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VIA ECF

July 12, 2015

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

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

Dear Judge Failla:

This office represents the Plaintiff, Matt Christiansen, in the above-captioned matter. I submit this letter for the pre-motion conference. I apologize that this is two days past the July 10, 2015 submission date; however, Defendant Cianciotto's letter was submitted late on July 7 (**Dkt 12**) rather than the 6th as Ordered (**Dkt. 11**). By July 9, 2015, Defendants' counsel consented to my request to file this by July 13, 2015 because I was previously engaged on the 8th preparing for a July 10, 2015 emergent court case regarding a sexual assault upon a child. I was unable to attend to this letter until today or to contact the court. Kindly accept this response *nunc pro tunc*.

FACTS

In April, 2011, Matthew Christiansen commenced working in the creative department of Omnicom's satellite advertising company, DDB. Matthew's supervisor was DDB manager Joe Cianciotto. For years, employees complained about the pervasive hostile work environment and harassment that Joe created at DDB. Defendants ignored their complaints. Joe would create and circulate perverted drawings of employees having sex with each other, draw naked males with erect penises, draw them having gay sex, ask to have sex with the gay male employees, ask them to describe their sex lives, publicly accused a gay male of having sex with children then kill them in his cabin in the woods and sexually harassed female employees (this is not a full recitation-see the complaint). A female employee's EEOC complaint against Joe, DDB and Omnicom led to employee interviews in August, 2014 at the EEOC.

In September, 2014, Matthew discovered that Joe published on Face Book a poster of Matthew in a bikini on his back with his legs in the air, depicting him as a gay sissy. Joe tagged that post so thousands of colleagues and clients could see it. To further harass and bully Matthew into quitting, in October, 2014, Defendants ignored Matthew's demands to remove that despite their Employee Handbook prohibiting it. Later in October, 2014, Matthew filed State and Federal EEOC complaints. Only after those complaints, in January, 2016, the Face Book post was removed. Because of his EEOC complaints, in March, 2015 Defendants requested that Matthew, the victim, leave his job for three months severance so Joe, the abuser, could stay.

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Matthew did not leave because he did nothing wrong and he needed his salary to survive. Defendants refused to remove Joe.

On March 30, 2015, an expert report confirmed that Matthew suffered severe emotional and physical distress from the harassment and hostile work environment condoned by DDB, and that he was rendered despondent from the abuse. By April, 2015, the Federal and State EEOC issued a right to sue letter and confirmed Matthew requested an administrative dismissal. Also, since October, 2014, Defendants and their counsel engaged in a conciliatory process with the EEOC by their answers and communications with Matthew's counsel, and also in a June, 2015 non-binding mediation.

On June 21, 2015 First Amended Complaint was filed. In June and July, 2015, a media outlet published a story about this case filing (<http://www.adweek.com/agencyspy/ ddb-cd-files-20m-sexual-harassment-lawsuit/87556>). That and a follow-up story generated almost 100 comments by DDB employees confirming the hostile work environment that Joe, DDB and Omnicom permitted for years. Only after Defendants' secret hostile work environment became public, then Defendants' claim they fired Joe as if that resolved the abuse. An official announcement at the office of that termination was never made.

OPPOSITION TO DEFENDANTS' POSITIONS

There is no bar to jurisdiction here. The State issued a March 10, 2015 letter informing Defendants that Matthew requested an administrative convenience dismissal to pursue the case in this court. *Drummer v DCI Contracting Corp.*, 772 F Supp 821 (SDNY 1991); *New York Telephone Co. v. New York State Div. of Human Rights*, 561 N.Y.S.2d 401, 405(Sup. Ct. 1990) (administrative convenience dismissal valid where plaintiff requested dismissal so he could bring judicial action). Defendants cannot claim now that Omnicom had no notices of the administrative remedies when Defendants' counsel always represented Omnicom in the conciliatory process before the Federal and State EEOC and at the mediation in June, 2015. They cannot avoid liability for Defendants Hempel and Brown as the complaint and the attached Certifications allege the complaints were made to them for years regarding the harassment. And requests by Matthew's counsel were made to Mr. Brown in 2014 and 2015 to remove the face Book post, which he continued the harassment by ignoring, then denying to the State and Federal authorities that he never received the requests to fabricate an excuse to his unlawful conduct

Defendants' improperly claim the harassment ended in May, 2013. It ended January, 2015 as alleged from the continued harassment of 2011, 2013, 2014. Inasmuch as "[a] hostile work environment claim is composed of a series of separate acts that collectively constitute one unlawful employment practice" (*National R. R. Passenger Corp. v Morgan*, 536 U.S. 101, 117, 122 S. Ct. 2061, 153 L. Ed. 2d 106 (2002)), then Matthew can allege objectionable conduct of a continuous nature starting in 2011 and continuing until January, 2015, and that some of the conduct occurred outside the statutory filing period. Under CPLR 214 the misconduct occurring over three years ago ordinarily would be time barred, but if that can be conduct contributed to what was continuous in nature over the years to date, then "the entire time period of the hostile environment may be considered by a court for the purposes of determining liability" *Id.*

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It is well established that "filing a timely charge of discrimination with the EEOC is not a jurisdictional prerequisite to suit in federal court, but a requirement that, like a statute of limitations, is subject to waiver, estoppel, and equitable tolling." *Zipes v. Trans World Airlines*, 455 U.S. 385, 393, 71 L. Ed. 2d 234, 102 S. Ct. 1127 (1982), *Li-Lan Tsai v. Rockefeller Univ.*, 137 F. Supp. 2d 276 (SDNY, 2001). The time to file is 300 days from the incident to give the employer notice and an opportunity to address the complaint. Defendants were never prejudiced because they had notice for years and chose to protect Joe's unlawful conduct. Moreover, "technicalities are particularly inappropriate in a statutory scheme in which laymen, unassisted by trained lawyers, initiate the process." *Love v. Pullman Co.*, 404 U.S. 522, 527, 30 L. Ed. 2d 679, 92 S. Ct. 616 (1972); *Hart v. J.T. Baker Chem. Co.*, 598 F.2d 829 (3d Cir. 1979) (it is "reasonable for courts to be flexible in appropriate cases when reviewing failures by aggrieved persons to comply with procedural technicalities"). Also, Matthew's complaint establishes that he and the other employees did not know they could complain to the EEOC, the Defendants insured they would not know and the complaint includes the medical opinion confirming that Matt was physically and mentally disabled.

In *Li-Lan, supra.*, the Southern District court examined a history of cases to conclude that New York's tolling provisions exist in cases where a physical and/or mental disability exists. Post-traumatic stress disorder tolls the statute of limitations, and a combination of physical ailments with a mental disability or even the fact that a party had to recount the nightmare of the abuse in his present workplace to the same abuses suffered in his lifetime will support tolling and deny a motion to dismiss a complaint. *Li-Lan, id.* Matt's complaint adequately alleges those infirmities and names the expert evaluation to overcome a statute of limitations dismissal for any of his causes of action.

Finally, Defendant Cianciotto's dismissal issue based on the Complaint being verbose is improper. It is not verbose. It explains the outrageous events by Defendants over a three year period that is necessary to support the causes of action. I suspect if the complaint was brief then Defendant Cianciotto would claim it did not provide enough facts.

I thank the court for its consideration and time in this matter.

Very truly yours,
LAW OFFICES OF SUSAN CHANA LASK

/s Susan Chana Lask

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