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July 13, 2016

VIA CM/ECF

Clerk of Court
United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, New York 10007

Re: *Christiansen v. Omnicom Group, Incorporated*
Docket No. 16-748cv

To the Clerk of the Court:

We write on behalf of appellees Omnicom Group Inc., DDB Worldwide Communications Group Inc., Peter Hempel and Chris Brown (collectively, "Appellees") in response to appellant Matthew Christiansen's ("Appellant") letter to the Court dated June 29, 2016 (hereinafter, the "Letter").

To the extent Appellant is requesting in his Letter that the Court consolidate, pursuant to Fed. R. App. P. 3(b)(2), this appeal with the appeal pending before this Court in *Zarda v. Altitude Express*, Docket No. 15-3775, Appellant should be required to file a motion setting forth the reasons for his request and the grounds on which he claims that this case and *Zarda* are "related" so that Appellees have the opportunity to provide a response.

In the event that the Court decides to review Appellant's consolidation request without requiring a formal motion, Appellees believe that consolidation of the two cases is not appropriate, as doing so would not be "both efficient and equitable for the disposition of the appeals." *Chem One, Ltd. v. M/V Rickmers Genoa*, 660 F.3d 626, 642 (2d Cir. 2011).

Other than one common question of law to be decided in the instant appeal and the *Zarda* appeal – i.e., whether Title VII protects against discrimination on the basis of sexual orientation – the two actions do not share any other similarities. Indeed, the cases involve different appellants and appellees, a different set of facts, and do not arise from the same litigation. Furthermore, each of the appeals seeks resolution of additional issues separate from the Title VII question described above. The *Christiansen* case seeks review of the district court's dismissal of Plaintiff's ADA claim and Appellees have statute of limitations defenses to Appellant's Title VII and ADA claims (issues not present in *Zarda*), and the *Zarda* case (which was dismissed on summary judgment) would require the Court to

decide issues involving the propriety of certain witnesses and whether there was a "trial by ambush" – issues that are simply not implicated in the *Christiansen* appeal.

The numerous differences between these two cases would make it less, not more, efficient for the Court to consolidate the appeals and hear them together. Additionally, *Christiansen* and *Zarda* were not designated as or considered "related cases" at the district court level, pursuant to Rule 13 of the Local Rules of the District Courts for the Southern and Eastern Districts of New York – nor could they, as they do not "concern the same or substantially similar parties, property, transactions or events" or share any "substantial factual overlap." Local Rule 13(a)(1); *see also* Local Rule 13(a)(2)(A) ("Civil cases shall not be deemed related merely because they involve common legal issues….").

Finally, from a timing standpoint, it would be impractical to consolidate *Zarda* and *Christiansen* given that the two cases are on substantially different schedules – the appellants in *Zarda* filed their reply brief last week and the *Zarda* appellees have already submitted their Local Rule 34.1 Oral Argument Statement, whereas Appellees in *Christiansen* have not even filed their principal brief yet and will not do so until September 20, 2016.

Appellees respectfully request that the Court require Appellant to file a motion to consolidate the *Christiansen* and *Zarda* appeals, or alternatively, deny Appellant's request for the cases to be heard by the same panel.

Respectfully submitted,

/s/ Howard J. Rubin

Howard J. Rubin

cc: All Counsel of Record (via CM/ECF)