

15 CV 3440
UNITED STATES DISTRICT COURT OF SOUTHERN DISTRICT OF NEW YORK

ANONYMOUS,

CASE NUMBER: JUDGE FAILLA

Plaintiff,

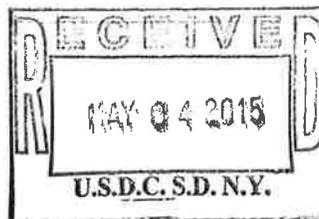
CIVIL COMPLAINT

-against-

Plaintiff demands trial by jury

**OMNICOM GROUP, INC., DDB
WORLDWIDE COMMUNICATIONS
GROUP INC., JOE CIANCOTTO,
PETER HEMPEL and CHRIS BROWN,**

Defendants.



INTRODUCTION

1. This action is brought to remedy and seeks damages for libel and discrimination occurring at the workplace of Ominicom’s subsidiary **DDB WORLDWIDE COMMUNICATIONS GROUP INC. ("DDB")**, one of the largest international advertising agencies, on the basis of discrimination because of an HIV disability in violation of 42 USCS §12112, 12117, animus towards a gender stereotype in violation of Title VII of the Civil Rights Act of 1964 and sexual orientation in the terms, conditions and privileges of employment in violation of the New York State Human Rights Law, N.Y. Executive Law 290, *et seq.*, and the New York City Human Rights Law, N.Y.C. Admin. Code 8-101, *et seq.*
2. The discrimination, harassment and victimization has been perpetrated by DDB’s supervisor Defendant **JOE CIANCOTTO** against Plaintiff **ANONYMOUS**, and advertising executive at **DDB**. **ANONYMOUS** is a gay man who kept his HIV positive status private. Inexplicably, DDB employs **JOE** as a supervisor knowing he has a history of employee sexual harassment and his admission of a sickness where he fears communicable diseases. Resultantly, **JOE** resents homosexuals as part of his own illness, as shown by the allegations herein. Of all the supervisors to put **ANONYMOUS** under, DDB chose Joe and then ignored his harassment history to other employees and simultaneous harassment campaign against **ANONYMOUS** for being gay with HIV. While DDB turned a blind eye, Joe victimized and bullied **ANONYMOUS** by publicly circulating at the workplace and on Facebook lewd pictures he drew of **ANONYMOUS** as a gay man defecating, urinating and with an erect

penis with comments about gay equality. Then Joe publicly accused **ANONYMOUS** of having AIDs when he does not have AIDs.

3. **ANONYMOUS** was emotionally and physically paralyzed with fear as a gay man being discriminated by his own supervisor at one of the world's largest advertising agencies. He feared the consequences of having to reveal his private medical HIV status if he filed a complaint against Joe. He feared that he will lose future employment because he was branded as having AIDs by his supervisor. He feared losing his job if he complained while DDB protected its admittedly sick supervisor Joe who resented him as a gay man while at the same time held **ANONYMOUS'** future in his hands as his supervisor.
4. In September, 2014, **ANONYMOUS** discovered that Joe posted to Facebook a picture of **ANONYMOUS** in a bikini on his back with his legs in the air in the gay sexual receiving position. Then **ANONYMOUS** filed a United States Employment Opportunity Commission (the "EEOC") complaint against **DDB** and Joe. After that complaint was filed, DDB denied receiving notice from **ANONYMOUS'** counsel demanding removal of the offensive post. Then they directed Joe to remove it after the EEOC served **ANONYMOUS'** complaint on **DDB**. Immediately after the EEOC's March 13, 2015 Right to Sue Letter was issued, DDB retaliated by requesting that **ANONYMOUS** resign without any basis regarding his work performance. DDB never asked their supervisor **JOE CIANCOTTO** to resign nor did they terminate him as the offender who unlawfully victimized **ANONYMOUS**.

JURISDICTION

5. This Court has jurisdiction to 42 USCS §§12112,12117, which incorporates by reference §706 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-5.
6. All conditions precedent to jurisdiction under §706 of Title the VII, 42 USC §2000e-5(F)(3), have occurred or been complied with.
 - (a) A charge of employment discrimination on the basis of disability was filed with the Equal Employment Opportunity Commission ("EEOC") within 180 days of the commission of the unlawful employment practice alleged herein.
 - (b) A Notification of Right to Sue was received from the EEOC on March 13, 2015.
 - (c) This complaint has been filed within 90 days of receipt of the EEOC's Notification of Right to Sue.

Also alleged are animus towards a gender stereotype in violation of Title VII of the Civil Rights Act of 1964, retaliation, and disability discrimination. Pursuant to 28 U.S.C. §1367(a), this Court also has jurisdiction over the pendent state law claims, including slander, because they

are so related to the other claims as to form pendent jurisdiction of this Court as part of the same case and controversy under New York State Human Rights Law and the New York City Human Rights Law, N.Y.C. Admin. Code 8-502.

7. Plaintiff exhausted his administrative remedies by filing complaints with the EEOC, the New York State Division of Human Rights ("SDHR"), and the New York City Commission on Human Rights ("CCHR") regarding the misconduct alleged herein.
8. Prior to commencing this civil action, Plaintiff served a copy of this complaint on the New York City Commission on Human Rights and the New York City Corporation Counsel pursuant to N.Y.C. Admin. Code 8-502d.
9. This Court also has jurisdiction under 28 U.S. Code §1332 because there is complete diversity between the plaintiff and the defendants and the amount in question is over \$75,000.00

PARTIES

10. The Plaintiff **ANONYMOUS** is a resident and domicile of the State of New Jersey. At all times relevant hereto was and still is an employee of Defendants **OMNICOM GROUP, INC.** and **DDB WORLDWIDE COMMUNICATIONS GROUP INC.**
11. At all times herein, Plaintiff, in the course of his employment with the Defendants, was an openly gay male who had HIV, and he kept that medical condition private. His HIV status puts him in a group protected against the acts described herein under the relevant New York State Human Rights Law and Federal and local New York City laws and ordinances.
12. The Defendant **OMNICOM GROUP, INC. ("Omnicom")**, upon information and belief, is the parent company of Defendant **DDB WORLDWIDE COMMUNICATIONS GROUP INC. ("DDB")**, and was and still is a corporation authorized to conduct business in the State of New York, maintaining a place of business at 437 Madison Avenue New York, NY 10022. The parent company, Defendant Omnicom, exercises extensive control over its subsidiary's, Defendant DDB, operations and personnel decisions, and the parent and subsidiary companies are considered as a single employer accountable for the discriminatory and other misconduct alleged herein.
13. The Defendant **DDB**, upon information and belief, is a subsidiary of Defendant Omnicom, and was and still is a foreign corporation duly organized and existing under and by virtue of the laws of the State of California and is authorized to conduct business in the State of New York, maintaining a place of business at 437 Madison Avenue New York, NY 10022, and employs the individual Defendants as listed herein below.

14. The Defendant **JOE CIANCOTTTO**, upon information and belief, is a resident and domicile of the State of New York, and at all times relevant hereto was and is employed by Defendant **DDB** and **Omnicom** as an Executive Creative Director from 2011 and Chief Digital Officer from April, 2013 to date.
15. The Defendant **PETER HEMPEL**, upon information and belief, is a resident and domicile of the State of New York, and at all times relevant hereto was and is employed by the Defendant **DDB** as the CEO until June 24, 2014.
16. The Defendant **CHRIS BROWN**, upon information and belief, is a resident and domicile of the State of New York and is employed by the Defendant DDB as CEO since June 24, 2014.

FACTS

17. Defendant **DDB** is an international marketing communications network owned by Defendant **OMNICOM (collectively, the “Corporate Defendants”)**, which is one of the world's largest advertising holding companies. DDB employs more than 14 employees.
18. In or about April, 2011, Plaintiff **ANONYMOUS** commenced employment with the Corporate Defendants as an Associate Creative Director. His employment was based upon an April 5, 2011 job offer from DDB that stated Defendant Omnicom was the parent of DDB that controlled **ANONYMOUS**' health, retirement and other benefits.
19. At all times herein mentioned, Defendant **JOE CIANCOTTTO** was and is a supervisor with immediate authority over the Plaintiff as an employee of the Corporate Defendants, and Defendants **PETER HEMPEL** and **CHRIS BROWN** supervised, managed and controlled Defendant **JOE CIANCOTTTO** and the terms and conditions of Plaintiff's employment.

A. Defendants' Employee Handbook

20. During all relevant times hereto, the Corporate Defendants maintained an “Employee Handbook” regarding their employment policies and practices (the “Handbook”, this Complaint uses the 2014 Handbook incorporating its 2011 policies).
21. The entire Handbook relates to policies promulgated by and involving Defendant Omnicom and uses Omnicom e-mails and contact information with respect to employee issues. For instance, at page 14 it states “As an employee of the Company, you have an obligation to conduct business according to the Omnicom Code of Business Conduct...”
22. The Handbook at pages 8-10 defines “Sexual Harassment as “verbal, physical or psychological conduct that denigrates or shows hostility toward an individual because of his/her ... sexual orientation, gender identity ... disability or any other protected characteristic, and that creates an intimidating, hostile or offensive work environment, unreasonably

interferes with an individual's work performance and/or adversely affects an individual's employment opportunities.”

23. The Handbook at pages 8-10 defines harassing conduct as “Epithets, Slurs, Negative stereotyping, Threatening, intimidating or hostile acts that relate to ...sexual orientation or disability or any other protected category, Written or graphic material that denigrates or shows hostility or aversion toward an individual or group because of ... sexual orientation, gender, identity ... disability or any other protected characteristic and that is placed on walls, bulletin boards, the internet, websites, blogs, etc. or elsewhere on the employer's premises, or circulated in the workplace.”
24. The Handbook at page 10 states that when “corrective action is called for, such action may include disciplinary measures up to and including “termination of the employment of the offender.”
25. The Handbook contains a “Blog/Social Media Policy at pages 11-13 that prohibits “inappropriate conduct” on personal social media such as Facebook.
26. Corporate Defendants and Defendants Hempel and Brown blatantly ignored and continue to ignore their own corporate prohibitions, in addition to Federal, State and City laws, and allowed Defendant Cianciotto to engage in a discrimination campaign against Plaintiff because of his disability, gender stereotype and sexual orientation. All of which created a hostile work environment as well.

B. Defendants Know that Defendant JOE CIANCOTTO Has a History of Harassing Employees in Violation of Federal, State and Local Laws and Ignore His Unlawful Conduct

27. Upon information and belief, Defendants knew that Defendant **JOE CIANCOTTO** would violate the law as he harassed employees sexually and in other ways according to previous complaints against him.
28. Despite his unlawful conduct, Defendants protect Defendant **JOE CIANCOTTO** rather than protect the employees he victimizes because he brings in high paying client accounts. Upon information and belief, one such account he is responsible for is the State Farm account estimated at Millions of Dollars. Therefore, DDB prefers to bite the bullet when Defendant **CIANCOTTO** engages in unlawful conduct as his profit making ability is valuable.
29. Despite the Corporate Defendant and Defendants Hempel and Brown knowing that Defendant Cianciotto has a psychological illness of fearing communicable diseases and openly resenting gay men as his misconduct towards Plaintiff made clear, said Defendants refuse to correct the

situation by at least transferring Plaintiff away from Defendant Cianciotto or terminating Cianciotto as the actual offender.

30. Instead, Defendants further victimize Plaintiff by asking him to leave the job for no reason except that he complained about the harassment; showing that they do not care about the offensive and damaging behavior directed to innocent employees at their offices.

C. The Harassment Commences With Explicit Pictures Depicting Plaintiff as a Shirtless Gay Man With an Erect Penis, Defecating and Urinating Related to Marriage Equality

31. Beginning about May, 2011, just one month after Plaintiff commenced employment under Defendant **JOE CIANCOTTO's** supervision, **CIANCOTTO** became openly resentful and hostile towards Plaintiff because of his sexual orientation.
32. This animosity was expressed by the Defendant **JOE CIANCOTTO** harassing, intimidating and mistreating Plaintiff as a homosexual male by drawing offensive sketches and creating other pictures of Plaintiff in a sexually suggestive manner, and circulating them in Defendants' office and publishing them on Facebook for colleagues and others in Plaintiff's industry to view, as follows:
 - A. In May 2011, a sketch of a shirtless, muscle bound Plaintiff prancing around and his creative partner saying "I fucking hate you all" (**Exhibit "A"**).
 - B. In May 2011, a picture of a shirtless, muscle bound Plaintiff on the body of a four legged animal with a tail and penis, urinating and defecating (**Exh. A**).
 - C. In late June, 2011, a picture of his creative partner pumping a muscle bound Plaintiff with a manual air pump, giving Plaintiff an erect penis, while he states "I'm so pumped for marriage equality" and his creative partner states "I fucking hate being pumped", meaning Bob is not homosexual and homosexual's do not get "pumped" to get an erect penis (**Exh. A**). This picture was published and circulated at the same time that New York marriage equality for same-sex couples was publicly at issue.
 - D. In July 2011, a "Muscle Beach Party" poster had Plaintiff's head attached to a female body, on his back in a bikini with his legs up in the air in the gay sexual receiving position (**Exh. A**).

D. The Discrimination Includes Withholding Plaintiff's Monetary Raises and Refusing to Announce his Promotion

33. In October, 2012, Plaintiff was promoted from associate creative director to creative director.
34. Defendants refused to pay Plaintiff the corresponding salary raise of \$25,000 in 2012 despite his promotion, withheld it from him for a year and Defendants refused to publicly announce that Plaintiff was promoted when everyone else received promotion announcements.
35. Defendants also refused to pay or announce the promotion to Plaintiff's creative partner Bob to evenly harm anyone directly related to Plaintiff so it is known that anyone directly

connected with Plaintiff will be as resented. They were the only two employees that year in that department who were treated disparately like that.

E. Defendant JOE CIANCIOOTTO Publicly Accuses Plaintiff of Having AIDS

36. In May, 2013, there was a Monday morning status meeting where some 20 people or more attended for Defendant DDB's State Farm account, including the account team, the Director of Operations, the creative team, project managers, Plaintiff and his creative partner Bob, and Defendant **JOE CIANCIOOTTO**, who was then the Chief Digital Officer.
37. At that meeting, Tabor Theriot, a project manager, was sitting behind Plaintiff. When he coughed, Defendant **JOE CIANCIOOTTO** commented that it sounded like a very bad cough. and walked towards Plaintiff as he informed everybody that he was also ill all weekend with a cold, cough, sinus and body aches. Then he sat beside Plaintiff, looked at him and said, "**It feels like I have AIDS. Sorry, you know what that's like, Anonymous.**" (Plaintiff's real name was actually stated in place of "Anonymous") .
38. Some of the persons present at that meeting were:

Veronica Parker-Hahn	Account Supervisor
Heidi Frank	Account Exec
Kristi Diaz	Account Exec
Stacey Mellus	Director, Operations at DDB
Tabor Theriot	Project Manager
Meredeth Friedman	Project Manager
Rachael Newell	Art Director
Megan Mitchell	Art Director
Melissa McCarthy	Copywriter
Brandon Hampton	Copywriter
Bobby Finger	Copywriter
Amanda Millwee	Art Director
Patrick Cannata	Assoc Creative Dir.
Bob Davies	Creative Director
Joe Cianciotto	Chief Digital Officer

39. Plaintiff was ridiculed his entire life for being a gay male and now he was experiencing it all over again at Defendants' offices while the Corporate Defendants' management, including **Hempel** and **Brown**, ignored Defendant **JOE CIANCIOOTTO's** harassment. That further paralyzed Plaintiff with fear by having to relive the entire shameful experience now being ridiculed by adults in senior positions in the corporate workplace, and by the very person, Defendant **JOE CIANCIOOTTO** who held his career and job at stake by having the ability to promote, demote or fire **Anonymous**.

40. Plaintiff was paralyzed with fear because he actually was HIV positive and he kept that fact private. He feared that human resources disclosed his private medical facts to **Defendant JOE CIANCOTTTO**.

41. Upon information and belief, Defendants obtained knowledge of Plaintiff's HIV status, although they perceived it as AIDs, from their internal human resources records showing his high monthly use of insurance for high cost prescriptions to treat his disability. That in turn raised their insurance premiums. From that information, Defendants deduced that because Plaintiff is a gay man using high insurance benefits monthly then he had AIDs.

42. Upon information and belief, that private medical information was disclosed to Defendant **JOE CIANCOTTTO** who used it to publicly accuse and shame Plaintiff of having AIDs.

F. The Harassment Continues

43. After relating Mr. Tabor's cough to Plaintiff having AIDS, Defendant **JOE CIANCOTTTO** then drew a graphic picture of a dog urinating with Mr. Tabor's head on its body and circulated that around the office to reinforce his position that anyone with a disease will be mocked at the office.

44. In September, 2014, Plaintiff discovered a "Muscle Beach Party" poster depicting him in the gay receiving position was published on Defendant **JOE CIANCOTTTO**'s Facebook page.

45. Some of Plaintiff's professional colleagues on that Facebook posting who saw that picture are as follows:

Wendy Raye	The Director of Human Resources
Barry Burdiak	Exec Creative Director on my account
John Hayes	Exec Creative Director
Patti Dirker Morris	The lead marketing client at State Farm.
Tammy Miller White	The primary digital client at State Farm.
Jeff Greeneberg	Client at State Farm
Tim Thomas	Client at State Farm.
Gustavo de Mello	Director of Strategy on Plaintiff's account
Kim Brun	Account Supervisor on Plaintiff's account
R Lee Newell (Rachel)	Art Director
Megan Mitchell	Art Director
Mario Azzi	Art Director
Hawley Tremblay	Executive Assistant
Heather Gorman	Group Account Director
Cassandra Anderson	Creative Director
Kimb Luisi	Art Director
Step Schultz	Copywriter
Veronica Parker-Hahn	Account Supervisor
Erika Amundson	Social Media Strategist
Kelli Lane	Account Supervisor

Staci Alfano	Director of New Business
Klane Harding	Copywriter
Trac Nguyen	Producer
Lindsay Marano	Account Executive
Heidi Frank	Account Executive
Tyler Kirsch	Copywriter
Lauren Brooks	Information Architect
Ryan Murphy	Art Director
Sarah Ramey	Producer
Luke Carmody	Associate Creative Director
Tont Bartolucci	Associate Creative Director
Marilyn Kam	Associate Creative Director
Diego Rionda	Art Director
Marcia Murry	Group Creative Director

H. Defendants Never Correct the Abuse and Instead Minimize It. Defendant JOE CIANCOTTTO Admits to Plaintiff that He Has a Disorder of Fearing Communicable Diseases.

46. On or about June 26, 2013, Plaintiff met with Wendy Raye, former Director of Human Resources of Defendant DDB. He complained that Defendant **JOE CIANCOTTTO's** drawings and public accusations that Plaintiff had AIDS were harassing and intimidating.
47. After that meeting, instead of correcting the hostile environment and ceasing the abusive and intimidating conduct, Defendant **JOE CIANCOTTTO** approached Plaintiff and interrogated him to discover whether he was the one who complained to human resources about **JOE**.
48. Plaintiff confirmed that he felt harassed by Defendant's conduct, to which Defendant **JOE CIANCOTTTO** justified his harassment and abuse towards Plaintiff by stating that he has a severe phobia of communicable diseases such as AIDS and herpes, and he has severe Attention Deficit Disorder. He said it is so bad that his doctor advises him to carry around cards in his pocket that read "AIDS" and "herpes" so he can pull them out and read them when he starts to obsess about contracting these diseases. He offered to play for Plaintiff a voicemail from his doctor where he revealed the recent results of an HIV test to show Plaintiff how fearful he was of having AIDS.
49. Plaintiff was rendered even more helpless now knowing that Defendants prepared an outrageous justification for Defendant **JOE CIANCOTTTO's** misconduct that because he was sick himself with a fear of communicable diseases then he can harass Plaintiff as a gay man whom he resented as people who have communicable diseases.

I. Defendants Refuse to Retract the AIDS Accusation Against Plaintiff and Further Harass Him by Refusing to Remove a Facebook Post Prohibited by the Employee Handbook Despite Plaintiff's Protestations to Remove it. Then Defendants Deny to the EEOC that they had no Knowledge of Plaintiff's Letters Objecting to the Post to Conceal Their Misconduct.

50. After being interrogated by **Defendant JOE CIANCIOOTTO**, on or about July 26, 2013, a meeting was called with the CEO Defendant **PETER HEMPEL**, the Director of Human Resources, and the Chief Creative Officer present. Defendant **JOE CIANCIOOTTO** gave a broad apology to the effect of hoping that no one was offended by anything he did, but he never addressed nor retracted his accusation that Plaintiff had AIDS, nor did he address his years of publishing lewd pictures depicting Plaintiff as a gay man.
51. Defendant **PETER HEMPEL** was present at that meeting. He gave a speech that **DDB** does not tolerate inappropriate behavior, but he refused to acknowledge or retract the harassment and AIDS accusation directed to Plaintiff.
52. On October 21, 2014 and November 10, 2014, Plaintiff's counsel sent letters to **Defendants Joe Brown and Joe Cianciotto** requesting that the "Muscle Beach Poster" be removed from Facebook because Plaintiff does not consent to his image being posted in that manner and that posting violated Defendants' DDB's Employee Handbook terms.
53. In their staunch position to discriminate against and harass Plaintiff and to further shame and humiliate him, Defendants refused to remove that post. In fact, Plaintiff's counsel's letters make it clear to Defendants that the Facebook posting was distressing and explained that the harassment he endured by Defendant **JOE CIANCIOOTTO** made that posting more distressing. Yet Defendants chose to maintain the hostile work environment against Plaintiff by ignoring even his counsel's not one, but TWO letters and Defendants insisted on keeping that improper posting public and would not remove it until Plaintiff complained to the EEOC.
54. More disturbing and evident of the bizarre, immature and callous environment Defendants support at the workplace, when Plaintiff complained to the EEOC, Defendants denied to the EEOC that they received any letters to remove the offensive poster. After that false denial, they directed Defendant **JOE CIANCIOOTTO** to remove the poster from Facebook.
55. Notably, they did not remove it until as late as January 27, 2015 for the public to see as long as possible despite the distress it caused Plaintiff.

56. That poster was clearly objectionable, harassing considering the course of conduct directed toward Plaintiff and its posting to Facebook violated the terms of employment. If not objectionable, Defendants would not direct **CIANCIOTTO** to remove it; a direction made only after Plaintiff was forced to complain to the EEOC that is investigating another harassment complaint against **CIANCIOTTO**.

J. Defendants Retaliate Against Plaintiff and Request He Leave his Employment Solely Because He Filed EEOC Complaints.

57. Plaintiff's worst fears came true as on or about March 21, 2015, without any basis or legitimate reason regarding Plaintiff's work performance, Defendants' counsel contacted Plaintiff's counsel and requested that Plaintiff accept severance to leave his employment.

58. There is absolutely no legitimate reason for Defendants to request that Plaintiff leave his employment.

59. Defendants request that he leave his employment rather than correct the situation and terminate the real offender, Defendant **JOE CIANCIOTTO**, was meant to notify Plaintiff that he is not wanted there because he is a gay man whom they perceive has AIDs and they prefer to tolerate the unlawful discrimination and harassment by their employee Defendant **JOE CIANCIOTTO** who has a history of harassment at the workplace rather than have a gay man with AIDs work there.

60. Plaintiff's above stated fears regarding retaliation if he complained about Joe's behavior were justified because when he finally complained to the Corporate Defendants after the May, 2013 incident then they concocted a justification that Joe's own sickness and fear of AIDS led him to victimize the Plaintiff and now they request that Plaintiff leave his job.

61. His fears were also justified because Defendants lied about receiving notice to remove Joe's offensive poster on Facebook to show Plaintiff his feelings and position were inconsequential to them. They only removed it after Plaintiff's EEOC complaint raised that issue again because Defendants could not deny receiving a complaint that came directly from the EEOC, a federal government agency.

62. His fears were also justified because after the EEOC complaint, on or about March 21, 2015, Defendants' counsel contacted Plaintiff's counsel and requested that Plaintiff leave his employment solely because of his complaints and not based on his work performance.

63. Remarkably, Defendants refuse to remove the actual culprit **Defendant JOE CIANCIOTTO** who created and engaged in the discrimination campaign against Plaintiff.

64. Upon information and belief, **Defendant JOE CIANCOTTTO** brought in large accounts to the Corporate Defendants of multi-millions of dollars in income. For instance, upon information and belief, Defendant **JOE CIANCOTTTO** brought the State Farm account to the Corporate Defendants which is worth Millions of Dollars. He is responsible for that account as well.
65. Defendants prefer supporting and defending a harassing abuser such as Defendant **JOE CIANCOTTTO** and ignore his unlawful conduct that harms others provide he brings income.
66. Additionally, after the May, 2013 incident when Defendant **Cianciotto** accused Plaintiff of having AIDs, Plaintiff complained to Defendants' human resources that he felt harassed to which Defendants did nothing to retract Defendant **Cianciotto**'s AIDs statement directed to Plaintiff, and instead concocted an excuse for his misconduct. Then Defendants subjected Plaintiff to further humiliation by posting on Facebook his picture in a bikini in the gay sexual receiving position and refused to remove that despite numerous requests by Plaintiff.
- K. The Discrimination Continued up to January 27, 2015 When Defendants Refused to Remove the Prohibited Poster. All Statutes of Limitations Are Tolled Considering the Discrimination and Harassment Caused Plaintiff Severe Emotional and Physical Distress.**
67. The discrimination and harassment was continuous, up to and including Defendants' refusal to remove the offensive Facebook poster until December, 2014 and including their request that he leave their employment in March, 2015.
68. Equitable tolling of all causes of action is warranted because Plaintiff suffered a combination of physical and mental conditions directly related to the harassment and discrimination.
69. Plaintiff grew up in the mid-west and was repeatedly gay-bashed there. That along with his later discovery that he had HIV caused him to fear every day his possible death from that disease. That led to his diagnoses of post-traumatic stress disorder ("PTSD").
70. His HIV status is an infirmity in itself that disables him physically by attacking his body and rendering him sick and disabled and mentally by living in fear of dying any day from it. His PTSD compounds those infirmities.
71. Plaintiff moved to New York City to benefit from its tolerable atmosphere towards the gay community and persons with HIV/AIDs, but was setback physically and mentally when Defendants abused him in his workplace in a City he came to escape the same abuse.
72. Defendants abuse led Plaintiff to become despondent, hopeless and numb the pain by going to work every day and having to make believe the abuse was not happening.

73. Plaintiff retreated during the abuse while he suffered physically and mentally from it, including, but not limited to, increased anxiety, depression, sleeplessness, inability to eat, headaches and social anxiety.
74. Plaintiff's mental and physical condition, which is not limited to depression and anxiety from the harassment and discrimination, is now exacerbated by any mention of his gay status and HIV or AIDs.
75. Confirming the above statements in paragraphs 65-72, on March 30, 2015, Plaintiff was evaluated by Dr. Stephen Reich, a licensed psychologist who diagnosed Plaintiff with chronic PTSD, anxiety and depression, including intense fear, helplessness and horror that traumatized Plaintiff and the trauma was exacerbated because of Defendants misconduct as alleged herein directed at his sexuality and disability and perceived disability, among everything else alleged above.
76. Dr. Reich concluded that as a direct result of the "gay taunts and drawings" that Defendants subjected him to from 2013 to 2015 that he was emotionally and physically unable to complain as Defendants harassment caused Plaintiff to retreat and avoid. Plaintiff instead resorted to medication, including Xanax, and drinking, to numb the pain during the harassment.
77. As a result of his physical and mental infirmities, Plaintiff was incapable of filing any complaints against Defendants.
78. All unlawful misconduct as alleged in the following causes of action was on a continuing basis up until March 21, 2015 when Defendants requested that Plaintiff leave his employment in retaliation for his EEOC complaints regarding their misconduct.
79. Because of Defendants' misconduct as alleged herein, Plaintiff has entered therapy.

FIRST CAUSE OF ACTION: Federal Disability HIV/AIDS Perceived

80. All of the foregoing paragraphs are incorporated here as if set forth here in their entirety.
81. At all relevant times, Plaintiff has tested positive for Human Immunodeficiency Virus (HIV) antibodies and is an individual with a "disability" as that term is defined in Section 3(2) of the ADA, 42 U.S.C. §12102(2).
82. Defendants Omnicom and DDB (collectively, the "Corporate Defendants") are New York domestic and/or foreign corporations, with offices and principal places of business in New York.

83. The Corporate Defendants are a “person” within the meaning of §101(7) of the ADA, 42 U.S.C. §12111(7), and §701(a) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e(a).
84. The Corporate Defendants are engaged in an “industry affecting commerce” within the meaning of Section 101(7) of the ADA, 42 U.S.C. §12111(7), and Section 701(h) of the Civil Rights Act of 1964, 42 U.S.C. §2000e(h).
85. Each of the Corporate Defendants employ 15 or more employees and is an “employer” within the meaning of Section 101(5)(A) of the ADA, 42 U.S.C. §12111(5)(A).
86. Plaintiff is a “qualified individual with a disability” within the meaning of Section 101(8) of the ADA, 42 U.S.C. §12111(8), in that Plaintiff is an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the position of creative director with DDB and Omnicom.
87. By refusing to provide Plaintiff his bonus and raise timely and in full, by permitting Plaintiff to be harassed at the workplace by their supervisor Defendant Cianciotto’s pictures and accusation of AIDs and by requesting Plaintiff to leave his employment without any basis regarding his work performance after he complained to the EEOC and making work there intolerable, among all of the other above allegations herein, including failing to remove Plaintiff from the offender Defendant Cianciotto or transferring Cianciotto away from the Plaintiff, the Corporate Defendants constructively discharged Plaintiff.
88. The Corporate Defendants terminated Plaintiff because of his HIV status.
89. The Corporate Defendants termination of Plaintiff’s employment on the basis of his HIV status is a discriminatory action prohibited by Section 102(a) of the ADA, 42 U.S.C. §12112(a).
90. The Corporate Defendants discriminatory conduct as to Plaintiff was taken with malice with reckless indifference to the federally protected rights of Plaintiff.
91. The Corporate Defendants termination of Plaintiff’s employment on the basis of his HIV infection has caused, continues to cause, and will cause Plaintiff to suffer substantial damages for future pecuniary losses, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.
92. Pursuant to Section 107(a) of the ADA, which incorporates by reference Section 706 of the Civil Rights Act of 1964, and 42 U.S.C. §2000e-5, Plaintiff is entitled to injunctive relief enjoining Defendants from engaging in any further prohibited discrimination against Plaintiff on the basis of his HIV status.

93. Pursuant to 42 U.S.C §1981a, Plaintiff is entitled to recover compensatory damages, including future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life and other non-pecuniary losses.
94. Pursuant to 42 U.S.C §1981a, Plaintiff also is entitled to recover punitive damages from Defendants because they acted with malice or with reckless indifference to the federally protected rights of Plaintiff.
95. Pursuant to Section 505 of the ADA, 42 U.S.C. §12205, Plaintiff is entitled to attorney's fees, including litigation expenses and the costs of this action.

SECOND CAUSE OF ACTION: Title VII Stereotypical animus

96. All of the foregoing paragraphs are incorporated here as if set forth here in their entirety.
97. Plaintiff suffered harassment, abuse, discrimination, was forced to work in a hostile work environment and faced adverse employment actions as a result of Defendant Cianciotto's animus toward Plaintiff's exhibition of behavior considered to be stereotypically inappropriate for men.
98. All other Defendants named herein supported, condoned and allowed the animus to continue by ignoring the disgusting, bizarre and outrageous drawings Defendant Cianciotto published in the office, and all Defendants refused a retraction regarding the AIDs statement directed to Plaintiff, but instead asked Plaintiff to leave his job.

THIRD CAUSE OF ACTION: Federal Constructive Discharge

99. All of the foregoing paragraphs are incorporated here as if set forth here in their entirety.
100. The Corporate Defendants and Defendants Hempel and Brown deliberately created intolerable work conditions for Plaintiff by knowing the Defendant Cianciotto bullied Plaintiff with his bizarre sketches directed to Plaintiff's sexuality which had no rational relation to Defendant Cianciotto's nor anyone's work there and his AIDs accusation against Plaintiff, and then all Defendants insist on forcing Plaintiff to work with Defendant Cianciotto as his supervisor knowing Cianciotto admits he has a sickness of fearing communicable diseases which correspondingly he resents gay men.
101. That resentment is clear as Defendant Cianciotto's harassment directed towards Plaintiff has an evil and malicious purpose as evidenced by his disturbing pictures, Facebook posting, accusing Plaintiff of AIDs and everything else as alleged herein where Defendants choose to ignore Defendant Cianciotto's evil motives directed at a gay man.
102. In efforts to cover-up his resentment towards homosexuals, Defendant Cianciotto claims that he supports the gay community or he gave Plaintiff positive work evaluations fail

as his feigned gay support is contradicted by his overt actions of humiliating, harassing and bullying Plaintiff as a gay man, accusing him of AIDs, refusing to get him his monetary raise and refusing to dignify Plaintiff as a human being by ignoring his request to remove the Facebook post that had not business being published publicly.

103. Defendants' contempt and scorn towards Plaintiff as a gay man deserving of no rights is obvious when they even lied to the EEOC that they never received notice of Plaintiff's requests to remove the offensive Facebook post, then they demand he resign after he complains to the EEOC.

104. Defendants discriminated against and constructively discharged Plaintiff because of his opposition to the disability discrimination in violation of 42 U.S.C. §12203 and under 42 U.S.C. §2000e-3 by requesting he resign without any basis, and only after he reported the Defendants' misconduct to the EEOC.

105. Defendants unreasonably failed to take corrective action to either terminate Defendant Cianciotto or remove him as Plaintiff's supervisor, and instead Defendants made the conditions more intolerable and force Plaintiff to work with this admittedly sick and unprofessional man. When Plaintiff did not resign, Defendants contacted his counsel to request that he resign.

FOURTH CAUSE OF ACTION: NY CLS Exec §290 et. seq. Sexual Orientation Discrimination

106. All of the foregoing paragraphs are incorporated here as if set forth in their entirety.

107. Throughout the course of Plaintiff's employment with Defendants, Plaintiff has endured outrageous and severe harassment on account of his sexual orientation.

108. The harassment and abuse plaintiff was forced to endure, on account of his sexual orientation, was in willful violation of the New York Human Rights Law, N.Y. Exec. Law 290, *et seq.*

FIFTH CAUSE OF ACTION: NY CLS Exec § 296 Disability Discrimination

109. All of the foregoing paragraphs are incorporated here as if set forth in their entirety

110. The harassment and abuse Plaintiff was forced to endure to the point Defendants are asking him to leave on account of his disability of having HIV that Defendants perceive as AIDS constitutes an unlawful discriminatory practice in willful violation of the New York Human Rights Law, N.Y. Exec. Law 290, *et seq.*

SIXTH CAUSE OF ACTION: NYC Human Rights Law Harassment

111. All of the foregoing paragraphs are incorporated here as if set forth in their entirety.
112. Plaintiff was forced to work in a hostile and abusive work environment.
113. Plaintiff was continually, routinely and frequently subjected to offensive, vulgar and crude comments and pictures depicting his sexual orientation by Defendants.
114. The offensive, vulgar and crude comments and pictures were directed at Plaintiff because of his sexual orientation and disability.
115. The outrageous harassment was both unwelcome and pervasive.
116. The Corporate Defendants knew or should have known about the harassment yet failed to take any action designed to stop it.
117. The harassment and abuse Plaintiff was forced to endure, on account of his sexual orientation and disability was in willful violation of the New York City Human Rights Law, N.Y.C. Admin. Code 8-101,8-107*et seq.*

SEVENTH CAUSE OF ACTION: Aiding & Abetting

118. All of the foregoing paragraphs are incorporated here as if set forth in their entirety.
119. The Defendants by engaging in the conduct described above, incited, compelled, aided and abetted in the violation of the New York Human Rights Law, N.Y. Exec. Law 290, *et seq.* and New York City Human Rights Law, N.Y.C. Admin. Code 8-101, *et seq.*

EIGHTH CAUSE OF ACTION: Slander PER SE

120. All of the foregoing paragraphs are incorporated here as if set forth in their entirety.
121. At the May, 2013 business meeting with some 20 colleagues and other professionals in Plaintiff's industry present, Defendant Cianciotto falsely stated and imputed that Plaintiff had AIDs when he does not.
122. In addition to that false statement accusing him of a communicable disease he does not have, it was meant to and clearly did expose Plaintiff to hatred, contempt, ridicule, and obloquy because it falsely accuses and depicts Plaintiff as having a disease most people fear.
123. The statement was so understood by those who heard it that Plaintiff has a communicable disease of AIDs.
124. The defamatory statement was published with reckless disregard for the truth of the matter, and Defendants knew at the time the statement was made that it was false and injurious to Plaintiff as they had no proof he had AIDs.

125. The defamatory statement was intended by Defendants, and each of them, to directly injure the Plaintiff with respect to his reputation, character and business.
126. Defendants, and each of them, jointly or separately, without due regard for the truth, falsity, or malicious nature of the statement, refused to publicly retract it.
127. As a consequence of the foregoing misconduct of the Defendants, Plaintiff has been injured in his good name and reputation as a creative director in the general industry, he has suffered great pain and mental anguish and has been held up to ridicule and contempt by coworkers, acquaintances and the public.
128. By engaging in the misconduct alleged above, the Defendants each engaged in “despicable” conduct with the willful and conscious disregard for the rights of plaintiff. Defendants were aware of the probable dangerous consequences of their misconduct and willfully and deliberately failed to avoid those consequences, including subjecting Plaintiff to cruel and unjust hardship, in conscious disregard of plaintiff’s rights. Thus, an award of exemplary and punitive damages is justified.
129. That as a consequence of the foregoing misconduct of Defendants, the career and future employability of Plaintiff has been damaged in an amount exceeding \$ 20,000,000.00.

NINTH CAUSE OF ACTION: Emotional Distress

130. All of the foregoing paragraphs are incorporated here as if set forth in their entirety.
131. Defendants openly and flagrantly engaged in outrageous offensive conduct and verbal abuse directed at Plaintiff.
132. The Corporate Defendants and Defendants Brown and Hempel were aware of, tolerated and condoned the offensive conduct that Defendant Cianciotto subjected Plaintiff to and disregarded the substantial possibility that the offensive, outrageous conduct and language would cause Plaintiff severe emotional distress.
133. Defendants disregarded the substantial probability that their conduct, comments and language would cause Plaintiff severe emotional distress.
134. Defendants’ conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society.
135. Defendants’ conduct was more than mere insults, indignities and annoyances but was so shocking and outrageous as to exceed all reasonable bounds of decency of permitting personal attacks upon Plaintiff by the offensive pictures to the point that Defendant Joe Cianciotto publicly accused Plaintiff of having AIDs because he is a gay man while the Corporate Defendants shielded Defendant Cianciotto’s misconduct with the excuse that he

himself is a sick man who fears communicable diseases, then continued their indifference to Plaintiff by lying that they never received his notices to remove the Facebook posting and then asked him to resign after he complained to the EEOC.

136. As a result of Defendants' conduct, Plaintiff has suffered, among other consequences, conscious pain and suffering, physical injury, great mental distress, great emotional distress, depression, sleeplessness, shock, fright, humiliation and anxiety.

TENTH CAUSE OF ACTION: Negligent Supervision/Retention of an Unfit Employee

74. All of the foregoing paragraphs are incorporated here as if set forth in their entirety.

75. The Corporate Defendants had a duty to provide Plaintiff with a safe workplace, free of discrimination and harassment.

76. The Corporate Defendants had both actual and imputed knowledge of the Defendant Joe Cianciotto's harassing, discriminatory acts and statements towards another co-worker prior to his unlawful conduct directed to Plaintiff and had actual and imputed knowledge of his similar unlawful conduct while he engaged in the harassing, discriminatory acts and statements towards Plaintiff, and the undue risk of harm to which they were exposing Plaintiff.

77. Despite the foregoing, the Corporate Defendants failed to take adequate steps to determine the fitness of Defendant Joe Cianciotto's, failed to adequately supervise him, and deliberately retained him.

78. As a proximate result of Defendants' duty to supervise, Plaintiff has been injured and has incurred damages thereby.

79. The actions of the Corporate Defendants were wanton and reckless, with malice and without reason or basis and were arbitrary, capricious, and unfounded.

DAMAGES AS TO ALL CLAIMS

As a result of all of the Defendants' conduct alleged herein Plaintiff has suffered, among other consequences, conscious pain and suffering, physical injury, great mental distress, great emotional distress, depression, sleeplessness, shock, fright, humiliation and anxiety and his career and future employability is damaged by his colleagues and other professionals believing, questioning or suspecting that Plaintiff has AIDs wherein Plaintiff will never know if he is denied future employment because of that fear of third parties and he is effectively prevented from leaving his present employment because he may never get hired again, and is maliciously forced by Defendants to continue to work under Defendant Joe Cianciotto in their hopes that Plaintiff will leave. By engaging in the misconduct alleged above, the defendants each engaged in "despicable"

conduct with the willful and conscious disregard for the rights of plaintiff. Defendants were aware of the probable dangerous consequences of their misconduct and willfully and deliberately failed to avoid those consequences, including subjecting plaintiff to cruel and unjust hardship, in conscious disregard of plaintiff's rights. Thus, an award of exemplary and punitive damages is justified.

WHEREFORE, on all of the above counts, Plaintiff demands the following relief:

That Defendants are permanently and forever enjoined from any further prohibited discrimination against Plaintiff,

That Plaintiff is awarded compensatory, actual, and special damages in an amount to be determined at trial in this matter,

That Plaintiff is awarded punitive damages in an amount to be determined at trial in this matter.

That Plaintiff be awarded his attorney fees, including litigation expenses and costs pursuant to Section 505 of the ADA, 42 U.S.C. §12205, and

Such other further relief as the Court deems just and proper.

Dated: May 4, 2015

Yours, etc
LAW OFFICES OF SUSAN CHANA LASK

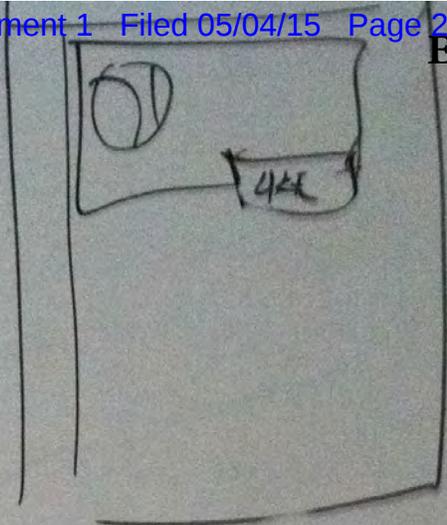
/s Susan Chana Lask

BY: Susan Chana Lask, Esq.
Attorney for Plaintiff
244 Fifth Avenue, Suite 2369
New York, NY 10001
(917) 300-1958

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ALICE
ALICE

Bob doesn't
mean it... really...



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EXHIBIT A

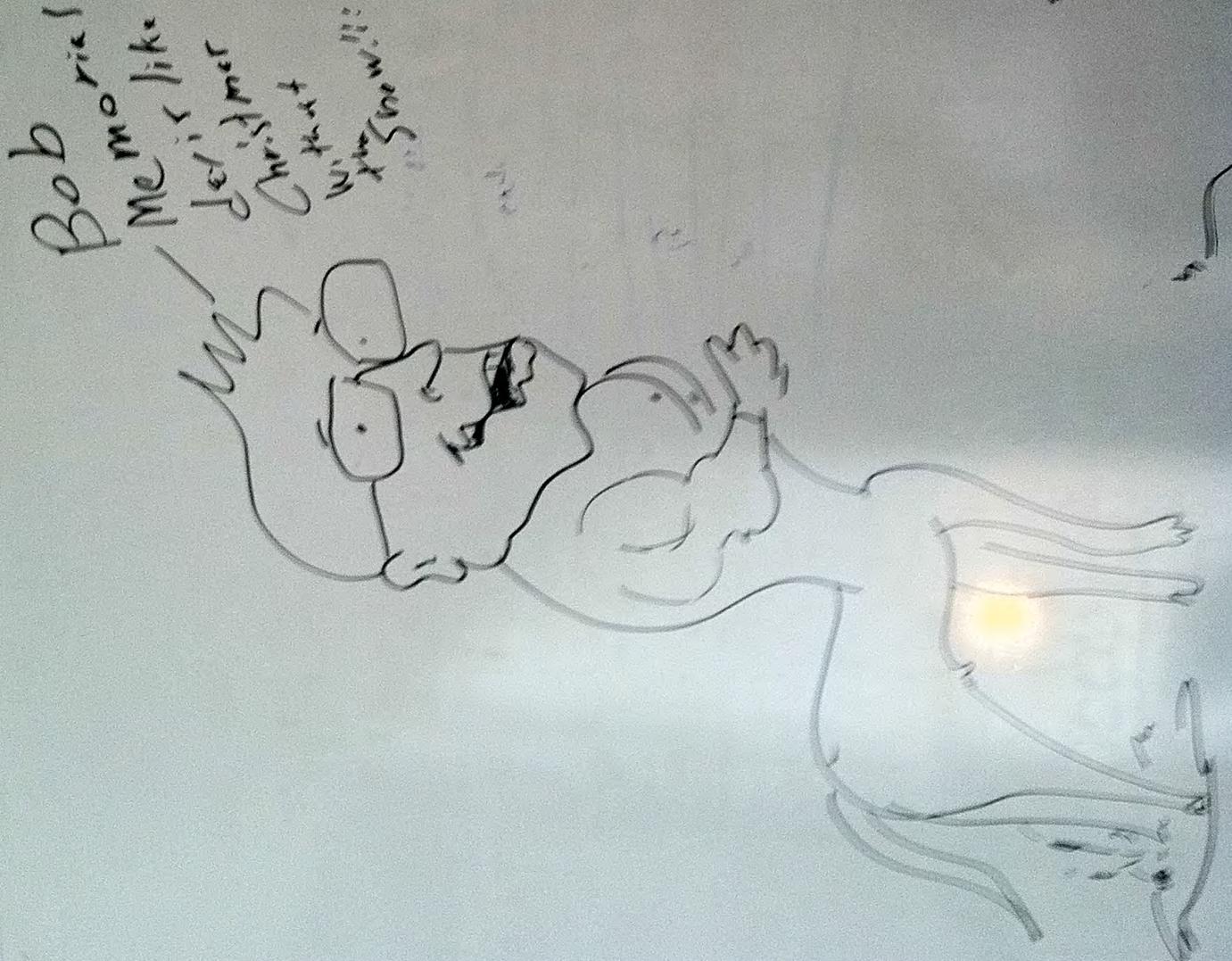
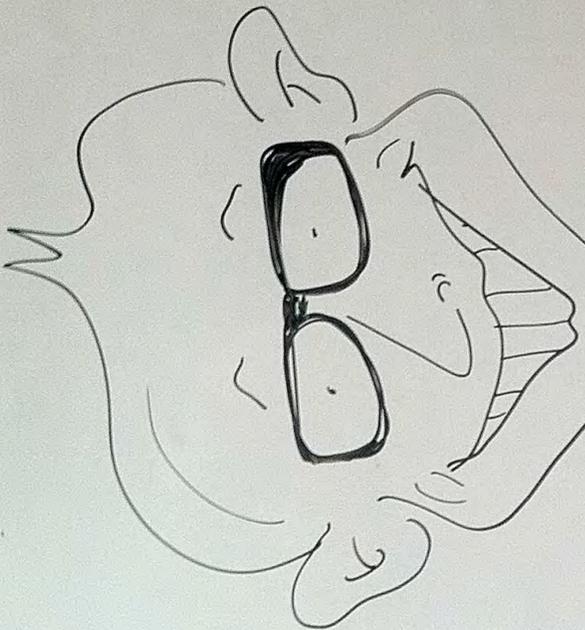
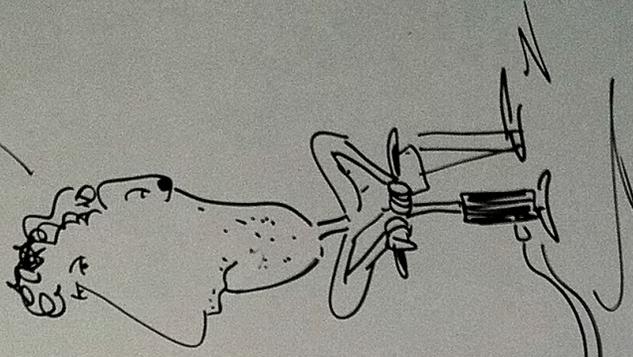


EXHIBIT A

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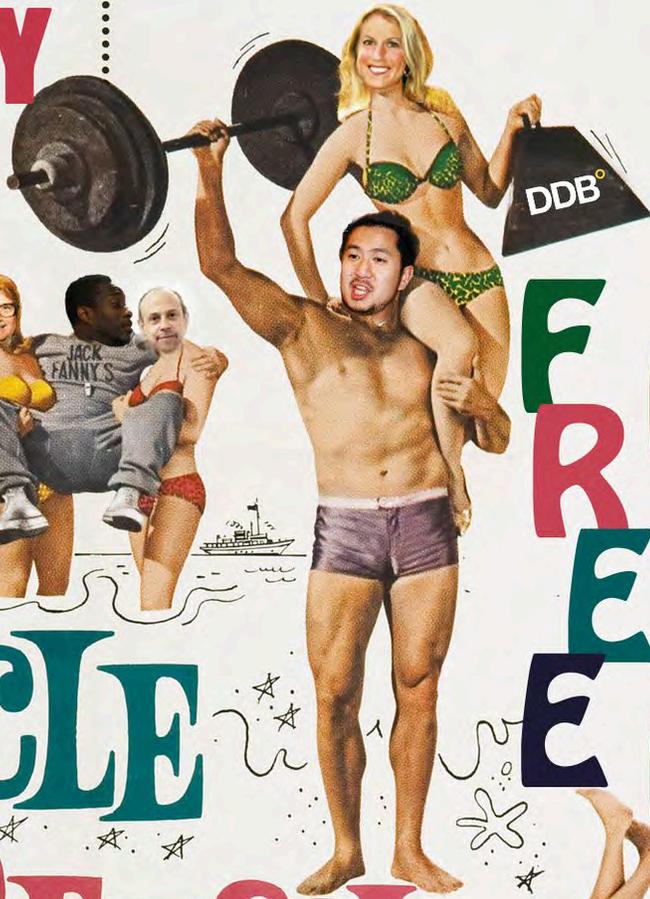


im so
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for marriage
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WEDNESDAY
JULY 20TH

5TH FLOOR
OPEN SPACE

6 P.M. til'
SHARIF COMES BACK.



F
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MUSCLE
BEACH
PARTY



I hate you all.

