09:31:10 -0700	IP: 69.118.226.10
Signed	Jacob Levin (jacob@jacoblewinlaw.com)	2023-09-27 09:17:57 -0700	IP: 47.45.104.99