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June 24, 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

**Re: Matthew Christiansen v. Omnicom Group Inc. et al., 15 CV 3440 (KPF)**

Dear Judge Failla:

This firm represents Defendants Omnicom Group Inc. (“Omnicom”), DDB Worldwide Communications Group, Inc. (“DDB”), Peter Hempel (“Hempel”) and Chris Brown (“Brown”) (collectively, “Defendants”) in the referenced case. We respectfully request a pre-motion conference regarding Defendants’ anticipated motion to dismiss the First Amended Complaint (“Complaint”).

**BACKGROUND**

Plaintiff is a creative director who is currently employed by DDB, an international advertising agency. He alleges in the Complaint that he is an openly gay male, is HIV positive, and that he was subjected to a hostile work environment at DDB on the basis of his sexual orientation and disability. Plaintiff contends that in May and June 2011, Defendant Joseph Cianciotto – his manager at that time – drew offensive sketches of Plaintiff referencing his sexual orientation and circulated a parody of a movie poster showing Plaintiff’s head on the body of a woman in a bathing suit. Plaintiff further alleges that in May 2013, Cianciotto made a comment at a meeting suggesting that Plaintiff had “AIDS”. In addition to Cianciotto’s drawings and the parody poster, Plaintiff references other behavior and comments by Cianciotto in support of his hostile work environment claims.

**DEFENDANTS’ ANTICIPATED MOTION TO DISMISS**

Plaintiff has asserted twelve (12) causes of action against DDB, senior executives Hempel and Brown, and DDB’s parent company Omnicom. In their anticipated motion, Defendants will move for dismissal of every claim in the Complaint pursuant to Fed. R. Civ. P. 12(b)(6) on numerous grounds, including:

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Plaintiff's claim under the ADA must be dismissed for failure to exhaust his administrative remedies. Plaintiff did not bring an ADA claim in an EEOC Charge. The Title VII claim that Plaintiff did assert in his EEOC Charge is not actionable because this claim is based on allegations of sexual orientation discrimination, which is not legally cognizable under Title VII. Plaintiff's ADA and Title VII claims are also time-barred because he failed to assert them in an EEOC Charge within 300 days after the alleged incidents giving rise to these claims.

The federal constructive discharge claim must be dismissed for failure to allege that Plaintiff resigned from his job – a requisite element of this cause of action. Plaintiff never resigned and continues to be employed by DDB.

The claims for sexual orientation discrimination, disability discrimination, and aiding and abetting under the New York State Human Rights Law (NYSHRL) and New York City Human Rights Law (NYCHRL) should be dismissed on the basis that they are time-barred, among other grounds.

Furthermore, in addition to filing an EEOC Charge, Plaintiff filed a complaint with the New York State Division of Human Rights (NYSDHR) based on the same incidents underlying the Complaint, and the NYSDHR claims are still pending. Under well-established law, Plaintiff is precluded from filing in federal or state court for the same causes of action. Thus, the Court is barred from exercising pendent jurisdiction over his NYSHRL and NYCHRL claims.

The slander claim, which is based on a statement made in May 2013, is time-barred under New York's one-year statute of limitations.

There is also no legal basis for Plaintiff's claim of intentional infliction of emotional distress. All of his allegations – taken together and with all reasonable inferences drawn in his favor – do not come close to meeting the rigorous pleading standard for this claim under New York law.

Plaintiff's negligent supervision and retention claim similarly fails as a matter of law because this claim is precluded by the New York Workers' Compensation Law. In addition, Defendants will move to dismiss Plaintiff's breach of contract claim for lack of jurisdiction and his wage claim on the ground that the remedies under the New York Labor Law are not available to Plaintiff.

All of Plaintiff's claims against Omnicom – DDB's parent company – must be dismissed because he has failed to allege any facts demonstrating that Omnicom is Plaintiff's employer for purposes of liability. Plaintiff has also failed to exhaust his administrative remedies against Omnicom.

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Finally, every claim against individual defendants Hempel and Brown should be dismissed for several reasons. Specifically: (i) there is no individual liability under Title VII; (ii) there are simply no allegations of fact supporting the claim that Hempel or Brown were involved in, or aided and abetted, any alleged discriminatory conduct against Plaintiff; and (iii) Brown was not even employed by DDB before September 1, 2014, which was more than one year after the last incident of discrimination directed against Plaintiff alleged in the Complaint.

**CONCLUSION**

For the foregoing reasons, Defendants respectfully request a pre-motion conference regarding their anticipated motion to dismiss.

Respectfully submitted,

/s/ Daniel A. Feinstein

Daniel A. Feinstein

cc: Susan Chana Lask, Esq. (via e-mail)  
Jeffrey Brown, Esq. (via e-mail)