

No. 06-16185

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

In re: GILEAD SCIENCES SECURITIES LITIGATION

TRENT ST. CLARE and TERRY JOHNSON,
On behalf of themselves and all others similarly situated,
Plaintiffs-Appellants,

v.

GILEAD SCIENCES, INC.; JOHN C. MARTIN; JOHN F. MILLIGAN;
MARK L. PERRY; NORBERT W. BISCHOFBERGER; ANTHONY
CARRACIOLO; and WILLIAM LEE,
Defendants-Appellees.

**On Appeal from the United States District Court
for the Northern District of California at San Francisco
No. CV-03-04999-MJJ Honorable Judge Jenkins, Presiding**

**REPLY IN SUPPORT OF MOTION FOR
CONTINUANCE OF ORAL ARGUMENT**

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Attorneys for Defendants-Appellees

The Court should permit Appellees to be represented by Stephen C. Neal, their counsel of choice, at oral argument. Mr. Neal has been lead counsel for Appellees throughout the district court litigation and on appeal.

The length of continuance requested to permit Mr. Neal to argue—three months—is both necessary and reasonable. Mr. Neal will be unable to prepare for or attend oral argument while he is representing a criminal defendant as lead counsel in a trial in New York. *See Declaration of Grant Fondo in Support of Motion for Continuance.* Appellants acknowledge Mr. Neal's unavailability, and do not assert that it is an unreasonable request, but rather argue that another lawyer from Cooley Godward Kronish LLP should present argument for Gilead. That another attorney could competently represent a client at oral argument should not deprive the clients of representation by the lawyer of their choosing, especially when there is no reason, compelling or otherwise, to deny a requested continuance.

In this instance, Mr. Neal has been Appellees' lead counsel throughout both the district court and appellate proceedings, and he is their counsel of choice to present oral argument on their behalf. *See Declaration of Jeffrey J. Hessekiel, filed contemporaneous herewith.* Appellees' vague assertions

about prejudice resulting from the passage of time do not outweigh the prejudice that will result if Appellees are deprived of their counsel of choice at argument. Further, Appellants' purported concern about the passage of time is contrary to their actions before this Court. The Court's original briefing schedule required Appellants to file their opening brief on September 25, 2006. Appellants did not do so, but rather Appellants requested a 14 day oral extension by phone to file their opening brief and filed it on October 10, 2006. Then, when their reply was due, Appellants asked Appellees to consent to a 28-day extension to file their reply brief, to January 23, 2007. Appellees, as a professional courtesy, agreed to this request. Appellants' filed their unopposed motion for 28-day extension to file reply brief, which this Court granted, and Appellants filed their reply brief on January 23, 2007.

Appellees should not be precluded from having their counsel represent them before this Court. Appellants have set forth no actual grounds for opposing Appellees' request, nor have their actions demonstrated that this

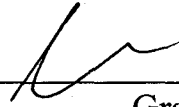
short delay will cause them harm. Accordingly, Appellees respectfully request that oral argument in this case be continued to the March 2008 calendar.

Dated: November 16, 2007

Respectfully submitted,

COOLEY GODWARD KRONISH LLP

By:



Grant P. Fondo
Attorneys for Defendants-Appellees

CERTIFICATE OF SERVICE

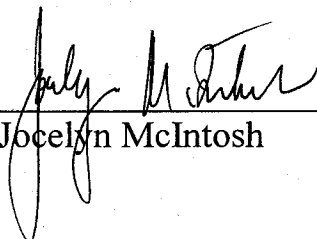
I certify that on November 16, 2007, a copy of the foregoing **REPLY IN SUPPORT OF MOTION FOR CONTINUANCE OF ORAL ARGUMENT** was served by U.S. Mail delivery on the following:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of November, 2007, at Palo Alto, California.



Jocelyn McIntosh

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