

1 Jonathan K. Levine (State Bar No. 220289)  
Laurence D. King (State Bar No. 206423)  
2 Linda M. Fong (State Bar No. 124232)  
KAPLAN FOX & KILSHEIMER LLP  
3 555 Montgomery Street, Suite 1501  
San Francisco, CA 94111  
4 Telephone: 415-772-4700  
Fax: 415-772-4707  
5

Marc A. Topaz  
6 Richard A. Maniskas  
Chad E. Kauffman  
7 SCHIFFRIN & BARROWAY, LLP  
Three Bala Plaza East, Suite 400  
8 Bala Cynwyd, PA 19004  
Telephone: 610-667-7706  
9 Fax: 610-667-7056

10 Samuel H. Rudman  
David A. Rosenfeld  
11 CAULEY GELLER BOWMAN & RUDMAN LLP  
200 Broadhollow Road, Suite 200  
12 Melville, NY 11747  
Telephone: 631-367-7100  
13 Fax: 631-367-1173

14 Attorneys for Plaintiff  
And All Others Similarly Situated

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17

18 JOHN CAMPAGNUOLA, JR., Individually )  
and On Behalf Of All Others Similarly )  
19 Situated, )

20 Plaintiff, )

21 vs. )

22 GILEAD SCIENCES, INC., JOHN C. )  
23 MARTIN, JOHN F. MILLIGAN, MARK L. )  
24 PERRY, NORBERT W. BISCHOFBERGER, )  
25 ANTHONY CARRACIOLO, and WILLIAM )  
A. LEE, )

26 Defendants )  
27

Case No.: \_\_\_\_\_

**CLASS ACTION COMPLAINT FOR  
VIOLATION OF FEDERAL SECURITIES  
LAWS**

JURY TRIAL DEMANDED

1 Plaintiff, John Campagnuola, Jr., (“Plaintiff”) individually and on behalf of all other persons  
2 similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against defendants,  
3 alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and  
4 information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by  
5 and through Plaintiff’s attorneys, which included, among other things, a review of the defendants’  
6 public documents, conference calls and announcements made by defendants, United States  
7 Securities and Exchange Commission (“SEC”) filings, wire and press releases published by and  
8 regarding Gilead Sciences, Inc. (“Gilead” or the “Company”), and information readily obtainable on  
9 the Internet. Plaintiff believes that substantial additional evidentiary support will exist for the  
10 allegations set forth herein after a reasonable opportunity for discovery.

11 **NATURE OF THE ACTION**

12 1. This is a federal class action brought by the Plaintiff on behalf of himself and a Class  
13 consisting of all other persons who purchased the publicly traded securities of Gilead (NASDAQ:  
14 GILD), between July 14, 2003 and October 28, 2003, inclusive (the “Class Period”), seeking to  
15 recover damages caused by Defendants’ violations of federal securities laws and pursue remedies  
16 under the Securities Exchange Act of 1934 (the “Exchange Act”).

17 **JURISDICTION AND VENUE**

18 2. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of  
19 the Exchange Act, (15 U.S.C. §§ 78j(b) and 78t(a)), and Rule 10b-5 promulgated thereunder (17  
20 C.F.R. §240.10b-5).

21 3. This Court has jurisdiction over the subject matter of this action pursuant to §27 of  
22 the Exchange Act (15 U.S.C. §78aa) and 28 U.S.C. § 1331.

23 4. Venue is proper in this Judicial District pursuant to §27 of the Exchange Act, 15  
24 U.S.C. § 78aa and 28 U.S.C. § 1391(b). Many of the acts and transactions alleged herein,  
25 including the preparation and dissemination of materially false and misleading information, occurred  
26 in substantial part in this District.

27 5. In connection with the acts, conduct and other wrongs alleged in this complaint,  
28 defendants, directly or indirectly, used the means and instrumentalities of interstate commerce,

1 including but not limited to, the United States mails, interstate telephone communications and the  
2 facilities of the national securities exchange.

3 **THE PARTIES**

4 6. Plaintiff, John Campagnuola, Jr., purchased Gilead securities, as set forth in the  
5 accompanying certification attached hereto and incorporated herein by reference, and has suffered  
6 damages as a result of the wrongful acts of defendants as alleged herein.

7 7. Defendant Gilead is a corporation organized and existing under the laws of Delaware  
8 with its principal place of business located at 333 Lakeside Drive, Foster City, California 94404.

9 8. Defendant John C. Martin (“Martin”) was, at all relevant times during the Class  
10 Period, the Company’s President and Chief Executive Officer.

11 9. Defendant John F. Milligan (“Milligan”) was, at all relevant times during the Class  
12 Period, the Company’s Chief Financial Officer.

13 10. Defendant Mark L. Perry (“Perry”) was, at all relevant times during the Class Period,  
14 the Company’s Vice-President.

15 11. Defendant Norbert W. Bischofberger (“Bischofberger”) was, at all relevant times  
16 during the Class Period, the Company’s Vice-President.

17 12. Defendant Anthony Carraciolo (“Carraciolo”) was, at all relevant times during the  
18 Class Period, the Company’s Vice-President.

19 13. Defendant William A. Lee (“Lee”) was, at all relevant times during the Class Period,  
20 the Company’s Vice-President.

21 14. Defendants Martin, Milligan, Perry, Bischofberger, Carraciolo, and Lee are  
22 collectively referred to hereafter as the “Individual Defendants.” During the Class Period, each of  
23 the Individual Defendants, as senior executive officers and/or directors of Gilead, were privy to  
24 non-public information concerning its business, finances, products, markets and present and future  
25 business prospects via access to internal corporate documents, conversations and connections with  
26 other corporate officers and employees, attendance at management and Board of Directors meetings  
27 and committees thereof and via reports and other information provided to them in connection  
28 therewith. Because of their possession of such information, the Individual Defendants knew or

1 recklessly disregarded the fact that adverse facts specified herein had not been disclosed to, and  
2 were being concealed from, the investing public.

3 15. Each of the Individual Defendants are liable as a direct participant with respect to a  
4 fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of Gilead  
5 publicly traded securities by disseminating materially false and misleading statements and/or  
6 concealing material adverse facts. The scheme deceived the investing public regarding Gilead's  
7 business, operations, management, and the intrinsic value of Gilead publicly traded securities and  
8 caused Plaintiff and other members of the Class to purchase Gilead securities at artificially inflated  
9 prices.

10 16. In addition, the Individual Defendants, by reason of their status as senior executive  
11 officers and directors were each a "controlling person" within the meaning of Section 20 of the  
12 Exchange Act and had the power and influence to cause the Company to engage in the unlawful  
13 conduct complained of herein. Because of their position of control, the Individual Defendants were  
14 able to and did, directly or indirectly, control the content of various SEC filings, press releases, and  
15 other public statements pertaining to the Company during the Class Period.

16 17. The Individual Defendants, because of their positions with Gilead were provided  
17 with copies of Gilead's reports and press releases alleged herein to be misleading, prior to or shortly  
18 after their issuance and had both the ability and opportunity to prevent their issuance or cause them  
19 to be corrected. The Individual Defendants had the opportunity to commit the fraudulent acts  
20 alleged herein. Accordingly, each of the Individual Defendants is responsible for the accuracy of  
21 the public reports and releases detailed herein and is therefore primarily liable for the  
22 representations contained therein.

23 18. The Individual Defendants are liable, jointly and severally, as direct participants in  
24 and co-conspirators of, the wrongs complained of herein.16.

25 **CLASS ACTION ALLEGATIONS**

26 19. Plaintiff brings this action as a federal class action pursuant to Federal Rules of Civil  
27 Procedure 23(a) and (b)(3) on behalf of a class (the "Class"), consisting of all those who purchased  
28 the securities of Gilead between July 14, 2003 and October 28, 2003, inclusive, (the "Class Period")

1 and who were damaged thereby. Excluded from the Class are defendants, the officers and directors  
2 of the Company, members of their immediate families and their legal representatives, heirs,  
3 successors or assigns and any entity in which defendants have or had a controlling interest.

4 20. The members of the Class are so numerous that joinder of all members is  
5 impracticable. Throughout the Class Period, Gilead securities were actively traded on the  
6 NASDAQ Stock Exchange (“NASDAQ”). While the exact number of Class members is unknown  
7 to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes  
8 that there are hundreds or thousands of members in the proposed Class.

9 21. Plaintiff’s claims are typical of the claims of the members of the Class, because  
10 plaintiffs and all of the Class members sustained damages arising out of defendants’ wrongful  
11 conduct complained of herein.

12 22. Plaintiff will fairly and adequately protect the interests of the Class members and has  
13 retained counsel who are experienced and competent in class actions and securities litigation.

14 23. A class action is superior to all other available methods for the fair and efficient  
15 adjudication of this controversy, since joinder of all members is impracticable. Furthermore, as the  
16 damages suffered by individual members of the Class may be relatively small, the expense and  
17 burden of individual litigation make it impossible for the members of the Class to individually  
18 redress the wrongs done to them. There will be no difficulty in the management of this action as a  
19 class action.

20 24. Questions of law and fact common to the members of the Class predominate over  
21 any questions that may affect only individual members, in that defendants have acted on grounds  
22 generally applicable to the entire Class. Among the questions of law and fact common to the Class  
23 are:

24 (a) Whether the federal securities laws were violated by Defendants’ acts as  
25 alleged herein;

26 (b) Whether the Company’s publicly disseminated press releases and statements  
27 during the Class Period omitted and/or misrepresented material facts;

28

1 (c) Whether defendants breached any duty to convey material facts or to correct  
2 material acts previously disseminated;

3 (d) Whether the defendants acted willfully, with knowledge or recklessly, in  
4 omitting and/or misrepresenting material facts; and

5 (e) Whether the members of the Class have sustained damages and, if so, what is  
6 the appropriate measure of damages.<sup>24</sup>

7 **SUBSTANTIVE ALLEGATIONS**

8 **Background**

9 25. Gilead Sciences, Inc. is a biopharmaceutical company that discovers, develops and  
10 commercializes therapeutics to advance the care of patients suffering from life-threatening diseases  
11 worldwide.

12 26. This action concerns defendants' materially false and misleading statements during  
13 the Class Period. More specifically, Defendants misrepresented the following: (1) that Gilead was  
14 aware that its revenue was not increasing due to sales of its drug Viread; (2) that Gilead was aware  
15 that Viread sales had only increased because wholesalers bought an excessive amount of the drug  
16 before July 27, 2003 in an attempt to avoid the price increase scheduled for July 27, 2003; (3) that  
17 Gilead was aware that its wholesalers' over-buying of Viread to avoid the price increase accounted  
18 for \$33 to \$37 million, not the \$25 to \$30 million that Gilead originally purported; and (4) that  
19 Gilead was aware that the wholesaler over-buying would decrease projected revenue in the future.  
20 Defendants failed to disclose each of these material facts.

21 **Materially False and Misleading Statements Made During the Class Period**

22 27. The Class Period begins on July 14, 2003. On that date, the Company issued a press  
23 release reporting that its second quarter 2003 results would "exceed expectations." The Company  
24 stated that it expected "that its financial results for the second quarter 2003 will exceed analyst  
25 expectations, driven primarily by higher product revenues."

26 28. More specifically, the Company estimated that its total net revenues for the second  
27 quarter 2003 would be in the range of \$236-239 million, and that median total net revenues  
28 projected by analysts who report their earnings forecasts to FirstCall were \$179 million. The

1 increase in revenue was driven primarily by strong sales growth of Viread® (tenofovir disoproxil  
2 fumarate), one of the company's antiviral drugs for the treatment of HIV. Gilead expected that  
3 Viread sales would be approximately \$165 million for the quarter, compared to \$107 million for the  
4 first quarter of 2003. Increasing Viread sales reflect broader prescribing patterns in all commercial  
5 markets, as well as increases in U.S. wholesaler inventory levels in the second quarter in  
6 anticipation of a Viread price increase, which was implemented on June 27, 2003.

7 29. However, on July 14, 2003, Bloomberg reported that Michael King, an analyst at  
8 Banc of America Securities was skeptical of Gilead's second quarter results. King stated, "It's not  
9 clear how much of the increase in Viread sales came as wholesalers stocked up on the drug ahead of  
10 a price increase that took effect last month." King further stated that he was going to be "careful."

11 30. In response, on July 14, 2003, Bloomberg reported that Gilead's spokeswoman, Amy  
12 Flood, was quoted by Bloomberg, "The main reason for the jump in Viread sales is an increase in  
13 prescriptions, not inventory stocking." (Emphasis added).

14 31. On July 31, 2003, the Company issued a press release reporting its second quarter  
15 2003 results. The Company stated that total revenues were up 118% and were \$238.9 million  
16 compared to second quarter 2002 revenues of \$109.4 million. Net income was \$100.4 million, or  
17 \$0.46 per diluted share. Additionally, the Company stated:

18 **Net revenues from product sales totaled \$230.7 million, up**  
19 **146 percent from the second quarter of 2002. This growth**  
20 **primarily was driven by higher revenues from Viread® (tenofovir**  
21 **disoproxil fumarate). Sales of Viread were \$167.0 million in the**  
22 **second quarter of 2003, up from \$44.7 million in the second**  
23 **quarter of 2002 and \$107.3 million in the first quarter of 2003.**  
24 **Viread sales growth was primarily driven by higher prescription**  
25 **volume, a significant increase in U.S. wholesaler inventories and a**  
26 **favorable European currency environment compared to the same**  
27 **quarter last year. Gilead estimates that increased stocking by U.S.**  
28 **wholesalers accounted for \$25-30 million of Viread sales in the**  
**second quarter.** AmBisome® (amphotericin B) liposome for  
injection sales for the second quarter of 2003 were \$51.2 million, an  
increase of 7 percent compared to the second quarter of 2002.  
Reported AmBisome sales in the second quarter of 2003 were \$7.0  
million higher due to the favorable currency environment compared to  
the same quarter last year. On a volume basis, AmBisome sales  
decreased by 4 percent in Europe compared to the second quarter  
2002. Sales of Hepsera® (adefovir dipivoxil 10 mg) totaled \$12.4  
million for the second quarter of 2003, up from \$5.8 million in the  
first quarter of 2003.

1 Commenting on these results, defendant Martin stated:

2 **"We are very pleased to report another quarter of**  
3 **significant increases in product revenues. This strong growth was**  
4 **fueled primarily by increasing sales of Viread in all marketed**  
5 **territories** and Hepsera's uptake in the United States and introduction  
6 in Europe[.]" "We are focused on continuing this sales momentum  
7 and increasing our market share through robust clinical data and label  
8 expansions in key territories, as well as launching Emtriva™  
9 (emtricitabine) for HIV." (Emphasis added).

10 32. On August 14, 2003, Gilead filed its Form 10-Q for the second quarter 2002 with the  
11 SEC, which confirmed the previously announced financial results. The Company's Form 10-Q,  
12 signed by defendants Martin and Milligan.

13 33. The statements referenced above in ¶¶ 27, 29-31 were each materially false and  
14 misleading because they failed to disclose and misrepresented the following material adverse facts  
15 which were known to defendants or recklessly disregarded by them: (1) that Gilead was aware that  
16 its revenue was not increasing due to sales of its drug Viread; (2) that Gilead was aware that Viread  
17 sales had only increased because wholesalers bought an excessive amount of the drug before July  
18 27, 2003 in an attempt to avoid the price increase scheduled for July 27, 2003; (3) that Gilead was  
19 aware that its wholesalers' over-buying of Viread to avoid the price increase accounted for \$33 to  
20 \$37 million, not the \$25 to \$30 million that Gilead originally purported; and (4) that Gilead was  
21 aware that the wholesaler over-buying would decrease projected revenue in the future, but did not  
22 disclose this.

### 23 **The Truth Begins To Emerge**

24 34. On October 28, 2003, after the markets closed, the Company issued a press release  
25 reporting its third quarter 2003 results. The Company stated, in pertinent part, the following:

26 Net revenues from product sales totaled \$194.1 million, up 61  
27 percent from the third quarter of 2002. This growth primarily was  
28 driven by higher revenues from Viread® (tenofovir disoproxil  
fumarate). Sales of Viread were \$115.4 million in the third quarter of  
2003, up from \$68.9 million in the third quarter of 2002, an increase  
of 67 percent. U.S. sales of Viread were \$59.4 million, and sales  
outside the United States totaled \$56.0 million. Viread sales growth  
was primarily driven by higher prescription volumes in both the  
United States and Europe and a favorable European currency  
environment compared to the same quarter last year. After reviewing  
NDC prescription trends, IMS inventory data and actual Viread sales,  
**Gilead estimates there was approximately \$33 to \$37 million of**

1 **inventory reduction by U.S. pharmaceutical wholesalers during**  
2 **the third quarter of 2003 following an equivalent inventory build**  
3 **during the second quarter of 2003.** AmBisome® (amphotericin B)  
4 liposome for injection sales for the third quarter of 2003 were \$51.6  
5 million, a record high and an increase of 6 percent compared to the  
6 third quarter of 2002. Reported AmBisome sales in the third quarter  
7 of 2003 were \$6.1 million higher due to the favorable currency  
8 environment compared to the same quarter last year. On a volume  
9 basis, AmBisome sales decreased by one percent in Europe compared  
10 to the third quarter of 2002. Sales of Hepsera® (adefovir dipivoxil 10  
11 mg) totaled \$16.4 million for the third quarter of 2003, up from \$12.4  
12 million in the second quarter of 2003. Since the launch of Emtriva™  
13 (emtricitabine) in July 2003, sales for the third quarter of 2003 were  
14 \$6.0 million. (Emphasis added).

15 35. The market reacted swiftly to this news, with the Company's stock falling 12%, or  
16 \$7.46 per share from a high of \$59.46 per share on October 28, 2003 to close at \$52.00 per share on  
17 October 29, 2003.

#### 18 **Undisclosed Adverse Facts**

19 36. The market for Gilead's publicly traded securities was open, well-developed and  
20 efficient at all relevant times. As a result of these materially false and misleading statements and  
21 failures to disclose, Gilead's publicly traded securities traded at artificially inflated prices during the  
22 Class Period. Plaintiff and other members of the Class purchased or otherwise acquired Gilead  
23 publicly traded securities relying upon the integrity of the market price of Gilead's publicly traded  
24 securities and market information relating to Gilead, and have been damaged thereby.

25 37. During the Class Period, defendants materially misled the investing public, thereby  
26 inflating the price of Gilead's publicly traded securities, by publicly issuing false and misleading  
27 statements and omitting to disclose material facts necessary to make defendants' statements, as set  
28 forth herein, not false and misleading. Said statements and omissions were materially false and  
misleading in that they failed to disclose material adverse information and misrepresented the truth  
about the Company, its business and operations, as alleged herein.

31 38. At all relevant times, the material misrepresentations and omissions particularized in  
32 this Complaint directly or proximately caused or were a substantial contributing cause of the  
33 damages sustained by plaintiff and other members of the Class. As described herein, during the  
34 Class Period, defendants made or caused to be made a series of materially false or misleading

1 statements about Gilead’s business, prospects and operations. These material misstatements and  
2 omissions had the cause and effect of creating in the market an unrealistically positive assessment  
3 of Gilead and its business, prospects and operations, thus causing the Company’s publicly traded  
4 securities to be overvalued and artificially inflated at all relevant times. Defendants’ materially  
5 false and misleading statements during the Class Period resulted in plaintiff and other members of  
6 the Class purchasing the Company’s publicly traded securities at artificially inflated prices, thus  
7 causing the damages complained of herein.

8 **ADDITIONAL SCIENTER ALLEGATIONS**

9 39. As alleged herein, defendants acted with scienter in that defendants knew that the  
10 public documents and statements issued or disseminated in the name of the Company were  
11 materially false and misleading; knew that such statements or documents would be issued or  
12 disseminated to the investing public; and knowingly and substantially participated or acquiesced in  
13 the issuance or dissemination of such statements or documents as primary violations of the federal  
14 securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of  
15 information reflecting the true facts regarding Gilead, their control over, and/or receipt and/or  
16 modification of Gilead’s allegedly materially misleading misstatements and/or their associations  
17 with the Company which made them privy to confidential proprietary information concerning  
18 Gilead, participated in the fraudulent scheme alleged herein.

19 40. Defendants knew and/or recklessly disregarded the falsity and misleading nature of  
20 the information which they caused to be disseminated to the investing public. The ongoing  
21 fraudulent scheme described in this complaint could not have been perpetrated over a substantial  
22 period of time, as has occurred, without the knowledge and complicity of the personnel at the  
23 highest level of the Company, including the Individual Defendants.

24 41. In addition, during the Class Period, the Individual Defendants sold over 300,000  
25 shares of stock for proceeds of over \$19 million. For example, Defendant Martin sold 50,000  
26 shares during the class period for proceeds of over \$3 million. Defendant Perry sold over 52,000  
27 shares during the class period for proceeds of over \$3 million. Defendant Milligan sold 11,000  
28 shares during the class period for proceeds of over \$600,000. Defendant Bischofberger sold 71,000

1 shares during the class period for proceeds of over \$4 million. Defendant Carraciolo sold over  
2 104,000 shares during the class period for proceeds of over \$6 million. Defendant Lee sold 15,000  
3 shares during the class period for proceeds of over \$900,000.

4 **Applicability of Presumption of Reliance:**  
5 **Fraud-On-The Market Doctrine**

6 42. At all relevant times, the market for Gilead's publicly traded securities was an  
7 efficient market for the following reasons, among others:

8 (a) Gilead's stock met the requirements for listing, and was listed and actively  
9 traded on the NASDAQ, a highly efficient and automated market;

10 (b) As a regulated issuer, Gilead filed periodic public reports with the SEC and the  
11 NASDAQ;

12 (c) Gilead regularly communicated with public investors via established market  
13 communication mechanisms, including through regular disseminations of press releases on the  
14 national circuits of major newswire services and through other wide-ranging public disclosures,  
15 such as communications with the financial press and other similar reporting services; and

16 (d) Gilead was followed by several securities analysts employed by major brokerage  
17 firms who wrote reports which were distributed to the sales force and certain customers of their  
18 respective brokerage firms. Each of these reports was publicly available and entered the public  
19 marketplace.

20 43. As a result of the foregoing, the market for Gilead's publicly traded securities  
21 promptly digested current information regarding Gilead from all publicly available sources and  
22 reflected such information in Gilead's stock price. Under these circumstances, all purchasers of  
23 Gilead's publicly traded securities during the Class Period suffered similar injury through their  
24 purchase of Gilead's publicly traded securities at artificially inflated prices and a presumption of  
25 reliance applies.

26 **NO SAFE HARBOR**

27 44. The statutory safe harbor provided for forward-looking statements under certain  
28 circumstances does not apply to any of the allegedly false statements pleaded in this complaint.

1 Many of the specific statements pleaded herein were not identified as “forward-looking statements”  
2 when made. To the extent there were any forward-looking statements, there were no meaningful  
3 cautionary statements identifying important factors that could cause actual results to differ  
4 materially from those in the purportedly forward-looking statements. Alternatively, to the extent  
5 that the statutory safe harbor does apply to any forward-looking statements pleaded herein,  
6 defendants are liable for those false forward-looking statements because at the time each of those  
7 forward-looking statements was made, the particular speaker knew that the particular forward-  
8 looking statement was false, and/or the forward-looking statement was authorized and/or approved  
9 by an executive officer of Gilead who knew that those statements were false when made.

10 **COUNT I**  
11 **Violation of Section 10(b) Of**  
12 **The Exchange Act And Rule 10b-5**  
13 **Promulgated Thereunder Against**  
14 **All Defendants**

15 45. Plaintiff repeats and reiterates the allegations set forth above as though fully set forth  
16 herein. This claim is asserted against all defendants.

17 46. During the Class Period, defendant Gilead and the Individual Defendants, and each  
18 of them, carried out a plan, scheme and course of conduct which was intended to and, throughout  
19 the Class Period, did: a) deceive the investing public, including plaintiff and other Class members,  
20 as alleged herein; b) artificially inflate and maintain the market price of Gilead’s publicly traded  
21 securities; and c) cause plaintiff and other members of the Class to purchase Gilead’s publicly  
22 traded securities at artificially inflated prices. In furthe rance of this unlawful scheme, plan and  
23 course of conduct, defendants Gilead and the Individual Defendants, and each of them, took the  
24 actions set forth herein.

25 47. These defendants: a) employed devices, schemes, and artifices to defraud; b) made  
26 untrue statements of material fact and/or omitted to state material facts necessary to make the  
27 statements not misleading; and c) engaged in acts, practices, and a course of business which  
28 operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to  
maintain artificially high market prices for Gilead's securities in violation of Section 10(b) of the  
Exchange Act and Rule 10b-5. These defendants are sued either as primary participants in the

1 wrongful and illegal conduct charged herein. The Individual Defendants are also sued as  
2 controlling persons of Gilead, as alleged below.

3 48. In addition to the duties of full disclosure imposed on defendants as a result of their  
4 making of affirmative statements and reports, or participation in the making of affirmative  
5 statements and reports to the investing public, they each had a duty to promptly disseminate truthful  
6 information that would be material to investors in compliance with the integrated disclosure  
7 provisions of the SEC as embodied in SEC Regulation S-X (17 C.F.R. § 210.01 et seq.) and S-K (17  
8 C.F.R. § 229.10 et seq.) and other SEC regulations, including accurate and truthful information with  
9 respect to the Company's operations, financial condition and performance so that the market prices  
10 of the Company's publicly traded securities would be based on truthful, complete and accurate  
11 information.

12 49. Gilead and the Individual Defendants, individually and in concert, directly and  
13 indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails,  
14 engaged and participated in a continuous course of conduct to conceal adverse material information  
15 about the business, business practices, performance, operations and future prospects of Gilead as  
16 specified herein.

17 50. These defendants employed devices, schemes and artifices to defraud, while in  
18 possession of material adverse non-public information and engaged in acts, practices, and a course  
19 of conduct as alleged herein in an effort to assure investors of Gilead's value and performance and  
20 continued substantial growth, which included the making of, or the participation in the making of,  
21 untrue statements of material facts and omitting to state material facts necessary in order to make  
22 the statements made about Gilead and its business operations and future prospects in the light of the  
23 circumstances under which they were made, not misleading, as set forth more particularly herein,  
24 and engaged in transactions, practices and a course of business which operated as a fraud and deceit  
25 upon the purchasers of Gilead's securities during the Class Period.

26 51. Each of the Individual Defendants' primary liability, and controlling person liability,  
27 arises from the following facts: a) each of the Individual Defendants was a high-level executive  
28 and/or director at the Company during the Class Period; b) each of the Individual Defendants, by

1 virtue of his responsibilities and activities as a senior executive officer and/or director of the  
2 Company, was privy to and participated in the creation, development and reporting of the  
3 Company's internal budgets, plans, projections and/or reports; c) the Individual Defendants enjoyed  
4 significant personal contact and familiarity with each other and were advised of and had access to  
5 other members of the Company's management team, internal reports, and other data and information  
6 about the Company's financial condition and performance at all relevant times; and d) the Individual  
7 Defendants were aware of the Company's dissemination of information to the investing public  
8 which they knew or recklessly disregarded was materially false and misleading.

9         52. These defendants had actual knowledge of the misrepresentations and omissions of  
10 material facts set forth herein, or acted with reckless disregard for the truth in that they failed to  
11 ascertain and to disclose such facts, even though such facts were available to them. Such  
12 defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for  
13 the purpose and effect of concealing Gilead's operating condition, business practices and future  
14 business prospects from the investing public and supporting the artificially inflated price of its  
15 securities. As demonstrated by defendants' overstatements and misstatements of the Company's  
16 financial condition and performance throughout the Class Period, the Individual Defendants, if they  
17 did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in  
18 failing to obtain such knowledge by deliberately refraining from taking those steps necessary to  
19 discover whether those statements were false or misleading.

20         53. As a result of the dissemination of the materially false and misleading information  
21 and failure to disclose material facts, as set forth above, the market price of Gilead's securities were  
22 artificially inflated during the Class Period. In ignorance of the fact that market prices of Gilead's  
23 publicly traded securities were artificially inflated, and relying directly or indirectly on the false and  
24 misleading statements made by defendants, or upon the integrity of the market in which the  
25 securities trade, and/or on the absence of material adverse information that was known to or  
26 recklessly disregarded by defendants but not disclosed in public statements by defendants during the  
27 Class Period, plaintiff and the other members of the Class acquired Gilead securities during the  
28 Class Period at artificially high prices and were damaged thereby.



1           59.     In addition, each of the Individual Defendants had direct involvement in the day-to-  
2 day operations of the Company and, therefore, is presumed to have had the power to control or  
3 influence the particular transactions giving rise to the securities violations as alleged herein, and  
4 exercised the same.

5           60.     As set forth above, Gilead and the Individual Defendants each violated Section 10(b)  
6 and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their  
7 controlling positions, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange  
8 Act. As a direct and proximate result of defendants' wrongful conduct, plaintiff and other members  
9 of the Class suffered damages in connection with their purchases of the Company's securities during  
10 the Class Period.

11           **WHEREFORE**, plaintiff prays for relief and judgment, as follows:

12                   (a) Determining that this action is a proper class action, designating plaintiff as Lead  
13 Plaintiff and certifying plaintiff as a class representative under Rule 23 of the Federal Rules of Civil  
14 Procedure and plaintiff's counsel as Lead Counsel;

15                   (b) Awarding compensatory damages in favor of plaintiff and the other Class  
16 members against all defendants, jointly and severally, for all damages sustained as a result of  
17 defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

18                   (c) Awarding plaintiff and the Class their reasonable costs and expenses incurred in  
19 this action, including counsel fees and expert fees; and

20                   (d) Such other and further relief as the Court may deem just and proper.

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**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

DATED: November 17, 2003

KAPLAN FOX & KILSHEIMER LLP

By: \_\_\_\_\_

Jonathan K. Levine (State Bar No. 220289)  
Laurence D. King (State Bar No. 206423)  
Linda M. Fong (State Bar No. 124232)  
KAPLAN FOX & KILSHEIMER LLP  
555 Montgomery Street, Suite 1501  
San Francisco, CA 94111  
Telephone: 415-772-4700  
Fax: 415-772-4707

Marc A. Topaz  
Richard A. Maniskas  
Chad E. Kauffman  
SCHIFFRIN & BARROWAY, LLP  
Three Bala Plaza East, Suite 400  
Bala Cynwyd, PA 19004  
Telephone: 610-667-7706  
Fax: 610-667-7056

Samuel H. Rudman  
David A. Rosenfeld  
CAULEY GELLER BOWMAN & RUDMAN LLP  
200 Broadhollow Road, Suite 200  
Melville, NY 11747  
Telephone: 631-367-7100  
Fax: 631-367-1173

Attorneys for Plaintiff

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**CERTIFICATE OF INTERESTED ENTITIES OR PERSONS**

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

\_\_\_\_\_  
Jonathan K. Levine  
Attorney of Record for Plaintiff  
John Campagnuola, Jr.