

From Ana Bove, Alex Sakirski, Polina Dolginov

VIA ECF

Honorable Ramon E. Reyes, Jr.  
United States Magistrate Judge  
United States District Court  
225 Cadman Plaza East  
Brooklyn, NY11201

July 12, 2011

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

Dear Judge Reyes:

Defendants file this letter motion due to the recently uncovered manipulations of Plaintiffs with QuickBook, and possibly with other important financial documents, which we believe to warrant the most severe sanctions against Plaintiffs. Plaintiffs' admission that they changed the data corroborates our position that Plaintiffs stole money from Defendants

We've had a meet and confer with the opposing counsel regarding the financial records of Plaintiffs, especially QuickBooks and related financial data.

In Plaintiffs' recent letter, dated June 20, 2011 (see Exhibit #1) they admit that every time they change QuickBooks, they write over the prior version. Per our understand, writing over the prior version means that they are erasing information which previously existed, and are thus destroying relevant financial data.

Their claim that they have provided thousands of financial documents so that we can track the various changes is unacceptable. First, Plaintiffs were not allowed to change and write over financial data, while hiding the changes. Per our understanding, that amounts to destruction of financial data, which is prohibited.

In addition to Plaintiffs' own words, we also have serious evidence that Plaintiffs really did rewrite this data.

Defendants discovered modifications of QuickBook in section of "Profit & Loss", between the data provided to us in March 2009, and the new QuickBook, provided by Plaintiffs in May 2011. Inside the new QuickBook, old data was altered and/or deleted, and also new data added. Overall, over 90 lines changed.

Also, changes were made to comments in certain records, which reflect PayPal payments made by Ana and Polina to Plaintiffs since 2004 through 2008, to pay for services which Mikhlyns provided for the embroidery business on ongoing basis. This way Plaintiffs have changed data for the purpose of forging a key evidence for the parties' "partnership" dispute. This evidence originally showed that Plaintiffs used to receive payments from Defendants for the services they provided, which proves that Plaintiffs worked for Defendants.

Since Plaintiffs declared that they never received regular payments for their work from Defendants, they decided to destroy the evidence which showed exactly the opposite. These comments corresponded to PayPal comments, made by Defendants when sending these payments. These comments indicated for whom each certain payment was intended, showing initials of the recipient. For example, "IM" meant that a payment was made for Inga Mikhlyn, "OP" - for Olga Plyuschay (Inga's daughter), "VM" - for Vadim Mikhlyn. Plaintiffs obviously forgot that they provided us the earlier spreadsheet in 2009, and decided to just delete all of these comments from the "original format" QuickBook. Therefore, they willfully destroyed critical evidence. There are over 60 such changes, made willfully, record by record, as Plaintiffs personally explained us earlier, regarding QuickBook redactions of social security numbers, which Your Honor allowed. There is a total of 60 lines which have been modified in this manner.

Except of that, Defendants believe that Plaintiffs needed those changes to prove their false claims in IRS, saying that the weekly payments for nearly 4 years (2005-2008), which Plaintiffs have been receiving from Defendants, weren't payment for their work in Defendants' business, but were something else. In 2009 Ana Bove sent 1099 and 1096 forms to IRS, regarding these payments to Plaintiffs. Defendants also demanded from Plaintiffs their correspondence with IRS, which Plaintiffs must have provided during Discovery but failed to do so. When we requested this correspondence, Plaintiffs stated that it's late and that discovery is over. Despite our recent request to extend the discovery, which was also for providing these documents, which Your Honor granted, Plaintiffs refuse to provide this correspondence with IRS. Therefore we respectfully request Your Honor to order Plaintiffs to provide us all of their correspondence with IRS and related documents, regarding the following matters: the issue of Plaintiffs receiving receiving those payments, and also other correspondence of all Plaintiffs with IRS.

It is important to note that both Vadim and Inga are very technically advanced individuals. Vadim is a computer expert and a programmer, and Inga at the very least knows programming basics, and is an

exceptionally advanced PC user. There is no slightest chance that they could destroy this QuickBook data due to a lack of knowledge, or by accident.

There is also no excuse for not backing up the original QuickBook files, when this dispute began. If, like Plaintiffs say, only one copy of this QuickBook ever existed, this must have happened due to a plan to have only one copy, and then to overwrite it, while destroying evidence. Namely Inga was writing this QuickBook, and Inga is an experienced person, who received high financial education, and she must understand the importance of backing up the one key financial document of ABC All Consulting, Inc. All the other "source" documents altogether do NOT bear as much information as the QuickBook, because QuickBook carries Inga's own perception of the income-expense categories and of reporting for the embroidery business. This perception isn't available from any alternative papers, while it greatly influences how Plaintiffs reported to IRS, and greatly influences the outcome of Defendants' financial claims. QuickBook must also be the exact file from which Inga "was dictating" to her accountant, who declared under oath that she has never seen even a single original document of ABC All Consulting, Inc. It's physically impossible to dictate such information from the thousands of various disorganized invoices, receipts, statements and checks.

In addition to this, it's now clear that Plaintiffs concealed from Defendants other financial and non-financial evidence, which Defendants have requested. When obtaining Plaintiffs' QuickBook in May 2011, Defendants discovered that Plaintiffs didn't provide a whole large and extremely important report which shows the Balance Sheet with loans and assets of the company. Even if Plaintiffs didn't wish to provide QuickBook back then, they must have given this report, at the very least.

Defendants also discovered substantial differences between the new QuickBook and Plaintiffs' yearly tax reports. Such significant changes between the main financial document and tax reports are found in every tax year since 2004 through 2008. The total amount of such changes is over \$870,000. This way the data of new QuickBook completely contradicts to Plaintiffs' tax reports, which were provided by Plaintiffs' accountant back in 2009. This once again shows that Plaintiffs have modified their QuickBook not only within the "Profit & Loss" part, but also in "Balance Sheet" etc.

These divergences suggests that Plaintiffs have filed substantial amendments to IRS after this litigation began (probably after 2009). When we requested Plaintiffs to provide any and all such tax-related amendments, and correspondence with IRS related to this case, they

refused to produce them. Plaintiffs also refused to provide us QuickBook-related metadata, that would allow us to track the changes they made to QuickBook file.

When Plaintiffs and us requested the last discovery extension from Your Honor (6/20/2011, Exhibit #3), we specified that one of the reasons was to allow Plaintiffs provide us these documents, since earlier Plaintiffs said that they won't do this because discovery is over, and got re-opened only for very limited matters. Now Plaintiffs again refuse to do this, and for delaying and failing the discovery they've just sent a new lawsuit to Supreme Court (see Exhibit #4), very similar to this lawsuit, since it's based on disputes over this same Intellectual Property. We're more than sure that these documents include proofs that Plaintiffs have changed these annual tax reports during the course of disco6/15/2011 very.

Therefore, we respectfully request Your Honor to order Plaintiffs produce these documents before the end of discovery, because we must ask questions regarding these documents, on deposition of Inga Mikhlyn. Defendants must have the up-to-date files for properly questioning Plaintiffs. These must be just several papers, which are not troublesome to produce, and this production won't prejudice Plaintiffs in any way. On the other hand, the lack of these documents would greatly prejudice Defendants.

There is also serious evidence that Plaintiffs withheld their chats, which happened after this litigation began. As Vadim Mikhlyn testified during his deposition, he and Inga now work on different floors, and they do use chat to talk to each other. These were never produced.

Considering that they have been so vigilant in claiming that we have failed to produce discovery, their simultaneous regular destruction of financial data to hide changes made is absolutely outrageous. It warrants the most severe sanctions, considering how the financial data is essential to this lawsuit. Therefore, we would like to request Your Honor's permission to file an appropriate sanctions motion against Plaintiffs.

There is also an important organizational issue. We understand that Mr. Berger will be on trial before Judge Melancon during the week of July 25<sup>th</sup>, and he can't be available to attend any court conferences. We also understand that Mr. Berger will be on vacation starting August 8th.

If Your Honor will schedule a conference in your chambers, we'd like Polina to be able to attend by telephone with her calling in from

Israel. Her knowledge of financial data, and a better ability to express herself in English, are important.

We also declare, being duly sworn, that the factual allegations contained herein are true, to the best of our knowledge.

Thank you for your consideration!

Respectfully submitted,  
Ana Bove, Polina Dolginov, Alex Sakirski.

07.12.2011      *Y-*      *Alex Sakirski*      *P*  
Dated                      Ana Bove                      Alex Sakirski                      Polina Dolginov