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Pro Se Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
_____ X

ELIOT I. BERNSTEIN, *et al.*,

Plaintiffs,

-against-

07-cv-11196 (SAS)

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

Defendants.
_____ X

PLAINTIFF'S OPPOSITION
TO PROSKAUER
DEFENDANT'S MOTION
FOR SANCTIONS

PRELIMINARY STATEMENT

Plaintiff Eliot I. Bernstein ("Bernstein"), respectfully submits this memorandum in opposition to the motion of Proskauer Rose LLP, Kenneth Rubenstein, Stephen C. Krane (deceased), and the Estate of Stephen R. Kaye (together "Proskauer"), pursuant to Rule 11 of the Federal Rules of Civil Procedure, and 28 U.S.C. § 1651 to impose sanctions, both monetary and injunctive, against Plaintiff Bernstein.



ARGUMENT

Proskauer replies for only limited defendants from Amended Complaint and Proskauer's Counsel Gregg Mashberg even fails to list himself as a Proskauer Defendant and Defendant in responding, while already having responded to various pleadings Pro Se acknowledging his acceptance of service as a Defendant. Many, most, of the Defendants have not responded to any pleadings and Proskauer's motion is only on behalf of a few "cherry picked" Proskauer Rose defendants from the Amended Complaint and therefore cannot be taken into consideration to sanction Bernstein.

Proskauer and Mashberg are conflicted and should not be Representing against their former client, or representing themselves where they will be called as witness, or representing themselves Pro Se and on behalf of others while defendants, or representing their law firm which is a defendant, as certainly their liability carrier would object as this court should, where they are the central RICO defendants complained of, all representations by Proskauer of Proskauer are violations of Attorney Conduct Codes and Law.

Proskauer also states all their contentions on behalf of New York Attorney General ("NYAG"), where such contentions should have been stated by NYAG and not by Proskauer. Proskauer has no grounds substantiated from its own side.

Proskauer refers to Lamont filings when there should be no rulings on Lamont other than to sanction him for he has no basis in the lawsuit, yet these Lamont pleadings and the rulings based upon them all seem staged to prejudice Plaintiff as if Lamont and this Court work for Proskauer too, as is commonplace in RICO conspiracies where the victims are targeted from all



sides. Also, evidence presented in the Motion to Rehear 3¹ shows that Judges are being illegally wiretapped and harassed to pervert and ILLEGALLY OBSTRUCT JUSTICE, by the very Officials in charge of Attorney at Law Conduct within the Courts. Yes, the heads of the Disciplinary Departments are accused of blocking due process against their "targets," including but not limited to, Anderson and the legally related cases, through MISUSE OF JOINT TERRORISM TASK FORCE FUNDS and VIOLATIONS OF THE PATRIOT ACT, to OBSTRUCT JUSTICE and these are claimed again by CREDIBLE EYEWITNESSES TO THE CRIMES. The crimes now alleged involve several of this RICO Lawsuits' defendants and wholly support Plaintiff's contentions of ABUSE OF PROCESS and RICO activity within state and federal agencies to Obstruct Due Process and Procedure in the courts and in prosecutorial offices, exactly as claimed in the Motions to Rehear 1², 2³ & 3. Perhaps this Court continues to attempt to Obstruct these material facts and motions because Officers of this Court and the Second Circuit Court have been accused therein of being key conspirators in aiding and abetting and failing to allow due process and obstruction that if heard might land them in jail. This CONFLICT OF INTEREST, ruling on matters in which one is the accused is beyond reproach,

¹ Motion to Rehear 3, included by reference in entirety herein can be found at <http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20130512%20FINAL%20Motion%20to%20Rehear%20and%20Reopen%20Obstruction%20of%20Justice165555%20WITH%20EXHIBITS.pdf>

² Motion to Rehear 1, included by reference in entirety herein can be found at <http://www.iviewit.tv/20120727%20COURT%20STAMPED%20FINAL%20SIGNED%20Motion%20to%20Remand%20and%20Rehear%20Lawsuit%20after%20Investigations%20of%20the%20New%20York%20Attorney%20General%20415935.pdf>

³ Motion to Rehear 2
<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20130228%20FINAL%20SIGNED%20Motion%20to%20Rehear%20and%20Reopen%20AG%20Conflicts%20.pdf>



should force this Court to turn this lawsuit over to a non conflicted court or find non conflicted Court Officers to adjudicate and those members accused in Motions to Rehear 1, 2 and 3, should immediately cease any further rulings where they are accused of FELONY CRIMES therein. Finally, it has also come to Plaintiff Bernstein's attention that former Chairman of the New York Senate Judiciary Committee, Senator John Sampson, who was conducting hearings and investigations into the Court and Public Office Corruption alleged by Bernstein, Anderson and other related cases, has admitted that he was both THREATENED AND THEN TOOK A BRIBE to cover up the crimes alleged against public officials and court officers and again this has OBSTRUCTED JUSTICE IN THESE HEARINGS⁴.

Proskauer states the motion is clearly vexatious and frivolous yet cites not a single claim to support such allegation and defamatory claim in efforts to circumvent the substantive evidence in the Motion to Rehear 1, 2 and 3. The Motions to Rehear filed by Plaintiff are based partially on acceptance of a verified conflict admission by a Senior Ranking Officer of the Attorney General's office that precludes the New York Attorney General from representing themselves and any others and where the Attorney General has promised Plaintiff that they are seeking counsel and new counsel would get back to him several months ago, as clearly stated in the telephone conversation transcripts exhibited in the Motion to Rehear 1 and 2. None of the Motions to Rehear filed by Plaintiff are vexatious or frivolous, as all Motions to Rehear are

⁴ UPDATE - INDICTMENTS COMING : Iviewit Breaking News: NY Supreme Court Ethics Oversight Bosses Alleged MISUSE of Joint Terrorism Task Force Resources & Funds & Violations of Patriot Acts Against Civilian Targets for Personal Gain... US Senator John Sampson Threatened & Bribed to Cover Up NY & Federal Corruption!
<http://www.free-press-release.com/news-iviewit-breaking-indictments-coming-us-senator-john-sampson-threatened-bribed-to-cover-up-ny-federal-corruption-1369140092.html>



strongly supported with valid evidence and testimony and statements from credible eyewitness experts skilled in the Art of Attorney Disciplinary complaints, all of which has not been considered by the Court, The Court's rulings appear to simply mimic and copy and paste whatever baseless and harassing claims of Proskauer in their motions as the facts, with no evidence to support their claims and thus the Motions to Rehear 1 and 2 been wrongly interpreted by the Court thereby further depriving Bernstein justice. In fact, the Court should not even allow submissions by those in absolute conflict with Plaintiff and this lawsuit, which consists of virtually all defense counsel, as they are tendered in conflict, violate Attorney Conduct Codes and State and Federal Law and act to deny due process through obstruction of these proceedings.

Proskauer claims August 08, 2008 Order to Dismiss was with Prejudice. This is absolutely incorrect and baseless without any valid proof of it. Again, trying to paint a picture based on false statements, further fraud on the court.

Proskauer falsely claims with scienter that the call with the AG was a one off call and that the James Rogers who was acting on behalf of the Chief of Staff who ADMITTED CONFLICT AND THE NEED FOR COUNSEL did not know who Bernstein was or why he was making the claims he made. This is absolutely incorrect, as the transcripts of the calls exhibited in Motion to Rehear 1 and 2 show, as New York Attorney General Chief of Staff under Cuomo, Steven M. Cohen, who Bernstein had been working with for several years on the Criminal Complaints against Cuomo, the AG, Eliot Spitzer and himself, to get them investigated by a non conflicted party was suddenly caught burying the complaints instead, again through a myriad of



conflicts and violations of law. Bernstein became aware that the complaints were being
CORRUPTION STALLED by Cohen and Cohen was caught attempting to bury the complaints
through a myriad of conflicts of interest and violations of public office and law, along with
Emily Cuomo Cole who was handling the complaints in conflict as ordered by Cohen. More
aptly Emily Cuomo Cole was mishandling the complaints, as the complaints were against
Andrew Cuomo and Cohen and where Emily and Andrew are believed to be related and Emily
was Cohen's assistant, the conflicts and obstructions were more than obvious. Cohen, as Chief
of Staff when Cuomo was AG, had gone to Governor's assistant when Cuomo became Governor
and had buried complaints filed with both offices while claiming they were being handled.
When Cohen got caught burying the complaints and when Emily Cole was exposed as a relative
of Cuomo, Cohen then referred Bernstein back to the AG's office to now investigate the
complaints and claimed he could no longer handle them, referring Bernstein to a one Harlan
Levy represented as the new Chief of Staff to Scheinderman, who Cohen claimed would know
all about what was going on prior to Bernstein's call as he was going to fully brief him, as clearly
evidenced in the transcripts.

The call to Levy was intercepted by James Rogers, claiming he was Special Counsel and
Senior Advisor to the Attorney General SCHEINDERMAN DIRECTLY who took the call and
claimed he was directed to handle the matters by Levy and was authorized to do so, obviously he
had been briefed on the LONG HISTORY of the CORRUPTION STALLED COMPLAINTS
AGAINST CUOMO AND COHEN prior to taking the call or he had accepted the call
unauthorized to derail the matters illegally. Either way, Roger's astutely and honestly identified



the problem for the AG all along was that their offices were in conflict with the complaints and this lawsuit and they would need to secure independent non conflicted counsel to represent them in both the complaints and lawsuits and they could not therefore continue representing other Defendants either or continue interfacing directly with Plaintiff. These CRIMINAL COMPLAINTS⁵ FILED AGAINST THE AG's OFFICE, COUMO AND COHEN, are central to enabling Due Process in this lawsuit, as they allege illegal activities of Cuomo and misuse of state resources in this lawsuit and several of the legally related lawsuits to Anderson and where these illegal actions have acted as key components to Obstructing Justice by denying due process to both the criminal complaints and this lawsuit since day one by Defendants in this lawsuit.

The Admission to the Conflicts of Interest that obstruct justice were clearly made for the right reasons on the day Roger's admitted and acknowledged them and were as valid on that day as the day when the case was filed. Therefore, the case should have NEVER proceeded from the start with the AG representing in conflict, or Proskauer and other Defense Counsel representing in conflict and none of them should have been allowed to illegally represent any defendants including themselves by this Court. The AG should not have been allowed to both personally and professionally represent Defendants in violation of public office rules and regulations and further ILLEGALLY MISUSE state funds to provide private defenses to state employees in so

⁵ Criminal Complaint Against AG can be found at the following URL and is hereby incorporated by reference in entirety herein at,

<http://iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20101120%20FINAL%20Andrew%20Cuomo%20Criminal%20Complaint%20New%20York%20Attorney%20General%20Cuomo%20Public%20Integrity%20Cover%20Letter%20Color.pdf>



doing. These claims against the AG were also made by Anderson in her motions⁶ to remove the AG for conflict and more. These ILLEGAL AND OBSTRUCTIONARY CONFLICT RIDDLED REPRESENTATIONS, severely prejudice Plaintiff in this lawsuit where Defendants personal counsel is not only paid for with ILLEGALLY OBTAINED state funds but also has the Attorney General representing them personally against Plaintiff, instead of independent counsel. Once the Amended Complaint was accepted by the Attorney General, where they were listed as Defendants, there was no way they should have continued to make illegal pleadings on anyone's behalf. Yet, even now they continue to file pleadings, despite admitted conflicts of interest that preclude them from making filings, including on behalf of themselves and yet this Court continues to not only allow these ILLEGAL pleadings constituting Fraud on the Court to continue but continues to make prejudicial rulings based upon them, despite the obvious violations of law and ethics codes. James Rogers in admitting Conflict and the need for counsel was right in his decision for the right reasons and did not make these claims because he was ignorant to what was going on, as Proskauer would have this Court believe based on their baseless and misleading claims in their Motion to Sanction. The AG's understanding and long history with Plaintiff prior to determining they were conflicted was described in the follow up letter to the AG written on May 20th 2011, titled "Admission & Acknowledgement of Conflicts of Interest By the New York Attorney General in Handling Criminal Complaints Against Andrew Cuomo and Steven M. Cohen, which can be found at

⁶ One of Anderson's Motion to Remove AG for Conflicts
<http://iviewit.tv/wordpress/?p=391>



<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20110520%20FINAL%20NY%20AG%20ADMITTED%20CONFLICT%20OF%20INTEREST%20and%20CRIMINAL%20COMPLAINTS%20CUOMO%20and%20COHEN.pdf>

df and hereby included in entirety by reference herein. That this Court cannot move forward without first waiting to see what the Attorney General's NEW counsel they have been seeking for over a year now, will now plead on their behalf as this will change the entire case and demand immediate rehearing free of the prejudice and illegal pleadings that have obstructed justice. This Court and the AG should already have moved for their removal from filing pleadings in the lawsuit and disqualified their prior filings and yet again, the Court attempts to turn a blind eye and bury the factual evidence presented in the Motion to Rehear 1, 2 and 3 against the New York Attorney General and others, instead furthering the Obstruction.

The Defendants and their conflicted counsel in this lawsuit, which is mostly the Defendants illegally representing themselves in most instances, violate Bernstein's rights to fair and impartial due process and thus these conflict riddled motions and responses filed by opposing counsel and ruled on by this Court are truly what are vexatious and in violation of law and ethics codes and this Court's own rules and therefore an utter waste of Bernstein's time and resources. These illegal proceedings however further constitute FRAUD ON THE COURT by opposing conflicted counsel and further ABUSE OF PROCESS. Bernstein filed this lawsuit against Defendants illegally infringing upon his inventions and those who have stolen them and for the ongoing conversion of his royalties through a variety of racketeering activity by Defendants. There are thousands, millions and even billions of infringers of his technologies,



since anyone with a TV, an Internet Connection, who owns Digital Imaging or Video Software or Hardware and even a Cell Phone, are among the many daily infringers of the inventions and thus all can truly be deemed as Defendants on the infringement basis alone. There are thousands of companies worldwide infringing, many aided and abetted by Patent Pooling Schemes set up by Defendants to block Plaintiff from market illegally and Plaintiff has stated valid claims against all Defendants as defined in the Amended Complaint and RICO Statement and Bernstein can and will continue to file in the courts to protect his Intellectual Property and other rights. Further, every day royalties are converted by the Law Firm Defendants and their accomplices will be further cause for Federal Court Actions and constitute new and ongoing crimes, affording a new clock on the statutes of limitations daily as the long as the crimes continue.

Bernstein's 6th Amendment Rights to securing counsel have been blocked by those who Regulate Attorneys at Law as evidenced in the Motion to Rehear 3⁷ and this has severely prejudiced Plaintiff in this lawsuit.

This lawsuit and the legally related cases were conflict riddled from start because of various facts which are known to this court, including but not limited to, the defense counsel attorneys representing against former clients in conflict, the AG representing State Defendants and themselves illegally in conflict and further ILLEGALLY misusing state funds for personal representations of State Defendants, attorneys representing themselves when they will be called as witnesses in violation of conflict rules, etc. It should be noted that Proskauer claims that Bernstein is using some other case in this Court as a basis for his claims and the reason Bernstein

⁷ docket 142



is referencing the Anderson case as additional evidence in support of his claims, is that this Court has "LEGALLY RELATED" Anderson and this lawsuit, a fact this Court should make Proskauer who is trying to hide that fact clear on, as it is a highly relevant case and not just some random case Bernstein attempts to use against the Proskauer defendants as supporting evidence.

Not all defendants responded to the amended complaint or to the motions or orders or anything at all in this lawsuit as described eloquently and pled perfectly in the Motion for Rehearing 3⁸ and the Motion for Clarification⁹, which prejudices Plaintiff and Defendants and is wholly outside the rules of this Court or any court. Where instead of adjudicating the Motions fairly based on the evidence contained therein, we find the Motion to Rehear 1, 2 and 3 trying to be buried by Proskauer with favor from this Court without giving due process and procedure to Plaintiff Bernstein or any of the factual evidence presented and instead concocting this vile and macabre attempt to twist the Motions to Rehear, chalk full of evidence and eyewitness testimony supporting Bernstein's claims, including admissions of conflicts by opposing counsel, instead into reasons to sanction Bernstein and ignore the substantive facts and evidence contained in the pleadings. This abuse of process and twisting of facts to hide the evidence is layered with a barrage of insults and harassments of Plaintiff Bernstein and no material facts and stands as a further sham on the court.

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<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20130512%20FINAL%20Motion%20to%20Rehear%20and%20Reopen%20Obstruction%20of%20Justice165555%20WITH%20EXHIBITS.pdf>

⁹ Motion for Clarification does not appear on the docket of this Court but can be found at the following URL, hereby included in entirety by reference herein at

<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20130513%20FINAL%20Motion%20for%20Clarification%20of%20Order174604%20WITH%20NO%20EXHIBITS.pdf>



Bernstein seeks SANCTIONS AGAINST THE ILLEGAL CONDUCT OF ALL OFFICERS OF THIS COURT, INCLUDING BUT NOT LIMITED TO PROSKAUER DEFENDANTS AND THE DEFENDANT NEW YORK ATTORNEY GENERAL FOR VIOLATING ATTORNEY CONDUCT CODES, JUDICIAL CANNONS, PUBLIC OFFICE RULES AND REGULATIONS AND STATE AND FEDERAL LAW AND MAKE ILLEGAL PLEADINGS IN THESE MATTERS AND THIS COURT'S ALLOWING and AIDING AND ABETTING SUCH FRAUD ON THE COURT.

Bernstein does not apologize to the Court for the length of his filings as this case is precedent setting in the sheer number of federal, state and international crimes alleged committed by the defendants against Plaintiff, including but far from limited to, car bombings, possible murder of his father, fraudulent and now forged estate court filings by Defendants in Plaintiff's parents estates (as more fully defined in the Motion to Rehear 3), theft of IP, Fraud on the US Patent Office, Fraud on Courts, Obstructions, Threats on Federal Witnesses, Wiretapping Judges to Obstruct Justice, 24/7/365 illegal wiretapping and surveillance of Anderson to Obstruct Justice in her case and the legally related cases. It would be impossible to merely list the massive number of Defendants and crimes committed by them in under a few hundred pages. Perhaps the court needs to expand its page rules in light of the never ending crimes being committed by Defendants in this lawsuit and by those representing them, which again is mainly themselves, and which gives the appearance that the criminals are representing themselves in violation of virtually the entire rules and regulations of this Court, the entire Code of Conduct for Attorneys at Law and state and federal laws and running this Court.



Proskauer list the 5 rules under 11 but fails to prove even a single instance of Bernstein's violations, as there really are none and where Bernstein has provided this Court repeatedly evidence of Proskauer Defendants and the New York Attorney General violations of these same statutes again full of damning evidence and eyewitness testimony and admitted conflicts of interest.

Proskauer claims Bernstein is somehow waging a "campaign of harassment" without any proof of any harassment what so ever. It is just a false claim without any basis. In fact, the Motion to Rehear 3 shows a host of very real factual harassments of Plaintiff Bernstein through continued legal process abuse of now several other courts in a number of new lawsuits that attempt to extort and harass Plaintiff and rob him of inheritance as well.

Proskauer claims Bernstein has a "litigious history" again a claim without any basis in law or fact. Proskauer has not proved a litigious history of Bernstein and Bernstein has virtually no litigious history until meeting Proskauer and filing this lawsuit. However, 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 pursuing the crimes and criminals who are attempting to steal them, despite whether they are cleverly disguised as Attorneys at Law, Judges, Prosecutors, etc. and despite the ridiculous Orders trying to prevent him from his due process rights and rights to his properties.

Plaintiff claims and bolsters with evidence and eyewitnesses that the courts and disciplinary committees etc were all conflicted and rigged from the start and has proved this with



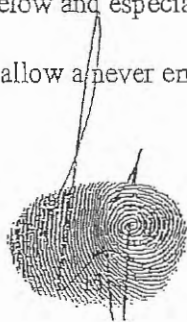
valid evidence and eyewitnesses and therefore the ORDERS of this COURT have been based on pleadings by Defense Counsel steeped in FRAUD ON THE COURT and thus Proskauer relying on these ill-gotten orders from this Court for defense and further illegally positing their knowingly false and baseless arguments in Court and finally this Court's own felonious responses and orders to these knowingly illegal representations is the problem Bernstein has had since the first day of filing this case, whereby all of these criminal obstructions block due process and are being committed by those involved in adjudicating the claims. If this Court and Officers of this Court continue down this path without resolving the CONFLICT SWAMP of the Defendants Counsel that Obstruct Justice, Plaintiff will be forced to seek Sanctions on this Court and it's Officer for their Contempt of the Court, Misprision of Felonies, Violations of Attorney Conduct Codes, Judicial Cannons, Public Office Rules and Regulations and State and Federal Law.

The Court's attempts to claim Plaintiff has not stated claims or has no Federal Rights or that State and Federal Employees are immune from FELONY MISCONDUCT and thus ABOVE THE LAW or that his Patent Claims have no Federal Relief are all part of this ongoing FRAUD ON THE COURT. This new attempt to stop Plaintiff Bernstein from filing Pleadings in the case in order to SUPPRESS EVIDENCE through illegally gained sanctions is further Abuse of Process, especially where all the pleadings and motions of Plaintiff Bernstein are based on NEW FACTUAL EVIDENCE and CREDIBLE EYEWITNESS EXPERTS IN ATTORNEY AT LAW CORRUPTION and show a PATTERN AND PRACTICE of Fraud on the Court and more. These acts to suppress Plaintiff and Evidence are obvious further attempts to silence Plaintiff



Bernstein and usurp his due process rights and are further harassment of him, constituting NEW CRIMES OF LEGAL PROCESS ABUSE, OBSTRUCTION and more, and thus must immediately cease. This Court's veiled attempt to claim that Bernstein's claims have no validity is wholly confounded as well by the fact that there are ongoing State and Federal and International investigations against the Defendants and that the Intellectual Properties have been suspended by the US Patent Office pending investigation of Proskauer and other defendants for FRAUD ON THE US Patent Office and more. That this Court should be aware that Defendant AT&T as listed in the Amended Complaint Defendants, is attempting to negotiate a SETTLEMENT of the Intellectual Property infringement and other claims against them as defined in the Amended Complaint, outside of this Court, as defined in the attached Exhibit 1 -- AT&T SETTLEMENT OFFER LETTER. This circumvented route to settlement is due to this Court failing to afford them a response to the complaint and opportunity within the court system to settle with Plaintiff as required by law and this Court has even illegally thwarted service of the Amended Complaint to them at all to tender any answer, along with all the thousands of defendants as described more fully in the Motion for Clarification. Had AT&T and others been afforded their right to respond to the claims in the Amended Complaint they might have admitted their infringement and settled, yet this court has Obstructed that process and Plaintiff's and Defendants rights in the case.

Plaintiff files Pro Se and thus his motions should not be dismissed for length of pleading or form, as per law and case laws cited below and especially where these nitpicking demands by this Court delay and obstruct justice and allow a never ending mass of crimes to continue to be



committed against Plaintiff while this Court counts page numbers and rules on illegal pleadings of defense counsel and more:

Judiciary Act of September 24, 1789, Section 342, FIRST CONGRESS, Sess. 1, ch.20, 1789 states that:

“Pleadings of the Plaintiff SHALL NOT BE dismissed for lack of form or failure of process. All the pleadings are as any reasonable man/woman would understand, and:

““And be it further enacted. That no summons, writ, declaration, return, process, judgment, or other proceedings in civil cases in any of the courts or the United States, shall be abated, arrested, quashed or reversed, for any defect or want of form, but the said courts respectively shall proceed and give judgment according as the right of the cause and matter in law shall appear unto them, without regarding any imperfections, defects or want of form in such writ, declaration, or other pleading, returns process, judgment, or course of proceeding whatsoever, except those only in cases of demurrer, which the party demurring shall specially sit down and express together with his demurrer as the cause thereof. And the said courts respectively shall and may, by virtue of this act, from time to time, amend all and every such imperfections, defects and wants of form, other than those only which the party demurring shall express as aforesaid, and may at any, time, permit either of the parties to amend any defect in the process of pleadings upon such conditions as the said courts respectively shall in their discretion, and by their rules prescribe (a)””

Court errs if court dismisses pro se litigant without instructions of how pleadings are deficient and how to repair pleadings. *Plaskey v CIA*, 953 F.2nd 25



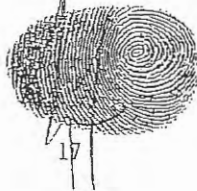
It is settled law that the allegations of such a complaint, "however inartfully pleaded" are held "to less stringent standards than formal pleadings drafted by lawyers, see *Haines v. Kerner*, 404 U.S. 519, 520 (1972). See also *Maclin v. Paulson*, 627 F.2d 83, 86 (CA7 1980); *French v. Heyne*, 547 F.2d 994, 996 (CA7 1976); *Estelle v. Gamble*, 429 U.S.97, 106 (1976). Such a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Haines*, supra, at 520-521. And, of course, the allegations of the complaint are generally taken as true for purposes of a motion to dismiss. *Cruz v. Beto*, 405 U.S. 319, 322 (1972).

Case laws referred by Proskauer are not completely in favor Proskauer:

In *Binghamton Masonic Temple, Inc. v. Bares*, 168 F.R.D. 121, 127 (N.D.N.Y. 1996) referred by Proskauer in its motion, the court states that under Fed. R. Civ. P. 11(b)(2) it is an improper purpose if a filing is submitted to harass, cause unnecessary delay, or increase the cost of litigation. Bernstein has not filed motions to harass, cause unnecessary delay, or increase the cost of litigation. In fact Bernstein has filed motions on the basis of evidence and new eyewitness testimony supporting his claims and factually admitted conflicts of interest by Defense Counsel.

In *id.*, 168 F.R.D. 121, 126 (N.D.N.Y. 1996), it has been clearly stated by court that Sanctions under Fed. R. Civ. P. 11 should be imposed with caution. See also *MacDraw Inc. v. Cit Group Equipment Financing Inc.*, 73 F.3d 1253, 1257 (2d Cir. 1996).

In *id.*, 168 F.R.D. 121, 126 (N.D.N.Y. 1996), the court states that "Fed. R. Civ. P. 11 states, in relevant part (b) Representations to Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an



attorney ... is certifying that to the best of the person's knowledge, information, and belief formed after an inquiry reasonable under the circumstances, -

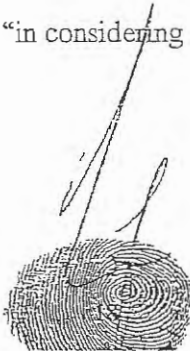
(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law, [and]; ... (3) the allegations and other factual contentions have evidentiary support...

Also see *See Katzman v. Victoria's Secret Catalogue*, 167 F.R.D. 649, 1996 U.S. Dist. LEXIS 8979, 1996 WL 351228, *7 (S.D.N.Y.)

In the present case to the best of Bernstein's knowledge, information, and belief formed after an inquiry reasonable under the circumstances, the motion was not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, the claims and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for which was based on newly found evidence, and the allegations and other factual contentions have evidentiary support produced by Bernstein. Hence sanctions under Fed. R. Civ. P. 11 shall not be applicable.

Proskauer relies on *Safir v. US. Lines Inc.*, 792 F.2d 19, 24 (2d Cir. 1986) and on *Positano v. New York*, 12-CV-2288 (ADS) (AKT), 2013 U.S. Dist. LEXIS 32488, at *23-25 (E.D.N.Y. Mar. 7, 2013) and states that "in considering injunctive relief in the context of Rule

A handwritten signature in black ink is written over a circular fingerprint. The signature is cursive and appears to be the name 'S. Bernstein'. The fingerprint is a clear, dark impression of a finger's ridges.

11, the district court should consider the following factors to determine if a party like Bernstein should be enjoined:

(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 an objective 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 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.

Proskauer has merely taken the contention that Bernstein conduct meets all 5 factors. But this contention of Proskauer is absolutely false and baseless. First factor: In the case at bar Plaintiff's litigation history is to get justice for the IP rights of Plaintiff violated by defendants and to stop illegal gains by defendants. It is not to harass or duplicate lawsuits. The motions to Rehear filed by Plaintiff were on discovery of new evidence and they cannot be considered as duplicative lawsuits. Second factor: Plaintiff definitely has good faith expectation of prevailing once a fair and impartial court can be had. Third factor: Plaintiff is Pro se and not represented by counsel. Fourth factor: Plaintiff has not caused expenses to other parties or has posed an unnecessary burden on the courts and their personnel, in fact, it is exactly the opposite and Defendants have continued with this Court to consistently deny due process through Abuse of Process. In fact many defendants have not yet been summoned in spite of repeated request from



Plaintiff due to further Obstruction of Justice. Fifth factor: When other four factors are not proved then there is no question of any sanctions on Plaintiff.

Proskauer relies on *Ex 'r of NY Estate of Kates*, 2013 U.S. Dist. LEXIS 16873, at * 15-16, 24-25 that states "enjoining *pro se* plaintiffs from further filings in the Eastern District of New York arising from or relating to the claims at issue and denying their Rule 59(e) motion where this was the Plaintiffs "fourth attempt" at litigating the same claims in the same court."

This case cannot apply to the case at bar as Plaintiff has not litigated same claims but his claim is based on new evidence that was not present at the time of earlier motions, including ADMISSION of CONFLICTS by Defense Counsel and Defendant the New York Attorney General.


This motion is based on grounds that are incorrect and false and misleading and harass Plaintiff. Hence it has to be dismissed and sanctions should be imposed on Proskauer and the New York Attorney General and others.




CONCLUSION

Proskauer shows no proof for their allegations against Plaintiff. The current motion is utterly frivolous and abusive. It should be denied and its campaign of harassment and abuse brought to an end by issuing sanctions on Proskauer and Court Officials for damages done to Plaintiff for several years since the docketing of this lawsuit.

Dated,  2013

Boca Raton, FL 

Respectfully submitted, 

Eliott Hornstein
2753 NW 34th St.
Boca Raton, FL 33434
(561) 245-8588



EXHIBIT 1 – AT&T SETTLEMENT OFFER LETTER

Eliot Ivan Bernstein

Subject: FW: Settlement Offer

From: Adam Floyd (<mailto:AFloyd@fblawllp.com>)
Sent: Wednesday, April 11, 2012 12:47 PM
To: Eliot I. Bernstein (iviewit@iviewit.tv)
Subject: Settlement Offer

Before taking your settlement offer to my client, I want written confirmation (email is fine) to the terms.

Here are the terms you have offered:

- 33% of the value of all of AT&T's stock;
- a license to all of iViewIt's technology including any and all patents that may issue;
- a dismissal of all existing claims against AT&T;
- a covenant not to sue AT&T or F&B;
- a covenant not to file any complaints against AT&T, F&B, or any of their attorneys to the state bars, PTO bar, or any other agency.

Please let me know if this is correct. I would also strongly encourage you to provide a realistic number, if you actually are intending to resolve all issues you have with AT&T.



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