

1 NORMAN J. BLEARS (Bar No. 95600)  
 MICHAEL L. CHARLSON (Bar No. 122125)  
 2 HOGAN LOVELLS US LLP  
 525 University Avenue, 4th Floor  
 3 Palo Alto, California 94301  
 Telephone: (650) 463-4000  
 4 Facsimile: (650) 463-4199  
 norman.blears@hoganlovells.com  
 5 michael.charlson@hoganlovells.com

6 BENJAMIN T. DIGGS (Bar No. 245904)  
 HOGAN LOVELLS US LLP  
 7 Four Embarcadero Center, 22<sup>nd</sup> Floor  
 San Francisco, California 94111  
 8 Telephone: (415) 374-2300  
 Facsimile: (415) 374-2499  
 9 benjamin.diggs@hoganlovells.com

10 Attorneys for Nominal Defendant  
 VIVUS, INC. and for Defendants  
 11 MARK B. LOGAN; LELAND F. WILSON;  
 LINDA M. DAIRIKI SHORTLIFFE, M.D.;  
 12 PETER Y. TAM, and CHARLES J. CASAMENTO

---

13 UNITED STATES DISTRICT COURT  
 14 NORTHERN DISTRICT OF CALIFORNIA  
 15 OAKLAND DIVISION

17  
 18 ELEANOR TURBERG, Derivatively on  
 Behalf of Nominal Defendant VIVUS,  
 19 INC.,

20 Plaintiff,

21 v.

22 MARK B. LOGAN, LELAND F.  
 WILSON, LINDA M. DAIRIKI  
 23 SHORTLIFFE, M.D., PETER Y. TAM,  
 and CHARLES J. CASAMENTO

24 Defendants,

25 -and-

26 VIVUS, INC., a Delaware Corporation,

27 Nominal Defendant.

Case No. 4:10-cv-05271 PJH

**STIPULATION AND [~~PROPOSED~~]  
 ORDER TO CONTINUE CASE  
 SCHEDULE**

Judge: Honorable Phyllis J. Hamilton  
 Courtroom: 3, 3<sup>rd</sup> Floor  
 Date Action Filed: November 19, 2010

1 Plaintiff Eleanor Turberg (“Plaintiff”) and Defendants Vivus, Inc., Leland F. Wilson,  
2 Mark B. Logan, Linda M. Dairiki Shortliffe, Peter Y. Tam, and Charles J. Casamento  
3 (collectively, the “Parties”), through their respective attorneys of record, hereby stipulate to and  
4 seek the Court’s approval of an order revising and continuing the case schedule:

5 **RECITALS**

6 WHEREAS, on November 19, 2010, Plaintiff filed her shareholder derivative action (the  
7 “Derivative Action”) purportedly on behalf of Nominal Defendant VIVUS, Inc. (“VIVUS” or the  
8 “Company”) in this Court, naming certain officers and directors of the Company as Defendants;

9 WHEREAS, also pending before this Court is a related case styled *Kovtun v. VIVUS, Inc.,*  
10 *et al.*, Case No. 4:10-cv-04957 PJH, a purported securities class action originally filed November  
11 2, 2010 against VIVUS and many of the same individuals named as defendants in the Derivative  
12 Action (the “Securities Action”);

13 WHEREAS, the Securities Action and the Derivative Action also concern substantially  
14 the same events;

15 WHEREAS, the Court on January 12, 2011 issued a Related Case Order, in which it  
16 found the Securities Action and the Derivative Action (together, the “Related Actions”) are  
17 related:

18 WHEREAS, the Court entered a stipulated order on February 7, 2011, that established a  
19 schedule for Plaintiff’s filing of an amended complaint in this Derivative Action, and deferring  
20 Defendants’ and Nominal Defendant’s response to the amended complaint and staying discovery  
21 until after the Court resolved a then-anticipated motion to dismiss the Securities Action;

22 WHEREAS, on June 3, 2011, Plaintiff filed her Verified Amended Shareholder  
23 Derivative Complaint (the “Amended Complaint”), which is the operative pleading in the  
24 Derivative Action;

25 WHEREAS, Defendants and Nominal Defendant in this Derivative Action believe they  
26 have legal challenges to Plaintiff’s standing to assert her purported derivative claims;

27 WHEREAS, defendants in the Securities Action filed a motion to dismiss the complaint in  
28 the Securities Action, which motion was heard by the Court on October 12, 2011;





1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

-and-

HOGAN LOVELLS US LLP  
Benjamin T. Diggs (Bar No. 245904)  
4 Embarcadero Center, 22nd floor  
San Francisco, California 94111  
benjamin.diggs@hoganlovells.com

Attorneys for Nominal Defendant  
VIVUS, Inc. and for Defendants

Dated: November 16, 2011

FARUQI & FARUQI, LLP

By: \_\_\_\_\_ /s/  
Vahn Alexander

FARUQI & FARUQI, LLP  
Vahn Alexander (Bar No. 167373)  
1901 Avenue of the Stars, 2nd Floor  
Los Angeles, CA 90067  
Telephone: (310) 461-1426  
Facsimile: (310) 461-1427  
valexander@faruqilaw.com

-and-

FARUQI & FARUQI, LLP  
Nadeem Faruqi  
Beth A. Keller  
369 Lexington Avenue, 10th floor  
nfaruqi@faruqilaw.com  
bkeller@faruqilaw.com

Attorneys for Plaintiff

**ORDER**

Pursuant to the above Stipulation, IT IS SO ORDERED

Dated: November 17, 2011

\_\_\_\_\_  
Honorable Phyllis J. Hamilton  
United States District Court



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I, Michael L. Charlson, attest that Vahn Alexander has read and approved the STIPULATION AND [PROPOSED] ORDER TO CONTINUE CASE SCHEDULE and consents to its filing in this action.