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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11 SUE KIM, Individually and On Behalf Of All
12 Others Similarly Situated,

13 Plaintiff,

14 v.

15 GILEAD SCIENCES, INC., JOHN C.
16 MARTIN, JOHN F. MILLIGAN, MARK L.
17 PERRY, NORBERT W.
18 BISCHOFBERGER, ANTHONY
19 CARRACIOLO and WILLIAM A. LEE,

20 Defendants.

Civil Action No.

CLASS ACTION COMPLAINT
FOR VIOLATIONS OF FEDERAL
SECURITIES LAWS

JURY TRIAL DEMANDED

21 Plaintiff, Sue Kim, individually and on behalf of all other persons similarly situated,
22 by Plaintiff's undersigned attorneys, for Plaintiff's complaint against defendants, alleges the
23 following based upon personal knowledge as to Plaintiff and Plaintiff's own acts, and
24 information and belief as to all other matters, based upon, *inter alia*, the investigation conducted
25 by and through Plaintiff's attorneys, which included, among other things, a review of the
26 defendants' public documents, conference calls and announcements made by defendants, United
27 States Securities and Exchange Commission ("SEC") filings, wire and press releases published
28 by and regarding Gilead Sciences, Inc. ("Gilead" or the "Company"), and information readily
obtainable on the Internet. Plaintiff believes that substantial evidentiary support will exist for the

1 allegations set forth herein after a reasonable opportunity for discovery.

2 **NATURE OF THE ACTION**

3 1. This is a federal Class Action brought by the Plaintiff on behalf of himself and a
4 Class consisting of all other persons who purchased the publicly traded securities of Gilead
5 (NASDAQ: GILD), between July 14, 2003 and October 28, 2003, inclusive (the “Class Period”),
6 seeking to recover damages caused by Defendants’ violations of federal securities laws and
7 pursue remedies under the Securities Exchange Act of 1934 (the “Exchange Act”).
8

9 **JURISDICTION AND VENUE**

10 2. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a)
11 of the Exchange Act, (15 U.S.C. §§ 78j(b) and 78t(a)), and Rule 10b-5 promulgated thereunder
12 (17 C.F.R. §240.10b-5).
13

14 3. This Court has jurisdiction over the subject matter of this action pursuant to §27
15 of the Exchange Act (15 U.S.C. §78aa) and 28 U.S.C. § 1331.
16

17 4. Venue is proper in this Judicial District pursuant to §27 of the Exchange Act, 15
18 U.S.C. § 78aa and 28 U.S.C. § 1391(b). Many of the acts and transactions alleged herein,
19 including the preparation and dissemination of materially false and misleading information,
20 occurred in substantial part in this District.
21

22 5. In connection with the acts, conduct and other wrongs alleged in this complaint,
23 defendants, directly or indirectly, used the means and instrumentalities of interstate commerce,
24 including but not limited to, the United States mails, interstate telephone communications and the
25 facilities of the national securities exchange.
26
27

1 **THE PARTIES**

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

6 7. Defendant Gilead is a corporation organized and existing under the laws of
7 Delaware with its principal place of business located at 333 Lakeside Drive, Foster City,
8 California 94404.
9

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

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

14 10. Defendant Mark L. Perry (“Perry”) was, at all relevant times during the Class
15 Period, the Company’s Vice-President.
16

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

19 12. Defendant Anthony Carraciolo (“Carraciolo”) was, at all relevant times during the
20 Class Period, the Company’s Vice-President.
21

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

24 14. Defendants Martin, Milligan, Perry, Bischofberger, Carraciolo, and Lee are
25 collectively referred to hereafter as the “Individual Defendants.” During the Class Period, each of
26 the Individual Defendants, as senior executive officers and/or directors of Gilead, were privy to
27

1 nonpublic information concerning its business, finances, products, markets and present and future
2 business prospects via access to internal corporate documents, conversations and connections
3 with other corporate officers and employees, attendance at management and Board of Directors
4 meetings and committees thereof and via reports and other information provided to them in
5 connection therewith. Because of their possession of such information, the Individual Defendants
6 knew or recklessly disregarded the fact that adverse facts specified herein had not been disclosed
7 to, and were being concealed from, the investing public.
8

9
10 15. Each of the Individual Defendants are liable as a direct participant with respect to
11 a fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of
12 Gilead publicly traded securities by disseminating materially false and misleading statements
13 and/or concealing material adverse facts. The scheme deceived the investing public regarding
14 Gilead's business, operations, management, and the intrinsic value of Gilead publicly traded
15 securities and caused Plaintiff and other members of the Class to purchase Gilead securities at
16 artificially inflated prices.
17

18 16. In addition, the Individual Defendants, by reason of their status as senior
19 executive officers and directors were each a "controlling person" within the meaning of Section
20 20 of the Exchange Act and had the power and influence to cause the Company to engage in the
21 unlawful conduct complained of herein. Because of their position of control, the Individual
22 Defendants were able to and did, directly or indirectly, control the content of various SEC
23 filings, press releases, and other public statements pertaining to the Company during the Class
24 Period.
25

26 17. The Individual Defendants, because of their positions with Gilead were provided
27
28

1 (e) Whether the members of the Class have sustained damages and, if so, what is
2 the appropriate measure of damages.

3 **SUBSTANTIVE ALLEGATIONS**

4 **Background**

5
6 25. Gilead Sciences, Inc. is a biopharmaceutical company that discovers, develops
7 and commercializes therapeutics to advance the care of patients suffering from life-threatening
8 diseases worldwide.

9
10 26. This Class Action concerns defendants' materially false and misleading statements
11 during the Class Period. More specifically, Defendants misrepresented the following: (1) that
12 Gilead was aware that its revenue was not increasing due to sales of its drug Viread; (2) that
13 Gilead was aware that Viread sales had only increased because customers bought an excessive
14 amount of the drug before July 27, 2003 in an attempt to avoid the price increase scheduled for
15 July 27, 2003; (3) that Gilead was aware that its customers' over-buying of Viread to avoid the
16 price increase accounted for \$33 to \$37 million, not the \$25 to \$30 million that Gilead originally
17 purported; (4) that Gilead was aware that the customer over-buying would decrease projected
18 revenue in the future, but did not disclose this; (5) that Gilead and the Individual Defendants
19 deceived the investing public during the Class Period so they could sell their personal shares of
20 Gilead for increased proceeds; and (6) as a result of the foregoing, defendants lacked a
21 reasonable basis for their revenue projections for the Company, which were therefore materially
22 false and misleading.
23
24

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

26 27. The Class Period begins on July 14, 2003. On that date, the Company issued a
27

1 press release reporting that its second quarter 2003 results “will exceed expectations.” The
2 Company stated, in pertinent part, the following:

3
4 **Gilead Sciences, Inc. today announced that based on initial analyses,**
5 **the company expects that its financial results for the second**
6 **quarter 2003 will exceed analyst expectations, driven primarily**
7 **by higher product revenues.**

8
9 Gilead estimates its total **net revenues for the second quarter 2003**
10 **will be in the range of \$236-239 million.** Median total **net revenues**
11 **projected by analysts who report their earnings forecasts to**
12 **FirstCall are \$179 million. The increase in revenue was driven**
13 **primarily by strong sales growth of Viread (tenofovir disoproxil ®**
14 **fumarate), one of the company's antiviral drugs for the treatment of**
15 **HIV. Gilead expects that Viread sales will be approximately \$165**
16 **million for the quarter, compared to \$107 million for the first**
17 **quarter of 2003. Increasing Viread sales reflect broader**
18 **prescribing patterns in all commercial markets, as well as**
19 **increases in U.S. wholesaler inventory levels in the second**
20 **quarter in anticipation of a Viread price increase, which was**
21 **implemented on June 27, 2003.**

22
23 28. Also, on July 14, 2003, Gilead’s spokeswoman, Amy Flood, was quoted by
24 Bloomberg, “The main reason for the jump in Viread sales is an increase in prescriptions, **not**
25 **inventory stocking.**” (Emphasis added).

26
27 29. On July 31, 2003, the Company issued a press release reporting its second
28 quarter 2003 results. The Company stated, in pertinent part, the following:

29
30 **Net revenues from product sales totaled \$230.7 million, up 146**
31 **percent from the second quarter of 2002. This growth primarily**
32 **was driven by higher revenues from Viread (tenofovir disoproxil ®**
33 **fumarate). Sales of Viread were \$167.0 million in the second**
34 **quarter of 2003, up from \$44.7 million in the second quarter of**
35 **2002 and \$107.3 million in the first quarter of 2003. Viread sales**
36 **growth was primarily driven by higher prescription volume, a**
37 **significant increase in U.S. wholesaler inventories and a favorable**
38 **European currency environment compared to the same quarter**
39 **last year. Gilead estimates that increased stocking by U.S.**

1 **wholesalers accounted for \$25-30 million of Viread sales in the**
2 **second quarter.** AmBisome® (amphotericin B) liposome for
3 injection sales for the second quarter of 2003 were \$51.2 million, an
4 increase of 7 percent compared to the second quarter of 2002.
5 Reported AmBisome sales in the second quarter of 2003 were \$7.0
6 million higher due to the favorable currency environment compared
7 to the same quarter last year. On a volume basis, AmBisome sales
8 decreased by 4 percent in Europe compared to the second quarter
9 2002. Sales of Hepsera (adefovir dipivoxil 10 mg) totaled \$12.4
10 million for the second quarter of 2003, up from \$5.8 million in the
11 first quarter of 2003.

12 **"We are very pleased to report another quarter of significant**
13 **increases in product revenues. This strong growth was fueled**
14 **primarily by increasing sales of Viread in all marketed territories**
15 **and Hepsera's uptake in the United States and introduction in**
16 **Europe," said John C. Martin, PhD, President and Chief**
17 **Executive Officer of Gilead Sciences.** "We are focused on
18 continuing this sales momentum and increasing our market share
19 through robust clinical data and label expansions in key territories, as
20 well as launching Emtriva™ (emtricitabine) for HIV."

21 30. On August 14, 2003, Gilead filed its Form 10-Q for the second quarter 2002 with
22 the SEC, which confirmed the previously announced financial results. The Company's Form 10-
23 Q, signed by defendants Martin and Milligan, stated, in pertinent part:

24 **et product sales** were \$230.7 million for the three months ended
25 June 30, 2003, compared with \$93.8 million for the quarter ended
26 June 30, 2002, representing an **increase of 146%**. The increase in
27 product sales is due to the significant increase in the volume of sales
28 of Viread. Sales of Viread in the second quarter of 2003 were \$167.0
million, or 72% of total product sales, compared to \$44.7 million, or
48% of total product sales, in the second quarter of 2002. Of the
\$167.0 million, \$115.6 million were U.S. sales and \$51.4 million
were international sales. International sales of Viread in the second
quarter of 2003 were positively impacted by \$5.0 million due to a
more favorable currency environment compared to the second quarter
of 2002. **We believe U.S. sales in the second quarter were**
favorably impacted by an increase in wholesaler stocking levels
in anticipation of a price increase. We estimate that this higher
stocking resulted in \$25.0 to \$30.0 million of additional sales
during the second quarter, which may adversely impact sales in the

1 third quarter as wholesalers return to more normal inventory levels
2 and buying patterns. We expect Viread sales to be in the range of
3 \$550 million to \$600 million for the full year 2003.

4 * * *

5 In the first six months of 2003, net product sales were \$386.6 million,
6 versus \$164.5 million in the comparable period of 2002, an increase
7 of 135%. Sales of Viread for the six months ended June 30, 2003
8 were \$274.3 million, or 71% of total product sales, compared to \$71.9
9 million, or 44% of total product sales, in the six months ended June
10 30, 2002. **The significant increase in Viread sales is due to**
11 **increased prescription volume and an increase in U.S. wholesaler**
12 **inventory levels.** Of the \$274.3 million in Viread sales, \$184.5
13 million were U.S. sales and \$89.8 million were international sales.
14 International sales of Viread in the first six months of 2003 were
15 positively impacted by \$8.6 million due to the more favorable
16 currency environment compared to the same period last year. We also
17 recognized \$92.2 million in AmBisome sales for the first six months
18 of 2003, a 5% increase over the six months ended June 30, 2002.
19 Reported AmBisome sales in the first six months of 2003 were \$13.2
20 million higher due to the favorable currency environment. On a
21 volume basis, however, AmBisome sales decreased by 7% in Europe
22 due to increased competition.

23 31. The statements referenced above in ¶¶ 27-30 were each materially false and
24 misleading because they failed to disclose and misrepresented the following material adverse
25 facts which were known to defendants or recklessly disregarded by them: (1) that Gilead was
26 aware that its revenue was not increasing due to sales of its drug Viread; (2) that Gilead was
27 aware that Viread sales had only increased because customers bought an excessive amount of the
28 drug before July 27, 2003 in an attempt to avoid the price increase scheduled for July 27, 2003;
(3) that Gilead was aware that its customers' over-buying of Viread to avoid the price increase
accounted for \$33 to \$37 million, not the \$25 to \$30 million that Gilead originally purported; (4)
that Gilead was aware that the customer over-buying would decrease projected revenue in the
future, but did not disclose this (5) that Gilead and the Individual Defendants deceived the

1 investing public during the Class Period so they could sell their personal shares of Gilead for
2 increased proceeds; and (6) as a result of the foregoing, defendants lacked a reasonable basis for
3 their revenue projections for the Company, which were therefore materially false and misleading.
4

5 **The Truth Begins To Emerge**

6 32. On October 28, 2003, after the markets closed, the Company issued a press
7 release reporting its third quarter 2003 results. The Company stated, in pertinent part, the
8 following:

9 Net revenues from product sales totaled \$194.1 million, up 61 percent
10 from the third quarter of 2002. This growth primarily was driven by
11 higher revenues from Viread (tenofovir disoproxil fumarate). Sales[®]
12 of Viread were \$115.4 million in the third quarter of 2003, up from
13 \$68.9 million in the third quarter of 2002, an increase of 67 percent.
14 U.S. sales of Viread were \$59.4 million, and sales outside the United
15 States totaled \$56.0 million. Viread sales growth was primarily
16 driven by higher prescription volumes in both the United States and
17 Europe and a favorable European currency environment compared to
18 the same quarter last year. After reviewing NDC prescription trends,
19 IMS inventory data and actual Viread sales, **Gilead estimates there
20 was approximately \$33 to \$37 million of inventory reduction by
21 U.S. pharmaceutical wholesalers during the third quarter of 2003
22 following an equivalent inventory build during the second
23 quarter of 2003.** AmBisome (amphotericin B) liposome for[®]
24 injection sales for the third quarter of 2003 were \$51.6 million, a
25 record high and an increase of 6 percent compared to the third quarter
26 of 2002. Reported AmBisome sales in the third quarter of 2003 were
27 \$6.1 million higher due to the favorable currency environment
28 compared to the same quarter last year. On a volume basis,
AmBisome sales decreased by one percent in Europe compared to the
third quarter of 2002. Sales of Hepsera (adefovir dipivoxil 10 mg)[®]
totalled \$16.4 million for the third quarter of 2003, up from \$12.4
million in the second quarter of 2003. Since the launch of Emtriva[™]
(emtricitabine) in July 2003, sales for the third quarter of 2003 were
\$6.0 million. (Emphasis added).

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

1 share on October 29, 2003.

2 **Undisclosed Adverse Facts**

3
4 34. The market for Gilead's publicly traded securities was open, well-developed and
5 efficient at all relevant times. As a result of these materially false and misleading statements and
6 failures to disclose, Gilead's publicly traded securities traded at artificially inflated prices during
7 the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired
8 Gilead publicly traded securities relying upon the integrity of the market price of Gilead's
9 publicly traded securities and market information relating to Gilead, and have been damaged
10 thereby.

11
12 35. During the Class Period, defendants materially misled the investing public, thereby
13 inflating the price of Gilead's publicly traded securities, by publicly issuing false and misleading
14 statements and omitting to disclose material facts necessary to make defendants' statements, as
15 set forth herein, not false and misleading. Said statements and omissions were materially false
16 and misleading in that they failed to disclose material adverse information and misrepresented the
17 truth about the Company, its business and operations, as alleged herein.

18
19 36. At all relevant times, the material misrepresentations and omissions particularized
20 in this Complaint directly or proximately caused or were a substantial contributing cause of the
21 damages sustained by plaintiff and other members of the Class. As described herein, during the
22 Class Period, defendants made or caused to be made a series of materially false or misleading
23 statements about Gilead's business, prospects and operations. These material misstatements and
24 omissions had the cause and effect of creating in the market an unrealistically positive assessment
25 of Gilead and its business, prospects and operations, thus causing the Company's publicly traded
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1 securities to be overvalued and artificially inflated at all relevant times. Defendants' materially
2 false and misleading statements during the Class Period resulted in plaintiff and other members of
3 the Class purchasing the Company's publicly traded securities at artificially inflated prices, thus
4 causing the damages complained of herein.
5

6 **ADDITIONAL SCIENTER ALLEGATIONS**

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

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

24 39. In addition, during the Class Period, the Individual Defendants sold over 300,000
25 shares of stock for proceeds of over \$19 million. Defendant Martin sold 50,000 shares during the
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1 class period for proceeds of over \$3 million. Defendant Perry sold over 52,000 shares during the
2 class period for proceeds of over \$3 million. Defendant Milligan sold 11,000 shares during the
3 class period for proceeds of over \$600,000. Defendant Bischofberger sold 71,000 shares during
4 the class period for proceeds of over \$4 million. Defendant Carraciolo sold over 104,000 shares
5 during the class period for proceeds of over \$6 million. Defendant Lee sold 15,000 shares during
6 the class period for proceeds of over \$900,000.
7

8 **Applicability of Presumption of Reliance:**
9 **Fraud-On-The Market Doctrine**

10 40. At all relevant times, the market for Gilead's publicly traded securities was an
11 efficient market for the following reasons, among others:

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

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

16 (c) Gilead regularly communicated with public investors via established market
17 communication mechanisms, including through regular disseminations of press releases on the
18 national circuits of major newswire services and through other wide-ranging public disclosures,
19 such as communications with the financial press and other similar reporting services; and
20

21 (d) Gilead was followed by several securities analysts employed by major
22 brokerage firms who wrote reports which were distributed to the sales force and certain
23 customers of their respective brokerage firms. Each of these reports was publicly available and
24 entered the public marketplace.
25

26 41. As a result of the foregoing, the market for Gilead's publicly traded securities
27

1 promptly digested current information regarding Gilead from all publicly available sources and
2 reflected such information in Gilead's stock price. Under these circumstances, all purchasers of
3 Gilead's publicly traded securities during the Class Period suffered similar injury through their
4 purchase of Gilead's publicly traded securities at artificially inflated prices and a presumption of
5 reliance applies.
6

7 **NO SAFE HARBOR**

8 42. The statutory safe harbor provided for forward-looking statements under certain
9 circumstances does not apply to any of the allegedly false statements pleaded in this complaint.
10 Many of the specific statements pleaded herein were not identified as "forward-looking
11 statements" when made. To the extent there were any forward-looking statements, there were no
12 meaningful cautionary statements identifying important factors that could cause actual results to
13 differ materially from those in the purportedly forward-looking statements. Alternatively, to the
14 extent that the statutory safe harbor does apply to any forward-looking statements pleaded
15 herein, defendants are liable for those false forward-looking statements because at the time each
16 of those forward-looking statements was made, the particular speaker knew that the particular
17 forward-looking statement was false, and/or the forward-looking statement was authorized
18 and/or approved by an executive officer of Gilead who knew that those statements were false
19 when made.
20
21
22

23 **COUNT I**

24 **Violation of Section 10(b) Of The Exchange Act And**
25 **Rule 10b-5 Promulgated Thereunder Against All Defendants**

26 43. Plaintiff repeats and reiterates the allegations set forth above as though fully set
27 forth herein. This claim is asserted against all defendants.
28

1 truthful information with respect to the Company's operations, financial condition and
2 performance so that the market prices of the Company's publicly traded securities would be
3 based on truthful, complete and accurate information.
4

5 47. Gilead and the Individual Defendants, individually and in concert, directly and
6 indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails,
7 engaged and participated in a continuous course of conduct to conceal adverse material
8 information about the business, business practices, performance, operations and future prospects
9 of Gilead as specified herein.
10

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

22 49. Each of the Individual Defendants' primary liability, and controlling person
23 liability, arises from the following facts: a) each of the Individual Defendants was a high-level
24 executive and/or director at the Company during the Class Period; b) each of the Individual
25 Defendants, by virtue of his responsibilities and activities as a senior executive officer and/or
26
27

1 director of the Company, was privy to and participated in the creation, development and
2 reporting of the Company's internal budgets, plans, projections and/or reports; c) the Individual
3 Defendants enjoyed significant personal contact and familiarity with each other and were advised
4 of and had access to other members of the Company's management team, internal reports, and
5 other data and information about the Company's financial condition and performance at all
6 relevant times; and d) the Individual Defendants were aware of the Company's dissemination of
7 information to the investing public which they knew or recklessly disregarded was materially
8 false and misleading.
9

10
11 50. These defendants had actual knowledge of the misrepresentations and omissions
12 of material facts set forth herein, or acted with reckless disregard for the truth in that they failed
13 to ascertain and to disclose such facts, even though such facts were available to them. Such
14 defendants' material misrepresentations and/or omissions were done knowingly or recklessly and
15 for the purpose and effect of concealing Gilead's operating condition, business practices and
16 future business prospects from the investing public and supporting the artificially inflated price of
17 its securities. As demonstrated by defendants' overstatements and misstatements of the
18 Company's financial condition and performance throughout the Class Period, the Individual
19 Defendants, if they did not have actual knowledge of the misrepresentations and omissions
20 alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking
21 those steps necessary to discover whether those statements were false or misleading.
22
23

24 51. As a result of the dissemination of the materially false and misleading information
25 and failure to disclose material facts, as set forth above, the market price of Gilead's securities
26 were artificially inflated during the Class Period. In ignorance of the fact that market prices of
27

1 herein. This claim is asserted against the Individual Defendants.

2 56. Each of the Individual Defendants acted as a controlling person of Gilead within
3 the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level
4 positions with the Company, participation in and/or awareness of the Company's operations
5 and/or intimate knowledge of the Company's actual performance, the Individual Defendants had
6 the power to influence and control and did influence and control, directly or indirectly, the
7 decision-making of the Company, including the content and dissemination of the various
8 statements which plaintiff contends are false and misleading. Each of the Individual Defendants
9 was provided with or had unlimited access to copies of the Company's reports, press releases,
10 public filings and other statements alleged by plaintiff to be misleading prior to and/or shortly
11 after these statements were issued and had the ability to prevent the issuance of the statements or
12 cause the statements to be corrected.

13 57. In addition, each of the Individual Defendants had direct involvement in the day-
14 today operations of the Company and, therefore, is presumed to have had the power to control
15 or
16 influence the particular transactions giving rise to the securities violations as alleged herein, and
17 exercised the same.

18 58. As set forth above, Gilead and the Individual Defendants each violated Section
19 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their
20 controlling positions, the Individual Defendants are liable pursuant to Section 20(a) of the
21 Exchange Act. As a direct and proximate result of defendants' wrongful conduct, plaintiff and
22 other members of the Class suffered damages in connection with their purchases of the
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1 Company's securities during the Class Period.

2 **JURY TRIAL DEMAND**

3 Plaintiff hereby demands a trial by jury.

4 **PRAYER FOR RELIEF**

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

6 (a) Determining that this action is a proper class action, designating plaintiff as
7 Lead Plaintiff and certifying plaintiff as a class representative under Rule 23 of the Federal Rules
8 of Civil Procedure and plaintiff's counsel as Lead Counsel;
9

10 (b) Awarding compensatory damages in favor of plaintiff and the other Class
11 members against all defendants, jointly and severally, for all damages sustained as a result of
12 defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
13

14 (c) Awarding plaintiff and the Class their reasonable costs and expenses incurred
15 in this action, including counsel fees and expert fees; and
16

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

18 Dated: November 18, 2003

GLANCY & BINKOW LLP

19
20 By: _____
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