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

PROBATE DIVISION

CASE NO.: 502014CP002815XXXXSB (IY)

OPPENHEIMER TRUST COMPANY OF DELAWARE, in its capacity as Resigned Trustee of the Simon Bernstein Irrevocable Trusts created for the benefit of Joshua, Jake and Daniel Bernstein,

Petitioner,

vs.

ELIOT AND CANDICE BERNSTEIN, in their capacity as parents and natural guardians of JOSHUA, JAKE AND DANIEL BERNSTEIN, minors,

Respondents.
_______________________________/

MOTION TO APPOINT GUARDIAN *AD LITEM* FOR MINOR BENEFICIARIES

Petitioner, OPPENHEIMER TRUST COMPANY OF DELAWARE ("OTCD"), as the resigned trustee of three irrevocable trusts created by the late Simon Bernstein for the benefit of his minor grandchildren, Joshua, Jake and Daniel Bernstein, moves to appoint a guardian *ad litem* to represent the minors in this action. In support hereof, OTCD states: [1]

1. The Petition filed in this action concerns three small trusts (the "Grandchildren Trusts") with minor beneficiaries – Joshua, Jake and Daniel Bernstein (the "Minors"). The Minors are the only beneficiaries of the Grandchildren Trusts.

[1] OTCD filed this action solely in its capacity as the Resigned Trustee and does not, by the filing of this Motion or otherwise, voluntarily appear in this action or subject itself to the jurisdiction of this Court in any other capacity.

2. The Court must appoint a guardian *ad litem* for the Minors because the Minor's natural guardians, Eliot and Candice Bernstein (the "Bernsteins"), have interests which are adverse to the Minors, and because Eliot Bernstein is a serial, vexatious litigant who has repeatedly shown contempt for the judicial system, its processes and its officers, and is therefore unfit to serve as the "litigation representative" of another.

MEMORANDUM OF LAW

I. THE NATURAL GUARDIANS HAVE CONFLICTING INTERESTS WITH THE MINORS

Courts are inclined to appoint a parent as a child's litigation representative ***unless "it appears that the minor's general representative has interests which may conflict with those of the person he is supposed to represent."*** *1 Leg. Rts. Child. (Legal Rights of Children) Rev. 2d § 12:3 (2d ed. 2013), citing Mistretta v. Mistretta, 566 So. 2d 836, 837 (Fla. 5th DCA 1990) (other internal citations omitted)*. In this case, Eliot Bernstein has confirmed, by the allegations of his Counter-Complaint that he has interests which conflict (or certainly which may conflict) with those of the Minors.[2] For instance, in the Counter-Complaint:

- Mr. Bernstein alleges that ***beneficiary designations were changed from him to his children based upon fraudulent documents and frauds on this Court***. *See Counter-Complaint, ¶ 253.*
- Mr. Bernstein alleges that "approximately 1/3 of all assets [are] ***either going to Eliot or his children or a combination of both depending on how this Court rules regarding the validity of the Wills and Trusts that have been challenged*** and already found fraught with fraud, fraudulent notarizations, improper notarizations, forgeries and more." *See Counter-Complaint, ¶ 186.*
- Even though the Minors are clearly listed as the sole beneficiaries of the Grandchildren Trusts, Eliot Bernstein alleges that he himself is a beneficiary. Specifically, he alleges that "Simon and Shirley [Bernstein] set up [the Grandchildren Trusts and Bernstein Family Realty, LLC] while living, in order

[2] Oppenheimer has summarized the background of this case and the contents of the Counter-Complaint in a simultaneously-filed *Motion to Strike Counterclaim*. Oppenheimer incorporates the contents of that Motion into this one, and requests that the Court consider both Motions together.

> to fund all of their living expenses, due to the fact that Eliot has had a bomb put in his car, death threats and is in the middle of a very intense RICO and ANTITRUST lawsuit where he and his family have been in grave danger for many years fighting corruption inside the very framework of the legal system." ***He alleges that the Grandchildren Trusts were "set up by Simon and Shirley [Bernstein] for the benefit of Eliot, Candice and their children."*** *See Counter-Complaint, ¶¶ 109-110.*

- Sixteen of the trust agreements identified as counterclaim-defendants are described as having beneficiaries including but not limited to "Eliot and/or his children or both." *See Counter-Complaint, ¶¶ 44-50, 52-60, 65.*

- ***Mr. Bernstein states that his overarching goal is "to bring about a change in the legal system in efforts to root out systemic corruption at the highest levels by a rogue group of criminals disguised as attorneys at law, judges, politicians, and more."*** *See Counter-Complaint ¶ 212*. No reasonable inference can be drawn that the Minors have a similar interest or agenda, or that pursuing such a broad agenda is in the Minors' best interest.

It is reversible error for a court to fail to appoint a guardian *ad litem* in a proceeding to disburse the proceeds of a child's trust fund. *1 Leg. Rts. Child. Rev. 2d § 12:3 (2d ed. 2013), citing Sarron v. Sarron, 564 So. 2d 206 (Fla. 3rd DCA 1990).* Especially in this case, where the Bernsteins interests are shown to be (and certainly may be) adverse to the Minors' interests, and where the Court cannot reasonably conclude that the Minors' separate interests "will be fully protected" by the Bernsteins, ***the appointment of a guardian ad litem is mandatory***. *See Mistretta 566 So. 2d at 837-38* (denial of due process occurs when the interests of the child may be adverse to the interests of the parent); *Johns v. Dep't of Justice, 624 F.2d 522 (5th Cir.1980); Smith v. Langford, 255 So.2d 294 (Fla. 1st DCA 1971). Chapman v. Garcia, 463 So.2d 528 (Fla. 3d DCA 1985).*[3]

[3] Curiously, in their *Applications for Determination of Civil Indigent Status* filed in this matter, Mr. Bernstein does not claim his children as dependents; only his wife does. *See Composite Exhibit "A."* Insofar as Mr. Bernstein disclaims responsibility for his children, he should not be permitted to assert rights on their behalf.

II. THE BERNSTEINS ARE UNFIT TO SERVE AS LITIGATION REPRESENTATIVES

Eliot Bernstein is an adjudicated vexatious litigant who has exhibited outright contempt for our judicial system and its processes in courts and administrative tribunals throughout the country, including this one. Although courts have given him wide latitude to pursue his hyper-aggressive, harassing litigation *in his own name* (*pro se*), he should not be permitted (and certainly should not be appointed) to do so *on behalf of others*.

A. Eliot Bernstein's History of Vexatious Litigation

Eliot Bernstein is on a self-proclaimed mission to raze the judicial system and overthrow its "corrupt" lawyers, judges and officers. *See Counter-Complaint* ¶ *212*. In connection with those efforts, he has become skilled at filing vexatious pleadings, wasting judicial resources, sullying hard-earned reputations, and publicly degrading the judicial system and its officers. The below are but a few examples of his prior litigation-related conduct that render him unfit to serve as his children's (or anyone's) litigation proxy.[4]

In 2003, Mr. Bernstein filed a Florida Bar Complaint against various lawyers associated with the law firm of Proskauer Rose, alleging, *inter alia*, that the law firm had stolen his inventions. *See Exhibit "B"* (a copy of the Bar Complaint posted on Mr. Bernstein's website). Dissatisfied with the grievance committee report, Mr. Bernstein unsuccessfully complained to the Florida Bar about conflicts of interest surrounding its investigation, and then filed a complaint against grievance committee members. *See Exhibit "C"* (a letter from the Florida Bar to Mr. Bernstein, annotated by Mr. Bernstein and posted on his website).

[4] Mr. Bernstein's broad litigation resume makes conducting a full investigation impractical and cost-prohibitive. Limiting a search to only federal cases and Palm Beach County cases (and the information posted on Mr. Bernstein's own website), it appears that Mr. Bernstein has been a party to at least 16 lawsuits and administrative proceedings since 2004.

In 2004, Mr. Bernstein filed a Petition with the Supreme Court of Florida against an expanded group of "conspirators," including the Proskauer lawyers, the Florida Bar and its grievance committee members. *See Eliot I. Bernstein, et. al. v. The Florida Bar, et al*, *Case No. SC04-1078*.[5] In a Motion filed in that action, Mr. Bernstein implicated the Boca Raton Police Department in the ever-growing conspiracy against him, requested the high court's protection from police authorities, and demanded an oversight role in the criminal investigation of his claims. *See Exhibit "D."* [6] According to Mr. Bernstein's website postings (see below) the Florida Supreme Court did not grant him satisfaction, and the United States Supreme Court declined to give him a further audience.

In 2008, Mr. Bernstein went national, filing a federal lawsuit against Proskauer Rose, the Florida Bar, the Virginia Bar, the State of New York, and hundreds of other defendants (including various lawyers, judges and lawmakers) for conspiring to steal his technology and deny him due process. *See Eliot I. Bernstein v. State of New York, et al*, 591 F. Supp. 2d 448, 453 (S.D. N.Y. 2008) (the "New York Action"). Bernstein sought over ONE TRILLION DOLLARS ($1,000,000,000.00) in damages and an injunction for the theft of his inventions, even though he surmised that, "the granting of this prayer for relief, effectively, halts the transmission of and viewing of video as we know it…"

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[5] Oppenheimer requests that the Court take judicial notice of the dockets of the legal proceedings cited in this Motion, and the pleadings and orders shown on the dockets, pursuant to §§ §§ 90.201(1) 90.202(2), (5), (6) and/or (13), Florida Statutes.

[6] According to Mr. Bernstein, when he reported the theft of $1,000,000 and intellectual property from his company, he was unsatisfied with the conduct of the ensuing investigation (including the lack of participation by the Chief of Police, the FBI and the SEC). He "suggested" to the police that there might be "bought off detectives" involved, and demanded an internal or third-party investigation. He then became fearful that his "suggestion" may result in retribution, and reported to the Supreme Court that his safety, and that of his family, was "questionable."

Throughout the litigation, Mr. Bernstein made inflammatory and defamatory public statements about the defendants, judges and others on his blog.[7] For example:

- "When you see what [the Honorable Jorge Labarga] did to Iviewit after the elections, it gives no cause for doubt about his character and adds fuel to the conspiracy theorists claims. Keep in mind that the Iviewit Technologies are not merely great inventions but also revolutionized the world, akin to the invention of electricity but in the digital world, estimated worth, over a TRILLION dollars. At first, it must have seemed to the pariah-like attorneys that there were only a few inventors to rip off. Convincing or more aptly ***bribing Labarga*** at that point in time, when so little evidence had yet to surface, to go along with the Coup, perhaps was cheap but to throw an election though might have cost a bundle. Perhaps get Labarga a leg up to the Florida Supreme Court, as the criminal organization rewards their criminal operatives with ever more lucrative government jobs to aid and abet."

- "The Florida Bar, hijacked from law by corruption, should convert to a drinking establishment. Attorneys regulating attorneys is like you surgically fixing your own hemorrhoids."

- "Proskauer Rose LLP or Porksour Rose, as you will learn that the law firm is treif, not Kosher, one of the main criminal conspirators and traitors to our nation, all roads to hell described herein relate to Proskauer… For 'Jewish' lawyers they are not only a disgrace to the integrity of law but to their race, with no belief in G-d, just greed. Joseph Proskauer, the firms founding partner, stood in the way of a ban on German war goods that could have pressured the Nazis to cease the killings in camps after the US learned of the exterminations, in the last months of the war. The last months, when Hitler ordered mass maniacal killings of everyone that he called inferior and Proskauer in part delayed the United States call to action, great Jew… These massive law firms caught red handed in an attempt to rob the Iviewit Inventors, the Iviewit companies and Shareholders, about to go public in the billions, estimated technologies worth trillions valued by leading engineers from Fortune 500 companies over the twenty-year life of the intellectual properties… Driven, as further described herein, once caught in the act, to attempt to blow up the key inventor, me, little ole inventor Eliot Ivan Bernstein and my family, by placing a bomb in our family minivan in an attempt to murder my wife and children, leaving no estate survivors."

- "The Supreme Court Jerk Off's could be bought or intimidated into action if necessary, many of them planted by the CFR and Skulls under Reagan, Carter, Bush I and Clinton, all CFR members, already aligned with the New World Order philosophy. These Skull fuckers had been plotting since WWII and

[7] http://www.iviewit.tv/CompanyDocs/Book/indexxrt.htm#_Toc265343583

Major General Butler spoiled planning for the overthrow of our government since the Business Plot to align with Hitler failed. Yet, it took only took a few generations of careful planning and planting in high level government posts and throughout Congress to have this Nazi Tyrannous and Treasonous Coup ready and in place to begin their maniacal scheme to rebuild the Reich and make America center stage for the Fourth Reich."

- "Owned & Operated by Proskauer Rose for the benefit of their criminal activities, spearheaded by Krane if he has not eaten himself to death, now that he is caught handling complaints against himself while holding official positions of influence at the departments investigating him, not much conflict there. Judge Judy, Chief Justice of NY is schtooping a Proskauer partner, married to him and Krane was her clerk, she is at the helm of ship of NY Court Fools blocking due process to Iviewit and the shareholders top down."

- "A Supreme Fuck You to you twelve Nazi's, for without your denial to allow complaints be to filed against public officers of state supreme courts in Florida and New York, someone had time to attempt to murder my family, so make that a FUCK YOU times 4, one for the wife and kids. Fuck You for your supreme failure to take heed that crimes have been committed on a massive scale against our country, including Treason and Fraud on The US Patent Office and you all closed your eyes, allowing the criminals almost to murder wife, my children and me. Yes, that was a bomb planted in my car with intent according to the fire investigator, Rick Lee."

- "A huge fu to all those corrupt lawyers, politicians, judges who are criminals cloaked as agents of the free world, who are merely criminals who know no other way to earn an honest day's work for the man, than to rob others, mostly due to spoiled rotten children syndrome found with most lawyers today. It is a shame when good ideas turn bad like when law used to be a noble undertaking. To those who continue to participate in such crime or the cover up of such crimes as described herein, "To those that attempt to poison and destroy my brother..." Ezekiel, your time is coming after finishing with the core group of nuts."

- "Final FU to all of the Following Defendants, mainly Dirty Rotten Lawyers, cloaked as Politicians, Judges, Prosecutors and Regulators but just Criminals Violating the Laws they are Duty Bound to Uphold…"

    - "Joseph Proskauer, the firms [sic] founding partner, stood in the way of a ban on German war goods that could have pressured the Nazis to cease the killings in camps after the US learned of the exterminations, in the last months of the war. The last months, when Hitler ordered mass maniacal killings of everyone that he called inferior and Proskauer in part delayed the United States call to action, great Jew."

- "Wheeler, or more aptly Wheezler, as his name historically now recorded, is worse than a Pedophile, as he will come into your life as your trusted legal advisor and while acting as such trusted advisor, offer candy and rape you of your rights legally. Very similar to how Pedophiles operate, using their adult status and trust with children in order to rape and molest the vulnerable. Oh, how the reader will come to see you Wheezler as the failure you are. How did it feel Chris, dragged through the Florida Supreme Court and the Supreme Court of the United States with your Felony DUI stamped to your head for the entire legal world to laugh at, as your scheme to steal the patents unfolding? Forever, historically, your name recorded as a disgraced loser, a loser who lost the Holy Grail, as you called the inventions. Objects of mine that I warned you upfront were a gift from a higher p0wer [sic] that it is now time to return. Either you can give it back, or give up and surrender, or I will extract the lifeblood from you and then torment your soul, slowly, painfully, lifting it from your flesh."

- "Rubenstein is soulless sole [sic] Patent Evaluator and creator of MPEGLA LLC., the criminal RICO organizations storefront for laundering stolen technologies, tied and bundled illegally, against Sherman, Clayton and more and acting as an Anticompetitive Monopolistic Patent Pool. Be wary, these criminals with legal degrees using law firms as front may promise the world to you and then fund your patents with deviously deviant plans to steal from you. If they are doing what they have tried to do with me, they are planning to steal your inventions and ruining or ending your life. Extracting your patents through a variety of racketeering means, if you raise questions or catch them, they will try to murder you or if your inventions are worth enough."

- "Judith Kaye, also conflicted up the butt with Krane, as Krane was Kaye's former whipping boy, serving her as a lapdog clerk. Krane, knowing the heat was on, attempted to influence peddle his extensive Ethics background like never before seen in Gotham to diffuse the complaints. Krane needed to block any New York Disciplinary Department actions or American Bar Association complaints filed nationally by Iviewit. Being one of the senior Ethics lawyer in New York, holding a multiplicity of titles, Krane would have to handle this in house, personally, to earn his Proskauer intellectual property partnership wings by blocking Iviewit complaints through conflict and violations of his public offices he held."

- "Foley & Lardner is a law firm that aided and abetted the crimes with Proskauer. Do not take any patent to Foley for they continued Joao's diabolical work once Joao caught patenting Iviewit's inventions for himself. Then Foley continued writing patents in the wrong inventors'

names. Foley brought in by Proskauer to cover up for Joao when Shareholders and Board Members asked for investigation when it was first rumored he was patenting patents in his own name faster than Edison."

- "Former CEO of Foley & Lardner, Former Chief Counsel of the Republican National Committee & Current Chair of the Bradley Foundation. It is May 09, 2007 and several important things have just surfaced. None other than Michael Grebe controlled Foley & Lardner, Porksour's partner in crime, at the time of the invention thefts, Grebe another Loser accorded a place in history with Wheezler before him. Grebe helped ruin America, through Tyrannous and Treasonous corruption under the disguise of law and justice. Mike also funds books claiming blacks are mentally inferior to whites through his Bradley Foundation and is working to a New World Disorder, like a plague upon the earth, a Hitler redo where everyone is a slave to him and his NeoCon NAZI freak ball friends who seem more like the Gestapo on steroids…These whack jobs under Grebe's rule claim blacks really are mentally inferior to whites, according to his Foundations study that paid an Uncle Tom Nigger to write for a 250,000 grant."

- "Gerry or Jerry as he claims when asked his name, a complete scumbag, as in a used condom, who brought Proskauer in to evaluate the technologies and was the first person in a position of trust to violate such trust, willingly. Lewin is a man so low as to befriend his friend and neighbor, my father, and steal from both his friend and his friend's son. Lower in that he recruited his own flesh and blood daughters into the Iviewit crimes to aid and abet him, how low can one go, well Lewin is the benchmark of scum."

Notwithstanding his scandalous allegations, and the incredible nature of the claims and relief that Bernstein was requesting in the New York Action (Mr. Bernstein alleged that the conspiracy against him contributed to the Enron bankruptcy and the presidency of George W. Bush), the Honorable Shira A. Scheindlin (U.S.D.J.) conducted a detailed review and analysis of Bernstein's complaint and, thereafter, dismissed each of Bernstein's claims, finding that they "failed to state a claim against any of the hundreds of defendants named in the action." *See Exhibit "E."* Undeterred by the Order, Bernstein continued to pursue the action on appeal, and in independent actions, for another five (5) years.

On July 27, 2012 (almost four years after the New York Action had been dismissed), Bernstein filed an "emergency" motion to reopen the case. *See Eliot I. Bernstein v. State of New York, et al*, *Case No. 1:07-cv-11196 (DE 138), Emergency Motion to Reopen Case (S.D. N.Y. July 27, 2012)*. On August 14, 2012, that motion was denied, and ***the court found Bernstein's claims to be "frivolous, vexatious, overly voluminous, and an egregious abuse of judicial resources."*** *Eliot I. Bernstein v. State of New York, et al*, *Case No. 1:07-cv-11196 (DE 141), Order Denying Emergency Motion to Reopen Case (S.D. N.Y. August 14, 2012)*. Bernstein was cautioned that any additional frivolous filings could subject him to sanctions under Federal Rule of Civil Procedure 11. *Id*.

Ignoring the court's admonition, on February 28, 2013, Mr. Bernstein filed a ***second motion*** to reopen the case. *Eliot I. Bernstein v. State of New York, et al*, *Case No. 1:07-cv-11196 (DE 142), Second Motion to Reopen Case (S.D. N.Y. February 28, 2013)*. On May 13, 2013, Mr. Bernstein filed a ***third motion*** to reopen based upon a claim of fraud on the Court. *Eliot I. Bernstein v. State of New York, et al, Case No. 1:07-cv-11196 (DE 149), Motion to Reopen Case (S.D. N.Y. May 13, 2013)*. On May 15, 2013, the Court denied Bernstein's second and third motions to reopen the case. *Eliot I. Bernstein v. State of New York, et al, Case No. 1:07-cv-11196 (DE 151), Order Denying Motions to Reopen Case (S.D. N.Y. May 15, 2013)*.

On August 29, 2013, ***the Court sanctioned Mr. Bernstein for repeatedly filing frivolous papers***. *Eliot I. Bernstein v. State of New York, et al, Case No. 1:07-cv-11196 (DE 154), Order on Motion for Sanctions (S.D. N.Y. August 29, 2013).* See Exhibit "F." Specifically, the Court ordered that Mr. Bernstein pay $3,500.00 to Proskauer Rose in monetary sanctions, and enjoined Mr. Bernstein as follows:

> ***Eliot I. Bernstein is hereby enjoined from filing any action <u>in any court</u> related to the subject matter of this action without first obtaining leave of this Court. In moving for such leave, Bernstein must certify that the claim or claims he wishes to present are new claims never before raised and/or disposed of by any court. Bernstein must also certify that claim or claims are not frivolous or asserted in bad faith. Additionally, the motion for leave to file must be captioned 'Application Pursuant to Court Order Seeking Leave to File.' Failure to comply strictly with the terms of this injunction shall be sufficient grounds for denying leave to file and any other remedy or sanction deemed appropriate by this Court.***

Id. (emphasis added). Mr. Bernstein expressed his contempt for the court and the proscriptions of Rule 11 by stating the following in his Rule 11 opposition: "Bernstein is notifying Proskauer and this Court that ***he will have a lifelong and generational long litigious history*** in pursuing his patent royalties…" *Id*.

In 2013, in the matter of *Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 v. Heritage Union Life Insurance Co.*, *1:13-CIV-03643 (N.D. Ill. May 16, 2013)* (the "Chicago Action"), Jackson National Life Insurance Company, as successor in interest to Heritage Union Life Insurance Company ("Jackson"), filed a third party complaint and counterclaim for interpleader, seeking a declaration of rights under a life insurance policy for which it was responsible to administer. *See Simon Bernstein Irrevocable Ins. Trust DTD 6/21/95 v. Heritage Union Life Ins. Co., Case No. 1:13-CIV-03643 (DE 17), Third Party Complaint by Heritage Union (N.D. Ill. June 26, 2013)*. Bernstein was named as a defendant in the third party complaint because he, and his children, were potential beneficiaries of the policy at issue. *Id.* The sole relief sought was an order interpleading the death benefit funds into the court registry. *Id*.

In response to the innocuous Complaint, Mr. Bernstein filed a ninety-eight (98) page answer and third party complaint against several third party defendants related to the administration of Simon Bernstein's Florida estate. *Simon Bernstein Irrevocable Ins. Trust*

DTD 6/21/95 v. Heritage Union Life Ins. Co., Case No. 1:13-cv-03643 (DE 35), *Answer and Third Party Complaint (N.D. Ill. September 22, 2013).* He brought claims for: i) fraudulent conversion; ii) breach of fiduciary duty; iii) legal malpractice; iv) abuse of the legal process; v) common law conversion; vi) civil conspiracy; and vii) negligence, and sought damages in the amount of Eight Million Dollars ($8,000,000.00), as well as punitive damages, costs, and attorney's fees. *Id*. The Court dismissed the third party complaint pursuant to Federal Rule of Civil Procedure 14, noting the impropriety of bringing in parties and claims related to the administration of a Florida estate. *Simon Bernstein Irrevocable Ins. Trust DTD 6/21/95 v. Heritage Union Life Ins. Co., Case No. 1:13-cv-03643 (DE 106), Order Granting Third-Party Defendants' Motion to Dismiss (N.D. Ill. March 17, 2014)*.

In 2012, Mr. Bernstein was found to have participated in a "sinister and tenacious scheme to extort money" through the use of administrative domain name transfers (the primary extorter would buy domain names which included the names of people or companies who had wronged or offended her, fill them with defamatory information, and then offer her "reputation services" to clean up the mess she created; once she learned of a domain registration suit, she transferred the site to Mr. Bernstein, her "proxy," in order to avoid liability via "cyberflight."). *See WIPO Arbitration and Mediation Center, Administrative Panel Decision, Marc J. Randazza v. Reverend Crystal Cox, Eliot Bernstein, Case No. D2012-1525*; *see also Randazza v. Cox, et. al., Case No. 2:12-cv-02040-GMN-PAL, Order (granting Plaintiff's Motion for Preliminary Injunction) (D. Nev. January 11, 2013).*

The Court is already familiar with Mr. Bernstein's claims against the fiduciaries, their lawyers and others in the matters involving the *Estates of Simon and Shirley Bernstein*,

including his attempts to manufacture conflicts of interest between the parties and their litigation counsel by joining litigation counsel as parties, and then seeking to disqualify them.[8]

B. The Instant Action

With full knowledge that his claims are already pending in other actions (or have been adjudicated or enjoined), and despite the fact that he has no personal interest in the Grandchildren Trusts and is not, individually, a party to this action, Mr. Bernstein continues to re-assert, yet again, his prior claims against the prior defendants, and in the process, continues to disregard both the federal court injunction and a prior Order of this Court.

For example, in his Counter-Claim:

- Mr. Bernstein alleges that he "is pursuing Defendants, Proskauer Rose LLP, Gerald Lewin, CPA and Albert Gortz, Esq. as the main parties involved in the theft of Simon and Eliot's Intellectual Properties." *See Counterclaim, ¶ 217*.

- Mr. Bernstein has alleged "[t]hat Defendant's [sic] Oppenheimer and JP Morgan were both initially involved in Eliot's technologies and signed various agreements with the companies that held the Intellectual Properties…" *See Counterclaim, ¶ 223*.

- Despite a prior Order of this Court declaring that a certain e-mail is privileged, Eliot Bernstein makes continuing and unnecessary references to it, and advertises where it can be found online. *See Counterclaim, ¶¶ 235-237*.

Much like in the Chicago Action, in this action, Oppenheimer is not seeking damages against Mr. Bernstein or the Minors. It is merely seeking instructions as to where to deliver trust property now that it has resigned as trustee, and for judicial review and approval of its final accounting. But, as has been his *modus operandi*, Mr. Bernstein (now using his children's trusts as a tool), has irresponsibly raised the stakes, needlessly joined countless unrelated

[8] Oppenheimer requests that the Court take judicial notice of the attorney-related claims, motions and orders entered in the pending Estate matters (Case Nos. 2011-CP000653, 2012-CP004391 and 2014-CP003698) pursuant to §§ 90.201(1) and/or 90.202(6), Florida Statutes.

parties, and redundantly asserted unrelated (and enjoined) claims. His stated purpose is to recover money for himself, even at the expense of his children. *See § I, infra.*

By his prior litigation-related conduct and the content of his Counter-Complaint herein, Mr. Bernstein has shown that he is an inappropriate person to act as anyone else's litigation proxy, particularly his minor children.

III. CONCLUSION

The Court *must* appoint a guardian *ad litem* to represent the Minors in this action because the Bernsteins have (or may have) conflicts of interests with the Minors, because the Court cannot be reasonably satisfied that the Bernsteins will fully represent the Minors' interests apart from their own, and because Mr. Bernstein (and Mrs. Bernstein by her silent acquiescence) has demonstrated that he is not a responsible litigant such that he should be permitted to represent others in a litigation setting. For all of the foregoing reasons, Oppenheimer respectfully requests that the Court appoint a guardian *ad litem* for the Minors, strike the Counter-Complaint filed by the Bernsteins, enjoin the Bernsteins from further participation in these proceedings, and grant such other relief as is just and proper.

Respectfully submitted,

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By: *___/s/ Steven A. Lessne___*
Steven A. Lessne, Esq.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via e-mail to all parties on the attached Service List this 19th day of September, 2014.

/s/ Steven A. Lessne

SERVICE LIST

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EXHIBIT A

Filing # 17178669 Electronically Filed 08/17/2014 09:42:14 PM

IN THE CIRCUIT/COUNTY COURT OF THE Fifteenth JUDICIAL CIRCUIT
IN AND FOR Palm Beach COUNTY, FLORIDA

Eliot Bernstein
Plaintiff/Petitioner or In the Interest Of

CASE NO. 502014CP002815XXXXSB

vs.
Oppenheimer & Co. Inc. et al.
Defendant/Respondent

APPLICATION FOR DETERMINATION OF CIVIL INDIGENT STATUS

Notice to Applicant: If you qualify for indigence and are unable to pay the costs listed in FS 57.081, you must enroll in the clerk's payment plan and pay a one-time administrative fee of $25.00. This fee shall not be charged for Dependency or Chapter 39 Termination of Parental Rights actions.

1. **I have** 0 **dependents.** *(Include only those persons you list on your U.S. income tax return.)*
   Are you Married?..(Yes)...No Does your Spouse Work?...Yes...(No) Annual Spouse Income? $ 0

2. **I have a net income of $** 0 paid ( ) weekly ( ) every two weeks ( ) semi-monthly ( ) monthly ( ) yearly ( ) other ______.
(Net income is your total income including salary, wages, bonuses, commissions, allowances, overtime, tips and similar payments, ***minus deductions*** *required by law and other court-ordered payments such as child support.)*

3. **I have other income** paid ( ) weekly ( ) every two weeks ( ) semi-monthly ( ) monthly ( ) yearly ( ) other ______.
(Circle "Yes" and fill in the amount if you have this kind of income, otherwise circle "No")

Income	Yes $	No
Second Job		(No)
Social Security benefits		
For you		(No)
For child(ren)		(No)
Unemployment compensation		(No)
Union payments		(No)
Retirement/pensions		(No)
Trusts		(No)
Veterans' benefits		(No)
Workers compensation		(No)
Income from absent family members		(No)
Stocks/bonds		(No)
Rental income		(No)
Dividends or interest		(No)
Other kinds of income not on the list		(No)
Gifts		(No)

I understand that I will be required to make payments for costs to the clerk in accordance with §57.082(5), Florida Statutes, as provided by law, although I may agree to pay more if I choose to do so.

4. **I have other assets:** (Circle "Yes" and fill in the value of the property, otherwise circle "No")

Asset	Yes $	No
Cash		(No)
Bank account(s)		(No)
Certificates of deposit or money market accounts		(No)
Boats*		(No)
Savings account		(No)
Stocks/bonds	(Yes) UA	(No)
Homestead Real Property*		(No)
Motor Vehicle*		(No)
Non-homestead real property/real estate*		(No)
Other assets*		(No)

*show loans on these assets in paragraph 5

Check one: I (✓) DO ( ) DO NOT expect to receive more assets in the near future. The asset is inheritance.

5. **I have total liabilities and debts of $**______ as follows: Motor Vehicle $ 0, Home $ 0, Boat $ 0, Non-homestead Real Property $ 0, Child Support paid direct $ 0, Credit Cards $ 0, Medical Bills $ 10,000, Cost of medicines (monthly) $ 0, Other $______.

6. **I have a private lawyer in this case:** (Circle "Yes" or "No") .... Yes (No)

A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under s. 57.082, F.S. commits a misdemeanor of the first degree, punishable as provided in s.775.082, F.S. or s. 775.083, F.S. **I attest that the information I have provided on this application is true and accurate to the best of my knowledge.**

Signed this 30 day of July, 2014.

9/30/63 — Date of Birth
C165-560-08 — Driver's License or ID Number

[signature] — Signature of Applicant for Indigent Status
Print Full Legal Name Eliot Ivan Bernstein
Phone Number: 561 245 8588

2753 NW 34th St Boca Raton, FL 33434
Address, P O Address, Street, City, State, Zip Code

This form was completed with the assistance of: ______________________
Clerk/Deputy Clerk/Other authorized person.

CLERK'S DETERMINATION

Based on the information in this Application, I have determined the applicant to be ( ) Indigent ( ) Not Indigent, according to s. 57.082, F.S.
Dated this ______ day of ____________, 20 ___.

____
Clerk of the Circuit Court
By ______________________, Deputy Clerk

APPLICANTS FOUND NOT TO BE INDIGENT MAY SEEK REVIEW BY A JUDGE BY ASKING FOR A HEARING TIME.
THERE IS NO FEE FOR THIS REVIEW.
Sign here if you want the judge to review the clerk's decision ______________________

IN THE CIRCUIT/COUNTY COURT OF THE Fifteenth JUDICIAL CIRCUIT
IN AND FOR Palm Beach COUNTY, FLORIDA

Candice Michelle Bernstein
Plaintiff/Petitioner or In the Interest Of
vs.
Oppenheimer & Co. Inc. et al.
Defendant//Respondent

CASE NO. 502014CP002815XX

APPLICATION FOR DETERMINATION OF CIVIL INDIGENT STATUS

Notice to Applicant: If you qualify for civil indigence you must enroll in the clerk's office payment plan and pay a one-time administrative fee of $25.00. This fee shall not be charged for Dependency or Chapter 39 Termination of Parental Rights actions.

1. I have 3 dependents. *(Include only those persons you list on your U.S. Income tax return.)*
Are you Married? ✓Yes No Does your Spouse Work?...Yes ✓ No Annual Spouse Income? $0

2. I have a net income of $ 0 paid weekly every two weeks semi-monthly monthly yearly other ________.
(Net income is your total income including salary, wages, bonuses, commissions, allowances, overtime, tips and similar payments, minus deductions required by law and other court-ordered payments such as child support.)

3. I have other income paid weekly every two weeks semi-monthly monthly yearly other ________.
(Circle "Yes" and fill in the amount if you have this kind of income, otherwise circle "No")

Income	Yes $	No	Income	Yes $	No
Second Job	no	No	Veterans' benefits	no	No
Social Security benefits			Workers compensation	no	No
For you	no	No	Income from absent family members	no	No
For child(ren)	no	No	Stocks/bonds	no	No
Unemployment compensation	no	No	Rental income	no	No
Union payments	no	No	Dividends or interest	no	No
Retirement/pensions	no	No	Other kinds of income not on the list	no	No
Trusts	unkoown	No	Gifts	no	No

I understand that I will be required to make payments for fees and costs to the clerk in accordance with §57.082(5), Florida Statutes, as provided by law, although I may agree to pay more if I choose to do so.

4. I have other assets: *(Circle "yes" and fill in the value of the property, otherwise circle "No")*

Asset	Yes $	No	Asset	Yes $	No
Cash	no	No	Savings account	no	No
Bank account(s)	600.00	No	Stocks/bonds	na	No
Certificates of deposit or money market accounts	no	No	Homestead Real Property*	no	No
			Motor Vehicle*	no	No
Boats*	no	No	Non-homestead real property/real estate*	no	No

*show loans on these assets in paragraph 5

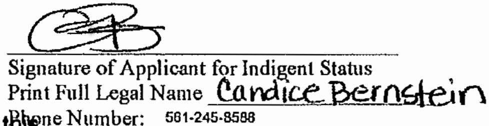
Check one: I ✓ DO DO NOT expect to receive more assets in the near future. The asset is inheritance.

5. I have total liabilities and debts of $10,000.00 as follows: Motor Vehicle $0, Home $ 0, Other Real Property $ 0, Child Support paid direct $ 0, Credit Cards $ 0, Medical Bills $________, Cost of medicines (monthly) $________,
Other $ 10,000.

6. I have a private lawyer in this case............ Yes No NO

A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under s. 57.082, F.S. commits a misdemeanor of the first degree, punishable as provided in s.775.082, F.S. or s. 775.083, F.S. **I attest that the information I have provided on this application is true and accurate to the best of my knowledge.**

Signed this 28 day of August, 2014.



Signature of Applicant for Indigent Status
Print Full Legal Name Candice Bernstein

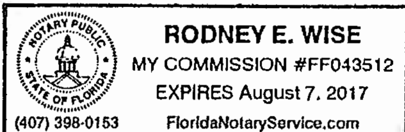
10/09/72
Date of Birth

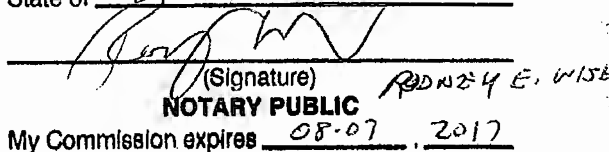
b652-113-72-869-0
Driver's License or ID Number

Phone Number: 561-245-8588

2753 NW 34th St. Boca Raton FL 33434
Address, P O Address, Street, City, State, Zip Code

Subscribed and sworn before me, this day of 28th Aug. 2014, a Notary Public in and for Palm Beach County, State of Florida





(Signature) Rodney E. Wise
NOTARY PUBLIC
My Commission expires 08-07, 2017

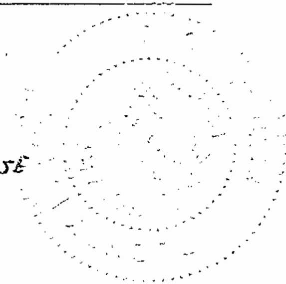


EXHIBIT B

The Florida Bar

650 Apalachee Parkway
Tallahassee, Florida 32399-2300
Toll Free 1-866-352-0707 (ACAP)

The Florida Bar
Internet Inquiry/Complaint Form

PART ONE: (See instructions, part one.)

Your Name: Eliot I Bernstein
10158 Stonehenge Crircle
Boynton Beach, FL 33437
561.364.4240

And

P. Stephen Lamont
4 Ward Street
Brewster, NY 10509
(845) 279-7710

Attorney's Name: Christopher Wheeler
Proskauer Rose LLP
One Boca Place
Suite 340 West
2255 Glades Road
Boca Raton, FL 33431-7360

ACAP Reference No. 03-13069

PART TWO: (See instructions, part two.) The specific thing or things I am complaining about are: See attached complaint sheet

PART THREE: (See instructions, part three.) The witnesses in support of my allegations are: [see attached sheet].

PART FOUR: (See instructions, part four.)
I did attempt to use ACAP to resolve this situation and Ted Littlewood suggested filing the complaint.

To attempt to resolve this matter, I did the following:

I called ACAP

PART FIVE *(See reverse, part five.): Under penalty of perjury, I declare the foregoing facts are true, correct and complete. I have read and understand the information on the reverse of this page and contained in the pamphlet "Complaint Against a Florida Lawyer." I also understand that the filing of a Bar complaint will not toll or suspend any applicable statute of limitations pertaining to my legal matter.*

____________________- Eliot I Bernstein 02/26/2003
Signature Date

____________________- for P. Stephen Lamont by Eliot I. Bernstein his attorney -in-fact 02/26/2003
Signature Date

IVIEWIT HOLDINGS, INC.

Part 2 – Florida Bar Complaint

February 25, 2003

Chief Disciplinary Counsel:
Eric M. Turner
Cypress Financial Center, Suite 835
5900 North Andrews Avenue
Ft. Lauderdale, Florida 33309
(954) 772-2245

Re: General Complaint against Christopher C. Wheeler on Behalf of Iviewit Holdings, Inc. (a Delaware Corporation) ("Company")

Dear Sir or Madam:

By way of introduction, I am Founder and President (Acting) of the above referenced Company, and write to file a General Complaint against the following member of the Florida State Bar Association:

Christopher C. Wheeler
Proskauer Rose LLP
One Boca Place
Suite 340 West
2255 Glades Road
Boca Raton, FL 33431-7360
(561) 995-4702

Introduction

Christopher Wheeler, (hereinafter "Wheeler"), believed to be a resident of the State of Florida, and who at various times relevant hereto was a partner of Proskauer Rose LLP (hereinafter "Proskauer"), and who provided legal services to the Company.

Moreover, beginning on or about September of 1998, the Company, through its agent and principal, Eliot I. Bernstein ("Bernstein"), began negotiations with Proskauer with regard to Proskauer providing legal services to the Company the purpose of which was to develop and market specific technologies developed by Bernstein and two others, which technologies allowed for the scaling, enlargement, panning and zooming of digital images and video without degradation to the quality of the digital image due to what is commonly referred to as "pixelation", the delivery of digital video using proprietary scaling techniques, a combination of the image pan and zoom techniques and video scaling techniques, and the remote control of video and image applications.

Furthermore, Bernstein engaged the services of Proskauer and in turn Wheeler, among others, through an engagement letter a true copy of which I attach herein as Exhibit "A", to obtain multiple patents and oversee US and foreign filings for such technologies including the provisional filings for the technologies as described above, and such other activities as were necessary to protect the intellectual property.

Additionally, upon information and belief, Wheeler upon viewing the technologies developed by Bernstein, and held by the Company, realized the significance of the technologies, its various applications to communication networks for distributing video data and images and for existing digital processes, including, but not limited to digital cameras, digital video disks (DVD), digital imaging technologies for medical purposes and digital video, and that Wheeler designed and executed, sometimes for himself or others similarly situated, deceptions, improprieties, and, even in certain circumstances, outright malfeasances by the disingenuous insertion of his own interests or the interests of third parties, who were other clients of Proskauer and Wheeler, between the Company, as his client and together with its disclosed techniques, and the ultimate end users of its future OEM and other licensees, to the detriment and damage of the Company. Many of the malfeasances against the Company have also involved fraud against the US Patent and Trademark Office. The technologies were evaluated by a leading imaging company, Real 3D of Orlando FL and were estimated to be worth billions of dollars, due to there application to almost all digital imaging and video applications.

Finally, as a direct and proximate result of the conduct of Wheeler, Warner Bros/AOLTW ceased business relations with the Company to the damage and detriment of the Company; the Company more specifically stipulates Wheeler's actions and inactions directly below:

Specifics of General Complaint

Where the Company employed Wheeler and Proskauer for purposes of representing the Company to obtain multiple patents and oversee foreign filings for such technologies including the provisional filings for the technologies as described above, and that pursuant to such employment, Wheeler and Proskauer owed a duty to ensure that the rights and interests of the Company were protected, Wheeler and Proskauer neglected that reasonable duty of care in the performance of legal services in that they:

1. Misrepresented lawyer Raymond A. Joao by Christopher Wheeler, to the Board of Directors and investors of I View It, Mr. Joao presently of counsel to Dreier & Baritz, New York, N.Y. initially was represented as a Proskauer Rose attorney when he was not a member of such firm, but actually of counsel to one Meltzer Lippe Goldstein and Schlissel, Mineola, N.Y.
2. Misrepresented lawyer Kenneth Rubenstein by Christopher Wheeler as a member of Proskauer Rose, and presently a partner of Proskauer Rose, but at the initiation of contact, a partner of a one Meltzer Lippe Goldstein and Schlissel.
3. Failed to take reasonable steps to ensure that the intellectual property of the Company was protected; and,

4. Allowed the infringement of patent rights of the Company and the intellectual property of the Company by other clients of Proskauer and Rubenstein. Failed to submit to patent pools overseen by Rubenstein Iviewit patents for inclusion to such pools, including but not limited to MPEG 2, MPEG 4, and DVD and;
5. Failed to and/or inadequately completed work regarding patents, copyrights and trademarks; and,
6. Engaged in unnecessary and duplicate corporate and other work; and,
7. By redacting information from the billing statements regarding services provided so to as to give the appearance that the services provided by Proskauer were limited in nature, when in fact they involved various aspects of intellectual property protection; and,
8. By knowingly and willfully representing and agreeing to accept representation of clients in conflict with the interests of the Company, without either consent or waiver by the Company.
9. Submitting false resumes for President candidate Brian Utley. Wheeler who was a close personal friend of Utley, recommended to Bernstein and other members of the board of directors of Iviewit that Iviewit engage the services of Utley to act as President of Iviewit.com LLC based on his knowledge and ability as to technology issues. That at the time that Wheeler made the recommendation of Utley to the board of directors, that Wheeler knew that Utley was in a dispute with his former employer, Diamond Turf Products, as to the fact that Utley had misappropriated certain patents on hydro-mechanical systems, which he claimed for himself to the detriment of his then employer Diamond turf Lawnmower, thereafter Utley was fired from the Company and Diamond Turf Lawnmower was closed down due to Utley's malfeasances, contrary to the resume submitted by Wheeler to the Board on behalf of Utley which claimed that the Company continued as a large success due to Utley and his inventions. Additionally, Wheeler was fully aware of the fact that Utley was not the highly qualified "engineer" that Wheeler represented Utley to be, and that in fact Utley lacked any formal education as an engineer and in fact had no engineering degree, whatsoever. Further, Wheeler and Utley submitted a new and improved biography on Utley to Wachovia Bank for a Private Placement in which Utley is described as having graduated SF College, which is in direct contradiction to his resume submitted to the Company by Mr. Wheeler. That despite such knowledge, Wheeler never mentioned such facts concerning Utley to any representative of Iviewit and in fact undertook to "sell" Utley as a highly qualified candidate who would be the ideal person to undertake day to day operations of Iviewit and work on the patents acting as a qualified engineer. Based on the recommendations of Wheeler, as partner of Proskauer, the Board of Directors agreed to engage the services of Utley as President/COO other qualified candidates were not chosen based on Wheeler's misrepresentations of Brian Utley.
10. Failing to disclose and secure conflict waivers from the Company, that Mr. Wheeler had preformed prior legal work for Mr. Utley for the setting up of Mr. Utley's company, Premiere Consulting.
11. Recommendation by Mr. Wheeler and Mr. Utley of William Dick as patent counsel for I View It without disclosure that Mr. Dick had been involved in patent

malfeasances with Mr. Utley's former employer Diamond Turf products. Mr. Dick subsequently aided and abetted Mr. Utley in writing patents into his own name of the Company's technologies, without assignment to the Company, sent to his home address and filed fraudulently with the US Patent and Trademark office.

12. Mr. Wheeler transacted stock to Tiedemann/Prolow, another referral friend of Mr. Wheeler, without proper documentation, nor Board approval.
13. Knowing and willful destruction of Company records
14. Failure to file Copyrights on behalf of I View It when billed for such
15. Failing to list proper inventors of the technologies on the patents, and thereby submitting false and fraudulent patents to the US Patent and Trademark office based on improper legal advise by Wheeler that foreign inventors could not be listed until their immigration status was adjusted leading to further erroneous billings by Proskauer Rose for frivolous immigration work. This resulted in the failure of the patents to include their rightful and lawful inventors; and,
16. Violation 4-1.1 - Lack of competence in all matters pertaining to patent and copyrights, in some instances outright lack of filing documents that were billed for
17. Violation 4-1.3 - Lack of diligence in representing the Company - Failure to file copyrights and failure to secure protection for patents
18. Violation 4-1.4 - Failure to communicate with Company to the detriment of the Company, and in certain instances communication of false materials to the Company. Submission of executive resumes with knowingly false information for MR. Brian Utley a close personal friend of Mr. Wheeler. Failure to communicate proper information regarding attorney's handling patents for Company.
19. Violation 4-1.4 - Withholding of information to the detriment of the Company, examples would be failure to secure Copyright protection and adequate patents based on withholding either partial or entire pertinent information from both client company and the United States Patent and Trademark Offices
20. Violation 4-1.6 - Violated Company Confidentiality of Information in multiple instances for the benefit of his firm and his firm clients and patent pools overseen by firm.
21. Violation 4-1.7 - Violated Company in multiple conflicts of Interest between Company and firm clients and firm patent pools overseen by firm
22. Violations of RULE 4-1.8 - CONFLICT OF INTEREST; PROHIBITED AND OTHER TRANSACTIONS - Accepted Company stock for his firm knowing of potential conflicts that were never revealed to the Company
23. Violations of RULE 4-1.10 - IMPUTED DISQUALIFICATION - Quit working for Company because he was being investigated by Company in several of the above allegations and then filed frivolous lawsuit against the Company in an attempt to claim a large claim against the Company holding the patents when he has no billing records to pursue such actions against these companies
24. Lastly, the negligent actions of Wheeler and Proskauer resulted in and were the proximate cause of loss to the Company; true copies of exhibits and witnesses are available on request and/or I will, on behalf of the Company, presented them

according to proof at commencement of investigation into this General Complaint.

It is of special interest to note that Mr. Wheeler is especially culpable in the malfeasances against the Company, in that although other Bar Actions are being filed against individual conspirators, that all malfeasances committed against the Company have stemmed from relationships cultivated by Mr. Wheeler for the Company.

Due to the highly sensitive nature of the patent and copyright materials, exhibits will be provided once formal protections have been established in regard to this complaint.

Very truly yours,

IVIEWIT HOLDINGS, INC.

- Electronic Signature

Eliot I Bernstein
Iviewit Holdings, Inc.
10158 Stonehenge Circle
Boynton Beach, FL 33437
561.364.4240

And

Electronic Signature for P. Stephen Lamont by Eliot I. Bernstein his attorney -in-fact

P. Stephen Lamont
CEO
Iviewit Holdings, Inc.

Part 3 – Florida Bar Complaint Witness List

Michele Mulrooney, Esquire
Armstrong Hirsch Jackoway Tyerman & Wertheimer, P.C.
1888 Century Park East
Suite 1888
Los Angeles, California 90067-1702
Business: (310) 553-0305

Has information pertaining to allegations that Mr. Wheeler; provided false information regarding the background of Mr. Utley to induce company to hire him; disseminated business plans with Kenneth Rubenstein as an advisor to Board, disseminated business plans with false information regarding MR. Utley, information regarding filing of patents without information disclosed by Company, information regarding patents written into Mr. Brian Utley's name as sole inventor and sent to home address without assignment to the Company, information regarding threats on inventor Eliot Bernstein's life leading to his moving family for safety concerns, information regarding interference with Company clients Warner Brothers, information regarding Mr. Utley misrepresentations in potential client Paramount/Viacomm; information regarding interference with Company by Wheeler referral Crossbow Ventures and damages caused by such interference to client Warner Brothers, information regarding Kenneth Rubenstein refusal to talk with client Warner Brothers leading to client refusing to continue business operations, information regarding her firms refusal to continue business with Company based on Mr. Utley's being caught lying to her client introduction Paramount Pictures which led to firms unwillingness to introduce Company to further prospects including but not limited to; FOX, Vivendi, Sony and MGM.

Because of the events that were being uncovered Armstrong Hirsh felt that the Company posed risk to their reputation with clients they were introducing Company to and led to their firm withdrawing as counsel to the Company.

Alan Epstein, Esquire
Armstrong Hirsch Jackoway Tyerman & Wertheimer, P.C.
1888 Century Park East
Suite 1888
Los Angeles, California 90067-1702
Business: (310) 553-0305

As an Advisory Board member to the Company has information pertaining to allegations that Mr. Wheeler; provided false information regarding the background of Mr. Utley to induce company to hire him; disseminated business plans with Kenneth Rubenstein as an advisor to Board, disseminated business plans with false information regarding MR. Utley, information regarding filing of patents without information disclosed by Company, information regarding patents written into Mr. Brian Utley's name as sole inventor and sent to home address without assignment to the Company, information regarding threats on inventor Eliot Bernstein's life leading to his moving family for safety concerns, information regarding interference with Company clients Warner Brothers, information regarding Mr. Utley misrepresentations in potential client Paramount/Viacomm; information regarding interference with Company by Wheeler referral Crossbow Ventures and damages caused by such interference to client Warner Brothers, information regarding Kenneth Rubenstein refusal to talk with client Warner Brothers leading to client refusing to continue business operations, information regarding their firms refusal to continue business with Company based on Mr. Utley's being caught lying to client introduction Paramount Pictures which led to firms unwillingness to introduce Company to further prospects including but not limited to; FOX, Vivendi, Sony and MGM.

Because of the events that were being uncovered Armstrong Hirsh felt that the Company posed risk to their reputation with clients they were introducing Company to and led to their firm withdrawing as counsel to the Company.

Mitchell Welsch
UBS/Paine Webber Inc.
5 Radnor Corporate Center
100 Matsonford Road
Suite 444
Radnor, PA 19087
(800) 942-0409 ext7251

Has information pertaining to allegations that Mr. Wheeler; provided false information regarding the background of Mr. Utley to induce company to hire him; disseminated business plans with Kenneth Rubenstein as an advisor to Board, disseminated business plans with false information regarding MR. Utley, information regarding filing of patents without information disclosed by Company, information regarding patents written into Mr. Brian Utley's name as sole inventor and sent to home address without assignment to the Company, information regarding threats on inventor Eliot Bernstein's life leading to his moving family for safety concerns, information regarding interference with Company clients Warner Brothers.

James Armstrong
126 Buttonwood Drive
Fair Haven, NJ. 07704
(732) 747-1448

Has information pertaining to allegations that Mr. Wheeler; provided false information regarding the background of Mr. Utley to induce company to hire him; disseminated business plans with Kenneth Rubenstein as an advisor to Board, disseminated business plans with false information regarding MR. Utley, information regarding filing of patents without information disclosed by Company, information regarding patents written into Mr. Brian Utley's name as sole inventor and sent to home address without assignment to the Company, information regarding threats on inventor Eliot Bernstein's life leading to his moving family for safety concerns. Has information regarding Mr. Wheeler being involved in patent malfeasances regarding missing and wrong information in the patents filed on behalf of the Company. Has information in which Mr. Wheeler attended meetings with representatives of Foley and Lardner regarding false and missing information contained in the patents filed on behalf of the Company.

Tom Coester, Esquire
Blakely, Sokoloff, Taylor & Zafman, LLP
12400 Wilshire Blvd.
Seventh Floor
Los Angeles, CA 90025-1030
(310) 207-3800

Uncovered information that Mr. Utley had patents being written into his own name through attorney referrals by Mr. Wheeler and his executive referral Mr. utley with a one Mr. William Dick of Foley and Lardner. Has knowledge that such fraudulent patents were submitted via US Postal service to US Patent and Trademark Office and his firm had to correct such fraudulent patents

Norman Zafman, Esquire
Blakely, Sokoloff, Taylor & Zafman, LLP
12400 Wilshire Blvd.
Seventh Floor
Los Angeles, CA 90025-1030
(310) 207-3800

Uncovered information that Mr. Utley had patents being written into his own name through attorney referrals by Mr. Wheeler and his executive referral Mr. utley with a one Mr. William Dick of Foley and Lardner. Has knowledge that such fraudulent patents were submitted via US Postal service to US Patent and Trademark Office and his firm had to correct such fraudulent patents

Simon Bernstein
7020 Lions Head Lane
Boca Raton, FL 33496
(561) 988-8984

Information pertaining to all allegations as the ex Chairman of the Board

Guy Iantoni
Strategica Technologies, Inc.
1167 Oxford Court
Highland Park, IL 60035
(847) 432-0873

Information pertaining to all allegations

Jeffrey Friedstein
Goldman Sachs Group, Inc.
4900 Sears Tower
Chicago, Il 60606
2142 Churchill Lane
Highland Park IL 60035
(800) 233-9622

Information pertaining to all allegations

David Colter
Vulcan Ventures
(425) 453-1940
david.colter@attbi.com

Has information regarding the conflict of interest between Proskauer Rose and I View It that led to AOLTW/WB ceasing to do business with Iviewit. Has information regarding threats by MR. utley on Mr. Bernstein. Has knowledge of patent malfeasances resulting from Mr. Wheeler and Mr. Rubenstein's work on behalf of Proskauer Rose. Has knowledge of AOLTW/WB infringement of Iviewit Intellectual properties. Disseminated business plans with Kenneth Rubenstein as an advisor to Board, disseminated business plans with false information regarding MR. Utley, information regarding filing of patents without information disclosed by Company, information regarding patents written into Mr. Brian Utley's name as sole inventor and sent to home address without assignment to the Company, information regarding threats on inventor Eliot Bernstein's life leading to his moving family for safety concerns, information regarding interference with Company clients Warner Brothers, information regarding Mr. Utley misrepresentations in potential client Paramount/Viacomm; information regarding interference with Company by Wheeler referral Crossbow Ventures and damages caused by such interference to client Warner Brothers, information regarding Kenneth Rubenstein refusal to talk with client Warner Brothers leading to client refusing to continue business operations, information regarding her firms refusal to continue business with Company based on Mr. Utley's being caught lying at Paramount Pictures.

P. Stephen Lamont
I View It Technologies, Inc.

4 Ward Street
Brewster, NY 10509
(845) 279-7710

As acting CEO of Iviewit has information pertaining to all allegations in the complaint

Donald G. Kane II
GDI
540 Dalewood Lane
Hinsdale, IL 60521
540 Dalewood Lane
Hinsdale, Il 60521
(630) 325-5622

As a Board member to Iviewit has information pertaining to most allegations contained in the complaint. Has information regarding Iviewit securities being transferred by Mr. Wheeler and Mr. Utley without Board approval and without proper documentation.

Zakirul Shirajee
9485 Boca Cove Circle
Apt. #708
Boca Raton, FL 33428
(561) 488-4351

Has information regarding inventors being left off patents as he is one of the original inventors

Jennifer Kluge
3100 N.E. 49th St.
Apt.#905
Ft. Lauderdale, FL 33308
or
361 North East 43rd Court
Oakland Park, Florida 33334
Home 2: (954) 772-6444

Has information pertaining to threats against Mr. Bernstein which forced him to take his family and leave FL for their safety.

Jude Rosario
5580 NW 61 Street
Apt. 625
Coconut Creek, FL 33073
(561) 451-4900 ext 413
(954) 574-9338

Has information regarding inventors being left off patents as he is one of the original inventors

Jack Scanlan
1560 Yosemite Drive,
Suite 129,
Los Angeles, CA 90041
(323) 258-1742

Has information regarding patent malfeasances that led to AOLTW/WB ceasing business with Iviewit, amongst other clients that were affected including but not limited to Paramount Pictures and Sony Pictures.

Kenneth Anderson
MyCFO.com
2029 Century Park East
Suite 800
Los Angeles, California 90067
(310) 407-1170

As a Board member to Iviewit has information pertaining to most allegations contained in the complaint. Has information regarding Iviewit securities being transferred by Mr. Wheeler and Mr. Utley without Board approval and without proper documentation.

Wayne Smith, Esq
4000 Warner Blvd.
Burbank, CA
United States of America

Has information regarding the conflict of interest between Proskauer Rose and I View It that led to AOLTW/WB ceasing to do business with Iviewit

Steven Selz. Esquire
Selz & Muvdi
(561) 820-9409

Has information pertaining to all allegations alleged. Is currently counsel for I view It in frivolous lawsuit filed by Mr. Wheeler on behalf of Proskauer Rose in Judge Jorge LaBarga's court.

Monte Friedkin
(954) 972-3222 x310
Benada Aluminum of Florida
1911 NW 32nd Street
Pompano Beach, FL 33064

Has information regarding Mr. Utley's false resume submitted by Mr. Wheeler. Has information that Mr. Wheeler had knowledge of both Mr. Utley and Mr. Bill Dick's patent malfeasances against a company, Diamond Turf, that he had to close due to the malfeasances caused by these patent issues.

Candice Bernstein
10158 Stonehenge Circle
Suite 801
Boynton Beach, FL 33437-3546
561.364.4240

Information pertaining to all allegations

Caroline Prochotska Rogers, Esquire
1949 Cornell Avenue
Melrose Park, IL 60160
Business Phone:
(708) 450-9400 ext 19

Hired to investigate claims against Christopher Wheeler in response to all allegations. Has information regarding Mr. Wheeler's; failure to take reasonable steps to ensure that the intellectual property of the Company was protected; and, failure to and/or inadequately completed work regarding patents, copyrights and trademarks; and, engaged in unnecessary and duplicate corporate

and other work; and, by redacting information from the billing statements regarding services provided so to as to give the appearance that the services provided by Proskauer were limited in nature, when in fact they involved various aspects of intellectual property protection; and, by knowingly and willfully representing and agreeing to accept representation of clients in conflict with the interests of the Company, without either consent or waiver by the Company. Has information pertaining to Mr. Utley and the misrepresentation of his character and past employment. Has information regarding Mr. Utley and Mr. Dick being involved in prior patent malfeasances.

Exhibit "A"

10158 Stonehenge Circle, Boynton Beach, Fla. 33437 • T (561) 364-4240 • www.iviewit.com

2255 Glades Road
Suite 340 West
Boca Raton, FL 33431-7360
Telephone 561.241.7400
Elsewhere in Florida
800.432.7746
Fax 561.241.7145

NEW YORK
LOS ANGELES
WASHINGTON
NEWARK
PARIS

PROSKAUER ROSE LLP

Christopher C. Wheeler
Member of the Firm

Direct Dial 561.995.4702

September 8, 1999

Mr. Brian G. Utley
iviewit LLC
c/o Goldstein Lewin
1900 Corporate Boulevard, Suite 300-E
Boca Raton, FL 33431

Re: Engagement Agreement for iviewit LLC

Dear Brian:

Thank you for the opportunity to represent iviewit LLC in connection with general corporate advice (the "Work") and such other matters as we may undertake on your behalf from time to time. As is our Firm's custom, we are writing to confirm our agreement regarding such representation.

Our fees for services performed will be billed at our regular hourly rates. Currently, these rates range from $135.00 to $385.00 per hour for all legal services performed by the Firm's attorneys in our Boca Raton office. The hourly rate charged by any particular attorney within the range mentioned depends on such factors as that lawyer's experience, familiarity with the subject matter being worked upon, and such other factors as have been determined by the Firm in establishing the normal hourly rates for its attorneys. Time spent by any legal assistant is currently charged at $90.00 per hour.

In addition to the fees described above, you agree to reimburse and pay us for all disbursements made by us, and our customary charges for in-house services in connection with the legal services performed under this agreement, including document reproduction and facsimile charges, computerized legal research, overtime (if required), travel expenses, court filing fees, postage, messenger and overnight courier fees, long-distance telephone charges, document preparation charges, word processing, taxes and miscellaneous expenses.

We anticipate billing you on a monthly basis, with payment of all monies due within 30 days of receipt. We will send you periodic statements setting forth the amount of the fees, disbursements and charges to which we are entitled and the basis for their calculation. Although, as noted above, we will ordinarily bill you monthly for fees, disbursements and charges of the preceding

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month, we may occasionally defer billing for a given month (or months) if the accrued fees and costs do not warrant current billing or if other circumstances would make it more convenient to defer billing.

We are waiving a retainer at this time, but we reserve the right to ask for one at any time.

You have the right to discharge us as your counsel in connection with the Work at any time, but such discharge shall not affect our right to be paid all our previously incurred but unpaid fees, and all our previously incurred but unpaid charges and disbursements, in accordance with this letter agreement.

We may from time to time, either at your request or at our own initiative, provide you with an estimate of fees or costs that we reasonably anticipate will be incurred in connection with the Work. It is understood that such estimates, which are predicated on a variety of assumptions, are subject to unforeseen circumstances and are by their nature inexact.

If you agree that the foregoing meets with your approval, please sign and return to me the enclosed copy of this letter as soon as possible.

We very much appreciate the opportunity to represent you in this matter.

Best regards.

Cordially,

Christopher C. Wheeler

0894/40017-001 BRLIB1/240799 v1 09/08/99 02:56 PM (274

EXHIBIT C

THE FLORIDA BAR

JOHN F. HARKNESS, JR.
EXECUTIVE DIRECTOR

651 EAST JEFFERSON STREET
TALLAHASSEE, FL 32399-2300

850/561-5600
WWW.FLABAR.ORG

July 9, 2004

Mr. Eliot Bernstein
IViewIt Holdings, Inc.
10158 Stonehenge Circle
Suite 801
Boynton Beach, FL 33437-3546

Re: Eric Turner et al.

Dear Mr. Bernstein:

I have been regularly communicating with Mr. Marvin concerning your assertions and I have read a series of letters and/or email between you and staff of our Fort Lauderdale office or Mr. Marvin.

Recently you wrote (in one email) Mr. Marvin:

> "As mentioned in our last conversation on 7/02/04 we have learned and notified you of a severe conflict of interest in the Wheeler complaint 2003-51 109 15c, whereby Matthew Triggs, with no formal disclosure, acted as Wheeler's counselor within the one-year period after serving as a Grievance Committee Member, thereby a conflict exists which has the additional appearance of impropriety and thus taints the entire Wheeler case, and your Turner decision, if such decision was formal. Due to the conflict and influence peddling at the Bar this may represent, the entire case should now be reviewed by an independent third-party. Triggs served from 4/1/99 to 3/31/02 and as illustrated in the attached letter to the bar, Triggs had already started representing Wheeler on March 21, 2003, clearly within the year prohibition:"

Subsequently you wrote (in another email) Mr. Marvin:

> "Please provide us with the rules and code that apply to internal review of complaints lodged against officers of the FL Bar and where we can find out how this process is handled. Also, since we have now notified you of the conflict of interest and appearance of impropriety in the Triggs response on behalf of the Wheeler complaint, we would like to add charges of conflict of interest and

appearance of impropriety to Mr. Turner's complaint. Would we need to establish another separate complaint or can you amend the existing "complaint"? We are certain that such charges would constitute a violation of Mr. Turner's professional ethics as regulated by the FL Bar and therefore constitute charges necessitating a formal complaint with formal process. In addition, do we need to file another case on Wheeler and Triggs for the conflict of interest, appearance of impropriety and the abuse of public office or is this something that the FL Bar needs to institute as you are now aware of the abuse of public office caused by Triggs and Wheeler? In light of the recent discoveries regarding such conflict, it seems that the FL Bar should re-open the Wheeler case, strike the tainted response of Triggs and charge Wheeler with all charges contained in his complaint, as if no response was given at all."

Boggs attempts to state that Triggs would have been granted a waiver but that is a unknown and Boggs only deals with one of the many conflicts we presented him with here, and in light of the multiple conflicts it would have been probably rejected. He also admits here that Triggs did not disclose the conflict or seek proper channels for approval

Boggs admits conflict citing it is "form over substance" and that no waiver was tendered by the Board

'would have" ndicating it was not

This is a form over substance issue. The fact that for a short period of time Mr. Triggs represented Mr. Wheeler without a waiver does not automatically create a conflict. Waiver would have been routinely granted under standing board policy and if the situation had come to our attention all that would have happened was notice to Mr. Triggs to submit a waiver request. Upon the expiration of 12 months from the end of his grievance committee service, the need for a waiver ceased. It is noteworthy that the grievance committee that heard your complaint against Mr. Wheeler is not the same committee on which Mr. Triggs served. Thus there was no actual conflict for the short time that a waiver was an issue.

The rules state nothing about bein on any specific committee they state that Triggs cannot represent ANYONE for a period of one year, what is this guy thinking???

15.10 **Waiver of Disqualification as Attorney for Respondents.**

(a) **Authority for Waiver.** The Rules Regulating The Florida Bar disqualify partners, associates or other firm members of board members, grievance committee members and former staff attorneys from representing a respondent in a disciplinary matter. Further, the rule disqualifies the board members, grievance committee members and former staff attorneys from the same representation and extends all disqualification periods for 1 year after the termination of board, grievance committee or staff service. The rule allows for waiver of the disqualification by the board.
This policy is enacted to identify the instances in which the board will waive the rule.

NO WAIVER = RULE VIOLATION.

(c) **Grievance Committee Members.** No current member of a grievance committee may represent a respondent in a disciplinary matter.
A member of the grievance committee member's law firm may represent a respondent while the grievance committee member is serving on the committee if:

(1) the representation involves a grievance committee other than the 1 on which the member of the law firm serves; and

2) the grievance committee member has no involvement with the representation and is screened from access to the file on the matter; and

(3) the attorney wishing to represent the respondent provides written notice of the disqualification to the executive director.

Former grievance committee members may represent a respondent in a disciplinary matter if the matter was not pending, before the committee on which the former member served, before the former member's term expired.

Members of the former grievance committee member's law firm may represent a respondent in a disciplinary matter during the 1-year disqualification period if the former member may also do so under the terms of this policy.

(f) **Executive Director Authority.** The executive director is hereby granted the authority to issue waivers under the terms of this policy. The executive director shall not deviate from this policy and if the executive director is in doubt regarding issuance of a waiver, the request shall be referred to the board of governors for resolution. The executive director shall report to the board listing all waivers granted and all waivers denied.

SOUNDS LIKE BOGGS IS TRYING TO DEVIATE FROM THE PROCESS - WITH A WOULD HAVE, SHOULD HAVE, COULD HAVE - BUT DIDN'T

We treated your complaint against Mr. Turner as an internal matter as you question his job performance. You employ other words and characterizations, but the thrust of what you say is that you do not accept his conclusions. There are no provisions in the Rules Regulating The Florida Bar for handling job performance based complaints and we have no written policies in this regard.

TURNER COMPLAINT IS FAR MORE SERIOUS AND SHOULD HAVE BEEN FILED AS A BAR COMPLAINT FOR VIOLATIONS OF RULES OF PROFESSIONAL CONDUCT.

Also your labeling the matter concerning Mr. Turner as a complaint is a creative attempt to fashion a way to preserve the file in your prior complaint when routine record retention schedules require its purging. It is obvious that one of your goals is the preservation of the Wheeler file. It can be argued that this is the central issue of your goals at this time. We cannot use an artifice to avoid routine record keeping requirements.

SOUNDS LIKE HE IS TRYING TO DESTROY FILE TO HIDE CONFLICT AND OTHER TURNER ISSUES. SEEMS AN OBSTRUCTION OF JUSTICE.

Your assertions have received careful and repetitive review (bar counsel, chief branch discipline counsel, grievance committee chair, and designated reviewer have all reviewed your complaint against Mr. Wheeler and all agree with closure) and that file shall remain closed. Mr. Marvin and I lack authority to do otherwise.

Your criticism of Mr. Turner's job performance is noted and has been reviewed by Mr. Marvin and me. We respect your right to be critical, but we conclude that Mr. Turner has acted within the scope of his duties and authority. No personnel action will be initiated.

As to the website content issue, we have that matter under review and will act as all of the facts require. This review will be conducted out of our Fort Lauderdale office. By copy hereof I advise Mr. Turner to provide status information to you, Mr. Marvin and me.

Sincerely,

John Anthony Boggs
Director, Legal Division

cc: Kenneth L. Marvin
Eric M. Turner

g:winword\letters\07-2004\07 09 2004 Eliot Bernstein

EXHIBIT D

44B6

44B6

Digitally signed by Eliot I. Bernstein
DN: CN = Eliot I. Bernstein, C = US, O = Iviewit Holdings, Inc.
Reason: I have reviewed this document
Location: sc
Date: 2004.10.13 07:58:26 -04'00'

Digitally signed by Eliot I. Bernstein
DN: CN = Eliot I. Bernstein, C = US, O = Iviewit Holdings, Inc.
Reason: I am the author of this document
Location: 2004 10 07 FLORIDA SUPREME COURT MOTION
Date: 2004.10.07 07:01:52 -04'00'

IN THE SUPREME COURT OF FLORIDA

ELIOT I. BERNSTEIN and
P. STEPHEN LAMONT

Petitioners

vs.

THE FLORIDA BAR (IN THE MATTER OF ATTORNEY COMPLAINTS AGAINST; CHRISTOPHER C. WHEELER, FILE NO: 2003-51 109 (15c); CHRISTOPHER C. WHEELER 2, FILE NO: PENDING CASE NO. ASSIGNMENT; MATTHEW H. TRIGGS, NO: PENDING CASE NO. ASSIGNMENT; ERIC M. TURNER, FILE NO: PENDING CASE NO. ASSIGNMENT); AND COMPLAINTS OF CONFLICTS OF INTEREST AND APPEARANCES OF IMPROPRIETY WITH THE FOLLOWING FLORIDA BAR REPRESENTATIVES; MATTHEW H. TRIGGS AS A GRIEVANCE COMMITTEE MEMBER AND FORMER GRIEVANCE COMMITTEE MEMBER; CHRISTOPHER WHEELER AS A GRIEVANCE COMMITTEE MEMBER AND FORMER GRIEVANCE COMMITTEE MEMBER; KELLY OVERSTREET JOHNSON AS PRESIDENT, KENNETH L. MARVIN AS DIRECTOR OF LAWYER REGULATION, JOHN ANTHONY BOGGS AS DIRECTOR OF LAWYER REGULATION; LORRAINE CHRISTINE HOFFMAN AS BAR COUNSEL; ERIC MONTEL TURNER AS CHIEF BRANCH DISCIPLINE COUNSEL; AND JOY A. BARTMON AS CHAIR OF A GRIEVANCE COMMITTEE

Respondents.

CASE NO: SC04-1078

MOTION FOR: DECLARATORY RELIEF; INTERVENE IN THIRD PARTY INVESTIGATIONS OF THE BOCA RATON POLICE DEPARTMENT, THE FEDERAL BUREAU OF INVESTIGATION, AND THE SECURITIES AND EXCHANGE COMMISSION WITH THE COURT'S OVERSIGHT TO ENSURE DUE PROCESS; AND AN EMERGENCY ORDER FOR THE IMMEDIATE PROTECTIVE CUSTODY OF ELIOT I. BERNSTEIN, CANDICE M. BERNSTEIN, JOSHUA E. Z. BERNSTEIN, JACOB N. A. BERNSTEIN, DANIEL E. A. O. BERNSTEIN, P. STEPHEN LAMONT AND P. STEPHEN LAMONT II

That Eliot I. Bernstein and P. Stephen Lamont (collectively "Petitioners"), after discussing the ensuing matters with Clerk of the Court, Debbie Yarbrough on October 6, 2004, hereby requests that the Court:

i. Enter an order granting a motion for declaratory relief as to the status of investigations or pending investigations of the Boca Raton Police Department, Florida ("Boca PD"), the United States Securities and Exchange Commission ("SEC"), and the Federal Bureau of Investigation ("FBI") including but not limited to (a) proof of delivery by Boca PD to an unidentified District Attorney for review, (b) the joint submission of the Boca PD and District Attorney to the SEC for review, and (c) provide written confirmation that the FBI has submitted its investigation the United States attorney for the Southern District of Florida to determine if the claims of Petitioners are prosecutable; and

ii. Enter an order granting a motion for the Court to intervene in third party investigations of the Boca PD, the SEC, and the FBI in an oversight capacity; and

iii. Enter an order granting a motion for immediate protective custody Eliot I. Bernstein, Candice M. Bernstein, Joshua E. Z. Bernstein, Jacob N. A. Bernstein, Daniel E. A. O. Bernstein, P. Stephen Lamont and P. Stephen Lamont II, and in support state as follows:

DECLARATORY RELIEF

1. That on or about August 25, 2003, Petitioners submitted two written statement to Detective Robert Flechaus ("Flechaus") of the Boca PD concerning the misappropriation and conversion of approximately One Million Dollars ($1,000,000) in funds of Iviewit Holdings, Inc. ("Iviewit") and the misappropriation of intellectual property of Iviewit.

2. That, subsequent to those submissions, and on or about the Winter of 2003-2004, Flechaus announced to Petitioners "I have completed my investigation, and in discussions with the District Attorney, I have submitted my report to the Miami office of the SEC for review," or words to that effect.

3. That on or about August 1, 2004, Petitioners telephoned Flechaus to ascertain case numbers for his investigations, wherein it was stated to Petitioners by the Boca PD that no case numbers existed, and were told to contact the "combat unit" of the District Attorney and internal affairs. Further, this prompted a call by Petitioners to the Honorable Chief Andrew J. Scott ("Scott") of the Boca PD to begin an internal affairs investigation, with requests to his personnel to have only Chief Scott return such call.

4. That, upon information and belief, a discussion between Scott and Flechaus ensued prompting a call by Flechaus to Petitioners, wherein Flechaus offered a follow up meeting to Petitioners on September 30, 2004.

5. That at the follow-up meeting, Flechaus backtracked on his prior statements of the completion of his investigation, the discussion with the District Attorney, and their joint submission to the SEC a true copy of the transcription of the voice mail message attached herein as Exhibit A, but instead claimed that the FBI was handling the investigations.

6. That shocked and dismayed at the twisted statement of Flechaus, heated discussions ensued, suggestions of "bought off" detectives were posited, and Petitioners were escorted from the offices of the Boca PD, upon demanding to speak to the Chief of Police and Internal Affairs. That Flechaus stated that in order to see the Chief or Internal Affairs Petitioner would have to call the station and make a formal meeting request.

7. That similar to the Boca PD, the FBI, through Special Agent Stephen Lucchesi ("Lucchesi"), offered Petitioners a follow-up meeting from their initial face to face meeting of on or about August 15, 2003, on August 12, 2004.

8. That in telephone discussions with Petitioners the following week, Lucchesi stated his desire to clarify issues since clarified, the summation of his report, and the delivery and discussion with the United States Attorney for the Southern District of Florida to determine if the claims of Petitioners were prosecutable.

Wherefore, Petitioners request that this Court enter an order granting a motion for declaratory relief from the Boca PD and Flechaus as to their investigations of the subject matter of the written statements, their review with an unidentified District Attorney, and their joint submission to the Miami office of the SEC, and declaratory relief from the FBI as to their submission of their report to the United States attorney for the Southern District of Florida, and such further relief that the Court deems appropriate.

INTERVENTION IN THIRD PARTY INVESTIGATIONS AS OVERSEER AND TO ENSURE DUE PROCESS IN THE INVESTIGATORY PROCESS

9. That as a result of the retraction of Flechaus of the Boca PD and the possibly unfulfilled statements of Luchessi of the FBI, Petitioners request this Court's intervention

and oversight of third party investigations ensuring due process of law as afforded by the Constitution of the United States and its progeny, the Constitution of the State of Florida.

Wherefore, Petitioners request that this Court enter an order granting a motion for the Court's intervention in the investigations of the Boca PD, the SEC, if any, and the FBI, and such further relief that the Court deems appropriate.

EMERGENCY ORDER FOR PROTECTIVE CUSTODY

10. That subsequent to Petitioners' heated discussion with Flechaus and the removal from the offices of the Boca PD, Petitioners telephoned Chief Scott to apprise him of the turnaround in the statements of Flechaus and their desire to pursue the allegations of their written statements at a higher level of review at the Boca PD.

11. That blocked by other member of the Boca PD at each of approximately three telephone calls to Chief Scott, in one call, Petitioners are threatened with arrest for having taped calls of Detective Flechaus, whereby such tapes, unbeknownst to Boca PD at the time, where voice mails left on Petitioners machine by Flechaus and whereby Petitioner asked how one reporting crime could be arrested by those charged with investigation. That Petitioner took this threat as an indication that something was amiss and demanded to speak only with Chief Scott.

12. Petitioners then have a discussion with a one Captain Jim Burke, who identifies himself as the Assistant Chief of Police ("Assistant Chief Burke"), wherein in such discussion Assistant Chief Burke relates to Petitioners that he will personally intervene in the matter with the full support and oversight of Chief Scott and that he was relegated such task by the Chief.

13. That the next day, and as part and parcel of his intervention, Assistant Chief Burke calls Petitioners to a meeting at the Boca PD on August 6, 2004 at 10:30 A.M. with other scheduled attendees of Lucchesi of the FBI and an undisclosed representative of the SEC, all with the full support and oversight of Chief Scott.

14. That when Petitioners press Assistant Chief Burke to allow them teleconference representation by counsel at the August 6 meeting, Assistant Chief Burke stammers and hesistates stating that a meeting room has yet to be secured and that the availability of a speaker phone cannot be assured, and most troubling, suggests that Petitioners' counsel be admitted *after* the meeting, all with the full support and oversight of Chief Scott.

15. That when Petitioners press Assistant Chief Burke to confirm the attendance of a representative of the SEC, Assistant Chief Burke recants stating that the "people at the SEC are very busy," or words to that effect, all with the full support and oversight of Chief Scott. That further, when asked who the representative was that Flechaus had sent the case to for review, Assistant Chief Burke claims that he cannot verify if it truly was ever sent to the SEC by Flechaus. That upon request for a contact name at the SEC to include in a petition being drafted to United States Supreme Court, Assistant Chief Burke claims to have no contact name. When asked who he called to schedule such meeting with, Assistant Chief Burke claims that he has no name and when asked how or who he scheduled the meeting with at the SEC, he states he has to go and will get back with more information.

16. That when Petitioners press Assistant Chief Burke to confirm the attendance of Lucchesi of the FBI, Assistant Chief Burke whole heartedly guarantees the attendance of Lucchesi, all with the full support and oversight of Chief Scott.

17. That Petitioners ask Assistant Chief Burke to confirm that Chief Scott is personally involved, as the Boca PD website states that all internal affairs complaints be directed directly to the Chief and that from that point the Chief personally relegates the investigation or outcome.

18. That Petitioners' subsequent calls to Lucchesi confirming his attendance go unanswered, Petitioners send an electronic mail message to Chief Scott to confirm the roster of individuals at the October 6 meeting, who answers in reply that "he knows nothing about the matters and concerns of Petitioners," or words to that effect and a true copy of which is attached herein as Exhibit B, in direct contradiction to the affirmations of Assistant Chief Burke of the full support and oversight of Chief Scott.

19. That as a result of the recantations of Assistant Chief Burke as to the attendance by the SEC, the unconfirmed attendance of Lucchesi of the FBI, and the utter untrue reporting by Assistant Chief Burke of the full support and oversight of the matters of Petitioners' written statements by Chief Scott, it is plausible that Petitioners would have been confronted with a inflammatory meeting solely with members of the Boca PD subsequent to the heated discussions and suggestions of "bought off" detectives in the burying of the written statements of Petitioners. That until it is further clarified that these investigations have been conducted in a manner that conforms to proper procedure and rules that the safety of Petitioners is questionable. That because of the nature of the entire nexus of events of these matter and that with conflicts of interest and the appearance of impropriety already discovered in two state bar investigations whereby it appears that Proskauer and other named Defendants have positioned to stymie and deny due process of Petitioners, that the events herein constitute reasonable concerns that these

investigations may also have been influenced in unknown ways to further stymie and deny due process to complaints filed by Petitioner. That if such unknown ways include bribery or the likes, that the uncovering of such crime could put Petitioners in a highly dangerous and volatile environment where no state or federal agencies will intercede to aid Petitioners and where Petitioners rightfully no longer know where to turn and where such attempts to expose such crimes could lead to further attempts to cover up or intimidate and harass Petitioners by those entrusted to help Petitioner. This conflict leaves Petitioner weary now of the entire legal system, the State Bars and the authorities that would typically investigate such matters.

Wherefore, Petitioners request that this Court enter an order granting a motion for an emergency order for immediate protective custody Eliot I. Bernstein, Candice M. Bernstein, Joshua E. Z. Bernstein, Jacob N. A. Bernstein, Daniel E. A. O. Bernstein, P. Stephen Lamont and P. Stephen Lamont II and such further relief that the Court deems appropriate.

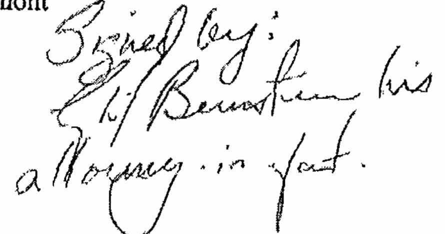
This 7th day of October 2004.

Attorney for Petitioners
Eliot I. Bernstein, Pro Se
10158 Stonehenge Circle, Suite 801
Boynton Beach, Fla. 33437
Tel: (561) 364-4240

Eliot I. Bernstein

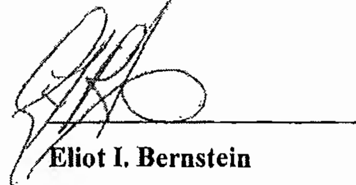
P. Stephen Lamont, Pro Se
10158 Stonehenge Circle, Suite 801
Boynton Beach, Fla. 33437
Tel: (561) 364-4240

P. Stephen Lamont



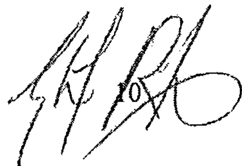
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished by facsimile this 7 day of October 2004, to The Florida Bar, Anthony Boggs facsimile no. ________________.



Eliot I. Bernstein

EXHIBIT A



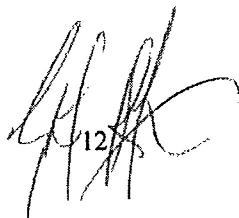
1st Message

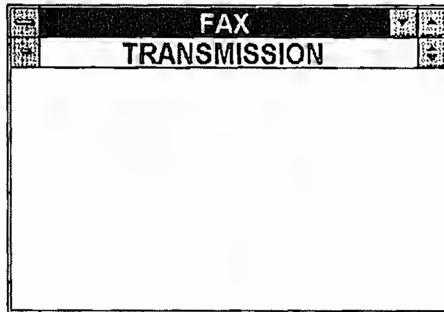
Flechaus: **[VOICE MAIL MESSAGE FROM PHONE NUMBER 561-395-1117] – Hey Eliot Detective Flechaus playing phone tag with you, give me a call 338-1325, thanks.**

2nd Message

Flechaus: **Hey Eliot Detective Flechaus again, hey just want to let you know that um I have been talking to the SEC down in Miami and uh their willing to uh review it and look at it, I don't if again, I don't know if you sent it in I can't remember, but there going to look at it for me again and uh go from there. Give me a call I can let you know who is going to be getting it and uh there phone number and all that good stuff and I just sent them everything plus my police report and all that good stuff but for a better explanation give me a call 338-1325.**

EXHIBIT B

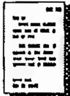




From: Iviewit Holdings, Inc.
Eliot I. Bernstein
Fax: 5613644240 **Phone:** 5613644240

To: Federal Bureau of Investigation
Special Agent Stephen Lucchesi

Date : 10/6/2004 Time : 7:31 AM page(s) : 6



-Message

URGENT

PLEASE DELIVER TO:

Special Agent Stephen Lucchesi,

If you have any questions, please feel free to call me at 561.364.4240.

Thank you for your assistance in these matters,
Eliot Bernstein
Iviewit Holdings, Inc.

This electronic message transmission contains information which is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination or distribution of this communication to other than the intended recipient is strictly prohibited. If you have received this communication in error,
please notify us immediately.

Eliot Bernstein

From: Eliot I. Bernstein [iviewit@adelphia.net]
Sent: Wednesday, October 06, 2004 7:15 AM
To: 'Scott, Andrew'
Cc: 'Burke, Jim'; 'Ceccarelli, Tom'; 'Reuter, Rick'; Caroline Prochotska Rogers Esquire (E-mail 2); P. Stephen Lamont (E-mail); Marc R. Garber (E-mail); 'Flaster Greenberg P.C. - Marc R. Garber, Esq.'; 'Hirsch Jackoway Tyerman Wertheimer Austen Mandelbaum & Morris - Michele Mulrooney, Esq. - Michele Mulrooney, Esq.'; 'Hirsch Jackoway Tyerman Wertheimer Austen Mandelbaum & Morris - Alan Epstein, Esq.'; Guy T. Iantoni (E-mail); James Frazier Armstrong (E-mail)
Subject: RE: Iviewit Holdings and Eliot Bernstein

Importance: High
Sensitivity: Confidential

Dear Honorable Chief of Police Andrew J. Scott:

This is most confusing, as two hours before receiving this communiqué I spoke with Jim Burke who stated that the SEC now would not be attending the meeting he scheduled and the FBI would. I asked if you personally had been notified of these matters and he stated not only that you knew but where the direct oversight of the matters, further that you would not attend as you were an extremely busy man but that he was reporting to you.

I would like to reschedule today's meeting until you have had a chance to review these matters, as I stated to Asst Chief Burke this meeting seems, to say the least, bizarre. I also asked for confirmation that the SEC had been contacted by Flechaus and he stated contrary to prior conversations that he was now not sure. When asked for a contact name he said he did not have one and that he would get back to me, this is very important information as we are preparing a Supreme Court document and these issues must be clarified for the justices currently reviewing the matters in NY & FL and the US Supreme Court is also being petitioned to intervene in all matters and investigations.

I await your direction and I am very thankful for your prompt and courteous reply.

Eliot I Bernstein
Founder, President & Inventor
561.364.4240
iviewit@adelphia.net

Iviewit Holdings, Inc.
10158 Stonehenge Circle
Suite 801
Boynton Beach, FL 33437-3546

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

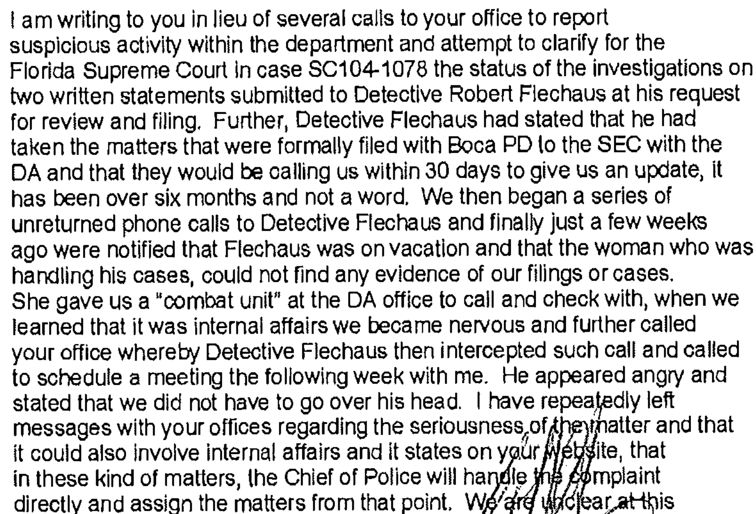
From: Scott, Andrew [mailto:AScott@ci.boca-raton.fl.us]
Sent: Tuesday, October 05, 2004 3:55 PM
To: iviewit@adelphia.net
Cc: Burke, Jim; Ceccarelli, Tom; Reuter, Rick
Subject: RE: Iviewit Holdings and Eliot Bernstein
Sensitivity: Confidential

This is the first time I have received information about your concern. I will review the matter and get back to you by Wednesday of next week.

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

From: Eliot I. Bernstein [mailto:iviewit@adelphia.net]
Sent: Tuesday, October 05, 2004 12:49 PM
To: Scott, Andrew
Cc: P. Stephen Lamont (E-mail); Caroline Prochotska Rogers Esquire (E-mail 2); 'Flaster Greenberg P.C. - Marc R. Garber, Esq.'; Marc R. Garber (E-mail 2); James Frazier Armstrong (E-mail); candiceb@adelphia.net
Subject: Iviewit Holdings and Eliot Bernstein
Importance: High
Sensitivity: Confidential

Dear Honorable Chief of Police Andrew J. Scott:



I am writing to you in lieu of several calls to your office to report suspicious activity within the department and attempt to clarify for the Florida Supreme Court in case SC104-1078 the status of the investigations on two written statements submitted to Detective Robert Flechaus at his request for review and filing. Further, Detective Flechaus had stated that he had taken the matters that were formally filed with Boca PD to the SEC with the DA and that they would be calling us within 30 days to give us an update, it has been over six months and not a word. We then began a series of unreturned phone calls to Detective Flechaus and finally just a few weeks ago were notified that Flechaus was on vacation and that the woman who was handling his cases, could not find any evidence of our filings or cases. She gave us a "combat unit" at the DA office to call and check with, when we learned that it was internal affairs we became nervous and further called your office whereby Detective Flechaus then intercepted such call and called to schedule a meeting the following week with me. He appeared angry and stated that we did not have to go over his head. I have repeatedly left messages with your offices regarding the seriousness of the matter and that it could also involve internal affairs and it states on your website, that in these kind of matters, the Chief of Police will handle the complaint directly and assign the matters from that point. We are unclear at this

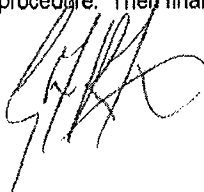
point if you have been noticed of any of these matters and have repeatedly asked for verbal or written confirmation from you personally.

On September 30th I met with Detective Flechaus whom I had immediate conflict with. I asked for updates and status on the investigations and he responded that there was no investigation and that he told us prior that the FBI was handling the matters not him. I told him he was lying and that he had told us the exact opposite when we met and had stated that he contacted the FBI and according to Flechaus they were busy investigating terrorist plots and that he was going to handle the matters. He then, quite inapposite his current story, requested that we file two separate written statements with the Boca PD for investigation. We provided Flechaus with a several hundred page submission on the matters and he told us he had taken it to the States Attorney (?) and that they had sent it off for joint investigation to the SEC and that they would be contacting us shortly. This has never occurred. In fact, why would he have taken it anywhere if the FBI had stated they were handling the matters?

We are in two cases where already conflicts of interest and the appearance of impropriety have traversed to the highest level of the States, at the Supreme Court level in Florida and New York and have resulted in actions by both the NY and FL Supreme Courts to protect the integrity of such courts, to take actions to prevent further conflict by removing those previously in charge from the investigatory matters to new investigations with Supreme Court oversight. In fact, the Florida Supreme Court has already issued rulings to prevent destruction of files in the matter of a complaint lodged against Christopher Clark Wheeler of Proskauer Rose, LLP with The Florida Bar, the main protagonist to our filings with Boca PD, pending further orders from that court. NY Supreme Court Appellate Division: First Department has moved three attorney complaints, all involving those accused in our complaints, for reasons of conflict and appearance of impropriety, involving the past President of the NY Bar, Steven C. Krane and Chief Counsel of the Department, Thomas Cahill involved in the instances of conflict.

Strangely enough, after the meeting with Flechaus, I requested while I was at the station that Flechaus call you down so I could speak with you and he refused telling me I would have to call and schedule an appointment with you. I then asked where internal affairs was and was again told to call and make an appointment. Immediately upon my return home after basically being escorted out of the police station, Detective Flechaus called my home to tell me that I had no case. He stated that he contacted one of the accused parties to the stolen million dollars reported to Boca PD by the Company and that the accused, Bruce Prolow, had said that it was OK if his money was stolen from our company. Detective Flechaus reported that without Prolow testifying that it was stolen money we had no case???? This would be like calling a bank to tell them they no case against the robber because he stated that it was OK to steal the banks money. It also behooves one to wonder why Detective Flechaus began the investigation that day and in such a strange way.

Finally, after several calls, whereby I was intimated by claims from officers intercepting your calls that I might be in violation of having taped calls with Flechaus, which somehow was illegal and that I might be charged with some such crime, all makes me uncomfortable in trying to report a crime and get fair due process and proper procedure. Then finally,



Assistant Chief of Police, Jim Burke got on the line and stated that he was capable of taking your calls, taking over the investigation and would get back to us the next day. The next day he called to informed us that a meeting had been set with the Boca PD, the SEC and the FBI and asked if I would like to join, scheduled for tomorrow at 10:30am, to meet to discuss who would be handling which aspects of the case. When I spoke to Mr. Burke yesterday, I called asking for a conference call line or speakerphone so that my attorney in PA, who is severely disabled from a bus hitting him, be teleconferenced in and Mr. Burke asked if the attorney could call in after the meeting. I asked what good that would do and stated that I felt uncomfortable in such meeting without counsel. I asked if there was a problem and he stated he did not have a phone with speakerphone and would have to get back to me after trying to find one. He then asked who was coming from our side and I told him the attorney and the CEO would be flying in, if the SEC was attending but that they would have to know soon to book flights and we still have not heard back. What was strange is that the meeting was set telling us the SEC would be there with the FBI and yesterday he was unsure of the attendees and if the SEC would be there.

I am sure that from being told to contact the "combat unit" at the DA, to being told the SEC was investigating jointly with Boca PD and all the very strange events that are occurring, that you understand our fears that something does not seem right. I ask that you contact me directly, to clarify certain matters and assure me of a safe haven meeting tomorrow whereby I am not denied the opportunity to have counsel present based on lack of a speakerphone at the PD and the likes. I offer to bring my phone if possible. Also, we would like written affirmation that you are aware of the nexus of events and have direct oversight of these matters. Finally, we would like an assurance of who will be attending the meeting from these agencies.

Eliot I Bernstein
Founder, President & Inventor
561.364.4240
iviewit@adelphia.net

Iviewit Holdings, Inc.
10158 Stonehenge Circle
Suite 801
Boynton Beach, FL 33437-3546

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AN INVENTOR IS A MAN WHO LOOKS AROUND UPON THE WORLD, AND IS NOT CONTENT WITH THINGS AS THEY ARE; HE WANTS TO IMPROVE WHATEVER HE SEES; HE WANTS TO BENEFIT THE WORLD; HE IS HAUNTED BY AN IDEA; THE SPIRIT OF INVENTION POSSESSES HIM, SEEING MATERIALIZATION.

ALEXANDER GRAHAM BELL

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The City of Boca Raton scanned this outbound message for viruses, vandals and malicious content and found this message to be free of such content.

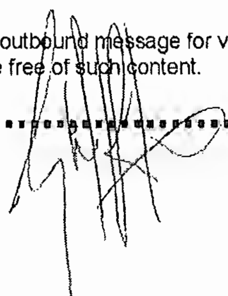
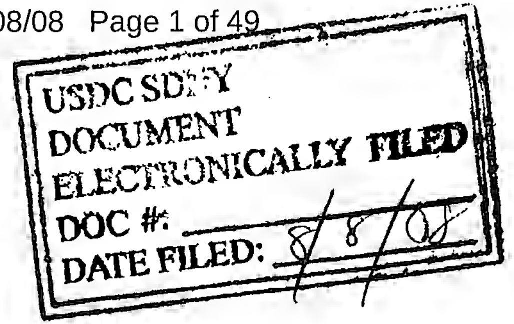


EXHIBIT E



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELIOT I. BERNSTEIN, *et al.*,

Plaintiffs,

- against -

STATE OF NEW YORK, *et al.*,

Defendants.

OPINION AND ORDER

07 Civ. 11196 (SAS)

SHIRA A. SCHEINDLIN, U.S.D.J.:

I. INTRODUCTION

This action presents a dramatic story of intrigue, car bombing, conspiracy, video technology, and murder. In short, plaintiffs allege that hundreds of defendants engaged in a massive conspiracy to violate their civil rights and, in the process, contributed to the Enron bankruptcy and the presidency of George W. Bush. In plaintiffs' words:

> Plaintiffs depict a conspiratorial pattern of fraud, deceit, and misrepresentation, that runs so wide and so deep, that it tears at the very fabric, and becomes the litmus test, of what has come to be known as free commerce through inventors' rights and due process in this country, and in that the circumstances involve inventors' rights tears at the very fabric of the Democracy protected under the

Constitution of the United States.[1]

Defendants characterize the events quite differently:

> For many years, *pro se* Plaintiffs Eliot I. Bernstein and Plaintiff Stephen Lamont have engaged in a defamatory and harassing campaign . . . alleging an immense global conspiracy . . . . Although largely unintelligible, the [Amended Complaint] purports to describe a fantastic conspiracy among members of the legal profession, judges and government officials and private individuals and businesses to deprive plaintiffs of what they describe as their "holy grail" technologies.[2]

While I cannot determine which of these descriptions is more accurate, I can and do conclude that plaintiffs have failed to state a claim against any of the hundreds of defendants named in this action. For the reasons stated below, plaintiffs' claims are dismissed.

II. BACKGROUND

A. Facts

The following factual allegations, taken from the Amended Complaint, are accepted as true for purposes of this motion. Because the Complaint comprises more than one thousand paragraphs, the facts presented here

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[1] Amended Complaint ("Compl.") ¶ 7.

[2] Memorandum of Law in Support of the Proskauer Defendants' Motion to Dismiss, at 1.

are by necessity a summary and a selection of the most pertinent allegations.

1. Development and Theft of the Video Technology

The story begins in 1997, when plaintiff Eliot Bernstein and others[3] invented video technologies (the "Inventions").[4] The Inventions permit transmission of video signals using significantly less bandwidth than other technologies.[5] They also provide a way to "zoom almost infinitely on a low resolution file with clarity,"[6] something that is generally believed to be impossible. The Inventions were quickly incorporated into "almost every digital camera and present screen display device" and they "played a pivotal part in changing the Internet from a text based medium to a medium filled with magnificent images and video, thought prior to be impossible on the limited bandwidth of the Internet."[7] They are also used by DVDs, televisions, cable television broadcasting, certain

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[3] The other inventors apparently include Zakirul Shirajee, Jude Rosario, Jeffrey Friedstein, James F. Armstrong, and others. *See* Compl. ¶ 254. These individuals are not parties to this case.

[4] *See id.* ¶ 240.

[5] *See id.* ¶ 242.

[6] *Id.*

[7] *Id.* ¶¶ 241, 242.

websites, and "chips," presumably integrated circuits.[8]

In 1998, Bernstein's accountant, Gerald R. Lewin, suggested that Bernstein contact Albert T. Gortz, an attorney at Proskauer Rose LLP, regarding the Inventions.[9] Gortz, an estate planner, put Bernstein in contact with Proskauer partner Christopher C. Wheeler, a real estate attorney, who told Bernstein that he would determine whether Proskauer's New York office had partners with appropriate experience in patent law.[10] Several weeks later, they represented that partners Kenneth Rubenstein and Raymond A. Joao would secure patents for the Inventions and would perform other trademark, trade secret, and copyright work.[11] Apparently impressed by the Inventions, Proskauer agreed to accept 2.5% of the equity of Iviewit, Inc., the company that owned the Inventions, in return for its services.[12] Unbeknownst to Bernstein, Rubenstein and Joao did not at the time work for Proskauer.[13] Rubenstein subsequently joined Proskauer, but Joao

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8 *Id.* ¶ 244.

9 *See id.* ¶ 254.

10 *See id.*

11 *See id.* ¶¶ 254-255. While patents for the Inventions were apparently secured, those patents are currently suspended. *See id.* ¶ 282.

12 *See id.* ¶¶ 256-257.

13 *See id.* ¶ 258.

remained at the firm Meltzer Lippe Goldstein Wolf & Schlissel, P.C. ("MLG")[14]

Rubenstein was also counsel to MPEGLA LLC, one of the largest users of the Inventions. When he was hired by Proskauer, MPEGLA became Proskauer's client. MPEGLA bundled the Inventions in with other technologies that they license, but did not pay Iviewit any royalties.[15] In fact, plaintiffs allege that Rubenstein was part of a scheme to steal the Inventions.[16] Apparently as part of this scheme, Joao filed for more than ninety related patents in his own name.[17] Then, to mask the theft, Proskauer created numerous illegitimate companies with names similar to that of Iviewit in various jurisdictions (the "Similar Companies").[18] Proskauer filed defective patent applications for Iviewit and valid applications for the Similar Companies.[19]

Proskauer then brought in representatives from Real (a consortium that at the time comprised Intel; Silicon Graphics, Inc.; and Lockheed Martin, and

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[14] *See id.* ¶ 261.

[15] *See id.* ¶ 262.

[16] *See id.* ¶ 268.

[17] *See id.* ¶ 270.

[18] *See id.* ¶ 273. Many of these companies have been named as defendants.

[19] *See id.* ¶ 274.

that was later acquired by Intel).[20] Real made use of the Inventions without first arranging for a license from Iviewit.[21] Proskauer required Real and other interested parties to sign non-disclosure agreements, but did not enforce these agreements.[22]

Proskauer also distributed the Inventions to Enron Broadband. Enron "booked enormous revenue through [Enron Broadband] without a single movie to distribute," but because they lost use of the Inventions, the deal "collapsed over night causing massive losses to Enron investors" – indeed, plaintiffs allege that this may be "one of the major reasons for Enron's bankruptcy."[23]

Meanwhile, Proskauer pursued investors for the Similar Companies. Using fraudulent documents, they secured millions of dollars from the Small Business Administration, Goldman Sachs, Gruntal & Co., Wachovia Securities, and various others,[24] including defendant Huizenga Holdings, Inc.[25] Plaintiffs also

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[20] *See id.* ¶ 277.

[21] *See id.* ¶ 278.

[22] *See id.* ¶ 297.

[23] *Id.* ¶¶ 358, 361, 363.

[24] *See id.* ¶¶ 284, 316-318.

[25] *See id.* ¶ 276.

allege that in March of 2001, the Tiedemann Investment Group ("TIG") invested several hundred thousand dollars in the Similar Companies.[26] Plaintiffs suggest that some of this money may have been stolen.[27]

2. Discovery of the Theft

Almost immediately after Joao began work on the patents, Bernstein discovered that Joao had made changes to the patent applications after they were signed. Bernstein forced Joao to fix the applications, mailed them, and then dismissed Joao.[28] Joao was replaced by William J. Dick, Douglas A. Boehm, and Steven C. Becker of Foley & Lardner LLP ("Foley").[29] But they too filed false papers, not only with the U.S. Patent and Trademark Office ("PTO"), but with various foreign patent offices.[30]

Bernstein began to discover the full extent of the scheme. To ensure Bernstein's silence, Brian G. Utley, President of one of the Similar Companies, flew to Iviewit's California office and told Bernstein that "if he did not shut up

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26 *See id.* ¶ 295.

27 *See id.*

28 *See id.* ¶¶ 301-303.

29 *See id.* ¶ 307.

30 *See id.* ¶ 311.

about what was discovered . . . that he and law firms [sic] would destroy him, his family and his companies."[31] Utley explained that if he were not made CEO, Bernstein and his family would be in danger from Proskauer and from Foley.[32] In response, Bernstein told his wife and children to flee their home.[33] Bernstein also attempted to have all corporate records from Iviewit's Florida office shipped to California, though defendants were able to destroy many of those documents before they could be shipped.[34] Utley and Michael Reale, Vice President of Operations for one of the Similar Companies, told Iviewit's Florida employees that they were fired and should join the Similar Companies.[35] Utley and Reale also stole equipment that belonged to Iviewit, leading to the filing of charges with the Boca Raton Police Department.[36] Not satisfied with threats, defendants blew

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[31] *Id.* ¶ 287.

[32] *See id.* ¶ 337.

[33] *See id.* ¶ 338.

[34] *See id.* ¶ 348.

[35] *See id.* ¶ 352.

[36] The department apparently failed to investigate these charges, and Bernstein has filed a corruption charge with the department's Chief and with internal affairs. *See id.* ¶ 356.

up Bernstein's car.[37] Fortunately for Bernstein, he was not in the vehicle at the time.[38]

Plaintiffs contacted the New York Attorney General's Office and requested that the Attorney General and the New York State Disciplinary Committee open an investigation into the actions of these attorneys.[39] "For his failure to respond to the earlier complaints, former [New York Attorney General] Eliot Spitzer and [the New York Attorney General] have also been included herein as defendants . . . ."[40]

Meanwhile, in the year 2000, Arthur Andersen LLP began an audit of the Similar Companies.[41] Arthur Andersen discovered some of these irregularities and requested clarifying information from certain parties, including Proskauer, which provided false information to prevent Arthur Andersen from discovering the full extent of the fraud.[42]

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37 *See id.* ¶ 288.

38 *See id.*

39 *See id.* ¶ 319.

40 *Id.* ¶ 320.

41 *See id.* ¶ 321.

42 *See id.* ¶¶ 323-324.

Bernstein also discovered a federal bankruptcy action filed in the Southern District of Florida.[43] In this case, defendant RYJO Inc., a subcontractor for Intel and Real, was attempting to steal some of the Inventions.[44] Defendant Houston & Shady, P.A. were counsel to Intel and Real in this action, which was filed in 2001.[45] This case was dropped after it was discovered by Iviewit.[46]

Bernstein also learned of *Proskauer Rose LLP v. Iviewit.com, Inc.*,[47] an action in Florida state court presided over by defendant the Hon. Jorge Labarga, Justice of the Circuit Court of the 15th Judicial Circuit in and for Palm Beach County, Florida.[48] Bernstein and Iviewit fired the attorneys who claimed to be representing Iviewit, Sachs Saxs & Klein, P.A., and retained new counsel, Steven Selz and Schiffrin Barroway Topaz & Kessler, LLP ("SBTK"), to represent the Iviewit companies in these actions.[49] Unfortunately for Iviewit, SBTK joined in

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[43] This is alleged to be case no. 01-33407-BKC-SHF.

[44] *See* Compl. ¶¶ 369, 371.

[45] *See id.* ¶ 443.

[46] *See id.* ¶ 426.

[47] No. CA 01-04671 AB10 (15th Jud. Cir. Ct., Palm Beach Co., Fla.).

[48] *See* Compl. ¶ 377.

[49] *See id.* ¶ 380.

the conspiracy with Proskauer.[50]

The Complaint also alleges that Justice Labarga was part of the conspiracy and finds substantial fault with his handling of the case.[51] In fact, plaintiffs suggests that the Iviewit case may have distracted Justice Labarga from his work on *Bush v. Gore*, leading possibly to its result.[52] Labarga granted a default judgment against Iviewit.[53]

In 2003, Plaintiffs filed a complaint with the Florida Bar that alleges Wheeler and Proskauer violated various ethical rules.[54] However, the Florida Bar failed to give the complaints due consideration.[55] Plaintiffs therefore appealed to

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[50] *See id.* ¶ 390.

[51] *See, e.g., id.* ¶ 402.

[52] *See id.* ¶ 394 ("That on information and belief, it then became apparent that Labarga was not only part of the conspiracy but in the words of the Supreme Court Justice, Sandra Day O'Connor, in relation to the Florida Supreme Court election recount in the Bush v. Gore presidential election that Labarga was central too [sic], that he was 'off on a trip of his own...,' perhaps referring to the Iviewit Companies matters which were consuming him at the same time.") (quoting Jan Crawford Greenburg, *Supreme Conflict: The Inside Story of the Struggle for Control of the United States Supreme Court* (2007)).

[53] *See id.* ¶ 414.

[54] *See id.* ¶ 544.

[55] *See id.* ¶ 547.

the Florida Supreme Court,[56] but that court closed the case "without explanation or basis in law."[57] The events involving Florida lasted from Spring 2003 to Spring 2004.[58]

3. Further Cover-up

As mentioned earlier, plaintiffs had filed complaints with the New York Appellate Division, First Department Disciplinary Committee ("1st DDC") against Rubenstein, Joao, and Proskauer itself. But Proskauer arranged for defendant Steven C. Krane, a partner at Proskauer and member of the 1st DDC, to have the complaints delayed and then dismissed.[59] Plaintiffs discovered Krane's involvement on May 20, 2004.[60] They filed a complaint against Krane with the 1st DDC. Believing Krane to be conflicted in his representation of Proskauer, plaintiffs contacted Catherine O'Hagan Wolfe, then the Clerk of the First Department, but the First Department took no action, allegedly because of the

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[56] *See id.* ¶ 595.

[57] *Id.* ¶ 600. The Florida Supreme Court denied Bernstein's appeal in 2005 in a one-line decision. *See Bernstein v. The Florida Bar*, 902 So. 2d 789, 789 (Fla.) (table decision) ("Disposition: All Writs den."), *cert. denied*, 546 U.S. 1040 (2005).

[58] *See* Compl. ¶ 607.

[59] *See id.* ¶ 612.

[60] *See id.* ¶ 610.

involvement of the judges of the First Department in the conspiracy.[61]

In July of 2004, Plaintiffs filed a formal complaint with the First Department.[62] The First Department voted to begin investigating Rubenstein, Proskauer, Krane, MLG, and Joao and transferred the investigation to the Second Department Disciplinary Committee ("2d DDC"), which refused to pursue it.[63] Plaintiffs also contacted defendant the Hon. Judith Kaye, Chief Judge of the New York Court of Appeals, but "she failed to intervene . . . ."[64]

Plaintiffs also requested an investigation by the New York Lawyers' Fund for Client Protection. It declined because it too was controlled by the conspiracy.[65] Plaintiffs had a similar experience with the State of New York Commission of Investigation.[66] They then contacted Eliot Spitzer, then-Attorney General of the State of New York, but he too conspired with defendants and

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[61] *See id.* ¶ 624.

[62] *See id.* ¶ 646.

[63] *See id.* ¶ 650.

[64] *Id.* ¶ 686.

[65] *See id.* ¶ 688.

[66] *See id.* ¶ 687.

refused to investigate.[67] Similar inquiries with the Virginia State Bar were unsuccessful.[68]

B. Claims

Plaintiffs allege that the conspiracy violated their rights to due process pursuant to the Fifth and Fourteenth Amendments (count one).[69] They also allege antitrust activity in violation of sections 1 and 2 of Title 15 of the United States Code (count two).[70] They further charge violation of Title VII of the Civil Rights Act of 1964 (count three)[71] and the Racketeering and Corrupt Organizations Act (count four).[72] In addition, plaintiffs allege a series of state law claims, including legal malpractice, breach of contract, tortious interference, negligent interference with contractual rights, fraud, breach of fiduciary duties, misappropriation of funds, and conversion. For each count, plaintiffs request one trillion dollars in compensatory damages and punitive damages. Plaintiffs also

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[67] *See id.* ¶ 689.

[68] *See id.* ¶ 692.

[69] *See id.* ¶¶ 1067-1070.

[70] *See id.* ¶¶ 1071-1074.

[71] *See id.* ¶¶ 1075-1078.

[72] *See id.* ¶¶ 1079-1082.

request an injunction to prevent the unauthorized use of the Inventions, although they acknowledge that "the granting of this prayer for relief, effectively, halts the transmission of and viewing of video as we know it . . . ."[73] They further request that the Court appoint a federal monitor to oversee the operations of the First and Second Department Disciplinary Committees, the Florida Bar, the United States Patent and Trademark Office, the Federal Bureau of Investigation, the United States Attorney's Office, and the Virginia Bar Association.[74] Plaintiffs further seek an injunction to correct all past wrongdoing and ask the Court to request the Attorney General to institute civil or criminal proceedings.

The precise basis for plaintiffs' first claim is unclear. They allege:

> The conspiratorial actions of the defendants in sabotaging IP applications through fraud and theft, and the ensuing white washing of attorney complaints by the defendants and other culpable parties both known and unknown with scienter, thereby continuing the violation of Plaintiffs inventive rights is contrary to the inventor clause of the Constitution of the United States as stated in Article 1, Section 8, Clause 8, and the due process clauses of the Fifth Amendment to the Constitution of the United States, and Fourteenth Amendment to the Constitution of the United States.[75]

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73 *Id.* ¶ XIII.

74 *See id.* ¶ XIV.

75 *Id.* ¶ 1069.

In the interest of construing the Complaint liberally, the Court will assume that plaintiffs mean to plead due process violations and a violation of the Patent Clause.

III. APPLICABLE LAW

A. Standard of Review

"Federal Rule of Civil Procedure 8(a)(2) requires . . . 'a short and plain statement of the claim showing that the pleader is entitled to relief.'"[76] When deciding a defendant's motion to dismiss under Rule 12(b)(6), courts must "accept as true all of the factual allegations contained in the complaint"[77] and "draw all reasonable inferences in plaintiff's favor."[78] Likewise, when deciding a motion for judgment on the pleadings, a court "must accept all allegations in the complaint as true and draw all inferences in the non-moving party's favor."[79]

Nevertheless, to survive a Rule 12(b)(6) motion to dismiss, the

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76 *Erickson v. Pardus*, — U.S. —, 127 S. Ct. 2197, 2200 (2007) (quoting Fed. R. Civ. P. 8(a)(2)).

77 *Bell Atl. Corp. v. Twombly*, — U.S. —, 127 S. Ct. 1955, 1964 (2007).

78 *Ofori-Tenkorang v. American Int'l Group*, 460 F.3d 296, 298 (2d Cir. 2006).

79 *Patel v. Contemporary Classics of Beverly Hills*, 259 F.3d 123, 126 (2d Cir. 2001) (citing *Irish Lesbian & Gay Org. v. Giuliani*, 143 F.3d 638, 644 (2d Cir. 1998)).

allegations in the complaint must meet the standard of "plausibility."[80] Although the complaint need not provide "detailed factual allegations,"[81] it must "amplify a claim with some factual allegations . . . to render the claim *plausible*."[82] The test is no longer whether there is "'no set of facts [that plaintiff could prove] which would entitle him to relief.'"[83] Rather, the complaint must provide "the grounds upon which [the plaintiff's] claim rests through factual allegations sufficient 'to raise a right to relief above the speculative level.'"[84]

Although this Court must take the plaintiff's allegations as true, "the claim may still fail as a matter of law . . . if the claim is not legally feasible."[85] In

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[80] *Bell Atl.*, 127 S. Ct. at 1970.

[81] *Id.* at 1964. *See also ATSI Commc'ns v. Shaar Fund, Ltd.*, 493 F.3d 87, 98 n.2 (2d Cir. 2007) (applying the standard of plausibility outside *Bell Atlantic*'s anti-trust context) .

[82] *Iqbal v. Hasty*, 490 F.3d 143, 157-58 (2d Cir. 2007) (holding that the plaintiff's complaint adequately alleged the personal involvement of the Attorney General because it was plausible that officials of the Department of Justice would be aware of policies concerning individuals arrested after the events of September 11, 2001).

[83] *Bell Atl.*, 127 S. Ct. at 1968 (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).

[84] *ATSI Commc'ns*, 493 F.3d at 98 (quoting *Bell Atl.*, 127 S. Ct. at 1965).

[85] *Allaire Corp. v. Okumus*, 433 F.3d 248, 250 (2d Cir. 2006).

addition, "bald assertions and conclusions of law will not suffice."[86]

Courts must construe pro se complaints liberally.[87] However, a litigant's pro se status does not exempt him from compliance with the relevant rules of procedural and substantive law.[88]

B. Rule 8(a)

"[T]he principal function of pleadings under the Federal Rules is to give the adverse party fair notice of the claim asserted so as to enable him to answer and prepare for trial."[89] "The statement should be short because '[u]nnecessary prolixity in a pleading places an unjustified burden on the court and the party who must respond to it because they are forced to select the relevant material from a mass of verbiage.'"[90]

If a pleading fails to comply with Rule 8(a), the court may strike

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[86] *Law Offices of Curtis V. Trinko, L.L.P. v. Bell Atl. Corp.*, 309 F.3d 71, 74 (2d Cir. 2002) (quotation omitted).

[87] *See Lerman v. Board of Elections in the City of N.Y.*, 232 F.3d 135, 140 (2d Cir. 2000). *See also Haines v. Kerner*, 404 U.S. 519, 596 (1972) (providing that courts should hold "allegations of [] pro se complaint[s] . . . to less stringent standards than formal pleadings drafted by lawyers.").

[88] *See Traguth v. Zuck*, 710 F.2d 90, 95 (2d Cir. 1983).

[89] *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988).

[90] *Id.* (quoting C. Wright & A. Miller, 5 *Federal Practice and Procedure* § 1281 (1969)).

redundant or immaterial portions or, if "the complaint is so confused, ambiguous, vague, or otherwise unintelligible that its true substance, if any, is well disguised," dismiss the complaint entirely.[91] It is generally an abuse of discretion to deny leave to amend when a complaint is dismissed for this reason.[92]

C. Civil Rights Claims

1. Constitutional Cause of Action

Plaintiffs have alleged that defendants violated their rights pursuant to the Fifth and Fourteenth Amendments. Typically such claims are brought under section 1983 of Title 42 of the United States Code. However, plaintiffs have apparently alleged direct violations of their constitutional rights.

The Supreme Court has permitted a direct cause of action for violation of a constitutional right in certain circumstances. For example, in some circumstances plaintiffs can sue for violations of the Fourth Amendment by the federal government.[93] But such actions are not permitted if "Congress has

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[91] *Id.*

[92] *See id.* (citing *Gordon v. Green*, 602 F.2d 743, 745-47 (5th Cir. 1979), in which the court ruled that plaintiffs should have been given leave to amend a 4000-page complaint) (other citations omitted).

[93] *See Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

provided an alternative remedy which it explicitly declared to be a substitute for recovery directly under the Constitution and viewed as equally effective."[94]

"The availability of a § 1983 action precludes an action for direct relief under the constitution."[95] Because a section 1983 action is available here, plaintiffs' direct constitutional claims are dismissed.[96]

However, "[s]ince the two causes of action are virtually identical, it would be most unfair to [these] pro se plaintiff[s] and entirely unnecessary, to dismiss [their] direct constitutional action without leave to replead the exact same constitutional violation in the guise of a Section 1983 action."[97] Such a result would be a waste of time and energy. Instead, I deem the Complaint to have pled

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[94] *Carlson v. Green*, 446 U.S. 14, 18-19 (1980) (citing *Bivens*, 403 U.S. at 397).

[95] *Gleason v. McBride*, 715 F. Supp. 59, 62-63 (S.D.N.Y. 1988) (citing *Turpin v. Mailet*, 591 F.2d 426, 427 (2d Cir. 1979); *Williams v. Bennett*, 689 F.2d 1370, 1390 (11th Cir. 1982); *Tarpley v. Greene*, 684 F.2d 1, 10-11 (D.C. Cir. 1982); *Ward v. Caulk*, 650 F.2d 1144, 1147 (9th Cir. 1981)), *rev'd in part on other grounds*, 869 F.2d 688 (2d Cir. 1989)).

[96] Plaintiffs have alleged that certain defendants, who are non-state actors, violated their rights under the Fifth and Fourteenth Amendments. Neither a section 1983 action nor a direct constitutional action is available against these defendants because the conduct of non-state actors is not governed by those amendments. Both a direct due process claim and a section 1983 claim require state action.

[97] *Lombard v. Board of Educ. of the City of N.Y.*, 784 F. Supp. 1029, 1035 (E.D.N.Y. 1992).

a claim pursuant to section 1983.

2. Section 1983

Section 1983 "does not create a federal right or benefit; it simply provides a mechanism for enforcing a right or benefit established elsewhere."[98] In order to state a claim under section 1983, a plaintiff must show that the conduct complained of was committed by a person or entity acting under color of state law, and that the conduct deprived a person of rights, privileges, or immunities secured by the Constitution.[99]

The statute of limitations for an action under section 1983 is three years.[100] "Although federal law determines when a section 1983 claim accrues, state tolling rules determine whether the limitations period has been tolled, unless state tolling rules would 'defeat the goals' of section 1983."[101] In New York, "the doctrines of equitable estoppel and equitable tolling can prevent a defendant from

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[98] *Morris-Hayes v. Board of Educ. of Chester Union Free Sch. Dist.*, 423 F.3d 153, 159 (2d Cir. 2005) (citing *Oklahoma City v. Tuttle*, 471 U.S. 808, 816 (1985)).

[99] *See Palmieri v. Lynch*, 392 F.3d 73, 78 (2d Cir. 2004).

[100] *See Patterson v. County of Oneida, N.Y.*, 375 F.3d 206, 225 (2d Cir. 2004).

[101] *Abbas v. Dixon*, 480 F.3d 636, 641 (2d Cir. 2007) (quoting *Pearl v. City of Long Beach*, 296 F.3d 76, 80 (2d Cir. 2002)).

pleading the statute of limitations as a defense where, by fraud, misrepresentation, or deception, he or she had induced the plaintiff to refrain from filing a timely action."[102] "Equitable estoppel is applicable where the plaintiff knew of the existence of the cause of action, but the defendant's misconduct caused the plaintiff to delay in bringing suit. Equitable tolling, on the other hand, is applicable where the defendant has wrongfully deceived or misled the plaintiff in order to conceal the existence of a cause of action."[103]

3. The Right to an Investigation

"[T]he Due Process Clauses generally confer no affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual."[104] "[C]ourts within the Second Circuit have determined that '[t]here is . . . no constitutional right to an investigation by government officials.'"[105] Thus,

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[102] *Kotlyarsky v. New York Post*, 757 N.Y.S.2d 703, 706 (Sup. Ct. Kings Co. 2003) (citing *Simcuski v. Saeli*, 44 N.Y.2d 442, 406 (2d Dep't 1978)) (other citations omitted). *Accord Holmberg v. Armbrecht*, 327 U.S. 392, 396-97 (1946) (explaining that a statute of limitations will be tolled if material facts are concealed).

[103] *Kotlyarsky*, 757 N.Y.S.2d at 707 (citations omitted).

[104] *DeShaney v. Winnebago Soc. Servs.*, 489 U.S. 189, 196 (1989).

[105] *Nieves v. Gonzalez*, No. 05 Civ. 17, 2006 WL 758615, at *4 (W.D.N.Y. Mar. 2, 2006) (quoting *Bal v. City of New York*, No. 94 Civ. 4450,

there is no constitutional violation where the government refuses to investigate a crime, allegations of patent fraud, or an attorney ethics grievance.[106]

D. The Sherman Act

The Sherman Act, which forbids certain monopolistic practices, provides that actions under the Act "shall be forever barred unless commenced within four years after the cause of action accrued."[107] "Generally, a cause of action accrues and the statute begins to run when a defendant commits an act that injures a plaintiff's business."[108]

E. Racketeer Influenced and Corrupt Organizations ("RICO")

A plaintiff claiming a civil RICO violation must allege each of the claim's elements, including "(1) conduct, (2) of an enterprise, (3) through a pattern (4) of racketeering activity."[109] In considering civil RICO claims, a court must be

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1995 WL 46700, at *2 (S.D.N.Y. Feb. 7), *aff'd*, 99 F.3d 402 (2d Cir. 1995)) (alterations in *Nieves*).

[106] *See Longi v. County of Suffolk*, No. CV-02-5821, 2008 WL 858997, at *6 (E.D.N.Y. Mar. 27, 2008) ("[T]here is no constitutional right to an investigation by government officials.").

[107] 15 U.S.C. § 15b.

[108] *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 338 (1971).

[109] *Anatian v. Coutts Bank (Switzerland) Ltd.*, 193 F.3d 85, 88 (2d Cir. 1999) (citing *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985)).

mindful of the devastating effect such claims may have on defendants.[110] Civil RICO should not be used to transform a "garden variety fraud or breach of contract case[] . . . into a vehicle for treble damages."[111] The statute of limitations for civil RICO claims is four years.[112]

F. Immunity

1. The Eleventh Amendment

The Eleventh Amendment to the United States Constitution provides that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign

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110 *See Kirk v. Heppt*, No. 05 Civ. 9977, 2006 WL 689510, at *2 (S.D.N.Y. Mar. 20, 2006) ("Because the mere assertion of a RICO claim . . . has an almost inevitable stigmatizing effect on those named as defendants, . . . courts should strive to flush out frivolous RICO allegations at an early stage of the litigation.") (citations and quotation marks omitted).

111 *Goldfine v. Sichenzia*, 118 F. Supp. 2d 392, 394 (S.D.N.Y. 2000). *Accord Kirk*, 2006 WL 689510, at *2 (observing that courts "must be wary of putative civil RICO claims that are nothing more than sheep masquerading in wolves' clothing"); *Schmidt v. Fleet Bank*, 16 F. Supp. 2d 340, 346 (S.D.N.Y. 1998) (noting that because civil RICO "is an unusually potent weapon – the litigation equivalent of a thermonuclear device . . . courts must always be on the lookout for the putative RICO case that is really nothing more than an ordinary fraud case clothed in the Emperor's trendy garb").

112 *Agency Holding Corp. v. Malley-Duff & Assocs.*, 483 U.S. 143, 156 (1987).

State." Because the States have sovereign immunity against claims in federal court, a private citizen cannot sue a State unless the State has consented or Congress has abrogated that immunity.[113] "This jurisdictional bar also immunizes a state entity that is an 'arm of the State,' including, in appropriate circumstances, a state official acting in his or her official capacity."[114]

However, under the rule of *Ex parte Young*,[115] "'a plaintiff may sue a state official acting in his official capacity – notwithstanding the Eleventh Amendment – for prospective, injunctive relief from violations of federal law.'"[116] This relief requires that there be an ongoing violation of federal law.[117]

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[113] *See Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 54 (1996). Although the text of the Amendment suggests that it does not prohibit a citizen from suing his own state in federal court, the Supreme Court has explained that the Amendment clarifies that the States enjoy broad sovereign immunity, including immunity in federal court from suits brought by their citizens. *See Hans v. Louisiana*, 134 U.S. 1 (1890).

[114] *In re Deposit Ins. Agency*, 482 F.3d 612, 617 (2d Cir. 2007) (citing *Northern Ins. Co. of N.Y. v. Chatham County, Ga.*, 547 U.S. 189 (2006); *Edelman v. Jordan*, 415 U.S. 651, 663 (1974)).

[115] 209 U.S. 123 (1908).

[116] *State Employees Bargaining Agent Coal. v. Rowland*, 494 F.3d 71, 95 (2d Cir. 2007) (quoting *In re Deposit Ins. Agency*, 482 F.3d at 617).

[117] *See id.* at 96 ("We are specifically required by *Ex parte Young* to examine whether there exists an ongoing violation of federal law.") (citing *Verizon Md., Inc. v. Public Serv. Comm'n of Md.*, 535 U.S. 635, 645 (2002)).

"Although the Supreme Court has not specifically ruled on this burden question, circuit courts that have done so have unanimously concluded that 'the entity asserting Eleventh Amendment immunity has the burden to show that it is entitled to immunity.'"[118] To determine whether a state agency is entitled to immunity under the Eleventh Amendment, the Second Circuit has prescribed six factors: "'(1) how the entity is referred to in the documents that created it; (2) how the governing members of the entity are appointed; (3) how the entity is funded; (4) whether the entity's function is traditionally one of local or state government; (5) whether the state has a veto power over the entity's actions; and (6) whether the entity's obligations are binding upon the state.'"[119] If these are not dispositive, "a court focuses on the twin reasons for the Eleventh Amendment: (1) protecting the dignity of the state, and (2) preserving the state treasury."[120] "If the outcome still remains in doubt, then whether a judgment against the governmental entity would be paid out of the state treasury generally determines the application of

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[118] *Woods v. Rondout Valley Central School Dist. Bd of Educ.*, 466 F.3d 232, 237 (2d Cir. 2006) (quoting *Gragg v. Kentucky Cabinet for Workforce Dev.*, 289 F.3d 958, 963 (6th Cir. 2002) (citations omitted)).

[119] *Id.* at 240 (quoting *Mancuso v. New York State Thruway Auth.*, 86 F.3d 289, 293 (2d Cir. 1996)).

[120] *Id.* (citing *Mancuso*, 86 F.3d at 293).

Eleventh Amendment immunity."[121]

2. Judicial Immunity

Judges have absolute immunity from suits for acts performed in their judicial capacities. Even if a judge acts maliciously, a litigant's remedy is to appeal, not to sue the judge. Judicial immunity can be overcome only where a judge completely lacks jurisdiction over the subject matter. This immunity also extends to the institution of the court itself, as well as its supporting offices.

It is "well-established that officials acting in a judicial capacity are entitled to absolute immunity against § 1983 actions, and this immunity acts as a complete shield to claims for money damages."[122] "Absolute immunity extends not only to judges and prosecutors, but also to officials who perform functions closely associated with the judicial process, including parole board officials conducting parole hearings, federal hearing examiners, administrative law judges, and law clerks."[123]

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[121] *Id.* at 241.

[122] *Montero v. Travis*, 171 F.3d 757, 760 (2d Cir. 1999).

[123] *Roe v. Johnson*, 334 F. Supp. 2d 415, 423 (S.D.N.Y. 2004) (citing *Cleavinger v. Saxner*, 474 U.S. 193, 200 (1985) (hearing examiners and administrative law judges); *Montero*, 171 F.3d at 760 (parole board officials); *Oliva v. Heller*, 839 F.2d 37, 40 (2d Cir. 1988) (law clerks)).

Judicial immunity was created "for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences."[124] "Thus, if the relevant action is judicial in nature, the judge is immune so long as it was not taken in the complete absence of jurisdiction."[125] Quasi-judicial immunity protects administrative officers who act in a judicial manner.[126] Attorney disciplinary proceedings are "judicial in nature,"[127] so the presiding officers are protected by absolute immunity. However, neither judicial immunity nor quasi-judicial immunity bars a claim for prospective injunctive relief.[128]

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[124] *Pierson v. Ray*, 386 U.S. 547, 554 (1967).

[125] *Huminski v. Corsones*, 396 F.3d 53, 75 (2d Cir. 2005). *Accord Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978) ("A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.'").

[126] *See Sassower v. Mangano*, 927 F. Supp. 113, 120 (S.D.N.Y. 1996) ("Under the doctrine of quasi-judicial immunity, absolute immunity extends to administrative officials performing discretionary acts of a judicial nature.").

[127] *Middlesex County Ethics Comm. v. Garden State Bar Assoc.*, 457 U.S. 423, 433-34 (1982) ("It is clear beyond doubt that the New Jersey Supreme Court considers its bar disciplinary proceedings as 'judicial' in nature.").

[128] *See Pulliam v. Allen*, 466 U.S. 522, 541-42 (1984) ("We conclude that judicial immunity is not a bar to prospective injunctive relief against a judicial officer acting in her judicial capacity.").

3. Qualified Immunity

The doctrine of qualified immunity protects government officials from civil liability if the officials' conduct "'does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'"[129] Qualified immunity balances "'the need . . . to hold responsible public officials exercising their power in a wholly unjustified manner and . . . [the need] to shield officials responsibly attempting to perform their public duties in good faith from having to explain their actions to the satisfaction of a jury.'"[130] Qualified immunity "provides ample protection to all but the plainly incompetent or those who knowingly violate the law."[131] Qualified immunity is "a defense afforded only to individuals – not municipalities or municipal agencies."[132] "[A]n official sued in his official capacity may not take advantage of a qualified

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[129] *Velez v. Levy*, 401 F.3d 75, 100 (2d Cir. 2005) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)).

[130] *Locurto v. Safir*, 264 F.3d 154, 162-63 (2d Cir. 2001) (quoting *Kaminsky v. Rosenblum*, 929 F.2d 922, 924-25 (2d Cir. 1991)).

[131] *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

[132] *Williams v. City of Mount Vernon*, 428 F. Supp. 2d 146, 153 n.2 (S.D.N.Y. 2006).

immunity defense."[133]

There are three steps in a qualified immunity analysis. The court first must determine whether, "taken in the light most favorable to the party asserting the injury . . . the officer's conduct violated a constitutional right . . . ."[134] If there is no constitutional violation, the defendant is not liable and the court need not proceed further. If, however, the plaintiff proves a constitutional violation, the court moves to the second step, which asks whether or not, at the time of the violation, the law prohibiting the defendant's conduct was clearly established.[135] If the violated right was not clearly established, the officer is immunized from liability. "Clearly established" means: "(1) the law is defined with reasonable clarity, (2) the Supreme Court or Second Circuit has recognized the right, and (3) 'a reasonable defendant [would] have understood from the existing law that [his] conduct was unlawful.'"[136] If the law prohibiting defendant's conduct was clearly established, the court moves to the final step in the analysis, which asks whether

[133] *Mitchell v. Forsyth*, 472 U.S. 511, 556 n.10 (1985) (Brennan, J., concurring in part and dissenting in part) (citing *Brandon v. Holt*, 469 U.S. 464, 472-73 (1985)).

[134] *Saucier v. Katz*, 533 U.S. 194, 201 (2001).

[135] *See id.*

[136] *Anderson v. Recore*, 317 F.3d 194, 197 (2d Cir. 2003) (quoting *Young v. County of Fulton*, 160 F.3d 899, 903 (2d Cir. 1998)) (alterations in *Anderson*).

or not "'it was objectively reasonable for [the defendant] to believe that his actions were lawful at the time of the challenged act.'"[137] An official's conduct is objectively unreasonable, and not eligible for qualified immunity, "when no officer of reasonable competence could have made the same choice in similar circumstances."[138]

G. The *Rooker-Feldman* Doctrine

In *Rooker v. Fidelity Trust Co.*, the Supreme Court held that federal district courts "lacked the requisite appellate authority, for their jurisdiction was 'strictly original.' Among federal courts, the *Rooker* Court clarified, Congress had empowered only [the Supreme Court] to exercise appellate authority 'to reverse or modify' a state-court judgment."[139] In *District of Columbia Court of Appeals v. Feldman*, the Court further clarified that state court proceedings that were "judicial in nature" were reviewable only by the Supreme Court or by the highest court of

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137 *Anthony v. City of N.Y.*, 339 F.3d 129, 137 (2d Cir. 2003) (quoting *Lennon v. Miller*, 66 F.3d 416, 420 (2d Cir. 1995)).

138 *Id.* at 138 (quotation marks omitted).

139 *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005) (internal citations omitted). *Accord Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923).

the state.[140] A denial of bar admission to two men who had not graduated from ABA accredited law schools by the Court of Appeals for the District of Columbia was considered a proceeding that was "judicial in nature" by the *Feldman* Court, and therefore not reviewable by the district court.[141]

IV. DISCUSSION

A. Failure to Allege Wrongdoing

Plaintiffs allege that a large number of defendants are involved in either the conspiracy or some other wrongdoing. However, many of these allegations are entirely conclusory. Plaintiffs simply fail to allege any facts that suggest wrongdoing. In many cases, plaintiffs infer a defendant's participation in the conspiracy from the defendant's refusal to investigate that conspiracy.[142] Plaintiffs have named other individuals as defendants without any explanation. In the absence of specific factual allegations as to the actions a defendant took to

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[140] *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983). *Accord Exxon Mobil*, 544 U.S. at 285.

[141] *Feldman*, 460 U.S. at 479-82.

[142] *See, e.g.*, Compl. ¶ 743 ("After being apprized of the illegal activities by Iviewit Companies, none of the defendants in public office positions charged with investigating as defined herein made reasonable effort [sic] to investigate report or remedy the illegal activities, therefore engaging in a conspiracy by condoning the activities through their inactions.").

incur liability that are sufficient to put the defendant on notice of what conduct is at issue, claims against that defendant must be dismissed.[143] All claims against the defendants listed in Appendix A are dismissed because they are not alleged to have engaged in wrongful conduct.

B. Immunity

1. The Eleventh Amendment

Neither the State of New York, the Commonwealth of Virginia, nor the State of Florida has consented to be sued in this action, and Congress has not abrogated state immunity for plaintiffs' claims. Therefore, this Court has no jurisdiction to hear any claims against the States. All claims against the States of New York and Florida and the Commonwealth of Virginia are therefore dismissed. The Florida Supreme Court is an arm of the State of Florida.[144] The Appellate Divisions of the New York State Supreme Court are arms of the State of New York.[145] Therefore, all claims against these defendants are dismissed.

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[143] *See Leibowitz v. Cornell Univ.*, 445 F.3d 586, 591 (2d Cir. 2006) ("[A] plaintiff is required only to give a defendant fair notice of what the claim is and the grounds upon which it rests.").

[144] *See* Fla. Const. art. 5, § 1.

[145] *See* N.Y. Const. art. 6, § 1. Further, these entities cannot be sued under section 1983 because they are not "persons." *See Zuckerman v. Appellate Div., Second Dep't, Supreme Court of State of N.Y.*, 421 F.2d 625, 626 (2d Cir.

The New York State Legislature has vested the exclusive jurisdiction to discipline attorneys in the four departments of the Appellate Division of the Supreme Court.[146] The Departments have delegated to the Departmental Disciplinary Committees their judicial function of investigating charges of attorney misconduct.[147] Accordingly, each Committee, like the disciplinary and

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1970) ("[I]t is quite clear that the Appellate Division is not a 'person' within the meaning of 42 U.S.C. § 1983.").

[146] The Judiciary Law of the State of New York states:

> The supreme court shall have power and control over attorneys and counsellors-at-law and all persons practicing or assuming to practice law, and the appellate division of the supreme court in each department is authorized to censure, suspend from practice or remove from office any attorney and counsellor-at-law admitted to practice who is guilty of professional misconduct, malpractice, fraud, deceit, crime or misdemeanor, or any conduct prejudicial to the administration of justice . . . .

N.Y. Judiciary Law § 90(2).

[147] New York State regulations state as follows:

> This court shall appoint a Departmental Disciplinary Committee for the Judicial Department, which shall be charged with the duty and empowered to investigate and prosecute matters involving alleged misconduct by attorneys who, and law firms that, are subject to this Part and to impose discipline to the extent permitted by section 603.9 of this Part.

grievance committees in other jurisdictions, "is a delegatee of the powers of the Appellate Division as an aid to that Court in carrying out its statutory functions."[148] The Committees are thus arms of the State.[149] All claims against them are dismissed because they are immune from suit under the Eleventh Amendment.[150] Similarly, the Florida Office of the State Courts Administrator, the New York Office of Court Administration of the Unified Court System, the State of New York Commission of Investigation, the Florida State Bar, and the Virginia State Bar are arms of their respective States. All claims against these defendants are dismissed as well.

2. Judicial and Quasi-Judicial Immunity

Plaintiffs have alleged that various judges, including the justices of the Florida Supreme Court and of the New York Supreme Court, Appellate

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N.Y. Comp. Codes R. & Regs., tit. 22, § 603.4(a).

[148] *Rappoport v. Departmental Disciplinary Comm. for First Judicial Dep't*, No. 88 Civ. 5781, 1989 WL 146264, at *1 (S.D.N.Y. Nov. 21, 1989).

[149] *See id.* ("The Departmental Disciplinary Committee of the First Judicial Department . . . is an arm of the State for Eleventh Amendment purposes.").

[150] *See Jackson v. Manhattan & Bronx Surface Transit Operating Auth. (M.B.S.T.O.A.)*, No. 92 Civ. 2281, 1993 WL 118510, at *2 (S.D.N.Y. Apr. 13, 1993) ("[D]amage claims against . . . [the] Departmental Disciplinary Committee are barred by the Eleventh Amendment.").

Division, First Department, have failed to uphold their judicial responsibilities, either by acting negligently or through malicious actions. They have further alleged that certain judges are members of the conspiracy against them. However, the alleged wrongdoings took place in the context of judicial proceedings where the courts had at least arguable jurisdiction over the relevant matters. Further, individuals who are not judges but "who perform functions closely associated with the judicial process" are protected by quasi-judicial immunity.[151] For these reasons, all claims for damages against the defendants listed in Appendix B in their official capacities are dismissed.[152]

3. Qualified Immunity

Qualified immunity protects officials who are sued in their individual capacities in certain circumstances. It applies if, *inter alia*, the defendant's conduct fails to violate clearly established federal law. In the situations described by plaintiffs, there is no clearly established right to have complaints investigated

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151 *See Oliva*, 839 F.2d at 39.

152 *See Polur v. Murphy*, No. 94 Civ. 2467, 1995 WL 232730, at *5 (S.D.N.Y. April 19, 1995) ("[T]he functions of the DDC, a Hearing Panel thereof, and the DDC counsel, in relation to attorney disciplinary proceedings are akin to those of both a hearing examiner and a prosecutor, and individuals serving in those capacities should appropriately be accorded immunity from suit for their conduct.").

or pursued. Therefore, all claims for damages against the defendants listed in Appendix C in for failure to investigate or failure to prosecute are dismissed.

C. Statute of Limitations

Statutes of limitations "are found and approved in all systems of enlightened jurisprudence," and with good reason.[153] Over time, evidence vanishes, memories fade, witnesses disappear.[154] After sufficient time, "the right to be free of stale claims in time comes to prevail over the right to prosecute them."[155] Thus, "strict adherence to limitation periods 'is the best guarantee of evenhanded administration of the law.'"[156]

Many of plaintiffs' claims are barred by statutes of limitations. Plaintiffs assert that the statutes should not apply because it is contrary to the "public interest," arguing that they had to wait "until enough evidence has been

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[153] *Wood v. Carpenter*, 101 U.S. 135, 139 (1879).

[154] *See Order of R.R. Telegraphers v. Railway Exp. Agency*, 321 U.S. 342, 348 (1944). *See also Bell v. Morrison*, 26 U.S. 351, 360 (1828) (observing that the statute of limitations "is a wise and beneficial law . . . [designed] to afford security against stale demands, after the true state of the transaction may have been forgotten, or be incapable of explanation, by reason of the death or removal of witnesses").

[155] *Order of R.R. Telegraphers*, 321 U.S. at 349.

[156] *Carey v. International Bhd. of Elec. Workers Local 363 Pension Plan*, 201 F.3d 44, 47 (2d Cir. 1999) (quoting *Mohasco Corp. v. Silver*, 447 U.S. 807, 826 (1980)).

ascertained that the actions of the would be defendants have become sufficiently evident . . . ."[157] However, statutes of limitations themselves serve the public interest. In the absence of a legal basis for tolling or estoppel, the Court cannot disregard the rules. Because plaintiffs have not raised a valid ground for the tolling of any statute of limitations or the application of equitable estoppel, the statutes of limitations apply without modification.

1. Section 1983

Claims brought under section 1983 must be filed within three years of the date on which they accrue. This action was filed on December 12, 2007. Therefore, plaintiffs cannot assert any cause of action pursuant to section 1983 for events that occurred before December 12, 2004. Although the nature of the Complaint makes it difficult to ascertain the exact dates of some events, plaintiffs allege that the underlying conspiracy regarding the theft of the Inventions occurred before 2004. All section 1983 claims relating to this conspiracy are therefore dismissed.

Plaintiffs allege that the conspiracy involving the State of Florida

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[157] Co-Plaintiff Lamont's Opposition to the Meltzer Defendants Cross Motion to Dismiss ("Pl. Meltzer Mem.") at 18.

occurred in "Spring 2003 to Spring 2004 . . . ."[158] All section 1983 claims relating to this conspiracy are therefore dismissed. Similarly, alleged wrongdoing by the Lawyers Fund for Client Protection of the State of New York occurred in 2003.[159] These claims are therefore dismissed.

Plaintiffs allege that the conspiracy involving the 1st DDC occurred in Spring through Summer of 2004.[160] All section 1983 claims relating to the 1st DDC are therefore dismissed.

2. The Sherman Act

Plaintiffs allege that defendants "create[d] an illegal monopoly and restraint of trade in the market for video and imaging encoding, compression, transmission, and decoding by, including but not limited to, the IP pools of MPEGLA LLC . . . ."[161] These actions were allegedly taken in the years 1998 through 2001. These claims are therefore dismissed.

3. RICO

Plaintiffs allege that the injury underlying their RICO claims is "the

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158 Compl. ¶ 607.

159 *See id.* ¶ 688.

160 *See id.* ¶¶ 638, 646.

161 *Id.* ¶ 1073.

theft of IP by the enterprise and its agents . . . ."[162] The alleged theft happened well before 2003. This claim is therefore barred by the statute of limitations.

D. Failure to State a Claim

1. Title VII of the Civil Rights Act of 1964

Count Three of the Complaint alleges that

> The conspiratorial actions of the defendants in sabotaging IP applications through fraud, denying property rights of the IP, the ensuing white washing of attorney complaints by the defendants and other culpable parties both known and unknown with scienter, creating an illegal monopoly and restraint of trade, thereby denies Plaintiffs' [sic] the opportunity to make and enforce contracts, to sue, be parties, give evidence, and the entitlements to the full and equal benefit of all laws and proceedings for the security of persons violates Title VII of the Civil Rights Act of 1964 (as amended).[163]

Title VII of the Civil Rights Act of 1964 addresses employment discrimination. There is no reading of the Complaint that suggests any defendant committed any action prohibited by Title VII. Count Three is therefore dismissed.

2. The Copyright and Patent Clause

Article I, Section 8 of the Constitution provides that "Congress shall have the power . . . [t]o promote the Progress of Science and useful Arts, by

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[162] Compl., RICO Statement Form, question (iv), at 180.

[163] Compl. ¶ 1077.

securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries . . . ." One possible reading of plaintiffs' first cause of action is that they are alleging a violation of this clause.

On its face, the Copyright and Patent Clause confer discretionary authority on Congress to pass laws relating to patents and copyrights. The text of the clause does not suggest any private right of action against any state or non-state actor, and I am not aware of any court that has created such a right. Because the Copyright and Patent Clause does not bestow any rights on individuals, plaintiffs' claim under this Clause is dismissed.

3. Section 1983

The only section 1983 claims that have not been dismissed on the grounds of statute of limitations and immunity are those that seek injunctive relief against certain state officials in connection with state attorney disciplinary procedures. To state a claim pursuant to section 1983, a plaintiff must allege that a constitutional right has been violated. As discussed above, plaintiffs have no cognizable interest in attorney disciplinary procedures or in having certain claims investigated. Plaintiffs have therefore failed to state a claim against these defendants.

E. Further Observations

1. The *Rooker-Feldman* Doctrine

All of plaintiffs' federal claims have been dismissed, either pursuant to the relevant statutes of limitations, the Eleventh Amendment, or judicial immunity. Were plaintiffs' claims not otherwise dismissed, exercise of jurisdiction over certain of those claims would likely violate the *Rooker-Feldman* doctrine. Several of plaintiffs' claims are essentially arguments that the state courts failed to give their state court suits adequate consideration.[164] Federal district courts have no jurisdiction to review the decisions of state courts. Regardless of the merit of plaintiffs' claims, this Court cannot exercise jurisdiction over them.[165]

2. Rule 8(a)

Plaintiffs repeatedly promise that if their allegations are considered

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[164] *See, e.g.*, Compl. ¶ 601 ("That this Court will see that not only did [the Florida Supreme Court] err in a decision but their actions were coordinated to further usurp due process and procedure with the direct intent of covering for their brethren, [The Florida Bar] members and to further aid and abet the conspiracy.").

[165] I also note that the Court likely cannot exercise personal jurisdiction over many of the defendants. Because there are sufficient other grounds for dismissal of this action, I do not discuss this issue any further.

conclusory, they will amend their Complaint to include more detail.[166] Plaintiffs misunderstand their pleading burden. To state a claim under Rule 8(a), plaintiffs are only required to give a "a short and plain statement of the claim showing that the pleader is entitled to relief . . . ."[167] Plaintiffs' claims fail not because they have given insufficient detail as to the alleged conduct, but rather because much of the alleged conduct does not constitute a violation of any statute and because the remaining claims are barred by statutes of limitations or immunity. Plaintiffs have provided not too little detail, but too much – by no stretch of the imagination can the Complaint be considered "short and plain." Were I not to dismiss all claims for other reasons, I would strike the Complaint for violating Rule 8(a).[168]

3. Standing

Several of plaintiffs' claims relate to the alleged failure of various defendants to take appropriate steps in various attorney disciplinary procedures. A

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166 *See, e.g.*, Pl. Meltzer Mem. at 11 ("Should the Court view the allegations . . . as conclusory, Plaintiffs will, when the Court further schedules depositions in the instant case, insert the deposition testimony of each and every client that were introduced to the IP by the Proskauer Defendants.").

167 Fed. R. Civ. P. 8(a)(2).

168 Ordinarily, I would strike a Complaint of this ilk immediately upon its filing and permit plaintiffs to file a shorter, more concise Complaint. However, the instant situation required a swift determination of whether plaintiffs can state a claim against any defendant.

non-party generally has no legally protected interest that is affected by such failure. In the absence of such an interest, a plaintiff has no standing to assert a claim.[169] Because they have no cognizable interest in having criminal or civil proceedings brought by the Government against the various defendants, plaintiffs cannot state a claim against government officials for failing to initiate those proceedings.

F. Supplemental Jurisdiction and Leave to Replead

When a plaintiff has not alleged diversity jurisdiction and her federal claims fail as a matter of law, courts generally decline to exercise supplemental jurisdiction over remaining state law claims.[170] Here, all federal law claims have been dismissed, and there is no reason to depart from this general rule. I therefore dismiss plaintiffs' state law claims.

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[169] *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

[170] *See* 28 U.S.C. § 1367(c)(3) (stating that a district court may decline to exercise supplemental jurisdiction over a claim if, *inter alia*, "the district court has dismissed all claims over which it has original jurisdiction"). *See also Martinez v. Simonetti*, 202 F.3d 625, 636 (2d Cir. 2000) (directing dismissal of state law claims when no federal claims remained); *Adams v. Intralinks, Inc.*, No. 03 Civ. 5384, 2004 WL 1627313, at *8 (S.D.N.Y. July 20, 2004) ("In the usual case in which all federal law claims are eliminated before trial, the balance of factors to be considered under the [supplemental] jurisdiction doctrine-judicial economy, convenience, fairness, and comity-will point toward declining to exercise jurisdiction over the remaining state law claims.") (quotation and citation omitted).

A pro se plaintiff should be permitted to amend her complaint prior to its dismissal for failure to state a claim "unless the court can rule out any possibility, however unlikely it might be, that an amended complaint would succeed in stating a claim."[171] However, "it is well established that leave to amend a complaint need not be granted when amendment would be futile."[172] Plaintiffs have burdened this Court and hundreds of defendants, many of whom are not alleged to have engaged in wrongdoing, with more than one thousand paragraphs of allegations, but have not been able to state a legally cognizable federal claim against a single defendant. There is no reason to believe they will ever be able to do so. Plaintiffs cannot overcome the various immunity defenses or the pertinent statutes of limitations. Leave to replead is denied. However, this in no way speaks to whether they may be able to plead valid state law claims.

V. CONCLUSION

For the reasons stated above, defendants' motions to dismiss are granted. The remaining defendants are dismissed sua sponte. The Clerk of the Court is directed to close these and related motions (documents no. 12, 47, 48, 65, 66, 68, 73, 75, 78, 81, 83, and 97 on the docket sheet) and this case.

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[171] *Gomez v. USAA Fed. Sav. Bank*, 171 F.3d 794, 796 (2d Cir. 1999).

[172] *Ellis v. Chao*, 336 F.3d 114, 127 (2d Cir. 2003).

SO ORDERED:

Shira A. Scheindlin
U.S.D.J.

Dated: New York, New York
August 8, 2008

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Appendix A

Christopher & Weisberg, P.A.; Alan M. Weisberg; Robert Flechaus, detective, Boca Raton; Andrew Scott, Chief of Police, Boca Raton; the City of Boca Raton; Huizenga Holdings, Inc.; Alberto Gonzales, Attorney General of the United States; Johnnie E. Frazier, Inspector General of the United States Department of Commerce; Kelly Overstreet Johnson, attorney for and former president of the Florida Bar; The New York State Commission of Investigation; Alan S. Jaffe, Robert J. Kafin, Gortz, Gregory Mashberg, Leon Gold, and Matthew M. Triggs, partners at Proskauer; Christopher Pruzaski, Mara Lerner Robbins, Donald "Rocky" Thompson, Gayle Coleman, David George, Joanna Smith, James H. Shalek, Joseph A. Capraro Jr., George A. Pincus, Kevin J. Healy, Stuart Kapp, Ronald F. Storette, Chris Wolf, Jill Zammas, Jon A. Baumgarten, Scott P. Cooper, Brendan J. O'Rourke, Lawrence I. Weinstein, William M. Hart, Daryn A. Grossman, Marcy Hanh-Saperstein, and Gregg Reed, associates at Proskauer; IBM; Frank Martinez, partner at MLG; Michael C. Grebe, Todd Norbitz, and Anne Sekel, partners at Foley; the Lawyers Fund for Client Protection of the State of New York; the Estate of Stephen Kaye; the Hon. Judith S. Kaye; the European Patent Office; SBTK; Furr & Cohen, P.A.; Gerald W. Stanley, Chief Executive Officer of Real; David Bolton, General Counsel of Real; Tim Connolly, Director of Engineering at Real; Rosalie Bibona, engineer at Real; Larry Palley, employee of Intel; Masaki Yamakawa, the Yamakawa International Patent Office; TIG; Bruce T. Prolow, officer of TIG; Carl Tiedemann, officer of TIG; Andrew Philip Chesler, officer of TIG; Craig L. Smith, officer of TIG; and all employees and members of law firms who are not explicitly named in the Complaint.[173]

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[173] *See, e.g.,* Compl. ¶ 27 (naming as defendants all partners, associates, and counsel at Proskauer Rose who profited from the alleged incidents).

EXHIBIT F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELIOT IVAN BERNSTEIN and P. STEPHEN LAMONT,

Plaintiffs,

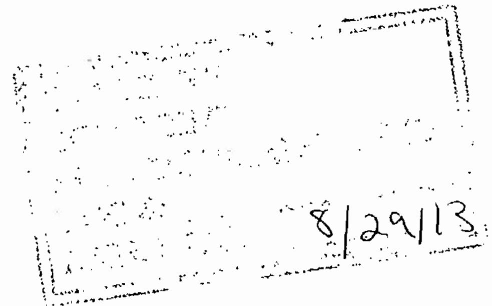
- against -

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

Defendants.

ORDER

07 Civ. 11196 (SAS)



SHIRA A. SCHEINDLIN, U.S.D.J.:

I. BACKGROUND

Pro se plaintiff Eliot Bernstein filed this action in December 2007. On August 8, 2008, this Court dismissed all of his federal claims on the merits, with prejudice. Bernstein's request for leave to file a second amended complaint was denied. On January 27, 2010, the Second Circuit issued a Mandate dismissing Bernstein's appeal *sua sponte*, finding that it lacked an arguable basis in law or fact. Approximately two and one-half years later, on July 27, 2012, Bernstein filed his first motion to re-open this case, entitled "Emergency Motion to Reopen Case." This motion, which was opposed by the Proskauer Defendants,[1] was denied in an

[1] The "Proskauer Defendants" include Proskauer Rose LLP, Kenneth Rubinstein, Christopher C. Wheeler, Stephen C. Krane (deceased) and the Estate of

Order dated August 14, 2012 (the "August 14th Order").[2] In the August 14th Order, I found plaintiff's Emergency Motion to be "frivolous, vexatious, overly voluminous, and an egregious abuse of judicial resources." I cautioned plaintiff that any additional frivolous filings could subject him to monetary and/or injunctive sanctions under Federal Rule of Civil Procedure 11 ("Rule 11").

Failing to heed this Court's warning, Bernstein filed a second motion to re-open this case[3] on February 28, 2013. In addition to opposing the motion, the Proskauer Defendants filed a Rule 11 motion for sanctions on May 7, 2013, which was previously served on Bernstein on April 5, 2013. Bernstein filed two additional motions on May 15, 2013: Notice of Motion to Re-Open Based on Fraud on the Court and More[4] and Notice of Emergency Motion for Clarification of Order[5], which sought reconsideration of the August 14th Order denying Bernstein's first motion to re-open. On May 15, 2013, this Court denied Bernstein's second and third motions to re-open as well as his motion for

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Stephen R. Kaye.

[2] *See* Docket Entry # 141.

[3] *See* Docket Entry # 142.

[4] *See* Docket Entry # 149.

[5] *See* Docket Entry # 150.

reconsideration,[6] stating as follows:

> Even if an alleged conflict on the part of the [New York State Attorney General's Office] were established, this would not overcome the fact that plaintiff's claims were barred on numerous jurisdictional and legal grounds. For example, the allegations against the State Defendants were based on their alleged failure to handle attorney grievances. But in dismissing these claims, this Court held that "there is no clearly established right to have complaints investigated or pursued," nor is there any "cognizable interest in attorney disciplinary proceedings or in having certain claims investigated." Furthermore, plaintiff had no standing to challenge the state court system's actions regarding attorney discipline. In addition, plaintiff's claims were barred by absolute judicial, quasi-judicial and qualified immunity as well as numerous other defenses.[7] Because plaintiff has not, and cannot, remedy the fundamental defects in the Amended Complaint, re-opening this action would be futile. Plaintiff's application to reopen and his request to alter or amend judgment must therefore by denied.

5/15/13 Order at 5-6 (footnotes omitted).

The Proskauer Defendants now seek monetary and injunctive sanctions against Bernstein for his vexatious and frivolous conduct. Specifically, they seek monetary sanctions in an amount not less than $3,500 and the following injunctive relief:

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6 *See* Docket Entry # 151.

7 *See id.*

> Eliot I. Bernstein is hereby enjoined from filing any action in any court related to the subject matter of this action without first obtaining leave of this Court. In moving for such leave, Bernstein must certify that the claim or claims he wishes to present are new claims never before raised and/or disposed of by any court. Bernstein must also certify that claim or claims are not frivolous or asserted in bad faith. Additionally, the motion for leave to file must be captioned "Application Pursuant to Court Order Seeking Leave to File." Failure to comply strictly with the terms of this injunction shall be sufficient grounds for denying leave to file and any other remedy or sanction deemed appropriate by this Court.

Proposed Order (Docket Entry # 146-2).

II. LEGAL STANDARDS

A. Rule 11 in General

The purpose of Rule 11 is "'the deterrence of baseless filings and the curbing of abuses.'"[8] Filings that have a complete lack of a factual and legal basis have been found "'to harass, cause unnecessary delay, or needlessly increase the cost of litigation[.]'"[9] In appropriate cases, pro se litigants are subject to Rule 11

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[8] *On Time Aviation, Inc. v. Bombardier Capital, Inc.*, 354 Fed. App'x 448, 452 (2d Cir. 2009) (quoting *Caisse Nationale de Credit Agricole-CNCA, N.Y. Branch v. Valcorp, Inc.*, 28 F.3d 259, 266 (2d Cir. 1994)).

[9] *Lawrence v. Richman Group of CT LLC*, 620 F.3d 153, 156 (2d Cir. 2010) (quoting Rule 11(b)).

sanctions.[10] Pro se litigants who show contempt for the judicial system, harass defendants, and/or cause courts and litigants to waste resources may be sanctioned under Rule 11.

B. Injunctive Relief

It is "beyond peradventure" that "[a] district court possesse[s] the authority to enjoin [a litigant] from further vexatious litigation."[11] In determining whether a litigants's future access to the courts should be restricted, courts should consider the following factors:

> (1) the litigant's history of litigation and in particular whether it entailed vexatious, harassing or duplicative lawsuits; (2) the litigant's motive in pursuing the litigation, e.g., does the litigant have a good faith expectation of prevailing?; (3) whether the litigant is represented by counsel; (4) whether the litigant has caused needless expense to other parties or has posed an unnecessary burden on the courts and their personnel; and (5) whether other sanctions would be adequate to protect the courts and

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[10] *See Maduakolam v. Columbia Univ.*, 866 F.2d 53, 56 (2d Cir. 1989) (stating that "Rule 11 applies both to represented and pro se litigants"). *See also Malley v. New York City Bd. of Educ.*, 207 F. Supp. 2d 256, 259 (S.D.N.Y. 2002) ("The fact that a litigant appears pro se does not shield him from Rule 11 sanctions because one acting pro se has no license to harass others, clog the judicial machinery with meritless litigation, and abuse already overloaded court dockets.") (quotation marks and citations omitted).

[11] *Safir v. U.S. Lines Inc.*, 792 F.2d 19, 23 (2d Cir. 1986). *Accord Lipin v. National Union Fire Ins. Co. of Pittsburgh, PA.*, 202 F. Supp. 2d 126, 142 (S.D.N.Y. 2002) ("A district court has the authority to enjoin a plaintiff who engages in a pattern of vexatious litigation from continuing to do so.").

> other parties. Ultimately, the question the court must answer is whether a litigant who has a history of vexatious litigation is likely to continue to abuse the judicial process and harass other parties.[12]

III. DISCUSSION

Bernstein had no factual or legal basis for his second motion to re-open or any subsequent motion he filed. Nonetheless, Bernstein must have believed his motion had merit, as evidenced by his twenty-two page Plaintiff's Opposition to Proskauer Defendant's [sic] Motion for Sanctions ("Opposition"). But there is no subjective, bad faith requirement in Rule 11. "The mental state applicable to liability for Rule 11 sanctions initiated by motion is objective unreasonableness . . . . ."[13] Moreover, as the following excerpt from his Opposition makes clear, Bernstein has no plans to ever end this litigation.

> Bernstein is notifying Proskauer and this Court that he will have a lifelong and generational long litigious history in pursuing his patent royalties, as litigation is the key to prosecuting patents over their useful life and will also have a litigious ongoing history in pursing the crimes and criminals who are attempting to steal them, despite whether they are cleverly disguised as Attorneys at Law, Judges, Prosecutors, etc. and despite the ridiculous Orders trying to prevent him from his due process rights and rights to his

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12 *Safir*, 792 F.2d at 24.

13 *In re Pennie & Edmonds LLP*, 323 F.3d 86, 90 (2d Cir. 2003).

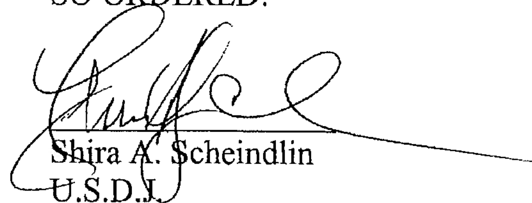
properties.[14]

Given these statements, this Court has no choice but to impose significant monetary and injunctive sanctions in an attempt to end this lengthy litigation.

IV. CONCLUSION

For the foregoing reasons, a monetary sanction in the amount of $3,500 is hereby imposed on Bernstein as is the injunctive sanction described above. The money is to be paid to the Clerk of the Court, Southern District of New York, forthwith. If Bernstein ignores the monetary sanction, defendants may obtain an enforceable judgment in the amount of $3,500. If Bernstein continues to file motions in this case, he may be subject to additional monetary sanctions. The Clerk of the Court is directed to close the motion for sanctions (Docket Entry # 145).

SO ORDERED:



Shira A. Scheindlin
U.S.D.J.

Dated: New York, New York
August 29, 2013

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[14] Opposition at 13.

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