

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ELIOT I. BERNSTEIN, et al.

Plaintiffs,

-against-

APPELLATE DIVISION FIRST  
DEPARTMENT DEPARTMENTAL  
DISCIPLINARY COMMITTEE, et al.

DOCKET NO:  
07Civ11196 (SAS)  
[rel. 07 Civ 09599]

MOTION IN  
OPPOSITION TO ORDER

Defendants  
-----X

MOTION IN OPPOSITION TO STAY ORDER DATED MAY 09 2008 ~  
REQUEST FOR CLARIFICATION OF ORDER

PLAINTIFFS, ELIOT I. BERNSTEIN, Pro se, individually and P. STEPHEN LAMONT, Pro se and Plaintiff BERNSTEIN on behalf of shareholders of Iviewit Holdings, Inc., Iviewit Technologies, Inc., Uview.com, Inc., Iviewit Holdings, Inc., Iviewit Holdings, Inc., Iviewit.com, Inc., Iviewit.com, Inc., I.C., Inc., Iviewit.com LLC, Iviewit LLC, Iviewit Corporation, Iviewit, Inc., Iviewit, Inc., and other John Doe companies (collectively, "Iviewit Companies"), and patent interest holders, move this honorable Court to clarify the Order dated May 9, 2008 in this case and in support state as follows:

REQUEST FOR CLARIFICATION OF ORDER

1. Plaintiffs are in receipt of your Order dated May, 9, 2008 ("Order"). Plaintiffs want to confirm our understanding of your Honor's Order, and reserve the right to oppose the Order if necessary. The Order states that the additional Defendants will be served after Your Honor rules on the pending motions to dismiss. That will start the time period for responsive pleadings. Plaintiffs assume this was ordered to allow the Court to maintain proper order and scheduling in this case, so that pending and anticipated



motions can be determined, resulting in the additional Defendants being served thereafter. Plaintiffs also assume that since the Court is not "Served", but instead the Amended Complaint was properly filed, that it is a Pleading, although not yet docketed and is part of the record as of this time. Plaintiffs filed the Amended Complaint which does not appear on the docket but other documents filed with it are and Plaintiffs want to clarify that the Amended Complaint constitutes a Pleading that will be formally docketed. As such, Plaintiffs can use it in responding to Defendant's motions and for other similar purposes.

2. Plaintiffs also assume that the additional Defendants will be served regardless of the outcome of the Motions practice, as many new Defendants have that status irrespective of the initially named Defendants based on their alleged actions and inactions as set forth in the Amended Complaint. Please respond to this Motion in Opposition to Order and confirm our understandings, whereby if correct they may save the Court having to review a more formal motion in opposition to the stay Order.

3. Where it appears from the attached letters (i) dated May 13, 2008 from Proskauer to Plaintiffs (Exhibit 1) (ii) Kent Anker letter dated May 14, 2008 to Plaintiffs (Exhibit 2) (iii) an email accepting the Amended Complaint from Greenberg Traurig, PA, on May 14, 2008 (Exhibit 3) (iv) an email accepting the Amended Complaint from Fried dated May 14, 2008 (Exhibit 4), that Proskauer, Greenberg, Anker and Fried also appear confused by the May 09, 2008 Order and appear to seek confirmation of their opinions of Your Honor's Order from Pro Se guys versus Your Honor, and, whereby Plaintiffs await an answer to this request for clarification before presuming to know any answers or taking any actions predicated on assumption regarding serving the Amended Complaint. Since some parties are accepting the sending of the copy of the Amended Complaint to Proskauer in response to their letter as service and some are refusing to be served the Amended Complaint copied them, pointing to the Order, and, where everyone on the carbon copy list of Proskauer's letter was sent the Amended Complaint as a courtesy copy in response to Proskauer's demand to be served, it is apparent that some parties are accepting this as service and some not and Plaintiffs are confused, like other counsel, if the Court's Order meant that both old and new Defendants were not to be served the Amended Complaint, etc.



4. Plaintiffs also requested to know if the Court will have the Marshal's Office serve the Amended Complaint on all old Defendants, due to the problems with the original service of the Complaint being lost and Defendants claiming they have been improperly served by the Marshal, due to mail problems caused by actions from other than Plaintiffs. Whereby certain Defendants in several cases have stated that they were not served all documents or incomplete service and these issues remain unresolved. That in the MOTION FOR PRO SE OFFICE TO COPY AND TRANSMIT AMENDED COMPLAINT TO U.S. MARSHAL'S OFFICE which in part was denied for the time being by Your Honor, that question remains unanswered but to clarify confusions, Plaintiffs again ask this Court to have the Marshal's service serve the old Defendants the Amended Complaint so that everyone is properly served at least one of the complaints, as well as, the new Defendants later servicing of the Amended Complaint by the Marshal's office at the Court's discretion. If the Court would like Plaintiffs to serve the old Defendants the Amended Complaint please issue clarification as it was unclear in the prior Order whether Plaintiffs should service such old Defendants and whereby the Affidavit of Service was contingent upon a Court decision regarding these matters. Whereby to facilitate Proskauer in the spirit of adversarial etiquette, a copy of the Amended Complaint was sent to Proskauer as demanded by Proskauer, to avoid burdening the Court with a formal request for clarification they claimed. A carbon copy was also sent to all those Defendants Proskauer carbon copied their letter too. Where in no way was this sending a copy intended to be servicing of the Amended Complaint inapposite of the Court Order but it appears that some Defendants felt that service was due and accepted it and others refused it?

5. That Plaintiffs' contacted the Pro Se desk whom claimed that it had to be served to old Defendants despite the Court Order and whereby Plaintiffs are more confused with this claim and await the answer to this Motion before sending service to any remaining parties and possibly violating the Court Order. Where the Pro Se desk also claimed that the Amended Complaint was not docketed and did not know why and could not confirm receipt, although other documents docketed by the Court were in the same package leaving Plaintiffs wondering if the Amended Complaint has been lost in the mail as was the Complaint.



**WHEREFORE**, based on the above, Plaintiffs request this Court provide clarification to the Order and if such interpretations offered by Plaintiffs are incorrect, allow Plaintiffs time to oppose the Order formally after clarification. Plaintiffs believe that the stay requested by Proskauer was premature and that after this Court reviews the filed Amended Complaint, the Court will order all Defendants to be served timely with the Court's schedule and direction, lifting any temporary stay at such time on both new and old Defendants or just new Defendants, as Proskauer's arguments to stay the service of the Amended Complaint were based on a draft amended complaint and all those arguments to stay are moot when viewed against the filed Amended Complaint.



**Exhibit 1 – Proskauer Letter Dated May 13, 2008**



PROSKAUER ROSE LLP

1585 Broadway  
New York, NY 10036-8299  
Telephone 212.969.3000  
Fax 212.969.2900

BOSTON  
BOSTON  
CHICAGO  
LONDON  
LOS ANGELES  
NEW ORLEANS  
NEW YORK  
PARIS  
SAO PAULO  
WASHINGTON

Joanna Smith  
Attorney at Law

Direct Dial 212.969.3437  
jsmith@proskauer.com

May 13, 2008

**By Fax and U.S. Mail**

Eliot I. Bernstein  
Iviewit Technologies, Inc.  
39 Little Avenue  
Red Bluff, CA 96080

P. Stephen Lamont  
35 Locust Avenue  
Rye, N.Y. 10580

Re: *Bernstein v. Appellate Division First Departmental Disciplinary  
Committee, et al.*, Index. No. 07 CV 11196 (SAS)

Dear Sirs:

I write to inform you that we have not yet received your Amended Complaint which, pursuant to the Court's April 14, 2008 Order, was to be filed by May 12, 2008.<sup>1</sup> In that same Order, the Court ruled that "[n]otwithstanding the filing of the Amended Complaint, defendants' deadline to move to dismiss or file an answer remains May 30, 2008." It is our understanding that, pursuant to this Order, our motion to dismiss should address the allegations made in the Amended Complaint, rather than the original Complaint.

We are in receipt of the Court's May 9, 2008 Order addressing our request, made by letter of the same date, to file a motion to stay service of the Amended Complaint on the additional defendants not named in the original Complaint pending the Court's disposition of the motions to dismiss to be filed May 30, 2008. We presume that you are also in possession of that Order.

---

<sup>1</sup> The Court's Order stated that the Amended Complaint was to be filed no later than May 10, 2008, but because May 10, 2008 was a Saturday, pursuant to the Federal Rules of Civil Procedure, the deadline for filing the Amended Complaint would be the following Monday, May 12, 2008.



PROSKAUER ROSE LLP

Eliot I. Bernstein & P. Stephen Lamont

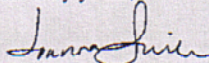
May 13, 2008

Page 2

Reading the two orders together, we believe that it was the Court's intention that Plaintiff serve the original defendants with the Amended Complaint, as it is necessary for us to receive that document in order to complete the motions to dismiss due May 30, 2008. Accordingly, we request that you serve us with the Amended Complaint (by fax followed by mail) as soon as possible.

If we do not receive the Amended Complaint by the close of business tomorrow, May 14, 2008, we will be forced to seek clarification from the Court. Your prompt attention to this letter would be appreciated.

Sincerely yours,



Joanna Smith

cc: Gregg M. Mashberg

Monica Connell, Esq.  
Office of the New York State Attorney General  
Counsel for the New York State Defendants

Kent K. Anker, Esq.  
Lili Zandpour, Esq.  
Friedman Kaplan Sciler & Adelman LLP  
Counsel for the Foley Lardner LLP Defendants

John W. Fried, Esq.  
Fried & Epstein LLP  
Counsel for Defendant Joao

Stephen H. Hall  
Office of the Virginia State Attorney General  
Counsel for the Virginia Defendants