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September 22, 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 write in response to Plaintiff’s counsel’s letter to the Court today in which she requests an extension of Plaintiff’s deadline to file his opposition to the motion to dismiss the First Amended Complaint (the “Complaint”).

By way of review, the Court held a pre-motion conference on July 21, 2015 concerning Defendants’ anticipated motion to dismiss the Complaint. At the conclusion of the conference, the Court entered the following Schedule Order with regard to Defendants’ motion: Motion by August 14, 2015; Opposition by September 21, 2015; Reply by October 5, 2015.

Defendants actually filed their motion earlier than required on July 31, 2015, giving Plaintiff an additional two weeks to prepare a response. Defendants moved to dismiss the Complaint in its entirety because Plaintiff refused to withdraw any causes of action or even respond in substance to Defendant’s attempt to confer and engage in meaningful discussions regarding the continued viability of certain causes of action (which the Court had instructed the parties to do). A copy of the correspondence between counsel regarding Defendants’ counsel’s attempts to confer with Plaintiff’s counsel is attached hereto as Exhibit A.

Plaintiff’s deadline to file his opposition was yesterday. Plaintiff’s counsel did not seek an extension of the deadline until today. Ordinarily we would grant an extension as a courtesy but given that the Court’s deadline was missed we assume this is something for the Court to decide and Defendants do not take position with regard to Plaintiff’s request. We

Hon. Katherine Polk Failla
September 22, 2015
Page 2

do note that when Plaintiff's counsel made the request this morning to Defendants' counsel she indicated to the Court that she was unable to meet the deadline due to a scheduling conflict. (We did not think that could be correct since a scheduling conflict occurs when a lawyer has to be in two places at the same time rather than when a brief is due at the same time as something else and the lawyer had weeks to prepare the brief.) A copy of today's correspondence between counsel regarding Plaintiff's request is attached hereto as Exhibit B. In her subsequent letter to the Court today regarding the request, Plaintiff's counsel gave the Court a different reason than she gave to us; rather than saying she had a scheduling conflict she indicates that she was not able to meet the deadline because she was sick.

Respectfully submitted,

/s/ Daniel A. Feinstein

Daniel A. Feinstein

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

EXHIBIT A

From: SCL <susanlesq@verizon.net>
Sent: Wednesday, July 22, 2015 5:09 PM
To: Kong, Judith
Subject: Re: Anonymous v. Omnicom Group Inc. et al, Case No. 1:15-cv-03440-KPF

Ms.Kong,

Are you admitted in the SDNY?

Susan Chana Lask, Esq.
www.appellate-brief.com
917.300-1958

This e-mail is confidential and intended for a specific recipient. If received in error, please notify the sender and delete.

From: "Kong, Judith" <jkong@dglaw.com>
Date: Wednesday, July 22, 2015 at 5:06 PM
To: "scl@appellate-brief.com" <scl@appellate-brief.com>, "Susan Chana Lask, Esq." <susanlesq@verizon.net>
Cc: "Rubin, Howard" <HRubin@dglaw.com>, "Gilman, Gregg" <GGilman@dglaw.com>, "Feinstein, Daniel" <DFeinstein@dglaw.com>, "Franco, Shira" <sfranco@dglaw.com>
Subject: Anonymous v. Omnicom Group Inc. et al, Case No. 1:15-cv-03440-KPF

Counsel:

Based on the discussions during the pre-motion conference yesterday, several issues were raised with respect to certain of the claims alleged in Plaintiff's First Amended Civil Complaint (the "Amended Complaint"). Per Judge Failla's instructions to the parties to confer and engage in meaningful discussions regarding the continued viability of such claims, please let us know which causes of action, if any, are being withdrawn by Plaintiff, so that we do not unduly burden Judge Failla by addressing them in our motion to dismiss. If we do not receive a response from you by **12:00 p.m. (noon) on Monday, July 27, 2015**, specifically indicating which causes of action (if any) will be withdrawn, we will be moving to dismiss all of the claims in the Amended Complaint.

Additionally, you represented to the Court during the pre-motion conference on Tuesday that the New York State Division of Human Rights ("DHR") complaint filed in connection with the Fourth, Fifth, Sixth, and Seventh Causes of Action asserted in the Amended Complaint (the "state and city claims") have been dismissed for administrative convenience by the DHR and that such dismissal constituted grounds to proceed with the state and city claims in this action. After the conference, we spoke to you and showed you the most recent (and only) document we have received from the DHR in this regard, stating that the DHR is "contemplating dismissing [Plaintiff's] complaint for administrative convenience" and inviting Defendant / Respondent DDB ("DDB") to respond with any objections within 15 days of the DHR's letter (see attached) (emphasis added). DDB objected to the dismissal of Plaintiff's complaint with the DHR within the 15-day time frame and has not received further communications from the DHR since. (DDB's objection, filed with the DHR on or around March 24, 2015, is attached for your reference). Based on our conversation with you, it is our understanding that you have not received a dismissal of Plaintiff's DHR complaint. Please confirm that you have not received a document from the DHR indicating that the DHR complaint was in fact dismissed for administrative convenience. If that is the case we expect that you will withdraw the claims that are based on the fact that there has been such a dismissal and that you will inform the judge of the correct version of the facts so that the record before the Court is corrected.

JUDITH KONG

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From: SCL <susanlesq@verizon.net>
Sent: Wednesday, July 22, 2015 5:38 PM
To: Rubin, Howard; scl@appellate-brief.com
Cc: Gilman, Gregg; Feinstein, Daniel; Franco, Shira; Kong, Judith
Subject: 7-22-15 Omnicom 1:15-cv-03440-KPF

The Judge did not make clear that "she wanted" Ms. Kong involved. The Judge responded politely that Ms. Kong could sit there that day as an observer, and nothing more, after she asked why so many people were sitting at your table and you informed Ms. Kong is not admitted. I hope you are not saying that the Judge violated the rules and ethics.

I object to anyone not admitted to be involved as it muddies the purpose of the rules. She and you should know better than to engage in a case in a court she is not admitted in.

I'll respond to an attorney who is admitted in the court. After this communication, I am removing her from my email list.

Also, please remove my scl@appellate-brief.com address as there is no need for you to send me e-mails twice to two different addresses.

Susan Chana Lask, Esq.
www.appellate-brief.com
917.300-1958

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From: "Rubin, Howard" <HRubin@dglaw.com>
Date: Wednesday, July 22, 2015 at 5:26 PM
To: "scl@appellate-brief.com" <scl@appellate-brief.com>, "Susan Chana Lask, Esq." <susanlesq@verizon.net>
Cc: "Gilman, Gregg" <GGilman@dglaw.com>, "Feinstein, Daniel" <DFeinstein@dglaw.com>, "Franco, Shira" <sfranco@dglaw.com>, "Kong, Judith" <jkong@dglaw.com>
Subject: RE: Anonymous v. Omnicom Group Inc. et al, Case No. 1:15-cv-03440-KPF

In response to your email to Ms. Kong I asked her to send the below email to you on my behalf and I am admitted in the SDNY. The Judge made clear that she wanted Ms. Kong to be involved in the case so in response to that I asked her to send the email.

HOWARD J. RUBIN

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From: Kong, Judith
Sent: Wednesday, July 22, 2015 5:06 PM
To: scl@appellate-brief.com; susanlesq@verizon.net
Cc: Rubin, Howard; Gilman, Gregg; Feinstein, Daniel; Franco, Shira
Subject: Anonymous v. Omnicom Group Inc. et al, Case No. 1:15-cv-03440-KPF

Counsel:

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EXHIBIT B

From: Feinstein, Daniel
Sent: Tuesday, September 22, 2015 9:45 AM
To: 'SCL'; Jeff Brown; Rick Ostrove
Subject: RE: 9-22-15 Christiansen/Omnicom_LtrExtend

The deadline was yesterday. Had you asked in advance we would generally consent to an extension but at this point it's for the Court to decide whether opposition papers can still be filed given the missed deadline. When you write to the Court to request an extension you can tell the Court that Defendants Omnicom, DDB, Mr. Brown and Mr. Hempel did not take a position on this for the reasons stated in the previous sentence.

From: SCL [<mailto:susanlesq@verizon.net>]
Sent: Tuesday, September 22, 2015 7:32 AM
To: Feinstein, Daniel; Jeff Brown; Rick Ostrove
Subject: 9-22-15 Christiansen/Omnicom_LtrExtend
Importance: High

Daniel, Jeff and Rick,

I am writing a brief letter requesting the Judge to permit a brief 3 day extension for the oppo to be filed 9/24 and your reply extended similarly to 10/8.
The reason is I had a scheduling conflict.

Please consent this morning so I can upload the letter by 10 a.m. as consented to.

Thank you.

Susan Chana Lask, Esq.
www.appellate-brief.com
917.300-1958

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