

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

GILEAD SCIENCES, INC., <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	Case No. 25-cv-1469 (RER) (RML)
	:	
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 PHARMACY, <i>et al.</i> ,	:	AND COURT ORDER (DKT. 15)
	:	
Defendants.	:	
	:	

**PLAINTIFFS’ REPLY MEMORANDUM OF LAW
IN SUPPORT OF ORDER TO SHOW CAUSE**

Plaintiffs Gilead Sciences, Inc. and Gilead Sciences Ireland UC (together, “Gilead” or “Plaintiffs”) by and through undersigned counsel, respectfully submit this reply memorandum of law in support of their Motion for an Order to Show Cause why Defendants should not be held in contempt for their failures to comply with the Seizure Order (Dkt. 17) and Asset Freeze Order (Dkt. 18), which were entered by this Court on March 17, 2025, and served upon Defendants during the execution of the Seizure Order on March 19, 2025.

Although they have produced some documents since Gilead filed this motion, Defendants continue to withhold the most critical information required by the Seizure Order. Most notably, they have failed to produce *any* documentation regarding the source of the counterfeits identified in Plaintiffs’ Complaint and seized from Heal the World. This is the most vital information called for in the Seizure Order because it permits Gilead to identify the source of the counterfeits and take action to stop additional counterfeits from reaching patients.

Furthermore, the information Defendants have produced demonstrates that the counterfeits identified by Gilead thus far are only the tip of the iceberg. According to Defendants' records, they have dispensed more than *twice* as many bottles of Gilead's BIKTARVY® HIV medicine as they have purchased. They have failed to produce *any* information whatsoever about the source of these excess bottles – almost certainly because they were obtained from illegal sources which Defendants are trying to protect. Defendants' failure to produce this information violates the Court's Seizure Order, and puts patients at risk.

The "production" Defendants have now made does not remedy Defendants' contempt. As set out in Plaintiff's letter to the Court dated April 9, 2025, Plaintiffs did not initially receive the documents Defendants refer to repeatedly in their opposition, Dkt. 33 ("Opp."), because Defendants sent them to the wrong email address. Defendants have subsequently apologized and re-sent them. After reviewing that "production," Gilead informed Defendants of several ways in which that it was deficient, and in response Defendants produced a single invoice for a single bottle of Gilead-branded medicine and disclosed one additional account in the amount of "\$10-\$20." Such a "production" and supplemental "production" do not come close to curing Defendants' contempt. Conspicuously, while this production claims to show purchase and dispense records from Heal the World for the past several years, the production contains no information about *any* BIKTARVY® purchased or dispensed in 2025, even though, as Gilead's Complaint and records seized from Heal the World show, patients received BIKTARVY® from Heal the World in 2025, and at least some of that BIKTARVY® was counterfeit. Defendants' selective production of dispense information has no good faith explanation – Defendants cannot claim that they have

dispensing records going back years, but no records regarding the last three months. Instead, the only explanation is that Defendants are willfully defying the Court's Order.

I. Defendants' Deficient Response to the Seizure Order

The Seizure Order requires that:

immediately upon receipt of this Order Defendants shall disclose to Gilead's attorneys and investigators the following information concerning their purchases and/or sales of any product bearing any of the Gilead Marks product from March 19, 2022 to the present: (1) the Drug Supply Chain Security Act pedigree documentation; (2) the price and quantity of each purchase or sale; (3) the product, including the specific type or variety of product; (4) the lot numbers; (5) the contact information, including names, addresses, email addresses, and telephone numbers of all associated individuals and/or companies from which Defendants have purchased or to whom Defendants sold the products....

Dkt. 17 (Seizure Order) at 5-6 (emphasis added). The Seizure Order further requires "Defendants immediately upon receipt of this Order" to "provide to Gilead's attorneys a summary document or documents giving the location or locations of any merchandise bearing any of the Gilead Marks that is in the possession, custody, or control of any of the Defendants so that merchandise can be seized pursuant to this Order." *Id.* at 5. 23 days after they were served with this Order to "immediately" produce this information, Defendants have failed to comply with it in numerous ways.

A. The Defendants Did Not Make a "Production"

As an initial matter, Gilead notes that the "production" that the Defendants purportedly made on April 4 – putting aside the fact that Defendants sent it to the wrong email address – was not a production, but part of a settlement communication. Every page of that "production" is stamped with a Rule 408 disclaimer, including the documents Defendants now claim satisfy the Seizure Order and Asset Freeze Order. Indeed, the cover letter to the "production" expressly

states: “nothing contained herein shall be deemed an admission as to any facts or circumstances.” Declaration of Timothy A. Waters, dated April 11, 2025 (“Waters Decl.”) Ex. A (Apr. 4, 2025 Ltr.) at 1. Providing documents while simultaneously disclaiming Gilead’s ability to rely on the truth of those documents is not a good-faith attempt to comply with the Seizure Order and Asset Freeze Order. But given that Defendants have represented to this Court that the Rule-408-stamped documents they provided Gilead constitute a production that satisfies those orders, Gilead will assume for purposes of this motion that those documents do in fact constitute Defendants’ attempt to comply with those Orders, and that their disclaimer that the documents are not an “admission” is void.

B. Defendants Have Failed to Produce Any Pedigrees

First, Defendants have not produced any pedigrees for any Gilead-branded medicines they bought or sold. As the Court (and counsel for the Defendants) are aware from *Gilead et al. v. Safe Chain Solutions LLC et al.*, 21-cv-4106 (E.D.N.Y.) (“*Gilead I*”), pedigrees are required documents under the federal Drug Supply Chain Security Act that, among other things, provide a chain of custody for each bottle of medicine that traces all the way back to the manufacturer. *See* 21 U.S.C. § 360eee-1. Pedigrees are anti-counterfeiting tools, and collecting and examining pedigrees was crucial to Gilead’s efforts to identify the source and distribution of the counterfeit Gilead-branded medicines in *Gilead I*.

Pharmacies are required by law to maintain pedigrees for six years after dispensing a drug. 21 U.S.C. § 360eee-1(d)(1)(A)(iii); *see generally* FDA, *Pharmacists: Utilize DSCSA Requirements to Protect Your Patients*, <https://www.fda.gov/drugs/drug-supply-chain-security-act-dcsa/pharmacists-utilize-dcsa-requirements-protect-your-patients>. Defendants of course

knew that they produced no pedigrees when they filed their opposition brief, but failed to mention that non-production in their brief, let alone explain it. Instead, Defendants said only that “[t]he Pharmacy has produced information it has identified that are responsive to this paragraph” by producing “invoices/reports.” Opp. at 4. To be clear: invoices and purchasing or dispensation reports are not the same as pedigrees, including because they do not show the history of how the medicine at issue passed through the supply chain, which is the point of a pedigree and essential to Gilead’s efforts to determine how Defendants obtained the counterfeit medicines and prevent additional patients from receiving counterfeits.

C. Defendants Have Produced *No Information* About Any Gilead-Branded Medicines They Dispensed This Year – Including the Counterfeit Dispensed to the Whistleblower

The Defendants produced as Exhibit 4 to their letter what they referred to as a “report generated through the Pharmacy’s software system” showing Heal the World’s dispensation of Gilead-branded medicines since March 2022. *See* Waters Decl. Ex. A at 18-36. But that report contains *no information on any BIKTARVY® the pharmacy dispensed to patients in the year 2025*, which is when Gilead knows the pharmacy was dispensing counterfeit BIKTARVY®. That means, for example, that the pharmacy failed to produce records showing that it dispensed the counterfeit BIKTARVY® to the whistleblower identified in Gilead’s Complaint and original moving papers.

This was no oversight or technical glitch in the Defendants’ production. As with all the deficiencies discussed herein, Gilead raised the complete lack of dispense records from 2025 with Defendants before filing this reply brief. Defendants again did not produce the records from 2025, and offered no explanation or excuse. It is bizarre for a pharmacy to claim it has sale/dispense

records going back years, but has no way whatsoever of identifying the Gilead-branded medicines it dispensed to patients in the past three months. Moreover, at the seizure Gilead discovered documents indicating that in 2025 a large number of patients with prescriptions for Gilead-branded HIV medicines were transferred to Heal the World from other pharmacies. *See, e.g.*, Waters Decl. Ex. B (Marga Pharmacy Transfer Form dated January 10, 2025); Ex. C (Marga Pharmacy Transfer Form dated January 13, 2025). The only rational explanation for the Defendants' failure to produce the 2025 dispense records is the obvious one: the Defendants are actively hiding from Gilead and the Court their recent dispenses of counterfeit HIV medicine to patients. In so doing, not only are they in willful contempt of the Seizure Order, but they are knowingly putting patients at risk.

D. Defendants Have Failed to Produce Purchase Records

The purchase information produced by Defendants is also grossly inadequate. For example, the dispense information that the Defendants did provide – and Gilead has no reason to believe any aspect of it is complete – purports to show that Heal the World dispensed 149 bottles of Gilead-branded BIKTARVY[®] beginning in March 2022. Defendants produced as Exhibit 2 to their letter what they called “a copy of invoices/reports” purportedly showing Heal the World's purchases of those Gilead-branded medicines – but even taken at face value, those records show purchases of 38 bottles of BIKTARVY[®] from McKesson, 19 from Cardinal, and three bottles from an entity called Paisa Pharmacy. Waters Decl. Ex. A at 8-10 (Ex. 2). In other words, Defendants have failed to account for nearly *two-thirds of the BIKTARVY[®] that Defendants admit to having dispensed*. Moreover, Defendants have failed to produce the lot number for *any* of the Gilead-

branded medicines they have purchased. Once again, the Defendants offer no explanation or excuse as to why these records have not been produced.

E. Defendants Do Not and Cannot Meet Their Burden of Proving It Is Impossible for Them to Comply

In their opposition brief, all the Defendants offer by way of excuse or explanation for their failure to produce information required by the Seizure Order is the flat assertion that “[t]his information is not available to the Pharmacy.” Opp. at 5. When Gilead followed up after receiving Defendants’ production, Defendants made the same assertion. This case is about potentially dangerous counterfeit HIV medicine being dispensed to innocent patients in this District. “This information is not available” is a grossly insufficient answer.

To raise impossibility as a defense to a motion for contempt, Defendants have the “burden of producing evidence that it is not possible for [them] to comply” with the Orders. *S.E.C. v. Towers Fin. Corp.*, No. 93 CIV. 0744 WK AJP, 1996 WL 406685, at *3 (S.D.N.Y. Mar. 26, 1996); *United States v. Rylander*, 460 U.S. 752, 757 (1983) (“[I]n raising this [impossibility] defense, the defendant has a burden of production.”). Defendants have not even attempted to meet that burden, nor could they. It is ridiculous for Defendants to claim that they can only provide dispense records from 2024 and earlier because they have no way of knowing to which patients they dispensed HIV medicine in the past few months. And if the Defendants are going to ask the Court to believe that they have never obtained the legally required pedigree documentation for any of the Gilead-branded medicines they purchased, or that they cannot locate any purchase records at all for two-thirds of the medicines they acquired in the past three years, they need to provide much more than unsupported statements by counsel that Defendants do not have that documentation. Defendants are in willful contempt of the Seizure Order. *See, e.g., Armstrong v. Guccione*, 470 F.3d 89, 99

(2d Cir. 2006) (affirming a district court’s “proper understanding of the law” where the court held defendant in contempt for failing to produce items required by court order).

II. Defendants’ Deficient Response to the Asset Freeze Order

Defendants are also in violation of the Asset Freeze Order, which requires that:

Immediately upon receipt of this Order, each **Defendant** shall disclose to Plaintiffs’ attorneys:

- a. a list of all assets held by, for, or on account of the Defendant, including any account for which they have signatory authority, in any bank, brokerage house, or financial institution, including account title, account number, and balance;
- b. a list of all real properties the Defendant owns or in which they presently have a legal interest; and
- c. a list of all real properties the Defendant previously owned or in which they previously had a legal interest from March 19, 2022 to the present.

Dkt. 18 (Asset Freeze Order) ¶ 5 (emphasis added). Defendants have not provided a complete list of assets to Gilead; in fact, Gilead knows from having served the asset freeze order on various banks, brokerage houses, and financial institutions that Defendants are undercounting their assets by millions of dollars.

As an initial matter, Defendants have been inconsistent in what they have told the Court as compared to what they have disclosed to Gilead. For example, in its production to Gilead, Defendants identify that “City Plus Pharmacy” [sic] has a total of \$57,000 in checking accounts. Waters Decl. Ex. A at 38 (Ex. 5). But in their opposition, Defendants claim that in addition to a Citi Bank account with \$57,000, City Plus Care Pharmacy Inc. has a T.D. Bank account with an additional \$55,000. Opp. at 4. Further, while Defendants’ opposition claims that there are no real properties Defendants own or have a legal interest, or which they previously owned or had a legal interest in, Opp. at 2, Defendants’ production to Gilead disclosed that Nabila Chaudhary has a home worth \$625,000, Waters Decl. Ex. A at 42 (Ex. 5).

The reality is that Gilead knows that Defendants have significant additional assets that they have failed to disclose to either Gilead or the Court, worth millions of dollars. Gilead has not revealed to Defendants the hidden assets that Gilead already knows about, because if Gilead were to do so, Defendants would inevitably claim that the assets Gilead was able to locate on its own were the only assets Defendants forgot to disclose.¹ The Asset Freeze Order requires Defendants to affirmatively disclose *all* their assets. The Court should give the Defendants a final opportunity to make a full asset disclosure, and warn Defendants that sanctions may issue if they fail to do so. Gilead reserves its right to seek further sanctions or a finding of contempt if, after Defendants make that purportedly full disclosure, Gilead has or obtains evidence that Defendants are continuing to conceal their assets.

CONCLUSION

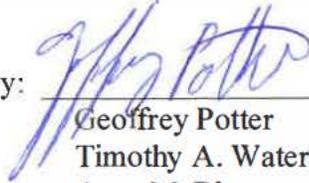
For the reasons stated above and in Gilead's opening brief, the Court should hold the Defendants in contempt of the Seizure Order, issue coercive sanctions against Defendants as the Court sees appropriate, and warn Defendants that increasing sanctions, up to and including imprisonment, will be issued until such time as their contempt is cured. The Court should also order Defendants to make a full disclosure of all of their assets pursuant to the Asset Freeze Order within three calendar days, and warn Defendants that failure to make a complete disclosure may result in an additional finding of contempt and issuance of additional sanctions.

¹ At the Court's request, Gilead can submit for *in camera* review records demonstrating that Defendants are grossly understating their assets.

Dated: New York, New York
April 11, 2025

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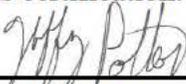
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CERTIFICATION OF WORD COUNT COMPLIANCE

I hereby certify pursuant to Local Civil Rule 7.1(c) that the foregoing Memorandum of Law contains 2,560 words (excluding the caption and signature block), and that I have relied upon Microsoft Word's word count for purposes of this certification.



Geoffrey Potter

CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2025, I served Plaintiffs' Reply Memorandum of Law in support of Order to Show Cause, and the supporting documents thereto, upon the following:

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TO: Clerk's Office
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK



APPLICATION FOR LEAVE
TO FILE DOCUMENT UNDER SEAL

Gilead Sciences Inc. and Gilead Ireland UC

-v-

25-cv-1469 (RER) (RML)

City Plus Care Pharmacy Inc.d/b/a Heal the World
Pharmacy, Nabila Chaudhary, Qaiser Chaudhary, and
Hamza Chaudhary

Docket Number

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INDICATE UPON THE PUBLIC DOCKET SHEET: YES NO

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A) If pursuant to a prior Court Order:

Docket Number of Case in Which Entered: Dkt. 15

Judge/Magistrate Judge: Reyes

Date Entered: 03/17/2025

B) If a new application, the statute, regulation, or other legal basis that
authorizes filing under seal

15 U.S.C. § 1116(d)

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THE COURT.

DATED: , NEW YORK

U.S. DISTRICT JUDGE/U.S. MAGISTRATE JUDGE

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DATE

MANDATORY CERTIFICATION OF SERVICE:

A.) A copy of this application either has been or will be promptly served upon all parties to this action, B.) Service is excused by 31 U.S.C. 3730(b), or by
the following other statute or regulation: ; or C.) This is a criminal document submitted, and flight public safety, or security are significant concerns.
(Check one)

4/11/2025

DATE

SIGNATURE