

Gregg M. Mashberg  
PROSKAUER ROSE LLP  
11 Times Square  
New York, New York 10036-8299  
Tel. (212) 969-3000  
Fax (212) 969-2900

*Attorneys pro se and Attorneys for Kenneth Rubenstein,  
Christopher C. Wheeler, Steven C. Krane (deceased),  
and the Estate of Stephen R. Kaye*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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:  
ELIOT I. BERNSTEIN, et al., :  
:  
Plaintiffs, : 07 Civ. 11196 (SAS)  
:  
- against - :  
:  
APPELLATE DIVISION, FIRST DEPARTMENT : **PROSKAUER**  
DEPARTMENTAL DISCIPLINARY COMMITTEE, et al., : **DEFENDANTS'**  
:  
Defendants. : **REPLY IN FURTHER**  
:  
: **SUPPORT OF THEIR**  
:  
: **MOTION FOR**  
:  
: **SANCTIONS**  
:  
: **PURSUANT TO FED.**  
: **R. CIV. P. 11**  
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Defendants Proskauer Rose LLP, Kenneth Rubenstein, Christopher C. Wheeler, the late Stephen C. Krane, and the Estate of Stephen R. Kaye (collectively, the "Proskauer Defendants") submit this memorandum of law in further support of their Motion for Sanctions against *pro se* Plaintiff Eliot I. Bernstein ("Bernstein") pursuant to Rule 11 of the Federal Rules of Civil Procedure.

### ARGUMENT

#### **I. BERNSTEIN FAILS TO JUSTIFY HIS UNTIMELY AND SUBSTANTIVELY BASELESS FILINGS**

Bernstein's Opposition to the Proskauer Defendants' Motion for Sanctions (the "Opposition" or "Opp.") fails to address meaningfully that he had no good faith basis for filing

his Second Motion to Reopen or how this repetitive filing could have comported with the Court's prior admonition that he would be sanctioned if his abusive conduct persisted. Notably, he has not attempted to justify or explain why he waited nearly two years before filing the Second Motion to Reopen after purportedly finding "new" evidence which, of course, is nothing of the sort. Indeed, he was in possession of his "new" evidence at the time he filed his first frivolous motion to reopen. Instead of offering any explanation for his objectively frivolous pleading, Bernstein rehashes yet again his wild claims of conspiracy and conflict, all of which were rejected years ago because they failed to state a cause of action or constitute grounds for relief. Bernstein is unrepentant and unbowed. If anything, the Opposition constitutes further abusive conduct. It demonstrates that he cannot or will not accept that this case is long over or perhaps, most disturbing, that he does not even care.

## **II. BERNSTEIN'S RECENT CONDUCT SHOWS INJUNCTIVE AND MONETARY SANCTIONS ARE NECESSARY**

The Proskauer Defendants demonstrated in their moving papers that Bernstein's conduct not only justified monetary sanctions, but that injunctive relief was necessary. The Opposition underscores the need for this relief. Bernstein states explicitly that he is far from done litigating the claims that have been dismissed by this Court. He tells us that he will

have a lifelong and generational long litigious history in pursuing his patent royalties . . . and will also have a litigious ongoing history in pursuing the crimes and criminals who are attempting to steal them, despite whether they are cleverly disguised as Attorneys at Law, Judges, Prosecutors, etc. and despite the ridiculous Orders.<sup>1</sup>

Bernstein clearly means what he says. After being served with the Proskauer Defendants' motion for sanctions, Bernstein doubled (or tripled) down by filing a Third Motion to Reopen totaling hundreds of pages.<sup>2</sup> And, lest there be any conceivable doubt that his threat is

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<sup>1</sup> Opp. at 13 (Dkt. No. 152).

<sup>2</sup> See Dkt. No. 149.

serious, he simultaneously filed an Emergency Reconsideration Motion.<sup>3</sup> (The Court dismissed both motions *sua sponte*<sup>4</sup>.) On and on it goes.

If there is any hope that Bernstein can be deterred from his frivolous litigation campaign, a filing injunction is necessary in addition to monetary sanctions. Perhaps when faced with the contempt power of this Court, Bernstein will finally accept the fact that this litigation is over.<sup>5</sup>

**CONCLUSION.**

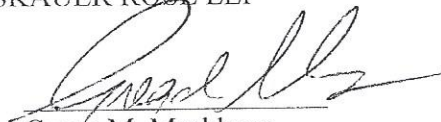
For the foregoing reasons and those contained in the Proskauer Defendants' opening memorandum of law, the Proskauer Defendants respectfully request that the Court grant their motion for Rule 11 sanctions, including (1) an order enjoining Bernstein from filing any further motions on this docket and enjoining him from filing another action in any court related to the subject matter of this action without prior leave of the Court; and (2) an order imposing monetary sanctions in an amount of not less than \$3,500.

Dated: June 10, 2013

Respectfully Submitted,

PROSKAUER ROSE LLP

By:



Gregg M. Mashberg  
Eleven Times Square  
New York, NY 10036-8299  
212.969.3450  
212.969.2900 (fax)  
gmashberg@proskauer.com

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<sup>3</sup> See Dkt. No. 150.

<sup>4</sup> See Dkt. No. 151.

<sup>5</sup> The Opposition briefly addresses the five part test for enjoining a *pro se* litigant pursuant to Rule 11 by asserting that (i) his "new" evidence means his claims are new; and (ii) he expects to prevail despite his claims having been dismissed because they were fatally defective. See Opp. at 19-20 (Dkt. No. 152). These conclusory contentions fail to explain why he omitted the purportedly "new" evidence from his First Motion to Reopen or how any of the stale and skewed allegations underlying his motion could have constituted a good faith basis for seeking to reopen this case.

*Attorneys pro se and attorneys for Kenneth  
Rubenstein, Christopher C. Wheeler, the late Steven  
C. Krane, and the Estate of  
Stephen R. Kaye.*

To: Eliot Bernstein, *pro se*  
2753 NW 34<sup>th</sup> St.  
Boca Raton, FL 33434

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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:  
ELIOT I. BERNSTEIN, et al., :  
:  
Plaintiffs, : 07 Civ. 11196 (SAS)  
:  
- against - : **AFFIDAVIT OF**  
: **SERVICE**  
:  
APPELLATE DIVISION, FIRST DEPARTMENT :  
DEPARTMENTAL DISCIPLINARY COMMITTEE, et al., :  
:  
Defendants. :  
:  
-----X

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

BENJAMIN M. RATTNER, being duly sworn, deposes and states:

1. I am not a party to this action, am over the age of eighteen years and reside in Rye, New York.
2. On June 10, 2013, I caused to be served true copies of the Proskauer Defendants' Reply in Further Support of Their Motion for Sanctions Pursuant to Fed. R. Civ. P. 11 upon the following:

Eliot I. Bernstein  
2753 Northwest 34<sup>th</sup> Street  
Boca Raton, FL 33434  
*Plaintiff Pro Se*

P. Stephen Lamont  
35 Locust Ave.  
Rye, NY 10580  
*Plaintiff Pro Se*

Glenn Thomas Burhans  
Greenberg Traurig  
101 East College Avenue



Tallahassee, FL 10022

Stephen M. Hall  
Assistant Attorney General III  
Office of the Attorney General  
900 E. Main Street  
Richmond, VA 23219

3. Service was effectuated by first class mail by enclosing true copies of the aforementioned document in a prepaid properly addressed wrapper to the above-referenced parties and causing them to be placed in an official depository under the exclusive care and custody of the United States Postal Service with the City and State of New York.



BENJAMIN M. RATTNER

Sworn before me this

10<sup>th</sup> day of June 2013



Notary Public

JANET M. BONELLI  
Notary Public, State of New York  
No. 01BO4714761  
Qualified in Queens County  
Commission Expires March 30, 2014

June 10, 2013

**By First Class Mail**

Hon. Shira A. Scheindlin  
United States District Judge  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl St.- Room 1620  
New York, NY 10007-1312

Attn: James Reily

Re: *Bernstein et al. v. Appellate Division, First Department Departmental Disciplinary  
Committee, et al.*, Docket No. 07-cv-11196 (SAS)

Dear Mr. Reily:

Enclosed please find courtesy copies of the Proskauer Defendants' Reply in Further Support of Their Motion for Sanctions Pursuant to Fed. R. Civ. P. 11, and an Affidavit of Service.

Respectfully,



Gregg M. Mashberg

Enclosures

cc: Monica A. Connell, Esq.  
120 Broadway – 24<sup>th</sup> Floor  
New York, New York 10271

Eliot I. Bernstein  
2753 Northwest 34<sup>th</sup> Street  
Boca Raton, FL 33434

P. Stephen Lamont  
35 Locust Ave.  
Rye, NY 10580