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

Case No. 502014CP003698XXXXSB

In Re: Hon. Martin Colin

Shirley Bernstein Trust

Agreement, dated, May 20, 2008,

Deceased.

Eliot Ivan Bernstein, Individually;

Eliot IVAN Bernstein in his capacity as

Natural Guardian of his minor children,

Joshua, Jacob and Daniel;

and as beneficiary of the Shirley

Bernstein Trust dated May 20, 2008, as

amended and Eliot IVAN Bernstein

as Trustee of the Eliot Bernstein Family

Trust dated May 20, 2008,

Counter Plaintiffs,

v.

Tescher & Spallina, P.A., and all Partners Associates and of Counsel;

Robert L. Spallina, Esq., Personally;

Robert L. Spallina, Esq., Professionally;

Donald R. Tescher, Esq., Personally;

Donald R. Tescher, Esq., Professionally;

Gutter Chaves Josepher Rubin Forman Fleisher Miller, P.A.;

Theodore Stuart Bernstein, Individually;

Theodore Stuart Bernstein, as alleged Trustee of the Shirley Trust;

Theodore Bernstein as Personal Representative of the Shirley Estate;

Lisa Sue Friedstein, Individually;

Jill Marla Iantoni, Individually;

Pamela Beth Simon, Individually;

Mark Manceri, Esq., Personally;

Mark Manceri, Esq., Professionally;

Mark R. Manceri, P.A., and all Partners, Associates and of Counsel;

Page, Mrachek, Fitzgerald & Rose, P.A., and all Partners Associates and of Counsel;

Alan B. Rose, Esq. – Personally;

Alan B. Rose, Esq. – Professionally;

Pankauski Law Firm PLLC, and all Partners, Associates and of Counsel;

John J. Pankauski, Esq. – Personally;

John J. Pankauski, Esq. – Professionally;

Kimberly Francis Moran – Personally;

Kimberly Francis Moran – Professionally;

Lindsay Baxley aka Lindsay Giles – Personally;

Lindsay Baxley aka Lindsay Giles – Professionally;

“Simon L. Bernstein Amended and Restated Trust Agreement” Dated July 25, 2012;

Simon Bernstein Trust Agreement Dated May 20th 2008;

Shirley Bernstein Trust Agreement Dated May 20th 2008;

The Estate of Simon Bernstein;

The Estate of Shirley Bernstein;

SIMON L. BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);

SIMON BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;

SHIRLEY BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;

SHIRLEY BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);

SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995;

SIMON BERNSTEIN 2000 INSURANCE TRUST (dated August 15, 2000);

SHIRLEY BERNSTEIN 2000 INSURANCE TRUST (DATED AUGUST 15, 2000);

Trust f/b/o Joshua Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;

Trust f/b/o Daniel Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;

Trust f/b/o Jake Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;

ELIOT BERNSTEIN FAMILY TRUST DATED MAY 20, 2008;

DANIEL BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;

JAKE BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;

JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;

DANIEL BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 049738;

JAKE BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;

JOSHUA Z BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;

John and Jane Doe’s (1-5000),

Counter Defendants.

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**MOTION TO STRIKE “MOTION FOR INSTRUCTIONS AND/OR MOTION TO COMPEL COMPLIANCE WITH COURT'S ORDER DATED SEPTEMBER 18, 2014; MOTION TO EXTEND TIME TO COMPEL TRUST ACCOUNTING UNDER FLORIDA STATUTE 736.0813 AND 736.08135”**

COMES NOW, Eliot Ivan Bernstein (“Eliot” or “Counter Plaintiff), individually and as a beneficiary of the “SHIRLEY BERNSTEIN TRUST dated May 20, 2008, as amended” and ELIOT IVAN BERNSTEIN as Trustee of the “ELIOT BERNSTEIN FAMILY TRUST dated May 20, 2008”, PRO SE, and Eliot as Guardians for his three minor children, as alleged beneficiaries of the “SHIRLEY BERNSTEIN TRUST dated May 20, 2008, as amended” and hereby files this “MOTION TO STRIKE “MOTION FOR INSTRUCTIONS AND/OR MOTION TO COMPEL COMPLIANCE WITH COURT'S ORDER DATED SEPTEMBER 18, 2014; MOTION TO EXTEND TIME TO COMPEL TRUST ACCOUNTING UNDER FLORIDA STATUTE 736.0813 AND 736.08135” filed by the Personal Representative of Simon Bernstein’s Estate, Brian O’Connell, Esq. and in support thereof states, as follows:

1. That Brian O’Connell, Esq. **is not** the PR or Trustee of Shirley Bernstein’s Estate or Trusts and therefore has no standing to object to the Motion to Compel Trust Accounting filed by Eliot in the Shirley Bernstein Trust case, as Personal Representative of the Simon Bernstein Estate.
2. That no request for accounting was made by Eliot to compel the Simon Bernstein Estate to produce an accounting, the request is for accounting in the Shirley Bernstein Trust and thus believes the PR of Simon’s Estate may have filed this request in error.
3. That a request for accounting under Florida Probate Codes is not an adversarial proceeding and is part of the normal administration of the trust.
4. That if O’Connell believes an accounting request was made for the Estate of Simon Bernstein in the filing in Shirley’s Trust case, it was not, the request was made only on the alleged Trustee of the Shirley Trust, Ted Bernstein. There appears no request for the Simon Bernstein Estate to produce an accounting in the Trust filing and therefore O’Connell has no standing to attempt to interfere or object in the proceeding in Shirley’s Trust where he has no fiduciary role.
5. That Eliot believes this filing by O’Connell may be in error as such and should therefore be stricken.

WHEREFORE, Eliot requests that this Court enter an order;

* 1. to strike the, “MOTION TO STRIKE “MOTION FOR INSTRUCTIONS AND/OR MOTION TO COMPEL COMPLIANCE WITH COURT'S ORDER DATED SEPTEMBER 18, 2014; MOTION TO EXTEND TIME TO COMPEL TRUST ACCOUNTING UNDER FLORIDA STATUTE 736.0813 AND 736.08135”,
  2. for legal fees of Eliot Bernstein Pro Se,
  3. any other remedies, relief, damages and sanctions this Court finds apropos.

Filed on Friday, February 27, 2015

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

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**CERTIFICATE OF SERVICE**

I, ELIOT IVAN BERNSTEIN, HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to all parties on the following Service List, Friday, February 27, 2015.

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

X\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SERVICE LIST**

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