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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 PETER STALEY, *et al.*,
15 Plaintiffs,
16 v.
17 GILEAD SCIENCES, INC., *et al.*,
18 Defendants.

Case No. 3:19-cv-02573-EMC

**NOTICE OF MOTION,
MOTION FOR LEAVE TO FILE
BRIEF OF HIV RESEARCH, POLICY,
AND ADVOCACY ORGANIZATIONS
IN SUPPORT OF PLAINTIFFS’
OPPOSITION TO MOTIONS TO
DISMISS, AND MEMORANDUM OF
LAW IN SUPPORT THEREOF**

Hearing Date: January 16, 2020
Hearing Time: 1:30 p.m.
Courtroom: 5 – 17th Floor
Judge: Honorable Edward M. Chen

1 **NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE**
2 **IN SUPPORT OF PLAINTIFFS’ OPPOSITION TO MOTIONS TO DISMISS**

3 TO PARTIES AND THEIR ATTORNEYS OF RECORD:

4 NOTICE IS HEREBY GIVEN that Amici Curiae Treatment Action Group (TAG),
5 AIDS Action Baltimore (AAB), The Foundation for AIDS Research (“amfAR”), AVAC: Global
6 Advocacy for HIV Prevention, Health GAP (Global Access Project), Housing Works, The SERO
7 Project, and the U.S. PLHIV Caucus, by and through their counsel of record, do hereby move this
8 Court for leave to file the attached brief amici curiae in support of plaintiff’s opposition to the
9 motion to dismiss.¹ The basis for this motion is set forth below.

10 Amici respectfully request leave to file the accompanying brief of amici curiae.

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12
13 **I. INTEREST OF AMICI CURIAE**

14 Amici – Treatment Action Group (TAG), AIDS Action Baltimore (AAB), The Foundation
15 for AIDS Research (amfAR), AVAC: Global Advocacy for HIV Prevention, Health GAP (Global
16 Access Project), Housing Works, The SERO Project, and the U.S. PLHIV Caucus – are not-for-
17 profit organizations dedicated to improving the lives of people living with HIV (or at risk of
18 acquiring HIV) through research, policy, and advocacy. Ensuring that lifesaving and preventive HIV
19 therapies are accessible and affordable for all who need them is central to the mission of all amici

20 _____
21 ¹ Plaintiffs and all defendants except Japan Tobacco Inc., have advised that they do not object to the
22 filing of the proposed amici brief; Japan Tobacco has indicated that it does not consent to the filing.
23 Amici state, as contemplated by the analogous Fed. R. App. P. Rule 29(a)(4)(D), that no party or
24 party’s counsel authored the brief in whole or in part, or contributed money that was intended to
25 fund preparing or submitting the brief. No person other than amici or their counsel contributed
26 money that was intended to fund preparing or submitting the brief. Amici note that plaintiff Peter
27 Staley was in 1992 one of the founders and Founding Director of amicus the Treatment Action
28 Group but left that position in 1997. Staley also served on the board of amicus amfAR but left that
role in 2004. Staley does not have any current role in any of the amici on this brief.

1 and a fundamental pillar of the strategy to end the HIV epidemic in the United States. Amici work to
 2 accelerate discovery, development, research, approval, and access to better HIV treatments and
 3 preventive therapies.

4 As part of this effort, amici have fought against excessive HIV drug prices for years and in
 5 some cases decades. Amici are keenly aware of and focus much of their research and advocacy on
 6 the high drug prices that prevent many people living with HIV from being able to afford the
 7 continuous drug regimens required to keep them healthy and their HIV suppressed. Relatedly, amici
 8 also have a deep understanding of the barriers, financial or otherwise, that keep preventive drugs that
 9 could dramatically reduce the risk of infection inaccessible for many people who are at risk of HIV.

10 **II. DISTRICT COURTS HAVE BROAD DISCRETION TO ACCEPT AMICUS BRIEFS**
 11 **THAT ARE USEFUL AND CAN ASSIST THE COURT**

12 “Whether to allow [a]mici to file a brief is solely within the Court’s discretion, and generally
 13 courts have ‘exercised great liberality... an individual seeking to appear as amicus must merely
 14 make a showing that his participation is useful or otherwise desirable to the court.’” *Woodfin Suite*
 15 *Hotels, LLC v. City of Emeryville*, No. C 06-1254, 2007 U.S. Dist. LEXIS 4467, at *8-9 (N.D. Cal.
 16 Jan. 9, 2007) (quoting *In re Roxford Foods Litigation*, 790 F. Supp 987, 997 (E.D. Cal. 1991).
 17 Moreover, “[d]istrict courts frequently welcome amicus briefs from non-parties concerning legal
 18 issues that have potential ramifications beyond the parties directly involved or if the amicus has
 19 ‘unique information or perspective that can help the court beyond the help that the lawyers for the
 20 parties are able to provide.’” *Sonoma Falls Developers, LLC v. Nev. Gold & Casinos, Inc.*, 272 F.
 21 Supp. 2d 919, 925 (N.D. Cal 2003) (citing *Cobell v. Norton*, 246 F. Supp. 2d 59, 62 (D.D.C. 2003)
 22 (quoting *Ryan v. Commodity Futures Trading Comm’n*, 125 F.3d 1062, 1064 (7th Cir. 1997))).
 23 “[T]here is no requirement ‘that amici must be totally disinterested’” – rather, the relevant question
 24 is “whether the amicus is ‘helpful,’” *California v. U.S. Dep’t of Labor*, No. 2:13-CV-02069-KJM-
 25 DAD, 2014 WL 12691095, at *1 (E.D. Cal. Jan. 14, 2014) (quoting *Hoptowitz v. Ray*, 682 F.2d 1237,
 26 1260 (9th Cir. 1982)) (finding amicus brief helpful in resolving motion to dismiss).

1 This Court too has previously allowed amicus participation at the motion to dismiss stage,
2 see *Ou-Young v. Roberts*, No. C-13-442 EMC, 2013 U.S. Dist. LEXIS 179213, at *9 (N.D. Cal. Dec.
3 20, 2013) (Chen, J.) (allowing brief of the United States as amicus on behalf of federal defendants),
4 and at the preliminary injunction stage, see *Ramos v. Nielsen*, 336 F. Supp. 3d 1075, 1085-86 (N.D.
5 Cal 2018) (Chen, J.).

6
7 **III. THE PROPOSED BRIEF WILL ASSIST THE COURT BY PROVIDING UNIQUE**
8 **PERSPECTIVES ON THE RAMIFICATIONS OF THE ALLEGATIONS IN THE**
9 **COMPLAINT**

10 The proposed *amicus* brief is useful and desirable. Amici offer independent expertise and a
11 unique perspective on the critical real-world impacts of the alleged conduct that the parties would
12 not otherwise provide. Amici’s work is centered on the third-party individuals and communities that
13 are, and continue to be, significantly harmed by the alleged conduct set forth in the Complaint. The
14 brief details the huge ramifications of this case for the future of HIV treatment and prevention efforts
15 in the United States. The lives and wellbeing of well over one million Americans depend on the HIV
16 drug market functioning openly and competitively. As the Court assesses the legal sufficiency of
17 Plaintiffs allegations, the perspectives provided in the brief will deepen the Court’s understanding of
18 the full context and potential impact of this case on the public interest, particularly the effects of
19 exorbitant prices, fewer drug options, and diminished competition on health outcomes for people
20 living with, or at risk of, HIV in the United States. This Court has found amicus briefs to be useful
21 when, as here, they “underscore that the harms to [the plaintiffs] will also harm the public interest.”
22 *Ramos*, 336 F. Supp. 3d at 1085-86.

23 In the proposed brief, amici explain the acute public interest and public health factors at stake
24 in this litigation. The brief provides greater context for the Court’s assessment of the allegations in
25 the Complaint, detailing the market and medical background necessary to understand the widespread
26 ramifications of Defendant’s alleged anticompetitive behavior. Defendant Gilead’s Motion to
27 Dismiss itself invokes the broader context beyond the mere allegations in the Complaint, noting its
28 role in addressing the HIV epidemic and citing its own press releases as well as government agency

1 news releases, guidelines, and guidance to direct the Court's attention to the larger context of HIV
2 drug development. See Gilead Motion to Dismiss at 5, 8, 9, and 15.

3
4 **IV. THE PROPOSED BRIEF IS TIMELY**

5 The proposed brief is timely and will not cause any delay. All parties were given notice on
6 October 22 of amici's intent to submit the brief and asked for consent. The proposed brief is being
7 submitted to the court within the time period provided by the analogous provision of the Fed. R.
8 App. P., Rule 29(a)(6) (within seven days after filing of the brief of the party being supported).
9 Plaintiffs and all defendants except Japan Tobacco Inc., have advised that they do not object to the
10 filing of the proposed amici brief; Japan Tobacco has indicated that it does not consent to the filing.

11 For the foregoing reasons, amici request that the Court grant leave to file the attached brief
12 *amici curiae*.

13 /s/ Phillip R. Malone

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CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2019, I electronically filed the foregoing NOTICE OF MOTION, MOTION FOR LEAVE TO FILE BRIEF OF HIV RESEARCH, POLICY. AND ADVOCACY ORGANIZATIONS IN SUPPORT OF PLAINTIFFS’ OPPOSITION TO MOTIONS TO DISMISS, AND MEMORANDUM OF LAW IN SUPPORT THEREOF; PROPOSED BRIEF AMICI CURIAE; and PROPOSED ODER with the Clerk of the Court for the United States District Court for the Northern District of California by using the court’s CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Date: October 25, 2019

/s/ Phillip R. Malone

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