

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

RALPH VARGAS and BLAND - RICKY  
ROBERTS,

Plaintiffs,

- V. -

PFIZER INC., PUBLICIS, INC., FLUID  
MUSIC, EAST WEST  
COMMUNICATIONS, INC., and BRIAN  
TRANSEAU p/k/a "BT",

Defendants.

Case No.: 04 CV 9772 (WHP)

ECF Case

**[PROPOSED] JOINT PRETRIAL ORDER**  
**EXHIBIT B**

**PLAINTIFFS' EXHIBIT LIST**

Plaintiffs expect to introduce the following exhibits in the trial of this matter. Defendants' objections, if any, are noted.

<b><u>No.</u></b>	<b><u>Description</u></b>	<b><u>Defendants' Objection(s)</u></b>
1.	Opinions and conclusions contained in the declaration of Matthew Ritter, and the exhibits attached thereto.	Hearsay; cumulative; Rule 702; Rule 705
2.	Opinions and conclusions contain in the declaration of Ivan Rodriguez, and the exhibits attached thereto.	Hearsay; cumulative; Rule 702; Rule 705
3.	Opinions and conclusions of Dr. Steven Smith, and the exhibits attached thereto.	Hearsay; relevance; lack of foundation; inadmissible opinion testimony; opinion testimony beyond scope of expertise; cumulative; Rule 702; Rule 705
4.	The compact disc, prepared by Ivan Rodriguez, identified as exhibit "C1" produced during discovery bates stamped number 000025	Lack of foundation; authenticity.

5.	The compact disc identified as “C2,” prepared by Ivan Rodriguez and produced during discovery bates stamped number 000033	Lack of foundation; authenticity.
6.	The notes and drum transcriptions prepared by Matthew Ritter attached to his declaration as exhibit “B.”	Rule 702; Rule 705
7.	The waveform graphs prepared by Ivan Rodriguez comparing <i>BDG</i> and <i>Aparthenonia</i> , which is attached to Ivan Rodriguez declaration.	Rule 702; Rule 705
8.	The graphs, charts and other documents comparing the frequency spectra of the first 2.3 second of drum music in <i>Aparthenonia</i> and <i>BDG</i> which is attached to the expert report of Dr. Steven Smith.	Lack of foundation; documents insufficiently identified; Rule 702; Rule 705.
9.	Plaintiffs documents identified as bates stamped numbers 000003 and 000017, identifying the names of the distribution companies that distributed <i>FD II and BDG</i> .	Lack of foundation; authenticity
10.	A copy of the recording <i>BDG</i>	Lack of foundation; authenticity; documents insufficiently identified
11.	A copy of the recording <i>Aparthenonia</i>	Lack of foundation; authenticity; documents insufficiently identified
12.	A copy of the recording of the <i>Celebrix Commercial</i> containing <i>Aparthenonia</i>	Lack of foundation; authenticity; documents insufficiently identified
13.	A copy of all declarations and reports, including all the exhibits attached thereto, prepared by witnesses and experts for Defendants, <u>except the second report by Dr. Richard Boulanger which was submitted after the close of discovery and as an exhibit to Defendants’ second motion for summary judgment.</u>	
14.	Plaintiffs Second Amended Complaint	

15.	Plaintiffs first set of interrogatories to Defendant Transeau	Hearsay; relevance.
16.	Plaintiffs first demand for the production of documents and things to Defendant Transeau	Hearsay; relevance.
17.	Plaintiffs first set of interrogatories to Defendant Transeau and responses thereto	Hearsay; relevance.
18.	Plaintiffs first demand for the production of documents and things to Defendant Transeau and responses thereto	Hearsay; relevance.
19.	Plaintiffs first set of interrogatories to Defendant EWC	Hearsay; relevance.
20.	Plaintiffs first demand for the production of documents and things to Defendant EWS	Hearsay; relevance.
21.	Plaintiffs first set of interrogatories to Defendant EWC and responses thereto	Hearsay; relevance.
22.	Plaintiffs first demand for the production of documents and things to Defendant EWC and responses thereto	Hearsay; relevance.
23.	Defendant Transeau's Answer to Plaintiffs' Second Amended Complaint	
24.	Defendant EWC Answer to Plaintiffs' Second Amended Complaint	
25.	Initial Report of Dr. Steven Smith bates stamped numbers 000040, 000040A, 000040B	Hearsay; relevance; cumulative.
26.	Copy of e-mail written by Defendant Transeau identified as Plaintiffs Exhibit 6 from Defendant Transeau's deposition and bates stamped numbers 000044, 000045, 000046, 000047	Hearsay; relevance; lack of foundation; authenticity.

27.	Deposition transcript of Defendant Brian Transeau taken on August 16, 2006. If necessary for impeachment.	Hearsay; relevance.
28.	E-mail dated July 28, 2006 from Plaintiffs' counsel to Defendant BT's attorneys (only if communications between attorneys is admissible by Court).	Hearsay; relevance; document insufficiently identified.
29.	E-mail dated August 7, 2006, 3:21 P.M., from Defendant BT's attorneys to Plaintiffs' counsel (only if communications between attorneys is admissible by Court).	Hearsay; relevance.
30.	E-mail dated August 7, 2006, 5:25 P.M., from Plaintiffs' counsel to Defendant BT's attorneys (only if communications between attorneys is admissible by Court).	Hearsay; relevance.
31.	E-mail dated August 7, 2006, 5:25 P.M., from Plaintiffs' counsel to Defendant BT's attorneys (only if communications between attorneys is admissible by Court).	Hearsay; relevance; duplicative
32.	Letter from Plaintiffs' counsel to Defendant BT's attorneys dated August 15, 2006 (only if communications between attorneys is admissible by Court).	Hearsay; relevance.
33.	Declaration of Anthony Ricigliano, and the exhibits attached thereto, dated	
34.	Copy of compact disc identified as Exhibit D in the declaration of Ivan Rodriguez	Lack of foundation; authenticity.