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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10
11 RICHARD BOEKEN,) CASE NO. BC 226593
12)
Plaintiff,)
13 vs.)
14 PHILIP MORRIS INCORPORATED, a)
corporation, et al.,)
15 Defendants.)
16)
Date: November 13, 2000
Time: 9:30 a.m.
Dept.: 308
Judge Charles W. McCoy, Jr.

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18 Action Filed: March 16, 2000
19 Trial Date: None Set

20 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

21 Plaintiff requests that the court specially set this case for trial pursuant to Code of Civil
22 Procedure Section 36.

23 Alternatively, plaintiff applies ex parte for an Order Shortening Time for Notice of
24 Motion to Specially Set Case for Trial.

25 Good cause is shown for this application because the plaintiff Richard Boeken has less
26 than 6 months to live according to the attached declaration of Dr. Gregory Sarna.

27 The motion is based on this Notice, the attached Memorandum of Points and
28 Authorities, the attached Declaration of Dr. Gregory Sarna, and upon such further evidence

1 as may be presented at the hearing of this motion.

2 DATED: November 9, 2000 at Los Angeles.

3 LAW OFFICES OF MICHAEL J. PIUZE

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5 By _____
6 GERALDINE WEISS
7 Attorneys for Plaintiff
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THE FACTS

Plaintiff Richard Boeken has terminal lung cancer. His doctor Gregory Sarna has declared under oath that there is substantial medical doubt of his survival beyond six months.

CONCLUSION

Good cause is shown to specially set this case for trial. Code of Civil Procedure section 36. Alternatively, the court should shorten time for Notice of Motion to Specially Set.

DATED: November 9, 2000 at Los Angeles.

LAW OFFICES OF MICHAEL J. PIUZE

By _____
GERALDINE WEISS
Attorneys for Plaintiff

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DECLARATION OF GREGORY SARNA, M.D.

I, _____, declare that:

1. I am a medical doctor, board certified in oncology, and have been licensed to practice medicine in the State of California since June, 1970.

2. I am Richard Boeken's treating physician. I have treated him for approximately twelve months.

3. Richard Boeken was diagnosed with stage IIIA adenocarcinoma of the lung (the right upper lobe) in October of 1999. An MRI taken in August of 2000 confirmed that this cancer has spread to his bones; specifically metastatic disease to the L3 to L4 area of his spine. The prognosis for Richard Boeken is poor.

4. There is substantial medical doubt for Richard Boeken's survival beyond six months.

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

Executed on November 9, 2000 at Los Angeles, California.

GREGORY P. SARNA, M.D., FACP
Medical Oncologist
Declarant

STATE OF CALIFORNIA COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 11755 Wilshire Boulevard, Suite 1170, Los Angeles, California 90025.

On November 13, 2000, I served the foregoing document described as: **EX PARTE APPLICATION FOR ORDER TO SPECIALLY SET CASE FOR TRIAL** on the parties in this action by placing:

___ the original to the propounding party and a true copy to all other parties; or

XX a true copy thereof enclosed in a sealed envelope addressed as follows:

John L. Carlton, Esq.
Angel L. Tang, Esq.
ARNOLD & PORTER
777 South Figueroa Street, 44th Floor
Los Angeles, CA 90017-5844
TEL (213) 243-4000
FAX (213) 243-4199

**Attorneys for Defendant Philip Morris, Inc.
and International House of Pancakes, Inc.**

() By Envelope - by placing () the original (X) a true copy thereof enclosed in sealed envelopes addressed as above and delivering such envelopes:

() By Mail: As follows: I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

(XX) By Personal Service: I delivered such envelope by hand to the addressee(s) above.

() By Federal Express: I caused such envelope to be delivered by Federal Express delivery service to the offices of the addressee.

() By Facsimile Transmission: On _____, I caused the above-named document to be transmitted by facsimile transmission telephonically to the offices of the addressee(s) at the facsimile number(s) so indicated above. The transmission was reported as complete and without error. A copy of the transmission report properly issued by the transmitting facsimile machine is attached hereto.

Executed on November 13, 2000 , at Los Angeles, California.

(X) (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

() (Federal) I declare that I am employed by the office of member of the bar or this court at whose direction the service was made.

Geraldine Weiss