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July 7, 2011

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:

We are writing pursuant to Your Honor's Individual Practice Rules and Local Civil Rule 37.3(a) regarding a discovery dispute. As indicated in our submissions in support of plaintiff's previous motion for Rule 37 sanctions, we believe defendants withheld or destroyed emails and internet chats. Such communications are a particularly critical source of evidence in this case because of the lack of formal contracts between the parties, as well as the parties' widely divergent assertions about the nature of their business relationship and certain events that occurred prior to litigation.

The recent submissions filed by defendants and their former attorneys, Boris Kogan & Associates, in connection with their own dispute about their relative responsibility for Rule 37 sanctions leave no doubt that defendants withheld a large volume of emails and chats and failed to disclose their existence to the Court or plaintiffs. As a result, we believe the sanctions award to be issued by the Court based upon the discovery violations discussed during the January 4, 2011 Court conference and in the Court's Report and Recommendations dated February 3, 2011, should be expanded to address and remedy these newly discovered violations.

1. Skype Chats

Mr. Kogan has submitted certain e-mails and documents referring to "Skype chats," between himself and the defendants.

The existence of these chats was unknown to us until Mr. Kogan mentioned it in his affidavit. Defendants never disclosed their existence during discovery, during the many conferences with the Court about discovery issues, or in opposition to plaintiff's Rule 37 motion.

Furthermore, it appears that defendants took it upon themselves to withhold at least some of the chats based upon their own laymen's determination about privilege, although they were represented by Mr. Kogan at the time and it was his job, as counsel, to make such determinations. A copy of the memo, dated February 21, 2010 is annexed hereto as Exhibit A – please see Fifth (c). Also, the Court ordered long ago that any assertions that intra-party communications were somehow privileged had to be accompanied by a privilege log.

When we raised this issue with the pro se defendants, they replied that:

> Regarding the message dated 02.21.10., with the sentence "We've removed a lot from there since it's Attorney-Client privilege". We were just fulfilling the request of our counsel, who didn't have enough time for this work. However, no matter if we classified this information correctly or not, we gave all of this information to Mr. Kogan, and he had to re-check all of this work.

This explanation – passing the blame to former counsel – evades the questions of why every single Skype chat was withheld and why such withholdings were never disclosed before in the long history of the parties' dispute over electronic communications.

More seriously, in their Memorandum in Response to Affirmation of Boris Kogan, dated April 27, 2011 ("Memorandum"), on page 34, the defendants reveal that in early 2009 many chats were "lost" because Mr. Sakirski (Ana Bove's business partner and a shareholder of the corporate defendants) uninstalled Skype. Not only did Mr. Sakirski delete these chats from his own computer but told Ms. Bove and even Ms. Dolginov in Israel to do the same.

Copies of the pertinent pages from the Memorandum are annexed hereto as Exhibit B. This is an admission of the intentional destruction of evidence during the pendency of a lawsuit.

These chats were never produced to us and, despite our demand for their production, have still not been turned over.

2. E-Mails

The situation with E-mails is similar to that of the Skype chats. The February 21, 2010 memo from the defendants to Mr. Kogan discloses, for the first time, thousands of e-mails that were withheld on grounds such as attorney-client, trade secrets, etc. See Exhibit A, Fourth and Fifth.

Even assuming, for arguments sake, that a document contained a trade secret, defendants' obligation was to produce it stamped "attorneys' eyes only" pursuant to the protective order in this case, not to withhold it, and certainly not to withhold it without disclosing its existence.

In a December 20, 2009 e-mail the defendants say "We didn't give... Order of clients = trade secret. Clients checks = trade secrets." A copy of the e-mail, dated December 20, 2009, is annexed hereto as Exhibit C - please see the last paragraph. No party has ever suggested that mere purchase orders or checks were entitled to trade secret protection in this case, and if they were, again, defendants' obligation was to produce them subject to "attorneys' eyes only" treatment. Such documents were produced by both sides in the past, sometimes redacted for sensitive information, but never completely withheld.

3. Tradeindicator, Inc. Subpoena

In the same December 20, 2009 e-mail to Mr. Kogan, the defendants say, in point #18, "Boris, I'd also like to remind that they're trying to request a Subpoena for Tradeindicator, Inc. ("Tradeindicator") to which our Anna Bove Company LLC has been paying rent since 2008." See Exhibit C, No. 18.

Even though he thus knew from December 20, 2009 about the subpoena, to date, Mr. Sakirski (Tradeindicator's president) produced only 4 pages of QuickBooks files less than a month ago in response. A copy of the subpoena is annexed hereto as Exhibit D.

During a recent telephone conversation, defendants insisted that there are no

additional Tradeindicator documents to produce. This is belied by the above quoted sentence about a four year commercial landlord tenant relationship.

These documents are important because we believe defendants are using their relationship with Tradeindicator to fraudulently understate profits and exaggerate expenses, employing a tactic discussed at length between Ana Polina, and labeled by them as "money laundering," in a series of emails in May of 2006.

Respectfully submitted,

Daniel Akselrod

DA/st
Encl.

cc: Ms. Ana Bove (via e-mail)
Ms. Polina Dolginov (via e-mail)
Peter L. Berger, Esq. (via e-mail)