

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

GILEAD SCIENCES, INC., <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	Case No. _____
	:	
v.	:	
	:	FILED <i>EX PARTE</i> AND UNDER SEAL
CITY PLUS CARE PHARMACY INC. D/B/A	:	PURSUANT TO 15 U.S.C. § 1116(d)
HEAL THE WORLD PHAMACY, <i>et al.</i> ,	:	
	:	
Defendants.	:	

**[PROPOSED] TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE FOR A PRELIMINARY INJUNCTION**



Upon review of the Complaint of Gilead Sciences, Inc. and Gilead Sciences Ireland UC, the accompanying declarations and the exhibits annexed hereto, and the memorandum of law submitted in support of this Order, and for good cause shown, it is hereby:

ORDERED, that for the reasons set forth in Plaintiffs’ request for entry of a temporary restraining order, Plaintiffs’ request be and hereby is GRANTED; and it is further

ORDERED that, pending further order of this Court, Defendants City Plus Care Pharmacy Inc. d/b/a Heal the World Pharmacy (“Heal the World”), Nabila Chaudhary, Qaiser Chaudhary, or Hamza Chaudhary (together, “Defendants”) and their principals, agents, officers, directors, members, servants, employees, successors, assigns and all other persons in concert and participation with them (collectively, the “Restrained Parties”), shall, upon service of this Order in the manner described below, be immediately temporarily restrained from engaging in any or all of the following acts:

1. Purchasing, selling, distributing, marketing, manufacturing, or otherwise using any of the Gilead Marks (as defined herein) on any counterfeit or authentic product, or any marks confusingly similar thereto in connection with any products. The “Gilead Marks” are defined as the following:

Trademark	Registration Number	Registration Date
GILEAD	3251595	June 12, 2007
	2656314	December 3, 2002
GSI	3890252	December 14, 2010
BIKTARVY	5344455	November 28, 2017
DESCOVY	4876632	December 29, 2015
DESCOVY FOR PREP	5912591	November 19, 2019
9883	5467392	May 15, 2018
	5636131	December 25, 2018
	5906177	November 12, 2019
	5030567	August 30, 2016
	5154303	March 7, 2017
TRUVADA	2915213	December 28, 2004
GENVOYA	4797730	August 25, 2015
VOSEVI	5259592	August 8, 2017
STRIBILD	4263613	December 25, 2012

Trademark	Registration Number	Registration Date
	6031751	April 14, 2020
SOVALDI	4468665	January 21, 2014
	5018106	August 9, 2016
7977	4585257	August 12, 2014
ODEFSEY	4879988	January 5, 2016

2. Using any logo, trade name or trademark confusingly similar to any of the Gilead Marks which may be calculated to falsely represent or which has the effect of falsely representing that the services or products of any or all of the defendants or of others are sponsored by, authorized by or in any way associated with Plaintiffs;

3. Infringing any of the Gilead Marks;

4. Falsely representing any or all of Defendants as being connected with Plaintiffs or sponsored by or associated with Plaintiffs or engaging in any act which is likely to cause the trade, retailers and/or members of the purchasing public to believe that any or all of Defendants are associated with Plaintiffs;

5. Using any reproduction, counterfeit, copy, or colorable imitation of any of the Gilead Marks in connection with the publicity, promotion, sale, or advertising of any Gilead product;

6. Affixing, applying, annexing or using in connection with the sale of any goods, a false description or representation including words or other symbols tending to falsely describe or represent such goods as being Gilead products, and from offering such goods in commerce;

7. Diluting any of the Gilead Marks;

8. Removing from their premises, or discarding, destroying, transferring or disposing in any manner any information, computer files, electronic files, WhatsApp or text messages, business records (including but not limited to e-mail communications) or other documents or communications relating to Defendants' assets and operations or relating in any way to the purchase, sale, manufacture, offer for sale, distribution, negotiation, importation, advertisement, promotion, or receipt of any products purporting to be Gilead products, including without limitation any products bearing any of the Gilead Marks, including without limitation BIKTARVY®; and

9. Assisting, aiding or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs (1) through (8) above; and it is further

ORDERED that the temporary restraining order as set forth in subparagraphs 1 through 9 above shall be in effect for a period of 14 days from the entry hereof, after which it shall expire absent further order of the Court; and it is further

ORDERED that the Restrained Parties shall turn over to Plaintiffs or any person or entity designated by Plaintiffs all counterfeit Gilead products in their possession, custody, or control to be held by Plaintiffs until further order of this Court; and it is further

ORDERED that Plaintiffs shall attempt in good faith to effect service of the Summons and Complaint, Asset Freeze Order, and this Order, together with copies of the papers in support thereof, within four business days of the undersigned date on Defendants (but in any event, not in advance of the execution of any Seizure Order entered by this Court), by delivering true copies thereof to any person of suitable age found at Defendants' business or home address, or if no such persons are found, then by any method permissible under Federal Rule of Civil Procedure 4; and it is further

ORDERED that within three business days of the entry of this Order, Plaintiffs post an undertaking with the Clerk of the Court in the form of a bond, cash or check in the amount of \$50,000 as security for the payment of such costs and damages as may be incurred or suffered by any party as a result of any undue harm caused by this Order and for the payment of such damages as may be incurred or suffered by any party as the result of a wrongful seizure or wrongfully attempted seizure pursuant to this Court's Seizure Order, and that such undertaking, if in the form of check or cash, shall be held in an interest-bearing account; and it is further

ORDERED that Defendants shall show cause before this Court at Courtroom _____, United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York, 11201, on the ____ day of _____, 2025 at ____ o'clock __.m., or such other date as may be fixed by the Court, why a preliminary injunction, pursuant to Rule 65 of the Federal Rules of Civil Procedure, should not be issued enjoining Defendants and the Restrained Parties in the manner set forth in paragraphs 1-9 of this Order for the duration of this litigation and confirming this Court's seizure order; and it is further

ORDERED that answering papers, if any, be filed by Defendants with this Court and served upon Plaintiffs' counsel, Geoffrey Potter, by email at the email address CounterfeitGileadMedications@pbwt.com on or before the _____ day of _____, 2025, and reply papers shall be filed and served on or before the _____ day of _____, 2025; and finally, it is

ORDERED that Defendants are hereby put on notice that failure to attend the show cause hearing scheduled herein shall result in the immediate issuance of the preliminary injunction and confirmation of the Court's seizure order, and that failure of Defendants to respond to the Order to Show Cause by the ____ day of _____, 2025 shall result in the automatic

issuance of a preliminary injunction, which shall be deemed to take effect immediately and shall extend during the pendency of this action. The Restrained Parties shall be deemed to have actual notice of the issuance and terms of such preliminary injunction, and that any act by any of the Restrained Parties in violation of any of its terms may be considered and prosecuted as contempt of this Court.

UNITED STATES DISTRICT JUDGE

Issued: March _____, 2025 at _____ o'clock _____.

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Plaintiffs Gilead Sciences, Inc. and Gilead Sciences Ireland UC (together, “Gilead” or “Plaintiffs”) submit this memorandum of law in support of their application seeking immediate injunctive relief against Defendants City Care Plus Pharmacy Inc. d/b/a Heal the World Pharmacy, Nabila Chaudhary, Qaiser Chaudhary, and Hamza Chaudhary. Gilead seeks on an *ex parte* basis (1) a seizure order; (2) a temporary restraining order, to be followed by a preliminary injunction; (3) an expedited discovery order; and (4) an asset freeze order.

INTRODUCTION

Gilead brings this action, the third anti-counterfeiting lawsuit it has brought in this Court since 2021, and moves for *ex parte*, urgent relief to put an immediate stop to the Defendants’ distribution of potentially dangerous counterfeit HIV medicines to patients in this District. Just weeks ago, Gilead received a complaint from a patient in Queens about a bottle of Gilead-branded HIV medicine, BIKTARVY[®], that they had received from their local pharmacy, Defendant City Care Plus Pharmacy Inc. d/b/a Heal the World Pharmacy (“Heal the World”), which is owned and operated by the remaining Defendants, members of the Chaudhary family. Gilead’s examination of the complaint bottle proves conclusively that it is counterfeit – and, alarmingly, a different and more sophisticated counterfeit than what Gilead has previously encountered. The counterfeit HIV medicine dispensed by Defendants bears a counterfeit replica of Gilead’s label for BIKTARVY[®], affixed to the bottle in a manner that makes the counterfeit nearly indistinguishable to the naked eye from authentic BIKTARVY[®]. An image of the counterfeit BIKTARVY[®] (left), alongside Gilead’s authentic BIKTARVY[®] artwork (right), is below¹:

¹ The black marker that appears on the label was present on the bottle dispensed by Heal the World at the time Gilead received the bottle.



Both the accuracy of the fake label and the professional-seeming manner in which it is adhered to the bottle strongly suggest a sophisticated counterfeiting scheme that is operating at scale: criminals do not go through the trouble of creating fakes like this in order to sell one or two counterfeit bottles.

The public health risk posed by the Defendants' trafficking counterfeit HIV medicines is dire. BIKTARVY[®] must be taken daily to maintain its efficacy. Missing even a few days of HIV treatment can lead to a significant increase in a patient's viral load, and viral rebound can have severe consequences. The patient who reported the bottle to Gilead did not know it was counterfeit: they called to report that their bottle of BIKTARVY[®] did not contain a full 30-day supply. And because the patient came to that realization only after consuming all the tablets inside the bottle, Gilead does not know what the BIKTARVY[®] branded bottle actually contained – but the evidence strongly suggests that whatever was in that bottle, it was filled by counterfeiters, not by Gilead.

Gilead approached Heal the World, the dispensing pharmacy, immediately after confirming the BIKTARVY[®] was counterfeit. In contrast to any legitimate pharmacy, which

would be horrified to learn it dispensed counterfeit HIV medicine to a patient, the Defendants have refused to respond to Gilead's inquiries about the counterfeit BIKTARVY[®], repeatedly hanging up the phone and ignoring written communications. And the principals of the pharmacy that dispensed the counterfeit, Defendants Nabila and Qaiser Chaudhary, have a documented history of selling infringing, mislabeled products through their pharmacies, and then simply ignoring service of process when sued in this District. Gilead therefore moves on an urgent *ex parte* basis to shut down this newly discovered counterfeiting operation.

In this motion, Gilead seeks three forms of urgent, *ex parte* relief. First, Gilead seeks an *ex parte* seizure order pursuant to the Trademark Counterfeiting Act of 1984, 15 U.S.C. § 1116(d). A seizure allowing Gilead to remove any other Gilead-branded counterfeits (or means for manufacturing counterfeits) from Heal the World's premises, and granting Gilead access to Defendants' documents and communications about the counterfeits, is vital to Gilead's efforts to shut down this counterfeiting operation and remove these counterfeit medicines from the pharmaceutical supply chain. Second, Gilead requests an *ex parte* temporary restraining order, to be followed by a preliminary injunction, prohibiting the Defendants from selling any Gilead-branded medicines. Third, Gilead requests an *ex parte* asset freeze order to prohibit the Defendants from dissipating their ill-gotten gains. Fourth, Gilead seeks expedited discovery.

Gilead has sought these forms of *ex parte* relief against dozens of other counterfeiters in prior actions before this Court, which have allowed Gilead to shut down an over quarter-billion dollar conspiracy to sell counterfeit Gilead-branded medicine. *See Gilead et al. v. Safe Chain et al.*, No. 21-cv-4106 (E.D.N.Y.) ("*Gilead I*"); *Gilead et al. v. Khaim et al.*, No. 24-cv-4259 (E.D.N.Y.) ("*Gilead II*"). Every seizure executed in *Gilead I* and *Gilead II* was subsequently confirmed by this Court, every temporary restraining order was converted into a preliminary

injunction, and many of the defendants in those cases have been criminally indicted and convicted. Gilead respectfully urges the Court to issue the similarly requested relief here, allowing Gilead to uncover and stop this latest counterfeiting scheme, and protecting patients in this District and throughout the United States from receiving fake Gilead-branded medicine.

* * *

To ensure a complete record is before the Court and the Defendants with regard to this action, Gilead does not assume the reader of this memorandum has any familiarity with *Gilead I* or *II*. However, because of the overlap in factual and legal issues amongst these cases, where appropriate select portions of this memorandum have been taken nearly verbatim from Gilead's filings in *Gilead I* or *II*.

STATEMENT OF FACTS

I. GILEAD'S HIV MEDICINES

A. Gilead's Trademarks

Gilead is the owner of several different registered, well-established, and famous trademarks that appear on the packaging of genuine Gilead HIV medicines. Those trademarks and proof of their registration are set forth as Exhibit 2 of the Declaration of Geoffrey Potter dated March 17, 2025 (the "Potter Decl."). The declaration of Gretchen Stroud, dated August 17, 2021, sets forth evidence of the marks' famousness and use.² Potter Decl., Ex. 3 ¶¶ 4-18.

B. Gilead's HIV Medicines

Gilead's HIV medicines are groundbreaking treatments that have transformed the lives of patients living with HIV and persons who are at high risk of HIV infection. So far, Gilead has

² Ms. Stroud's declaration, along with some of the other declarations submitted in connection with this motion, was originally submitted in *Gilead I* and *Gilead II*, and is re-submitted here to ensure a complete record is before the Court.

confirmed that Heal the World sold counterfeit Gilead BIKTARVY®.

BIKTARVY® is a complete, one-pill, once-a-day prescription medication used to treat HIV. Potter Decl., Ex. 4 ¶ 8. It has a demonstrated long-term efficacy and safety profile, few drug interactions and side effects, and a high barrier to developing drug resistance. *Id.* ¶ 9.

Although BIKTARVY® does not cure HIV, when taken every day as prescribed, it can lower the amount of virus in a patient's blood to undetectable levels. *Id.* ¶ 10.

BIKTARVY® comes in thirty-tablet original Gilead bottles, representing a one-month supply of the drug. *Id.* ¶ 14. For patients treating HIV infection, it is important that the patient take the Gilead medicine once a day, every day. *Id.* ¶ 15. If a patient skips doses for even a short period of time, the patient faces the risk that the patient's viral load – *i.e.*, the amount of HIV in their blood – will increase. *Id.* Viral rebound can have severe consequences: over time, it can weaken the patient's immune system and increase the possibility of infections; it can result in progression of the disease and lead to the development of AIDS; and it can make patients more likely to infect their sexual partners. *Id.* ¶ 16.

II. HEAL THE WORLD'S SALE OF COUNTERFEIT HIV MEDICAITON

A. The Patient Report

On January 27, 2025, Gilead received a call at its customer-service hotline from a patient in Queens regarding a bottle of BIKTARVY® that had been dispensed to them by Heal the World. Decl. of Connor Mitchell, dated March 14, 2025 (“Mitchell Decl.”) ¶ 4. The patient reported that the bottle contained the incorrect number of tablets: while a bottle of BIKTARVY® contains 30 tablets, the patient reported that they had taken one tablet a day since picking up the bottle from Heal the World on January 4, 2025, and, on January 27, had just taken the final tablet in the bottle. *Id.* ¶ 5.

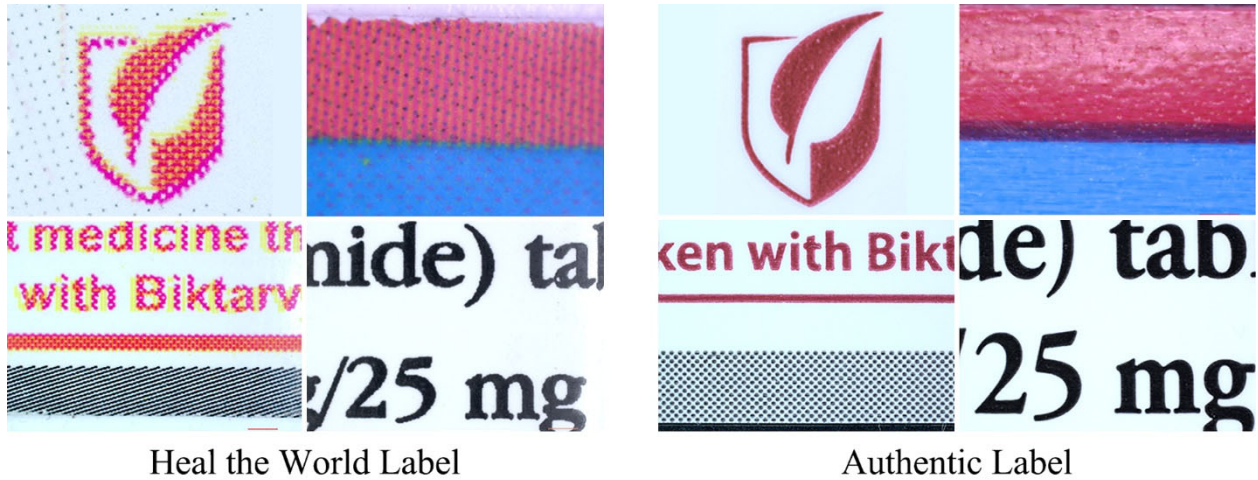
B. Gilead Confirms the Expiration Date Is Fake and Obtains the Counterfeit BIKTARVY® from the Patient

At Gilead's request, the patient sent Gilead a photograph of their BIKTARVY® bottle. *Id.* ¶ 6. The label showed lot number ZYFSA and an expiration date of December 2026. *Id.* Gilead checked its internal records and determined that the expiration date on the bottle was fake: ZYFSA is a genuine lot number of BIKTARVY®, but all authentic bottles of BIKTARVY® from lot ZYFSA had an expiration date of November 2020 – which, obviously, had long since passed when the patient was dispensed the bottle in 2025. Gilead immediately arranged for the patient to send the now-empty BIKTARVY® bottle to Gilead for analysis. *Id.*

C. Gilead's Analysis Confirms the BIKTARVY® Label Is a Counterfeit Replica

Gilead received the BIKTARVY® bottle from the patient on or about January 29, 2025. *Id.* ¶ 7. Like many Gilead-branded products, BIKTARVY® must be dispensed in Gilead's original manufacturer's branded bottle: per its FDA-approved label, it cannot be dispensed in generic pharmacy bottles. Potter Decl., Ex. 5 (Current BIKTARVY® FDA Labeling) at 42. As is typical for prescription medicine dispensed to U.S. patients, the patient's BIKTARVY® bottle had a pharmacy patient sticker from Heal the World affixed to it – a label applied at the time of dispensation listing the pharmacy name, patient name, doctor name, number of refills, etc. – that was partially covering up the BIKTARVY® label. Mitchell Decl. ¶ 8. Gilead's packaging expert carefully removed that pharmacy patient sticker to examine the BIKTARVY® label on the bottle itself. *Id.* Although Gilead knew at the time it received the BIKTARVY® bottle that it bore a fake expiration date, at first glance, it appeared authentic. *Id.* ¶ 9. But upon closer examination, Gilead's in-house experts conclusively determined the entirety of the BIKTARVY®

Finally, Gilead conducted a microscopic analysis of the print on the counterfeit label. Although not apparent to the naked eye, under a microscope the differences between the high-quality printing on Gilead’s label and the lower-quality printing on the counterfeit label are clear:



Id. ¶ 13.

D. The Counterfeit Did Not Include the Patient Information Booklet

Authentic BIKTARVY® is distributed with the FDA-required Patient Information booklets folded up and affixed to the side of the bottle with adhesive. *Id.* ¶ 14. The Patient Information booklet is sometimes referred to as an “outsert” (because it is on the outside of the bottle, as opposed to an “insert” inside a carton). As received by Gilead, the counterfeit dispensed by Heal the World did not have a Patient Information booklet attached. *Id.* The bottle in fact did not show any signs of adhesive residue, as would be expected if the booklet had been once present but subsequently removed. *Id.* ¶ 15.

E. The Counterfeit BIKTARVY® Is Difficult to Detect

Although the evidence set forth above leaves no room for doubt that the BIKTARVY® from Heal the World pharmacy is in fact counterfeit – and contains counterfeit reproductions of Gilead’s registered trademarks – those differences are generally unlikely to be spotted by a

pharmacy or patient. Gilead was only able to identify the expiration date on the label as fake based on Gilead's own internal records. And even the misspelled word "Manufacturaded" is easy to miss, because *manufactured* is a word that native speakers tend to read quickly, without parsing letter-by-letter. While not perfect, the counterfeit is otherwise a highly deceptive replica, matching the words, font, and images of the authentic product. The small differences between the two indicate that the counterfeit label is not merely a scan or photocopy of an authentic label, but rather a carefully reconstructed fake.

Moreover, the counterfeit label is also affixed to the bottle firmly and professionally. Even after being dispensed, handled by the patient, and delivered to Gilead, the counterfeit label did not show any of the skewing/misalignment, bubbling, stretching, tearing, lifted corners, or other imperfections typically associated with counterfeit labels, especially those adhered to cylindrical surfaces. It would be virtually impossible to apply the counterfeit label in this manner by hand.

This is the first time Gilead has ever encountered in the United States this type of counterfeit: a bottle of Gilead-branded medicine bearing a counterfeit replica label. The counterfeit Gilead-branded HIV medicines uncovered in *Gilead I* and *II* were, generally speaking, manufactured from once-authentic Gilead bottles, bearing once-authentic Gilead labels, purchased off the street. For example, in those cases counterfeiters would take empty bottles of BIKTARVY[®], fill them with the wrong medication (or, for example, candy), apply a counterfeit seal to the opening of the bottle, and sell the bottles as new. The level of sophistication and effort that evidently went into this counterfeit – both the label itself and the manner in which it is affixed to the bottle – strongly suggests that this is a counterfeiting operation that either is or intends to be large-scale. Counterfeiters are very unlikely to incur the

significant up-front cost of creating a sophisticated counterfeit labeling apparatus in order to manufacture only a handful of counterfeits.

F. Heal the World Obstructs Gilead’s Anti-Counterfeiting Investigation

After receiving the product complaint about the BIKTARVY[®] dispensed by Heal the World, Gilead repeatedly attempted to contact the pharmacy for more information about the BIKTARVY[®] and where it came from. On January 27 – before Gilead had received the BIKTARVY[®] bottle from the patient – Gilead’s Quality Assurance Team called Heal the World and spoke to the pharmacy by phone. Mitchell Decl. ¶ 16. On that call, the pharmacy confirmed the reporting patient was a customer, stated that it had been dispensing BIKTARVY[®] for the patient for years, and claimed to confirm all medicines had an intact foil seal before dispensing. *Id.* But when Gilead asked for a copy of the pedigree for the BIKTARVY[®] at issue, the pharmacy stopped being responsive. *Id.* ¶ 17.

Pedigrees are legally required documents pursuant to the federal Drug Supply Chain Security Act (“DSCSA”), 21 U.S.C. §§ 360eee *et seq.* Enacted in the wake of a devastating fungal meningitis outbreak caused by contaminated medications sold by a rogue distributor, the DSCSA’s stated purpose is “to strengthen the prescription drug supply chain in order to protect American families against counterfeit drugs.”³ The central feature of the DSCSA is the

³ See Congressional Record H5960, Floor Statement of Representative Upton, dated Sept. 28, 2013, *available at* <https://www.govinfo.gov/content/pkg/CREC-2013-09-28/pdf/CREC-2013-09-28-pt1-PgH5946-2.pdf#page=1>; *see also* Press Release dated July 7, 2021, U.S. Attorney’s Office, District of Massachusetts, “Former Owner of Defunct New England Compounding Center Resentenced to 14 Years in Prison in Connection with 2012 Fungal Meningitis Outbreak,” *available at* <https://www.justice.gov/usao-ma/pr/former-owner-defunct-new-england-compounding-center-resentenced-14-years-prison> (stating that 753 patients in 20 states were diagnosed with a fungal infection after receiving contaminated injections from the same pharmacy, and more than 100 patients died as a result). The FDA similarly states on its website that the DSCSA’s purpose is to “help protect consumers from exposure to drugs that may be

requirement that, with limited exceptions, every time a prescription drug is sold or transferred, it *must* be accompanied by what is known in the industry as a “pedigree” or “T3” document. *Id.* § 360eee-1(b)(1). Pedigrees must list a chain of custody for every sale of the bottle, going back to the manufacturer. *Id.* They must also include affirmative statements by the seller, including that the seller purchased the drug from a trading partner that is “authorized” under the DSCSA. *Id.* § 360eee-1(b)(3). Drugs that are sold with a false or suspect pedigree, or with no pedigree at all, must be quarantined and cannot be sold. *Id.* § 360eee-1(c)(4)(A). Of course, there is no such thing as a valid pedigree for counterfeit medicine – by definition, there is no chain of custody for a counterfeit that goes back to the manufacturer of the authentic product.

When Gilead asked Heal the World to provide the pedigree for the complaint BIKTARVY[®] on the initial January 27 phone call, the pharmacy refused to do so, told Gilead to talk to the patient, and refused to answer further questions. Mitchell Decl. ¶ 16. Gilead’s Quality Assurance team called back the following day, January 28, to request the DSCSA pedigree for the complaint BIKTARVY[®] – a document the pharmacy is legally required to maintain for six years. *Id.* ¶ 17. The pharmacy again refused to provide the pedigree or any further information, and told Gilead to talk to the “owner” of the pharmacy. *Id.* When Gilead asked the owner’s name, the pharmacy stated “I don’t know, just call back on Thursday” – i.e., January 30 – and hung up the phone. *Id.*

Gilead’s Quality Assurance team called again on January 30, and the person who picked up at the pharmacy identified the owner by his first name and last initial – the Gilead representative heard “Harris C.” – and provided an email and phone number for that owner. *Id.*

counterfeit.” FDA, *Drug Supply Chain Security Act (DSCSA)*, available at <https://www.fda.gov/drugs/drug-supply-chain-integrity/drug-supply-chain-security-act-dscsa>.

¶ 18. When Gilead called that phone number, the man who answered the phone denied being the owner of Heal the World Pharmacy and immediately hung up the phone. *Id.* ¶ 19.

On January 31, Gilead’s anti-counterfeiting team wrote an email to the email address provided, with the subject line “Counterfeit Bottle of BIKTARVY Dispensed by Heal the World Pharmacy,” describing the evidence that the BIKTARVY® was counterfeit, emphasizing the grave risk to patient safety posed by the counterfeit, and again seeking the pedigree and any other information the pharmacy could provide about the provenance of the counterfeit BIKTARVY®. *Id.* ¶ 20. Gilead received an automatic notification that that email was successfully delivered, but Gilead never received a response. *Id.*

G. Heal the World’s Principals and Their Other Pharmacies

Public records identify two principals for Heal the World: Defendants Nabila and Qaiser Chaudhary, who are husband and wife. Nabila Chaudhary is listed as the president of Heal the World on its National Provider Identifier (“NPI”) listing. Decl. of Hannah Lee, dated March 14, 2025, ¶ 3; *see also id.* Ex. 1 (NPI Listing). Qaiser Chaudhary signed as an officer of the corporation for Heal the World’s certificate of assumed name. Lee Decl. ¶ 4; *see also id.* Ex. 2 (Certificate of Assumed Name).

Nabila and Qaiser’s son, Defendant Hamza Chaudhary, does not appear on any public filings for the company, but he lists himself as the “Business Owner” on Heal the World’s Yelp page, where he touts the pharmacies’ services. Lee Decl. ¶ 5; *see also id.* Ex. 3. Several reviews for Heal the World on Yelp also identify “Hamza” or “Shamza” as the owner and/or manager of the pharmacy. *Id.* ¶ 6; *see also id.* Ex. 3 (Heal the World Yelp Reviews).

The evidence shows that Hamza Chaudhary is almost certainly the man whom Heal the World’s staff identified as the owner of the company, and the man who denied being the owner and hung up the phone when Gilead called him directly. “Harris C.,” which is how Gilead’s

Quality Assurance team recorded the name of the owner as stated by the pharmacy over the phone, is likely a mishearing of “Hamza,” an Anglicization of his name, or both. The phone number provided by the pharmacy for the “owner” is associated with Hamza Chaudhary in commercial databases that compile publicly available information about contact information. Lee Decl. ¶ 7. Moreover, the email address provided by Heal the World was used some years ago in an online posting seeking a pharmacist for a pharmacy in Queens – and that posting listed another phone number also associated with Hamza Chaudhary in commercial databases. *Id.* ¶ 8; *see also id.* Ex. 4 (Pharmacy Posting).

Nabila and Qaiser Chaudhary have owned a series of pharmacies in this District for several years. In 2015, Nabila and Qaiser Chaudhary were personally named, along with another pharmacy they owned at the time, in a lawsuit filed in this District by Abbott Laboratories. *Abbott Labs. v. H&H Wholesale Servs.*, No. 15-cv-5826 (E.D.N.Y.) (“*Abbott*”). Abbott alleged that Nabila and Qaiser were liable under the Lanham Act for selling through their pharmacy infringing, non-FDA-approved, misbranded medical devices.⁴ Nabila and Qaiser Chaudhary were personally served with the summons and complaint in the *Abbott* litigation, but they ignored service of process: neither they nor the pharmacy they controlled appeared in the action. Potter Decl., Exs. 12-13 (*Abbott*, ECF Nos. 1843, 1846 (E.D.N.Y. Apr. 25-26, 2023)). They were preliminarily enjoined shortly after being added to the action. *Id.* Ex. 11 (Preliminary Injunction, *Abbott* ECF No. 423 (E.D.N.Y. Apr. 29, 2016)). A default judgment and permanent injunction was entered against them in 2024. *Id.* Exs. 14-15 (Order and Permanent Injunction, *Abbott* ECF No. 2121-2122 (E.D.N.Y. Sept. 23, 2024)).

⁴ Second Amended Complaint, *Abbott*, ECF No. 307 (Mar. 28, 2016).

ARGUMENT

Gilead respectfully submits that the extraordinary facts of this case, the serious public health risk presented by the counterfeit sold by Defendants, and the case law illustrating that Defendants trafficked counterfeits within the meaning of the Lanham Act all make clear that Gilead is entitled to the relief it seeks in this motion.

I. THE COURT HAS PERSONAL JURISDICTION OVER ALL THE NAMED DEFENDANTS

This Court has personal jurisdiction over all Defendants at issue in this motion. All Defendants are New York residents and therefore subject to this Court’s general personal jurisdiction. The Court also has specific personal jurisdiction over each Defendant because they acquired and sold the counterfeits in New York to a New York resident in this District.

II. GILEAD IS ENTITLED TO AN *EX PARTE* SEIZURE ORDER AGAINST THE DEFENDANTS

Gilead seeks an *ex parte* seizure order against Heal the World pursuant to the Trademark Counterfeiting Act of 1984, 15 U.S.C. § 1116(d)(1). Gilead seeks the seizure to occur at Heal the World’s retail store location: 161-45 Baisley Boulevard, Jamaica, NY 11434. Gilead seeks this seizure to, among other things, remove counterfeit HIV medicines from the pharmaceutical supply chain, and to collect and preserve documents concerning the manufacture, sale, and distribution of the counterfeits that would be destroyed by the Defendants and their co-conspirators if they were given advance notice.

Passed in response to “an ‘epidemic’ of commercial counterfeiting,” *see* S. Rep. No. 98-526, 98th Cong., 2d Sess. 5 (1984), reprinted in 1984 U.S.C.C.A.N. 3627, 3631 (citing *Montres Rolex, S.A. v. Snyder*, 718 F.2d 524, 528 (2d Cir. 1983), *cert. denied*, 465 U.S. 1100 (1984)), the Counterfeiting Act permits a court to grant an *ex parte* order of seizure in “[c]ivil actions arising out of [the] use of counterfeit marks,” including seizure of counterfeit goods and “records

documenting the manufacture, sale, or receipt” of the counterfeit goods. 15 U.S.C.

§ 1116(d)(1)(A). As Congress explained in the Senate Report accompanying this bill, “[t]he reason for this provision is that many counterfeiters, once given notice that their fraudulent operations have been discovered, will immediately dispose of the counterfeit goods and make it impossible for the trademark owner ever to bring them to justice.” 1984 U.S.C.C.A.N. at 3629.

A. Gilead Satisfies All the Requirements for an *Ex Parte* Seizure Under the Counterfeiting Act

The Counterfeiting Act enumerates several prerequisites for obtaining an *ex parte* seizure order. *See* 15 U.S.C. § 1116(d)(4)(B).⁵ As set forth below, Gilead has satisfied all of them. Gilead therefore respectfully requests that the Court issue an *ex parte* seizure order. A proposed order is being filed simultaneously with this motion. Other than the identities of the parties and the locations to be searched, the proposed seizure order is substantially identical to the seizure order issued in *Gilead II*.

1. An order other than an *ex parte* seizure order is not adequate to achieve the purposes of the Lanham Act (15 U.S.C. § 1116(d)(4)(B)(i))

As set forth below, the goals of the Lanham Act are to protect manufacturers’ marks and goodwill, to allow manufacturers to control the quality of their products, and to protect the American consumer from confusion. *See infra* pp. 21-27 (Argument III). Here, the Defendants are dispensing potentially dangerous counterfeit HIV medicines directly to patients, and even after being alerted to their counterfeiting directly by Gilead, have refused to identify their source or provide the pedigree information they are required to maintain by law.

⁵ The Counterfeiting Act separately requires plaintiffs to notify the local U.S. Attorney before seeking an *ex parte* seizure. 15 U.S.C. § 1116(d)(2). Gilead has done so. Potter Decl., Ex. 1. In its proposed seizure order, Gilead has also included a provision requiring a seizure bond pursuant to 15 U.S.C. § 1116(d)(4)(A).

As recognized by Congress in enacting the Counterfeiting Act, counterfeiters are more likely than not to dispose of or conceal the counterfeit goods when confronted with a trademark action. 1984 U.S.C.C.A.N. at 3632-33 (“[M]any of those who traffick in counterfeits have become skilled at destroying or concealing counterfeit merchandise when a day in court is on the horizon.”). Accordingly, courts have regularly issued *ex parte* seizure orders against entities and individuals who have been shown to be distributing counterfeit products obtained from or distributed through the secondary market for drugs and medical supplies. *See, e.g., Gilead I*, ECF Nos. 18, 46, 165, 629 (involving counterfeit HIV medicines); *Gilead II*, ECF No. 14 (same); *Janssen v. Safe Chain*, No. 22-cv-1983 (E.D.N.Y.) (same); *Johnson & Johnson et al. v. Advanced Inventory Management, Inc. d/b/a eSutures.com et al.*, No. 20-cv-341 (N.D. Ill.) (involving counterfeit surgical devices); *Johnson & Johnson et al. v. XS Supply, LLC et al.*, No. 8:19-cv-1673 (M.D. Fla.) (involving counterfeit surgical hemostats); *Abbott Labs. et al. v. H&H Wholesale Servs., Inc.*, No. 17-cv-3095 (CBA) (LB) (E.D.N.Y.) (involving counterfeit blood-glucose test strips); *Johnson & Johnson v. Stone Medical Group, LLC*, No. 15-cv-3221 (PKC) (LB) (E.D.N.Y.) (involving counterfeit blood-glucose test strips); *Johnson & Johnson v. South Pointe Wholesale, Inc. et al.*, No. 08-1297 (SLT) (SMG) (E.D.N.Y.) (involving counterfeit blood-glucose test strips).

Here, Heal the World pharmacy refused to provide any information to Gilead as soon as Gilead asked questions about where they acquired the complaint BIKTARVY®; the man identified as the “owner” of the pharmacy by the pharmacy’s own staff – and identifies himself as the owner on the pharmacy’s Yelp page – claimed not to be and hung up the phone; and the pharmacy refused to answer or acknowledge an email that directly stated the bottle was counterfeit and posed a serious risk to patient health. Any legitimate pharmacy would be

shocked to learn it sold counterfeit HIV medication and would take immediate steps to address the situation – including, at bare minimum, supplying the pedigree that the pharmacy is required to maintain under federal law for precisely this type of situation. The record of Defendants’ obstructionism gives rise to only two reasonable inferences: either they are involved in the manufacture of the counterfeits, or they are protecting a co-conspirator who supplied them with the counterfeit medication.

Indeed, the facts here mirror those upon which Gilead obtained an *ex parte* seizure in *Gilead I* against a similarly sized, family-owned independent pharmacy in the Bronx called Laconia Avenue Pharmacy. Potter Decl., Ex. 6 (*Gilead I* Memorandum of Law in Support of Seizure, ECF No. 607). Gilead sought that seizure based on a patient complaint that Laconia Avenue pharmacy had dispensed a bottle of BIKTARVY® with the wrong pills in the bottle, and on the pharmacy’s refusal to provide a pedigree or further information. *Id.* at 73-74. At the seizure, Gilead found direct evidence that the pharmacy was involved in manufacturing counterfeit HIV medicine. Potter Decl., Ex. 7 (*Gilead II* Memorandum of Law in Support of Seizure, ECF No. 2-5) at 47-49. After the seizure and Gilead’s cooperation with law enforcement, the owner of Laconia Avenue Pharmacy was criminally indicted and convicted. Potter Decl., Ex. 8 (C. Corvalan Judgment in a Criminal Case).

Moreover, as noted above, two of Heal the World’s officers have a documented history of ignoring formal service of process when sued under the Lanham Act in this Court for illegally selling non-FDA-approved, misbranded products through one of their other pharmacies. In the *Abbott* case, Nabila and Qaiser Chaudhary got away without providing any information about where they received the misbranded medical devices, and the plaintiff elected to seek only injunctive relief against them after their default. But that case did not involve dangerous

counterfeit medicines. Here, if Gilead were to proceed through normal service of process, and the Defendants continued their practice of intentionally defaulting to avoid participating in the lawsuit, innocent patients would continue to be put at risk. Gilead urgently needs to remove from the distribution chain any further counterfeits owned or manufactured by the Defendants, and equally urgently needs to learn where they obtained the counterfeits and how they were manufactured. The factual record makes clear that the only way Gilead can obtain that information is through an *ex parte* seizure.

Moreover, Gilead respectfully submits that the facts here are far graver than in the typical counterfeiting case envisioned by the statute, because the counterfeits at issue are of medication intended to treat or prevent a life-threatening medical condition, HIV. Congress recognized that the slow wheels of ordinary civil procedure, which rely on the voluntary compliance of honest litigants, are not adequate to address counterfeiting. It is difficult to envision a more appropriate use for the potent procedural mechanism created by the Counterfeiting Act than to rapidly trace and seize counterfeit HIV medicines.

2. Gilead has not publicized the requested seizure (15 U.S.C. § 1116(d)(4)(B)(ii))

Gilead has not publicized the requested seizure. Potter Decl. ¶¶ 3-6. Gilead has filed the instant papers, and the other filings made in connection with it, under seal and *ex parte*.

3. Gilead is likely to succeed in showing that the persons against whom seizure would be ordered used a counterfeit mark in connection with the sale, offering for sale, or distribution of goods or services (15 U.S.C. § 1116(d)(4)(B)(iii))

The evidence set forth above establishes conclusively that Defendants have dispensed at least one counterfeit Gilead-branded HIV medicine with an entirely fake label that replicates Gilead's authentic label – including multiple Gilead registered trademarks. As described in more detail at pp. 21-27, *infra*, counterfeiting is a strict-liability offense, and on this record there can

be no question that Gilead is more than likely to succeed on its counterfeiting claims against Defendants, which satisfies this statutory criterion.

4. An immediate and irreparable injury will occur if such seizure is not ordered (15 U.S.C. § 1116(d)(4)(B)(iv))

As discussed below, both patients and Gilead are being irreparably harmed by the Defendants' counterfeit medicines being distributed to, and used by, patients in the United States. *See infra* pp. 25-26 (Argument III.B). And as discussed above, although Gilead has only been notified of one counterfeit BIKTARVY[®] bottle dispensed by Heal the World, the sophisticated detail with which this counterfeit replicates the authentic Gilead product strongly suggests that this is not the only counterfeit BIKTARVY[®] that Defendants created and/or dispensed. *See also, e.g.*, Potter Decl. Ex. 7 (*Gilead II* Seizure Motion, ECF No. 2-5) at 9-53 (describing scheme in *Gilead I* and *II*, in which counterfeiters sold thousands of bottles of counterfeit HIV medicine). The odds that only one counterfeit was created, and that single counterfeit was almost immediately reported to Gilead, are vanishingly small. Because a seizure is the only means by which Gilead is likely to take additional counterfeits out of distribution and learn where the counterfeits are being made and/or sold to pharmacies, absent a seizure, patients and Gilead will continue to suffer irreparable harm as more counterfeits are dispensed.

5. The matter to be seized will be located at the place identified in the application (15 U.S.C. § 1116(d)(4)(B)(v))

The requested seizure will take place at Heal the World Pharmacy's only known location, its retail store at 161-45 Baisley Boulevard, Jamaica, New York 11434. That is the address from which Heal the World dispensed the known counterfeit, and the address that appears on the pharmacy label that was attached to that counterfeit BIKTARVY[®].

Gilead's investigators have recently visited Heal the World at that address and confirmed it is an open, active business. *See* Declaration of P. McAllister, dated March 14, 2025 ¶ 3. At

his visit to Heal the World, Gilead's investigator noted that a computer was visible in the pharmacy area. *Id.* ¶ 7. This computer likely contains electronic records relating to the counterfeit bottle Gilead discovered, which Heal the World dispensed, as well as records of other counterfeits and the patients to which they were dispensed.

6. The harm to the applicant of denying the application outweighs the harm to the legitimate interests of the persons against whom seizure would be ordered (15 U.S.C. § 1116(d)(4)(B)(vi))

As a general matter, the Defendants have no legitimate interest in selling counterfeit Gilead medicine. *See Koon Chun Hing Kee Soy & Sauce Factory, Ltd. v. Kun Fung USA Trading*, No. 07-CV-2568 (CPS), 2007 WL 9723382, at *5 (E.D.N.Y. July 19, 2007) (“[T]o the extent that items seized are counterfeit, defendants have no legitimate interest in the physical goods to be seized.”). The Defendants therefore cannot suffer any harm from the seizure of counterfeit Gilead-branded medicine. Gilead, on the other hand, has a very strong interest in protecting the public's health and safety, as well as its own trademarks and goodwill, from the counterfeits that Defendants are selling.

7. Defendants would destroy, move, hide, or otherwise make such matter inaccessible to the court, if the applicant were to proceed on notice to such persons (15 U.S.C. § 1116(d)(4)(B)(vii))

This final statutory factor overlaps significantly with the first statutory factor: i.e., that measures short of an *ex parte* seizure will be inadequate. As noted above, Congress determined in passing the Counterfeiting Act that counterfeiters “have become skilled at destroying or concealing counterfeit merchandise when a day in court is on the horizon.” 130 Cong. Rec. H12076, at 12080. Here, the counterfeits are prescription HIV medicine: small, lightweight, easily movable, and extremely high-value products. Tens of millions of dollars' worth of these products can fit in the trunk of a car and be driven away on a moment's notice.

As described above, the Defendants' obstructionism when informed by Gilead that they had sold counterfeit HIV medicine; the owner's denial that he is the owner; and Nabila and Qaiser Chaudhary's history of ignoring legal process all make clear that the Defendants will not come to this Court when summoned and voluntarily disclose their counterfeiting activity. Moreover, Gilead's experience in prior seizures confirms that significant volumes of electronic communications and other data concerning the manufacture and sale of the counterfeits exist on individual conspirators' computers, cell phones and other electronic devices. As detailed in Gilead's seizure motions in *Gilead I* and *II*, individual members of the conspiracy communicate about the counterfeits using "burner" cell phones, and by using phone-based messaging platforms like WhatsApp, which are encrypted end-to-end and can only be recovered directly from one of the interlocutor's cell phones. *See* Potter Decl. Ex. 7 at 61, Ex. 6 at 19-98. Those records can be, and indeed are designed to be, quickly and easily deleted *en masse* if prior notice is given.

III. GILEAD IS ENTITLED TO A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION AGAINST ALL DEFENDANTS

"Federal courts have long recognized the need for immediate injunctive relief in trademark infringement cases due to the amorphous nature of the damage to the trademark and the resulting difficulty in proving monetary damages." *Multi-Local Media Corp. v. 800 Yellow Book, Inc.*, 813 F. Supp. 199, 202 (E.D.N.Y. 1993). Here, Gilead seeks a temporary restraining order to stop the Defendants' trafficking of counterfeit Gilead medicine and ensure that evidence, including any physical counterfeit product, is preserved. To obtain such relief, Gilead must demonstrate "that [it is] likely to succeed on the merits, that [it is] likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [its] favor, and that an injunction is in the public interest." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20

(2008). Gilead easily meets all of those elements and therefore is entitled to immediate injunctive relief.

A. Gilead Has a Strong Likelihood of Success on the Merits


Gilead alleges that Defendants infringed its trademarks in violation of the Lanham Act and state law. To prevail on these claims, Gilead “must show that ‘it has a valid mark entitled to protection and that the defendant’s use of it is likely to cause confusion.’” *Threeline Imports, Inc. v. Vernikov*, 239 F. Supp. 3d 542, 557 (E.D.N.Y. 2017) (quoting *Arrow Fastener Co. v. Stanley Works*, 59 F.3d 384, 390 (2d Cir. 1995)). Each of Gilead’s marks for the products at issue are registered, *see* Potter Decl., Ex. 125, which establishes their validity. *See Lane Capital Mgmt., Inc. v. Lane Capital Mgmt., Inc.*, 192 F.3d 337, 345 (2d Cir. 1999).

1. Defendants Are Liable for Selling Counterfeits

None of these elements is remotely in question here. Gilead owns multiple distinct, valid registered trademarks for the products at issue. *See* Potter Decl., Ex. 3 ¶ 4. Defendants have “used” those marks in interstate commerce by buying and selling counterfeit Gilead medicines. There also can be no dispute that Defendants are not authorized to use Gilead’s marks to sell counterfeits. *Id.* ¶¶ 14-18.

Counterfeiting “is the ‘hard core’ or ‘first degree’ of trademark infringement that seeks to trick the consumer into believing he or she is getting the genuine article.” *Gucci Am., Inc. v. Guess?, Inc.*, 868 F. Supp. 2d 207, 242 (S.D.N.Y. 2012); *see* 15 U.S.C. § 1114(1)(a); § 1117(b). “[T]he Lanham Act defines a ‘counterfeit’ as ‘a spurious mark which is identical with, or substantially indistinguishable from, a registered mark.’” *Coty Inc. v. Cosmopolitan Cosmetics Inc.*, 432 F. Supp. 3d 345, 352 (S.D.N.Y. 2020) (quoting 15 U.S.C. § 1127). Courts in this Circuit define “spurious” as “deceptively suggesting an erroneous origin; fake.” *Id.*

A product is counterfeit if any portion of it is fake, including any part of its packaging or anything distributed with it. For example, when a once-genuine good is repackaged to manipulate the labeling, outer box, or sold with fake pedigrees or fake instructions for use, the entire product is considered a counterfeit. *See Gilead I*, 684 F. Supp. 3d 51, 67 (E.D.N.Y. 2023) (finding that “made-up pedigrees and other manipulations to the labeling, sealing and bottle caps” are “spurious marks,” rendering bottles of HIV medicine counterfeit); *see also Johnson & Johnson v. South Pointe Wholesale Inc.*, No. 08-cv-1297 (SLT) (SMG), 2014 WL 12558573 at *2 (E.D.N.Y. Mar. 28, 2014), *report and recommendation adopted*, ECF Order dated February 27, 2018 (holding that “the repackaged test strips ... are counterfeits” even though “the test strips inside the packages were apparently genuine”); *Monsanto Co. v. Haskel Trading, Inc.*, 13 F. Supp. 2d 349, 357–59 (E.D.N.Y. 1998) (holding that counterfeit outer packaging rendered otherwise authentic product counterfeit).

Here, the evidence shows that the Gilead is more than likely to succeed on its counterfeiting claims against these Defendants. The reporting patient identified Heal the World as the dispensing pharmacy, the pharmacy itself identified the reporting patient as its customer, and the counterfeit BIKTARVY[®] came with a Heal the World pharmacy patient label adhered to it. The evidence from Gilead’s in-house experts about the counterfeit, including the typographical errors, the fake expiration date, and non-authentic printing technology, leaves no room for doubt that the label is fake, and bears counterfeit reproductions of Gilead’s registered trademarks, including BIKTARVY, Gilead, and . The BIKTARVY[®] that Defendants sold is unquestionably counterfeit under the Lanham Act.

2. Each Defendant Is Individually Liable for Their Role in the Counterfeiting

The pharmacy that dispensed the counterfeit is, of course, liable for its infringement. But any party, including individual owners, officers, or agents of corporate entities, who was “a moving, active, conscious force behind the defendant corporation’s infringement” is also individually liable, on a joint-and-several liability basis. *KatiRoll Co. v. Kati Junction, Inc.*, 33 F. Supp. 3d 359, 367 (S.D.N.Y. 2014); see *Matsunoki Grp., Inc. v. Timberwork Or., Inc.*, 2009 WL 1033818, at *4 (N.D. Cal. Apr. 16, 2009) (“A plaintiff may show that a corporate employee is [a] moving, active, conscious force behind the infringing activity by demonstrating that [he or she] direct[ed], control[led], ratifie[d], or participate[d] in the infringing activity.”). Thus, there may be – and in large-scale operations, almost always are – multiple Defendants who are individually liable for the same company’s counterfeiting. In other words, it is no defense to argue that others “had more significant roles in executing the operation.” See *Innovation Ventures, LLC v. Ultimate One Distrib. Corp.*, 176 F. Supp. 3d 137, 173, 178 (E.D.N.Y. 2016).

3. The Defendants Are Willful Infringers, but Gilead Needs to Establish Only Strict Liability

Notably, while there is strong evidence in the record that the Defendants knowingly and willfully trafficked in counterfeits, trademark infringement is a strict-liability offense. *Sunward Elecs., Inc.*, 362 F.3d at 25 (“[I]t is well established that wrongful intent is not a prerequisite to an action for trademark infringement . . . and that good faith is no defense.” (citations and internal quotations omitted)); *Hard Rock Café Licensing Corp. v. Concession Servs., Inc.*, 955 F.2d 1143, 1152 n.6 (7th Cir. 1992) (“Sellers bear strict liability for violations of the Lanham Act.”); *Taubman Co. v. Webfeats*, 319 F.3d 770, 775 (6th Cir. 2003); *Philip Morris USA Inc. v. Shalabi*, 352 F. Supp. 2d 1067, 1073-74 (C.D. Cal. 2004). Therefore, Defendants are liable under the Lanham Act regardless of whether they were aware of the counterfeit or otherwise

infringing nature of the products they sold. *Id.*; *Philip Morris USA Inc. v. Liu*, 489 F. Supp. 2d 1119, 1122 (C.D. Cal. 2007). Gilead's Lanham Act claims are not merely likely, but virtually certain to succeed.

B. Gilead Is Suffering Irreparable Harm as a Result of Defendants' Activities

Because Gilead has demonstrated a likelihood of success on the merits on its Lanham Act claims, it is entitled to a rebuttable presumption of irreparable harm as a matter of law pursuant to the Trademark Modernization Act of 2020, 15 U.S.C. § 1116(a).

Even without that presumption, where, as here, a Lanham Act plaintiff has succeeded in showing a likelihood of confusion, irreparable injury “almost inevitably follows.” *Omega Importing Corp.*, 451 F.2d at 1195. The reason is simple: “because the losses of reputation and goodwill and subsequent loss of customers that Plaintiff will suffer are not precisely quantifiable[,] remedies at law cannot adequately compensate Plaintiff for its injuries.” *Pretty Girl, Inc. v. Pretty Girl Fashions, Inc.*, 778 F. Supp. 2d 261, 270 (E.D.N.Y. 2011); *see also Church of Scientology Int'l v. Elmira Mission*, 794 F.2d 38, 44 (2d Cir. 1986) (“[A]llowing defendants the opportunity to reduce the marks' reputational value and goodwill by its continued unauthorized use constitutes the irreparable harm that is requisite to the issuance of the preliminary injunction.”); *New York City Triathlon, LLC v. NYC Triathlon Club, Inc.*, 704 F. Supp. 2d 305, 325 (S.D.N.Y. 2010) (“It is well-settled that a trademark owner's loss of goodwill and ability to control its reputation constitutes irreparable harm sufficient to satisfy the preliminary injunction standard.”).

There is no question that Defendants' sale of counterfeits of Gilead's HIV medicines is causing great harm to Gilead's goodwill, and that its continued sale will irreparably harm Gilead. *See Potter Decl.*, Ex. 3 ¶¶ 14-18. Immediate injunctive relief is, therefore, necessary to prevent

further damage to Gilead’s reputation and goodwill—and, of course, to patient health and safety, none of which can be undone.

C. The Balance of Equities Tips Decisively in Gilead’s Favor

Here, the equities emphatically support the issuance of a temporary restraining order. First and foremost, the counterfeits at issue pose a serious threat to patient health and safety. *See supra* pp. 5-13 (Facts II). Quite apart from the harm to Gilead’s goodwill, this threat to public health justifies immediate injunctive relief. *See, e.g., Burger King Corp. v. Stephens*, No. 89-CV-7691, 1989 WL 147557 at *12-13 (E.D. Pa. Dec. 6, 1989).

Because the law recognizes no excuse for selling counterfeit goods, the harm to Gilead should the requested injunction be denied far outweighs the harm to Defendants if their conduct is preliminarily enjoined. Each and every sale of counterfeit Gilead medicine infringes Gilead’s trademarks, causes harm to Gilead’s reputation, and places patients at risk. *See Microsoft Corp. v. ATEK 3000 Computer, Inc.*, No. 06-CV-6403 (SLT)(SMG), 2008 WL 2884761, at *5 (E.D.N.Y. Jul. 23, 2008). The Defendants have no right to sell counterfeit Gilead medicines. Defendants thus cannot validly claim hardship based on the proposed injunctive relief.

D. An Injunction Is in the Public Interest

The public interest in an injunction is self-evident in this case. It is in the public interest to prevent the sale of counterfeit Gilead-branded HIV medicines that appear to have been filled with unknown tablets by someone other than Gilead and are missing their FDA-required Patient Information booklets. It is also in the public interest to prevent confusion and protect informed choice when patients’ health is at stake. *Cytosport, Inc. v. Vital Pharms., Inc.*, 617 F. Supp. 2d 1051, 1081 (E.D. Cal. 2009) (“When a trademark is said to have been infringed, what is actually infringed is the right of the public to be free of confusion and the synonymous right of the trademark owner to control his products’ reputation.”) (internal citation omitted), *aff’d*, 348 F.

App'x 288 (9th Cir 2009); *Int'l Kennel Club of Chicago, Inc. v. Mighty Star, Inc.*, 846 F.2d 1079, 1092 n.8 (7th Cir. 1988) (“[T]he relevant consideration” in determining whether the public interest will be served by the grant of an injunction “is the consumer’s interest in not being deceived about the products they purchased.”).

IV. GILEAD IS ENTITLED TO AN *EX PARTE* ORDER FREEZING ALL DEFENDANTS’ ASSETS

As part of its efforts to immediately remove this counterfeit medication from the U.S. market, Gilead also seeks an asset freeze against all Defendants.

Under the Lanham Act, Gilead is entitled to an accounting and disgorgement of Defendants’ illicit profits from their sale and distribution of counterfeit Gilead medicine that bears Gilead’s trademarks. An *ex parte* asset freeze order will maintain the status quo, which includes preserving Gilead’s ability to recoup the profits that Defendants earned from the sale of the counterfeit Gilead medicine. This relief is not merely consistent with, but critical to, putting an immediate stop to Defendants’ sale of counterfeits in the United States. Moreover, this relief is routinely granted in counterfeiting cases, including in *Gilead I* and *II*.

A. Legal Standard for Asset Freezes under the Lanham Act

Where, as here, a plaintiff seeks lost profits and equitable remedies under the Lanham Act, 15 U.S.C. §§ 1116(a) and 1117, a federal court has the “inherent equitable powers to order preliminary relief, including an asset freeze, in order to assure the availability of permanent relief.” *Levi Strauss & Co. v. Sunrise Int’l Trading, Inc.*, 51 F.3d 982, 987 (11th Cir. 1995). The Second Circuit has joined its “sister circuits to have considered the issue” in holding that in trademark infringement actions, “the district court ha[s] the inherent equitable authority to issue [an] Asset Freeze Injunction.” *Gucci Am., Inc. v. Bank of China*, 768 F.3d 122, 130, 132 (2d Cir. 2014); *see also Gilead I*, 684 F. Supp. 3d at 62 (“[T]he Court unquestionably has authority to

freeze assets to preserve an equitable accounting of profits.”) (citation omitted); *N. Face Apparel Corp. v. TC Fashions, Inc.*, No. 05-cv-9083 (RMB), 2006 WL 838993, at *3 (S.D.N.Y. Mar. 30, 2006) (In counterfeiting cases, “[d]istrict courts have the ‘authority to freeze those assets which could [be] used to satisfy an equitable award of profits.’”). “The purpose of freezing assets is to preserve security for [the] plaintiff’s future recovery on an accounting of the counterfeiter’s profits.” *Gilead I*, 684 F. Supp. 3d at 62 (citation and quotation marks omitted). The assets subject to this inherent authority include real property. Indeed, the Court in *Gilead I* and *II* issued freeze orders covering all real properties in which defendants had an ownership interest, and also named specific properties to be frozen.

Motions for an asset freeze under the Lanham Act are evaluated under the familiar standard for a preliminary injunction. *See Shamrock Power Sales, LLC v. Scherer*, No. 12-cv-8959 (KMK)(JCM), 2016 WL 6102370, at *2 (S.D.N.Y. Oct. 18, 2016); *see also Lorillard Tobacco Co. v. Montrose Wholesale Candies & Sundries, Inc.*, No. 03-cv-4844, 2005 WL 3115892, at *13-14 (N.D. Ill. Nov. 8, 2005).

B. Gilead Has a Strong Likelihood of Success on the Merits

As set forth above, the evidence leaves no room for doubt that the Defendants have sold counterfeit Gilead HIV medicine that bears counterfeit reproductions of Gilead’s registered trademarks, which is all that Gilead needs to establish to prevail on its strict-liability Lanham Act claims. *See supra* pp. 3-13 (Facts); pp. 22-25 (Argument III.A).

C. Defendants Are Likely to Dissipate Assets, and Gilead Will Suffer Additional Irreparable Harm If Their Assets Are Not Frozen

Counterfeiters like Defendants make their living by secrets and subterfuge, and therefore are likely to “hide their allegedly ill-gotten funds” if their assets are not frozen. *Reebok Int’l, Ltd. v. Marnatech Enterprises, Inc.*, 970 F.2d 552, 563 (9th Cir. 1992); *accord Chanel, Inc. v.*

Classic-Bag-Shop, No. 19-cv-60492, 2019 WL 2638608, at *3 (S.D. Fla. Mar. 14, 2019) (“In light of the inherently deceptive nature of the counterfeiting business ... Plaintiff has good reason to believe Defendants will hide or transfer their ill-gotten assets beyond the jurisdiction of this Court unless those assets are restrained.”). When engaged in the practice of selling counterfeit or otherwise infringing HIV medication, serious civil and criminal exposure is a given – as the indictments of many of the Defendants in *Gilead I* and *II* highlight. The Defendants here operate in a heavily regulated industry, and rely on fraud and subterfuge to sell highly illegal (but highly profitable) counterfeits to U.S. patients. The same record evidence that demonstrates the Defendants are likely to conceal or destroy evidence absent an *ex parte* seizure, *see supra* pp. 20-21, strongly supports the conclusion that the Defendants will conceal or dissipate their illegal profits if given the chance. *See Lorillard Tobacco Co.*, 2005 WL 3115892, at *16 (“In this case, the Lanham Act provides [Plaintiffs] with the equitable remedy of recovering the [Defendants’] profits. In such cases, courts have generally concluded that an asset freeze is appropriate to ensure that permanent equitable relief will be possible.” (quoting *Levi Strauss & Co.*, 51 F.3d at 987; *Reebok*, 970 F.2d at 559)).

D. The Balance of the Equities Strongly Favors Gilead

The balance of harms also heavily weighs in favor of an asset freeze. The evidence shows that Defendants sold counterfeit medications in violation of the Lanham Act, and when confronted with their counterfeiting, refused to provide any information or take any steps to ameliorate the harm they caused. Any harm an asset freeze may cause to Defendants was “brought upon themselves with their tactics of deception and underhandedness.” *Lorillard Tobacco Co.*, 2005 WL 3115892, at *17. By comparison, the harm caused by Defendants’ actions – both to unsuspecting patients and to Gilead’s trademarks and goodwill – is clear.

To the extent that the Defendants can demonstrate – contrary to the overwhelming evidence – that their assets are not the fruits of their counterfeiting, they can make such a showing to the Court and have the freeze lifted or amended. *See Balenciaga Am*, 2010 WL 3952850, at *7-8. Defendants can also move to have sufficient funds released to pay their lawyers and other necessary expenses – but Gilead has a long and established track record before this Court in *Gilead I* and *II* of reaching amicable stipulations with defendants allowing them access to necessary funds. Gilead, on the other hand, will have no recourse if the Defendants dissipate their assets. *See Dong v. Miller*, No. 16-CV-5836 (NGG)(JO), 2018 WL 1445573, at *10-11 (E.D.N.Y. Mar. 23, 2018). Once hidden or removed from the Court’s reach, very little can be done to recover a counterfeiter’s assets.

E. The Public Interest Is Served by an Asset Freeze

An asset freeze is in the public interest because it will help secure the Defendants’ participation in this lawsuit and ensure they do not continue to purchase and sell counterfeits during the course of litigation. *See Std. & Poor’s Corp. v. Commodity Exch., Inc.*, 683 F.2d 704, 711 (2d Cir. 1982) (“[A] court of equity ... may go much further both to give or to withhold relief in furtherance of the public interest than where only private interests are involved.”). There will be no harm to the public from the asset freeze, as there is no shortage of legitimate pharmacies who can dispense authentic Gilead medicine to patients in Queens or anywhere in the nation.

F. The Asset Freeze Should Be Global in Scope

Further, the Court should freeze all assets Gilead can identify no matter those assets’ location, as the Court’s authority to freeze assets is not limited to assets within this District, nor even to assets within the United States. *See, e.g., Citronelle-Mobile Gathering, Inc. v. Watkins*, 943 F.2d 1297, 1301 (11th Cir. 1991) (upholding district court order directing “banks or

financial institutions wherever located to freeze the judgment debtors' assets." (internal quotation marks omitted)); *Iron Maiden Holdings Ltd. v. Partnerships & Unincorporated Associations Identified on Schedule "A"*, No. 1:18-cv-1098, 2018 WL 2077732, at *4 (N.D. Ill. Mar. 6, 2018) (issuing asset restraining order on "[a]ny banks, savings and loan associations, payment processors or other financial institutions, including . . . PayPal, . . . for any Defendant"); *see also United States v. First Nat'l City Bank*, 379 U.S. 378, 384 (1965) ("Once personal jurisdiction of a party is obtained, [a district court] has authority to order it to 'freeze' property under its control, whether the property be within or without the United States."); *Balenciaga*, 2010 WL 3952850, at *7-8 (same).

G. The Asset Freeze Should Be Issued *Ex Parte*

In order to ensure that the accounting and lost profits sought by Gilead are available at the conclusion of this action, that Gilead's right to a full equitable accounting of Defendants' profits is not impaired, and that Defendants participate in this action, Gilead respectfully submits that the order be issued *ex parte*. *See Columbia Pictures Indus., Inc. v. Jasso*, 927 F. Supp. 1075, 1077 (N.D. Ill. 1996) (relying on *In re Vuitton Et Fils S.A.*, 606 F.2d 1, 4-5 (2d Cir. 1979) "and its progeny" to conclude that "proceedings against those who deliberately traffic in infringing merchandise are often rendered useless if notice is given to the infringers"). For the reasons set forth above, Defendants are both likely and well-positioned to hide or dispose of their assets if given prior notice, which would render an accounting by Gilead meaningless.

V. GILEAD IS ENTITLED TO EXPEDITED DISCOVERY

Gilead also respectfully seeks a limited expedited discovery order so that it may quickly (a) investigate the distribution of counterfeit Gilead products in an effort to permanently banish them from the market and (b) trace and freeze Defendants' counterfeiting proceeds to prevent them from being used to buy more counterfeits and preserve Gilead's ability to recover its

damages. The expedited discovery order proposed here is functionally identical to orders previously granted by judges in this District in anti-counterfeiting actions involving *ex parte* seizures, including *Gilead I* and *II*, examples of which are attached as Exhibits 9 and 10 to the Potter Declaration.

Federal courts have broad discretion to expedite the normal pace of discovery in cases seeking temporary or preliminary injunctive relief. 28 U.S.C. § 1657 directs that “the court shall expedite the consideration of . . . any action for temporary or preliminary injunctive relief.” Rule 26(d) of the Federal Rules of Civil Procedure allows for expedited discovery and an Advisory Committee comment to that rule notes that expedited discovery “will be appropriate in some cases, such as those involving requests for a preliminary injunction.” Fed. R. Civ. P. 26(d) and Advisory Comm. Note. Rule 30(a)(2)(A)(iii) provides that the Court may grant leave to take depositions “before the time specified” in the discovery rules. Similarly, Rule 34(b)(2)(A) provides that “[a] shorter or longer time may be . . . ordered by the court” for the production of documents than the rules would otherwise allow. Congress recognized that there is a special need for expedited discovery in counterfeiting cases, specifying in the Counterfeiting Act that a court may modify the time limits for discovery “to prevent the frustration of the purposes of [a seizure order] hearing.” 15 U.S.C. § 1116(d)(10)(B).

The standard for obtaining expedited discovery closely resembles the standard for obtaining preliminary injunctive relief. Four factors must be considered: “(1) irreparable injury, (2) some probability of success on the merits, (3) some connection between the expedited discovery and the avoidance of the irreparable injury, and (4) some evidence that the injury [that] will result without expedited discovery looms greater than the injury that the defendant will suffer if the expedited relief is granted.” *Gidatex, S.R.L. v. Campaniello Imports, Ltd.*, 13 F.

Supp. 2d 417, 420 (S.D.N.Y. 1998); *Twentieth Century Fox Film Corp. v. Mow Trading Corp.*, 749 F. Supp. 473, 475 (S.D.N.Y. 1990).

Like injunctive relief, expedited discovery “is routinely granted in actions involving infringement and unfair competition.” *Benham Jewelry Corp. v. Aron Basha Corp.*, No. 97-CV-3841, 1997 WL, at *58 (S.D.N.Y. Oct. 14, 1997). There are numerous examples from within this Circuit alone, in trademark cases involving conduct far less extreme than the sale of counterfeit HIV medication. *See, e.g., Philip Morris USA, Inc. v. Jackson*, 826 F. Supp. 2d 448, 450 (E.D.N.Y. 2011); *GAKM Res. LLC v. Jaylyn Sales, Inc.*, No. 08-CV-6030 (GEL) (THK), 2009 U.S. Dist. LEXIS 128595, at *3 (S.D.N.Y. May 21, 2009); *Cartier Int’l B.V. v. Ben-Menachem*, No. 06-CV-3917 (RWS), 2008 WL 64005, at *1 (S.D.N.Y. Jan. 3, 2008); *Johnson & Johnson v. Champion Sales, Inc.*, No. 06-CV-5451 (SLT), ECF No. 3 (E.D.N.Y. Oct. 7, 2006); *ALCOA, Inc. v. ATM, Inc.*, No. 04-CV-5225 (DRH), ECF No. 9 (E.D.N.Y. Dec. 2, 2004); *Procter & Gamble Co. v. Xetal, Inc.*, No. 04-CV-2820 (DRH) (E.D.N.Y. July 7, 2004); *Chere Amie, Inc. v. Windstar Apparel Corp.*, 191 F. Supp. 2d 343, 344-45 (S.D.N.Y. 2001); *Hoffman-La Roche, Inc. v. Medisca, Inc.*, No. 99-CV-163, 1999 WL 123578, at *2 (N.D.N.Y. Mar. 3, 1999); *Tommy Hilfiger Licensing, Inc. v. Tee’s Ave., Inc.*, 924 F. Supp. 17, 18 (S.D.N.Y. 1996); *Francis S. Denney, Inc. v. I.S. Labs., Inc.*, 737 F. Supp. 247, 248 (S.D.N.Y. 1990); *Am. Cyanamid Co. v. Campagna Per Le Farmacie in Italia S.P.A.*, 678 F. Supp. 1049, 1055 (S.D.N.Y. 1987), *aff’d*, 847 F.2d 53 (2d Cir. 1988); *Playskool, Inc. v. Prod. Dev. Grp., Inc.*, 699 F. Supp. 1056 (E.D.N.Y. 1988).

Applying the four factors set forth in *Gidatex*, and based on the wealth of authority cited above, the Court should grant the limited expedited discovery that Gilead seeks. The first two factors are readily met: (1) plaintiffs have already demonstrated a likelihood of infringement; and

(2) its business reputation and goodwill are being irreparably harmed. As for the third factor, discovery is a critical first step in exposing, and then shutting down, this unlawful activity. Expedited discovery will allow Gilead to prepare for, and the Court to conduct, a prompt preliminary injunction hearing. It will also enable Gilead to identify other persons and entities involved in the manufacture and distribution of the counterfeits. *See e.g., Twentieth Century Fox Film Corp.*, 749 F. Supp. at 475 (allowing discovery to proceed “on an expedited basis may very well lead to evidence of continuing infringement by [these] defendant[s] or others; it may also lead to the discovery of future plans to infringe or the discovery of additional infringing merchandise.”).

Finally, with respect to the fourth factor, the harm to Gilead if discovery proceeds at the ordinary pace will far outweigh any conceivable harm to Defendants should this request for expedition be granted. The scope of discovery is narrow. *See Fed. Express Corp. v. Fed. Espresso, Inc.*, No. 97-CV-1219, 1997 WL 736530, at *2 (N.D.N.Y. Nov. 24, 1997) (“[T]he scope of permissible expedited discovery is limited to requests that are more narrowly ‘tailored to the time constraints under which both parties must proceed [and] to the specific issues that will have to be determined at the preliminary injunction hearing.’”). The proposed timetable calls for document production within a week of service of the request and depositions on a week’s notice. These documents should be at Defendants’ disposal and Defendants will suffer little if any “injury” from having to produce them sooner rather than later. Conversely, without expedition, Gilead and the public will continue to be harmed by each and every additional sale of counterfeit medication.

CONCLUSION

For the reasons stated above, the Court should grant Gilead's motion for an *ex parte* seizure order, a temporary restraining order (to be followed by a preliminary injunction), an asset freeze order, and an expedited discovery order, and should award any other and further relief that the Court may deem just and proper. Proposed orders for the requested relief are being filed simultaneously herewith.

Dated: March 17, 2025

PATTERSON BELKNAP WEBB & TYLER
LLP

By: 

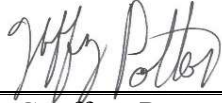
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CERTIFICATION OF WORD COUNT COMPLIANCE

I hereby certify pursuant to Local Civil Rule 7.1(c) that the foregoing Memorandum of Law contains 10,367 words (excluding the caption, table of contents, table of authorities, and signature block), and that I have relied upon Microsoft Word's word count for purposes of this certification.



Geoffrey Potter