

IN THE CIRCUIT COURT OF THE FIFTEEN JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

IN RE: THE ESTATE OF  
SHIRLEY BERNSTEIN,  
Deceased

CASE NO. 502012CP004391XXXXSB  
HON. JUDGE MARTIN H. COLIN

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ELIOT IVAN BERNSTEIN, PRO SE  
PETITIONER,

V.

TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,  
ASSOCIATES AND OF COUNSEL);  
ROBERT L. SPALLINA, ESQ., PERSONALLY;  
ROBERT L. SPALLINA, ESQ., PROFESSIONALLY;  
DONALD R. TESCHER, ESQ., PERSONALLY;  
DONALD R. TESCHER, ESQ., PROFESSIONALLY;  
THEODORE STUART BERNSTEIN, INDIVIDUALLY;  
THEODORE STUART BERNSTEIN, AS ALLEGED PERSONAL  
REPRESENTATIVE;  
THEODORE STUART BERNSTEIN, AS ALLEGED TRUSTEE  
AND SUCCESSOR TRUSTEE PERSONALLY;  
THEODORE STUART BERNSTEIN, AS ALLEGED TRUSTEE  
AND SUCCESSOR TRUSTEE, PROFESSIONALLY;  
THEODORE STUART BERNSTEIN, AS TRUSTEE FOR HIS  
CHILDREN;  
LISA SUE FRIEDSTEIN, INDIVIDUALLY AS A BENEFICIARY;  
LISA SUE FRIEDSTEIN, AS TRUSTEE FOR HER CHILDREN;  
JILL MARLA IANTONI, INDIVIDUALLY AS A BENEFICIARY;  
JILL MARLA IANTONI, AS TRUSTEE FOR HER CHILDREN;  
PAMELA BETH SIMON, INDIVIDUALLY;  
PAMELA BETH SIMON, AS TRUSTEE FOR HER CHILDREN;  
MARK MANCERI, ESQ., PERSONALLY;  
MARK MANCERI, ESQ., PROFESSIONALLY;  
MARK R. MANCERI, P.A. (AND ALL PARTNERS,  
ASSOCIATES AND OF COUNSEL);  
JOSHUA ENNIO ZANDER BERNSTEIN (ELIOT  
MINOR CHILD);  
JACOB NOAH ARCHIE BERNSTEIN (ELIOT  
MINOR CHILD);  
DANIEL ELIJSHA ABE OTTOMO BERNSTEIN  
(ELIOT MINOR CHILD);  
ALEXANDRA BERNSTEIN (THEODORE ADULT  
CHILD);

ERIC BERNSTEIN (THEODORE ADULT CHILD);  
MICHAEL BERNSTEIN (THEODORE ADULT CHILD);  
MATTHEW LOGAN (THEODORE'S SPOUSE ADULT CHILD);  
MOLLY NORAH SIMON (PAMELA ADULT CHILD);  
JULIA IANTONI – JILL MINOR CHILD;  
MAX FRIEDSTEIN – LISA MINOR CHILD;  
CARLY FRIEDSTEIN – LISA MINOR CHILD;  
PAGE, MRACHEK, FITZGERALD & ROSE, P.A.  
(AND ALL PARTNERS, ASSOCIATES AND OF COUNSEL);  
ALAN B. ROSE, ESQ. – PERSONALLY;  
ALAN B. ROSE, ESQ. – PROFESSIONALLY;  
PANKAUSKI LAW FIRM PLLC, (AND ALL PARTNERS, ASSOCIATES AND OF COUNSEL);  
JOHN J. PANKAUSKI, ESQ. – PERSONALLY;  
JOHN J. PANKAUSKI, ESQ. – PROFESSIONALLY;  
KIMBERLY FRANCIS MORAN – PERSONALLY;  
KIMBERLY FRANCIS MORAN – PROFESSIONALLY;  
LINDSAY BAXLEY AKA LINDSAY GILES – PERSONALLY;  
LINDSAY BAXLEY AKA LINDSAY GILES – PROFESSIONALLY;  
THE ALLEGED “SIMON L. BERNSTEIN AMENDED AND RESTATED TRUST AGREEMENT” DATED JULY 25, 2012;  
JOHN AND JANE DOE'S (1-5000).

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**AMMENDED EMERGENCY MOTION TO COMPEL ALLEGED TRUSTEE OF THE SHIRLEY TRUST TO MAKE EMERGENCY WELFARE PAYMENTS AS PROVIDED FOR UNDER THE TRUST;**

**MOTION FOR REMOVAL OF TRUSTEE ON THE COURT'S OWN INITIATIVE – FLORIDA TITLE XLII 736.0706**

COMES NOW, Eliot Ivan Bernstein (“Eliot”) or (“Petitioner”), PRO SE, as Beneficiary and Interested Party both for himself personally and Guardian for his three minor children (who may also be Beneficiaries and Interested Parties of the Estates and Trusts of

Simon Bernstein (“Simon”) and Shirley Bernstein (“Shirley”), and hereby files this **“AMMENDED EMERGENCY MOTION TO COMPEL THE ALLEGED TRUSTEE OF THE SHIRLEY TRUST TO MAKE EMERGENCY WELFARE PAYMENTS AS PROVIDED FOR UNDER THE TRUSTS OF SIMON AND SHIRLEY; MOTION FOR REMOVAL OF TRUSTEE ON THE COURT’S OWN INITIATIVE – FLORIDA TITLE XLII 736.0706”** and in support thereof states, on information and belief, as follows:

**AMENDED EMERGENCY MOTION TO COMPEL ALLEGED TRUSTEE OF THE SHIRLEY TRUST TO MAKE EMERGENCY WELFARE PAYMENTS AS PROVIDED FOR UNDER THE TRUSTS OF SIMON AND SHIRLEY**

1. This Emergency Motion is being amended because the need for school tuition for Saint Andrews School that the prior motions dealt with are no longer necessary as the minor children have are no longer attending Saint Andrews School as they no longer accepted them and as of August 21, 2014, after two days of school they were turned back from school.
2. That Eliot and Candice immediately began the process of enrolling them in new public schools where they will be going forward. Therefore, there is no need for a payment to Saint Andrews school or any agreements related to the funding of Saint Andrews School.
3. That in a hearing on August 19, 2014, Alan Rose (“Alan”) stated on the record that Eliot was “indigent” and stated that Eliot had just filed with the Court, in a new lawsuit filed in the Oppenheimer matter, a civil indigent application, which clearly shows as Alan stated that Eliot, Candice and their three minor children had no income or net worth and Eliot does not dispute these claims.
4. That these severe economic hardships have been WHOLLY caused by the delay in inheritance to Eliot’s family in Simon and Shirley’s Estates and Trusts, caused directly by the former and current

Officers of this Court and Fiduciaries who committed Egregious Acts of Bad Faith with Unclean hands, including Fraudulently Altering Trust Documents, Forgery (including Post Mortem Forgery of Simon's name), taking ILLEGAL and IMPROPER distributions to improper beneficiaries, closing Shirley's Estate with a DEAD PERSONAL REPRESENTATIVE (which has caused Shirley's Estate to be reopened, delaying the ability to make any distributions until who the beneficiaries are due to the Fraud.

5. That Eliot's family inheritances were not delayed by these criminal acts and more, Eliot would not be indigent. Simon and Shirley had even put away monies for their children's school to fund them all the way through college and these monies too would be accessible and they would have stayed in Saint Andrews School without the need for any special type agreements or Welfare Payments. All of this again caused by the criminal misconduct of the former and current Fiduciaries and Attorneys at Law that were all Officers of this Court, all under Your Honor's jurisdiction and tutelage, as are the three minor children of Eliot.
6. That the former and current Trustees in the Estates and Trusts of Simon and Shirley have repeatedly with scienter failed to make necessary required Welfare Payments as provided under the Shirley and Simon Trusts after repeated requests for almost two years. The ALLEGED TRUSTS state:

Shirley's Alleged Trust

6. Needs and Welfare Distributions. Payments to be made for a person's "needs" means payments for such person's **support, health** (including lifetime residential or nursing home care), maintenance and education. Payments to be made for a person's "Welfare" means payments for such person's Needs, and as the Trustee determines in its sole discretion also for such person's **advancement in life {including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being.** However, the Trustee, based upon information reasonably

available to it, shall make such payments for a person's Needs or Welfare **only to the extent such person's income**, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), **are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living**, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

#### Simon's Alleged Amended and Restated Trust

5. Needs and Welfare Distributions. Payments to be made for a person's "Needs" means payments necessary for such person's health (including lifetime residential or nursing home care), education, maintenance and support. Payments to be made for a person's "Welfare" means discretionary payments by the Trustee, from time to time, for such person's Needs and also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without, any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

7. That Theodore and the former Personal Representatives and Trustees, all Officers of this Court have been requested repeatedly for two years to make these Welfare Payments to Eliot and his family due

to the intentional delays and frauds and they repeatedly REFUSED to even reply in most instances.

8. That the Fiduciaries have intentionally delayed Eliot's inheritance and have since being contacted by the authorities regarding the criminal misconduct have gone on the warpath even harder against Eliot by further misusing their Fiducial Capacities to seek revenge. As Theodore stated in the Evidentiary Hearing regarding the Privileged Email on the record, he and Alan clearly intended on using a strategy of FORCE and AGRESSION against Eliot.
9. That Alan has replaced Theodore's former counsel Tescher and Spallina as his counsel and where ALL OF THEM, including Alan were part of advancing the past, proven and admitted crimes and those alleged ongoing that benefited PRIMARILY their friend, client and business associate Theodore, who for all purposes and in all alleged dispositive documents is considered Predeceased and Disinherited entirely.
10. That Theodore and the former disgraced Fiduciaries illegally seized Dominion and Control of the Estates and Trusts and have stolen and converted properties in series of crimes under ongoing investigations, each of which has directly harmed the beneficiaries and DIRECTLY AND PRIMARILY BENEFITED THEODORE AND HIS SISTER PAMELA SIMON who was also considered Predeceased and wholly disinherited from all dispositive documents. That these acts have all further damaged the beneficiaries and delayed their inheritances for two years.
11. That these acts have caused major changes to Eliot's family accustomed lifestyle, as Eliot and Candice were receiving \$10,000.00 a month from Simon and Shirley for the maintenance of their family for over seven years prior to their deaths.
12. That without this \$120,000.00 of tax free monies to Eliot's family, where such loss was caused DIRECTLY by the acts of the former and current Fiduciaries, Attorneys at Law and Officers of this

Court, Eliot and his family were thrown into poverty overnight, as told to the Court in the first hearing on September 13, 2013, where Your Honor first learned of the FRAUD and FORGERY that was delaying the inheritances, even stating to Theodore and the former Fiduciaries, once Your Honor became aware of the FRAUD ON THIS COURT that Your Honor had enough evidence of their criminal Misconduct to read Theodore, Spallina, Tescher and Mark Manceri, Esq. their Miranda Rights there and then, see Exhibit 2 - Transcript of Proceedings, pages 15 and 16.

13. That while Spallina, Tescher and Manceri were removed and abdicated their Fiduciary roles and roles as Counsel in all Bernstein family matters, somehow, Theodore and Alan survived and continue to commit newly alleged crimes as discussed further herein.
14. That Alan further claimed that Eliot and Candice were unemployed. Eliot and Candice are actually employed but with no income from their jobs at this time. Eliot and Candice were both employed until the company they worked at with Simon when he died, Telenet Systems, LLC that Simon had committed a \$250,000.00 investment in for a percentage of the newly formed company, was suddenly shuttered overnight after he died when the FORMER disgraceful fiduciaries failed to fulfill the remaining \$210,000.00 investment commitment of Simon's, leaving not only Candice and Eliot without jobs but several other people, including almost bankrupting Simon's dearest and closet friends, Scott and Diana Banks (Simon's personal assistant for 10 years). This was done wholly against the desires and intent of Simon.
15. That to pay off the debt owed by the Estate and Trusts of Simon to Scott Banks, Eliot and Candice several months ago agreed to go back and help Scott Banks rebuild the company from ruins and pay off the \$210,000.00 balance Scott was stiffed by Theodore and the former Fiduciaries and Attorneys at Law, Tescher and Spallina.

16. That Eliot, Candice, Simon and Scott Banks had budgeted in the Telenet business plan, \$50,000.00 of income for Eliot and \$60,000.00 for Candice with a %50 split on commissions for new business that was project to bring an additional \$100,000.00 by the second year.
17. That Candice and Eliot are working as fast and hard for Scott now so they can repay the \$210,000.00 owed by Simon's Estate and Trusts and earn back Simon's interest in the Company as part of the deal. While they have brought in sales to offset the loss they are still a few months away from paying off the debt in full, getting income flowing again and getting back the shareholdings of Simon's that the fiduciaries refused to take for the beneficiaries when they overnight ceased funding for Telenet.
18. That at the time of Simon's death, Candice and Eliot both lost their jobs overnight and it has gotten much worse since, including the Trustees who controlled their bills turning off their health insurance, homeowner's insurance, school monies, electricity, phones, home security, home maintenance, property taxes (on a house they claim the Estate owns) and more.
19. That additionally Eliot and Candice have had to focus HUGE amounts of time protecting their interests in the Estates and Trusts and working on uncovering the crimes both proven and alleged in the Estates and Trusts lawsuits with Criminal Authorities and have been forced to do this Pro Se to the irritation of the Court and Eliot and Candice, where this time could have been spent working at getting second jobs in addition to their Telenet commitment.
20. That to make matters worse, the former disgraced Fiduciaries and Theodore then through a series of fraud, also took over a Company of Eliot's family, Bernstein Family Realty that Eliot was to be Trustee for when Simon died and even more income and properties were lost as a result of this as fully explained in prior pleadings and more specifically explained in the Counter Complaint Eliot

filed with this Court in Oppenheimer v. Eliot and Candice lawsuit now before this Court.

21. That to make matters worse, the former disgraced Fiduciaries and Theodore then through a series of fraud, also took over and misused approximately \$200,000 of the minor children's prefunded school trust funds that Eliot was to be Trustee for when Simon died as a result of this, as fully explained in prior pleadings and more specifically explained in the Counter Complaint Eliot filed with this Court in Oppenheimer v. Eliot and Candice lawsuit now before this Court.
22. That Eliot and Candice's standard of living and the fact that Simon was directly paying the Saint Andrews Tuition in full each year, left them with income that allowed them to keep the children in private school, pay all their typical and customary expenses and their extracurricular activities and trips and all of this was destroyed by the **INTENTIONAL, GROSSLY NEGLIGENT, RECKLESS, WANTON** and **FELONIOUS** Egregious Acts of Bad Faith done with Unclean Hands.
23. That three minor children lives have been ruined since then as well, again all due to intentional acts of the FIDUCIARIES, ATTORNEYS AT LAW all acting as OFFICERS OF THIS COURT and where this Court has done nothing to this point to release any monies to help Eliot and his family even knowing the fiduciaries have behaved and continue to behave egregiously and dangerously and in fact they continue to do the exact opposite and continue a Pattern and Practice of breach after breach of duties that continue tolling damages daily and have put Eliot's family in harm's way repeatedly.
24. That finally, Eliot was forced to use over \$50,000.00 in legal fees because the disgraceful Fiduciaries further refused to provide either Eliot or his three minor children monies for legal fees, even knowing the need for lawyers was DIRECTLY caused by their actions and refusal to release Estate and Trust

documents.

25. That this long list of Breaches of Fiduciary Duties and other Criminal Misconduct and Civil Torts against the beneficiaries that Theodore and Alan are centrally involved in and under investigation for prohibit Theodore now from acting as a Fiduciary in the Estates and Trusts of Simon and Shirley.
26. That the Court has agreed to hear next in these proceedings the multiple motions to remove Theodore in all capacities finally that have been filed by several parties in these matters that were delayed and it is now time for the Court to hear those Motions and Petitions to remove Theodore and act on its own initiative to instantly remove Theodore in any fiduciary capacities forward BEFORE HEARING ANY OTHER PLEADINGS FILED BY THEODORE are heard or given any more time by this Court.
27. That Alan Rose on August 19, 2014 in a hearing before this Court additionally notified the Court on the record that he was being sued in these matters as a Respondent and Defendant in other lawsuits relating to these matters and in prior hearings has already even been called already as a material and fact witness regarding his involvement in ongoing investigations, the prior frauds and more, all new reasons and new conflicts that Alan should not be able to represent parties further, other than himself Pro Se, especially where he was brought into the Estates and Trusts by Theodore and the former removed Fiduciaries Tescher and Spallina and participated in the advancement of the fraudulent schemes with them.
28. These issues of Eliot suing Alan and Theodore and the fact that they are under ongoing investigations due to Eliot efforts to have them prosecuted by criminal and civil authorities have led to extreme hostilities towards Eliot and as Theodore stated on the record in this Court and obviously they are unwilling to cooperate or work with Eliot to benefit Eliot and his family who are beneficiaries and

continue to do.

29. That it will be argued their inactions and games with Saint Andrews School and failure to make payments since September of 2013 led directly to the children being removed from school on August 21, 2013 and left the school with an almost \$50,000.00 balance that they patiently waited payment for due to the fact that they were understanding of the delays due to the FRAUD until the beginning of the next school year when they understandably could wait no longer and Theodore timed this to the very last minute in what is alleged as further extortion to have Eliot sign an agreement that he never even saw in writing until three hours before the deadline and had language that wholly attempted to release liabilities and indemnify Theodore and Alan and ANYBODY from ANY lawsuits for anything for simply making a requested school payment of \$133,000.00.
30. That further, the language presented three hours before the deadline despite what the Court, Eliot, Alan and Theodore agreed in principle to NOT have in the document was in the document Alan drafted, whereby it stated that “DISTRIBUTIONS” were being made to Eliot’s children, which language would constitute Eliot committing the same exact FRAUD that he has accused Theodore and Pamela of, who took distributions to knowingly improper parties as part of the fraud.
31. That it was agreed in Court that no distributions would be made until the true and proper beneficiaries are later determined by the Court so that Eliot would not take distributions at this time that could be construed as similar to those of Theodore and others, who we now know factually were distributed illegally through the Frauds of Tescher, Theodore and Spallina. This was agreed to in Court and with Alan that he would make changes from the word distribution to “payment” as Your Honor defined on the record in the hearing, the first time Alan tried to use the term distribution that it was to be called a “payment” as was agreed. The language Alan then drafted stated the EXACT

opposite violating the good faith the Court and everyone worked to try and get this done in a hurry and Alan even stated later,

-----Original Message-----

From: Alan Rose [mailto:ARose@mrachek-law.com]

Sent: Friday, August 22, 2014 8:56 AM

To: Eliot Ivan Bernstein

Cc: Alan B. Rose Esq.; Brian M. O'Connell PA ~ Partner @ Ciklin Lubitz Martens & O'Connell; Peter Feaman, Esq. ~ Attorney at Law @ Peter M. Feaman, P.A.; Caroline Prochotska Rogers Esq.; Michele M. Mulrooney ~ Partner @ Venable LLP; Andrew R. Dietz @ Rock It Cargo USA; Marc R. Garber Esq. @ Flaster Greenberg P.C.; Marc R. Garber Esq.; Marc R. Garber Esq. @ Flaster Greenberg P.C.; tourcandy@gmail.com; Glasko William H.; Morrissey John  
Subject: Re: Bernstein Children School Payments

...These are not being made as "welfare payments" under the terms of the trust. Instead, these are payments being made which will count against future distributions, **Similar to the interim distribution is made to others.[emphasis added]**.

Who did this word "distribution" rather than the word payment benefit, Alan and Theodore or the beneficiaries? Certainly the beneficiaries gain nothing and stand to lose quite a bit if it is misinterpreted as distribution, as it would be considered that they SIMILAR to the Interim distributions made by others had COMMITTED FRAUD. That Alan and Theodore would have an implied consent to get them out of the trouble they are in for making IMPROPER ILLEGAL DISTRIBUTIONS. Seeing this language immediately raised concern, especially where it stated if the Court later determines that these distributions were to go to Eliot, rather than his children, which right there made the agreement void and a violation of the agreement orally agreed to in Court on what was stated in Court as the agreement that Alan was to draft and let everyone see for the first time.

32. That it should be noted that Alan also objected to the indemnification, hold harmless and liability changes that were open ended, despite Your Honor stating on the record it would be specifically

defined and limited to scope and amount, which changes would have only protected the beneficiaries and without them changed from open ended, the liabilities and exposure would have been construed as virtually “Get Out of Jail Free” cards and unlimited indemnification benefiting again Theodore and Alan, exposing the beneficiaries, again a GROSS VIOLATION of their FIDUCIAL AND LEGAL DUTIES and again opposite of what was agreed in Court on the record. But what does this Court expect them to do in trying to stave off the current, pending and future lawsuits that they are involved in already in these matters as Respondents and Defendants. Alan’s language stated,

**(i) the Trustee and his professionals shall have absolutely no liability to anyone for making the above-listed payments to St. Andrews School, and (ii) the Trustee and his professionals shall be indemnified and held harmless from suit by Eliot and Candice, and Eliot and Candice as parents and natural guardians of Daniel, Jacob and Joshua, for making the above-listed payments.**

This language clearly states that Theodore and his counsel and “anyone” would have no liability, unlimited indemnity from suit for merely making a payment to Saint Andrews. Again, who does this language benefit, the beneficiaries where the exposure is increased endlessly by the language or Alan or Theodore who are being sued currently in these matters, along with others, who could be construed to be part of “anyone” who do not want to limit the scope to the singular act and amount of the payment.

33. That Eliot even asked Alan to use language similar to what was in the Order Your Honor somehow signed without the agreement signed that stated more accurately,

In addition, based upon this order directing the Trustee to make such payment, the Court rules that the Trustee shall be held harmless and cannot be sued for the act of making these required, court-ordered distributions. Neither Eliot or Candice Bernstein, individually; Eliot Bernstein and Candice Bernstein, as guardians and natural parents of Daniel, Jacob and Joshua; nor any other beneficiary of The Shirley

Bernstein Trust shall commence, prosecute or participate in any litigation against the Trustee concerning these payments.

Yet, Alan refused to use the matching language and began hours of word play with Eliot trying several different ways to craft the language, each time the exposures were not limited as agreed and Alan refused and stated that he not modify it any longer to get it right to protect the beneficiaries and as Exhibit 5 shows then stated he would get Your Honor to sign the Order without the agreement signed and refused to comprise. Again, who did this benefit, Eliot was trying to limit exposure and Alan refused to limit he or his clients Theodore in the agreement and this is very telling and caused Eliot and Candice to lose the little faith they had in both Theodore and Alan, who they are suing and trying to have imprisoned for their ongoing crimes.

34. That Eliot for good and legally valid reasons no longer can trust the Trustee Theodore or his counsel to be fair and impartial and cease their continued breaches, where there are newly alleged criminal misconduct charges against them, they are adversarial to Eliot due to the fact that Eliot is suing and pursuing them criminally.
35. Therefore, while this Court continues amazingly to leave them representing these matters as Fiduciaries and Officers of this Court, instead of reading them their Miranda's and instantly remove, sanction and report them to the proper authorities as is the DUTY of YOUR HONOR under Law and Judicial Canons, then this Court must now compel them to make the required Welfare Payments and design any releases with Eliot and his children having representative counsel if it needs to be negotiated with Alan and Theodore.
36. That the Court should note that Alan recommended that Eliot speak with Brian O'Connell, Esq., Peter Feaman, Esq. and other friends of Eliot who are lawyers about his language, not one of them Eliot spoke to including Feaman gave Eliot the go ahead and stated that Alan's language was safe for

the minor children, in fact, several came back with grave concerns about the language and it's open ended language.

37. That Eliot and Candice and their children have been damaged hundreds of thousands of dollars now for two years and it is time this Court act on its own initiative to COMPEL the ALLEGED Trustee to make the requested herein \$100,000.00 Welfare Payment per the terms of the Trust Agreements in either Simon or Shirley's Trusts or both. While this Motion is filed in the Estates, since both the Estates remain open, the Trusts remain part of the Gross Estate under this Court's continued jurisdiction and so no separate Trust actions should be required to make these Welfare Payments.

**MOTION FOR REMOVAL OF TRUSTEE ON THE COURT'S OWN  
INITIATIVE – FLORIDA TITLE XLII 736.0706**

**736.0706 Removal of trustee.—**

- (1) The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee, **or a trustee may be removed by the court on the court's own initiative.**
- (2) **The court may remove a trustee if:**
- (a) The trustee has committed a **serious breach of trust**;
  - (b) The lack of cooperation among cotrustees substantially impairs the administration of the trust;
  - (c) Due to the **unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries**; or
  - (d) There has been a **substantial change of circumstances** or removal is requested by all of the qualified beneficiaries, **the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.**
- (3) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court **may order such appropriate relief under s. 736.1001(2) as may be necessary to protect the trust property or the interests of the beneficiaries.**

History.—s. 7, ch. 2006-217.

38. That Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 37, inclusive.
39. That Eliot hereby incorporates by reference in entirety all pleadings before the Court to remove Theodore filed by Creditor Stansbury's counsel and Eliot in this Motion for the Court to review in

making its decision on its own initiative to remove Theodore.

40. That because it serves Theodore and Alan best to avoid these UPCOMING AND NEXT TO BE HEARD hearings to remove Theodore and thereby Alan and they have already moved to try and prevent the Creditor's counsel Peter Feaman, Esq. from arguing for Theodore's removal, despite Feaman's knowledge of alleged criminal misconduct and more by Theodore that he is required under the Florida Bar rules to report to this Tribunal any misconduct of any Fiduciary that he is aware of, especially criminal and which he has already done in yet unheard motions. This Court in the August 19<sup>th</sup> 2014 hearing heard arguments on blocking Feaman and stated that more time was needed by the Court to determine if Feaman could argue the Motion to Remove Theodore.
41. This tactic was to attempt to force Eliot as a Pro Se litigant to argue the Motion to Remove where they would have more chance of somehow surviving and if the Court precludes Feaman's Motion to Remove Theodore, Eliot is asking this Court under Section 736.0706 to act first **on its own initiative** based on all the reasons contained herein, those stated in the Feaman and Eliot filings and from its own knowledge and evidence from the proceedings thus far to REMOVE Theodore instantly in the ESTATES AND TRUSTS OF SIMON AND SHIRLEY COMPLETELY and perhaps finally read him his Miranda Rights and stop the pain and suffering he is causing to everyone, including this Court.
42. That if the Court cannot remove him based on these solid reasons Eliot will then move to remove Theodore and have his hearings heard but there appears and insurmountable amount of evidence to cause Theodore's instant removal without the Court burdening Eliot or any other party with costly hearings to accomplish this on its own initiative to protect the beneficiaries and creditor from further harms.

43. That the delay in hearing to remove Theodore can no longer be allowed by this Court, as Peter Feaman, Esq. stated on the record in the August 19<sup>th</sup> 2014 hearing, he had to schedule the hearing that day to attempt to have Your Honor to force opposing counsel to schedule the LONG OVERDUE hearing to remove Theodore, due to as stated on the record, opposing counsels failing to cooperate in rescheduling the hearings to remove Theodore. This is an Emergency as it also involves assets of the Estate of Simon recently discovered missing and unaccounted for.
44. That as Your Honor will recall, Eliot too had similar problems with the cooperation of opposing counsel in attempting to schedule his hearings to remove Theodore that led to hearings in which Your Honor forced the hearings to be scheduled and opposing counsel to cooperate and we can continue to expect NO COOPERATION from opposing counsel as this again benefits Theodore and Alan and keeps them in Dominion and Control of the Estate of Shirley and Trusts of Shirley and Simon illegally, despite their knowing they are not legally qualified any longer to be Fiduciaries in any capacities in the Estates and Trusts of Shirley and Simon.
45. That these delays are not only leading to serious breaches that endanger the future of minors but now are alleged to be allowing assets of the Estate of Simon to be stolen off with and unaccounted for in violation of Court Order for re-inventorying.
46. There is evidence that personal properties of Simon alleged to be worth millions of dollars are not where the Trustee and Alan stated to this Court, which led to the Court Order for re-inventorying at Simon's residence of the assets. That there are now statements made by Donald Tescher under sworn deposition and by Alan who was deposing him that directly contradict those statements made to the Court of where the assets are and the Court Order has been violated by Theodore to evade the inventory being done.

47. That Theodore was centrally involved with his Attorneys at Law, Tescher and Spallina, in the frauds that benefited him the most in Shirley's Trusts and also now is under ongoing investigations for these illegal distributions he and others made knowingly and for other alleged criminal misconduct in both the Estates and Trusts of Simon and Shirley.
48. That Alan Rose emailed the Creditor's counsel Feaman to release his clients hold on some of the funds in the Simon Trust that he has interests in to make Welfare Payments to Eliot's family. The Creditor's counsel Feaman simply asked Alan to provide an accounting of the Trust by the Alleged Trustee Theodore to agree to that but Alan refused to give him one and this Court should take Judicial Notice that NO ACCOUNTING HAS BEEN PROVIDED TO ANY BENEFICIARY or OTHER PARTY FOR FOUR YEARS NOW in the Trusts of Shirley and Simon and the Estate of Shirley. The one accounting provided in the Estate of Simon by Court Order on removal of the former disgraced Fiduciaries has now been challenged by Eliot, the Creditor, the Curator Benjamin Brown and the new PR, Brian O'Connell in ENTIRETY as it wholly does not comport with generally accepted accounting principles as required under law.
49. That the Creditor's counsel, Peter Feaman, Esq. requested the accounting simply to prove that what Alan was claiming regarding the deficiency in the Trust to meet his claims were true, in efforts to try and help Eliot and his children. As the Court will note, this was a wonderful act of angelic kindness by Feaman and his client and close personal friend of Simon's, William Stansbury, where both are abhorred by the conduct of Theodore et al. and have so stated to the Court in their motions filed, claiming that Eliot is the only family member who has acted with unmoving integrity in the face of the hardships placed on him and his minor children and even recommended him in their pleadings to be the next successor Fiduciary. They were willing to reduce their interest in the trust by the Saint

Andrews School amount due and this INTEGRITY is the reason Eliot believes that before all the Fraud and Forgery done in the dispositive documents, William Stansbury was who Simon elected as PR and Trustee.

50. That Simon's ALLEGED Trust has had NO ACCOUNTING PROVIDED TO ANY BENEFICIARY FOR TWO YEARS NOW and since Theodore has allegedly become the Successor Trustee, which is being challenged by Eliot in unheard Petitions and Motions before the Court, he has still failed to provide statutorily required and requested accountings to the beneficiaries.
51. That the ALLEGED 2012 Will and Trust of Simon that replaces Stansbury and attempts to change the beneficiaries (again to benefit Theodore primarily) have been found by the Governor Rick Scott's Office to be IMPROPERLY NOTARIZED, making them legally insufficient, along with several other problems making them legally void as pled in prior Petitions and Motions yet unheard since May of 2013.
52. That this Court may recall that it denied Eliot's Motion for Emergency Hearing filed in May 2013 and stated it was "ORDERED AND ADJUDGED that said Motion is hereby DENIED as an Emergency, the moving party is directed to address said Motion in the ordinary course" and where due to delay after delay in these proceedings with intent, it was finally being scheduled to be heard next, after the Motions to Remove Theodore as agreed by the Court, after months and months of trying to schedule it with opposing counsel.
53. That Eliot Bernstein states that Theodore is acting knowingly and ILLEGALLY as alleged Successor Trustee of the Simon Bernstein alleged Amended and Restated Trust, in violation of the Breach of the terms of the Trust, which such terms explicitly exclude Theodore by name from acting as Trustee and therefore these pleadings he is filing is Simon's Trust are all PROHIBITED.

54. That the first question this Court must answer before considering ANY pleadings of Theodore in the Simon Trust is if he is acting with legal authority or if he has hijacked this position and these proceedings right under Your Honor's nose in violation of the terms of the Trusts and for other good and just reasons that now preclude him from being a fiduciary further.
55. That Theodore has illegally been anointed by the former removed and resigned Trustees, Tescher and Spallina, in a Successor of Criminals scheme that violates the very terms of the Trust that PROHIBITED EXPRESSLY FROM ACTING IN ANY FIDUCIARY CAPACITY.
56. That if Theodore has become Successor Trustee of the Simon Trust by fraudulent appointment, he should be removed and for many other reasons as well. First, Theodore is ineligible under the very terms of the ALLEGED Simon Trust to serve as successor trustee. Article IV, Section C. (3) (Page 16) of the ALLEGED Simon Trust states:

C. Appointment of Successor Trustee

3. A successor Trustee appointed under this subparagraph **shall not be a Related or Subordinate Party of the trust.** (emphasis added)

57. That Theodore further was **specifically** disqualified to be a Successor Trustee by the terms of the ALLEGED Trust. Another provision of the ALLEGED Trust also disqualifies Theodore. Article III E(l) states:

Notwithstanding the foregoing, **for all purposes of this Trust and the dispositions made hereunder,** my children, **TED S. BERNSTEIN,** PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, **shall be deemed to have predeceased me ...** " (emphasis added)

Therefore, by the very language of the Alleged 2012 Amended and Restated Trust, Theodore Bernstein is disqualified by this provision to serve as Successor Trustee or in any capacity, as Ted is considered dead for all purposes of the Trust and the dispositions made thereunder and therefore

Theodore is acting illegally knowing he cannot serve in any fiduciary capacity.

58. That if the ALLEGED 2012 Amended and Restated Trust is ruled legally invalid due to fraud and improper notarizations as pled to this Court and under ongoing investigations and the 2008 Trust of Simon is reverted to, Theodore will again remain wholly disinherited along with his lineal descendants, as they are in Shirley's IRREVOCABLE Trusts as it stands now and that language from the 2008 Simon Trust is as follows;

Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, **my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me.**

Under the 2008 Simon Trust, Eliot and his lineal descendants are Beneficiaries of Simon's Trust, as it would be the same Beneficiary Class as Shirley (Eliot, Lisa and Jill and their lineal descendants) and Theodore and Pamela and their lineal descendants would be wholly excluded, as was the case in Shirley's Trust when she died and the Trust became irrevocable and her Beneficiary Class was established as Eliot, Jill and Lisa and their lineal descendants, who at this time remain the ONLY beneficiaries in the Shirley Trust.

59. That the alleged changes to Simon's Wills and Trusts took place allegedly 48 days prior to Simon's sudden and unexpected death. The Governor Rick Scott's Notary Public Division has already confirmed that these documents were improperly notarized. Again, improper notarizations in these proceedings are discovered, this time committed by Theodore's personal assistant, Lindsay Baxley aka Lindsay Giles on Wills and Trusts no less and due to the improper notarizations it cannot now or ever be stated that Simon was present at the signing of these alleged documents at all. All of the witnesses to the document are involved in prior criminal Fraudulent Notarizations, Admitted Forged

and Altered documents in these proceedings and one has been arrested and convicted, all facts that this Court is fully aware of and therefore cannot now or ever be trusted or act as witness.

**CONFLICT OF INTEREST FROM PROVEN AND ALLEGED CRIMINAL ACTS AND CIVIL TORTS THAT BENEFITED THEODORE AND THAT HE IS THE ALLEGED CENTRAL PARTICIPANT IN**

60. That there has been PROVEN FELONY CRIMINAL ACTS in the Shirley and Simon's Estates and Trusts and further allegations of conversion, comingling and theft of assets that are estimated to be crimes that have cost the Beneficiaries, Interested Parties and Creditors already millions upon millions of dollars. There are serious factual FRAUDS and FORGERIES, with certain felony crimes already proven and admitted and ongoing investigations of others in the Shirley and Simon Bernstein Estates and Trusts committed by former Personal Representatives, Trustees and Counsel and Theodore.
61. That there are ongoing criminal and civil actions against Theodore and Alan, including but not limited to,
- i. Palm Beach County Sheriff Report – Case No. 12121312 – Alleged Murder filed by Theodore Bernstein
  - ii. Palm Beach County Sheriff Report – Case No. 13097087 - Forgery and Fraudulent Notarizations
  - iii. State Attorney FL – - Case No. 13CF010745 - Forgery and Fraudulent Notarizations
  - iv. Palm Beach County Sheriff Report – Case No. 13159967 - Theft of Assets of Estates
  - v. Palm Beach County Sheriff Report – Case No. 14029489 - Continuation of Fraud, Extortion and more
  - vi. Jacksonville, Il. Police Department – Case No. #2014000865 – Insurance Fraud - Directed to Federal Authorities.
  - vii. Case No. 13-cv-03643 United States District Court – Northern District Il.
  - viii. Florida Probate Simon – Case No. 502012CP004391XXXXSB
  - ix. Florida Probate Shirley – Case No. 502011CP000653XXXXSB
  - x. Heritage Union Fraud Investigation – Case No. TBD
  - xi. Florida Medical Examiner – Autopsy Case No. 12-0913 – Filed by Theodore Bernstein
  - xii. Governor Rick Scott Notary Public Division – Moran – Case No. Eliot and Simon Bernstein v. Moran
  - xiii. Governor Rick Scott Notary Public Division – Baxley – Case No. Eliot and Simon Bernstein v. Baxley
62. That there are hosts of new alleged felonious misconduct, where Theodore Bernstein and his minion of Attorneys at Law again are centrally involved in and directly benefiting from these acts, while providing no benefit to the trusts or beneficiaries.

63. That the prior CRIMINAL FELONY MISCONDUCT committed by Theodore's Counsel, Tescher and Spallina, who were acting as Officers and Fiduciaries of this Court and committed numerous Frauds Upon this Court, now appears to be continuing with Theodore's new counsel and Theodore's new claims that he is a qualified Successor Trustee of the Simon Trusts despite numerous reasons he and his counsel and this Court are aware make him ineligible to serve in any fiduciary capacity in the Simon and Shirley Estates and Trusts going forward.
64. In one instance of the fraud going on in this Court by Theodore and his prior counsel, prior Co-Personal Representatives and Co-Trustees of Simon's Estate, Tescher and Spallina, is that documents were submitted to the Court bearing fraudulently notarized and forged signatures of Simon Bernstein on a date after he had passed away and there were fraudulently notarized and there were even forged signatures in the name of Theodore Bernstein himself and Theodore failed as an ALLEGED Fiduciary to notify any authorities until they contacted him and after he had converted monies to his family improperly and more.
65. This Court was apprised of these facts in a hearing conducted September 13, 2013 wherein the Court questioned whether the parties involved in perpetrating the Frauds, including Theodore and his Attorneys at Law, Donald Tescher, Esq., Robert Spallina, Esq. and Mark Manceri, Esq., should be read their Miranda Rights, see Exhibit 2 - Transcript of Proceedings, pages 15 and 16.)
66. That the Attorneys at Law for Theodore whom he introduced to the Bernstein Family, Tescher and Spallina, have now admitted to Palm Beach County Sheriff Investigators to conspiring to altering provisions of the Shirley Bernstein Trust POST MORTEM OF SHIRLEY AND SIMON, see the Sheriff's report fully incorporated by reference herein at <http://www.iviewit.tv/20140131PBSOReport.pdf> , which had the effect of directly benefitting their

client, affiliate, friend and business associate Theodore and directly damaging other Beneficiaries, including Plaintiff and led to fraudulent conversion and comingling monies to Theodore using fraudulent documents to make illegal and improper distributions knowingly to improper Beneficiaries, while fully cognizant that there were allegations of Fraud, Forgery and more and that the beneficiaries were alleged improper at that time they committed the conversions.

67. That additionally, Theodore's direct involvement in such criminal activity involving the Estate of Shirley and Simon should disqualify him from serving as Successor Trustee of the ALLEGED Simon Trust and disqualify him in any fiduciary capacity whatsoever in the Estates and Trusts of Simon and Shirley.
68. That Tescher and Spallina, upon their removal from these proceedings as both Fiduciaries and Counsel in Simon's Estate, in the wake of the frauds committed to benefit their client Theodore and themselves, then FRAUDULENTLY attempted to transfer Trusteeship to Theodore as their parting gift to these proceedings. This FRAUDULENT transfer of Trusteeship to Theodore when knowing he is a party that was directly involved in and who benefited directly from their fraudulent activities, in a Successor Criminal scheme.
69. That Tescher and Spallina knew Theodore and his counsel Alan who they recruited from the start to aid and abet their schemes would do everything as Successor Criminals to further cover up their crimes and those of Tescher and Spallina through this fraudulent transfer of Trusteeship scheme. Thus began another long and lengthy waste of time trying to get rid of the Successors Criminals and stop their continued fraud, waste and abuse.
70. That this attempted felonious transfer violates the very alleged Simon Trust terms that Tescher and Spallina wrote and this is reason alone for this Court to remove Theodore immediately and sanction

all those involved in this felonious attempt to continue the frauds in and upon this Court, the Beneficiaries, Interested Parties and Creditors by attempting such a criminally shady and unlawful transfer of Trusteeship that violates even the very terms of the Alleged Trust and the definition of fiduciary.

71. That Alan has further been retained by Theodore who was only representing him as a Defendant in the Creditor Stansbury lawsuit against the Estate and Trusts prior, to now replace the capacities Tescher and Spallina were abdicating with their withdrawal and removal from all Bernstein family related matters.
72. That Alan too has been involved and participated in the advancement of the fraudulent schemes to benefit himself and his client Theodore from the start in cahoots with Tescher and Spallina and advancing the fraudulent schemes, again acting opposite the best interests of the Beneficiaries and Creditors et al.
73. That Alan, despite knowing of the Florida Bar Rules against advancing frivolous pleadings and legally devoid and baseless arguments still allows Theodore to continue to act as ALLEGED Successor Trustee, even despite direct and explicit language excluding Theodore from acting in any capacities in the Trusts of Simon.
74. That Alan continues to represent Theodore as the alleged Trustee's counsel despite his knowledge that Theodore cannot serve and yet continues to advance pleadings in this matter that he knows are TOXIC, VEXATIOUS, FRIVILIOUS, MISLEADING AND PROHIBITED BY LAW AND THE TERMS OF THE SIMON TRUST.
75. That it is understandable that they would disregard law to maintain illegally gained Dominion and Control of the Estate and Trusts and as Alan's life too hangs in the balance in these matters, as if

Theodore is ousted by this Court in all fiduciary capacities, so goes Alan. Then, the Estates and Trusts can finally begin to ascertain the damages done and begin hunting down those ripe for prosecution and hunting down the missing assets, documents and personal properties. No longer will Alan and Theodore be able to delay, stymie or derail these proceedings and misuse Estate and Trust assets to protect themselves whilst launching harassing campaigns against beneficiaries using their delayed and interfered inheritances against them, including Minor Children, as more fully defined herein.

**THEODORE HAS BEEN DENIED BY THIS COURT TWO RECENT MOTIONS TO BECOME A FIDUCIARY IN THE ESTATE OF SIMON**

76. That this Court should take note that Theodore has TWICE attempted to become a fiduciary in the Estate of Simon despite knowing all the reasons he is unfit and further waste the courts time and the Estates and Trusts assets. Theodore's first Petition was to become Curator as Successor to Tescher and Spallina upon their termination and this was rejected on February 19th, 2014 by the Your Honor who stated in the Order, "DENIED, for the reasons stated on the record." This DENIAL was for just and sound reasons by the Court that should have applied to removal of Theodore in any and all fiduciary capacities in both Simon and Shirley's Estates and Trusts that Theodore was acting in already as a fiduciary or seeking nomination to become one.
77. That the second attempt to become a fiduciary of the Estate of Simon was made by Theodore in a hearing held in July 2014 in efforts to become Successor Personal Representative at the replacement of Benjamin Brown as Curator.
78. That he Court however strongly urged Theodore and Alan to WITHDRAW their TOXIC, VEXATIOUS, FRIVILIOUS, PROHIBITED and DOOMED pleading PRIOR to even hearing the pleading.

79. That after considerable waste of this Court, the Beneficiaries, Creditors and everyone's time, effort and monies in a frivolous pleading certain to fail, Alan and Theodore finally WITHDREW the pleading but only after the Court warned them that they would SANCTIONED if they lost for everyone's costs.
80. That the Court's Order dated July 11, 2014 reads, "Ted Bernstein's Petition For Appointment of Successor Personal Representative is hereby ~~DENIED~~ WITHDRAWN. Again, this Court suggested such withdrawal of their pleading at the hearing and this SECOND attempt was withdrawn for just and sound reasons urged by the Court and these reasons again should have applied to removal of Theodore in any and all fiduciary capacities Theodore was acting in or seeking nomination for at the time.
81. That for the same reasons the Court has deemed Theodore unfit in now two attempts to become a Successor Fiduciary forward, now constitute the same reasons that should serve for this Court to act on its own Motion under Fla. Stat. 736.0706 to remove Theodore from any/all fiduciary capacities in either the Estates or Trusts of Simon and Shirley, as further discussed herein.
82. That in addition to the fact that the Trust language precludes Theodore from becoming a Successor Trustee in Simon's Trusts, Theodore is further not qualified now or has ever been to be a fiduciary in the Estates and Trusts of both Simon and Shirley, including from a continued pattern and practice of fraudulent activity, breaches of fiduciary duties and more, that include but are not limited to all of the following:

**CONFLICTS OF INTEREST AND ADVERSE INTERESTS THAT PRECLUDE THEODORE FROM BEING A FIDUCIARY IN THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY**

83. Theodore has adverse interests and conflicts of interest that preclude him from acting as a fiduciary,

including but not limited to:

- i. Theodore and his lineal descendants were wholly disinherited in Estate and Trust documents done in 2008 and only allegedly have been included through the use of forged, fraudulent, improperly notarized and legally invalid documents, all alleged to have been done only days before Simon passed. If these alleged 2012 documents and forged and fraudulent documents do not stand up, Theodore and his lineal descendants will be excluded entirely from the Estates and Trusts and this puts Theodore in conflict with other beneficiaries and impairs his ability to be impartial due to the conflicts.
- ii. Theodore and his counsel Alan Rose (“Alan”) are both further adverse to Eliot Bernstein and his family, as it is through Eliot’s Pro Se efforts that Theodore’s prior counsel, the fiduciaries of Simon’s Estate and Trusts and Alan’s affiliates who brought him into these matters, Tescher and Spallina, have been forced out of these proceedings and removed as Fiduciaries and Counsel. Further, there has been an arrest of their employee made and where Eliot is still pursuing Tescher, Spallina, Manceri, Theodore and Alan, with criminal authorities and in state and federal civil actions for their direct involvement and benefit from the frauds, thefts, conversions and comingling of assets and more, severely impairs both Theodore and Alan’s ability to be impartial to Eliot and has led to their continued retaliation and extortion of Eliot, as further defined herein. If Theodore is removed as a fiduciary in these matters by this Court and losses his illegally gained Dominion and Control of the Estates and Trusts and his ability to misuse Trust funds for his legal defenses of these actions, he and his Counsel Alan both may land in jail and lose their assets if successfully prosecuted in these matters forward.
- iii. That Theodore and Alan are both Respondents in the probate cases in Shirley and Simon’s

Estates and Trusts before this Court and are now also Defendants in a related Counter Complaint recently moved to Your Honor, Case #502014CP002815XXXXSB, with allegations that directly relate to these Probate and Trust matters, including; CIVIL CONSPIRACY, CIVIL EXTORTION, THEFT, FRAUDULENT CONVERSION, INTENTIONAL INTERFERENCE WITH AN INHERITANCE/EXPECTANCY, CIVIL FRAUD, BREACH OF FIDUCIARY DUTIES, ABUSE OF PROCESS, LEGAL MALPRACTICE and EQUITABLE LIEN.

- iv. That Theodore is conflicted with the Estates and Trusts sued under the Creditor William Stansbury's lawsuit against the Estate and Trusts of Simon and Theodore Professionally and Personally, as Theodore is the alleged primary cause of the torts claimed by Stansbury and Theodore is the primary Defendant in that action. Despite the possibility that Theodore may have or may, settle(d) his personal capacities with Stansbury, the Estate, the Trusts and the Beneficiaries will still have claims that may seek recovery from Theodore personally for any settlement with Stansbury that uses Simon or Shirley's Trust and/or Estate funds that further damage the Beneficiaries. The Estate and the Beneficiaries may make the claim that Theodore and not the Estates and Trusts are WHOLLY responsible for the torts and damages to Stansbury, as Petitioner is already making that claim and would seek immediate recovery from Theodore and this again makes irrefutable conflicts of interest.

Where evidence shows that Theodore may have benefited solely from the misconduct alleged by Stansbury and new evidence suggests that Simon was unaware that Stansbury had been defrauded by Theodore until approximately six weeks before his sudden and unexpected death. That at that time, Simon and Theodore are alleged to have been at extreme odds with each other, with Simon abandoning his offices with Theodore due to Theodore's extreme anger raged upon

Simon by Theodore, his son, that was witnessed by others. Theodore was enraged at his exclusion from the Estates and Trusts and that Simon would not support him in his defense of the alleged bad faith acts against Stansbury.

Stansbury, whom Simon and Shirley loved and trusted, so much so, as to name Stansbury in their 2008 estate plans as the Personal Representative and Trustee over their entire Estates and Trusts, and not Theodore their own eldest son for good and just reasons. Where Stansbury may again be in those fiduciary capacities if Theodore is successfully removed by this Court and the 2012 Will and Amended and Restated Trust of Simon fails due to the improperly notarized and perhaps forged documents, according to newly discovered 2008 documents of Simon's, including two new 2008 Simon Trusts and a Will, only recently produced by Tescher and Spallina, upon the Court's Order to turn over ALL of their records on their removal, after suppressing and denying these documents from Beneficiaries and this Court for almost two years despite repeated requests by beneficiaries and their counsel.

- v. That Theodore is further conflicted with the Estate and Trust of Simon and the Beneficiaries, Interested Parties and Creditors further due to a lawsuit IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION Case No. 13cv3643, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DTD 6/21/95 v. HERITAGE UNION LIFE INSURANCE COMPANY, adjudicated by Hon. Judge Amy St. Eve. The lawsuit filed by Theodore acting as Trustee of a NONEXISTENT TRUST is for Breach of Contract that he was advised by Tescher and Spallina et al. that he had no basis to file but Theodore filed anyway using yet another TOXIC, VEXATIOUS, FRIVOLOUS, FRAUDULENT and PROHIBITED pleading, this time acting as a

“Trustee” of a NONEXISTENT TRUST that he claims he has never seen. Again Theodore effectuates this criminal illegal legal scheme to convert insurance proceeds into his own pocket is aided and abetted by his minion of Attorneys and this Fraud is now upon a Federal Court and as that crime attempts to remove an asset of the Estate of Simon out the back door, this is yet another Fraud on this Court that Theodore is smack in the middle of costing the Estates and Trusts time, monies and attorney fees, while providing no benefit to the Estates, Trusts and Beneficiaries. Theodore has paid Tescher and Spallina from Estate and Trusts assets to remove this insurance asset from the Estate where he and sister Pamela would get none of it and thus they tried this costly scheme and fraud on a federal court to convert it into he and his sister Pamela Simon’s pockets, instead of their very own children.

It should be noted that remarkably, Theodore in a January 28, 2014 police interview stated to Palm Beach County Sheriff Investigators, “Ted confirmed that **he did not make any decisions in relation to Simon’s insurance policy generated out of Chicago, Illinois [emphasis added]**.”

However, Theodore is actually the Plaintiff that filed the lawsuit in 2012 trying to claim the insurance proceeds through the illegal Breach of Contract legal action, which puts Theodore again directly in conflict with the Estate Beneficiaries. If that baseless lawsuit fails, the Estate would receive the benefits due to the fact that no beneficiary can be found at the time of death.

The Court is already well aware of this lawsuit and has recently allowed the Personal Representative and Counsel to represent the Estate in that matter, again after over a year and half that the Estate was blocked from entry in the case to represent the Estates interest in the insurance proceeds by Tescher and Spallina, who were representing Ted initially in the Breach of Contract Lawsuit and are alleged to have made a FRAUDULENT INSURANCE DEATH BENEFIT

CLAIM that led to the alleged breach.

That it should be noted that several weeks before filing the FRAUDULENT Breach of Contract Lawsuit, Robert Spallina filed an Insurance Death Benefit Claim as the Trustee of the same LOST trust that he claims to have never seen or possessed and this claim was DENIED by the carrier as Spallina could not prove his alleged beneficial interest as the alleged Trustee of a LOST Trust he claimed to the carrier not to possess. The DENIAL OF THE CLAIM led to Theodore then claiming he was now the “Trustee” of the LOST Trust he never saw and in such IMAGINARY FIDUCIARY CAPACITY filed the Breach of Contract lawsuit against Heritage for their failing to pay on Spallina’s DENIED and FRAUDULENT INSURANCE CLAIM.

Again, this insurance scheme inures benefits directly to the pocket of Theodore and his minion of counsel and where again, it is Theodore that is completely disinherited from both the 2008 and 2012 Estates and Trusts of Simon and Shirley (not Eliot as Alan repeatedly tries to sell this Court). Without this fraudulent insurance scheme to convert the insurance proceeds from the Estate of Simon’s Beneficiaries and Creditors, Theodore would receive nothing. These conflicts of interest further demand Theodore’s removal from these proceedings in any/all fiduciary capacities he has or alleges to have in both Simon and Shirley’s Estates and Trusts.

- vi. That further disqualifying Theodore from acting as fiduciary are further statements he made to PBSO investigators and this Court that show that he is perjuring himself and unfit to serve as a fiduciary and conflicted with these matters, whereby according to the PBSO Supplemental Report,

**“TED STATED THAT HE DID NOT READ ALL OF SHIRLEY’S TRUST DOCUMENTS [EMPHASIS ADDED] and that Spallina and Tescher told him several times how Shirley’s Trust was to be distributed. TED SAID THAT HE**

**DID READ IN THE DOCUMENTS WHERE THE 10 GRANDCHILDREN WERE TO RECEIVE THE ASSETS FROM THE TRUST [EMPHASIS ADDED].** He said that he did issue a partial distribution to the seven of the 10 grandchildren.”

Spallina stated to PBSO investigators that “SPALLINA STATED THAT AGAINST HIS ADVICE, A DISTRIBUTION WAS MADE FROM ONE OF THE TRUSTS AFTER SIMON'S DEATH. HE STATED THAT HE ADVISED AGAINST THIS...” and later states “SPALLINA REITERATED THAT TED WAS TOLD TO NOT MAKE DISTRIBUTIONS.”

That Theodore could not have read as he claims, language in the 2008 Shirley Trust (that he also claims not to have read?) that the grandchildren were to receive the assets from the Trust, as that language is NOT in the Trust anywhere at all. The only Beneficiaries defined in the Shirley Trust are Eliot, Jill and Lisa and their lineal descendants, as Theodore and Pamela and their lineal descendants are considered predeceased as evidenced already herein.

That the only possible way Theodore could have read in the Shirley Trust documents that the 10 grandchildren were to receive benefits, is if he would have read the newly alleged FRAUDULENTLY CRAFTED “Second First Amendment to Shirley’s Trust,” the very Trust document Spallina states to PBSO that he fraudulently altered for Shirley POST MORTEM by two years in January 2013. This fraud achieved allegedly by Spallina altering an alleged “First Amendment to Shirley’s Trust” whereby the altered document then fraudulently attempted to include the 10 grandchildren in Shirley’s Trust fraudulently.

The problem for Theodore here is also that he claims to PBSO in that same Supplemental Report,

“Ted said that he not spoken to Spallina about his withdrawing from being the attorney for the trusts, but that he did speak with Tescher. He said that Tescher told him he had been made aware of a fabricated document that was potentially problematic for the

Estates [referencing the Second First Amendment]. He said that Tescher told him that Spallina created the fabricated document and it essentially impacted the ability for Simon to distribute funds to all 10 grandkids. Ted said that Tescher told him that he had only recently become aware of this document, approximately three weeks from today (01/28/14).”

Again, Theodore made the distributions in Sept 2013 to the 10 grandchildren before learning of the altered document, which directly contradicts his own prior claims and his illegal actions in distributing the funds to knowingly improper parties.

Theodore then wrote to Eliot further contradicting his statement that he saw language allowing him to make distributions in Shirley’s documents to the grandchildren that does not exist and where he claims again not to have known of the altered document until way after his distributions by stating to Eliot,

**From:** Ted Bernstein [mailto:tbernstein@lifeinsuranceconcepts.com]  
**Sent:** Tuesday, **January 14, 2014** [emphasis added] 5:23 PM  
**To:** Eliot Bernstein (iviewit@gmail.com)  
**Subject:** Update

Eliot,

You may have received a letter or email from Don Tescher today. Late last week I learned of **shocking developments concerning mom and dad’s planning documents that were prepared by their counsel at the time [Ted fails to state they were his counsel too at the time]. In light of what I have learned, [emphasis added]** I will be obtaining new counsel, as Trustee and PR. Things are still unfolding. As a courtesy to you, please let me know if you would like to arrange a meeting with me and my counsel in an effort to bring you up to speed.

Sincerely,

Ted

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Spallina then tells PBSO investigators in the already exhibited herein report,

Spallina told me that he and his Partner had discussions reference to fulfilling Simon’s wishes of all 10 grandchildren receiving the benefit from both Simon and Shirley’s Trust...

That Spallina said that **they** [referring to he and his partner Tescher]

noticed that the first page of the document skipped from one to three, so he took it upon himself to add in number two, before sending it to Yates [Christine Yates of the most respectable Tripp Scott law firm that represented Eliot and his children and cost them over \$50,000.00 to chase around fraudulent documents sent to her and more]. The change that number two made to the trust, amended Paragraph E of Article III, making it read that only Ted and Pam were considered predeceased, not their children. He said the original trust states that Ted, Pam and their children are deemed predeceased. Spallina said he did this at this office in Boca Raton, Florida. He said that no one else took part in altering the document.

So if Spallina sent this document to Yates in January 2013 and did not confess to it until January 2014 to PBSO investigators, how could Theodore have seen language in Shirley's Trust documents that would have allowed him to make distributions to 10 grandchildren on or about September 16, 2013, when even Ted claims he did know about the "Second First Amendment" until January of 2014.

That for Theodore's admitted alleged **failure to even read** Shirley's Trust documents before acting as the alleged Trustee and making fraudulent distributions upon language that does not exist, this Court should sanction and remove him instantly for this reckless behavior.

This breach has led to fraudulent conversion and comingling of assets to profit himself directly and in fact use trust and estate funds for counsel and fiduciaries to advance and effectuate these schemes benefiting both he and they at the expense of the Beneficiaries and Creditors. Now Theodore tells lie after lie attempting to cover up the crimes and further mislead the Court and others, which is outrageous conduct for an alleged fiduciary that is supposed to be held to a higher standard not a lower standard for their actions.

That Theodore further stated to PBSO investigators in contradiction to Spallina's prior exhibited statement herein where Spallina states he told Theodore to NOT make distributions that "He

[Theodore] stated that Spallina told him it was OK to distribute the funds.” That this contradiction of statements to investigators puts Theodore in direct contradiction with his own counsel’s statements and shows that irrefutably, Theodore is now adverse to other beneficiaries who are claiming the distributions were illegal conversions and a comingling of funds to improper parties and thus how can he now be impartial forward under Florida Statute 736.0803, where his actions as an alleged fiduciary may benefit his children at the expense of other beneficiaries in both the Estates and Trusts of Simon and Shirley.

**ACCOUNTING VIOLATIONS BY THEODORE AS ALLEGED FIDUCIARY IN THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY – FLORIDA STATUTE 736.0813 DUTY TO INFORM AND ACCOUNT**

84. That Theodore and his predecessors Tescher and Spallina have all failed to follow the very Terms of the Trusts he operates under, The Trust Code and Florida Probate Rules and Statutes, that all require a duty of accounting to beneficiaries.
85. To date, Theodore, nor Spallina and Tescher have ever sent any required accountings or administrative information for the trusts they claim to be trustees of to the beneficiaries, yet all have had several open checking accounts that they have administered freely with no supervision or accountability using them as their own personal accounts and reporting to no one in violation of statutes and law.
86. That Theodore has refused to turn over multiple trusts in the Estate and Trusts of Simon and Shirley and where Eliot still to this date is missing several of these important dispositive documents.
87. Theodore refuses to provide financial information of transactions he has done or any accountings despite repeated requests and therefore breaches all duties of loyalty and accounting under the terms of the trust.

88. THEODORE is self-dealing, converting and co-mingling trust funds and uses trust funds for his own personal use. Petitioner has reasons to believe THEODORE and others he has recruited to the Estates and Trusts as either counsel or as Fiduciaries, in coordinated efforts are stealing Trust and Estate assets, failing to give accountings, suppressing and denying Trust documents, altering Trust and Estate documents and the Beneficiaries and Creditors need immediate relief from this Court by removing Theodore on the Court's own motion as required by law and appointing a qualified independent Trustee to marshal the assets and guarantee the terms of the trust are carried out in a non-conflicted and non-vindictive fashion against those Theodore and Alan are adverse to. No accountings have been provided for the Simon Trust for two years and in Shirley's Estate & Trusts for almost four years and Beneficiaries have been denied this information as part of the overall fraud and looting of the Estates and Trusts. Petitioner has requested accountings that are due to him under the terms of the Trusts, upon request, annually and when the PR and Trusteeship have changed according to Statute. There have been NO Annual accountings provided, NO requested accountings provided and NO accountings at the change of trusteeship by Theodore or the former removed Fiduciaries and Counsel in these matters in violation 736.0813 and 733.604.

736.0813 Duty to inform and account.—The trustee shall keep the qualified beneficiaries of the trust reasonably informed of the trust and its administration.

(1) The trustee's duty to inform and account includes, but is not limited to, the following:

(a) Within 60 days after acceptance of the trust, the trustee shall give notice to the qualified beneficiaries of the acceptance of the trust, the full name and address of the trustee, and that the fiduciary lawyer-client privilege in s. 90.5021 applies with respect to the trustee and any attorney employed by the trustee.

(b) Within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, the trustee shall give notice to the qualified beneficiaries of the trust's existence, the

identity of the settlor or settlors, the right to request a copy of the trust instrument, the right to accountings under this section, and that the fiduciary lawyer-client privilege in s. 90.5021 applies with respect to the trustee and any attorney employed by the trustee.

(c) Upon reasonable request, the trustee shall provide a qualified beneficiary with a complete copy of the trust instrument.

(d) A trustee of an irrevocable trust shall provide a trust accounting, as set forth in s. 736.08135, to each qualified beneficiary annually and on termination of the trust or on change of the trustee.

(e) Upon reasonable request, the trustee shall provide a qualified beneficiary with relevant information about the assets and liabilities of the trust and the particulars relating to administration.

89. That Theodore upon accepting the PROHIBITED fiduciary capacity of ALLEGED Successor Trustee from Tescher via the Fraudulent Transfer of Trusteeship has failed to provide an accounting for the Trust since January 2014 and Tescher similarly failed to produce ANY Trust accountings while he was the ALLEGED Trustee.

90. That Theodore upon allegedly accepting his Letters of Administration most amazingly granted to him by Your Honor while there were serious allegations of breaches and criminal misconduct before the Court, in October 2013, has failed to provide an accounting when he became Successor PR of Shirley's Estate in violation of statutes and law. It should be noted that no FINAL ACCOUNTING of the Estate of Shirley was ever completed by Simon due to fraudulent and forged waivers being submitted and other closing documents filed by Simon while he was dead for four months and so NO ACCOUNTINGS have ever been done in Shirley's Estates and Trusts, in violation of Probate and Trust Rules and Statutes.

**BREACHES OF FIDUCIARY DUTIES BY THEODORE IN THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY**

91. On January 28, 2014, THEODORE, in the already Exhibited PBSO report admitted to PBSO investigators regarding distributions that he made that he had never read the Trust documents in full, "Ted stated that he did not read all of Shirley's Trust documents and that Spallina and Tescher had

both told him several times how Shirley's Trust was to be distributed.”

92. However, Spallina stated to PBSO, “Spallina reiterated that Ted was told to not make distributions.”

Then Theodore stated, “Ted stated that Spallina told him it “was OK to distribute the funds.”

THEODORE however states in various emails produced by his counsel Tescher and Spallina in the Court Ordered production upon their termination that he had in fact read the trust document

“carefully.” From an alleged email dated October 25, 2013, months prior to his statements to PBSO that he had not read the Shirley Trust and only followed the advice of counsel we find Theodore again contradicting himself when he states,

**Robert Spallina**

**From:** Ted Bernstein [tbernstein@lifeinsuranceconcepts.com]

**Sent:** Friday, October 25, 2013 7:34 PM

**To:** Robert Spallina

**Subject:** RE: Withdrawal Activity Report

Good news is that on quick glance, all looks kosher but Deborah and I will tie everything out over the weekend. Bad news is that there is a steadily increasing amount of money being wasted on Eliot related matters. Once we get past Monday, I want to meet with you about my damages that I have incurred as a result of my role as trustee. **I have read through the document carefully [emphasis added]** and I have important questions and concerns about doing some things to counter the affects and I feel that there is time sensitivity involved. I hope Kim is doing as best as can be expected [this statement regarding Kimberly Moran and Eliot having her arrested by PBSO for fraudulent notarizations and admitted forgery]. I'm available over the weekend if you need me.

Ted

There are multiple ongoing investigations into felony criminal misconduct involving Theodore and Alan, including but not limited to, Frauds, Insurance Fraud, Fraud on a State and a Federal Court, Bank Fraud, Theft of Estate and Trust Assets of Simon and Shirley totaling millions of dollars, Falsifying Documents, Criminal Breaches of Fiduciary Duties and more, all relating to Simon and Shirley's Estates and Trusts and those who have administered them from the start.

93. That the next Breach of Fiduciary duties by Theodore is a direct attack on Eliot's three minor children and retaliation by Theodore and Alan against Eliot, whereby Theodore alleges the three minor children of Eliot's are Beneficiaries of the Shirley and Simon Trusts that he alleges to be

Trustee for. In a sophisticated attempt to destroy their educational futures that were long planned and paid for by Simon and Shirley and as part of an extortive effort to get Eliot to participate in taking knowingly illegal distributions again, in the same manner he and Tescher and Spallina did, a new recent attempt was launched using the children as pawns this time with Theodore and Alan.

94. That Eliot contacted the alleged Trustee Theodore on July 25, 2014 for a Welfare Payment according to the terms of the alleged Trust as defined herein, which provides for distributions for schooling and requested a simple yes or no answer so that he could notify St. Andrew's school, who had notified Eliot that on August 09, 2014 his children would lose their enrollments for school for the 2014-2015 year for past due balances owed and current tuition due.
95. That the children have been in St. Andrew's school throughout most of their lives and which was contracted and paid for entirely by Simon and Shirley while they were alive and provisions were made to continue after their deaths that have been interfered with to cause this calamity with intent. Greater detail of this extortive attempt and fraud can be found in Eliot's recently filed Motion for Interim distributions filed in both Simon and Shirley's Estates and Trusts. See Motion for Interim Distribution @ <http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140815EMERGENCYMOTIONFORINTERIMDISTRIBUTIONS.pdf>
96. That despite knowing of the illegal distributions already made using the fraudulent documents and schemes to alter Shirley's Beneficiary Class by Tescher and Spallina, Alan now tried to get Eliot to take illegal distributions, this time by extorting him using his children's school tuition as the basis of the extortion play or pay this time and tried to keep the extortive attempt secreted from this Court and others by misleading Eliot with misstated and misquoted statutes regarding Settlements.

97. That even other Attorneys at Law that Alan attempted to recruit into this scheme are catching on to his schemes, as illustrated in the Creditor Stansbury's counsel, Peter Feaman, Esq.'s letter to Alan in response to his request to have the creditor release his hold on the assets in Simon's Estate and Trusts, since Eliot would not again partake in the fraudulent distribution scheme under Shirley's Trust, see Exhibit 3 - Feaman Letter to Alan. Whereby Feaman states after requesting an accounting from Alan of the alleged Simon Trust to confirm his claims about how little was left in the Trust and then being denied a copy, Feaman states to Alan,

My client tells me there are numerous witnesses who know that it was Simon's intent to provide for the St. Andrews schooling for Eliot's children. Heck, the house he bought for Eliot is within walking distance of the school! Whatever differences there are between Ted and Eliot, **the grandkids should not be used as pawns.** There is money to pay for the grandchildren's education. Stop playing games and get this done. At the end of the day, an adjustment can be made if necessary, **but stop putting the kids in the middle [emphasis added].**

98. That once Theodore and Alan could not get Eliot or Feaman to participate in their renewed extortive schemes and play by Alan's rules, Theodore then failed as an alleged Fiduciary to respond to Eliot's repeated request for a simple yes or no answer to the Welfare Payment, in order to notify the school of their decision and make preparations if necessary to relocate the children. No timely reply was given (talk about uncooperative) and they allowed the due date to pass and the children to lose their enrollments and enacted a new series of schemes to cover up their new breaches.

99. That once they failed with scienter, in an attempt to cover up their breach of duties and failure to pay under the terms of the Trusts of Simon and/or Shirley, they then claimed they need all kinds of stipulations now from this Court to make any payment and stated they were seeking a Court Order to make the payments, which of course they have never did and so enrollment was compromised.

100. That instead of the promised Court filing to get the requested Welfare Payments, in efforts to now recruit the Court to aid and abet in the coverup of their breaches, they instead filed a Contempt Motion against Eliot, to act as if Eliot has somehow prevented them from making the Welfare Payments to keep the children in school and are using this new ABUSE OF PROCESS and TOXIC, VEXATIOUS, FRIVOLOUS, COSTLY, EXTORTIVE pleading as an excuse for failing to act in a timely manner.
101. This breach of duties resulting in MASSIVE DAMAGES THEY HAVE NOW CAUSED TO THREE MINOR CHILDREN'S FUTURES. In fact, it appears they intentionally created these delays through this new Fraud on the Court to have Eliot take "distributions fraudulently to unknown and improper beneficiaries as Theodore et al. had already done, despite admitting to the Court in hearings repeatedly that they are unsure who the beneficiaries are in the Shirley Trust at this time due to the Fraud. In an email of Alan's dated August 01, 2014 he states that the Trustee does not Object to "Payment from the Trust Funds", whereby Alan states,

As Trustee, **Ted has no objection to making a payment from the Trust funds to St. Andrews School for each of Eliot's three kids [emphasis added]**, so long as (i) the Court enters an order directing and authorizing such payment, with the approval of a guardian ad litem if the Court decides to appoint one, and also holding the Trustee harmless for complying with such order and requiring repayment if needed; (ii) the payment for each child will reduce the amount to be distributed to that child's trust and with Eliot agreeing that if it is ultimately decided that the payments were to go to him and not his childrens' trusts (which we believe is not the case), then these same payments would count against Eliot's distribution; and (iii) each of you has the opportunity to be heard by responding to the email or by appearing in court."

102. That the Court should note that in that language Alan refers to the disbursements as PAYMENTS not DISTRIBUTIONS as he then tried to put into the proposed agreement he drafted where he consistently peppered the document with the word distributions, despite Your Honor on the record at

the hearing telling him they were PAYMENTS not distributions.

103. Then Theodore and Alan filed yet another TOXIC, VEXATIOUS, FRIVOLOUS, COSTLY and MISLEADING Construction of Trust motion, recently filed in now a separate hearing to make it look like they could also not make the Welfare Payments without this Court's Order and a reconstruction of the Shirley Trust and to have this Court somehow now reconstruct Shirley's Irrevocable Trust to fit the crimes they already have committed in knowing violation by taking "distributions" to knowingly improper beneficiaries of that Trust with scienter. Yes, Alan and Theodore, who aided and abetted the prior frauds and benefited directly from them, now want to have this Court reconstruct Shirley's Trust four years later to attempt to make the illegal "distributions" Theodore made with others knowing they were improper no somehow legal.
104. That Alan claims they cannot make Welfare Payments without Eliot taking them as knowingly improper "distributions" to beneficiaries that have not been resolved by the Court and are currently admitted by all parties to be unknown.
105. That their claims that Welfare Payments cannot be made and must be made as knowingly ILLEGAL "distributions" despite the fact that at the present time there are no legally qualified beneficiaries known to make legal distributions too are untrue.
106. That Donald Tescher stated in a letter dated, December 26, 2013, "Ted as trustee of Shirley's trust did make some partial distributions and that issue was also addressed at the first hearing where Judge Colin again addressed Eliot on the proper course of action. [KEEP IN MIND THAT WHEN THE COURT FIRST ADVISED ELIOT TO TAKE THE FUNDS YOUR HONOR WAS UNAWARE THAT THEY WOULD BE FRAUDULENT AND WHEN DISCOVERING THAT OUT THEN STATED WHEN ASKED BY ELIOT TO GIVE HIS LEGAL BLESSING TO THE ACT OF

COMMITTING FRAUD, YOUR HONOR WOULD NOT BLESS THEM AND GIVE ELIOT PROTECTION.] Despite Eliot's refusal to open up trust accounts for your boys, Ted has paid necessities for your family (since the Oppenheimer trusts were depleted by your actions) to keep the house running.” Those Welfare Payments were made without a Court Order and any language to release them from anything.

107. That further, Theodore claimed in a letter to Candice dated December 26, 2013,

Because of my concern stemming from my fiduciary role as well as the fact that Joshua, Jacob and Danny are my nephews, Robert Spallina and **I agreed that I would pay some of the bills for your family that I deemed necessary for their well being, on a temporary basis. For example, I have paid for such things as health insurance, electric, water, phones and Internet. I have made these payments from the Shirley Trust account and I will deduct these amounts from any distributions that are ultimately made to the three boys' trusts.**

This statement shows that Alan and Theodore could have simply made the payments to St. Andrews school and then deducted them later after the Court determined the true and proper beneficiaries and only after review of ALL the dispositive documents by forensic analysis and more but they chose instead to try a last attempt to use Eliot's children's schooling and futures to force him to take the illegal and improper distributions the way Theodore and his sisters Pam, Lisa and Jill knowingly did already with the help of Tescher, Spallina and Alan et al.

108. That Theodore and Alan's attempt to further again extort Eliot this time by using his children's schooling as leverage and force him to either take the distributions illegally or else his children would be forced out of school has been brought to this Court's attention in a yet another unheard pleading filed by Eliot, see

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140804EMERGENCYMOTIONFORI>

[NTERIMDISTRIBUTIONS.pdf](#) , which further defines the continued and ongoing Pattern and Practice of Fraud and Extortion being committed by Alan and Theodore against Eliot, his three minor children and lovely wife Candice.

109. This new and exotic extortive attempt began when Alan tried to trick Eliot into a meeting to extort him to take KNOWINGLY ILLEGAL DISTRIBUTIONS TO IMPROPER PARTIES in a meeting Alan tries to claim is about a settlement and Alan tries to claim nothing in the meeting can be used in anyway with any party, in efforts to keep the extortion a secret from the Courts and others.
110. The meeting was only to get a yes or no on if the ALLEGED Trustee Theodore would make the Welfare Payments as he has done in the past as provided for the in the ALLEGED trust he operates under and NOTHING TO DO WITH SETTling ANY CLAIMS.
111. That Alan in fact cites to Eliot a law that he has knowingly fabricated by adding language to the law to make it appear that the meeting could not be used in any way in Court or elsewhere because he claims it is cloaked as a settlement conference and hoped Eliot as a Pro Se litigant would not fact check his legal citing and would comply with Alan's misrepresented law and be forced to keep the extortionary attempt in the dark.
112. That Alan's email to Eliot clearly shows that despite knowing that Shirley's beneficiaries were altered through illegal activity and despite the fact that the beneficiaries are now not known due to the fraud (again costing everyone a fortune to defend and expose), Alan tries to use Eliot's children's school tuition to extort him to take the monies illegally or else the children will be thrown out of school. Alan in his letter even claims he is aware the beneficiaries are not known at this time but in a last ditch effort to get Eliot to partake in illegal distributions to non legally qualified beneficiaries, he picks up where Spallina and Tescher's extortion of Eliot left off, as he demands Eliot take

“distributions” to knowing improper beneficiaries, instead of, as Eliot suggested, making them as Welfare Payment until the Court rules on who the ultimate beneficiaries will be and then deduct it from those parties distributions, either Eliot or his children.

113. That all this renewed extortive effort to have Eliot in desperation with a proverbial “gun to the head” of he and his wife to keep their kids in the school they were put in by Eliot’s parents and paid for by them for virtually their entire lives, once again force him to accept “distributions” illegally to gain an implied consent that Eliot too took illegal distributions as Theodore and others did and further participate in the crime leaving him perhaps no recourse against those who already took KNOWINGLY improper and illegal distributions. This is the same tactic that was tried by Theodore, Tescher, Spallina and Manceri several times before, using the children in several of the attempts as hostage, until they finally admitted to altering trust documents to make the illegal distributions to improper parties and more and after lying to the Court and others for months until they finally confessed.
114. That finally, it was just learned from review of the production documents turned over by Tescher and Spallina upon their resignations and by Order of this Court that the school contract for the 2012-2013 was directly with Simon and should have been a liability of the Estate and instead these costs were shifted to Eliot’s children to pay by Spallina and Tescher, which is yet another fraud that is more fully expanded on in the Counter Complaint filed in the related Oppenheimer v. Eliot and Candice Bernstein lawsuit now before this Court.
115. That both Theodore and Alan have profited and benefited from aiding and abetting in the advancement of the fraudulent schemes to enrich themselves and primarily Theodore at the expense of Beneficiaries, Interested Parties and Creditors from excessive billing, self-dealing and fraudulent

transfers.

116. That Theodore, his sisters Pamela, Jill and Lisa, all knew that documents had been fraudulently notarized and forged in their names and in their deceased father's name POST MORTEM at least from May 2013 when Eliot first presented the evidence to the Court in his initial Petition to this Court and served it upon them and for months none of them notified authorities and instead began a rush to pillage and liquidate and walk off with assets in both Simon and Shirley's Estates and Trusts.
117. That despite knowing of these crimes, Theodore and the others who took the "distributions" failed to take any steps as alleged fiduciaries to report these crimes to the authorities or this Court, instead rushing to take the knowingly improper "distributions." Theodore only admitted he knew of the frauds to PBSO in January of 2014 when he was hauled in for questioning in direct contradiction to the truth, which is he knew at least in May of 2013 when Eliot served the evidence. In fact, Theodore and his sisters then attempted to gloss over and pardon the criminal acts of proven Fraudulent Notarizations and admitted Forgeries of the arrested and convicted Legal Assistant/Notary Public of Tescher and Spallina, Kimberly Moran et al. by submitting further fraudulent waivers to this Court.
118. That from the time Theodore, Spallina, Manceri, Tescher and Alan knew of the allegations alleging the fraudulent distributions and a mass of other crimes launched against them, Theodore et al. began a further aggressive and forceful campaign of terror and retribution against Eliot, his three minor children and lovely wife Candice, in efforts to stop them from bringing these criminal acts and civil torts they partook in to Justice.

**CONTINUED MISREPRESENTATIONS, MISTATEMENTS OF FACTS AND WASTE,  
FRAUD AND ABUSE IN THE ADMINISTRATION OF THE ESTATES AND TRUSTS**

119. The court needs to act on its own Motion to Remove Theodore as Trustee and review those petitions

and motions filed by Eliot and the Creditor Stansbury to stop these continuing and ongoing Frauds on the Court, again being committed by Fiduciaries and Officers of this Court under the Court's tutelage who are directly involved in and directly benefited from the prior frauds? This Court needs to put a stop this RECKLESS, WANTON and GROSSLY NEGLIGENT disregard for law, this Court, the Beneficiaries and Creditors and begin to prevent the ongoing attempts to cover up their crimes through further fraud, waste and abuse of process.

120. That this Court needs to stop them from committing additional new crimes instantly, including the new alleged thefts of Personal Properties (discussed further herein and in prior unheard Motions and Petitions) and round up and rid the Court of every single person who was involved in any way with the prior fraudulent activity, as is required by law when Fraud Upon the Court has been proven. This Court needs to clean up its own Court and provide for fair and impartial due process free of the fraudsters who operate cloaked as Officers and Fiduciaries of this Court and not wait for Stansbury or Eliot to file further Motions and Petitions to have him removed, IT IS THIS COURTS DUTY. Every day this Court leaves these reckless and unlawful Fiduciaries and Officers of this Court in place, is a day of suffering, damages and abusive costs for the already injured parties.
121. That the Court should note that all of these PROVEN AND ADMITTED FRAUDS on this Court, the Beneficiaries and the Interested Parties have ALL been committed through legal process abuse that allowed for illegal seizure of Dominion and Control of the Estates committed by OFFICERS OF THIS COURT and FIDUCIARIES, using this Court as the host for the CRIMES and ALL of these parties were APPROVED BY YOUR HONOR.
122. That despite knowing these facts, this Court continues to allow those involved and under investigation to now continue to act in Fiducial and Legal capacities, despite KNOWING THESE

FACTS and knowing that under law they should have already resigned voluntarily when requested and under law they should be removed by this Court on the Court's own Motion. These problems occurred and continue to occur in this Court and it is this Court's duty under law to clean up the mess it is responsible for, not wait for Eliot or others to do this.

123. That Alan and Theodore now pick up and continue the Pattern and Practice of Harassment, Extortion, ATTEMPTED NEW Illegal Distributions of Estate and Trust funds, Fraud on the Court, Fraud on Beneficiaries, Fraud on Creditors and more committed by Theodore and the prior PR's, Trustees and Counsel in the Estate and Trusts of Simon and Shirley, Tescher and Spallina, who have been removed from these matters after MASSIVE AMOUNTS OF time, effort and costs to Petitioner and others to have them removed.

124. That Theodore has brought ALL of these people who have participated in all these fraudulent activities into the Estates and Trusts of Simon and Shirley who have all BLED THE ESTATE of hundreds of thousands in legal fees already. Where Theodore and his cohorts have benefited and continue to benefit at the expense of everyone else involved. Again, THIS COURT NEEDS TO PUT AN END TO THE FRAUDS BEING COMMITTED BY OFFICERS OF THE COURT and remove them on the Court's own motion as allowed for in instances such as these, especially where the main frauds have all been effectuated by multiple Frauds on this Court. The only remedy at law is removal, award of damages, sanctions and more.

125. That the Court can no longer look the other way or wait for Pro Se Eliot to file proper legal pleadings and have hearings where PROHIBITED pleadings are filed fraudulently and argued wasting everyone's time and simply remove those who should voluntarily withdraw. Where the Court has legal obligations to act on its own motion to stop FRAUD, WASTE and ABUSE especially in its

own Court committed by Officers of the Court.

126. That this Court allowing Theodore and Alan to continue to act as fiduciaries and counsel before the Court can only be viewed by the victims as aiding and abetting the crimes and attempting to cover up the crimes that took place in this Court, especially where all these felony crimes occurred in this Court by Officers and Fiduciaries that are under the tutelage of this Court and Your Honor. That Your Honor has a duty to protect the beneficiaries and interested parties and has failed to follow law and judicial canons to protect them.
127. That Theodore and Alan are violating a Court Order that involves now attempting to further and cover up the crime of THEFT, CONVERSION AND COMINGLING OF ESTATE ASSETS, in fact FELONY MISCONDUCT IN VIOLATING THE COURT ORDER as pled in Eliot Motion in Response to Theodore's Contempt Motion filed with this Court and yet unheard.
128. That Alan and his client Theodore have failed to follow the Court's Order, see Exhibit 4 – Court Order for Inspection of Residence and Accounting for Personal Property, for an re-inventorying of the Estate assets of Simon, after learning in a hearing before this Court that statements made by Theodore and Alan revealed that Estate assets were missing and unaccounted for. Where it appears that Theodore and others may have stolen off with these personal properties of Simon and then lied to this Court about where they had gone.
129. That the Court was told in the hearing that furnishings of Simon's estate that were held in a Condominium held in Shirley's Trust were moved to Simon's other residence when the Condominium was sold. Despite Theodore and Alan's claim that the furniture was moved to Simon's other residence, no records of such transaction were turned over by Spallina and Tescher who were the prior responsible parties for the personal properties and the items appear in the Final

Accounting submitted upon their termination in these proceedings.

130. That no mention was made in the fraudulent estate Final Accounting prepared by Tescher and Spallina after their resignations and withdrawals that were turned over by Order of this Court that these personal property assets were disposed of in any way. The fact that the items were missing and Theodore who is alleged to be the Trustee responsible for the items could not state where they were are what led to the Court Order to verify that the assets were where they now stated. Spallina and Tescher were responsible for the items of Simon's estates and should be sanctioned.
131. That Theodore, alleging to be the Trustee of Shirley's Trust, knows that he is responsible for the marshalling of those assets of Simon's Estate contained in Condominium, as he was informed of this obligation by Spallina in a letter dated September 14, 2012 (1 day after Simon passed) whereby it states,

On a separate note, as discussed, you are designated as the successor trustee to Si on your mother's trust document. In this regard, both the residence and the beach condo were titled in the name of her trust. **All of the contents in both places are the subject of your father's estate, over which Don and I have been named as Personal Representatives. Please make sure that both homes are secure and that the contents contained therein are protected. As a fiduciary of your mother's trust and during the period of administration of your father's estate, you owe a duty to the ultimate beneficiaries to protect the assets...**[emphasis added] It may be helpful to take pictures and even create an inventory of the contents so that when there is a division of the assets among the family there are no issues.

132. That after telling the Court that the furniture was moved to Simon's other residence and then knowing they were again going to be busted if the Court Order was complied with as the furniture is not there, Donald Tescher in his deposition on July 09, 2014, ordered by Alan (who throughout the deposition objected and represented Tescher several times), see Tescher Deposition Regarding Furniture excerpt and partial transcript and exhibits at

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140709TescherDepositionAndExhibits>

[.pdf](#) , fully incorporated by reference herein, then claimed and Alan chimed in now in direct contradiction to what was told to the Court that the contents were now sold with the Condominium without any accounting for the properties to the Beneficiaries or anyone or even including this information in the shoddy Final Accounting Tescher and Spallina produced. Where further evidence will prove that this claim is also untrue, as the Condominium was sold without any personal properties listed as part of the transaction.

133. That when the lies they told to the Court that the furniture and other properties were moved to the other residence did not hold up as they themselves seemed confused at the hearing, the Order for the Inspection was granted by Your Honor. They then claimed that the Court ORDER could not be complied with because the items were boxed in the garage and this somehow made them unaccountable for, then they were sold without any accounting and with each claim being proven false they have continued to try and make up new explanations for where the missing items went and continue to violate the Court Ordered Inspection.
134. That it is alleged that Theodore took the possessions to his own second home and then sold that home after selling the Condominium with the contents owned by Simon's Estate in them as part of a further elaborate scheme to steal millions of dollars of assets and/or Theodore disposed of these properties in other ways for his own personal gain, as beneficiaries were NOT notified of any such sale of these items. Again, this Court and everyone else involved are wasting precious time, effort and monies to expose these nonstop frauds and thefts, all again being perpetrated by Officers of this Court who were directly involved in the prior frauds, who again appear to have lied to this Court about Estate assets and now fail to follow the Court's Order to cover up and further their crimes.

135. That Eliot will be filing yet another criminal complaint for this GRANDTHEFT of the personal properties estimated worth millions and again will have to recruit law enforcement time and efforts to hunt down the missing items and contact all those parties involved in the transactions that Theodore, Alan and others did regarding the ILLEGAL sale of the Condominium and the subsequent missing personal properties of Simon's Estate.
136. That other crimes alleged and under investigation regarding the sale of the Condominium include Theodore signing documents as the PR of Shirley's Estate to make the sale complete when he was not appointed as the Personal Representative at the time he made the sale and signed the documents in that fiduciary capacity knowingly and with scienter.
137. That Theodore at the time of the sale knew the Estate of his mother had been closed illegally through a Fraud on the Court using his deceased father as PR to close the Estate and knew no Successor PR was ever appointed by this Court due to that Fraud and thus knew he was signing the tax documents for the sale illegally. Again, the closing of the Estate of Shirley was achieved through fraud with a DEAD Personal Representative, Simon, acting as if alive to close his deceased wife's Estate, which was all part of an elaborate FRAUD ON THE COURT by OFFICERS of the Court that has already been proven in this Court.
138. That this Court will remember in the September 13, 2013 hearing that Your Honor upon learning of this Fraud on the Court and Fraud on the Beneficiaries using a dead PR to close an estate as if alive to then attempt to enact fraudulent changes to the beneficiaries stated that you had enough evidence at that time, almost a year ago, to read Theodore, Spallina and Tescher their Miranda rights, see Exhibit 2 and perhaps now it is that time for the reading of these Miranda Rights to protect the Estates and Trusts and prevent further criminal activity by Officers and Fiduciaries of this Court.

139. That Your Honor will also remember that it was proven that POST MORTEM FORGED documents for Simon were tendered to this Court by Spallina and Tescher as part of the elaborate scheme to change beneficiaries by Theodore's counsel that directly benefited Theodore the most, to the disadvantage of other beneficiaries.
140. That upon learning of these facts, the Court issued a second statement in the September 13, 2013 hearing that it had enough to read them their Miranda warnings and again the Court instead let them walk out the door and continue to practice law, continue to act as fiduciaries and counsel, allowed Successor Criminals to be anointed exposing all parties involved and the general public to these lawyers who have committed felony crimes in these proceedings and without sanctions or required reporting of their crimes as required under Judicial Canons and law, as of yet.
141. That further in the September 13, 2013 hearing it was further stated by Spallina that Moran's forgeries and fraudulent notarizations were a one off event and he knew of nothing else wrong in the Estates and Trusts, while knowing and CONCEALING FROM THE COURT that he and his partner Tescher had committed yet another FELONY CRIME by FRAUDULENTLY ALTERING TRUST documents that they failed to notify the Court of at that time they claimed they knew nothing else wrong and therefore bold face lied to the Court.
142. That Spallina, only later, in January 2014, three months after the hearing and wasting everyone's time and monies in the hundreds of thousands in that time period, then confessed to Palm Beach County Sheriff investigators that he and his partner Tescher had known they could not change the Shirley Trust Beneficiary Class (although Alan will now try and con everyone that he can do that in his new Motion for Construction) and together Spallina and Tescher had discussed their options and determined they would alter documents to perpetrate the fraud and Spallina then admitted that he

ALTERED TRUST DOCUMENTS with scienter and sent them to various parties.

143. That again Spallina's confession only came when he and Tescher knew they were busted from Eliot's Pro Se pleadings and Eliot and Candice's excellent investigatory efforts that exposed their crimes and led to ongoing investigations of them and Theodore and Alan.
144. That again, the confession came only after everyone, including this Court, the Palm Beach County Sheriff's office, the Governor Rick Scott's Notary Public Division, the State Attorney, the Beneficiaries and Interested Parties, wasted hundreds of thousands of dollars having to force the confessions. That Eliot questions the truthfulness of the confessions as well, as it appears that it was carefully crafted and fraught with further perjured statements to try and cover up their crime as best they could.
145. That Eliot again apologizes to the Court for having to file a lengthy pleading to unravel the web of lies and deceit in Alan's TOXIC, VEXATIOUS, FRIVILIOUS, EXTORTIVE, PROHIBITED, COSTLY and MISLEADING pleading that is further an abuse of process but there are just so many false statements and attempts to twist things around by these Successor Criminals to somehow, now that they are all busted, make Eliot, the victim of their crimes already proven and admitted, look like the bad guy to the Court.
146. That it takes a lot of time to explain and unravel each of these schemes to this Court and unwind the lies in their pleadings and Eliot is doing the best he can Pro Se to comport with the statutes and rules he is not schooled in and thus admits his pleadings may fall short but Eliot has ALWAYS HAS TOLD THE TRUTH TO THIS COURT DESPITE HOW MANY PAGES IT TAKES AND HAS NEVER PUT FORTH ANY FORGED, FRADULENT, FRAUDULENTLY NOTARIZED DOCUMENTS or lied to the Court, nor has he violated any criminal codes or civil torts in these

proceedings, unlike Theodore, Spallina, Tescher, Alan, Manceri, Pankauski et al..

147. That again Alan and Theodore and their cohorts costing everyone time and money on TOXIC, VEXATIOUS, FRIVOLOUS, EXTORTIVE, MISLEADING, CRUEL and COSTLY pleadings that abuse process, and Eliot, despite his lengthy, yet poetically just pleadings that may be legally faulty as expected in Pro Se pleadings, has put forth nothing abusive, unless this Court considers the length of truth abusive.
148. That if the Court wishes to stop the poetic pleadings of Eliot, the Court can simply, again on its own motion under the circumstances, demand that the Estates and Trusts provide funds for Eliot to retain counsel, as certainly the ALLEGED Fiduciaries and Counsel in these matters (excluding Brown and O'Connell) have already wasted fortunes on legal fees to further their criminal misconduct. Where these monies of the Estates and Trusts are either Eliot's or his children's and Theodore, Spallina, Tescher, Alan, Manceri and Pankauski have used these funds of Eliot's and his children for EXCESSIVE AND ABUSIVE legal fees to execute their crimes and then more Estate and Trust funds used to further protect and shield themselves from prosecution of their crimes.
149. That Theodore and his cohorts have nothing to lose spending the Trusts and Estate funds recklessly and illegally, which are not theirs and deny the victims counsel, which is provided for in the very documents they operate under to protect the Beneficiaries. Certainly, having Eliot and his children represented by separate counsel due to the Conflicts created through the frauds that make Eliot and his children in conflict for the proceeds, caused by Tescher and Spallina et al. with scienter will not only benefit this Court but further protect, the Estates, Trusts, Beneficiaries, Interested Parties and Creditors.
150. That there have been serious breaches of Trust already proven and many more alleged and under

investigation, all involving Theodore Bernstein and Alan as central parties in the misconducts.

151. That it has been evidenced herein and in prior pleadings filed that Theodore is unfit and unwilling to follow probate and trust Rules and Statutes.
152. That it has been evidenced that Theodore cannot act as the Trustee in the Simon Trust as he is expressly prohibited and this may be even further fraud on this Court, the Beneficiaries and Interested Parties.
153. That it has been evidenced herein and in prior pleadings filed that Theodore has persistently failed as alleged Trustee to administer the Trust in Simon and Shirley's Trusts legally.
154. That Theodore and Alan are both in conflict and have adverse interests in these matters, especially in regard to Eliot.
155. That the Court removing Theodore instantly from ALL fiduciary capacities in the Estates and Trusts of Simon and Shirley for very serious breaches of fiduciary duties and alleged criminal misconduct from his direct participation in the prior frauds committed in this Court and now causing continued torts and alleged criminal misconduct regarding assets of the Estate causing continuing and ongoing harms to Beneficiaries, Interested Parties and Creditors.
156. That there has been substantial change of circumstances after discovering criminal misconduct and breaches of fiduciary duties that Theodore is directly involved in and benefited from and a continued Pattern and Practice of newly alleged criminal misconduct under ongoing investigations that justify the Court's instant removal of Theodore to protect the assets of the Estates and Trusts of Simon and Shirley to prevent further criminal acts and civil torts from occurring that damage the Beneficiaries, Interested Parties and Creditors further.
157. That the Court should find that removal of the trustee best serves the interests of all of the

beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable co-trustee or successor trustee is available.

158. That for all of these reasons stated herein, this Court must act as legally obligated on its own motion under 736.0706 to remove Theodore and Alan from ALL Fiduciary and Legal capacities they have in both the Estates and Trusts of Simon and Shirley, in order to remove the conflicts and adverse interests and stop further violations of, Attorney Conduct Codes, Judicial Canons, State and Federal Law that are being committed by their continued allowance by this Court to remain as Fiduciaries and Counsel before this Court and continue acting as OFFICERS OF THIS COURT. Their continued actions are wasting estate assets due to their fraudulent misadministration and attempts to cover up their own and their friends and business associates prior crimes with one lie after another to this Court and the Beneficiaries, Interested Parties and Creditors.
159. That the remedies to cure the damages from the prior Frauds In and Upon this Court, the Beneficiaries, Interested Parties and Creditors, would mandate now that the Trustees and Fiduciaries sue themselves and when this type of situation arises the only remedy at law is to remove them from this irrefutable conflict of interest.
160. That the Fiduciaries and Counsel thus far in these matters have all (except Benjamin Brown and Brian O'Connell) acted in their own best interests, basking in ill-gotten legal and trustee fees, instead of acting the best interests of the Beneficiaries and Creditors and it is expected for them to continue misusing trust and estate assets to now protect themselves from further prosecution and therefore the Court must instantly remove them.
161. That failure of the Court to remove ALL tentacles from these proceedings of those who participated, profited and benefited from the prior CRIMINAL MISCONDUCT and FRAUD COMMITTED BY

OFFICERS OF THIS COURT THAT HAS OCCURRED IN AND UPON THIS COURT, the BENEFICIARIES, INTERESTED PARTIES AND CREDITORS violates the sanctity and decorum of the Court, violates law and judicial canons and denies fair and impartial due process and procedure under law to all the other parties and allows for continuing and ongoing crimes to be committed.

162. That Eliot demands the Court take Judicial Notice of the criminal misconduct and follow its own rules and act on its own motions to restore law and order to the Court and impart fair and impartial due process to all parties and begin by STRIKING all TOXIC, FRIVILIOUS, VEXATIOUS and MISLEADING filings of the Fiduciaries and Counsel acting as OFFICERS OF THIS COURT and Remove these fiduciaries and counsel in order to stop the further fraud, waste and abuse by those Officers of this Court and alleged Fiduciary, who knowingly and with scienter continue to act in violation of Probate and Trust Rules and Statutes, despite the Court's knowledge of their participation in the prior frauds, their overwhelming conflicts of interests and adverse interests that all legally preclude their continued involvement as Fiduciaries and Counsel.
163. That Theodore and Alan wholly ignore their duties to withdraw voluntarily due to their lack of qualification and continue to act despite repeated requests to withdraw for multitudes of legally valid reasons. These continued actions further misuse Estate and Trusts assets and are accruing damages to the Beneficiaries, Interested Parties and Creditors from the Court allowing this continuing Pattern and Practice of Fraud, Waste and Abuse started by the prior fiduciaries and counsel who worked together with Theodore and Alan to perpetrate the prior frauds from the start and again this will require the Beneficiaries to ultimately sue them all for damages. Certainly if they will not voluntarily withdraw knowing they are unfit to act as fiduciaries and officers of this Court, then they will not sue themselves either and thus this Court must smack down the gauntlet and forcefully and aggressively

remove them.

164. That finally, Eliot, his lovely wife Candice and their three angelic boys have been tormented, lied to, defrauded, extorted and abused through legal process by these Officers of this Court and their crimes to deny, delay, stymie and steal off with assets of Eliot and his children's due to them as inheritance and deny them through further frauds to deny them entirely their inheritances, jeopardizing and exposing the Estates and Trusts to more and more risks from their actions, as they lack to administer these legally and this has caused major damages, including directly to THREE MINOR CHILDREN with intent, including withholding the KIA, failing to provide trust assets used for education, theft of millions of dollars of assets, failure to account under law, removing health insurance etc. that all border on child abuse by these alleged Fiduciaries and Officers of this Court and now threaten the minor children's school futures and more.

165. That Eliot and his family have refused to participate in knowingly fraudulent distributions to improper parties, while those improper parties have stolen off, converted and comingled assets they took knowingly improperly and illegally with scienter and now use Eliot and his children's family's inheritance monies to line their pockets and harass and extort Eliot in prayers that these criminal tactics will force Eliot to participate in illegal "DISTRIBUTIONS" and attempt to gain under FL Statute 736.1012 consent from Eliot through his participation to take "distributions" under great pressure and duress to attempt to keep his children in school as provided for under the Terms of the Trusts.

**Beneficiary's consent, release, or ratification.—A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:**

(1) The consent, release, or ratification of the beneficiary was

induced by improper conduct of the trustee; or  
(2) At the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

This all done despite the fact that (1) above negates any such extorted consent that may have gained. Despite that fact, Eliot will not commit a violation of law knowingly and also violate one or more of the Ten Commandments and participate in their crimes under ANY circumstances, except with this Court's blessing to participate in such fraud that the Court would not give in the September 13, 2013 hearing and so Eliot doubts the Court now will with all of this new information of criminal misconduct unfolding since that hearing decide that Eliot should participate in knowingly FRAUDULENT ILLEGAL DISTRIBUTIONS TO ADMITTED UNKNOWN BENEFICIARIES AT THIS TIME.

166. That until Eliot and others can review for further evidence of FRAUD AND FORGERY, ALL the records, court records, dispositive and other documents, accountings, inventories and re-inventory ALL assets of the Estates and Trusts of Shirley and Simon, this Court must provide EMERGENCY WELFARE PAYMENTS TO ELIOT AND HIS FAMILY TO BE DEDUCTED LATER FROM HIS OR HIS CHILDREN INHERITANCES when the Court determines the Beneficiaries or add them to THE CONTINUING AND TOLLING DAMAGES ASSESSED TO THE RESPONSIBLE PARTIES OF THESE CRIMES.

167. That this Court should and must act to protect Eliot and his family who are victims of the past and present Fiduciaries and their Counsel, who all took part and benefited from the prior Willful, Wanton, Reckless, Criminal and Egregious Acts of Bad Faith committed with Unclean Hands that again were done by Officers of this Court Under Your Direct Jurisdiction and in light of the Court's knowledge of these past and ongoing Crimes and Extortion after Extortion of Eliot to either take the

improper proceeds and lose rights to claim damages against others by participating in the knowingly fraudulent activity or watch his family be starved out through fraud after fraud by Fiduciaries approved by Your Honor, as now proven, admitted and evidenced in Eliot's pleadings since May 2013, it is time this Court act to release WELFARE PAYMENTS DUE TO THE INTENTIONAL INTERFERENCE WITH INHERITANCE THAT HAS DELAYED DISTRIBUTION until this Court can determine beneficiaries to make distributions legally to and until all of this grotesque Fraud can be sorted out due to CRIMINAL MISCONDUCT BY OFFICERS OF THIS COURT.

168. That since this Court is also partially responsible for these continued and ongoing damages caused by its Officers, damages inflicted by the delay and interference of life sustaining inheritances that were intended to be distributed to Eliot and his family over four years ago, as were the desires and wishes of both Simon and Shirley, due to special circumstances already defined in Eliot's initial pleadings with the Court.

169. The Extortions first started with Theodore, his former counsel, the former Fiduciaries and Counsel of the Estates and Trusts, seizing companies that were left to Eliot's families alone, acting with no legal authority and taking over a company responsible for paying the bills of Eliot's household for over 7 years while Simon and Shirley were alive and where the bills were even sent to others and controlled by others. Once the illegal corporate takeover was achieved by Tescher, Spallina, Theodore, members of Oppenheimer and others, Eliot's family's basic necessities were cut off without notice repeatedly by Tescher, Spallina, Theodore and others, including but not limited to shutting off, Security Services, Homeowners Insurance (this also exposing Simon's Estate to further MAJOR RISKS), Health Insurance for the entire Family, Electricity, Phones, School Services for the minor Children, School Tuition for the children, Utilities, Food, etc.). The company also provided income

and a monthly 10-20 thousand dollar monthly stipend to cover ALL expenses of Eliot's family and this too was shut off through a combination of frauds discussed further in the Oppenheimer Counter Complaint and in prior pleadings Eliot filed, see Answer and Counter Complaint Oppenheimer @ [http://www.iviewit.tv/Simon and Shirley Estate/20140730OppenheimerAnswerAndCounter.pdf](http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140730OppenheimerAnswerAndCounter.pdf) , fully incorporated by reference herein.

170. That when this forced destitution or else failed to compel Eliot to participate in the fraud and take knowingly improper distributions as others had done, they next moved on to using Eliot's son's birthday gift, the KIA, as a lever to force Eliot to take distributions illegally or not get the gifted car back.
171. That when that failed, they have refused Welfare Payments as provided under the Trusts despite REPEATED requests to act even under the terms of the Alleged Documents they are touting, which are most likely fraudulent to begin with but even so they fail to act as required in the best interests of the Beneficiaries for items provided for the Beneficiaries in the terms thereunder.
172. Again, these criminal acts and breaches of duties are all being committed by the fiduciaries who are supposed to be protecting the beneficiaries as intended in the Estate plans but who are instead too busy forging, fraudulently notarizing, criminally altering trust documents, looting the Estates, committing Insurance Fraud and Bank Fraud, Fraud on this Court and Federal Court, Extorting Eliot and his family, Losing, Destroying and Suppressing Trust Documents, and more to care of the damages they are causing, even to minor children. They have even been alleged to have seized illegally and misused school trust funds of the children in yet another fraudulent scheme that Eliot's Counter Complaint in the new Oppenheimer Lawsuit more fully exposes.
173. This Court must now act to allow to remove Theodore on its own initiative due to all of the reasons

so stated herein.

WHEREFORE, Eliot requests this Court either on its Own Motions or based on Eliot's Pro Se pleadings enter an Order for all of the following, a copy of an Order for Your Honor to sign attached hereto:

- vii. TO COMPEL ALLEGED TRUSTEE OF THE SHIRLEY AND/OR SIMON TRUST TO MAKE EMERGENCY WELFARE PAYMENTS AS PROVIDED FOR UNDER THE TRUSTS OF SIMON AND SHIRLEY;
- viii. FOR REMOVAL OF TRUSTEE ON THE COURT'S OWN INITIATIVE – FLORIDA TITLE XLII 736.0706;
- ix. an order for relief under s. 736.1001(2) as may be necessary to protect the trust property or the interests of the beneficiaries;

Filed on Sunday, August 24, 2014,

Eliot Bernstein, Pro Se, Individually and as legal guardian on behalf of his minor three children.

X\_\_\_\_\_

**CERTIFICATE OF SERVICE**

I, ELIOT IVAN BERNSTEIN, HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to all parties on the following Service List, Sunday, August 24, 2014.

Eliot Bernstein, Pro Se, Individually and as legal guardian on behalf of his minor three

children

X\_\_\_\_\_

**SERVICE LIST**

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<p>RESPONDENT/REPRIMANDED BY FLORIDA GOVERNOR RICK SCOTT NOTARY PUBLIC DIVISION FOR FAILING TO NOTARIZE AN ALLEGED 2012 WILL AND TRUST OF SIMON AND SIGNING NOTARY UNDER FALSE NAME</p> <p>Lindsay Baxley aka Lindsay Giles <a href="mailto:lindsay@lifeinsuranceconcepts.com">lindsay@lifeinsuranceconcepts.com</a></p>	<p>RESPONDENT MINOR CHILDREN</p> <p>Carley &amp; Max Friedstein, Minors c/o Jeffrey and Lisa Friedstein Parents and Natural Guardians 2142 Churchill Lane Highland Park, IL 6003 Lisa@friedsteins.com lisa.friedstein@gmail.com</p>	<p>RESPONDENT – MINOR CHILD INITIALLY NOW ADULT CHILD</p> <p>Molly Simon 1731 N. Old Pueblo Drive Tucson, AZ 85745 <a href="mailto:molly.simon1203@gmail.com">molly.simon1203@gmail.com</a></p>	

EXHIBIT 1 – ELIOT AND ALAN DISCUSSIONS REGARDING THE FAILED AGREEMENT

THAT DUE TO THE 300+ PAGES OF CORRESPONDENCES THIS EXHIBIT HAS BEEN LINKED TO A PRIVATE WEBSITE AND IS FULLY INCORPORATED BY REFERENCE HEREIN AS EXHIBIT 1 @

[WWW.IVIEWIT.TV/SIMON AND SHIRLEY ESTATE/20140820EXHIBIT1ROSEANDELIOTS EMAILS.PDF](http://WWW.IVIEWIT.TV/SIMON%20AND%20SHIRLEY%20ESTATE/20140820EXHIBIT1ROSEANDELIOTS%20EMAILS.PDF)

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EXHIBIT 2 - TRANSCRIPT OF PROCEEDINGS, PAGES 15 AND 16

AMENDED EMERGENCY MOTION...  
Sunday, August 24, 2014  
EXHIBITS

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1 IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
2 PROBATE/GUARDIANSHIP DIVISION IY  
3 CASE NO.: 502011CP000653XXXXSB

4 IN RE: THE ESTATE OF:  
SHIRLEY BERNSTEIN,  
Deceased

5 \_\_\_\_\_/  
ELIOT IVAN BERNSTEIN, PRO SE,  
6 Petitioner,

7 vs.

8 TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,  
ASSOCIATES AND OF COUNSEL); ROBERT L. SPALLINA  
(BOTH PERSONALLY & PROFESSIONALLY); DONALD  
9 R. TESCHER (BOTH PERSONALLY & PROFESSIONALLY);  
THEODORE STUART BERNSTEIN (AS ALLEGED PERSONAL  
10 REPRESENTATIVE, TRUSTEE, SUCCESSOR TRUSTEE) (BOTH  
PERSONALLY & PROFESSIONALLY); AND JOHN AND JANE  
11 DOE'S (1-5000),  
Respondents.

12 \_\_\_\_\_/  
13 TRANSCRIPT OF PROCEEDINGS  
14 BEFORE  
15 THE HONORABLE MARTIN H. COLIN  
16  
17 South County Courthouse  
200 West Atlantic Avenue, Courtroom 8  
18 Delray Beach, Florida 33344  
19  
20 Friday, September 13, 2013  
1:30 p.m. - 2:15 p.m.

21  
22  
23  
24 Stenographically Reported By:  
JESSICA THIBAUT

25  
♀  
00002

1 APPEARANCES  
2  
3 On Behalf of the Petitioner:  
4 ELIOT IVAN BERNSTEIN, PRO SE  
2753 NW 34th Street  
5 Boca Raton, Florida 33434  
6

7 MR. MANCERI: That's when the order was  
8 signed, yes, your Honor.

9 THE COURT: He filed it, physically came  
10 to court.

11 MR. ELIOT BERNSTEIN: Oh.

12 THE COURT: So let me see when he actually  
13 filed it and signed the paperwork. November.  
14 What date did your dad die?

15 MR. ELIOT BERNSTEIN: September. It's  
16 hard to get through. He does a lot of things  
17 when he's dead.

18 THE COURT: I have all of these waivers by  
19 Simon in November. He tells me Simon was dead  
20 at the time.

21 MR. MANCERI: Simon was dead at the time,  
22 your Honor. The waivers that you're talking  
23 about are waivers from the beneficiaries, I  
24 believe.

25 THE COURT: No, it's waivers of

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1 accountings.

2 MR. MANCERI: Right, by the beneficiaries.

3 THE COURT: Discharge waiver of service of  
4 discharge by Simon, Simon asked that he not  
5 have to serve the petition for discharge.

6 MR. MANCERI: Right, that was in his  
7 petition. When was the petition served?

8 THE COURT: November 21st.

9 MR. SPALLINA: Yeah, it was after his date  
10 of death.

11 THE COURT: Well, how could that happen  
12 legally? How could Simon --

13 MR. MANCERI: Who signed that?

14 THE COURT: -- ask to close and not serve  
15 a petition after he's dead?

16 MR. MANCERI: Your Honor, what happened  
17 was is the documents were submitted with the  
18 waivers originally, and this goes to  
19 Mr. Bernstein's fraud allegation. As you know,  
20 your Honor, you have a rule that you have to  
21 have your waivers notarized. And the original  
22 waivers that were submitted were not notarized,  
23 so they were kicked back by the clerk. They  
24 were then notarized by a staff person from  
25 Tescher and Spallina admittedly in error. They

♀

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1 should not have been notarized in the absentia  
2 of the people who purportedly signed them. And  
3 I'll give you the names of the other siblings,  
4 that would be Pamela, Lisa, Jill, and Ted  
5 Bernstein.

6 THE COURT: So let me tell you because I'm  
7 going to stop all of you folks because I think  
8 you need to be read your Miranda warnings.

9 MR. MANCERI: I need to be read my Miranda  
10 warnings?

11 THE COURT: Everyone of you might have to  
12 be.

13 MR. MANCERI: Okay.

14 THE COURT: Because I'm looking at a  
15 formal document filed here April 9, 2012,  
16 signed by Simon Bernstein, a signature for him.

17 MR. MANCERI: April 9th, right.

18 THE COURT: April 9th, signed by him, and  
19 notarized on that same date by Kimberly. It's  
20 a waiver and it's not filed with The Court  
21 until November 19th, so the filing of it, and  
22 it says to The Court on November 19th, the  
23 undersigned, Simon Bernstein, does this, this,  
24 and this. Signed and notarized on April 9,  
25 2012. The notary said that she witnessed Simon

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1 sign it then, and then for some reason it's not  
2 filed with The Court until after his date of  
3 death with no notice that he was dead at the  
4 time that this was filed.

5 MR. MANCERI: Okay.

6 THE COURT: All right, so stop, that's  
7 enough to give you Miranda warnings. Not you  
8 personally --

9 MR. MANCERI: Okay.

10 THE COURT: Are you involved? Just tell  
11 me yes or no.

12 MR. SPALLINA: I'm sorry?

13 THE COURT: Are you involved in the  
14 transaction?

15 MR. SPALLINA: I was involved as the  
16 lawyer for the estate, yes. It did not come to  
17 my attention until Kimberly Moran came to me  
18 after she received a letter from the Governor's  
19 Office stating that they were investigating  
20 some fraudulent signatures on some waivers that  
21 were signed in connection with the closing of

EXHIBIT 3 - FEAMAN LETTER TO ALAN

AMENDED EMERGENCY MOTION...  
Sunday, August 24, 2014  
EXHIBITS

## Eliot Ivan Bernstein

---

**From:** Peter M. Feaman <pfeaman@feamanlaw.com>  
**Sent:** Tuesday, August 5, 2014 10:42 AM  
**To:** Alan Rose  
**Cc:** William Stansbury  
**Subject:** RE: Eliot's Demand

By the way, what about the Shirley Bernstein Trust?  
We know The Aragon Condominium Unit was sold which netted over \$1,000,000.

Where is that money?

This is an expense that the trusts clearly should pay.

My client tells me there are numerous witnesses who know that it was Simon's intent to provide for the St. Andrews schooling for Eliot's children.

Heck, the house he bought for Eliot is within walking distance of the school!

Whatever differences there are between Ted and Eliot, the grandkids should not be used as pawns. There is money to pay for the grandchildren's education. Stop playing games and get this done.

At the end of the day, an adjustment can be made if necessary, but stop putting the kids in the middle.

*Peter M. Feaman*

PETER M. FEAMAN, P.A.

3695 West Boynton Beach Boulevard

Suite 9

Boynton Beach, FL 33436

Telephone: 561-734-5552

Facsimile: 561-734-5554

[www.feamanlaw.com](http://www.feamanlaw.com)

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---

**From:** Alan Rose [mailto:ARose@mrachek-law.com]

**Sent:** Tuesday, August 5, 2014 10:05 AM

**To:** Peter M. Feaman

**Subject:** Re: Eliot's Demand

My question is much simpler than that. Would Mr. Stansberry ever consent to Elliot receiving an interim distribution without there being sufficient assets to pay Mr. Stansberry's claim in full. In other words, would he agreed to a preferential distribution to Elliot that could potentially diminish or defeat his ability to collect on a claim, if he is successful

Alan B. Rose

On Aug 5, 2014, at 9:53, "Peter M. Feaman" <[pfeaman@feamanlaw.com](mailto:pfeaman@feamanlaw.com)> wrote:

Until Mr. Stansbury sees an accounting of trust assets, he is not in a position to make a decision on the request.

Can you send me a trust accounting?

*Peter M. Feaman*

PETER M. FEAMAN, P.A.

3695 West Boynton Beach Boulevard

Suite 9

Boynton Beach, FL 33436

Telephone: 561-734-5552

Facsimile: 561-734-5554

[www.feamanlaw.com](http://www.feamanlaw.com)

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---

**From:** Alan Rose [<mailto:ARose@mrachek-law.com>]

**Sent:** Tuesday, August 5, 2014 9:02 AM

**To:** Peter M. Feaman

**Subject:** Eliot's Demand

Eliot has demanded an interim payment from the Simon Bernstein Trust or Estate.

Based upon the facts as I understand them, there is not more that enough money in the Estate or Trust than the amount of the claim by Mr. Stansbury, and indeed, it appears that there is substantially less than needed to do so should Mr. Stansbury prevail.

Absent Mr. Stansbury's consent to an interim distribution to Eliot, there is no point in anyone (including the new successor PR) considering the request as from the assets of Simon's Trust or Estate.

Please advise asap if Mr. Stansbury would consent to a payment of +/- \$125,000 to St. Andrews School for Eliot's children's three private school tuitions.

Thanks

Alan B. Rose, Esq.

[arose@Mrachek-Law.com](mailto:arose@Mrachek-Law.com)

561.355.6991

<image001.jpg>

505 South Flagler Drive

Suite 600

West Palm Beach, Florida 33401

561.655.2250 Phone  
561.655.5537 Fax

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If there any documents attached to this email with the suffix .pdf, those documents are in Adobe PDF format, If you have difficulty viewing these attachments, you may need to download the free version of Adobe Acrobat Reader, available at: <http://www.adobe.com>

EXHIBIT 4 – COURT ORDER FOR INSPECTION OF RESIDENCE AND ACCOUNTING FOR PERSONAL  
PROPERTY

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

PROBATE DIVISION  
CASE NO. 5021012CP004391XXXXSB

IN RE: ESTATE OF SIMON L. BERNSTEIN  
\_\_\_\_\_ /

**ORDER ON CURATOR'S MOTION TO INSPECT AND TAKE POSSESSION OF ESTATE TANGIBLE PERSONAL PROPERTY**

THIS MATTER came before the Court on the Curator's Motion to Inspect and Take Possession of Estate Tangible Personal Property dated June 10, 2014 ("Motion"), the Court having reviewed the Motion, and the Court being otherwise fully advised in the premises, it is hereby:

ORDERED and ADJUDGED as follows:

The Motion is granted in part. Curator is authorized and directed to use Estate funds to retain Robert Hittel in order to inspect the tangible personal property at described on the January 22, 2013 Fair Market Value Appraisal of the Personal Property of Simon L. Bernstein (effective date September 13, 2012) ("Appraisal") located at 7020 Lions Head Lane, Boca Raton, FL

("House") and prepare a written report regarding whether such property is located at the House and its condition (if different than described on the Appraisal). The Court defers decision on the remainder of the Motion.

*Mr. Hittel's fee shall not exceed \$500.00, Ted Bernstein and Eliot Bernstein may be present on the day Mr. Hittel conducts his inspection, but may not enter the house while Mr. Hittel conducts such inspection.*

DONE AND ORDERED in Chambers, Delray Beach, Palm Beach County, Florida, on June \_\_\_\_\_, 2014.

**SIGNED & DATED**

**JUN 19 2014**

**MARTIN H. COLIN  
CIRCUIT JUDGE**

\_\_\_\_\_  
Circuit Court Judge

Copies furnished to the parties on the attached service list

**SERVICE LIST**

Estate of Simon L. Bernstein

Palm Beach County Case No. 502012CP004391XXXXSB

Max Friedstein 2142 Churchill Lane Highland Park, IL 60035	Alan B. Rose, Esq. Page, Mrachek, Fitzgerald & Rose, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 (561) 355-6991 <a href="mailto:arose@pm-law.com">arose@pm-law.com</a>	John J. Pankauski, Esq. Pankauski Law Firm PLLC 120 South Olive Avenue 7th Floor West Palm Beach, FL 33401 (561) 514-0900 <a href="mailto:john@Pankauskilawfirm.com">john@Pankauskilawfirm.com</a>	Carley Friedstein, Minor c/o Jeffrey and Lisa Friedstein Parent and Natural Guardian 2142 Churchill Lane Highland Park, IL 60035 <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a> <a href="mailto:lisa.friedstein@gmail.com">lisa.friedstein@gmail.com</a>
Pamela Beth Simon 950 N. Michigan Avenue Apartment 2603 Chicago, IL 60611 <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a>	Irwin J. Block, Esq. The Law Office of Irwin J. Block PL 700 South Federal Highway Suite 200 Boca Raton, Florida 33432 <a href="mailto:ijb@ijblegal.com">ijb@ijblegal.com</a>	Julia Iantoni, a Minor c/o Guy and Jill Iantoni, Her Parents and Natural Guardians 210 I Magnolia Lane Highland Park, IL 60035 <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a>	Joshua, Jacob and Daniel Bernstein, Minors c/o Eliot and Candice Bernstein, Parents and Natural Guardians 2753 NW 34th Street Boca Raton, FL 33434 <a href="mailto:iviewit@iviewit.tv">iviewit@iviewit.tv</a>
Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a>	Peter Feaman, Esquire Peter M. Feaman, P.A. 3615 Boynton Beach Blvd. Boynton Beach, FL 33436 <a href="mailto:pfeaman@feamanlaw.com">pfeaman@feamanlaw.com</a>	Eliot Bernstein 2753 NW 34th Street Boca Raton, FL 33434 <a href="mailto:iviewit@iviewit.tv">iviewit@iviewit.tv</a>	John P. Morrissey, Esq. 330 Clematis Street, Suite 213 West Palm Beach, FL 33401 <a href="mailto:john@jmorrisseylaw.com">john@jmorrisseylaw.com</a>
Lisa Friedstein 2142 Churchill Lane Highland Park, IL 60035 <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a> <a href="mailto:lisa.friedstein@gmail.com">lisa.friedstein@gmail.com</a>	William H. Glasko, Esq. Golden Cowan, P.A. 1734 South Dixie Highway Palmetto Bay, FL 33157 <a href="mailto:bill@palmettobaylaw.com">bill@palmettobaylaw.com</a>		

EXHIBIT 5 – FURTHER DISCUSSION BETWEEN ALAN AND ELIOT REGARDING NOTIFYING COURT OF  
IMPROPER AND MISTATED SIGNED ORDER

THAT DUE TO THE 300+ PAGES OF CORRESPONDENCES THIS EXHIBIT HAS BEEN LINKED TO A  
PRIVATE WEBSITE AND IS FULLY INCORPORATED BY REFERENCE HEREIN AS EXHIBIT 5 @

[HTTP://WWW.IVIEWIT.TV/SIMON%20AND%20SHIRLEY%20ESTATE/ROSE%20EMAIL%20RE%20EXTOR  
TION%20OF%20ELIOT.PDF](http://www.iviewit.tv/simon%20and%20shirley%20estate/rose%20email%20re%20extor%20tion%20of%20eliot.pdf)

IN THE CIRCUIT COURT OF THE FIFTEEN JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

IN RE: THE ESTATE OF  
SHIRLEY BERNSTEIN,  
Deceased

CASE NO. 502011CP000653XXXXSB

HON. JUDGE MARTIN H. COLIN

\_\_\_\_\_  
ELIOT IVAN BERNSTEIN, PRO SE  
PETITIONER,

V.

TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,  
ASSOCIATES AND OF COUNSEL);  
ROBERT L. SPALLINA, ESQ., PERSONALLY;  
ROBERT L. SPALLINA, ESQ., PROFESSIONALLY;  
DONALD R. TESCHER, ESQ., PERSONALLY;  
DONALD R. TESCHER, ESQ., PROFESSIONALLY;  
THEODORE STUART BERNSTEIN, INDIVIDUALLY;  
THEODORE STUART BERNSTEIN, AS ALLEGED PERSONAL  
REPRESENTATIVE;  
THEODORE STUART BERNSTEIN, AS ALLEGED TRUSTEE  
AND SUCCESSOR TRUSTEE PERSONALLY;  
THEODORE STUART BERNSTEIN, AS ALLEGED TRUSTEE  
AND SUCCESSOR TRUSTEE, PROFESSIONALLY;  
THEODORE STUART BERNSTEIN, AS TRUSTEE FOR HIS  
CHILDREN;  
LISA SUE FRIEDSTEIN, INDIVIDUALLY AS A BENEFICIARY;  
LISA SUE FRIEDSTEIN, AS TRUSTEE FOR HER CHILDREN;  
JILL MARLA IANTONI, INDIVIDUALLY AS A BENEFICIARY;  
JILL MARLA IANTONI, AS TRUSTEE FOR HER CHILDREN;  
PAMELA BETH SIMON, INDIVIDUALLY;  
PAMELA BETH SIMON, AS TRUSTEE FOR HER CHILDREN;  
MARK MANCERI, ESQ., PERSONALLY;  
MARK MANCERI, ESQ., PROFESSIONALLY;  
MARK R. MANCERI, P.A. (AND ALL PARTNERS,  
ASSOCIATES AND OF COUNSEL);  
JOSHUA ENNIO ZANDER BERNSTEIN (ELIOT  
MINOR CHILD);  
JACOB NOAH ARCHIE BERNSTEIN (ELIOT  
MINOR CHILD);  
DANIEL ELIJSHA ABE OTTOMO BERNSTEIN  
(ELIOT MINOR CHILD);  
ALEXANDRA BERNSTEIN (THEODORE ADULT  
CHILD);  
ERIC BERNSTEIN (THEODORE ADULT CHILD);  
MICHAEL BERNSTEIN (THEODORE ADULT

CHILD);  
MATTHEW LOGAN (THEODORE'S SPOUSE  
ADULT CHILD);  
MOLLY NORAH SIMON (PAMELA ADULT  
CHILD);  
JULIA IANTONI – JILL MINOR CHILD;  
MAX FRIEDSTEIN – LISA MINOR CHILD;  
CARLY FRIEDSTEIN – LISA MINOR CHILD;  
PAGE, MRACHEK, FITZGERALD & ROSE, P.A.  
(AND ALL PARTNERS, ASSOCIATES AND OF  
COUNSEL);  
ALAN B. ROSE, ESQ. – PERSONALLY;  
ALAN B. ROSE, ESQ. – PROFESSIONALLY;  
PANKAUSKI LAW FIRM PLLC, (AND ALL  
PARTNERS, ASSOCIATES AND OF COUNSEL);  
JOHN J. PANKAUSKI, ESQ. – PERSONALLY;  
JOHN J. PANKAUSKI, ESQ. – PROFESSIONALLY;  
KIMBERLY FRANCIS MORAN – PERSONALLY;  
KIMBERLY FRANCIS MORAN –  
PROFESSIONALLY;  
LINDSAY BAXLEY AKA LINDSAY GILES –  
PERSONALLY;  
LINDSAY BAXLEY AKA LINDSAY GILES –  
PROFESSIONALLY;  
THE ALLEGED “SIMON L. BERNSTEIN AMENDED  
AND RESTATED TRUST AGREEMENT” DATED  
JULY 25, 2012;  
JOHN AND JANE DOE'S (1-5000).

---

**ORDER ON ELIOT BERNSTEIN'S: EMERGENCY MOTION TO COMPEL  
ALLEGED TRUSTEE OF THE SHIRLEY TRUST TO MAKE EMERGENCY  
WELFARE PAYMENTS AS PROVIDED FOR UNDER THE TRUST;  
MOTION FOR REMOVAL OF TRUSTEE ON THE COURT'S OWN  
INITIATIVE – FLORIDA TITLE XLII 736.0706**

THESE CAUSES HAVING COME BEFORE THE COURT ON ELIOT BERNSTEIN'S  
“AMENDED EMERGENCY MOTION TO COMPEL ALLEGED TRUSTEE OF THE  
SHIRLEY TRUST TO MAKE EMERGENCY WELFARE PAYMENTS AS PROVIDED FOR  
UNDER THE TRUST; MOTION FOR REMOVAL OF TRUSTEE ON THE COURT'S OWN  
INITIATIVE – FLORIDA TITLE XLII 736.0706” AND THE COURT HAVING HEARD

ARGUMENT OF COUNSEL AND BEING OTHERWISE DULY ADVISED IN THE PREMISES, IT IS

**ORDERED AND ADJUDGED**

1. THAT THIS COURT COMPELS THE ALLEGED TRUSTEE OF THE SHIRLEY AND SIMON TRUSTS TO COMPLY WITH THE TERMS OF THE TRUSTS AND MAKE REQUIRED WELFARE PAYMENTS TO ELIOT'S FAMILY, TO BE LATER DEDUCTED FROM ELIOT OR HIS CHILDREN'S DISTRIBUTIONS, ONCE LEGALLY QUALIFIED BENEFICIARIES ARE DETERMINED BY THIS COURT TO MAKE DISTRIBUTIONS TO LEGALLY.

ELIOT AND CANDICE BERNSTEIN INDIVIDUALLY, AND ELIOT AND CANDICE AS PARENTS AND NATURAL GUARDIANS, ON BEHALF OF DANIEL, JACOB AND JOSHUA, AGREE THAT THE TRUSTEE AND HIS PROFESSIONAL SHALL HAVE ABSOLUTELY NO LIABILITY IN REGARD TO SPECIFICALLY MAKING THE WELFARE PAYMENTS OF \$100,000.00 AND SHALL BE INDEMNIFIED AND HELD HARMLESS FROM SUIT; PROVIDED THAT IN NO EVENT SHALL SUCH INDEMNIFIED AMOUNT EXCEED \$100,000 FOR THIS PAYMENT.

A CONDITION OF THIS WELFARE PAYMENT UNDER THE TERMS OF THE TRUST IS THE AGREEMENT BY THE UNDERSIGNED TO RETURN TO THE TRUSTEE, UPON DEMAND, ANY PROPERTY DETERMINED BY THE COURT TO HAVE BEEN IMPROPERLY RECEIVED AND ITS INCOME SINCE THE WELFARE PAYMENTS WERE PAID OR, IF THE UNDERSIGNED NOT HAVE THE PROPERTY, TO RETURN TO THE SAID TRUSTEE THE VALUE OF THE

PROPERTY AT THE DATE OF FINAL DISPOSITION TO A LEGAL BENEFICIARY TO BE DECIDED BY THE COURT AT A LATER DATE AND ITS INCOME AND GAIN RECEIVED. THE UNDERSIGNED SHALL HAVE NO OBLIGATION TO RETURN THE PROPERTY UNLESS IT IS DETERMINED BY A COURT TO HAVE BEEN IMPROPERLY PAID.

FURTHER, IF THE COURT DETERMINES THAT THESE PAYMENTS SHOULD LATER BE TREATED AS A DISTRIBUTION TO ELIOT'S CHILDREN, THEN PAYMENT FOR THE BENEFIT OF THE RESPECTIVE CHILD WILL CONSTITUTE PART OF ANY FUTURE DISTRIBUTION TO WHICH EACH SUCH CHILD WOULD BE ENTITLED. IF THE COURT DETERMINES THAT THESE WELFARE PAYMENTS SHOULD BE TREATED AS A DISTRIBUTION TO ELIOT BERNSTEIN INDIVIDUALLY AT A LATER DATE, ELIOT AGREES THAT HE WOULD HAVE USED THIS MONEY FOR THE BENEFIT OF HIS CHILDREN AND HE AGREES THE \$100,000.00 PAYMENT WOULD CONSTITUTE PART OF ANY DISTRIBUTION TO WHICH HE WOULD BE ENTITLED IN THE FUTURE AFTER THE COURT DETERMINES THE TRUE AND PROPER BENEFICIARIES TO LEGALLY MAKE DISTRIBUTIONS TO.

IF THE COURT DETERMINES AT A LATER DATE THAT DANIEL, JACOB AND JOSHUA ARE BENEFICIARIES OF THE SHIRLEY TRUST, THE ABOVE WELFARE PAYMENT WILL CONSTITUTE A PARTIAL DISTRIBUTION TO THE RESPECTIVE CHILD IN THE AMOUNT SET FORTH ABOVE.

IF THE COURT DETERMINES AT A LATER DATE THAT ELIOT IS A QUALIFIED LEGAL BENEFICIARY OF THE SHIRLEY TRUST, THE FULL

AMOUNT OF \$100,000.00 WILL CONSTITUTE A PARTIAL DISTRIBUTION TO ELIOT AND WILL COUNT AGAINST ANY DISTRIBUTION TO ELIOT.

THE FACT THAT ELIOT AND CANDICE BERNSTEIN HAVE ENTERED INTO THIS AGREEMENT DOES NOT CONSTITUTE AN ADMISSION, CONCESSION OR WAIVER BY ELIOT AND CANDICE THAT ANY PRIOR DISTRIBUTIONS TO ANY PARTIES WERE PROPER, NOR DOES ENTERING THIS AGREEMENT WAIVE ANY OTHER CLAIMS AGAINST THE TRUSTEE AND HIS COUNSEL, NOR ANYONE ELSE.

THIS AGREEMENT WAS MADE VOLUNTARILY AND NOT UNDER ANY DURESS, PRESSURE OR COERCION BY THE TRUSTEE. THE WELFARE PAYMENT CONTEMPLATED HEREUNDER ARE SUBJECT TO APPROVAL BY THE PROBATE COURT.

THE TRUSTEE IS AUTHORIZED, DIRECTED AND COMPELLED TO MAKE THIS WELFARE PAYMENT.

IN ADDITION, TO THE EXTENT THAT IT WOULD BE NECESSARY, THE COURT WAIVES ANY REQUIREMENT FOR THE APPOINTMENT OF A GUARDIAN AD LITEM AND FURTHER FINDS THAT, IN RESPECT TO THE AGREEMENT AND THIS ORDER, THE AGREEMENT IS IN THE BEST INTERESTS OF THE MINOR CHILDREN AND THAT ELIOT AND CANDICE BERNSTEIN ADEQUATELY REPRESENT THE INTERESTS OF THEIR MINOR CHILDREN.

2. THAT THE COURT APPROVES AFTER CAREFUL REVIEW OF THE REASONS TO REMOVE THEODORE ON THIS COURTS OWN INITIATIVE AND HAVING

REVIEWED THE MATTERS BEFORE THE COURT FOR THE REMOVAL OF THEODORE BERNSTEIN, THE COURT ON THE COURT'S OWN INITIATIVE HEREBY REMOVES THEODORE IN ANY FIDUCIARY CAPACITIES IN THE ESTATES AND TRUSTS OF BOTH SIMON AND SHIRLEY, AS THIS COURT FINDS THAT THEODORE BERNSTEIN IS NOT NOW QUALIFIED TO ACT AS A FIDUCIARY IN ANY CAPACITY.

3. \_\_\_\_\_  
\_\_\_\_\_.

DONE AND ORDERED IN DELRAY BEACH, PALM BEACH COUNTY, FLORIDA

THIS \_\_ DAY OF AUGUST, 2014.

\_\_\_\_\_  
**MARTIN COLIN**  
**CIRCUIT COURT JUDGE**

***COPIES TO:***

Alan Rose, Esq., PAGE, MRACHEK, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, [arose@pmlaw.com](mailto:arose@pmlaw.com) and [mchandler@pm-law.com](mailto:mchandler@pm-law.com) ;  
John Pankauski, Esq., PANK.AUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401, [courtfilings@pankauskilawfirm.com](mailto:courtfilings@pankauskilawfirm.com) ;  
Peter M. Feaman, Esq., PETER M. FEAMAN, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, [service@feamanlaw.com](mailto:service@feamanlaw.com) ;  
Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv) ;  
William H. Glasko, Esq., Golden Cowan, P.A., Palmetto Bay Law Center, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, [bill@palmettobaylaw.com](mailto:bill@palmettobaylaw.com) ;  
John P. Morrissey, Esq., 330 Clematis Street, Suite 213, West Palm Beach, FL 33401, [john@morrisseylaw.com](mailto:john@morrisseylaw.com) ;  
Benjamin P. Brown, Esq., Matwiczuk & Brown, LLP, 625 No. Flagler Drive, Suite 401, West Palm Beach, FL 33401, [bbrown@matbrolaw.com](mailto:bbrown@matbrolaw.com) ;  
Brian M O'Connell PA, 515 N Flagler Drive, West Palm Beach, FL 33401  
[boconnell@ciklinlubitz.com](mailto:boconnell@ciklinlubitz.com) .

AMENDED EMERGENCY MOTION...  
Sunday, August 24, 2014  
ORDER