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September 28, 2019

VIA ECF

Hon. Robert W. Lehrburger  
United States Magistrate Judge  
United States Courthouse  
500 Pearl Street  
New York, NY 10007

Re: *Emil Shasha, Trustee, et al., v. Peter L. Malkin, et al.*, No. 14-CV-9989 (AT) (RWL)

Dear Judge Lehrburger:

Plaintiffs and Defendants jointly submit this status report pursuant to the Court's March 11, 2015 order, as reaffirmed by the Court's January 22, 2018 order, to report every sixty (60) days as to the status of the pending arbitration between the parties, *Emil Sasha, Trustee, et al. v. Peter L. Malkin, et al.*, AAA No. 01-14-0001-6986.

Arbitration hearings were held on May 24-26, 2016, October 13-14, 2016, January 18-20, 2017, February 13-17, 2017, April 5-7, 2017, May 4-5, 2017, the week of June 5, 2017, June 12, 14-16, 2017, November 13-15, 2017, December 11-13, 2017, January 18, 2018, May 31-June 1, 2018, and July 10-11, 2018. The final session of hearings was held on August 7, 2018.

The arbitrators adopted a briefing schedule on August 8, 2018, that set a due date of December 3, 2018, for initial post-hearing briefs. Plaintiffs challenged the briefing schedule on September 21, 2018, and submitted a proposed alternative briefing schedule on October 17, 2018. One of the Plaintiffs' objections is that the defamation *per se* counterclaim against a single, separate party be severed from briefing on the main claims of the other nine parties. The arbitrators held a telephone conference with the parties on November 6, 2018. The arbitrators issued an order on November 15, 2018, making certain changes to the due dates for briefs, but denying Plaintiffs' requests relating to severance of the counterclaim and format of the briefs.

Plaintiffs continued attempts over the ensuing months to persuade the arbitrators to sever the counterclaim against the single, separate party from the briefing involving the nine other parties. The arbitrators instead authorized Defendants to file an initial brief commingling their defamation counterclaim against the one party with a so-called "anticipatory answer" to the main claims of the other nine parties. On March 12, 2019, Claimant Judith Jacobson withdrew from the arbitration citing severe anxiety out of fear that she will be found liable to the counterclaim even though she is not a party to it. On March 21, 2019, Plaintiffs filed a request with the AAA

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for relief, and a stay of the briefing schedule pending resolution of the issues. The AAA denied that request in an email dated March 26, 2019.

On March 28, 2019, in response to Plaintiffs' March 21, 2019 request to the AAA and in response to a March 25, 2019 request from counsel for the separate counterclaim respondent, the arbitrators adjourned the due date for initial briefs to June 27, 2018. Plaintiffs filed additional objections with the arbitrators on March 28 and April 8, 2019, and the arbitrators on April 9, 2019, issued an order summarily denying all requests and demands.

On May 21, 2019, after consultations with medical and ethical professionals, the Plaintiffs advised the arbitrators that they cannot consent to the post-hearing briefing schedule, that they will need a six-month recess on medical, legal, and ethical grounds, pursuant to AAA Commercial Rule 37(c), without compromising their right to complete the arbitration. On July 18, 2019, the arbitrators issued an order granting the request, extending the due date for initial and reply briefs to January 17, 2020, and March 23, 2020, respectively, and stating that this will be the last modification to the post-hearing briefing schedule.

Respectfully submitted,

*/s/ John W. Griggs*  
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*/s/ David S. Pegno*  
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cc: Parties of record