

No. 06-16185

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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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In re GILEAD SCIENCES SECURITIES LITIGATION

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TRENT ST. CLARE and TERRY JOHNSON,  
On Behalf of Themselves and All Others Similarly Situated,  
*Plaintiffs-Appellants,*

vs.

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

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Appeal From the United States District Court  
for the Northern District of California  
Master File No. C-03-4999-MJJ  
The Honorable Martin J. Jenkins

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PLAINTIFFS'-APPELLANTS' OPPOSITION TO MOTION FOR  
CONTINUANCE OF ORAL ARGUMENT

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Plaintiffs-appellants oppose defendants' motion to continue the date established by this Court for oral argument in the above-captioned matter – which is the appeal of dismissal of a complaint first filed in April, 2004.

Plaintiffs oppose delay of the argument because the course of litigation and appeal has already been extremely protracted. As time passes, memories may dim and witnesses may become less available to support the facts alleged in plaintiffs' complaint. The operative amended complaint was filed on December 2, 2005 and was dismissed on May 12, 2006. Notice of appeal was filed on June 9, 2006. The case has been fully briefed since January, 2007.

Moreover, plaintiffs believe that defendants can be well represented at oral argument in Mr. Neal's absence. Indeed, the lawyer who signed the brief for defendants – John Dwyer – appears well able to represent defendants in proceedings before this Court. According to Cooley Godward Kronish LLP's website, Mr. Dwyer was named California Lawyer of the Year in securities law for 2005 by *California Lawyer* magazine. <http://www.cooley.com/attorneys/attorneys.aspx?letter=D>.

Prior to joining Cooley Godward, Mr. Dwyer served from January to December 1997, as the Acting Associate Attorney General for the United States Department of Justice. Mr. Dwyer was selected for the post, the third highest in the Department of Justice, by President Clinton. *Id.* Mr. Dwyer earned a J.D., *magna cum laude*, from Harvard Law School in 1988. *Id.* He received a B.S., *summa cum laude*, in Business

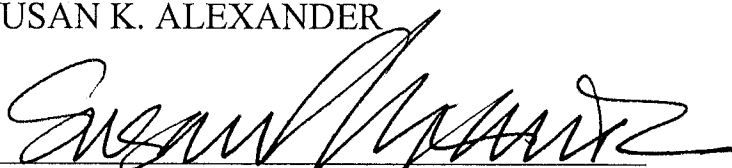
Administration from the University of California at Berkeley in 1984 where he was elected to Phi Beta Kappa. *Id.* Prior to attending law school, Mr. Dwyer worked as an auditor at Arthur Andersen & Co. *Id.*

Grant Fondo and Lori Ploeger, the two other attorneys who appear on defense counsel's caption, are both partners with Cooley Godward Kronish LLP. According to the firm's website, Mr. Fondo's practice primarily involves securities and technology litigation. <http://www.cooley.com/attorneys/attorneys.aspx?letter=F>. His practice includes class action litigation, federal and state securities litigation, corporate governance disputes, SEC and internal corporate investigations, and intellectual property litigation, as well as representing venture capital firms in all forms of litigation. *Id.* Mr. Fondo is a frequent author on issues such as securities and technology litigation. *Id.* Ms. Ploeger's practice centers on appellate litigation. <http://www.cooley.com/attorneys/attorneys.aspx?letter=P>.

Because this case relates to a three and one-half year-old complaint, plaintiffs oppose any extension of the argument date. There appears to be ample legal ability at the Cooley firm to present argument in this matter in Mr. Neal's absence.

DATED: November 8, 2007

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DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare:

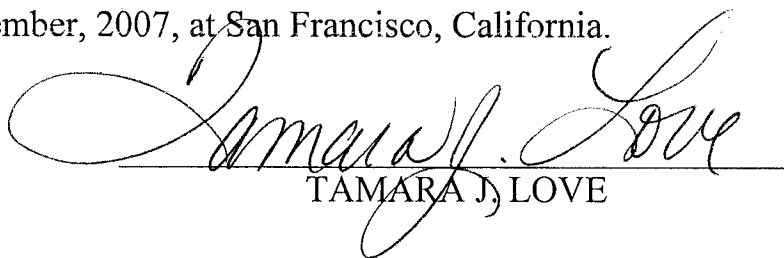
1. That declarant is and was, at all times herein mentioned, a citizen of the United States and employed in the City and County of San Francisco, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 100 Pine Street, Suite 2600, San Francisco, California 94111.

2. That on November 8, 2007, declarant served the **PLAINTIFFS'-APPELLANTS' OPPOSITION TO MOTION FOR CONTINUANCE OF ORAL ARGUMENT** by depositing a true copy thereof in a United States mailbox at San Francisco, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List.

3. That there is a regular communication by mail between the place of mailing and the places so addressed.

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

Executed this 8th day of November, 2007, at San Francisco, California.

  
TAMARA J. LOVE

GILEAD

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