

**VAL MANDEL, P.C.**

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Val Mandel  
Member of NY, NJ and DC Bars  
e-mail: [vm@valmandelpc.net](mailto:vm@valmandelpc.net)

80 Wall Street, Suite 1115  
New York, NY 10005  
(212) 668-1700  
Fax (212) 668-1701

Eric Wertheim  
Member of NY and NJ Bars  
e-mail: [ew@valmandelpc.net](mailto:ew@valmandelpc.net)

Daniel Akselrod  
Member of NY Bar  
e-mail: [da@valmandelpc.net](mailto:da@valmandelpc.net)

September 3, 2010

VIA ECF

Honorable Ramon E. Reyes, Jr.  
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:

Pursuant to the Court's Order dated August 25, 2010, plaintiffs hereby respond to defendants' latest motion to stay the Court's ruling on the corporate defendants' default or for an extension to find a corporate attorney.

There are at four reasons why the latest of defendants' motions for the same relief must be denied.

First, defendants have had many months to hire new counsel. Defendants first had notice that they needed new attorneys on May 3, 2010 when the law firm of Boris Kogan & Associates moved to withdraw. The court gave defendant until May 28, 2010 to appear by new counsel. No counsel appeared by May 28, and no new counsel has attempted to appear since then. There is no indication that another brief extension will lead to the appearance of new counsel.

Second, defendants' request to defer the issue of the corporate defendants' default has been ruled upon at least twice already. By Order dated August 23, 2010, the Court declined to stay or delay the issue of the corporations' default, directing defendants to respond to the motion for Rule 37 sanctions and a Rule 55 default judgment by no later than September 3. In addition, Judge Ross

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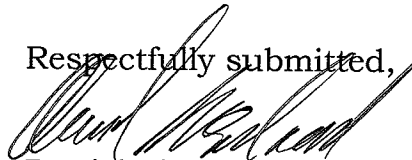
specifically directed that both issues be addressed in Your Honor's Report and Recommendation in the second of two referral orders she issued in this case. Defendants cannot keep filing the same motion over and over again in the hopes that the Court will change its mind.

Third, there is no legal basis for avoiding a default judgment against the corporate defendants. As we pointed out in plaintiffs' memorandum of law in support of summary judgment, where, as here, a corporation fails to obtain counsel, a default judgment must follow. Eagle Assoc. v. Bank of Montreal, 926 F.2d 1305, 1308 (2d Cir. N.Y. 1991). The result is the same where, as here, the case proceeds with individual parties who are associated with or own the defaulting corporation. See, e.g., Lattanzio v. Galen Institute, Inc., 481 F.3d 137, 139-40 (2d Cir. 2007); U.S.A. v. Select Aviation Corp., 2006 U.S. Dist. LEXIS 74596 (E.D.N.Y. Oct. 10, 2006).

Finally, the deferral defendants seek would effectively eviscerate plaintiffs' case. The corporate defendants are principal, if not the principal, wrongdoers from plaintiffs' perspective. The individual defendants purportedly assigned to one of the corporations all of the intellectual property at issue in this case and it is the corporations that are the direct legal actors violating plaintiffs' rights on an ongoing basis. The defendants do not have the right to proceed to trial only on the issues and claims they are interested in.

Therefore, we respectfully request that the Court deny the stay and the extension that the defendants are seeking, but instead decide the issues of the corporate defendants' default on plaintiffs' pending motion Pursuant to Rule 37 and for Default Judgment Pursuant to Rule 55.

Respectfully submitted,



Daniel Akselrod

DA/st  
Encl.

cc: Ms. Ana Bove (via e-mail)  
Ms. Polina Dolginov (via e-mail)