

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

IN RE: THE ESTATE OF  
SIMON LEON BERNSTEIN,  
Deceased

CASE NO. 502012CP004391XXXXSB

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).

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**MOTION IN OPPOSITION TO: MOVANT'S, TED S. BERNSTEIN, AS  
SUCCESSOR TRUSTEE OF THE SIMON BERNSTEIN TRUST, MOTION TO  
HOLD ELIOT BERNSTEIN IN CONTEMPT OF COURT AND FOR  
SANCTIONS, AND TO COMPEL COMPLIANCE WITH PRIOR ORDERS  
AND SERVICE RULES; MOTION FOR CONTEMPT OF COURT FOR  
FAILING TO FOLLOW A COURT ORDER**

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 “**MOTION**

**IN OPPOSITION TO: MOVANT'S, TED S. BERNSTEIN, AS SUCCESSOR TRUSTEE  
OF THE SIMON BERNSTEIN TRUST, MOTION TO HOLD ELIOT BERNSTEIN IN  
CONTEMPT OF COURT AND FOR SANCTIONS, AND TO COMPEL COMPLIANCE  
WITH PRIOR ORDERS AND SERVICE RULES; MOTION FOR CONTEMPT OF  
COURT FOR FAILING TO FOLLOW A COURT ORDER**” and in support thereof states,

on information and belief, as follows:

**BACKGROUND**

1. That Eliot Bernstein states that Theodore Bernstein (“Theodore”) or (“Ted”) is acting knowingly and ILLEGALLY as alleged Successor Trustee of the Simon Bernstein alleged Amended and Restated Trust, in violation of the terms of the trust that preclude his acting as Trustee. If Theodore has become successor trustee of the Revocable Trust by fraudulent appointment, he should be removed for many reasons. First, Theodore is ineligible under the very terms of the ALLEGED Revocable Trust to serve as successor trustee. Article IV, Section C. (3) (Page 16) of the ALLEGED Revocable 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)

2. That Theodore 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(1) 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.

3. That if the ALLEGED 2012 Amended and Restated Trust is deemed 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 also will be wholly disinherited along with his lineal descendants as they are in Shirley's Trusts and that language 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.**

Where under this 2008 Trust Eliot and his lineal descendants are beneficiaries and only Theodore and Pamela are excluded, as was the case in Shirley's Trust when she died and her Beneficiary Class was established as Eliot, Jill and Lisa and their lineal descendants and the Shirley Trust became irrevocable.

4. That The alleged changes took place allegedly 48 days prior to Simon's sudden and unexpected death and the Governor Rick Scott's Notary Public Division has already confirmed that the documents were improperly notarized, yet again improper notarizations in these matters, this time committed by Theodore's personal assistant and due to the improper notarizations of the Wills and Trusts it cannot be stated that Simon was present at the signing of these documents at all.
5. That there has been CRIMINAL FELONY Misconduct in the Shirley and Simon Estates and Trusts already proven and efforts to criminally alter documents and convert and comingle assets and further wholly exclude assets through theft in the millions of dollars. There are serious factual FRAUDS and FORGERIES, with certain felony crimes already proven and admitted in the Shirley and Simon Bernstein Estates and Trusts and hosts of new alleged felony misconduct, where Theodore Bernstein

and his minion of Attorneys at Law are centrally involved in and directly benefited from the CRIMINAL FELONY MISCONDUCT committed by Theodore's Counsel who were acting as Officers and Fiduciaries of this Court. In one instance documents were submitted to the Court bearing notarized signatures of Simon Bernstein on a date after he had passed away. This Court was apprised of these allegations in a hearing conducted September 13, 2013 wherein the Court questioned whether the potential parties involved in perpetrating the Fraud, including Theodore and his Attorneys at Law Donald Tescher, Esq. ("Tescher") and Robert Spallina, Esq. ("Spallina"), should be read their Miranda Rights. (See Transcript of Proceedings, pages 15 and 16, attached as Exhibit 1)

6. 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 altering provisions of the Shirley Bernstein Trust, 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 and business associate Theodore and damaging other beneficiaries by converting and comingling benefits to Theodore. Theodore direct involvement in such activity involving the Estate of Shirley and Simon should disqualify him from serving as Successor Trustee of the ALLEGED Revocable Trust as well and disqualify him in any fiduciary capacity whatsoever in the Estates and Trusts of Simon and Shirley.
7. That Tescher and Spallina, upon removal as both Fiduciaries and Counsel in Simon's Estate in the wake of the frauds committed to benefit their client Theodore, allegedly transferred Trusteeship to Theodore and this alleged transfer to a party involved in and who benefited directly from the fraudulent activities and who would further cover up their crimes for them and himself in a Successor

Criminal scheme, is reason alone for this Court to remove Theodore 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 such a shady and unlawful transfer of Trusteeship that violates even the very terms of the Alleged Trust.

8. That Theodore's counsel Alan is also fully aware of the many problems and trust language that preclude his client Theodore from acting as a Successor Trustee.
9. That Alan has further been retained by Theodore to replace the capacities Tescher and Spallina were representing him under prior to their removal from all Bernstein family related matters and where Alan has been involved and participated in the advancement of the fraudulent schemes to benefit himself and his client Theodore.
10. That Alan, despite knowing of the Florida Bar Rules, continues to represent Theodore as the alleged Trustee and advances knowingly frivolous, toxic, vexatious and prohibited pleadings in this matter to advance what he knows are illegal actions as defined further herein for his client, as his life too hangs in the balance and if Theodore is ousted by this Court in all fiduciary capacities and so goes Alan, the Estates and Trusts can 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 they be able to delay, stymie or derail these proceedings and misuse Estate and Trust assets to protect themselves and launch harassing campaigns against beneficiaries.
11. That this Court should take note that Theodore has twice attempted to become a fiduciary in the Estate of Simon, his first Petition to become Curator was "DENIED, for the reasons stated on the record." by this Court for just and sound reasons on February 19<sup>th</sup>, 2014, when Theodore's counsel, friends and affiliates, Tescher and Spallina, were removed and a Curator needed to be appointed.

12. That the second attempt to become a fiduciary was made by Theodore in a hearing held on July 16, 2014 in efforts to become Successor Personal Representative at the replacement of Benjamin Brown as Curator. The Court however strongly urged Theodore and Alan to withdraw their TOXIC, VEXATIOUS, FRIVOLOUS and DOOMED pleading PRIOR to even hearing the pleading, which they then withdrew after wasting considerable time and monies of Beneficiaries, Creditors and this Court in a frivolous pleading certain to fail, after the Court warned them that it would sanction them if they lost for everyone's costs in advancing arguments already failed in the prior attempt to install Theodore that were certain to lose again. That again, this Court suggested such withdrawal of their pleading at the hearing for just and sound reasons as further described herein.
13. That for the same reasons the Court has deemed Theodore unfit in two attempts to become a Successor Fiduciary forward, these same reasons serve for this Court to act on its own Motion under 736.0706 to remove Theodore from any/all fiduciary capacities in either the Estates or Trusts of Simon and Shirley, as further discussed herein.
14. 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**

15. 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, documents done by Theodore's former counsel Tescher and Spallina. If the 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 possible beneficiaries and impairs his ability to be impartial.
- ii. Theodore and his counsel Alan Rose ("Alan") are both adverse to Eliot Bernstein and his family, as it is through Eliot's efforts that Theodore's prior counsel 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, arrests of their employees was made and where Eliot is pursuing Theodore and Alan with criminal authorities and in state and federal civil actions for their involvement in the frauds, thefts, conversion and comingling of assets and more, which again severely impairs his impartiality and has led to his retaliation and extortion of Eliot. If Theodore is removed and loses his illegally gained Dominion and Control of the Estates and Trusts, 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 case Counter Complaint recently moved to Your Honor, Case #502014CP002815XXXXSB, allegations that directly relate and are directly intertwined to these 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 Creditor William Stansbury's legal claim against the Estate and Trusts of Simon, as Theodore is the alleged cause of the torts claimed by Stansbury. 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. 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. 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 fail due to fraud, forgery and more.
- v. That Theodore is further conflicted with the Estate and Trust of Simon and the Beneficiaries, Interested Parties and Creditors further due to an Illinois Federal Court

breach of contract case that Theodore has now launched using a VEXATIOUS, TOXIC, FRIVOLOUS and Fraudulent Breach of Contract lawsuit, whereby Theodore is suing an insurance company Heritage Life Insurance Company to convert life insurance proceeds that do not belong to him.

It should be noted that Theodore in January of 2014 stated to Palm Beach County Sheriff Investigators, "Ted confirmed that he did not make any decisions in relation to Simon's insurance policy generated of Chicago, Illinois. He stated that he understood the policy to be owned by Simon personally.

However, Theodore is actually the Plaintiff that filed the lawsuit trying to claim the insurance proceeds in that action, which puts him directly in conflict with the Estate Beneficiaries, who will receive the benefits if the Federal Court denies their Breach of Contract lawsuit where Your Honor and the Federal Judge Amy St. Eve have not allowed the Estate to be represented in that matter and make claim to the benefits.

Theodore in fact, opposite of what he told PBSO, where he stated he had nothing to do with the insurance policy has filed the lawsuit acting as an Alleged Trustee of the Policy of what he claims to be a "LOST" trust of Simon's that he has never seen and no one has produced an executed copy of.

That it should be noted that several weeks before filing the 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 Trustee of the LOST Trust he never saw and in such IMAGINARY FIDUCIARY CAPACITY filed the Breach claim against Heritage for failing to pay on Spallina's DENIED claim.

Again, this insurance scheme inures benefits directly to the pocket of Theodore, who again, is completely disinherited from both the 2008 and 2012 Estates and Trusts of Simon and Shirley as was their intents and wishes. Without this fraudulent insurance scheme to convert the insurance proceeds from the Estate of Simon's Beneficiaries and Creditors, Theodore would receive nothing.

- vi. That further disqualifying Theodore 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 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.** He said that he did issue a partial distribution to the seven of the 10 grandchildren."

That Theodore could not have read in the 2008 Shirley Trust that the grandchildren were to receive the assets from the Trust as that language is NOT in the Trust at all. The only beneficiaries 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 alleged “Second First Amendment to Shirley’s Trust,” the very document Spallina states he fraudulently altered for Shirley POST MORTEM by two years, by altering an alleged “First Amendment to Shirley’s Trust,” which then fraudulently attempted to include the grandchildren in Shirley’s Trust.

The problem for Theodore here is 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).”

Further, Theodore then wrote to Eliot,

**From:** Ted Bernstein [mailto:tbernstein@lifeinsuranceconcepts.com]  
**Sent:** Tuesday, January 14, 2014 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. In light of what I have learned, 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,

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 Tripp Scott law that represented Eliot's children and Eliot and cost over \$30,000.00 chasing 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 have Theodore seen language in Shirley's Trust that would allow distributions to 10 grandchildren, when even Ted claims he did know about the "Second First Amendment" until January of 2014, which is the only reference to this language fraudulently inserted by Spallina to include the grandchildren in Shirley's Trust and that he claims no one else but Yates, not even the Court, was given the document.

That Theodore acting as alleged Trustee of the Shirley Trust made distributions on September 16, 2013 months before Spallina's confession to the altered document that would have allowed distributions fraudulently to the 10 grandchildren under Shirley's Trust, so how can Theodore possibly claim to PBSO that he saw language in Shirley's Trust that allowed him to make those distributions when that language does not exist in that Trust.

That for Theodore's admitted alleged failure to even read Shirley Trust that he alleges to be Trustee of, this Court should sanction and remove him. This breach through fraudulent conversion and comingling to profit him and then tell lie after lie attempting to cover it up and mislead the Court and others is outrageous conduct for an alleged fiduciary whom is 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 statement that he was told NOT to make distributions by counsel, "He [Theodore] stated that Spallina told him it was OK to distribute the funds." That this contradiction puts Theodore in direct contradiction with his own counsel who was advising him and the Estate Beneficiaries and Trust Beneficiaries who are damaged by the improper distributions to improper parties and shows that irrefutably Theodore is now adverse to other beneficiaries who are claiming the distributions were illegal conversions and comingling of funds to improper parties and thus how can he be impartial forward under Florida Statute 736.0803 Impartiality.

**ACCOUNTING VIOLATIONS – Florida Statute 736.0813 Duty to inform and account.**

16. 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.
17. 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.

- i. 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.
- ii. 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.

Paragraphs (a) and (b) do not apply to an irrevocable trust created before the effective date of this code, or to a revocable trust that becomes irrevocable before the effective date of this code. Paragraph (a) does not apply to a trustee who accepts a trusteeship before the effective date of this code.

(2) A qualified beneficiary may waive the trustee's duty to account under paragraph (1)(d). A qualified beneficiary may withdraw a waiver previously given. Waivers and withdrawals of prior waivers under this subsection must be in writing. Withdrawals of prior waivers are effective only with respect to accountings for future periods.

(3) The representation provisions of part III apply with respect to all rights of a qualified beneficiary under this section.

(4) As provided in s. 736.0603(1), the trustee's duties under this section extend only to the settlor while a trust is revocable.

(5) This section applies to trust accountings rendered for accounting periods beginning on or after July 1, 2007.

History.—s. 8, ch. 2006-217; s. 15, ch. 2007-153; s. 11, ch. 2011-183.

### **BREACHES OF FIDUCIARY DUTIES**

18. On **January**, THEODORE admitted to PBSO 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." 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 has read the trust document and plans on using Trust assets to protect himself and them. From an alleged email dated October 25, 2013, months prior to his statements to PBSO that he had not read the Trust and only followed the advice of counsel,

**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, Fraud, Insurance Fraud, Fraud on a State and a Federal Court, Bank Fraud, Theft of Estate and Trust assets of Simon and Shirley, 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.

19. 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.

20. That Eliot contacted the alleged Trustee Theodore on July 25, 2014 for an interim distribution according to the terms of the alleged Trust, **see Exhibit \_\_\_\_** 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.
21. 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.
22. 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.
23. 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 \_\_\_\_, 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].**

24. 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 distribution, 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.
25. 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 not done timely or at all and so enrollment was compromised. **See Exhibit \_\_\_\_ - Alan Letter Regarding Seeking a Court Order for Distributions.**
26. That instead of the promised Court filing to get the distributions, in efforts to now recruit the Court to aid and abet in the coverup of their breaches, they have instead filed this instant Contempt Motion against Eliot, to act as if Eliot has somehow prevented them from making the interim distributions 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 and the resulting 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, in order to intentionally miss the deadline through further abuse of process by filing their Contempt Motion instead to confuse the Court while failing to act in the interests of the minor children of Eliot who they claim are the Beneficiaries.

27. 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 distributions without this Court's Order and a reconstruction of the Shirley Trust and to have this Court somehow reconstruct the Trust to fit their crimes. 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 they made legal.
28. That Alan claims they cannot make interim distributions without Eliot taking the improper distributions, even asking him to sign a refund agreement, if later after wasting lots of everyone's time and money in defending these new TOXIC, VEXATIOUS, FRIVOLOUS, MISLEADING and EXTORTIVE pleadings, the Court rules the payments were improper, which everyone already knows they are and where there have even been admissions that these distributions were illegal and achieved through fraud.
29. However, their claims that Interim Distribution cannot be made and then be deducted from the to be determined Beneficiaries is wholly untrue, as 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. 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 distributions were made without a Court order.

30. 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.

31. That Theodore and Alan's attempt to extort Eliot 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/20140804EMERGENCYMOTIONFORINTERIMDISTRIBUTIONS.pdf> to learn further of 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.
32. This 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 that Alan claims nothing in the meeting can be used in anyway, in efforts

to keep the extortion a secret from the Courts and others.

33. The meeting was only to get a yes or no on if the ALLEGED Trustee Theodore would make the interim distributions 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. 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.

See Exhibit \_\_\_\_, as Pled in Interim Distribution Filing Section

34. That Alan's email to Eliot, see Exhibit \_\_\_\_ 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, picks up where Spallina and Tescher's extortion of Eliot left off, as he demands Eliot take the distributions to the improper beneficiaries instead of, as Eliot suggested, making them as Interim Distribution until the Court rules on who the ultimate beneficiaries will be and then deduct it from that party, either Eliot or his children. All this effort to have Eliot in desperation to keep his kids in the school they were put in by his parents and paid for by them for virtually their entire lives, accept the distributions illegally to gain an implied consent and further participate in the crime leaving him no recourse against those who already took KNOWINGLY improper and illegal distributions. This is the same

tactic that was tried by Tescher and Spallina before 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 until they finally confessed.

35. 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
36. 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.
37. 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. That despite knowing of these crimes, Theodore failed to take any steps as an alleged fiduciary to report these crimes to the authorities or this Court and only admitted that he knew of the frauds to PBSO in January of 2014 when he was hauled in for questioning. In fact, Theodore and his sisters then attempted to gloss over and pardon the criminal acts of Moran et al. by submitting further fraudulent waivers to this Court and from the time they knew of the allegations launched a further aggressive and forceful campaign of terror and retribution with

Tescher and Spallina et al. 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.

**REMOVAL OF TRUSTEE – 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 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.
39. 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 according to cases-----**(Candice has)**.

40. 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, instead of the best interests of the Beneficiaries and Creditors and it is expected for them to continue to doing so to protect themselves and therefore the Court must instantly remove them.
41. 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.
42. 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, FRIVOLOUS, 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.

43. 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 lay down the gauntlet and forcefully and aggressively remove them.
44. That due to their continued involvement allowed by this Court despite knowing of these problems that make them unfit, Eliot is now further forced to respond to this Contempt Motion with UTMOST CONTEMPT for the fact that the pleading has been allowed by this Court in the first place when it is submitted by Officers of the Court that this Court is fully cognizant are not qualified to act in any legal or fiduciary capacities any longer. So begins another lengthy filing to unwind the lies and deceit in Theodore and Alan's pleading.

**RESPONSE TO MOTION FOR CONTEMPT**

**CONTINUED MISREPRESENTATIONS, MISTATEMENTS OF FACTS AND WASTE OF ESTATE ASSETS**

45. That Theodore Bernstein and Alan Rose in their first paragraph of the TOXIC, VEXATIOUS, FRIVOLOUS, EXTORTIVE, COSTLY AND MISLEADING Motion for Contempt open in paragraph one by flat out lying to the Court and stating, "Eliot Bernstein, despite this Court's Order

dated July 18 (Exhibit "A") has published the privileged materials, directly or indirectly, in a pleading filed in an unrelated case. (See excerpts attached as Exhibit "C".) His continued use and re-publication of the privileged information directly violates this Court's ruling.”

46. That Eliot has NOT published the privileged materials in a pleading or anywhere else, as Eliot only referenced links to public Internet sites where the Publically available Privileged Email has been published by Crystal Cox Investigative Blogger at her sites across the web and at “Rip Off Report.” Alan is fully aware that others, NOT ELIOT, published this PUBLIC PRIVILEGED Email all over the web making it now a public document.
47. That Cox further refuses to comply with Eliot, Alan or this Court’s order claiming privilege, despite Eliot notifying Cox twice of the claim of privilege and sending her the Court Order as required. Eliot can do nothing else about the actions of a reporter of court corruption who feels she has certain inalienable rights. The Court’s ruling states nothing about using or referencing a document that is publically available, only that Eliot should not forward the Email to any parties.
48. That Alan was notified several times directly by Cox who published it on various sites across the Internet, see [Exhibit \\_\\_ - Cox Letters to Alan Regarding Privilege](#), explaining she would not comply with any Order or Eliot’s requests to comply and that she has a different opinion of the publically available privileged document status as not privileged and that she would continue to publish and disseminate the Public Privileged Email despite Eliot notifying her twice of the privilege claim and sending the Court’s Order as required. Cox has invited Alan to sue her or try and stop her and Alan has done nothing to remove the publically available “privileged” Email and instead attempts to now convince the Court that Eliot published the email after learning of the privilege claim in violation of the Court Order when he is knowledgeable of the truth, yet argues lies.

49. That the Court in its Order actually stated, "Eliot shall not, from the time of the Court's oral ruling, forward the email to anybody. If Eliot violates this Order, the Court may hold him in contempt of court and consider appropriate remedy for such violation." Eliot has NOT forwarded the email to anybody since the Court's Oral Order and Alan has not advanced ANY claim or evidence that Eliot has but Alan claims in his TOXIC, VEXATIOUS, FRIVOLOUS AND MISLEADING pleading that again abuses process that Eliot has directly violated the Order by trying to state things the Order does NOT state to make it appear to this Court that Eliot is uncooperative and in violation and even threatens the need of a guardian for Eliot's children.
50. That one questions arises, if Alan is so concerned about the publication of the document and trying to keep it a secret why he has not pursued those publishing and disseminating it on the world wide web to remove it under the Order and instead tries to trick the Court that Eliot is the one who published it and mislead the Court that Eliot forwarded the email sent to him by Theodore to other parties in a violation of the Court Order?
51. That if Alan's argument of Contempt for the Order were to hold up in this Court, Alan too would be in violation of his own claim of privilege, as he then published the weblink to the Email and used it himself in the instant Contempt Motion and so this too would be considered by the Court a violation of the Privilege Order.
52. That Alan and Theodore's second paragraph is also fraught with lies and deceit to this Court, as he states in his pleading,

"2. In addition, Eliot has not complied with ¶9B of the Order dated July 18. To date, Eliot has not: (i) provided proof that he sent notice to everyone to whom Eliot sent a copy of the email; (ii) has not directed those persons to comply with Order, and instead told the people that because he might appeal "I'm not sure what you are supposed to do in the meantime with your copies" (Exhibit "D"); and

(iii) has never provided any evidence that email in fact was sent out to anyone between his receipt of it at 10:52 pm on May 22, 2014 and the hearing held on the morning of May 23, 2014, as Eliot represented on the record (as demonstrated in the transcript excerpt attached as Exhibit "E").

That these claims are all factually incorrect and Alan is aware of the fact that Eliot has:

- i. provided proof to this Court that he sent notice to everyone he sent a copy of the email to PRIOR TO LEARNING OF ANY CLAIM OF PRIVILEGE in an Email he was sent by his brother Theodore, in reply to an email Eliot sent to Theodore (where neither of them are Attorneys or Clients of each other) and Alan was served this proof of compliance submitted by Eliot to the Court but fails to mention this fact in his pleading, see [www.iviewit.tv/Simon and Shirley Estate/20140804FINALSGNEDCOMPLIANCEWITHCOURTORDER.pdf](http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140804FINALSGNEDCOMPLIANCEWITHCOURTORDER.pdf) . On August 04, 2014 at 10:09am Alan was served this filing, docketed with the Court as #219;
- ii. **twice** directed those persons he sent the Email to before learning of the privilege claim to comply with the Order and Statute and provided them with the privilege statute to comply with and attached the Court Order as ordered by the Court. Alan though through clever cut and pasting of words from Eliot's notice to the parties, instead of using complete sentences, fails to notify the Court of the whole sentence of Eliot's in Alan's own Exhibit D of his pleading, whereby Alan states Eliot said, "I am not sure what you are supposed to do in the meantime with your copies." This statement on its own is in effort to again mislead the Court to believe that instead of telling people to delete and destroy their copies as per the Order, Eliot told the parties something else. Yet, if one reads the whole document and that whole sentence in context one sees that Eliot notified them to follow

the statutes and the Order and to delete, etc.

The whole sentence Alan excerpted from actually reads, “**I may appeal so** I am not sure what you are supposed to do in the meantime with your copies, **please consult counsel** [emphasis added to the parts of the sentence Alan left out of his toxic filing].” Here the Court can plainly see that Alan tries to twist this statement to say that Eliot did not comply by telling people he was not sure what to do with their copies, leaving out the part about appeal. **Exhibit \_\_\_** herein and the Proof Eliot submitted to the Court in compliance with the Order clearly show that Eliot complied with the Court Order and noticed each party to delete the Email and comply with the attached statute and Order. Eliot, due to the Court’s Order being only directed at what Eliot must do pending appeal, stated separately that he was unsure what the other parties where to do in the event of an appeal and that they should consult counsel regarding this unknown. Where Eliot is Pro Se and therefore unable to tender legal advice and the Order was unclear in this regard, stating “If **Eliot** appeals this Order, **he** [emphasis added] must obey and follow this Order pending the appeal. Alan knew all of this and that Eliot had complied to the letter of the Order but due to this is word play, Eliot is now forced to deconstruct virtually every sentence of his TWISTED, TOXIC, VEXATIOUS, FRIVOLOUS and MISLEADING pleading that takes so much time and so many pages to unravel to this Court;

- iii. Theodore and Alan have now been shown as part of their legal strategy against Eliot to use what they claim are “FORCEFUL AND AGGRESSIVE” tactics against him, as so stated on the record by Theodore Bernstein in **the \_\_\_\_\_ hearing** before this Court and demands that Eliot now send him the actual emails he sent to the people from

10:52pm on May 22, 2014 to the time of the hearing where Eliot learned of the privilege claim for the first time held on May 23, 2014. However, Alan again is fully aware that prior to Eliot first learning that there was a claim of privilege asserted, Eliot had already sent it out via email to many parties named and threatened in the Email and posted it on his social media pages, as already told to Alan and this Court in the Evidentiary Hearing and in pleadings.

That after the May 23, 2014 hearing Eliot, prior to learning he could challenge the claim of Attorney Client Privilege as one of his options under the law, in good faith and due to his promise to the Court that he would follow the law that he had never heard of before, went ahead and deleted all the emails he sent and notified the parties of the claim of privilege and provided them the statutes on May 23, 2014, as Alan's Exhibit D and Eliot's **Exhibit 1**, clearly show, long before the Court Order. Despite Alan's repeated demands now for the Emails, in effort to build a case that Eliot is being uncooperative, he makes this argument despite knowing that Eliot cannot send Alan the original emails he sent, as Alan is well aware that Eliot deleted them already. Alan tries however to mislead the Court yet again in efforts to convince the Court Eliot is in violation of the Order which states nothing about sending Alan anything. Further, sending that Email with the Privileged letter attached to Alan or the Court now would violate the Court Order if the original Emails still existed, as Eliot would then be forwarding the Emails to other parties in violation of the Court Order. Eliot in his Pro Se understanding of law has from the moment he learned of the claim of privilege followed the letter of the complex law and the Court's Order. That one thing is for certain, this whole sordid legal affair over the

privilege has cost the Beneficiaries, the Estates and Trusts, the Creditor and this Court THOUSANDS UPON THOUSANDS OF DOLLARS in legal fees that Alan directly benefits from and where this whole ClusterF&\*\* was caused by Alan's client Theodore sending an email reply to an email Eliot sent to him, in what he and Alan then claimed to the Court was an alleged mistake and stated that Theodore meant to send the Email reply to Eliot's Email to Alan instead of Eliot. That Theodore claimed in the hearing when asked about this alleged "mistake" of his that it was all due to his use of a brand new email system that day. A new system that somehow makes replying to emails from Eliot instead go to Alan, a system Eliot would not recommend to anyone. Thus, it is clear that Eliot was not the cause of this colossal mess, Theodore and his Attorney Alan are but we all paid and keep on paying while they now try and twist their mistake to look like this was somehow Eliot's fault in any way or that he is not complying with the Court.

53. That Theodore and Alan based on these previous false premises in their TOXIC, VEXATIOUS, FRIVILOUS and MISLEADING pleading then seek an order from the Court in Paragraph 3 of the pleading attempting to basically silence Eliot and limit his legal rights by seeking all kinds of remedies from this Court. Alan states,

“Movant seeks an order finding Eliot Bernstein in contempt and awarding appropriate sanctions, which should include striking all of his pro se court filings and precluding him from further participation in this case, and an award of attorneys' fees against Eliot Bernstein. Eliot has no individual standing in this matter as he is not named as a beneficiary under Simon's Will or Trust, and it is unclear from his own filings whether he is advancing his own interests or the interests of his minor children, who may be in need of a Guardian ad Litem.”

54. That Alan in Paragraph 3 for an alleged possible violation of a complex Court Order regarding privilege wants to shut Eliot's rights down and have the Court Aid and Abet in this scheme, in fact



stating to the Court that Eliot should be banned from the proceedings and even claims Eliot is not a beneficiary of the Will and Trust of Simon.

55. That the Court and Alan are aware that the current 2012 Alleged Will and Trust of Simon are challenged as illegitimate and legally invalid. Where the Court and Alan are further aware that the Governor Rick Scott's Notary Public Division has already confirmed that the 2012 ALLEGED Will and Amended and Restated Trust of Simon were improperly signed and improperly notarized (failing to state if Simon was present upon signing) and where Eliot has already posited with the Court evidence that these documents suffer from further irreparable flaws in construction and may be further fraudulent and forged documents produced by Tescher and Spallina, the attorneys who enlisted Alan into these matters from the start to aid and abet them.
56. That Robert Spallina has admitted to the PBSO he unlawfully ALTERED Trust documents of Shirley's Trust to allow the fraudulent trust construction that attempted to materially change the Beneficiary Class that was already established upon her death. Until these fraudulent documents were submitted to the Court, Eliot for years was a 1/3<sup>rd</sup> beneficiary of the Estates and Trusts of his parents estate plans and when his mother Shirley died, he was a 1/3<sup>rd</sup> beneficiary of her Revocable and Irrevocable Trusts. Where Alan is fully aware that if these documents do not prevail, Eliot will again be a Beneficiary, once the Court determines the validity of the documents. Theodore and Alan however noticeably forget to state this fact that Eliot has potential beneficial interests to the Court that gives Eliot standing in these proceedings and further attempts to mislead the Court that he has no beneficial interest and further wastes everyone's time and monies deconstructing their proverbial bullshit.

### **CONSTRUCTION OF UNLAWFUL TRUST CHANGES**

57. That Alan fails to mention that his client Theodore is the one who actually is disinherited from all versions of the Estate and Trust plans of Simon and Shirley and is really the one with no standing or beneficial interest whatsoever in any circumstance and where Theodore is considered for all purposes of even the alleged legally void documents to be PREDECEASED and no matter what scenario of beneficiaries is ruled on ultimately by this Court, Theodore in every scenario is not a beneficiary of anything at all by the very terms of all of the alleged Trust and Estate documents from 2008 and 2012.
58. That Theodore and his sister Pam were wholly disinherited in all versions of the Estate plans and have been upset about their disinheritances since being tipped off by Tescher and Spallina while Simon was alive that they had been disinherited by their parents. From that point where Spallina tipped them off without first consulting with Simon, a war was raged against Simon by Theodore and Pamela, a wicked war whereby Theodore and Pam were trying to force Simon to make changes that used his grandchildren as pawns, a war that lasted to the day he died, as he never made their desired changes.
59. That Simon had considered making changes to resolve the disputes between him and Theodore and Pamela in an effort to see his grandchildren again but when Simon did not make the demanded changes prior to his death he had POST MORTEM help from the former removed Fiduciaries Tescher and Spallina, their client Theodore and Alan, all acting as Officers of this Court and Fiduciaries, who then FRAUDULENTLY ALTERED TRUST DOCUMENTS POST MORTEM FOR SHIRLEY, FRAUDULENTLY NOTARIZED ESTATE DOCUMENTS FOR SIX PERSONS INCLUDING SIMON POST MORTEM, FORGED DOCUMENTS FOR SIX PEOPLE INCLUDING SIMON POST MORTEM, FORWARDED FRAUDULENT DOCUMENTS TO

MULTIPLE PARTIES TO EFFECUATE THEIR FRAUDS, CONVERTED AND COMINGLED ASSETS and more, as the Court is already well aware of. All of these crimes to, ILLEGALLY SIEZE DOMINION AND CONTROL OF THE ESTATES AND TRUSTS, attempt to change the beneficiaries illegally to benefit primarily Theodore and Pamela and to loot the Estate and Trusts through fraud and other felony criminal misconduct.

60. That the only people who should be removed from these proceedings and have all their TOXIC, VEXATIOUS, FRIVILIOUS and MISLEADING pleadings stricken and have Guardians assigned them as suggested by Alan in his pleading, are in fact, Alan and Theodore. That Alan and Theodore however may need Prison Guardians to protect the Beneficiaries, Interested Parties, Creditors and the General Public from them, where they both participated in these fraudulent activities in efforts to convert and comingle illegal distributions that benefited Theodore the most and benefited his minion of attorneys at law handsomely. The crimes were factually committed by Theodore and his Attorneys at Law who he brought into these matters from the start and who also are his business associates and bedfellows, Tescher, Spallina, Manceri and Alan, who all worked together against the interests and wishes of Simon and Shirley, the Beneficiaries, Interested Parties and Creditors in various schemes to benefit themselves.
61. That Alan has even recently suggested to Eliot that his client and he were considering dropping the ALLEGED 2012 Will and Trust of Simon alleged to be done days before his death, **see Exhibit \_\_\_ - Page 14, Paragraph 1**. These documents were allegedly signed while Simon suddenly began suffering severe medical conditions, having hallucinations with severe headaches (prompting a brain biopsy) and under extreme emotional duress due to pressure of Theodore and his sister Pam to make changes or else never see his grandchildren only days before his death.

62. That Alan then makes more false claims to this Court in his Contempt Motion and seeks an Order from the Court to have Eliot comply with a request for Production and Deposition when he states,

“4. Movant also seeks a second order compelling Eliot Bernstein to appear for deposition, as he has been unwilling to agree to a deposition date. (See Exhibit "B"). Eliot has been requested to provide deposition dates and documents (Exhibit "F") and has refused.”

63. That again, Theodore and Alan are knowingly lying to the Court, as Eliot has never refused a deposition and Eliot responded to the production request in Shirley’s estate, which is the only production request filed. Alan has raised no objection to the filing but claims Eliot has failed to comply to further mislead the Court that Eliot is somehow the bad guy and uncooperative.

64. That further the Court Order actually states,

“2. Eliot Bernstein shall appear for deposition at a mutually agreeable date and time, prior to the hearing on Eliot's pending motions/petitions.”

That Eliot has told Alan when he requested his Deposition, as Exhibit \_\_\_ shows, that Eliot at the time Alan was demanding his deposition was already planned to have dental work done over several weeks that would require heavy medications and showed Alan proof that he already had this work planned for months. In fact, Eliot sent Alan a Petition he filed with this Court prior to the request whereby Eliot requested an extension of time to file an Answer and Counter Complaint to the related Oppenheimer matter now before this Court (which the Court approved) and provided the Doctors name and number for Alan to confirm the work was being done at that time. Eliot informed Alan that since there were no hearings scheduled to hear Eliot’s pending motions/petitions that it would be best to wait until after the procedures and after Eliot was off the medications provided to take a deposition and that he would be happy to schedule once completed. Yet Theodore and Alan knowing

this all too well, still attempt to again mislead the Court and spin things to appear that Eliot is uncooperative and violating Court orders.

65. That Alan points to his request for deposition made after knowing of Eliot medical condition, see Alan's Exhibit F, even after knowing Eliot's medical treatment was underway and again lies to the Court that Eliot failed to respond to his requests and was refusing deposition. Eliot responded to an email of Alan's requesting deposition during the treatment time on July 14, 2014, see **Exhibit \_\_\_\_ - Eliot First Response** to Alan Request for Deposition. Alan has since asked and threatened a deposition repeatedly during the time he is aware of Eliot's medical treatment despite knowing of this to build a false record for the Court. On August 04, 2014 Eliot received yet another email demanding deposition during treatment and Eliot responded two days later after recovering from 5 hours of dental work on August 04, 2014 when Alan sent his request and Eliot timely responded to his request on August 06, 2014 at 4:21pm, see **Exhibit \_\_\_\_ - Eliot Letter to Alan Re Deposition**. Whereby Alan then rushed to file his Contempt Motion with the Court at 4:37pm on August 06, 2014 without disclosing to the Court that Eliot had responded to his prior requests for deposition prior to the filing of his TOXIC, VEXATIOUS, FRIVOLOUS and MISLEADING Contempt Motion again claiming to the Court Eliot was uncooperative despite knowing Eliot had never refused a deposition or failed to properly respond and secreting from the Court and his Motion for Contempt the fact that Eliot had replied.
66. That since filing his Contempt Motion Alan has made no notice to correct these false statements to the Court and acknowledge that he did receive cooperative responses from Eliot and that Eliot in no way was refusing any deposition and had already complied with the production request filed in Shirley's estate. Further, the Court Ordered that Eliot take a deposition prior to any scheduled

hearings of Eliot's pleadings and since that time there have been none scheduled so what is the rush and rush to build a case against Eliot for failing to cooperate?

67. That Alan again stretches the imagination when he states next,

5. Movant seeks an order overruling Eliot Bernstein's Objections to discovery and compelling him to produce responsive documents within 10 days.

68. That Eliot has not made any Objections to discovery and again complied with the production request filed with the Court in Shirley's estate (the only production request made of him) as Ordered by the Court, see "Response to Production Request and Request for Protective Order" filed with this Court in Shirley's Estate @

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140630PRODUCTIONANDREQUES>

[TFORPROTECTIVEORDER.pdf](#) but Alan again hopes this Court is asleep and did not see Eliot's filing in compliance, which Alan also was served a copy of.

69. Paragraph 6 of Alan's Motion attempts to further silence Eliot by creating another bizarre web of lies that claims that Eliot is sending Court pleadings improperly to all of his law firm members without reason, instead of to lawyers designated to receive the new Counter Complaint and pleadings regarding the probate cases. However, Eliot pointed out to Alan in his August 06, 2014 email to him already exhibited herein that Eliot is serving the people in his office, as they are being sued by Eliot in the Counter Complaint and the fact that they are all Respondents as well in the Probate matters. None of them, including Alan, have told Eliot who their counsel is going to be for several months despite Eliot's repeated requests for that information. Eliot in fact stated to Alan, again prior to his filing the Contempt Motion, in response to his request to cease sending his partners et al. the pleadings, see **Exhibit \_\_\_** herein,

I am suing you and each of your partners, associates of counsel and the firm in the Oppenheimer case and you are all respondents in the Estates of Shirley and Simon as well as the firm and so I am serving them as required. Please notify me of who will be representing each of them individually and professionally and who will be representing the firm and I can notify their counsel forward instead of them individually. Also, will you be representing yourself Pro Se individually or professionally as a respondent in the probate cases and Oppenheimer counter?

Again, Alan fails to include this information in his filing with the Court or supplement his filing knowing of this information that makes his points moot, again this will cost everyone considerable time, effort and monies to defend, including reading this response.

70. That Alan also attempts to claim that Eliot is sending things to Brian O'Connell, the new Personal Representative of Simon's Estate that replaced Theodore's former counsel Tescher and Spallina that do not relate to matters that Brian is involved with. This claim is also wholly unsupported and just Alan's myopic view as no information is tendered to the Court in support of his claim. Brian O'Connell has not stated anything of this sort to Eliot or this Court.
71. That the Court should note that virtually all of the hundreds of thousands of dollars of legal bills already expended in these matters from the Estates and Trusts have come from Alan and those who retained him, namely Theodore, Spallina and Tescher, all who are billing legal fees ad nauseum for a multiplicity of Frauds, Forgeries and Altering Estate and Trust documents and other criminal acts and civil torts that all have cost Beneficiaries, Interested Parties, Creditors, this Court and Investigatory Agencies a fortune to unravel and prove. This while they have continuously lied to the Court and Beneficiaries and made knowingly TOXIC, VEXATIOUS, FRIVOLOUS, EXTORTIVE, COSTLY and MISLEADING false pleadings that abuse process.
72. That Alan was centrally involved in the original efforts to make illegal distributions to parties,

primarily his client Theodore that were based on the fraudulent schemes to change beneficiaries committed by the former PR's, Trustees and Counsel in the Simon and Shirley Estates and Trusts and as evidenced further herein, Theodore and Alan now continue in desperation to try and advance these fraudulent schemes again, even after they attended PBSO interviews and became fully informed of the frauds.

73. That further, Alan's constant contact with the prior Curator Benjamin Brown resulted in almost half of the billable hours expended by Benjamin Brown in dealing with parties involved in these matters and yet Alan tries to spin this with the Court that Eliot is the one inflating the legal billings. In fact, Eliot has worked Pro Se and saved the Estates and Trusts considerable legal fees and his efforts have exposed that OFFICERS OF THIS COURT have COMMITTED and ADMITTED to FELONY CRIMINAL ACTS and more. In fact, Tescher and Spallina even have billed the Estates and Trusts for their time at PBSO confessing to their crimes.
74. That it is Theodore and his minion of Attorneys at Law, including Alan, who are involved directly in the criminal acts that have cost the Estates and Trusts hundreds of thousands of dollars in advancing fraudulent schemes and then hundreds of thousands more exposing them and hundreds of thousand more exposing how they are now trying to cover up those crimes through further Frauds on the Courts, Beneficiaries and Interested Parties and all the while continue looting the Estates and Trusts.
75. That the remainder of Paragraph 6 attempts to stop Eliot from exposing Alan and the crimes committed in these matters to the world because Eliot is sending public documents to the public, such as the pleadings in the case, which are not protected at all. Alan however must try to convince the Court that they somehow are, while citing no examples of Eliot doing anything illegal or wrong by sending public documents or documents in Eliot's possession to any party he so chooses. This spin



attempted because Alan would like all his actions and everything happening in this Court that exposes the grotesqueness of the crimes he and Theodore are directly implicated in to be veiled in a cloak of secrecy going forward.

76. That Alan Rose's Contempt Motion is fraught with lies and deceit and continues a pattern and practice in these matters of Fraud on the Court through vexatious and costly pleadings and where Tescher, Spallina and Theodore left off, Alan picks up the baton with Theodore again.

### **WASTING ESTATE AND TRUST ASSETS AND MISMANAGEMENT**

77. That Alan Rose, his client Theodore and his legal cohorts have wasted in the past in FRIVOLOUS and ABUSIVE legal costs in the hundreds of thousands of dollars to chase down and prove the Fiduciaries and Counsel in these matters, acting as OFFICERS OF THIS COURT, have committed not only serious breaches but serious FELONY CRIMINAL MISCONDUCT, including Fraud on this Court and Fraud on US Federal Court, etc.
78. That in one instance of fraud, waste and abuse in this Court, over \$30,000 of legal costs alone were billed to the Estate for trying to claim a KIA Soul with a value of \$11,000 as personal property of the Estate of Simon, when they knew along it was a gift from Simon to his grandson for his 15<sup>th</sup> birthday only two weeks before he passed away. Only after a year of fighting the transfer of the title and the car unable to be driven just sitting in the driveway breaking a young boys heart, then only when it came to "show down" in the Court did they withdraw their TOXIC, VEXATIOUS, FRIVOLOUS, EXTORTIVE, COSTLY pleading because after a year, as the new Curator, Benjamin Brown was appointed, Brown filed that the Estate was at great risk from the KIA, an alleged asset of the Estate being uninsured and neglected, exposing the Estate to massive liabilities. In fact, the alleged KIA asset was later **NOT** found listed on the original inventory of Simon, nor the Amended Inventory of

Simon and not even on the Final Accounting Ordered by the Court on Tescher and Spallina's resignations (the Final Accounting now objected in whole and in every part by Benjamin Brown, Esq., Brian O'Connell, Esq. and Eliot) but only after a year of expending Eliot, this Court, the Creditor and everyone's time and monies defending their TOXIC, EXTORTIVE, CRUEL, VEXATIOUS, FRIVOLOUS and MISGUIDED claims. Only on the day of the Court hearing regarding the KIA, after everyone had counsel appear in troves, did they then concede to allow the transfer of the vehicle to the rightful owner, Eliot's son, without a fight. This win to Simon's grandson coming after over a year of holding the car as hostage in an extortion scheme already pled before the Court to force Eliot to take knowingly ILLEGAL and IMPROPER distributions in order to get the car turned over to his 16 year old son who suffered much damage from the loss of his vehicle that precluded him from driving to school, school related activities and a job, all interfering with his future and making him very depressed. That this scheme also cost the Creditor Stansbury, Eliot, Ben Brown, this Court and others considerable legal fees to defend and hear the frivolous pleadings regarding the KIA.

79. That Theodore's Attorneys at Law then put in a Petition to make Theodore the Curator of the Estate of Simon, despite knowing of Theodore's irrefutable conflicts of interests, adverse interests, alleged direct involvement in the former frauds, alleged by his counsel to have taken improper distributions against their advice to improper parties and he the most and just a host of other solid reasons Theodore could not be a fiduciary, which the Court DENIED his request for solid reasons and instead appointed Benjamin Brown instead. Yet again, everyone involved had to expend considerable resources and time, including the Estates and Trusts defending this TOXIC, VEXATIOUS, FRIVOLOUS pleading to make Theodore a fiduciary when Alan was fully aware all along of the

many problems that preclude Theodore from being a fiduciary in the Estates and Trusts of Shirley and Simon. Yet, Alan proceeded to waste everyone's time again trying to claim Theodore as the fiduciary, despite knowing these facts and this proceeding cost the Estates, Trusts, Eliot, the Creditor Stansbury and others thousands upon thousands in legal fees.

80. That not taking NO once from this Court once regarding Theodore's appointment as a Fiduciary in the Estate of Simon, Alan and Theodore again approached the Court with a Petition to make Theodore the PR of Simon's Estate in replacement of the Curator, which again cost a fortune in travel, legal fees and time for all of the already victimized parties to have to come to Court, where we witnessed YOUR HONO URGE STRONGLY both Alan and Theodore to WITHDRAW their TOXIC, VEXATIOUS, FRIVILOUS and COSTLY TO EVERYONE PLEADING for Theodore to become PR or else face sanctions if they lost, including for EVERYONES LEGAL EXPENSES. So after two conferences motivated by the Court to try and agree with the other parties for a resolution, which both failed, suddenly, while standing before the Court ready to argue his doomed Motion, Alan turned to his Client Theodore and his co-counsel John J. Pankauski and after their huddle in the Court, Alan turned to address the Court, only to cowardly withdraw their TOXIC, VEXATIOUS, FRIVILOUS, COSTLY and DOOMED pleading. Again, not until enormous time, money and energy was spent by everyone to show up and have defenses and counsel present in troves.

### **JUDICIAL NOTICE**

81. That the question now becomes when will this Court on its own Motion or those filed by Eliot and the Creditor Stansbury stop these Frauds on the Court, again being committed by Officers of this Court who are directly involved in and directly benefited from the prior frauds and put a stop their reckless disregard for law and this Court and the beneficiaries and prevent their ongoing attempts to

cover up their crimes through further fraud, waste and abuse of process, committing additional new alleged thefts of Personal Properties (discussed further herein) 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, in order to clean up the Court and provide for fair and impartial due process free of the fraudsters? 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.

82. 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**. Yet, 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 voluntary when requested and been removed by this Court on its 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.
83. That Alan and Theodore now pick up and continue the Pattern and Practice of Harassment, Extortion, Illegal Distributions of Estate and Trust funds, Fraud on the Court, Fraud on Beneficiaries, Fraud on Creditors and more committed by 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.

84. 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, WHEN WILL THE COURT 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?
85. That the Court can no longer look the other way or wait for Pro Se Eliot to file pleadings and have hearings to remove those who should voluntarily withdraw and where the Court has legal obligations to act on its own motion to stop the FRAUD, WASTE and ABUSE in its own Court. 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.

**MOTION FOR CONTEMPT OF COURT FOR FAILING TO FOLLOW A COURT ORDER**

86. That after wasting so much time deconstructing the false statements in Theodore and Alan's TOXIC, FRIVOLOUS, VEXATIOUS, HARRASING, COSTLY, MISLEADING AND CONTEMPTOUS pleading herein, this Court can now address a far more serious CONTEMPT OF COURT issue committed by Theodore and Alan who are violating a Court Order that involves now further allegations of THEFT, CONVERSION AND COMINGLING OF ESTATE ASSETS, a far more

serious Contempt issue than a possible privilege infraction, in fact FELONY MISCONDUCT IN VIOLATING THE COURT ORDER.

87. That Alan and his client Theodore have failed to follow the Court's Order, see Exhibit \_\_\_ or [www.iviewit.tv](http://www.iviewit.tv) for an re-inventorying of the Estate assets of Simon, after learning in the hearing on \_\_\_ in statements made by Theodore and Alan that Estate assets were missing and unaccounted for. Where it appears that Theodore and others may have stolen off with them.
88. 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 their claim that the furniture was moved, 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 missing upon their termination in these proceedings. No mention was made in the fraudulent estate accounting they turned over by Order of this Court that these personal property assets were disposed of in any way. These facts are what led to the Court ordering verification that the assets were where they stated.
89. 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, see Exhibit \_\_\_ Spallina Letter to Theodore Regarding Protecting Contents of Condo whereby it states, "".
90. That after telling the Court that the furniture was moved and then knowing they were again going to be busted if the Court Order was complied with, Donald Tescher in his deposition ordered by Alan (who throughout the deposition objected and represented Tescher several time), see Exhibit \_\_\_, then claimed the contents may have been sold with the Condominium without any accounting for the

property to the Beneficiaries or anyone and 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.

91. That when their stories did not work, 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 and with each claim being proven false they continue to try and make up new explanations for where the missing items went and continue to defy the Court Ordered Inspection.
92. 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 no beneficiaries were 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 fraud, who again appear to have lied to this Court about Estate assets and now fail to follow the Court's Order to cover up their crimes.
93. 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.
94. 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.

95. 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 document for the sale illegally. Again, the closing the Estate of Shirley with a DEAD Personal Representative, Simon, was all part of an elaborate FRAUD ON THE COURT by OFFICERS of the Court that has already been proven in this Court.
96. 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 \_\_\_\_\_, perhaps it is that time.**
97. 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. Upon learning of these facts, the Court issued a second statement in the 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, exposing the general public to these lawyers who have committed felony crimes in these proceedings and without sanctions or required reporting, as of yet.
98. 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 and therefore lied to the Court. 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, 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.

99. 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. 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.

Add in extortion language from Candice re pattern and practice and perjury

100. 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, FRIVOLOUS, EXTORTIVE, MISLEADING

pleading that is further an abuse of process but there are just so many false statements and attempts to twist things around 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. 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 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 nor has he violated any criminal codes or civil torts in these proceedings, unlike Theodore, Spallina, Tescher, Alan, Manceri, Pankauski and others. Again in closing, Alan and Theodore and their cohorts costing everyone time and money on TOXIC, VEXATIOUS, FRIVILOUS, 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. 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 further protect and shield themselves from prosecution of their crimes, when 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. will not only benefit but further protect, the Estates, Trusts, Beneficiaries, Interested Parties and Creditors.

Wherefore, Eliot requests this Court either on its Own Motions or based on Eliot's Pro Se pleading enter an Order for all of the following:

- i. That Eliot requests this Court reject all of the claims for relief for Contempt filed by Theodore and Alan and instead sanction and perhaps read Theodore and Alan their Miranda rights for their continued efforts to propagate Fraud on this Court and Fraud on, the Beneficiaries, Interested Parties and others.
- ii. That this Court remove Theodore and his counsel Alan from these proceedings and strip them of any fiduciary capacities as Officers of this Court.
- iii. That this Court STRIKE all filings and pleadings made by Theodore and Alan to this Court as they were made when Theodore and Alan know of their conflicts of interest, their adverse interests and other reasons disqualifying them from the proceedings and fail to voluntarily withdraw upon repeated requests.
- iv. That this Court instantly seize all records and assets of the Trusts of Simon, the Trusts and Estate of Shirley and any records relating to them from all parties removed or withdrawn in these proceedings in order to marshal the assets and estates as is required by this Court under law, especially in circumstances as defined already herein,
- v. That this Court find Theodore and Alan in contempt of Court and Order an immediate

inventory of the missing items, whereby Eliot and others can take a proper inventory of all the missing items and what remains and determine if other personal properties of the beneficiaries have been stolen off with.

Filed on Friday, August 15, 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, Friday, August 15, 2014.

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

X\_\_\_\_\_

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EXHIBIT 1 - TRANSCRIPT OF PROCEEDINGS, PAGES 15 AND 16

ELIOT BERNSTEIN COMPLAINT WITH COURT ORDER  
Monday, August 4, 2014  
EXHIBITS



EXHIBIT – PROOF OF COMPLIANCE

ELIOT BERNSTEIN COMPLIANCE WITH COURT ORDER  
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