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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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DANNY ABRAHAMS, ANTHONY CELARDO,  
KEVIN CHRISTMAN, LAUREN EPSTEIN,  
MERYL JACKELow, EVAN SKIDMORE,  
DAVID TINDAL, and LEE WOLBROM,

Plaintiffs,

-against-

**ORDER**  
**10-CV-1535 (SJF) (ARL)**

MTA LONG ISLAND BUS,  
Defendant.

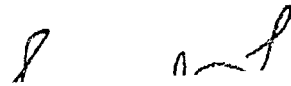
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FEUERSTEIN, J.

On April 7, 2010, plaintiffs Danny Abrahams, Anthony Celardo, Kevin Christman, Lauren Epstein, Meryl Jackelow, Evan Skidmore, David Tindal, and Lee Wolbrom (collectively, "Plaintiffs") commenced this action against defendant MTA Long Island Bus ("Defendant"), asserting violations of, *inter alia*, the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.* ("ADA"). On April 9, 2010, Plaintiffs moved for a preliminary injunction, and a Temporary Restraining Order ("TRO") was issued "enjoining Defendant from implementing changes in its paratransit policy" until April 27, 2010. *See* DE 7. On April 28, 2010, the TRO was continued for thirty (30) days until May 27, 2010. *See* DE 20. On May 25, 2010, this Court entered an Order denying Plaintiffs' motion for a preliminary injunction and dismissing Plaintiffs' Complaint (the "May 25<sup>th</sup> Order"). *See* DE 16. Plaintiffs filed a notice of appeal of the May 25<sup>th</sup> Order on May 26, 2010. *See* DE 29. On May 27, 2010, the Second Circuit issued a mandate denying Plaintiffs' emergency motion for a temporary restraining order and indicating that the appeal would be decided "in due course." *See* DE 31.

On June 18, 2010, Plaintiffs filed a motion to vacate the May 25<sup>th</sup> Order pursuant to Rules 59 and 60 of the Federal Rules of Civil Procedure. Plaintiffs filed a letter indicating that Defendant would not be filing opposition papers because “in his view, the case is closed with this Court.” *See* DE 32.

By filing a notice of appeal, Plaintiffs divested this Court of jurisdiction to grant a motion to modify or vacate a judgment without consent of the Second Circuit. *See Toliver v. County of Sullivan*, 957 F.2d 47, 49 (2d Cir. 1992) (a district court may deny a Rule 60 motion pending appeal, but may not grant the motion without consent); *see also* Fed R. Civ. P. 60(a). As there is no indication that consent has been granted, Plaintiffs’ motion is denied without prejudice.

SO ORDERED.



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SANDRA J. FEUERSTEIN  
UNITED STATES DISTRICT JUDGE

Dated: March 21, 2011  
Central Islip, New York