

## Fla. Man's Silence Keeps Gilead's NY Counterfeiting Suit Alive

By **Dani Kass**

*Law360 (September 30, 2022, 7:32 PM EDT)* -- A New York federal judge has refused to let a Florida man escape allegations that he was part of a conspiracy to sell counterfeit versions of Gilead HIV medication, saying his decision to plead the Fifth during a deposition was particularly damning when deciding whether he could be sued in the state.

U.S. District Judge Ann M. Donnelly on Thursday said the court can draw adverse inferences from Carlos Vega's refusal to answer questions about whether he had visited New York on certain dates and about fund transfers involving New York banks, and that Gilead Sciences Inc. had otherwise proven proper jurisdiction.



Geoffrey Potter

"Even aside from the negative inference to be drawn from defendant's refusal to answer questions, the plaintiffs have submitted persuasive evidence — in the form of receipts, photographs, and money transfers — that supports the allegation that the defendant was in New York on the dates alleged," the Brooklyn-based judge said. "The totality of the evidence establishes that this court has personal jurisdiction ... over the defendant."

Gilead's August 2021 complaint against Vega alleges that he was part of a counterfeiting ring that sold drugs in Gilead bottles, including with fake records tying them back to the manufacturer. The company claims that Vega owns New Jersey supplier Synergy Group Wholesalers LLC and that its proceeds are laundered through Cesar Castillo Wholesalers LLC and DNS Distributor LLC. The alleged conspiracy also includes the case's namesake, Safe Chain Solutions LLC, a distributor accused of buying counterfeit drugs from Synergy.

Vega asked the court to let him leave the suit, arguing that the Brooklyn court has no jurisdiction over him, and that venue is improper. The court rejected each of his arguments on Thursday.

In one example, the suit alleges that Vega traveled to New York City in June 2021 and transferred more than \$800,000 from Synergy to DNS, which then spent more than \$400,000 at jewelers in the city that day.

During a December deposition for jurisdictional discovery, Vega refused to say whether he'd been in New York on those dates, and refused to answer additional questions about fund transfers.

Judge Donnelly said Gilead has provided sufficient evidence backing its claim that Vega was in New York those days, and has established other reasons for the suit to be in New York.

For example, the judge said if the counterfeit goods were sold with the knowledge that they were intended for a New York purchaser, he's subject to jurisdiction in the state.

"The defendant's refusal, on Fifth Amendment grounds, to answer questions on this topic — whether he was aware 'that the Gilead-branded HIV medication sold by Synergy would be sold in Brooklyn, New York,' or 'that the product sold by Synergy would be sold into Brooklyn, New York,' or that Gilead products 'sold by Synergy were sold in Brooklyn, New York' — warrants an adverse inference that he knew that 'the goods [were] destined for a purchaser residing in New York,'" the order states.

Those connections to Brooklyn were also used by Judge Donnelly to affirm that venue was proper in New York.

Vega had claimed jurisdiction would be unreasonable, which the judge likewise shot down. While he had argued that he doesn't have the financial means to litigate, Judge Donnelly said that would be the same whether the case was in New York or Florida.

The judge also said New York has an interest in the dispute, shooting down Vega's argument that the court has already ended any alleged harm — which the judge interpreted as referring to injunctive relief and evidence gained through seizure and discovery.

Judge Donnelly finally concluded that Gilead has sufficiently pled a conspiracy involving Vega, which establishes jurisdiction, and that the company likewise established jurisdiction under the Racketeer Influenced and Corrupt Organizations Act.

"This ruling validates Gilead's decision to include these defendants in our litigation against this complex counterfeiting network in the Eastern District of New York," a spokesperson said Friday. "We are pleased with this outcome because it supports Gilead's ongoing efforts to protect patient safety."

Counsel for Vega didn't immediately respond to a request for comment Friday.

Gilead is represented by Geoffrey Potter, Aron Fischer and Timothy A. Waters of Patterson Belknap Webb & Tyler LLP.

Vega is represented by Juan Diego Berrio of Berrio & Berrio PA.

The case is Gilead Sciences Inc. et al. v. Safe Chain Solutions LLC et al., case number 1:21-cv-04106, in the U.S. District Court for the Eastern District of New York.

--Editing by Jay Jackson Jr.