LEEDS BROWN LAW, P.C.

One Old Country Road, Ste. 347
Carle Place, NY 11514
(516) 873-9550

Attorneys at Law

July 7, 2015

Via ECF

Hon. Katherine Polk Failla
United States District Court
Southern District of New York
40 Foley Square, Courtroom 618
New York, NY 10007-1312

Re: Christiansen v. Omnicom Group Inc., et al.,
15-CV-3440

Dear Judge Failla:

On June 26, 2015, this Firm was retained to represent defendant, Joseph Cianciotto. That day, I filed a notice of appearance and drafted a letter requesting that the previously sought pre-motion conference be used as a pre-motion conference for our client's anticipated motion to dismiss. I did not specify the details of our proposed motion because I had not yet conducted a sufficient review of the matter. On June 30, while I was away on vacation, the Court issued an order ("Order") directing me to submit a letter setting forth the basis of our proposed motion by July 6. I returned from my vacation on July 6 and saw the Order at approximately 7:30 p.m. that night. Accordingly, I was unable to file this letter by the deadline. I apologize for submitting this letter one day late and I hope the Court will excuse the delay. The bases for our proposed motion to dismiss are as follows:

- To the extent that claims are brought against Cianciotto under the ADA or Title VII, such claims cannot be brought against individuals and should be dismissed.

- To the extent that State or City Human Rights Law claims are brought against Cianciotto as an employer, as opposed to an aider and abettor, such claims should be dismissed.

- The aider and abettor claims should be dismissed because Plaintiff elected his remedies by filing a complaint at the NYSDHR, which is still pending.

- To the extent an aider and abettor constructive discharge claim exists, it must be dismissed because there was no resignation.

- The May 2013 slander claim is time barred. To the extent that other slander claims are vaguely alluded to, they do not provide an adequate identification of the purported communication, including when it was made. *Ives v. Guilford Mills, Inc.*, 3 F. Supp. 2d 191, 199 (NDNY 1998)(citing *Broome v. Biondi*, 1997 LEXIS 1431 at * 2 (SDNY 1997).

- The intentional infliction of emotional distress claim does not rise to the level of outrageousness required by New York law.

- To the extent that the breach of contract claim or labor law claim is alleged against Cianciotto, there is no allegation of a contract between Cianciotto and Plaintiff. There is also no allegation of a meeting of the minds as to an essential term of alleged contract – specifically, the date the alleged raise was to become effective.

- Finally, the complaint should be dismissed for excessive verbosity, which is a violation of FRCP Rule 8(a)'s "short and plain" requirement and Rule 8(d)'s requirement that "each allegation must be simple, concise, and direct." Given the length of each paragraph and the insertion of evidence therein, if required to answer, such task is unduly burdensome. Thus, if the motion to dismiss is not granted, a motion for a more definitive statement should be granted.

Thank you for your attention to this matter. I look forward to discussing these matters more meaningfully at the conference scheduled for July 16, 2015.

Respectfully submitted,

LEEDS BROWN LAW, P.C.

_____/s/_____
RICK OSTROVE

cc: Counsel of Record (via ECF)