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January 25, 2023

### VIA ECF

The Honorable Colleen McMahon  
U.S. District Court for the Southern District of New York  
Daniel Patrick Moynihan U.S. Courthouse  
500 Pearl Street, Room 2550  
New York, NY 10007

Re: *In re Omnicom Group Inc. ERISA Litigation*, No. 1:20-cv-04141;  
Pre-Trial Conference and Trial Logistics

Dear Judge McMahon:

We write jointly on behalf of the Parties in the above-captioned matter respectfully to request the Court's guidance regarding certain logistical matters in advance of the trial currently scheduled to begin on February 22, 2023.

On October 12, 2022, this Court issued an Order setting the trial date and deadlines for the submission of certain pre-trial filings, including: (1) an affidavit/declaration from each witness being called to testify at trial, who is under the Parties' control; (2) all exhibits the Parties wish to introduce; (3) objections to exhibits proposed by the other party; (4) a physical copy of any deposition designations and counter-designations that the parties wish to introduce; (5) a list of stipulated facts; (6) each side's proposed findings of fact; and (7) each side's proposed conclusions of law. *See* ECF No. 129. On December 23, 2022, the Court issued a Decision and Order regarding Defendants' Summary Judgment and *Daubert* Motions, in which the Court noted that "[t]he parties should submit the written direct testimony of their witnesses per the court's rules for bench trials, as well as proposed findings of fact and conclusions of law . . . by February 3." ECF No. 191 at 34. In addition to the above guidance, the Parties also request clarification of the following matters:

1. Whether the Court intends to hold a pre-trial conference;
2. Whether the Court intends to set aside a certain number of days for trial and/or implement a "chess clock" format, so that the Parties can coordinate in-person witness attendance. At present, Plaintiffs intend to submit witness statements for the five named Plaintiffs along with their three expert witnesses, while Defendants intend to submit witness statements for five members of the Administrative Committee of the Omnicom Group Retirement Savings Plan, along with their three experts. Defendants also may call up to five third-party witnesses, including

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- individuals from the Plan's investment consultant (Mercer), the investment manager of the Freedom Funds Active Suite (Fidelity), and the Plan's outside counsel (Davis & Gilbert), for whom no witness statements will be submitted;
3. Whether the Court would prefer opening and/or closing statements to be presented at trial;
  4. Whether expert reports may be entered into evidence by the Parties;
  5. The Court's preferred method for receiving copies of the exhibits on the Parties' joint exhibit list, and whether the Court has any specific formatting requirements for the submission of hard-copy exhibits (*e.g.*, multiple copies, printed double or single-sided, and/or organized in binders);
  6. Whether the Parties' respective technology teams will be allowed to meet with Court staff before trial in order to conduct test runs of their trial equipment;
  7. Whether the Parties will be permitted to offer limited, supplemental direct examination of the witnesses before subjecting them to cross-examination, per the Court's Individual Practices and Procedures Rule VII.F.2;
  8. Whether the Court intends to permit rebuttal testimony from expert witnesses.

The parties are available to discuss these issues and any other pre-trial logistics at the Court's convenience.

Respectfully submitted,

/s/ Peter A. Wald

Peter A. Wald (admitted *pro hac vice*)  
of LATHAM & WATKINS LLP

cc: All Counsel of Record (via ECF)