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May 10, 2010

VIA ECF
Honorable Ramon E. Reyes, Jr.
United States Magistrate Judge
United States District Court
225 Cadman Plaza East
Brooklyn, NY 11201

Re: **Vadim Mikhlyn, Inga Mikhlyn and ABC All Consulting, Inc. v. Ana Bove, Polina Dolginov, *et al.***
Docket No.: 08 CIV. 3367

Dear Judge Reyes:

This is in response to the letter motion of Boris Kogan and Associates to be relieved as counsel for defendants.

Plaintiffs do not, per se, oppose counsel's withdrawal from the case. Plaintiffs, however, strongly oppose any modification of the Court's prior scheduling Orders.

It is now clear that defendants have unilaterally obstructed this case for at least five months because of their internal conflicts. That obstruction includes not only their failure to complete their now quite old discovery obligations – including the production of documents ordered by the Court more than a year ago – but also their routine failure to observe the common decency of simply responding to plaintiff's many communications. Defendants' failure to participate in discovery and respond to our communications has plagued the entire course of discovery in this case, leading to a number of applications to the Court and multiple extensions of discovery.

These failures cannot be chalked up to Mr. Kogan's health problems because when it is in their interest do so, defendants manage to surface; Mr. Kogan's

May 3, 2010 letter being the most recent example.

Defendants should not be given a clean slate by virtue of this very late and long delayed disclosure of their internal conflicts. Despite the Court's extreme patience with defendants, the status of discovery ,with two exceptions described below, is essentially the same as set forth in our last two letters to the Court: a) the list of documents owed by defendants, which has been submitted to defendants multiple times since last year and includes categories of documents ordered to be produced by the Court long ago, remains unanswered; b) defendants have yet to turn over copies of documents received pursuant to 21 subpoenas returnable more than four months ago; and c) defendants have continued to ignore our requests to confer about scheduling dates for the completion of party depositions.

At the last conference, counsel for defendant indicated that he wanted certain data in "native" format even though it had already been produced in hard copy. We indicated that we also wanted to see certain data in native format. Your Honor indicated that we should produce the requested information in native format and that, conversely, we could obtain data in native format from defendants.

Although defendants, as usually, completely ignored our repeated requests for data in native format, continued to ignore the list of documents described above, continued to ignore our request for documents obtained by subpoena, and continued to ignore our request to complete depositions, we turned over the data on April 6, 2010.

At the last conference, Your Honor also authorized the deposition of Eugene Sakirski, the son of defendant Ana Bove's business partner. Your Honor may recall that at the time, defense counsel was emphatic that he did not and would not be representing Mr. Sakiriski and was not even willing to consider accepting service of a subpoena on his behalf. After Mr. Sakirski failed to appear on the first return date of his deposition and we indicated that we would seek relief from the Court if he did not cooperate, counsel had a change of heart and represented Mr. Sakirski at his rescheduled deposition.

The Sakirski deposition and our one-sided production of native format data, as well as some other documents, represent the entire progress of discovery since the deposition of Polina Dolginov on December 17, 2010 through May 7, 2010, which, pursuant to the Court's Order of March 6, 2010, was the final day of discovery.

Had defendants participated in discovery with anything like reasonable diligence, discovery would have been completed long ago. The appearance of new counsel should not provide yet another opportunity for defendants to delay the completion of discovery. See Small v. Regalbuto, 2009 U.S. Dist. LEXIS 55033 (N.D. Ohio June 29, 2009) (denying motion to withdraw without prejudice due to discovery violations, and requiring eventual new counsel to certify that it is ready to participate in case without delay); Keystone Manufacturing Co., Inc. v. Jaccard Corp., 2007 U.S. Dist. LEXIS 88291 (W.D.N.Y. 2007 November 30, 2007) (denying new counsel's request to reopen discovery); Colletti v. Fagan, 1999 U.S. Dist. LEXIS 2635 (S.D.N.Y. March 10, 1999) (denying new counsel's request for discovery that should have been completed earlier).

Finally, defendants' counsel has some documents (including the native format data) which has been designated "Attorneys Eyes Only" because of their highly competitive and confidential nature. We request that the Court, in the event that the motion for withdrawal is granted, direct Mr. Kogan and his firm not to turn these documents over to defendants and to hold them until substitute counsel enters its appearance and executes the Protective Order governing discovery in this case.

Respectfully submitted,

Daniel Akselrod

DA/st