

PUBLIC CITIZEN LITIGATION GROUP

1600 20TH STREET, N.W.
WASHINGTON, D.C. 20009-1001

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(202) 588-1000

February 28, 2007

Honorable Marcy S. Friedman
Supreme Court of New York
80 Centre Street, Room 326
New York, New York 10013

Re: *Greenbaum v. Google*, No. 07-102063

Dear Judge Friedman:

Along with my local counsel, Donald Rosenthal of Scarola Ellis, I represent the blogger known as “Orthomom” in attempting to preserve her First Amendment right to remain anonymous. Orthomom has also authorized us to advocate the First Amendment right to anonymity of the commenters who have posted on her blog. We will appear on behalf of Orthomom at the hearing that you have set on April 5, 2007.

I am writing to request that the Court allow Orthomom to file a brief in advance and not just to appear (by counsel) at the hearing itself. Courts in several states have developed procedures to resolve this sort of issue, of whether to order the identification of an anonymous Internet speaker so that he or she can be served with process in an action for defamation or otherwise allegedly wrongful speech, but there are no reported appellate opinions in New York state courts. Accordingly, we intend to file a brief discussing the standards that the various state (and federal) courts have adopted. In addition, it was not clear to us from your Honor’s order whether Orthomom will need to intervene in order to be heard, because she is not a party to the existing proceeding.

Based on our experience representing Doe speakers in other states as a matter of first impression, we believe that it would be beneficial for the Court to set a briefing schedule that allows both sides sufficient time to address the law as well as the factual basis for either disclosure or protection of anonymity. Accordingly, I attempted to engage plaintiff’s counsel, Adam Feder, in discussions both about whether Orthomom’s intervention could be stipulated, and about whether an appropriate briefing schedule could be adopted. In the alternative, I suggested to Mr. Feder that the two of us contact your Chambers by telephone to try to get the procedures resolved. Mr. Feder, however, explained that it was not in his client’s interest to do so and that in any event Orthomom is not a party. I attach a copy of the relevant exchange between Mr. Feder and myself.

I ask the Court to allow Orthomom to intervene and to file a brief no later than March 14, 2007, and to allow plaintiff Greenbaum to file a responsive brief no later than March 28, 2007. Because Google’s counsel, Tonia Klausner, has indicated to me that Google is simply a stakeholder

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in this dispute and that she does not need to be involved in scheduling discussions, I did not fully discuss these issues with her before writing this letter.

Respectfully yours,


Paul Alan Levy

cc: Adam B. Feder, Esquire
Tonia Klausner, Esquire
Donald Rosenthal, Esquire

From: Paul Levy
To: abfederesq@msn.com; tklausner@wsgr.com
Date: 2/27/2007 2:20:13 PM
Subject: Re: Greenbaum v. Google

I have local counsel and I have been retained by Orthomom. I never told you that I was a "pro se advisor," whatever that means.

But because your communication makes clear that, in any event, you do not intend to cooperate in attempting to put these issues before the Court on an agreeable schedule, either by reaching agreement or by contacting chambers together, we will proceed accordingly.

Paul Alan Levy
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1600 - 20th Street, N.W.
Washington, D.C. 20009
(202) 588-1000
<http://www.citizen.org/litigation>

>>> <abfederesq@msn.com> 2/27/2007 2:08 PM >>>

Sir:

Your email contains a mis-characterization of our recent conversations. You have a copy of the Judge's Order and I leave it to you to determine the best course for compliance. I have a duty to protect my client's interests and to carry out the Order as the Judge wrote it, despite your odd threats.

To set the record straight, last week when we spoke you advised me that you were in the process of retaining local counsel to deal with this matter, and you indicated that your own role was as a pro se advisor.

To date you have apparently not retained local counsel, and you have not provided me with proof that you have been retained by the person or people operating the "orthomom" blog, or by any anonymous commenters on that blog. Accordingly, I have no assurance that you have authority to represent, let alone bind, any alleged client of yours.

Assuming you have the authority, however, I think we can agree that I have no obligation to stipulate to matters that are not in my client's interest. The order provides ample time for you to brief whatever issues you want and our State's practice statute lays out the timing of responsive papers so your request for a schedule is unnecessary. Instead, it appears to me that your main goal for a further "briefing schedule" relates to your need to travel from Washington DC. But my client's rights are not affected by a non-party's decision to hire an out-of-state attorney any more than the Court's Order is.

Justice Friedman's Order constitutes the briefing schedule here and I have no authority to modify its terms. I am also under no obligation to stipulate with the purported representative of non-parties to modify those terms for "counsel's" convenience.

If you insist upon making your ex parte application for a briefing schedule, and the Court accomodates your request, I trust you will let me know.

Adam B. Feder
Attorney for Pamela Greenbaum

----- Original Message -----

From: Paul Levy
To: abfederesq@msn.com ; tklausner@wsgr.com
Sent: Tuesday, February 27, 2007 12:41 PM
Subject: Greenbaum v. Google

As I have advised you, I represent Orthomom, the Doe whose identity Pamela Greenbaum is attempting to obtain through the current pending order to show cause that has been reset for hearing before Judge Friedman on April 5, 2007. Judge Friedman made clear in her order that she wants to give Orthomom the opportunity to be heard in opposition to your request.

Accordingly, I have tried to secure your cooperation in fixing an orderly way to present the relevant issues to the Court. I suggested that we agree on a briefing schedule on both the question of Orthomom's intervention -- if in fact such intervention is required -- as well as the litigation of the merits. I also suggested that we jointly confer with chambers by telephone in fixing that procedure. You told me that you are unwilling to cooperate in any way and that you insist that I either file papers to set a hearing on intervention, or just show up at the hearing on April 5, although you indicated that you might well seek additional time if I follow either such course.

With respect, I do not think that this is a helpful way to proceed, and I prefer not to risk the possibility of having to travel New York twice based on your decision, on the day of a hearing, whether to make things harder for my client by making me come back. It is, therefore, my intention to present the quandary of how to address these issues to the Court for her decision.

I urge you, though, to make that unnecessary by agreeing to stipulate my client's intervention and then agreeing on a briefing schedule.

Paul Alan Levy
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