

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MATTHEW CHRISTIANSEN,

Plaintiff,

-against-

**DOCKET NO.: 15 cv 3440  
(KPF)**

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

Defendants.

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**REPLY MEMORANDUM OF LAW OF DEFENDANT JOE CIANCIOFFO  
IN SUPPORT OF HIS MOTION TO DISMISS PLAINTIFF'S FIRST  
AMENDED COMPLAINT**

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**PRELIMINARY STATEMENT**

Defendant, Joe Cianciotto (“Cianciotto”), respectfully submits this memorandum of law in reply to Plaintiff’s opposition his Motion to Dismiss Plaintiff’s First Amended Complaint.

**CIANCIOTTO JOINS IN CO-DEFENDANTS’ REPLY**

On October 8, 2015, Defendants Omnicom Group, Inc., DDB Worldwide Communications Group, Inc., Peter Hempel, and Chris Brown (the “Corporate Defendants”) filed a Reply to Plaintiff’s Opposition to its Motion to Dismiss. (Dkt. 31). Cianciotto joins in the Corporate Defendants’ Reply *in toto*, subject to the below additional arguments.

**ADDITIONAL ARGUMENTS**

**I. Plaintiff’s slander claim is inadequately pled.**

As noted in Cianciotto’s principal brief, and in the Corporate Defendants’ brief, this claim is time-barred. But, to the extent some allegations are not time-barred, the claim must still be dismissed because Plaintiff has not adequately identified the nature of the purported communication, or when it occurred. (Dkt. 25, p. 4). In response, Plaintiff offers only his bare disagreement, stating, “[t]he slander is adequately identified as to whom said, what was said and when it was said in the FAC, contrary to Defendant’s argument.” (Dkt. 30, p. 26). Plaintiff does not cite to the complaint to support this assertion, because he cannot. In relevant part, the Complaint states Plaintiff’s slander claim as follows:

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 AID[S] when he does not.<sup>1</sup> Plaintiff also discovered in Ma[y], 2015 for the first time that Defendant Cianciotto routinely accused him of having AIDs to another employee named Ryan.

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<sup>1</sup> Plaintiff’s allegation regarding the May 2013 business meeting is clearly outside the one year statute of limitations, and thus warrants no further analysis. (Dkt. 22, p. 16).

(Dkt. 4, ¶ 120).

Assuming *arguendo* that Cianciotto's comments to Ryan Murphy were made inside the statutory period,<sup>2</sup> Plaintiff still cannot establish a slander claim because he states only when he learned of the alleged comments, not when they were made. Burns v. Cook, 458 F. Supp. 2d 29 (N.D.N.Y. 2006) (dismissing defamation claim where plaintiff did not identify the date or time period of the alleged defamatory comments); Conte v. Newsday, Inc., 703 F. Supp. 2d 126, 148 (E.D.N.Y. 2010) (same).

Further, Plaintiff has not adequately described Cianciotto's alleged AIDS related comments. Olsson v. Wenner Media LLC, 2012 U.S. Dist. LEXIS 101943, \*12 (S.D.N.Y. 2012) (dismissing defamation claim based on allegation an employee told company management of a "racially charged incident that involved plaintiff;" allegation failed to adequately identify the nature of the purported communication); Ford v. Clement, 834 F. Supp. 72, 78-79 (S.D.N.Y. 1993) (dismissing defamation claim where plaintiff alleged defendant spread false allegations, but did not identify what was said); Creed Taylor, Inc. v. CBS, Inc., 718 F. Supp. 1171, 1176 (S.D.N.Y. 1989) (dismissing defamation claim based on allegation defendant "sought to disseminate false and misleading information meant to convey that [plaintiff] and its principal are 'has beens' who are no longer a force in the music industry;" description of purported communication too vague to "afford [defendant] with enough information regarding its alleged defamatory statements to frame a defense").

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<sup>2</sup> As noted in the moving papers for the Corporate Defendants, this is impossible in light of the sworn testimony contained in Murphy's declaration, which Plaintiff has annexed to the Complaint. (Dkt. 22, p. 16-17)

Thus, even to the extent Plaintiff's defamation claim is timely, dismissal remains warranted.

## **II. Plaintiff's IIED claim must be dismissed.**

Plaintiff's allegations that Cianciotto commented about AIDS and made sexual comments, and that Cianciotto drew offensive sketches and made a parody poster ridiculing Plaintiff's sexual orientation do not satisfy the rigorous pleading standard for an IIED claim. (Dkt. 22, pp. 3-6, 17-19). Under New York law, the elements of a claim for Intentional Infliction of Emotional Distress (IIED) are: "(1) extreme and outrageous conduct; (2) intent to cause severe emotional distress; (3) a causal connection between the conduct and injury; and (4) severe emotional distress." Bender v. City of New York, 78 F.3d 787, 790 (2d Cir. 1996). While IIED does not proscribe specific conduct, the New York Court of Appeals has required that a plaintiff prove conduct "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 community." Hogan v. J.P. Morgan Chase Bank, 2008 U.S. Dist. LEXIS 118373, \*10 (E.D.N.Y. 2008) "New York sets a high threshold for conduct that is considered 'extreme and outrageous' enough to constitute intentional infliction of emotional distress," and "[i]ntentional infliction of emotional distress is an extremely disfavored cause of action." Id. "Very few claims satisfy the extreme and outrageous requirement of a IIED Claim." Elmowitz v. Executive Towers at Lido, LLC, 571 F. Supp. 2d 370, 378 (E.D.N.Y. 2008). "In fact, none of the IIED claims considered by the New York Court of Appeals have survived because the conduct was not sufficiently outrageous." Id.

As noted by the Corporate Defendants, New York courts routinely grant motions to dismiss IIED claims brought in the context of employment, based on allegations of workplace conduct far

more serious than the conduct alleged here. (Dkt. 22, pp. 17-18). Additional relevant case law<sup>3</sup> includes Curto v. Medical World Communications, Inc., 388 F. Supp. 2d 101 (E.D.N.Y. 2005) (plaintiff was allegedly verbally abused, ostracized by co-workers, falsely criticized, and directed not to report any complaints under threat of termination); Zephir v. Inemer, 305 A.D.2d 170 (1st Dep't 2003) (defendant allegedly attempted to kiss plaintiff at work several times, falsely maligned plaintiff's work performance, and frequently made inappropriate comments about plaintiff and her clothing); and Ruggiero v. Contemporary Shells, Inc., 160 A.D.2d 986, 987 (2d Dep't 1990) (defendant allegedly harassed and discharged plaintiff because she was pregnant).

Thus, the "extreme and outrageous" threshold for an IIED claim is very high, and this threshold is not met by Plaintiff's allegations. Accordingly, Plaintiff's IIED claim should be dismissed.

**III. Plaintiff's complaint is so confusing that it would be unfair for Cianciotto to be forced to Answer.**

As noted in Cianciotto's principal brief, Plaintiff's Complaint is drafted in such a manner that it should be dismissed based on non-compliance with FRCP Rule 8, or, in the alternative, the Court should require Plaintiff to amend the Complaint to provide a more definitive statement and/or to break each thought into an independent paragraph. (Dkt. 25, pp. 7-9). In response, Plaintiff states "There is no Rule 8 violation here. Defendants were able to understand and respond to everything with their Motions to Dismiss." (Dkt. 30, p. 26). This is false. The Complaint was unclear as to which allegations were asserted against whom. Cianciotto was forced to brief every cause of action, despite the fact Plaintiff's counsel conceded, just two days before Cianciotto's

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<sup>3</sup> For the sake of economy, Cianciotto includes only a few demonstrative cases. Cianciotto can provide a more comprehensive list at the Court's request. It appears the vast majority of cases on the topic of IIED involve dismissal of that claim.

motion was due, that only six of Plaintiff's twelve causes of action were being asserted against Cianciotto. (Dkt. 25, p. 1).

Further, Plaintiff's argument that the Court appreciated the amount of detail in the complaint is misplaced. Given that many of the paragraphs in the Complaint contain a litany of allegations, and it is unclear to whom those allegations pertain, the amount of detail Plaintiff has chosen to include does not make the Complaint any less impossible to discern.

### **CONCLUSION**

Based on the foregoing, Cianciotto respectfully requests that the Court dismiss the Complaint with prejudice, and grant such other and further relief as the Court deems just and proper.

Dated: Carle Place, New York  
October 8, 2015

Respectfully Submitted,

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\_\_\_\_\_/s/\_\_\_\_\_  
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