

MEMORANDUM ENDORSED

LAW OFFICES OF PAUL A. CHIN

MEMBER NEW YORK & MARYLAND BARS

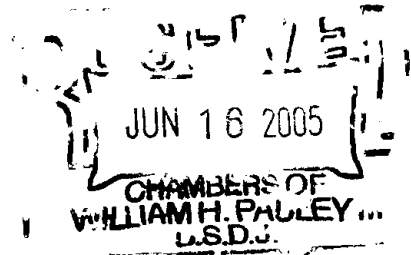
June 15, 2005

VIA HAND DELIVERY

The Honorable William H. Pauley III
 U.S. District Court for the Southern District of New York
 500 Pearl Street
 Chambers 2210
 Courtroom 11D
 New York, NY 10007

Re: Scheduling Conference of June 7, 2005
Vargas, et. al. v. Pfizer, Inc., et. al.
Case No.: 04 CV 9772 (WHP)

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 6/24/2005
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Dear Judge Pauley:

This firm represents Ralph Vargas and Bland-Ricky Roberts, plaintiffs in the above referenced matter. We are writing to request that the Court reconsider its decision: (i) granting defendants' request to file a motion for summary judgment in this case; and (ii) denying plaintiffs' request that defendants file an Answer to the Amended Complaint.

During the scheduling conference referenced above, defendant Pfizer (speaking on behalf of all defendants) represented to the Court that the musical work in question is a four-beat drum riff in which plaintiffs claim exclusive rights. I informed the Court that plaintiffs' Amended Complaint clearly identifies the musical composition, which is the subject matter of this action, and that the entire composition was entitled to copyright protection. I also informed the Court that plaintiffs contend that defendants unlawfully used plaintiffs' entire musical composition in the Celebrex Commercial. At no point did I agree with defendants' position that plaintiffs' copyright infringement claim is based solely on defendants' use of a four-beat drum riff. The Court's decision to allow defendants to move for summary judgment on the four-beat drum riff assumes that plaintiffs' copyright action is based on this four-beat drum riff. My comments during the scheduling conference, and the allegations of the Amended Complaint, make clear that this is not the case.

We also believe that it would be fundamentally unfair to plaintiffs to have the parties conduct another round of limited discovery and allow defendants to move for summary judgment without requiring defendants to file an Answer. Although the Court, during the scheduling conference, denied plaintiffs' request that defendants file an Answer, I respectfully disagree with the Court's position that an Answer at this stage of the proceedings would be "worthless." An Answer to the Amended Complaint will clarify the legal and factual issues in this case; narrow the scope of discovery; and place the

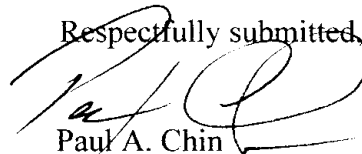
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parties on even playing field. While defendants have tangible evidence of plaintiffs' legal claims and factual assertions in this case, plaintiffs must rely on defendants oral representations regarding their alleged defenses to this action. To proceed in this fashion would be unfair to plaintiffs.

I discussed the issues raised in this letter with Bruce Keller, attorney for defendant Pfizer, on or about June 10, 2005. Mr. Keller disagreed with our position.

For the foregoing reasons, plaintiffs respectfully request that the Court: (i) reconsider its decision granting defendants' request to move for summary judgment; (ii) order defendants to file and serve an Answer in this case; and (iii) postpone the filing of defendants' summary judgment motion until the parties have completed discovery pursuant to the schedule recommended by the Court on June 7, 2005.

Respectfully submitted,



Paul A. Chin

Cc: Sara Edelman, Esq. (via fax)
(Attorney for Defendant Publicis, Inc.)

Eric M. Stahl, Esq. (via fax)
Sam Leaf, Esq. (via fax)
(Attorneys for Defendants Brian Transeau and East West Communications, Inc.)

Bruce P. Keller, Esq. (via fax)
(Attorney for Defendant Pfizer, Inc.)

Edward P. Kelly, Esq. (via fax)
(Attorney for Defendant Fluid Music)

Application granted in part and denied in part. Plaintiff's application seeking reconsideration of this court's scheduling of Defendants' motion for summary judgment is denied. Defendants are directed to file their Answers by 6/30/2005.

SO ORDERED:



WILLIAM H. PAULEY III U.S.D.J.

6/20/2005