

BORIS KOGAN & ASSOCIATES
ATTORNEYS AND COUNSELORS AT LAW

277 BROADWAY, SUITE 701
NEW YORK, NY 10007
TEL: (212) 625-8910
FAX: (212) 219-2728
WWW.BORISKOGAN.COM
EMAIL: BK@BORISKOGAN.COM

February 27, 2009

Sent Via ECF To:

Honorable Judge Ramon E. Reyes
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Mikhlyn, et al. v. Bove, et al.
Case No. 1:08-cv-3367

Honorable Judge Reyes:

I represent the Defendants in the above referenced action and I respectfully request a ruling on a question regarding the Scheduling Order dated November 20, 2008.

Pursuant to the Scheduling Order, the parties agreed that the deadline to amend the pleadings be set for February 18, 2009. Specifically, Paragraph 3 of the Scheduling Order states: "No amendment of the pleadings will be permitted after February 18, 2009."

Defendants timely filed their Amended Answer via ECF on February 18, 2009. In response, by letter dated February 24, 2009, a copy of which is attached hereto, Plaintiffs' attorney rejected the Amended Answer arguing that the deadline set in the Scheduling Order was for moving to amend the pleadings.

The foregoing interpretation is inconsistent with the plain meaning of the Scheduling Order. Also, in agreeing to the dates in the Scheduling Order, both my co-counsel, Peter Berger, Esq., and I intended and understood that the deadline was for amendment of the pleadings, not for filing a motion seeking leave to amend.

Moreover, it seems that the delayed rejection of the Amended Answer is an afterthought, especially in light of the fact that none of the cases cited by Mr. Wertheim support the proposition that the Scheduling Order set a deadline for moving to amend the

pleadings.

In light of the foregoing, it is respectfully requested that the Court rule that the Amended Answer is timely and that no motion to amend the pleading is required.

Very truly yours,

/s/ Boris Kogan
Boris Kogan (BK-9135)

DB:zk
Encl.

cc: Eric Wertheim, Esq. (Via Facsimile)