

**UNITED STATES DISTRICT  
SOUTHERN DISTRICT COURT OF NEW YORK**

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**MATTHEW CHRISTIANSEN,**

**CASE NUMBER:** 15 CV 3440

**Plaintiff,**

**FIRST AMENDED  
CIVIL COMPLAINT**

**-against-**

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

**Plaintiff demands trial by jury**

**Defendants.**

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**INTRODUCTION**

1. **MATTHEW CHRISTIANSEN** brings this action to remedy and seek damages against his employer for libel, discrimination and labor law violations occurring at the workplace of **OMNICOM** and **DDB WORLDWIDE COMMUNICATIONS GROUP INC. ("DDB")**, one of the largest international advertising agencies. The basis of discrimination is an HIV disability in violation of 42 USCS §12112, 12117, animus towards a gender stereotype in violation of Title VII of the Civil Rights Act of 1964 and sexual orientation in the terms, conditions and privileges of employment in violation of the New York State Human Rights Law, N.Y. Executive Law §290, *et seq.* and the New York City Human Rights Law, N.Y.C. Admin. Code 8-101, *et seq.* Also alleged are violations of Labor Law §§ 190-198, breach of contract and slander.
2. Defendants for years permitted a pervasive harassing environment against their employees because of gender, sexual orientation and race. Defendant **JOE CIANCIOFFO** in his management position victimized employees on a daily basis for years with his lewd statements, drawing male employees fornicating, accusing women of being lesbians, accusing gay men of having AIDs and asking gay males to describe gay sex to him while he told them he was turned on by them. Plaintiff does not have AIDs but is HIV positive. **JOE CIANCIOFFO** targeted him as having AIDs as soon as he started work because he was gay.

3. For years, employees have complained to Defendants and human resources about the pervasive hostile environment. An EEOC investigation commenced in about 2014 against Defendants because of a female employee's complaints about the conditions there.
4. In retaliation to Plaintiff's complaints to the EEOC, Defendants asked him to leave so they could retain **CIANCIOTTO**, threatened he may lose his job as part of a lay-off and now threaten to sue him for libel for filing this complaint. Defendants Omnicom and DDB provided Defendant **CIANCIOTTO** with counsel for years to defend him from the harassment complaints, and then shifted counsel to another firm to engage in a secret settlement between themselves after this complaint was filed, allegedly so Defendants can release each other from liability and regroup to file a baseless "libel" counterclaim they threatened against Plaintiff. Defendants' threats to sue are retaliatory, make it more intolerable for Plaintiff to work there and were made to reveal his identity in a counterclaim. He is forced to file this amended complaint identifying himself. Plaintiff remains working at DDB because he cannot find similar work, he needs a paycheck to survive and by law the victim does not have to leave, the abuser does.

#### **JURISDICTION & VENUE**

5. This Court has jurisdiction to 42 USCS §§12112,12117, which incorporates by reference §706 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-5.
6. All conditions precedent to jurisdiction under §706 of Title the VII, 42 USC §2000e-5(F)(3), have occurred or been complied with.
  - (a) A charge of employment discrimination on the basis of disability was filed with the Equal Employment Opportunity Commission ("EEOC") within 180 days of the commission of the unlawful employment practice alleged herein.
  - (b) A Notification of Right to Sue was received from the EEOC on March 13, 2015.
  - (c) This complaint has been filed within 90 days of receipt of the EEOC's Notification of Right to Sue.

Also alleged are animus towards a gender stereotype in violation of Title VII of the Civil Rights Act of 1964, retaliation, and disability discrimination. Pursuant to 28 U.S.C. §1367(a), this Court also has jurisdiction over the pendent state law claims, including slander, because they are so related to the other claims as to form pendent jurisdiction of this Court as part of the same case and controversy under New York State Human Rights Law and the New York City Human Rights Law, N.Y.C. Admin. Code 8-502.

7. Plaintiff exhausted his administrative remedies by filing complaints with the EEOC, the New York State Division of Human Rights ("SDHR"), and the New York City Commission on Human Rights ("CCHR") regarding the misconduct alleged herein.
8. Prior to commencing this civil action, Plaintiff served a copy of this complaint on the New York City Commission on Human Rights and the New York City Corporation Counsel pursuant to N.Y.C. Admin. Code 8-502d.
9. This Court also has jurisdiction under 28 U.S. Code §1332 because there is complete diversity between the plaintiff and the defendants and the amount in question is over \$75,000.00. Venue is proper in this Court as all of the acts occurred in New York County and the defendants are present there.

### **PARTIES**

10. The Plaintiff **MATTHEW CHRISTIANSEN** is a resident and domicile of the State of New Jersey. At all times relevant hereto he was and still is an employee of Defendants **OMNICOM GROUP, INC.** and **DDB**.
11. At all times herein, Plaintiff, in the course of his employment with the Defendants, was an openly gay male who had HIV, and he kept that medical condition private. His HIV status puts him in a group protected against the acts described herein under the relevant New York State Human Rights Law and Federal and local New York City laws and ordinances.
12. The Defendant **OMNICOM GROUP, INC. ("Omnicom")**, upon information and belief, is the parent company of Defendant **DDB WORLDWIDE COMMUNICATIONS GROUP INC. ("DDB")**, and was and still is a corporation authorized to conduct business in the State of New York, maintaining a place of business at 437 Madison Avenue New York, NY 10022. The parent company, Defendant Omnicom, exercises extensive control over its subsidiary's, Defendant **DDB**, operations and personnel decisions. The parent and subsidiary companies are considered as a single employer accountable for the discriminatory and other misconduct alleged herein.
13. The Defendant **DDB**, upon information and belief, is a subsidiary of Defendant **Omnicom**, and was and still is a foreign corporation duly organized and existing under and by virtue of the laws of the State of California. It is authorized to conduct business in the State of New York, maintaining a place of business at 437 Madison Avenue New York, NY 10022.
14. Defendant **JOE CIANCIO**, upon information and belief, is a resident and domicile of the State of New York, and at all times relevant hereto was and is employed by Defendant

**DDB** and **Omnicom** as an Executive Creative Director from 2011 and Chief Digital Officer from April, 2013 to date.

15. Defendant **PETER HEMPEL**, upon information and belief, is a resident and domicile of the State of New York, and at all times relevant hereto was and is employed by the Defendant **DDB** as the CEO until June 24, 2014.
16. Defendant **CHRIS BROWN**, upon information and belief, is a resident and domicile of the State of New York and is employed by the Defendant **DDB** as CEO since June 24, 2014.

### **FACTS**

17. Defendant **DDB** is a worldwide marketing communications network owned by Defendant **OMNICOM**, which is a global marketing and corporate communications network (**collectively, the “Corporate Defendants”**). **OMNICOM** is one of the world's largest advertising holding companies with a market capital of \$19.5 Billion Dollars<sup>1</sup>. **DDB**'s
18. In or about April, 2011, Plaintiff **MATTHEW CHRISTIANSEN** commenced employment with the Corporate Defendants as an Associate Creative Director. His employment was based upon an April 5, 2011 job offer letter from **DDB** that stated Defendant **OMNICOM** was the parent of **DDB** that controlled **MATTHEW**'s health, retirement and other benefits.
19. At all times herein mentioned, Defendant **JOE CIANCIOOTTO** was and is a supervisor with immediate authority over Plaintiff as an employee of the Corporate Defendants, and Defendants **PETER HEMPEL** and **CHRIS BROWN** supervised, managed and controlled Defendant **JOE CIANCIOOTTO** and the terms and conditions of Plaintiff's employment.
20. Since the filing of the State and Federal EEOC complaints by Plaintiff commencing October, 2014, all of the Corporate and the individual Defendants named herein have been represented by counsel, have filed responses and have participated in a conciliatory mediation process by their request to Plaintiff. That conciliatory process included a mediation agreement, dated June 10, 2015, executed by Defendants' counsel on behalf of “Omnicom Group, Inc., **DDB** Worldwide Communications Group, Inc., Peter Hempel, Chris Brown”(sic) and by independent counsel for “Joe Cianciotto”. All Defendants have and had notice of the charges and opportunity to, and did participate in, several conciliation proceedings.

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<sup>1</sup> <http://www.forbes.com/companies/omnicom-group/> (as of May, 2015)

**A. Defendants' Employee Handbook by Omnicom**

21. During all relevant times hereto, the Corporate Defendants maintained an "Employee Handbook" regarding their employment policies and practices (the "Handbook", this Complaint uses the 2014 Handbook incorporating its 2011 policies).
22. The entire Handbook relates to policies promulgated by and involving Defendant Omnicom. For instance, at page 14 it states "As an employee of the Company, you have an obligation to conduct business according to the Omnicom Code of Business Conduct...". It also lists Omnicom e-mails and contact information for employee issues.
23. The Handbook at pages 8-10 defines "Sexual Harassment as "verbal, physical or psychological conduct that denigrates or shows hostility toward an individual because of his/her ... sexual orientation, gender identity ... disability or any other protected characteristic, and that creates an intimidating, hostile or offensive work environment, unreasonably interferes with an individual's work performance and/or adversely affects an individual's employment opportunities."
24. The Handbook describes sexual Harassment at pages 9 as:
  - Unwelcome sexual advances - whether they involve physical touching or not
  - Sexual epithets, slurs, jokes, written or oral references to sexual conduct, gossip regarding one's sex life; comments on an individual's body or comments about an individual's sexual activity, deficiencies or prowess
  - Displaying sexually suggestive objects, pictures or cartoons
  - Leering, whistling, brushing against the body, sexual gestures or suggestive or insulting comments
  - Sending or circulating, whether in print or electronic form, literature or communications (articles, magazines or emails) of a sexual nature
  - Inquiries into one's sexual experiences; and
  - Discussion of one's sexual activities
25. The Handbook at pages 8-10 defines harassing conduct as "Epithets, Slurs, Negative stereotyping, Threatening, intimidating or hostile acts that relate to ...sexual orientation or disability or any other protected category, Written or graphic material that denigrates or shows hostility or aversion toward an individual or group because of ... sexual orientation, gender, identity ... disability or any other protected characteristic and that is placed on walls, bulletin boards, the internet, websites, blogs, etc. or elsewhere on the employer's premises, or circulated in the workplace."
26. The Handbook at page 10 states that when "corrective action is called for, such action may include disciplinary measures up to and including "termination of the employment of the

offender.” It further claims that employees must report harassment to Human Resources which will take action. And it mandates that supervisors report any known harassment.

27. The Handbook contains a “Blog/Social Media Policy at pages 11-13 that prohibits “inappropriate conduct” on personal social media such as Facebook.
28. Defendants blatantly ignore and continue to ignore their own corporate prohibitions, in addition to Federal, State and City laws, and allowed Defendant Cianciotto to engage in a discrimination campaign against the employees, including Plaintiff because of his disability, gender stereotype and sexual orientation. All of which created a hostile work environment.

**B. Defendants Know that Defendant JOE CIANCOTTO’s History of Harassing Employees and Ignored it to Permit a Pervasive Environment of Harassment.**

29. Defendants knew that Defendant **JOE CIANCOTTO** violated the law as he harassed employees sexually and in other ways according to previous complaints against him.
30. That harassment includes the following employee complaints against **JOE**:

-In about 2012, Employee Shawna Laken filed a Federal EEOC complaint after Defendants refused to acknowledge her complaints about **JOE**’s sexual harassment at the workplace. Employee witnesses attested to the EEOC of the pervasive hostile environment at DDB and that their complaints to human resources and management were ignored for years. Many complaints at exit interviews when employees left DDB were made verbally and in writing on the exit interview questionnaire about **JOE**, but Defendant **Kempel** and the other Defendants ignored them.

-**JOE** routinely targeted an employee at group meetings. On a whiteboard in his office he would draw employees fornicating with offensive narratives about them, then call people in his office for a meeting to make everyone uncomfortable by observing their colleagues he drew.

- From 2012 to 2015, **JOE** victimized a gay male employee named Tabor Theriot who is disabled with cerebral palsy that gives him a slight limp. Joe told him to the effect that “You have this creepster look and I don’t want anyone creeped out about you.” Joe mocked Tabor as a gay man by stating to him many times “I feel like a gay man in a straight man’s body”, “Oh god, if only I was gay, I would sleep with you now” and “What are you doing tonight, call me some time.” Tabor witnessed Joe harassing his colleague Megan Sheehan, and then after abusing her he asked her in front of everyone “Why are you always upset or always crying?” Tabor heard stories about Joe sexually harassing Shawna Laken until she left because **DDB** ignored her complaints. A former employee named Heidi Frank told Tabor that Joe threw a Pepsi can at her. Joe insisted that before

starting a meeting the employees guess a song to win a chance to sleep with his wife because he said he hated her. When Matthew guessed the song so the meeting could start, Joe said to everyone "How does it feel to be beat by the gay guy in the room?" Tabor witnessed Joe saying to Matthew in front of everyone that "Your muscles are big" and "Everybody look at Matt's muscles". Tabor confirms that Matthew would do anything to make Joe go away, and appease him to go away, which was a learned response everyone did knowing it was futile to complain about Joe. Tabor was present in May, 2013 when Joe accused Matthew of AIDs after Tabor coughed at a State Farm meeting. Joe went to Matthew and said he was sick and "It feels like I had AIDs, you know what that's like Matt?" Tabor feared that Joe just disclosed a private medical condition about Matthew that no one knew and feared he would next attack Tabor the same way for being gay. Tabor saw Matthew visibly upset from that, and subsequently told Tabor that Joe had no right to say that because many of his friends died from AIDs. Tabor complained to Human Resources about Joe. The response was more harassment by Joe bolting into a room where Tabor and his colleagues were in a meeting and Joe drew on the whiteboard Tabor on a female dog's body peeing with the caption "Mush". Tabor complained to Wendy Raye and Stacey Mellus, Director of Digital Operations. Ms. Mellus defended Joe as "Well, that's just how Joe operates." A subsequent meeting had Joe say in front of everyone that he was not a good leader, nothing more. No apology to anyone for his harassment. After that, Defendant Hempel approached Tabor and said "Are you going to be ok, we are going to get through this?" Joe was not terminated and continued his harassment, including threats at meetings that he had to leave early because he was being investigated since someone complained about him. Tabor confirms Joe created a Muscle Beach poster placing Matthew's face on a woman's body in a bikini on her back with her legs in the air to represent Matthew in the gay sexual receiving position as a submissive sissy. Tabor confirms Matthew could not attend many employment meetings because he was very disoriented by Joe's attacks against him as a gay man. It was understood that complaints about Joe would be ignored because Joe is friends with the Corporate Defendants. Tabor did not know he could complain past human resources to an agency such as the EEOC. Defendants also did not tell him he had that right when he complained to Human Resources. Tabor knows that employees were always promised bonuses but they never received when promised. Tabor made a detailed complaint to human resources and others at Defendants' office in the following e-mails:

**From:** Tabor Theriot <[Tabor.Theriot@ny.ddb.com](mailto:Tabor.Theriot@ny.ddb.com)>  
**Date:** July 16, 2013, 10:35:22 AM EDT  
**To:** Peter Nish <[Peter.Nish@ny.ddb.com](mailto:Peter.Nish@ny.ddb.com)>  
**Subject:** FW: Follow Up

Per our discussion, Fyi below/attached. There have been more instances like below since my return from vacation. Happy to share those if necessary.

-----Original Message-----

From: Tabor Theriot  
Sent: Friday, June 21, 2013 12:07 AM  
To: Wendy Raye  
Subject: Follow Up

Wendy -

See below/attached for the info per your request.

As discussed, the State Farm PM/Account team (myself, Veronica Parker, Kristi Diaz, Heidi Frank, Ayan Bhattacharyya, Bob Davies, Matthew Christiansen, Meredith Friedman) has a weekly Monday business mtg with Joe. On a weekly basis, Joe often makes explicit sexual comments geared toward both male and female team members and, on one occasion, Joe responded to a comment from a team member who suggested submitting a request through a PM (female), "Nobody is putting anything into that PM."

On a number of occasions, I've worn business/business casual attire to the office and Joe has made comments referring to himself as the gayest straight guy you know and how I look sexually appealing, and, if he were gay, he'd like to have gay intercourse with me. On one occasion, he commented on my snappy wardrobe and said "It's growing a little..."

Other examples are...

Mid - October 2012

- Joe referred to me as a "Creepster" creeping down the hallways, next day pulled me aside to apologize for the comment bc he felt bad for calling out my gate, (which is a result of my permanent disability) directly to me.
- Asked SF team to "Name That Tune". One person guessed incorrectly. The second person guessed correctly - Joe replied to the first person "How does it feel to be beaten out by the gay guy" (SF Team referenced above)

May 2013

- Joe attended a full SF team mtg and pointed out that I had a cough. I replied it was a sinus infection. Joe started talking about how he was ill all weekend with cold/cough/sinus aches ad body aches, then said, "It feels like I have AIDS...you know what that's like, Matt."

Tues 6/18

2:45 pm mtg for State Farm AOL Tablet Magazine Review

Attendees: Bob Davies, Matthew Christiansen, Amanda Millwee, Bobby Finger

Notes: Joe walked into the mtg and proceeded to sketch the attached photo of my face on a dog's body urinating like a "female" dog. The person pictured in the attached photo is Bobby Finger.

\* The photo is still up on Bob and Matt's whiteboard on the 5th floor if you'd like to see it in person.

Please let me know if you need additional detail or want to set up follow up discussions, etc.

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Tabor J. Theriot  
Sr. Digital Project Manager

DDB Worldwide

Attached hereto as **Exhibit "A"** is Tabor's Certification, dated June 18, 2015, which is incorporated herein in its entirety.



-Ryan Murphy started working at DDB in 2005 and left in 2014 as an associate creative director. He is a gay male. He was called in by the EEOC regarding the Shawn Laken case. He understood that she complained about JOE and the hostile work environment and DDB tried to fire her in retaliation, so she left. He witnessed Joe harass Matthew since the first week he started there by approaching Ryan and repeatedly telling him that Matthew was effeminate and gay so he must have AIDs. He told Ryan many times that Matthew was the “bottom in sex. ” JOE would ask Ryan about gay sex and tell him how handsome he was and that if Joe was gay he would have sex with him. Joe would discuss women’s anatomy in a derogatory manner. Joe would photo shop employee’s faces on posters to make fun of them. For instance, he took an Arab employee and put him on a flying carpet. Ryan saw the Muscle Beach poster with Matthew on his back in a bikini and understood that to depict Matthew as a gay sissy. Ryan said he complained about Joe to human resources that said they could not do anything. Even after complaints, Joe would continue to sexually harass employees and create a pervasive hostile work environment that made it difficult to work there. Ryan witnessed Matthew very uncomfortable at work and around Joe. Attached hereto as **Exhibit “A”** is Ryan Murphy’s Certification, dated June 18, 2015, which is incorporated herein in its entirety.

-Andy Tarradath started working at DDB in 2010. He witnesses an entire summer where JOE would take employees’ faces from Face Book and photo shop them on posters he would create to make fun of the employees. Most of his pictures he drew were of men fornicating, and they always involved a gay employee. He drew their penises and would post these on a whiteboard in his office to make employees uncomfortable at meetings he would hold there. Andy witnessed in a group meeting Joe tell Luke that he looked like an AIDs patient because Luke got a buzz haircut. In October, 2011, Andy returned to work after being sick for months and when someone told Joe Andy had pneumonia, Joe said “Well, be glad its not AIDs”, meaning if you are a gay man then you will get AIDs which implies reckless behavior. Joe DDB would promote employees and give them more job responsibilities but would never pay the salary commensurate with the promotion. Joe would give perverted Christmas presents to employees. He gave Andy a leotard thong and another woman a President Obama statute with its penis out. Joe would comment at meetings that he did not want his advertisements to be “too black or too gay” when Andy was present because Andy is a gay black male. Employees never received the raise in salary they were promised or DDB would withhold it for months, in Andy’s case, 6 months, and they would not give him the retroactive pay for his promotion work. JOE was the supervisor who could get their raises. Employees knew not to complain about JOE because they felt powerless knowing DDB ignored their complaints. Andy witnessed JOE abusing Shawna Laken by talking to her in an unprofessional and degrading manner. She finally went to the EEOC and in about August, 2014 Andy was requested to speak to them regarding the

hostile environment there. The employees did not know they had the option to go anywhere else but human resources and human resources never told them they could go to the EEOC when they complained about Joe. Andy witnessed that Matthew was tense and uncomfortable around JOE. Andy saw the Muscle Beach poster and confirms JOE put Matthew on his back in a bikini with his legs in the air to make him a gay sissy. Andy feared Joe would next accuse him of AIDs for being a gay man. Attached hereto as **Exhibit "A"** is Andy's Certification, dated June 18, 2015, which is incorporated herein in its entirety.

31. Defendants protect Defendant **JOE CIANCIOOTTO**'s unlawful conduct rather than protect the employees he victimizes because he handles high paying client accounts. Upon information and belief, one such account he is responsible for is the State Farm account estimated at \$20 Million Dollars.
32. Defendants refuse to correct the situation by transferring Plaintiff away from Defendant Cianciotto or terminating Cianciotto as the offender. Instead, Defendants further victimize Plaintiff by defending **JOE** and asking **MATTHEW** to leave his job after he complained about the harassment.

**C. The Harassment Commences With Explicit Pictures Depicting Matthew as a Shirtless Gay Man With an Erect Penis, Defecating and Urinating to Mock Gay Marriage Equality**

33. Beginning about May, 2011, just one month after Plaintiff commenced employment under Defendant **JOE CIANCIOOTTO**'s supervision, **CIANCIOOTTO** became openly resentful and hostile towards Plaintiff because of his sexual orientation.
34. This animosity was expressed by the Defendant **JOE CIANCIOOTTO** harassing, intimidating and mistreating Plaintiff as a homosexual male by drawing offensive sketches and creating other pictures of Plaintiff in a sexually suggestive manner, and circulating them in Defendants' office and publishing them on Facebook for colleagues and others in Plaintiff's industry to view, as follows:
  - A. In May 2011, a sketch of a shirtless, muscle bound Plaintiff prancing around and his creative partner saying "I fucking hate you all" (**Exhibit "B"**).
  - B. In May 2011, a picture of a shirtless, muscle bound Plaintiff on the body of a four legged animal with a tail and penis, urinating and defecating (**Exh. B**).
  - C. In late June, 2011, a picture of his creative partner pumping a muscle bound Plaintiff with a manual air pump, giving Plaintiff an erect penis, while he states "I'm so pumped for marriage equality" and his creative partner states "I fucking hate being pumped", meaning Bob is not homosexual and homosexual's do not get "pumped" to get an erect penis (**Exh. B**). This picture was published and circulated at the same time that New York marriage equality for same-sex couples was publicly at issue.

D. In July 2011, a “Muscle Beach Party” poster had Plaintiff’s head attached to a female body, on his back in a bikini with his legs up in the air in the gay sexual receiving position displaying him as a sissy bottom (**Exh. B**). This was also posted to Defendant CIANCIOOTTO’s Face Book page for years unbeknownst to Plaintiff until he discovered it in September, 2014 with his name tagged on the picture for thousands of people to see.

**D. The Discrimination Includes Withholding Plaintiff’s Monetary Raises and Refusing to Announce his Promotion**

- 35. In October, 2012, Plaintiff was promoted from associate creative director to creative director.
- 36. Defendants refused to pay Plaintiff the corresponding salary raise of \$25,000 in 2012 despite his promotion, withheld it from him for a year and Defendants refused to publicly announce that Plaintiff was promoted when everyone else received promotion announcements.

**E. Defendant JOE CIANCIOOTTO Publicly Accuses Plaintiff of Having AIDS**

- 37. In May, 2013, there was a Monday morning status meeting where some 20 people or more attended for Defendant DDB’s State Farm account, including the account team, the Director of Operations, the creative team, project managers, Plaintiff and his creative partner Bob, and Defendant **JOE CIANCIOOTTO**, who was then the Chief Digital Officer.
- 38. At that meeting, Tabor Theriot, a project manager, was sitting behind Plaintiff. When he coughed, Defendant **JOE CIANCIOOTTO** commented that it sounded like a very bad cough. and walked towards Plaintiff as he informed everybody that he was also ill all weekend with a cold, cough, sinus and body aches. Then he sat beside Plaintiff, looked at him and said, **“It feels like I have AIDS. Sorry, you know what that’s like, Matt.”**
- 39. Some of the persons present at that meeting were:

Veronica Parker-Hahn	Account Supervisor
Heidi Frank	Account Exec
Kristi Diaz	Account Exec
Stacey Mellus	Director, Operations at DDB
Tabor Theriot	Project Manager
Meredeth Friedman	Project Manager
Rachael Newell	Art Director
Megan Mitchell	Art Director
Melissa McCarthy	Copywriter
Brandon Hampton	Copywriter
Bobby Finger	Copywriter
Amanda Millwee	Art Director
Patrick Cannata	Assoc Creative Dir.
Bob Davies	Creative Director

Joe Cianciotto

Chief Digital Officer

40. Plaintiff was ridiculed his entire life for being a gay male and now he was experiencing it all over again at Defendants' offices while the Corporate Defendants' management, including **Hempel** and **Brown**, ignored Defendant **JOE CIANCIOTTO's** harassment. That further paralyzed Plaintiff with fear by having to relive the entire shameful experience now being ridiculed by adults in senior positions in the corporate workplace, and by the very person, Defendant **JOE CIANCIOTTO** who held his career and job at stake by having the ability to promote, demote or fire **MATTHEW CHRISTIANSEN**.
41. Plaintiff was paralyzed with fear because he actually was HIV positive and he kept that fact private. He feared that human resources disclosed his private medical facts to Defendant **JOE CIANCIOTTO**.
42. Upon information and belief, Defendants obtained knowledge of Plaintiff's HIV status, although they perceived it as AIDs, from their internal human resources records showing his high monthly use of insurance for high cost prescriptions to treat his disability. That in turn raised their insurance premiums. From that information, Defendants deduced that because Plaintiff is a gay man using high insurance benefits monthly then he had AIDs.
43. Upon information and belief, that private medical information was disclosed to Defendant **JOE CIANCIOTTO** who used it to publicly accuse and shame Plaintiff of having AIDs.

#### **F. The Harassment Continues**

44. After relating Mr. Tabor's cough to Plaintiff having AIDS, Defendant **JOE CIANCIOTTO** then drew the graphic picture of a female dog urinating with Mr. Tabor's head on its body to reinforce his position that anyone with a disease will be mocked at the office (**Exhibit "C"**).
45. In September, 2014, Plaintiff discovered a "Muscle Beach Party" poster depicting him in the gay receiving position was published on Defendant **JOE CIANCIOTTO's** Facebook page.
46. Some of Plaintiff's professional colleagues on that Facebook posting who saw that picture are as follows:

Wendy Raye	The Director of Human Resources
Barry Burdiak	Exec Creative Director on my account
John Hayes	Exec Creative Director
Patti Dirker Morris	The lead marketing client at State Farm.
Tammy Miller White	The primary digital client at State Farm.
Jeff Greeneberg	Client at State Farm
Tim Thomas	Client at State Farm.
Gustavo de Mello	Director of Strategy on Plaintiff's account

Kim Brun	Account Supervisor on Plaintiff's account
R Lee Newell (Rachel)	Art Director
Megan Mitchell	Art Director
Mario Azzi	Art Director
Hawley Tremblay	Executive Assistant
Heather Gorman	Group Account Director
Cassandra Anderson	Creative Director
Kimb Luisi	Art Director
Step Schultz	Copywriter
Veronica Parker-Hahn	Account Supervisor
Erika Amundson	Social Media Strategist
Kelli Lane	Account Supervisor
Staci Alfano	Director of New Business
Klane Harding	Copywriter
Trac Nguyen	Producer
Lindsay Marano	Account Executive
Heidi Frank	Account Executive
Tyler Kirsch	Copywriter
Lauren Brooks	Information Architect
Ryan Murphy	Art Director
Sarah Ramey	Producer
Luke Carmody	Associate Creative Director
Tont Bartolucci	Associate Creative Director
Marilyn Kam	Associate Creative Director
Diego Rionda	Art Director
Marcia Murry	Group Creative Director

**H. Defendants Never Correct the Abuse and Instead Minimize It. Defendant JOE CIANCIOOTTO Admits to Plaintiff that He Has a Disorder of Fearing Communicable Diseases.**

47. On or about June 26, 2013, Plaintiff met with Wendy Raye, former Director of Human Resources of Defendant DDB. He complained that Defendant **JOE CIANCIOOTTO's** drawings and public accusations that Plaintiff had AIDS were harassing and intimidating.
48. After that meeting, instead of correcting the hostile environment and ceasing the abusive and intimidating conduct, Defendant **JOE CIANCIOOTTO** approached Plaintiff and interrogated him to discover whether he was the one who complained to human resources about **JOE**.
49. Plaintiff confirmed that he felt harassed by Defendant's conduct, to which Defendant **JOE CIANCIOOTTO** justified his harassment and abuse towards Plaintiff by stating that he has a severe phobia of communicable diseases such as AIDS and herpes, and he has severe Attention Deficit Disorder. He said it is so bad that his doctor advises him to carry around cards in his pocket that read "AIDS" and "herpes" so he can pull them out and read them when he starts to obsess about contracting these diseases. He offered to play for Plaintiff a

voicemail from his doctor where he revealed the recent results of an HIV test to show Plaintiff how fearful he was of having AIDS.

50. Plaintiff was rendered even more helpless now knowing that Defendants prepared an outrageous justification for Defendant **JOE CIANCIOOTTO**'s misconduct that because he was sick himself with a fear of communicable diseases then he can harass the employees, including Plaintiff as a gay man whom **JOE** resented as people with communicable diseases.

**I. Defendants Refuse to Retract the AIDS Accusation Against Plaintiff and Further Harass Him by Refusing to Remove a Facebook Post Prohibited by the Employee Handbook Despite Plaintiff's Protestations to Remove it. Then Defendants Deny to the EEOC that they had no Knowledge of Plaintiff's Letters Objecting to the Post to Conceal Their Misconduct.**

51. After being interrogated by Defendant **JOE CIANCIOOTTO**, on or about July 26, 2013, a meeting was called with the CEO Defendant **PETER HEMPEL**, the Director of Human Resources, and the Chief Creative Officer present. Defendant **JOE CIANCIOOTTO** gave a broad apology to the effect of hoping that no one was offended by anything he did, but he never addressed nor retracted his accusation that Plaintiff had AIDS, nor did he address his years of publishing lewd pictures depicting Plaintiff as a gay man.
52. Defendant **PETER HEMPEL** was present at that meeting. He gave a speech that **DDB** does not tolerate inappropriate behavior, but he refused to acknowledge or retract the harassment and AIDS accusation directed to Plaintiff.
53. After that meeting. Defendant **JOE CIANCIOOTTO**
54. On October 21, 2014 and November 10, 2014, Plaintiff's counsel sent letters to Defendants **Joe Brown** and **Joe Cianciotto** requesting that the "Muscle Beach Poster" be removed from Facebook because Plaintiff does not consent to his image being posted in that manner and that posting violated Defendants' **DDB**'s Employee Handbook terms.
55. In their staunch position to discriminate against and harass Plaintiff and to further shame and humiliate him, Defendants refused to remove that post. Plaintiff's counsel's letters make it clear to Defendants that the Facebook posting was distressing and explained that the harassment he endured by Defendant **JOE CIANCIOOTTO** made the posting more distressing. Defendants chose to maintain the hostile work environment against Plaintiff by ignoring even

his counsel's not one, but TWO letters, insisted on keeping that improper posting public and would not remove it until Plaintiff complained to the EEOC.

56. More disturbing and evident of the bizarre and callous environment Defendants support at the workplace, when Plaintiff complained to the EEOC, Defendants denied to the EEOC that they received any letters to remove the offensive poster. After that false denial, the posting was removed as late as January 27, 2015 for the public to see as long as possible despite the distress it caused Plaintiff.
57. That poster was clearly objectionable and harassing considering the course of conduct directed toward Plaintiff and it violated the terms of employment. If not objectionable, Defendants would not direct **CIANCIOTTO** to remove it; a direction made only after Plaintiff was forced to complain to the EEOC that is investigating another harassment complaint against **CIANCIOTTO**.

**J. Defendants Retaliate Against Plaintiff and Request He Leave his Employment Solely Because He Filed EEOC Complaints.**

58. Plaintiff's worst fears came true as on or about March 21, 2015, without any basis or legitimate reason regarding Plaintiff's work performance, Defendants' counsel contacted Plaintiff's counsel and requested that Plaintiff accept a 3 month severance to leave his employment.
59. There is absolutely no legitimate reason for Defendants to request that Plaintiff leave his employment.
60. Defendants request that he leave his employment rather than correct the situation and terminate the real offender, Defendant **JOE CIANCIOTTO**, was meant to notify Plaintiff that he is not wanted there because he is a gay man whom they perceive has AIDs and they prefer to tolerate the unlawful discrimination and harassment by their employee Defendant **JOE CIANCIOTTO** who has a history of harassment at the workplace rather than have a gay man with AIDs work there.
61. Plaintiff's above stated fears regarding retaliation if he complained about Joe's behavior were justified because when he finally complained to the Corporate Defendants after the May, 2013 incident then they concocted a justification that Joe's own sickness and fear of AIDS led him to victimize the Plaintiff and now they request that Plaintiff leave his job.
62. His fears were also justified because Defendants lied about receiving notice to remove Joe's offensive poster on Facebook to show Plaintiff his feelings and position were inconsequential to them. They only removed it after Plaintiff's EEOC complaint raised that issue again

because Defendants could not deny receiving a complaint that came directly from the EEOC, a federal government agency.

63. His fears were also justified because after the EEOC complaint, on or about March 21, 2015, Defendants' counsel contacted Plaintiff's counsel and requested that Plaintiff leave his employment solely because of his complaints and not based on his work performance.
64. Remarkably, Defendants refuse to remove the actual culprit Defendant **JOE CIANCOTTTO** who created and engaged in the discrimination campaign against Plaintiff.
65. After filing this complaint, Defendants circulated a company-wide e-mail stating the following to make it appear that this complaint is false when it is not and falsely stating that Plaintiff never made a previous complaint when he did:

**From:** Mark O'Brien <[Mark.OBrien@ddb.com](mailto:Mark.OBrien@ddb.com)>  
**Date:** June 4, 2015 at 2:29:51 PM EDT  
**To:** Corporate <[DDBCorporate@ny.ddb.com](mailto:DDBCorporate@ny.ddb.com)>, DDB NY <[DDBNYEveryone@ny.ddb.com](mailto:DDBNYEveryone@ny.ddb.com)>  
**Cc:** Christie Giera <[christie.giera@ddb.com](mailto:christie.giera@ddb.com)>  
**Subject: Re: Press Reports**

Media outlets are reporting about a recent harassment lawsuit filed against DDB New York. The complainant, a current employee, alleges behavior that violated our policies. The actions alleged in the lawsuit by the complainant took place years ago and the employee never filed a complaint with the Agency. We believe the lawsuit is without merit and we intend to defend ourselves vigorously. We are committed to a work environment free of harassment of any type and we encourage anyone who feels they have been subjected to behavior that violates our harassment policy to immediately report it to your supervisor or to human resources so that we may take appropriate action.

As this is pending litigation, we are limited in the amount of information that we can share at this time. Please refer any client or press inquiries to our Director of Public Relations, Christie Giera at (212) 415-2186 or to her email address above.

Mark O'Brien  
President and CEO – North America  
DDB Worldwide  
437 Madison Ave  
New York, NY 10022  
[Mark.OBrien@ddb.com](mailto:Mark.OBrien@ddb.com)  
O: 212.415.2166

**K. The Discrimination Continued up to January 27, 2015 When Defendants Refused to Remove the Prohibited Poster. All Statutes of Limitations Are Tolloed Considering the Discrimination and Harassment Caused Plaintiff Severe Emotional and Physical Distress.**

66. The discrimination and harassment was continued, up to and including Defendants' refusal to remove the offensive Facebook poster until January, 2015 and including their request that he leave their employment in March, 2015.



67. Equitable tolling of all causes of action is warranted because Plaintiff suffered a combination of physical and mental conditions directly related to the harassment and discrimination.
68. Plaintiff grew up in the mid-west and was repeatedly gay-bashed there. That along with his later discovery that he had HIV caused him to fear every day his possible death from that disease. That led to his diagnoses of post-traumatic stress disorder (“PTSD”).
69. His HIV status is an infirmity in itself that disables him physically by attacking his body and rendering him sick and disabled and mentally by living in fear of dying any day from it. His PTSD compounds those infirmities.
70. Plaintiff moved to New York City to benefit from its tolerable atmosphere towards the gay community and persons with HIV/AIDs, but was setback physically and mentally when Defendants abused him in his workplace in a City he came to escape the same abuse.
71. Defendants abuse led Plaintiff to become despondent, hopeless and numb by going to work every day and having to make believe the abuse was not happening in a corporate environment run by such brand names as OMNICOM and DDB where one would never expect such rampant harassment and hostility.
72. Plaintiff retreated during the abuse while he suffered physically and mentally from it, including, but not limited to, increased anxiety, depression, sleeplessness, inability to eat, headaches and social anxiety.
73. Plaintiff’s mental and physical condition, which is not limited to depression and anxiety from the harassment and discrimination, is now exacerbated by any mention of his gay status and HIV or AIDs.
74. Confirming the above statements in paragraphs 65-72, on March 30, 2015, Plaintiff was evaluated by Dr. Stephen Reich, a licensed psychologist who diagnosed Plaintiff with chronic PTSD, anxiety and depression, including intense fear, helplessness and horror that traumatized Plaintiff, with exacerbated trauma because of Defendants misconduct alleged herein directed at his sexuality and disability and perceived disability, among everything else alleged above.
75. Dr. Reich concluded that as a direct result of the “gay taunts and drawings” that Defendants subjected him to from 2013 to 2015 that he was emotionally and physically unable to complain as Defendants harassment caused Plaintiff to retreat and avoid. Plaintiff instead resorted to medication, including Xanax, and drinking, to numb the pain during the harassment.
76. As a result of his physical and mental infirmities, Plaintiff was incapable of filing any complaints against Defendants.

77. All unlawful misconduct as alleged in the following causes of action was on a continuing basis up until March 21, 2015 when Defendants requested that Plaintiff leave his employment in retaliation for his EEOC complaints regarding their misconduct.
78. Because of Defendants' misconduct as alleged herein, Plaintiff entered therapy.

**FIRST CAUSE OF ACTION: Federal Disability HIV/AIDS Perceived**

79. All of the foregoing paragraphs are incorporated here as if set forth here in their entirety.
80. At all relevant times, Plaintiff has tested positive for Human Immunodeficiency Virus (HIV) antibodies and is an individual with a "disability" as that term is defined in Section 3(2) of the ADA, 42 U.S.C. §12102(2).
81. Defendants Omnicom and DDB (collectively, the "Corporate Defendants") are New York domestic and/or foreign corporations, with offices and principal places of business in New York.
82. The Corporate Defendants are a "person" within the meaning of §101(7) of the ADA, 42 U.S.C. §12111(7), and §701(a) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e(a).
83. The Corporate Defendants are engaged in an "industry affecting commerce" within the meaning of Section 101(7) of the ADA, 42 U.S.C. §12111(7), and Section 701(h) of the Civil Rights Act of 1964, 42 U.S.C. §2000e(h).
84. Each of the Corporate Defendants employ 15 or more employees and is an "employer" within the meaning of Section 101(5)(A) of the ADA, 42 U.S.C. §12111(5)(A).
85. Plaintiff is a "qualified individual with a disability" within the meaning of Section 101(8) of the ADA, 42 U.S.C. §12111(8), in that Plaintiff is an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the position of creative director with DDB and Omnicom.
86. By refusing to provide Plaintiff his bonus and raise timely and in full, by permitting Plaintiff to be harassed at the workplace by their supervisor Defendant Cianciotto's pictures and accusation of AIDs and by requesting Plaintiff to leave his employment without any basis regarding his work performance after he complained to the EEOC and indicated that he actually had HIV, and making work there intolerable, among all of the other above allegations herein, including failing to remove Plaintiff from the offender Defendant Cianciotto or

transferring Cianciotto away from the Plaintiff, the Corporate Defendants constructively discharged Plaintiff.

87. The Corporate Defendants terminated Plaintiff because of his HIV status, particularly after that was revealed and asked him to leave so Defendant Cianciotto could stay as he feared HIV as a communicable disease.
88. The Corporate Defendants termination of Plaintiff's employment on the basis of his HIV status is a discriminatory action prohibited by Section 102(a) of the ADA, 42 U.S.C. §12112(a).
89. The Corporate Defendants discriminatory conduct as to Plaintiff was taken with malice with reckless indifference to the federally protected rights of Plaintiff.
90. The Corporate Defendants termination of Plaintiff's employment on the basis of his HIV infection has caused, continues to cause, and will cause Plaintiff to suffer substantial damages for future pecuniary losses, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.
91. Pursuant to Section 107(a) of the ADA, which incorporates by reference Section 706 of the Civil Rights Act of 1964, and 42 U.S.C. §2000e-5, Plaintiff is entitled to injunctive relief enjoining Defendants from engaging in any further prohibited discrimination against Plaintiff on the basis of his HIV status.
92. Pursuant to 42 U.S.C §1981a, Plaintiff is entitled to recover compensatory damages, including future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life and other non-pecuniary losses.
93. Pursuant to 42 U.S.C §1981a, Plaintiff also is entitled to recover punitive damages from Defendants because they acted with malice or with reckless indifference to the federally protected rights of Plaintiff.
94. Pursuant to Section 505 of the ADA, 42 U.S.C. §12205, Plaintiff is entitled to attorney's fees, including litigation expenses and the costs of this action.

**SECOND CAUSE OF ACTION: Title VII Stereotypical Animus**

95. All of the foregoing paragraphs are incorporated here as if set forth here in their entirety.
96. Plaintiff suffered harassment, abuse, discrimination, was forced to work in a hostile work environment and faced adverse employment actions as a result of Defendant Cianciotto's animus toward Plaintiff's exhibition of behavior considered to be stereotypically inappropriate for men.

97. All other Defendants named herein supported, condoned and allowed the animus to continue by ignoring the disgusting, bizarre and outrageous drawings Defendant Cianciotto published in the office, and all Defendants refused a retraction regarding the AIDs statement directed to Plaintiff, but instead asked Plaintiff to leave his job.

**THIRD CAUSE OF ACTION: Federal Constructive Discharge**

98. All of the foregoing paragraphs are incorporated here as if set forth here in their entirety.

99. The Corporate Defendants and Defendants Hempel and Brown deliberately created intolerable work conditions for Plaintiff by knowing the Defendant Cianciotto bullied Plaintiff with his bizarre sketches directed to Plaintiff's sexuality which had no rational relation to Defendant Cianciotto's nor anyone's work there and his AIDs accusation against Plaintiff, and then all Defendants insist on forcing Plaintiff to work with Defendant Cianciotto as his supervisor knowing Cianciotto admits he has a sickness of fearing communicable diseases which correspondingly he resents gay men.

100. That resentment is clear as Defendant Cianciotto's harassment directed towards Plaintiff has an evil and malicious purpose as evidenced by his disturbing pictures, Facebook posting, accusing Plaintiff of AIDs and everything else as alleged herein where Defendants choose to ignore Defendant Cianciotto's evil motives directed at a gay man.

101. In efforts to cover-up his resentment towards homosexuals, Defendant Cianciotto claims that he supports the gay community or he gave Plaintiff positive work evaluations fail as his feigned gay support is contradicted by his overt actions of humiliating, harassing and bullying Plaintiff as a gay man, accusing him of AIDs, refusing to get him his monetary raise and refusing to dignify Plaintiff as a human being by ignoring his request to remove the Facebook post that had not business being published publicly.

102. Defendants' contempt and scorn towards Plaintiff as a gay man deserving of no rights is obvious when they even lied to the EEOC that they never received notice of Plaintiff's requests to remove the offensive Facebook post, then they demand he resign after he complains to the EEOC.

103. Defendants discriminated against and constructively discharged Plaintiff because of his opposition to the disability discrimination in violation of 42 U.S.C. §12203 and under 42 U.S.C. §2000e-3 by requesting he resign without any basis, and only after he reported the Defendants' misconduct to the EEOC.

104. Defendants unreasonably failed to take corrective action to either terminate Defendant Cianciotto or remove him as Plaintiff's supervisor, and instead Defendants made the conditions more intolerable and force Plaintiff to work with this admittedly sick and

unprofessional man. When Plaintiff did not resign, Defendants contacted his counsel to request that he resign.

**FOURTH CAUSE OF ACTION: NY CLS Exec §290 et. seq. Sexual Orientation Discrimination**

105. All of the foregoing paragraphs are incorporated here as if set forth in their entirety.
106. Throughout the course of Plaintiff's employment with Defendants, Plaintiff has endured outrageous and severe harassment on account of his sexual orientation.
107. The harassment and abuse plaintiff was forced to endure, on account of his sexual orientation, was in willful violation of the New York Human Rights Law, N.Y. Exec. Law 290, *et seq.*

**FIFTH CAUSE OF ACTION: NY CLS Exec §296 Disability Discrimination**

108. All of the foregoing paragraphs are incorporated here as if set forth in their entirety
109. The harassment and abuse Plaintiff was forced to endure by Defendant Cianciotto perceiving Plaintiff to have AIDs because he was an effeminate gay man is detailed hereinabove, to the point Defendants request Plaintiff to leave on account of his HIV disability while they retain **JOE**, and they perceive him with AIDS constitutes an unlawful discriminatory practice in willful violation of the New York Human Rights Law, N.Y. Exec. Law 290, *et seq.*

**SIXTH CAUSE OF ACTION: NYC Human Rights Law Harassment**

110. All of the foregoing paragraphs are incorporated here as if set forth in their entirety.
111. Plaintiff was forced to work in a hostile and abusive work environment.
112. Plaintiff was continually, routinely and frequently subjected to offensive, vulgar and crude comments and pictures depicting his sexual orientation by Defendants.
113. The offensive, vulgar and crude comments and pictures were directed at Plaintiff because of his sexual orientation and disability.
114. The outrageous harassment was both unwelcome and pervasive.
115. The Corporate Defendants knew or should have known about the harassment yet failed to take any action designed to stop it.
116. The harassment and abuse Plaintiff was forced to endure, on account of his sexual orientation and disability was in willful violation of the New York City Human Rights Law, N.Y.C. Admin. Code 8-101,8-107*et seq.*

**SEVENTH CAUSE OF ACTION: Aiding & Abetting**

117. All of the foregoing paragraphs are incorporated here as if set forth in their entirety.

118. The Defendants by engaging in the conduct described above, incited, compelled, aided and abetted in the violation of the New York Human Rights Law, N.Y. Exec. Law 290, et seq. and New York City Human Rights Law, N.Y.C. Admin. Code 8-101, et seq.

**EIGHTH CAUSE OF ACTION: Slander PER SE**

119. All of the foregoing paragraphs are incorporated here as if set forth in their entirety.

120. 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 AIDs when he does not. Plaintiff also discovered in Mat, 2015 for the first time that Defendant Cianciotto routinely accused him of having AIDs to another employee named Ryan.

121. In addition to these false statements of accusing him of a communicable disease he does not have, it was meant to and clearly did expose Plaintiff to hatred, contempt, ridicule, and obloquy because it falsely accuses and depicts Plaintiff as having a disease most people fear.

122. The statement was so understood by those who heard it that Plaintiff has a communicable disease of AIDs.

123. The defamatory statement was published with reckless disregard for the truth of the matter, and Defendants knew at the time the statement was made that it was false and injurious to Plaintiff as they had no proof he had AIDs.

124. The defamatory statement was intended by Defendants, and each of them, to directly injure the Plaintiff with respect to his reputation, character and business.

125. Defendants, and each of them, jointly or separately, without due regard for the truth, falsity, or malicious nature of the statement, refused to publicly retract it.

126. As a consequence of the foregoing misconduct of the Defendants, Plaintiff has been injured in his good name and reputation as a creative director in the general industry, he has suffered great pain and mental anguish and has been held up to ridicule and contempt by coworkers, acquaintances and the public.

127. By engaging in the misconduct alleged above, the Defendants each engaged in "despicable" conduct with the willful and conscious disregard for the rights of plaintiff. Defendants were aware of the probable dangerous consequences of their misconduct and willfully and deliberately failed to avoid those consequences, including subjecting Plaintiff to cruel and

unjust hardship, in conscious disregard of plaintiff's rights. Thus, an award of exemplary and punitive damages is justified.

128. That as a consequence of the foregoing misconduct of Defendants, the career and future employability of Plaintiff has been damaged in an amount exceeding \$ 20,000,000.00.

**NINTH CAUSE OF ACTION: Emotional Distress**

129. All of the foregoing paragraphs are incorporated here as if set forth in their entirety.

130. Defendants openly and flagrantly engaged in outrageous offensive conduct and verbal abuse directed at Plaintiff.

131. The Corporate Defendants and Defendants Brown and Hempel were aware of, tolerated and condoned the offensive conduct that Defendant Cianciotto subjected Plaintiff to and disregarded the substantial possibility that the offensive, outrageous conduct and language would cause Plaintiff severe emotional distress.

132. Defendants disregarded the substantial probability that their conduct, comments and language would cause Plaintiff severe emotional distress.

133. Defendants' conduct has been 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 society.

134. Defendants' conduct was more than mere insults, indignities and annoyances but was so shocking and outrageous as to exceed all reasonable bounds of decency of permitting personal attacks upon Plaintiff by the offensive pictures to the point that Defendant Joe Cianciotto publicly accused Plaintiff of having AIDs because he is a gay man while the Corporate Defendants shielded Defendant Cianciotto's misconduct with the excuse that he himself is a sick man who fears communicable diseases, then continued their indifference to Plaintiff by lying that they never received his notices to remove the Facebook posting and then asked him to resign after he complained to the EEOC.

135. As a result of Defendants' conduct, Plaintiff has suffered, among other consequences, conscious pain and suffering, physical injury, great mental distress, great emotional distress, depression, sleeplessness, shock, fright, humiliation and anxiety.

**TENTH CAUSE OF ACTION: Negligent Supervision/Retention of an Unfit Employee**

74. All of the foregoing paragraphs are incorporated here as if set forth in their entirety.

75. The Corporate Defendants had a duty to provide Plaintiff with a safe workplace, free of discrimination and harassment.

76. The Corporate Defendants had both actual and imputed knowledge of the Defendant Joe Cianciotto's harassing, discriminatory acts and statements towards another co-worker prior to his unlawful conduct directed to Plaintiff and had actual and imputed knowledge of his similar unlawful conduct while he engaged in the harassing, discriminatory acts and statements towards Plaintiff, and the undue risk of harm to which they were exposing Plaintiff.

77. Despite the foregoing, the Corporate Defendants failed to take adequate steps to determine the fitness of Defendant Joe Cianciotto, failed to adequately supervise him and deliberately retained him.

78. As a proximate result of Defendants' duty to supervise, Plaintiff has been injured and has incurred damages thereby.

79. The actions of the Corporate Defendants were wanton and reckless, with malice and without reason or basis and were arbitrary, capricious, and unfounded.

**ELVENTH CAUSE OF ACTION: BREACH OF CONTRACT**

80. All of the foregoing paragraphs are incorporated here as if set forth in their entirety.

81. In April of 2011, Plaintiff was hired at DDB as an Associate Creative Director for \$180,000 with the verbal promise to be reviewed for a promotion to Creative Director in 18 months.

82. In October 2012, Plaintiff was promoted to Creative Director ("CD") with more responsibilities and verbally promised by Defendants that came with a raise in salary.

83. Over the course of the next year, Defendants omitted the raise from each pay period check. Plaintiff would follow-up with Defendants CINACIOTTO and HEMPEL for information regarding his promised raise, but Defendants avoided responding.

84. The following are some communications Plaintiff made to enforce the promise of his raise:

**March 28, 2013 EMAIL:** Plaintiff's partner sent CIANCIOTTO a calculation of lost wages from the day of review to the first day of 2013, explaining the verbal promise of salary increase in October, 2012, and Plaintiff expecting a raise of some \$25,000.00 based on that date.

**June 14, 2013 EMAIL:** Plaintiff asks CIANCIOTTO about the raise.

**June 26, 2013 EMAIL: Human Resources'** Wendy Raye informs that Defendant HEMPEL was working on Plaintiff's raise as : "Matt—I spoke with Peter Hempel and he wanted me to assure you that he is working on your and Bob Davies salary increases. This is not an easy task but you guys are his priority. W—"

**August 26, 2013 EMAIL:** Wendy Raye apologizes that the raise is taking so long and confirms that Defendant HEMPEL was submitting a request.

**September 30th, 2013 EMAIL:** Plaintiff emails Defendant HEMPEL for an update.



85. Defendants breached their promise to pay Plaintiff his salary increase for an entire year from October, 2012 since he was promoted to October, 2013.

86. On October 31, 2013, Plaintiff received a check with a pay increase of \$25,000.00 which was withheld for an entire year before when he was actually promoted and promised that raise.

87. Plaintiff is damaged from Defendants' breach of their promise by working in a promoted position with more responsibility on the promise of being paid more but never paid such for an entire year while he worked in the promoted position based upon that promise of a raise. Plaintiff is due all retroactive pay of the \$25,000 from October, 2012 to the date he is paid.

**TWELFTH CAUSE OF ACTION: VIOLATIONS OF LABOR LAW §§190-198**

88. All of the foregoing paragraphs are incorporated here as if set forth in their entirety.

89. Plaintiff brings this cause of action under §190 et seq. He was promised by Defendants a pay increase for his promotion but never was paid the increase upon being promoted. Plaintiff is an employee and the pay increase is wages as both are defined in §190.

82. All attorney fees and costs and penalties under §190 et seq. are demanded in this action.

**DAMAGES AS TO ALL CLAIMS**

As a result of all of the Defendants' conduct alleged herein Plaintiff has suffered, among other consequences, conscious pain and suffering, physical injury, great mental distress, great emotional distress, depression, sleeplessness, shock, fright, humiliation and anxiety and his career and future employability is damaged by his colleagues and other professionals believing, questioning or suspecting that Plaintiff has AIDs wherein Plaintiff will never know if he is denied future employment because of that fear of third parties. He is effectively prevented from leaving his present employment because he may never get hired again, and is maliciously forced by Defendants to continue to work under Defendant Joe Cianciotto in their hopes that Plaintiff will leave. By engaging in the misconduct alleged above, Defendants each engaged in "despicable" conduct with the willful and conscious disregard for the rights of plaintiff. Defendants were aware of the probable dangerous consequences of their misconduct and willfully and deliberately failed to avoid those consequences, including subjecting plaintiff to cruel and unjust hardship, in conscious disregard of plaintiff's rights. Thus, an award of exemplary and punitive damages is justified.

**WHEREFORE**, on all of the above counts, Plaintiff demands the following relief, including the relief as permitted under any statutory count alleged above:

That Defendants are permanently and forever enjoined from any further prohibited discrimination against Plaintiff,

That Plaintiff is awarded compensatory, actual, and special damages in an amount to be determined at trial in this matter and as requested in the above causes of action, including \$20 Million Dollars with respect to the Libel,

That Plaintiff is awarded punitive damages in an amount to be determined at trial in this matter,

That Plaintiff is awarded his attorney fees, including litigation expenses and costs pursuant to Section 505 of the ADA, 42 U.S.C. §12205 and all other counts alleged herein above that permit fees, costs and expenses, and

Such other and further relief as the Court deems just and proper.

Dated: June 22, 2015

Yours, etc

**LAW OFFICES OF SUSAN CHANA LASK**



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**BY: Susan Chana Lask, Esq.**

Attorney for Plaintiff

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