UNITED STATES DISRICT COURT
SOUTHERN DISTRICT OF NEW YORK
_____X

ELIOT I. BERNSTEIN, et al.,

Plaintiffs,

-against-

APPELLATE DIVISION, FIRST DEPARTMENT DEPARTMENTAL DISCIPLINARY COMMITTEE, *et. al.,*

Defendants.
_____X

Case No. 1:07-cv-11196-SAS
Related Case No. 1:07-cv-09599-SAS

NOTICE OF EMERGENCY MOTION FOR CLARIFICATION OF ORDER

PLEASE TAKE NOTICE that upon the accompanying affirmation and the exhibits, Pro Se Plaintiff Eliot Ivan Bernstein will move this Court before the Honorable Judge. Shira A. Scheindlin, United States District Judge, at the United States Courthouse, 500 Pearl Street, New York, New York 10007, at a date and time to be determined by the Court, for an order:

(1) For clarification of Order[1] dated August 14, 2012, docketed as #141, in response to Plaintiff's motion titled "EMERGENCY MOTION (pursuant to Rule 40 60(b) and (d)(3) of the FRCP to Reopen Case, MOTION for appointment of a federal monitor

[1] http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20120814%20Scheindlin%20Order%20Re%20Motion%20to%20ReOpen.pdf

and MOTION fur New Trial and for a fair and impartial jury trial as the law may deem just and proper filed on July 27, 2012 docketed as #138[2]

(2) In the alternative reconsideration of order;

(3) for such other relief as the Court may find just and proper.

Dated: Boca Raton, FL

_____, 2013

Eliot I. Bernstein
2753 NW 34th St.
Boca Raton, FL 33434
(561) 245-8588

To: Defendants
Office of the NYS Attorney General
120 Broadway, 24th floor
New York, New York 10271-0332

and

APPELLATE DIVISION, FIRST DEPARTMENT DEPARTMENTAL DISCIPLINARY COMMITTEE, et al., and all Defendants listed in Exhibit 1 of this Motion.

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2 http://www.iviewit.tv/20120727%20COURT%20STAMPED%20FINAL%20SIGNED%20Motion%20to%20Remand%20and%20Rehear%20Lawsuit%20after%20Investigations%20of%20the%20New%20York%20Attorney%20General%20415935.pdf

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UNITED STATES DISRICT COURT

SOUTHERN DISTRICT OF NEW YORK

_____X

ELIOT I. BERNSTEIN, *et al.,*

Plaintiffs,

-against-

Case No. 1:07-cv-11196-SAS
Related Case No. 1:07-cv-09599-SA

APPELLATE DIVISION, FIRST DEPARTMENT DEPARTMENTAL DISCIPLINARY COMMITTEE, *et al.,*

AFFIRMATION

Defendants.

_____X

I, Eliot I. Bernstein, make the following affirmation under penalties of perjury:

I, Eliot I. Bernstein, am the pro se plaintiff in the above entitled action, and respectfully move this court to issue an order

1. For clarification of Order[3] dated August 14, 2012, docketed as #141, in response to Plaintiff's motion titled "EMERGENCY MOTION (pursuant to Rule 40 60(b) and (d)(3) of the FRCP to Reopen Case, MOTION for appointment of a federal monitor and MOTION fur New Trial and for a fair and impartial jury trial as the law may deem just and proper Filed on July 27, 2012 docketed as #138[4];

[3] http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20120814%20Scheindlin%20Order%20Re%20Motion%20to%20ReOpen.pdf

[4] http://www.iviewit.tv/20120727%20COURT%20STAMPED%20FINAL%20SIGNED%20Motion%20to%20Remand%20and%20Rehear%20Lawsuit%20after%20Investigations%20of%20the%20New%20York%20Attorney%20General%20415935.pdf

2. In the alternative reconsideration of order,

3. For such other relief as the Court may find just and proper.

The reasons why I am entitled to the relief I seek are the following:

I. INTRODUCTION

1. That on August 14, 2012, this Court issued an Order[5] that contradicts the record in this case and appears to violate this Court's rules and law in efforts to hide thousands of Defendants in this matter and shield them from liabilities, whereby in so doing, it could be concluded that this Court is aiding and abetting a Criminal RICO Organization through violation of Plaintiff's Constitutional Due Process and Procedure Rights and Obstructing Justice by failing to properly identify and serve the Defendants as listed in the Amended Complaint.

2. That the Order states, "For example, plaintiff seeks to name almost four thousand individuals and corporations as defendants in a re-instituted action." This statement is wholly false and must be clarified and corrected and the docket must be also corrected to show ALL Defendants named in the Amended Complaint, as Plaintiff is not seeking to add them in this action as they are already Defendants approved by this Court and were so classified, even by this Court, as new Defendants in the Amended Complaint and thus they should be served and respond to all pleadings and orders filed in the case, including the Amended Complaint. Yet, a funny and perhaps criminal thing happened on the way to

5 http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20120814%20Scheindlin%20Order%20Re%20Motion%20to%20ReOpen.pdf

servicing certain of the Defendants in this case that Obstructs Justice and denies Plaintiff Due Process and also deny these unserved Defendants Due Process.

3. That in the Attorney General's conflicted and therefore void response to the Emergency Motion, dated August 14, 2012[6], they too appear to be just as confused as to how many Defendants are sued under the Amended Complaint, when claiming, "Plaintiff alleges that an 'amended Rico and Antitrust Lawsuit' against 3787 defendants, including federal and state judges, has been approved by this Court." Plaintiff does not allege this, as the fact is that the Court approved an Amended Complaint by Order on August 14, 2008[7], "the Court has received plaintiffs' request to file an Amended Complaint. Plaintiffs' request is granted" and in that approved Amended Complaint there are well over 3,787 Defendants listed, as evidenced herein.

4. That the New York Attorney General's response should be stricken in entirety due to the prevailing Conflicts of Interest their self-representations and conflicted representations of the State of New York Defendants creates, as more fully defined in Plaintiff's Motion to Rehear #2 and Remove the Attorney General[8], as fully incorporated by reference herein.

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6 http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20120824%20082412%20Docket%20Report%2008-14-2012%20140%20MEMORANDUM%20OF%20LAW%20in%20Opposition%20re%20138%20MOTION%20to%20Reopen%20Case%20%20MOTION%20for%20New%20Trial%20%20Motion%201.pdf

7 http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20080414%20Order%20Granting%20Filing%20of%20Amended%20Complaint.pdf

8 http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20130228%20FINAL%20SIGNED%20Motion%20to%20Rehear%20and%20Reopen%20AG%20Conflicts%20.pdf

5. That Defendant Proskauer's conflicted and therefore technically void response to the Emergency Motion, dated August 13, 2012[9], also appears to be confused on just who is a Defendant under the Amended Complaint, when claiming, "His [Plaintiff's] requests for relief are summarized on pages 61-62 of his 286 page submission (Doc. No. 138). As part of the relief requested, he seeks leave to name almost four thousand enumerated individuals and corporate entities as defendants in a reinstituted action" and "Indeed, Bernstein flaunts the Court's prior ruling, as he now seeks to sue not hundreds - but thousands of defendants, virtually none of whom he alleges to have engaged in wrongdoing. Overwhelmingly, he has apparently copied the names of thousands of proposed new defendants from (outdated) law firm, industry and government directories…" These statements are false and intentionally misleading as they attempt to claim that these are new Defendants, when they were all Defendants in the Amended Complaint.

6. That Proskauer's response should first be stricken in entirety due to the prevailing Conflicts of Interest their self-representations has created since the start of this action, as Proskauer is (i) the main Defendant in the RICO allegations regarding the theft of Plaintiff's Intellectual Property, (ii) Plaintiff was Proskauer's former client for Corporate and Intellectual Property, (iii) Proskauer is now representing themselves in this case in several conflicted capacities both Pro Se and then representing select other Proskauer

9 http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20120813%20Proskauer%20Response%20to%20Emergency%20Motion.pdf

Defendants as counsel, both personally and professionally, where Pro Se Defendants can only represent themselves and not others and (iv) where Proskauer is only representing select Partners, Associates and Of Counsel when every one of them has been sued.

7. That as illustrated in the August 13, 2012 response Proskauer Partner Gregg M. Mashberg responded for only the following Defendants, "**Attorneys pro se** for Proskauer Rose LLP, and Attorneys for Kenneth Rubenstein, Steven C Krane, and the Estate of Stephen Rackow Kaye." Yet, Mashberg is representing himself Pro Se and fails to list himself as one of the Defendants he is responding for. Therefore, this Court must clarify for Proskauer's Mashberg and Smith who they are representing and in what capacity are they representing "pro se." It is unclear from their own language if they are representing Proskauer Rose LLP pro se, as their language states exactly that, "**Attorneys pro se for Proskauer Rose LLP** and…" Are they representing themselves Pro Se or their firm and partners pro se? Again, wholly confusing.

8. That this confusion carries forward for the Proskauer Partners allowed by this Court to act in conflict in other matters regarding proper procedure, as in a recent March 21, 2013 letter to Plaintiff by Proskauer, herein entered as Exhibit 2. In this threatening letter to either withdraw Plaintiff's last motion to reopen Dkt No. 142 or else face foreshadowed judicial sanctions, written by Gregory Mashberg, the letter is again unclear as to who he is representing and in what capacities he is representing and again confusion arises in who the Proskauer Defendants are and again Plaintiff too is confused. Is Proskauer Partner Mashberg, who represents the firm Proskauer "pro se" according to his pleadings

writing this threatening letter to Plaintiff as defendant counsel or as a defendant responding Pro Se, or just as a Defendant in this letter regarding these matters? Mashberg and Smith since the Amended Complaint have begun, without court approval, representing themselves and Proskauer in a "pro se" capacity as indicated in their own pleadings and letters, or is Proskauer acting as counsel for the Proskauer Defendants Mashberg and Smith, again the conflicts make these distinctions impossible to decipher and why this Court must clarify its prior rulings. If they are contacting me as Defendants this is also quite outside the rules of this Court and Law, since they should be represented by non-conflicted counsel that can contact Plaintiff, not themselves representing themselves as defendants against their former client. Yet, since this Court has overlooked these conflicts initially and allowed them to persevere, it must now be clarified who Proskauer represents and whom they are represented by, as well as who the total Proskauer Defendants are and in what capacities each is represented and by whom they are being represented by and who are the "pro se" Partners Mashberg and Smith representing, the firm, the Partners et al. or themselves, as Plaintiff finds no sustainable law to allow these wholly conflicted parties to represent this lawsuit in such conflicted capacities. Yet, as this Court and Your Honor have created this conflict circus by allowing conflict rules and law to be tossed out entirely in how the case is represented by the Defendants, this must be clarified as it is all precedence setting. In fact, Mashberg in the letter fails to include himself as a Defendant in his list of Defendants although he and Smith responded to the Amended Complaint as Defendants Pro Se while representing

Proskauer "pro se" against their former client Plaintiff, where the web of conflicting legal roles and violations of Attorney Conduct Codes again law again becomes so thick one cannot clearly understand anyone's role in this matter, an Abbot and Costello "Who's on first?" Yet, in this threatening letter to Bernstein to withdraw, Mashberg states, "As you know [and Plaintiff does not know], we represent" and where Plaintiff is unclear as to just who "we" is. Is the "we represent" referencing Proskauer or Mashberg or Smith acting Pro Se representing Proskauer, or is it a singular "we" as Mashberg representing himself Pro Se or is it is Proskauer representing Pro Se themselves and their partners?

9. That further Mashberg's letter states, "we represent Proskauer Rose LLP, Kenneth Rubenstein, Christopher C. Wheeler, Steven C. Krane (deceased), and the Estate of Stephen R. Kaye (collectively, the "Proskauer Defendants"). Where Plaintiff does not agree that these are collectively the "Proskauer Defendants" as clearly it is missing not only Mashberg and Smith who responded Pro Se but it misses the rest of the Proskauer Partners, Associates and Of Counsel and clearly it is again a "cherry picked" list that fails to accurately describe the real collective Proskauer Defendants sued.

10. That these questions must be clarified by the Court now, so Plaintiff and Defendants Counsel and this Court can ascertain how to file pleadings forward and whom to address them to and in what capacities they are representing and what capacities they are sued under and what capacity they are writing threatening letters to Plaintiff under and is that contact of defendants proper or legal, in a case that since the first day follows absolutely

no rules of Due Process and Procedure by allowing this conflict swamp to continue in opposite of this Court's own rules and law.

11. That from Proskauer's recent letter to Plaintiff and the Court's own August 14th Order, the Proskauer Defendants listed by Proskauer and this Court do not even match. As this Court claims the "The 'Proskauer Defendants' include Proskauer Rose LLP, Kenneth Rub[e]nstein[10], Stephen C. Krane (deceased) and the Estate of Stephen R. Kaye." Where this Court's accounting of the Proskauer partners is missing Christopher Wheeler, a central Conspirator, who is listed in the Proskauer letter as a Defendant by Gregory Mashberg. Both this Court and Proskauer cannot fail to include Mashberg and Smith as Proskauer Defendants when they clearly responded to the Amended Complaint as Defendants and again this Court must clarify this for the continued administration of this suit.

12. That let us be crystal clear that the Amended Complaint that only certain "cherry picked" Proskauer Partners, Associates and Of Counsel responded to, in fact names ALL the Proskauer Partners at that time of filing the Amended Complaint and also included the following central conspirators who were named directly as Defendants, not just the "cherry picked" few that responded to the Emergency Motion in their August 13, 2012 response or the "cherry picked" few who responded to the Amended Complaint and other pleadings. Many of these named Proskauer Defendants listed below and named in the Amended Complaint did not, nor have ever, filed responses either personally or

[10] The correct spelling is Rubenstein for the Court record.

professionally despite their firm accepting service of the complaint, which on the cover page alone included these named Proskauer Defendants,

> "PROSKAUER ROSE LLP, **and, all** of its Partners,
> Associates and Of Counsel, in their professional and
> individual capacities,
> STEVEN C. KRANE in his official and individual
> Capacities for the New York State Bar Association
> and the Appellate Division First Department
> Departmental Disciplinary Committee, and,
> his professional and individual capacities as
> a Proskauer partner,
> KENNETH RUBENSTEIN, in his professional
> and individual capacities,
> ESTATE OF STEPHEN KAYE, in his professional and
> individual capacities,
> ALAN S. JAFFE, in his professional and individual
> capacities,
> ROBERT J. KAFIN, in his professional and individual
> capacities,
> CHRISTOPHER C. WHEELER, in his professional
> and individual capacities,
> MATTHEW M. TRIGGS in his official and individual
> capacity for The Florida Bar and his professional and
> individual capacities as a partner of Proskauer,
> ALBERT T. GORTZ, in his professional and individual
> capacities,
> CHRISTOPHER PRUZASKI, in his professional and
> individual capacities,
> MARA LERNER ROBBINS, in her professional and
> individual capacities,
> DONALD "ROCKY" THOMPSON, in his professional and
> individual capacities,
> GAYLE COLEMAN, in her professional and individual
> capacities,
> DAVID GEORGE, in his professional and individual
> capacities,
> GEORGE A. PINCUS, in his professional and individual
> capacities,
> GREGG REED, in his professional and individual capacities,

LEON GOLD, in his professional and individual capacities,
MARCY HAHN-SAPERSTEIN, in her professional and individual capacities,
KEVIN J. HEALY, in his professional and individual capacities,
STUART KAPP, in his professional and individual capacities,
RONALD F. STORETTE, in his professional and individual capacities,
CHRIS WOLF, in his professional and individual capacities,
JILL ZAMMAS, in her professional and individual capacities,
JON A. BAUMGARTEN, in his professional and individual capacities,
SCOTT P. COOPER, in his professional and individual capacities,
BRENDAN J. O'ROURKE, in his professional and individual capacities,
LAWRENCE I. WEINSTEIN, in his professional and individual capacities,
WILLIAM M. HART, in his professional and individual capacities,
DARYN A. GROSSMAN, in his professional and individual capacities,
JOSEPH A. CAPRARO JR., in his professional and individual capacities,
JAMES H. SHALEK, in his professional and individual capacities,
GREGORY MASHBERG, in his professional and individual capacities,
JOANNA SMITH, in her professional and individual capacities,

Plaintiff states that the remaining Proskauer Partners, Of Counsel and Associates that were sued were served when the firm and certain “cherry picked” Partners accepted service and responded to the Amended Complaint. Therefore, all of these other Proskauer Defendants named have therefore failed to respond to the Amended Compliant or any other pleadings and therefore should be considered by the Court as defaulting in

this lawsuit, despite Proskauer's carefully crafted attempts to claim they did not know these Partners et al. were sued since the Amended Complaint and now try to hide this fact with the Court it appears ever since.

13. That the Amended Complaint approved and docketed by this Court, included at that time over five thousand individuals and corporations as Defendants in this RICO and ANTITRUST lawsuit and all should have been served by either the Court or Plaintiff according to procedure and law and ALL Defendants should have been compelled to respond.

14. That only a select "cherry picked" group of the Original Complaint Defendants and the newly added Amended Complaint Defendants responded to the Amended Complaint, in opposite of law and setting new precedence by this Court, when the Court apparently "cherry picked" with Proskauer which Defendants to serve and respond and which ones did not have to. Plaintiff demands the Court to clarify just how and under what law this prejudicial "cherry picking" of Defendants scheme was decided, as the Court states in the Order dated August 13, 2012, "The remaining defendants are directed to save their resources and not file any opposition papers to the instant Motion."

15. That Plaintiff demands this Court list each and every Defendant by name that comprises the "remaining defendants" who do not have to file opposition papers, as it is evidenced herein that Defendants and this Court do not seem to know or agree on just exactly who the Amended Complaint Defendants are. It is unclear how many were served the Original and Amended Complaint and how many were not, again wholly prejudicing the

lawsuit. It is unclear as evidenced herein who and how many have responded to pleadings and in what capacities they have responded and who responded for them as counsel and in what capacities. In fact, Proskauer claims in their response that there are "hundreds" of Defendants in the Amended Complaint, if so, where are their responses and how many exactly is "hundreds?"

16. That Proskauer claims in their response that Plaintiff is seeking leave to amend to add "thousands" of Defendants, yet this is merely another attempt to claim these thousands of Amended Complaint Defendants are now "new" in attempts to cover up the fact that they were all named in the Amended Complaint but that service was interfered with and that they are actually Defendants in this lawsuit since that time the Amended Complaint was filed and have not pleaded legal responses due to Obstruction through interference of service.

17. That the Court will note that the language of the Amended Complaint approved by the Court and the list of Defendants named at that time totaled over five thousand Defendants. For example, Plaintiff sued several large law firms all with the same type language, for example with Defendant Proskauer, the Amended Complaint states, **"PROSKAUER ROSE LLP, and, <u>ALL</u> of its Partners, Associates and Of Counsel, in their professional and individual capacities"** and for Defendant MPEG **"On information and belief, defendant MPEGLA, LLC[5] (hereinafter "MPEG") sued herein is a domestic limited liability company providing alternative technology licenses to the public, located at 6312 S Fiddlers Green Circle, Suite 400E,**

Greenwood Village, Colorado 80111" where the footnote 5 next to MPEGLA in the Amended Complaint states additionally **"Plus royalties derived from patent pools including but not limited to: MPEG-2, ATSC, AVCIH.264, VC-1, MPEG-4 Visual, MPEG2 Systems, DVB-T, 1394, MPEG-4 Systems, other programs in development."**

18. That at the time the Amended Complaint was filed in 2008 the Proskauer Partners, Associates and Of Counsel know to Plaintiff totaled approximately 600 plus, ALL sued in both a personal and professional capacity, totaling approximately 1200 Defendants for just Proskauer, that is if the Court counts each capacity as an individual Defendant for docketing and response purposes, see APPENDIX A - EXTENDED LIST OF DEFENDANTS THAT WAS SUBMITTED TO THIS COURT AS PART OF THE AMENDED COMPLAINT & OTHER PLEADINGS @ http://iviewit.tv/CompanyDocs/Appendix%20A/index.htm and attached herein as Exhibit 1.

19. That Exhibit 1 is an excellent place for this Court to start its list of total Defendants in this Lawsuit despite whether service and response to the Amended Complaint were Obstructed they remain Defendants.

20. That a quick tally of the Defendants that were sued under the Amended Complaint will help clarify just how many Defendants were sued at that time and should be considered "defendants" not new defendants,

	Law Firms Sued Defendant	Total No. Individuals Sued Approximate
1	Proskauer Rose	601
2	Foley & Lardner	1042
3	Schiffrin & Barroway	42
4	Blakely Sokoloff Taylor & Zafman	76
5	WILDMAN, HARROLD, ALLEN & DIXON LLP	198
6	MELTZER, LIPPE, GOLDSTEIN, WOLF & SCHLISSEL, P.C.	34
7	BROAD & CASSEL	Not Available
8	HARRISON GOODARD FOOTE	Not Available
9	HOUSTON & SHAHADY, P.A.	Not Available
10	FURR & COHEN, P.A.	Not Available
11	MOSKOWITZ, MANDELL, SALIM & SIMOWITZ, P.A.	Not Available
12	SACHS SAX & KLEIN, P.A.	Not Available
13	CHRISTOPHER & WEISBERG, P.A.	Not Available
14	YAMAKAWA INTERNATIONAL PATENT OFFICE	Not Available
	TOTAL LAW FIRM DEFENDANTS SUED	1993

NDA's, NON-COMPETES, EMP AGREEMENTS, STRATEGIC ALLIANCES, LICENSEES, OTHER CONTRACT VIOLATERS	Number of Defendants Sued in Amended Complaint	768
Patent Pools Sued		
MPEG	Number of Defendant Licensors and Licensees Sued in Amended Complaint	640
DVD6C LICENSING GROUP (DVD6C)	Number of Defendant Licensors and Licensees	230
	Defendants Sued	**5624**

21. That just in these categories of Defendants sued in the Amended Complaint, Plaintiff has over five thousand Defendants and there are more as several of the law firms partners were not fully known at the time of filing the AC. The law firm Defendants sued, all included language that clearly states, "**All** Partners, Associates and Of Counsel…" and if Plaintiff could secure the names of the Partners et al. when filing the Amended Complaint they were included by name as listed in Exhibit 1, however some of the law firms and their Partners sued were unknown to Plaintiff at the time as they were not published online but nonetheless they were all sued under the language and/or in Exhibit

in the Amended Complaint. Each law firm should be mandated by the Court to turn over a list of ALL Partners, Associates and Of Counsel at the time of filing the AC and any new ones added since the AC for proper accounting of the total Defendants.

22. That the Partners, Associates, Of Counsel of the law firms sued are all tied together for liability purposes through their partnership arrangements. Under the RICO statutes the criminal enterprise would certainly include all of the individual partners, etc. both individually and professionally that work in the Criminal Cartel Law Firms, as more fully described in the Amended Complaint. The Defendant law firms are all being sued in this matter as they are central conspirators in the theft of the Iviewit Intellectual Properties and ongoing racketeering activities in the conversion and theft of Plaintiff's Intellectual Property royalties and other crimes alleged. Each of the law firms and Attorneys at Law that are Defendants were therefore sued for good and just cause in the Amended Complaint.

23. The Second set of entities and individuals sued and named as Defendants in the Amended Complaint stem from contract violators of various contracts signed with the Iviewit companies and Eliot Bernstein, as defined in the Amended Complaint. This set of Defendants listed under the Amended Complaint totals approximately 768 more Defendants. These Defendants are sued for, including but not limited to, violations of contracts with the Iviewit companies and Inventor Eliot Bernstein. The Contract Violators were all sued for violations of agreements and therefore this class was sued for good and just cause in the Amended Complaint.

24. That the Third set of entities and individuals sued in the Amended Complaint stem from several Patent Pooling Scheme Licensors and Licensees and other infringers of the stolen Iviewit Intellectual Properties. That the Pooling schemes Licensors and Licensees are Defendants as they are committing Antitrust activities and more by blocking Plaintiff from market entry, as more fully described in the Amended Complaint and RICO Statement.

25. That these "Patent Pooling" Defendants are primarily being sued for royalties owed to Plaintiff and many of the Defendant Licensees are not alleged at this time to have acted knowingly in the criminal conspiracy to steal the Intellectual Property and other felony crimes alleged but are sued as infringers of the technologies. That many of the "Pooling" Defendants, mainly the Licensees, total another several hundred of Defendants sued in the Amended Complaint. While many of these are not central conspirators in the thefts of the Intellectual Properties, they do however act to create an illegal monopoly in violation of trade and antitrust laws, as described in the Amended Complaint.

26. That this class of "Patent Pooling" Defendants both Licensors and Licensees of the pools sued act to block Plaintiff from receiving royalties due to him that are instead being illegally converted to the Pools every day and where the profits are then split between a handful of Defendant Licensors who are centrally involved in the thefts of the Intellectual Properties, as more fully described in the Amended Complaint. This illegal conversion of royalties through illegal schemes occurs daily around the world, as Plaintiff has not received any royalties since discovering his retained Attorneys at Law and others had

stolen the Intellectual Properties and each act of conversion of these royalties constitutes continuing RICO crimes against Plaintiff daily.

27. That Defendant Proskauer Rose has controlled and monetized several of these Patent Pools and one of the largest infringers and central antitrust violators is Defendant MPEGLA LLC, with several Thousand Licensees and several dozen Licensors. Proskauer suddenly entered the Intellectual Property businesses and became involved directly in the pooling schemes immediately after learning of Plaintiff's technologies while retained Patent Counsel. Proskauer has used these illegal pooling schemes to convert the stolen royalties to themselves and their co-conspirators and block Plaintiff from market, as has been a problem with pooling schemes historically leading to their being broken apart by the Justice Department. Therefore ALL participants of the pools, both Licensors and Licensees in these schemes, were sued in the Amended Complaint for good and just cause. Other Patent Pooling Schemes listed in the Amended Complaint also have several Thousand infringer companies as Licensees and since such time as the Amended Complaint was filed several more patent pooling schemes have been discovered that infringe on Plaintiff's IP and Plaintiff will seek leave to amend the complaint shortly to reflect these Defendants, once this Court clarifies who already is a Defendant by clarifying and naming each party to this Lawsuit in the Amended Complaint.

28. That there are another hundred or more Defendants listed in the APPROVED AND DOCKETED Amended Complaint, consisting mainly of Public Officials, including

Judges and officials from State and Federal Agencies who have Aided and Abetted the conspiracy through misuse of Public offices and more to intentionally OBSTRUCT JUSTICE. That these ongoing Criminal Obstructions by the Defendant Public Officials and Offices are typical in RICO cases where public office corruption is a key component to almost every criminal RICO enterprise, necessary to evade prosecution. Therefore, these Public Officials and Agencies that are named Defendants were sued for good and just cause in the Amended Complaint.

29. That the Court should note here that Defendants who are infringing only on Plaintiff's Intellectual Properties as Licensees of the Pools can simply choose to take a license with Plaintiff and walk from this RICO & ANTITRUST Lawsuit, absolving themselves of any illegal infringement of Plaintiff's Intellectual Properties. The Defendants that are Licensees in these pooling schemes can opt simply to pay typical and customary royalties to the TRUE AND PROPER INVENTORS AND INVESTORS OF PLAINTIFF'S Intellectual Properties that are currently Pending/Suspended at the US and Foreign Patent and Copyright Offices and cease paying the Defendant Pools. Thus, thousands of the Defendants that have already become Defendants through the Amended Complaint could be let out of this suit by simply RESPONDING WHEN SERVED by admitting the infringement and taking a license with Plaintiff for typical and customary royalty fees that are due Plaintiff for his inventions. The Court should note here that in no pleading by any Defendants has it ever been disputed that Plaintiff has not developed and is

therefore entitled to as Inventor, the royalties from his technologies that are at the heart of this suit.

30. That this Court ERRED further in its Order dated August 14, 2012 when it claimed, "The 'Proskauer Defendants' include only Proskauer Rose LLP, Kenneth Rubinstein, Stephen C. Krane (deceased) and the Estate of Stephen R. Kaye." This statement is false. The Proskauer Defendants that were sued in the Amended Complaint include far more Proskauer Defendants than the Order mistakenly claims. Again, it appears a completely random selection of Proskauer Partners responded to the Amended Complaint and all future pleadings.

31. That some Proskauer Partners that were added as new Defendants in the Amended Complaint then began representing themselves Pro Se and others just wholly failed to file a response at all, which would leave them in default. The following is the EXACT language naming the Proskauer defendants that was APPROVED & DOCKETED BY THIS COURT in the Amended Complaint and whom ALL, not some random group, should have responded as required,

> PROSKAUER ROSE LLP, and, **all** of its Partners, Associates and Of Counsel, **in their professional and individual capacities**,
> STEVEN C. KRANE in his official and individual Capacities for the New York State Bar Association and the Appellate Division First Department Departmental Disciplinary Committee, and, his professional and individual capacities as a Proskauer partner,
> KENNETH RUBENSTEIN, in his professional and individual capacities,
> ESTATE OF STEPHEN KAYE, in his professional and individual capacities,
> ALAN S. JAFFE, in his professional and individual capacities,
> ROBERT J. KAFIN, in his professional and individual capacities,
> CHRISTOPHER C. WHEELER, in his professional and individual capacities,

MATTHEW M. TRIGGS in his official and individual capacity for The Florida Bar and his professional and individual capacities as a partner of Proskauer,
ALBERT T. GORTZ, in his professional and individual capacities,
CHRISTOPHER PRUZASKI, in his professional and individual capacities,
MARA LERNER ROBBINS, in her professional and individual capacities,
DONALD "ROCKY" THOMPSON, in his professional and individual capacities,
GAYLE COLEMAN, in her professional and individual capacities,
DAVID GEORGE, in his professional and individual capacities,
GEORGE A. PINCUS, in his professional and individual capacities,
GREGG REED, in his professional and individual capacities,
LEON GOLD, in his professional and individual capacities,
MARCY HAHN-SAPERSTEIN, in her professional and individual capacities,
KEVIN J. HEALY, in his professional and individual capacities,
STUART KAPP, in his professional and individual capacities,
RONALD F. STORETTE, in his professional and individual capacities,
CHRIS WOLF, in his professional and individual capacities,
JILL ZAMMAS, in her professional and individual capacities,
JON A. BAUMGARTEN, in his professional and individual capacities,
SCOTT P. COOPER, in his professional and individual capacities,
BRENDAN J. O'ROURKE, in his professional and individual capacities,
LAWRENCE I. WEINSTEIN, in his professional and individual capacities,
WILLIAM M. HART, in his professional and individual capacities,
DARYN A. GROSSMAN, in his professional and individual capacities,
JOSEPH A. CAPRARO JR., in his professional and individual capacities,
JAMES H. SHALEK, in his professional and individual capacities,
GREGORY MASHBERG, in his professional and individual capacities,
JOANNA SMITH, in her professional and individual capacities.

That the extended list of Proskauer partners known at that time and submitted with the Amended Complaint are included in Exhibit 1 in the list of known, at that time, Proskauer Partners, Associates and Of Counsel. Nonetheless, even those included on the face page of the suit failed to respond in any capacity sued.

32. That certain random Proskauer Partners et al. respond to the Amended Complaint and ensuing pleadings listed in the Original Complaint and Amended Complaint, a virtual pick and choose of what Proskauer defendants replied, in opposite of Due Process and

Procedure, which requires each Defendant to respond in all capacities sued under. Even the select few Proskauer Partners that seem to have accepted service and responded, then had a duty to notify all of their Partners, Associates and Of Counsel that the firm and every partner individually is sued directly as a Defendant both personally and professionally in this Lawsuit and they should have had every one of them respond both personally and professionally.

33. That when the Amended Complaint was filed, Proskauer Partners Mashberg and Smith who represent the Proskauer firm in conflict prior, where then sued in the Amended Complaint and after began representing themselves additionally in a Pro Se capacity, although it is not known if the Pro Se representation is for their personal or professional capacity they were sued in. The fact that they have accepted service and responded to the Amended Complaint should have forced them to notify at minimum all the 601+ Proskauer Defendants listed in the Amended Complaint of their liabilities both personally and professionally in this Lawsuit.

34. That it will certainly be interesting when this case gets to trial and due process is restored to imagine Proskauer representing Proskauer via their Partners Mashberg and Smith and how would they call to the stand themselves and cross examine themselves while representing the firm and themselves Pro Se, will they run back and forth in the Court when asking themselves questions to assume their different roles as Counsel and Defendant? The conflicts appear overwhelming and cause for a DISQUALIFICATION of Proskauer as their own counsel and all prior conflicted pleadings stricken entirely from

the record. This Court must follow its own rules and law and force Proskauer to retain counsel for their firm and each partner retain counsel for each capacity sued under.

35. That Mashberg and Smith began representing themselves in conflict Pro Se after the Amended Complaint was filed listing them as Defendants, so they cannot now deny that they were served the Amended Complaint. The failure to notify all their Partners et al. of their liabilities, again appears to impart that they are hiding liabilities from named Defendants in this Lawsuit and perhaps committing further insurance fraud if they have failed to notify their liability carriers, which begets the question of where is their liability carriers counsel in these matters and are they allowing Proskauer to self-represent in multiple capacities, against their former client?

36. That Proskauer and all of its Partners et al. also have a duty to their liability carriers and others with liabilities arising from these matters to give notice that Proskauer and ALL of its Partners, Of Counsel and Associates are being sued in this Lawsuit. Proskauer should also notice their liability carrier that they have also recently been sued by the Court Appointed Receiver in the Convicted Felon Ex-Sir Allen Stanford's Ponzi scheme as central conspirators in that scheme, for Aiding and Abetting a criminal enterprise and Conspiracy and more.

37. That Proskauer in their response to Plaintiff's Emergency Motion to Rehear should not attempt to commit further fraud on this Court by attempting to act surprised at the number of Defendants listed in the Amended Complaint and falsely claiming that Plaintiff is trying to add "new" Defendants and seeking leave to amend to do so. This

feint of ignorance and false statements, as if they did not understand the language in the Amended Complaint as to who was sued at their firm, when it clearly states ALL Partners, Associates, of Counsel, etc. both personally and professionally, is further an attempt to obscure who the Defendants are and to further Obstruct service and responses due from all parties named as Defendants in the Amended Complaint and further hide the fact that they are concealing liabilities. Of course, this Court should not even allow Proskauer to represent themselves against their former client in violation of conflict of interest rules, which thus acts to deny due process and procedure and OBSTRUCT JUSTICE again furthering the Fraud on this Court and continue to violate Plaintiff's due process rights.

38. That in the Proskauer response they claim to the Court that they are confused as to why the list of Partners, Associates and Of Counsel comes from the same year the Amended Complaint was filed and docketed, when they claim, "Overwhelmingly, he [Plaintiff] has apparently copied the names of thousands of proposed new defendants from (outdated) law firm, industry and government directories." The reason it appears to Proskauer that the lists served in the Emergency Motion to Rehear are "outdated" is that this was these lists were filed several years ago when they were approved in the Amended Complaint when it was filed in 2008. Yet, this language exhibits intent by Proskauer to attempt to deny whom the Defendants are that were included in the Amended Complaint and thus hide the liabilities from their Defendant Partners, Associates and Of Counsel by feigning that Plaintiff is now somehow trying to add them new.

39. That both Proskauer and this Court cannot attempt to deny now the Defendants listed in the Amended Complaint and now attempt to act surprised at the list of Defendants contained in Plaintiff's Emergency Motion and ridiculously attempt to claim Plaintiff is trying to add "proposed new" Defendants. In fact, Proskauer filed responses for whomever they wanted to from their firm of those that were listed in the Amended Complaint and this Court allowed this unheard of selective picking and choosing of which Defendants would be served and respond to the Amended Complaint and which would not. That this random selection of Defendants was then assisted by the Court when ruling in GRAVE ERR to allow Proskauer to choose which Defendants to serve and therefore which would have to respond.

40. That another ERR of this Court was to suppress with Proskauer the service of the Amended Complaint for ALL OTHER DEFENDANTS NAMED IN THE AMENDED COMPLAINT, setting new unheard of precedence by this Court in allowing the random picking and choosing of Defendants by another Defendant of whom to serve and whom not to serve, when the US Marshall or Plaintiff were required by procedural LAW to serve the Amended Complaint to ALL Defendants for response.

41. That in a March 09, 2008 UNDOCKETED Letter to this Court[11] by Proskauer, Proskauer assumes a new conflicted role as Counsel for ALL the other THOUSANDS of Defendants, as it sways this Court, again in a conflicted pleading to the Court, to

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11 http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20080509%20Proskauer%20to%20Scheindlin%20to%20block%20amended.pdf

circumvent procedural law in attempts to Obstruct service to other Defendants and stay the service based on ridiculous claims of economies of scale and more.

42. Where proper service not Obstructed by this Court would have included service to the 601+ Partners, Associates, Of Counsel, Employees, et al. at Proskauer that were included in the Amended Complaint and additionally all the other THOUSANDS of Defendants who were named and then Obstructed by this Court from service, to appease Proskauer's claim to not serve Defendants on behalf of other Defendants whom they do not represent.

43. That further, this Court then stayed the service of the Amended Complaint in an Order[12] dated May 09, 2008, after ruling on Proskauer's conflicted and UNDOCKETED letter. Thus, service was somehow decided by Proskauer and this Court for only selected Defendants and the Court stated, "Service of any amended complaint shall be stayed until such time as the scheduled motions to dismiss have been decided. Accordingly, the time for **newly named defendants** to respond to the Complaint is hereby stayed until after the Court has ruled on those motions. This Order is subject to reconsideration upon receipt of opposition, if any, from plaintiffs." That the Court is not specific in this Order as to whom the "newly named defendants" that were stayed in this Order are and this also needs to be clarified by the Court as requested herein, again with each Defendant being clarified and numbered so that all parties in this Lawsuit are clearly delineated for the

[12]May 09, 2008 Order
http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20080509%20Scheindlin%20Order%20to%20stay%20amended.pdf

record and we have an exact total number of Defendants sued and who were mysteriously not served by interference in the service process by this Court.

44. That the May 09, 2008 Order states the rest of the Defendants would be served after Motions to Dismiss were decided and yet there still was no service to ALL the THOUSANDS of named Defendants in the Amended Complaint by the US Marshall, as this Court then ruled to DISMISS the case prior to servicing of the Amended Complaint to ALL Defendants according to the rules of this Court and Law and precluding each of them to file individual answers.

45. That the Court then dismissed Defendants prior to any service or response Sua Sponte. This Sua Sponte dismissal of some of the Defendants without even notice and service of the Lawsuit, acted to Obstruct Service and therefore Obstruct Justice. These Obstructions appear to have allowed only "cherry picked" Defendants whom all are represented by Conflicted Counsel or representing themselves in Conflict, to respond to the Amended Complaint. This cherry picking of Defendants that at first seems random selection now appears to have been very calculated to be intentional Obstruction and Fraud on this Court, aided by this Court, which continues to rule on knowingly conflicted pleadings of the all of the cherry picked Defendants Counsel.

46. That had the Amended Complaint been served to ALL Defendants as legally required, each of the Thousands of Defendants would have had to retain counsel to respond and the case would not have then been handled by 100% cherry picked and conflicted counsel for only a select few Defendants. Most of these cherry picked Defendants are the main

accused Defendants now found representing themselves illegally and in violation of Attorney Conduct Codes, Public Office Rules and Regulations and law. With proper service to ALL the Amended Complaint Defendants the Obstruction would have been confounded by the insertion of thousands of Defendants counsels retained to respond to the Amended Complaint and certainly not all would have retained conflicted counsel whom are central conspirators and defendants in this Lawsuit to represent them, as is the case with the cherry picked group that represents themselves. This would have ended the tightly controlled Conflict Swamp existing in every pleading made by Defendants counsel that are wholly conflicted.

47. That this Court blocked proper and legal service of the Amended Complaint to all Defendants and thus Obstructed notification to THOUSANDS OF DEFENDANTS that they are indeed named DEFENDANTS in a FEDERAL RICO and ANTITRUST action and giving them ALL the opportunity to respond to the complaint and properly account to their SHAREHOLDERS and others that they have very real ONGOING liabilities.

48. That by selectively choosing Defendants to serve in opposite of known Law and in violation of Law and even violating this Court's own Rules and Regulations as to service of a complaint, this Court has gravely ERRED and exposed THOUSANDS UPON THOUSANDS of the Shareholders of these companies sued, who have not been served, including many Fortune 500 companies, to illegally concealed risks by failure of proper service. Risks that would have had to been exposed to shareholders and others from both this Lawsuit and the technology infringements alleged in the Amended Complaint.

49. That Plaintiff, for example, has given notice to several of the central conspirator Defendant companies involved in the Antitrust Scheme, notifying them that they are both being sued in this Lawsuit and that they have Intellectual Property infringement royalties owed and therefore by LAW they must legally account to their Shareholders and others under FASB for these liabilities.

50. That when these Defendants then failed to list the liabilities in their Annual Reports, Plaintiff then filed complaints with the SEC for these Defendant companies failure to account properly under FASB the LIABILITIES that they have incurred, constituting MAJOR SHAREHOLDER FRAUD. They certainly these noticed Defendants became aware that actual and threatened litigation would continue for the life of the Intellectual Properties and that this case would be appealed until Justice was served with Due Process afforded Plaintiff. Notice of liabilities of these actual and threatened ongoing litigations legally mandates corporate accounting compliance for the public company defendants in and of itself, whether by failing to follow law this Court served them this Lawsuit or not. For those that Plaintiff has not notified yet, their liabilities remain concealed by this Court's interference with the Amended Complaint.

II. ARGUMENT

Clarify its order or reconsider it on the following grounds

Failure to afford an opportunity to oppose a contemplated sua sponte dismissal may be, 'by itself, grounds for reversal.'" *Abbas v. Dixon,* 480 F.3d 636, 640 (2d Cir. 2007) (quoting *Acosta v. Artuz,* 221 F.3d 117, 124 (2d Cir.2000)).

Sua sponte dismissal is inappropriate, however, where the plaintiff is not given an opportunity to be heard on the issues underlying the dismissal. *Jane Tucker v. Judege Prudence B. Abraham*, U.S.Dist, LEXIS 2257, 6 (1993) (quoting *Square D Co. v. Niagara Frontier Tariff Bureau, Inc.*,760 F.2d 1347, 1365 (2d Cir. 1985))

In reviewing a pro se complaint, the court must assume the truth of the allegations, and interpret them liberally to "raise the strongest arguments [they] suggest[]."*John Spear v. Town of Brandford*, U.S. Dist. LEXIS 179817(2012) (quoting *Abbas v. Dixon*, 480 F.3d 636, 639 (2d Cir.2007)), see also *Kevan Arya v. Ensil Technical Services, Inc.*, U.S. Dist. LEXIS 181038, 3 (2012), see also *Richard Rogue v. State of Connecticut*, U.S. Dist. LEXIS 181961(2012), see also Thomas L. Holmes v. Perez, U.S. Dist. LEXIS 183405(2012).

"The policy of liberally construing pro se submissions is driven by the understanding that '[i]mplicit in the right to self-representation is an obligation on the part of the court to make reasonable allowances to protect pro se litigants from inadvertent forfeiture of important rights because of their lack of legal training.'" *Id.*, U.S. Dist. LEXIS 181038, 4 (2012) (quoting *Abbas*, 480 F.3d at 639, quoting *Traguth v. Zuck, 710* F.2d 90, 95 (2d Cir. 1983)).

Generally, the Court will afford a *pro se* Plaintiff an opportunity to amend or to be heard before dismissal "unless the court can rule out any possibility, however unlikely it might be, that an amended complaint would succeed in stating a claim. *Id.*, U.S. Dist. LEXIS 181038, 4 (2012) (quoting *Abbas*, 480 F.3d at 639 (2d Cir. 2007) (quoting *Gomez v. USAA Federal Savings Bank*, 171 F.3d 794, 796 (2d Cir.1999) (per curiam)).

Although detailed allegations are not required, the complaint must include sufficient facts to afford the defendants fair notice of the claims and the grounds upon which they are based and to demonstrate a right to relief. *Id*., U.S. Dist. LEXIS 179817, 2 (2012) (quoting *Bell Atlantic v. Twombly*, 550 U.S. 544, 555-56, 127)), see also *Id.,* U.S. Dist. LEXIS 181038, 4 (2012), see also *Id.,* U.S. Dist. LEXIS 181961, 2 (2012), see also *Id.*, U.S. Dist. LEXIS 183405, 2 (2012).

The plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Id*., U.S. Dist. LEXIS 179817, 2 (2012) (quoting *Twombly, 550 U.S. at 570))*, see also *Id.,* U.S. Dist. LEXIS 181038, 4 (2012), see also *Id.,* U.S. Dist. LEXIS 181961, 2 (2012), see also *Id.,* U.S. Dist. LEXIS 183405, 2 (2012).

But "'[a] document filed *pro se* is to be liberally construed and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.'" *Id*., U.S. Dist. LEXIS 179817, 2 (2012) (quoting *Boykin v. KeyCorp,* 521 F.3d 202, 214 (2d Cir. 2008)) (quoting *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007)). S. Ct. 1955, 167 L. Ed. 2d 929 (2007)), see also *Id.,* U.S. Dist. LEXIS 181038, 4 (2012), See also *Id.,* U.S. Dist. LEXIS 181961, 2 (2012), see also *Id.,* U.S. Dist. LEXIS 183405, 2 (2012).

Discussion

In this case Plaintiff was not given an opportunity to oppose Sua Sponte dismissal. This being a Pro Se Complaint the court had to assume the truth of the allegations. The Plaintiff had included sufficient facts to afford the Defendants fair notice of the claims and the grounds upon

which they are based and to demonstrate a right to relief. However a document filed in this Complaint being Pro Se complaint, however inartfully pleaded, must have been held to less stringent standards than formal pleadings. The Court has to afford a *Pro Se* Plaintiff an opportunity to amend or to be heard before dismissal "unless the court can rule out any possibility, however unlikely it might be, that an amended complaint would succeed in stating a claim. Hence the court should clarify this order or alternatively reconsider the order.

III. Conclusion

For the reasons set forth in detail herein, Plaintiff respectfully requests that this Court, in the interest of justice, clarify its Order[13] dated August 14, 2012, docketed as #141, in response to Plaintiff's motion titled "EMERGENCY MOTION (pursuant to Rule 40 60(b) and (d)(3) of the FRCP to Reopen Case, MOTION for appointment of a federal monitor and MOTION for New Trial and for a fair and impartial jury trial as the law may deem just and proper," filed July 27, 2012 docketed as #138[14] or in alternative to reconsider said order.

WHEREFORE,

1. Plaintiff respectfully requests this court to clarify its Order dated August 14, 2012, docketed as #141, in response to Plaintiff's motion titled "EMERGENCY MOTION (pursuant to Rule 40 60(b) and (d)(3) of the FRCP to Reopen Case, MOTION for

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13 http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20120814%20Scheindlin%20Order%20Re%20Motion%20to%20ReOpen.pdf

14 http://www.iviewit.tv/20120727%20COURT%20STAMPED%20FINAL%20SIGNED%20Motion%20to%20Remand%20and%20Rehear%20Lawsuit%20after%20Investigations%20of%20the%20New%20York%20Attorney%20General%20415935.pdf

appointment of a federal monitor and MOTION for New Trial and for a fair and impartial jury trial as the law may deem just and proper filed July 27, 2012, docketed as #138 and in alternative to reconsider said order.

2. Plaintiff demands this Court have the US Marshal service all those Amended Complaint Defendants once clarified that have been stayed service for whatever reasons and have the US Marshall instantly service all 5,000 + Defendants immediately and demand a response as required by law. Or in the alternative notify Plaintiff that the Court refuses Marshal service to the Defendants and Plaintiff will serve the Amended Complaint and all future filings to all named Defendants.

3. That Plaintiff put together the Amended Complaint list of Defendants at the time of filing of the Amended Complaint and seeks leave to amend the Complaint to add more Defendants discovered since that time, including several new pooling schemes with several thousand more infringers, as was indicated in the Emergency Motion. As RICO conspiracies are not always easy for a victim to discover all the parties initially partaking in the conspiracy, plaintiffs must amend the complaint continually as more Defendants/Conspirators become known. For example, it has now become apparent that almost all purveyors and even end users of Plaintiff's technologies adds up to several billion people a day infringing one form or another of Plaintiff's technologies through Television, the Internet, Cell Phones, Hardware, Software, etc. and thousands upon thousands of companies who are benefiting as a result.

4. That this Court after clarifying who the Defendants in this case are by creating a numbered list of Amended Complaint defendants in each capacity so that we may all know exactly who was sued must then Order ALL Defendants to file Answers to the Amended Complaint as the earlier Motions to Dismiss have been decided and these Defendants must be allowed the opportunity to affirm or deny the charges in the Amended Complaint. That this Court's picking and choosing Defendants to serve denies those Defendants the opportunity to respond in the Affirmative to the allegations alleged and thus interferes again with Plaintiff Due Process rights. The Court must therefore clarify who the Defendants are and have each and every one of them respond to the Amended Complaint in each capacities they have been sued. This includes all the law firm partners, of counsel and associates, all the licensees and licensors of the Patent Pooling schemes named as Defendants, all the contract violators named as Defendants at the time of filing of the Amended Complaint.

5. That once this Court clarifies, identifies and numbers each and every Defendant sued in the Amended Complaint, the Court should then clarify and correct the Docket of this Lawsuit, adding each and every party to the suit as Defendant, in every capacity they were sued under, as would be the case with any other lawsuit where defendants are not "cherry picked."

6. That this Court must clarify how both Proskauer Rose and the New York Attorney General and other conflicted Defendant counsel that have been handpicked to tender conflicted responses to the Amended Complaint can continue to submit pleadings in

conflict of interest to this Court, pleadings that continue to move the Court and deny Plaintiff Due Process and Procedure by continuing to Obstruct Justice in violation of Attorney Conduct Codes, Public Office Rules and Regulations and Law.

7. That these conflicted pleadings continue perpetrating an ongoing Fraud on this Court, apparently with this Court's blessing, while they remain void under law they are frivolous, vexatious, an egregious abuse of Process and Procedure and other violations of law. Plaintiff seeks this Court to Sanction Defendants, including but not limited to, Proskauer and the New York Attorney General that are filing illegal and conflicted pleadings under Federal Rules of Civil Procedure 11 and that this Court impose monetary and injunctive sanctions upon them. Defense Counsel Proskauer, the New York Attorney General et al., cannot claim they do not understand the law or were unaware of the conflict rules as they are all attorneys at law.

8. That the Amended Complaint APPROVED BY THE COURT and DOCKETED as No. 87 on May 12, 2008 (which in the docket No. 87 falls between Docket Nos. 62 & 63) had all of the Defendants listed in Exhibit 1 as Amended Complaint Defendants.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

Dated: May 13, 2013
Boca Raton, FL

X
Eliot Ivan Bernstein
2753 NW 34th St.
Boca Raton, FL 33434
(561) 245-8588

8. That the Amended Complaint APPROVED BY THE COURT and DOCKETED as No. 87 on May 12, 2008 (which in the docket No. 87 falls between Docket Nos. 62 & 63) had all of the Defendants listed in Exhibit 1 as Amended Complaint Defendants.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

Dated: _____,2013
Boca Raton, FL

X_____,
Eliot Ivan Bernstein
2753 NW 34th St.
Boca Raton, FL 3343
(561) 245-8588

EXHIBIT 1 – LIST OF AMENDED COMPLAINT DEFENDANTS APPROVED BY COURT AND SUED THEREIN

DEFENDANTS LISTED ON FACE PAGE OF AMENDED COMPLAINT

EXHIBIT 2 – PROSKAUER MARCH 21, 2012 LETTER

Motions

1:07-cv-11196-SAS Bernstein et al v. Appellate Division First Department Departmental Disciplinary Committee et al **CASE CLOSED on 08/08/2008**

CLOSED, ECF, PRO-SE, RELATED

U.S. District Court

Southern District of New York

Notice of Electronic Filing

The following transaction was entered on 5/13/2013 at 8:21 AM EDT and filed on 5/13/2013

Case Name: Bernstein et al v. Appellate Division First Department Departmental Disciplinary Committee et al

Case Number: 1:07-cv-11196-SAS

Filer: Eric Turner
Richard T. Andrias
Paul Curran
Judith S. Kaye
David B. Saxe
Kenneth Rubenstein
David Friedman
Proskauer Rose LLP
David B. Saxe
Thomas J. Cahill
Judith S. Kaye
John Does
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Raymond A. Joao
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Joseph Wigley
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Steven C. Krane
Estate of Stephen Kaye
Meltzer Lippe Goldstein & Breistone LLP
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The Florida Bar
Lorraine Christine Hoffman
John Anthony Boggs
Kenneth Marvin
Thomas Hall
Debroah Yarborough
Virginia State Bar
Andrew H. Goodman
Noel Sengel
Mary W. Martelino

WARNING: CASE CLOSED on 08/08/2008

Document Number: 150

Docket Text:

FIRST MOTION for Reconsideration *1:07-cv-11196-SAS Bernstein et al v. Appellate Division First Department Departmental Disciplinary Committee et al*. Document filed by Richard T. Andrias(in his individual capacity), Richard T. Andrias(in his official capacity), Appellate Division First Department Departmental Disciplinary Committee, Appellate Division Second Department Departmental Disciplinary Committee, Steven C. Becker, Eliot Ivan Bernstein, Eliot Ivan Bernstein(Individually), Douglas A. Boehm, John Anthony Boggs(in his individual capacity), John Anthony Boggs(in his official capacity), Thomas J. Cahill(in his individual capacity), Thomas J. Cahill(in his official capacity), Paul Curran(in their official capacity), Paul Curran(in individual capacity), Lawrence DiGiovanna(in his official capacity), Lawrence DiGiovanna(in his individual capacity), William J. Dick, Estate of Stephen Kaye, Foley Lardner LLP, David Friedman(in his official capacity), David Friedman(in his individual capacity), Martin R. Gold(in thier offical capacity), Martin R. Gold(in his individual capacity), Luiz A. Gonzales(in his individual capacity), Luiz A. Gonzales(in his official capacity), Andrew H. Goodman(in his official capacity), Andrew H. Goodman(in his individual capacity), Michael C. Grebe, Thomas Hall(in his individual capacity), Thomas Hall(in his official capacity), Lorraine Christine Hoffman(in her official capacity), Lorraine Christine Hoffman(in her individual capacity), Raymond A. Joao, John Does, Judith S. Kaye, Judith S. Kaye, Diana Maxfield Kearse(in her individual capacity), Diana Maxfield Kearse(in her

official capacity), Steven C. Krane(in his individual capacity), Steven C. Krane(in his official capacity), P. Stephen Lamont, Lawyers Fund for Client Protection of the State of New York, Mary W. Martelino, Kenneth Marvin(in his official capacity), Kenneth Marvin(in his individual capacity), Angela M. Mazzarelli(in her individual capacity), Angela M. Mazzarelli(in her official capacity), Lewis S. Meltzer, Meltzer Lippe Goldstein & Breistone LLP, Catherine O'Hagen Wolfe(in their individual capacity), Catherine O'Hagen Wolfe(in their official capacity), James E. Peltzer(in his individual capcity), James E. Peltzer(in his offical capacity), Proskauer Rose LLP, A. Gail Prudenti(in her individual capacity), A. Gail Prudenti(in her offical capacity), Kenneth Rubenstein, David B. Saxe, David B. Saxe, Noel Sengel(in her official capacity), Noel Sengel(in her individual capacity), State of New York Commission of Investigation, The Florida Bar, Eric Turner(in his individual capacity), Eric Turner(in his official capacity), Virginia State Bar, Joseph Wigley(in his official capacity), Joseph Wigley(in his individual capacity), Debroah Yarborough(in her individual capacity), Debroah Yarborough(in her official capacity). (Attachments: # (1) Exhibit EXHIBIT 1 LIST OF AMENDED COMPLAINT DEFENDANTS APPROVED BY COURT AND SUED THEREIN DEFENDANTS LISTED ON FACE PAGE OF AMENDED COMPLAINT, # (2) Exhibit EXHIBIT 2 PROSKAUER MARCH 21, 2012 LETTER)(Bernstein, Eliot)

1:07-cv-11196-SAS Notice has been electronically mailed to:

Gregg M Mashberg gmashberg@proskauer.com, LSOSDNY@proskauer.com

Joanna Frances Sandolo jsandolo@denleacarton.com, jofrancie1@aol.com

John Walter Fried johnwfried@fried-epstein.com

Kent Kari Anker kanker@fklaw.com

Lili Zandpour lzandpour@fklaw.com

Monica Anne Connell Monica.Connell@oag.state.ny.us, stephanie.rosenberg@oag.state.ny.us

Richard M. Howard rhoward@meltzerlippe.com

1:07-cv-11196-SAS Notice has been delivered by other means to:

Glenn Thomas Burhans , Jr
Greenberg Traurig
101 East College Avenue
Tallahassee, FL 10022

Stephen M. Hall
Assistant Attorney General III
Office of Attorney Genreral

900 E. Main Street
Richmond, VA 23219

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Original filename:n/a
Electronic document Stamp:
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Document description: Exhibit EXHIBIT 1 LIST OF AMENDED COMPLAINT DEFENDANTS APPROVED BY COURT AND SUED THEREIN DEFENDANTS LISTED ON FACE PAGE OF AMENDED COMPLAINT
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1008691343 [Date=5/13/2013] [FileNumber=11431584-1] [2c77f78fd76d32b2e2be5024d38a995119ba7c1f48add86ae42fc0cde8fe35b00b5a15ee9e18f05a0fcea819e956fb4e0b498e36521d94812435c59ea65cf735]]
Document description: Exhibit EXHIBIT 2 PROSKAUER MARCH 21, 2012 LETTER
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Electronic document Stamp:
[STAMP dcecfStamp_ID=1008691343 [Date=5/13/2013] [FileNumber=11431584-2] [a6fb78d2b097b77dd4ff10c8b3fbde32db2e4fa27bf91d057df56534a1f3d5b93b043955b79b2626137677b82fc1a9d69cbf3df820ce7f6d78bdb9820421ce35]]