

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

PROBATE DIVISION

JUDGE JOHN PHILLIPS

CASE NO.: 502014CP002815XXXXNB (IH)

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,

**Response in Opposition To Omnibus  
Motion Filed Jan 07. 2016 by  
Lessnee-Oppenheimer**

vs.

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

Respondents.

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**RESPONSE IN OPPOSITION TO OMNIBUS MOTION...Filed Jan 07, 2016**

COMES NOW, Eliot Ivan Bernstein (“Eliot”) and Candice Michelle Bernstein (“Candice”), both PRO SE as Guardians for their three minor children (“Respondents”) and hereby files this **“Response in Opposition To Omnibus Motion...” Filed Jan 07. 2016**” and in support thereof states, as follows:

1. I oppose the motion by Steven Lessne in this case and the related motion by Alan M. Rose in what should be deemed a “complex” case, these motions seeking to appoint a Guardian for

my children and oppose his motion for any “gag” order and since an Evidentiary Hearing and Testimony are both necessary with respect to the factual pleadings by Steven Lessne and such evidence and testimony including my own testimony on both matters which would last well beyond 30 minutes alone it is inappropriate and improper process to achieve anything at the Uniform Motion Calendar Hearing on Jan. 14, 2016 beyond Scheduling of Compliance for outstanding Discovery and Production, depositions and then an evidentiary hearing and a proper Case Management Conference for this “Complex” case.

2. This, however, naturally raises the issue of Lessne being a “resigned” Trustee and thus lacking standing herein and the Court should otherwise first schedule hearings on the motions in the related complex cases to remove Ted Bernstein as Trustee for not being qualified under the language of the trusts, for misconduct in fiduciary capacity, for waste and fraud upon the estate and other matters wherein even this very response by myself in this filing has been delayed by Representations by Creditor William Stansbury that his Florida Licensed Attorney Peter Feaman would be filing yesterday with the Court and Alan Rose a request to delay any hearing on these motions until a Status Conference / Case Management Conference for the Orderly scheduling of further hearings wherein Peter Feaman already notified this Court on Sept. 15, 2015 that removal of Ted Bernstein as Trustee should be the first order of business instead of a validity trial with Ted Bernstein as Trustee, but whereupon this Court improperly moved to Schedule Trial in Shirley Bernstein’s Trust case which was Not Notified for the Case Management Conference requested by the current PR of Simon’s Estate being Mr. Brian O’Connell and Joy Foglietta of the Ciklin Lubitz Martens & O’Connell firm who filed the Notice to bring the matter up for the Case Management Conference on Sept. 15, 2015 in the first instance.

3. Thus, both alleged Creditor William Stansbury and Florida Licensed Attorney Peter Feaman are both Necessary Witnesses in relation to the Integrity of these proceedings and the good faith efforts I have undertaken to uncover fraud upon the Court and in the Court which is directly relevant to resolution of any sham claim by attorney Steven Lessne or Alan Rose regarding guardianship, both being Florida licensed attorneys who have directly Mislead this Court in many ways including but not limited to falsely citing language from other Court orders such as Southern District of New York Judge Shira Scheindlin, or Alan Rose falsely claiming during the alleged validity trial that there has been no prior Order for Production of all Original Records by Tescher and Spallina when in fact this was part of the Discharge Order of Judge Colin to the extent any such Order of Judge Colin remains valid. See, Order of Colin on Production<sup>1</sup>.
4. Specifically, Alan Rose, a Served Counter Defendant in the related action in this complex case has knowingly misquoted an Order of SDNY Judge Shira Scheindlin by falsely portraying a Proskauer Rose proposed language in an Order as an actual Order, quote, finding of Hon. Judge Scheindlin herself and while this conduct recently occurred in matters before the 4th DCA<sup>2</sup>, this evidence is representative of the sharp practices that Alan Rose and Ted Bernstein have employed to avoid full and fair hearings, obstruct due process, and obscure actual truth seeking processes acting in conflict of interest and more while simultaneously not only denying proper funds for myself to obtain proper counsel for my minor children and myself but further denied retained Texas attorney Candice Schwager

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<sup>1</sup>February 18, 2014 Colin Order Regarding Turning Over ALL Records to Curator  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140218%20ORDER%20ON%20PETITION%20FOR%20DISCHARGE%20TESCHER%20SPALLINA%20Case%20502012CP004391XXXXSB%20SIMON.pdf>

<sup>2</sup> December 17, 2015 Sur Reply Showing Alan Rose Misquoting Federal Judge Shira Scheindlin Order  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151217%204th%20DCA%20Rose%20Ted%20Sur%20Reply%20Dec%2016%202015.pdf>

documents to review for her to further an application to be admitted pro hac vice after having opportunity to scope potential conflicts of interest between myself and minor children.

5. Alan Rose falsely stated to this Court at the Case Management Conference<sup>3</sup> that no hearings were held prior for guardianship hearings but yet Alan Rose had only a year earlier been denied<sup>4</sup> by Judge Colin who claimed Eliot and Candice did not need Guardians for their children and yet Alan Rose and Lessnee not only file similar false pleadings but move in coordination in their sharp practices where both Alan Rose and Lessnee should now be Witnesses.
6. Thus, attorney Alan Rose's conduct himself in these proceedings has relevance to both Lessne and Oppenheimer's sham motion as well as Rose's sham motion for guardianship since Rose and Ted Bernstein's own conduct has caused waste and harm to beneficiaries and delayed and obstructed the fact finding and truth seeking processes of this court and thus right there alone are 3 Witnesses in addition to myself that should be part of any Evidentiary hearing relating to appointment of a Guardianship and thus arriving at a Schedule would be the most that can happen on Jan. 14, 2016, or at least should be the most that can happen on this date.
7. In fact, Florida licensed attorney Peter Feaman has directly prepared pleadings and correspondence showing myself as being the only sibling in these cases to expose fraud and forgery and other proper matters in these cases and eligible to be a Successor Trustee. See, below.

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<sup>3</sup> September 15, 2015 Case Management Hearing Transcript Scheduled In Simon Estate ONLY, Page 28 Line 7-16

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150915%20Judge%20Phillips%20Hearing%20Transcript%20-%20Estate%20of%20%20Simon%20Bernstein.pdf>

<sup>4</sup> August 14, 2014 Order DENYING GUARDIAN

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140814%20Order%20Judge%20Martin%20Colin%20NO%20GUARDIAN%20FOR%20ELIOT%20CHILDREN.pdf>

8. See filings by Peter Feaman on behalf of alleged Creditor William Stansbury relevant to the sham filing for Guardianship by Alan Rose on behalf of Ted Bernstein.

- a. <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140217%20Stansbury%20Response%20in%20Opposition.pdf> Page 4-6 (C)
- b. <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140522%20JOINDER%20IN%20PETITION%20FILED%20BY%20ELIOT%20IVAN%20BERNSTEIN%20FOR%20REMOVAL%20OF%20TRUSTEE%20AND%20FOR%20TRUST%20ACCOUNTING.pdf>
- c. <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140627%20Response%20in%20Opposition%20to%20the%20Appointment%20of%20Ted%20Bernstein%20as%20Successor%20PR%20etc%20filed%20by%20Feaman%20Stansbury.pdf>

9. Then of course is the letter by Florida Licensed attorney Peter Feaman from August of 2014, nearly 17 months ago claiming PR Brian O'Connell had an absolute "duty" to file to Remove Ted Bernstein in showing failure to provide Accountings, waste of Trust assets and other matters, yet no action taken by PR O'Connell and no present follow-up by Peter Feaman although as indicated I have been delayed in this very filing by Representations of William Stansbury that Peter Feaman would be filing with the Court relative to these matters including holding hearings off until a Status or Case Management Conference but has yet to do that either, although it was represented it would be filed Tuesday, Jan., 12, 2016 further knowing I had filed for Unavailability with this Court which was served upon Alan Rose and further filed in my last opposition to the Gag order that I was under medication and needing medical care. See,

- a. August 29, 2014 Letter from Attorney at Law Peter Feaman, Esq. to Personal Representative Attorney Brian O'Connell re Conflicts and more of Ted and Alan Rose.  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140829%20Feaman%20Stansbury%20Letter%20to%20Brian%20O'Connell.pdf>
- b. December 16, 2014, Letter from Attorney Peter Feaman to PR and Attorney Brian O'Connell Letter re O'Connell's Absolute Duty to Remove Ted –  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20141216%20Attorney%20Peter%20Feaman%20Letter%20to%20Attorney%20Personal%20Representative%20Brian%20O'Connell%20re%20Ted%20and%20Alan%20Conflicts.pdf>
- c. <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140919%20Feaman%20Letter%20to%20Brian%20Oconnell%20re%20assets%20of%20Simon%20Estate%209%2019%202014.pdf>
- d. September 19, 2014 Attorney Peter Feaman to PR Attorney Brian O'Connell re Assets of Estates -  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140919%20Feaman%20Letter%20to%20Brian%20Oconnell%20re%20assets%20of%20Simon%20Estate%209%2019%202014.pdf>

10. William Stansbury is further a necessary Witness as he has information relating to an ongoing Federal investigation of Ted Bernstein by the US Dept. of Labor in relation to Ted Bernstein's fiduciary actions as Plan Administrator / Trustee involving Arbitrage International an asset of the Estate and Trusts where it is likely that further financial harm to beneficiaries including my minor children has occurred according to William Stansbury and yet Alan Rose and Ted Bernstein have not only failed to Disclose these matters to the Court and parties but further failed to disclose these matters in an alleged Meeting involving Bernstein Holdings and Bernstein Family Investments where Ted Bernstein and Alan Rose .

11. Further that the Estate itself by and through Brian O’Connell and Joy Foglietta has failed to account for or provide Documents and Records that should have been in their Custody despite prior Court Ordered Production<sup>5</sup> upon the former PR’s, Tescher and Spallina, after their removal after admissions to fraudulently altering and creating a fraudulent Shirley Trust that Alan Rose misleads this Court about there being no such Court Order during an alleged Validity Trial<sup>6</sup> and having multiple cross examination questions sustained as a result of such misstatement to the Court where it appears that in **contempt of such order** for Tescher & Spallina to Produce and turn over all Originals and files, Alan Rose, alleged Fiduciary and Trustee Ted Bernstein, Brian O’Connell and Joy Foglietta and potentially others have left “Original” documents and files instead in the Custody of Tescher & Spallina where Spallina has now admitted to fraud upon beneficiaries and their counsel, mail fraud, fraud upon the Court in the filings his office prepared and other crimes and misconduct during the alleged “validity” trial before Your Honor where the PRs O’Connell & Foglietta are **wholly and conspicuously absent from the “Validity trial”** (despite having pleaded to the Court in the Shirley Trust Construction case that Ted was NOT A VALID TRUSTEE<sup>7</sup> in the SIMON TRUST, which would have materially affected the outcome of such hearing on the Simon Trust case and Ted’s ability to argue the validity in the first place) among many other **“missing Witnesses”** at the alleged validity Trial such as Traci Kratish, Diana Banks, Donald

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<sup>5</sup> February 18, 2014 Court Ordered Production of ALL Records of Tescher and Spallina to Curator <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140218%20ORDER%20ON%20PETITION%20FOR%20DISCHARGE%20TESCHER%20SPALLINA%20Case%20502012CP004391XXXXSB%20SIMON.pdf>

<sup>6</sup> December 15, 2015 Validity Hearing Transcript - Transcript Page 123 Lines 10-18 & Page 124 3-7 and Pages 124 Line 17 to 125 Line 17. <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20Hearing%20Transcript%20Phillips%20Validity%20Hearing.pdf>

<sup>7</sup> February 17, 2015 Answer Affirmative Defenses Filed by PR Attorney Brian O’Connell stating Ted is NOT A VALID TRUSTEE under the terms of the Trust. <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150217%20Answer%20Affirmative%20Defenses%20O'Connell%20States%20Ted%20is%20NOT%20VALID%20TRUSTEE.pdf>

Tescher, unknown signatory witnesses, leaving the Estate of Simon Bernstein without counsel despite the fact that one of the First Orders of Business PRs O'Connell and Foglietta should have sought at the Case Management Conference held Sept. 15, 2015 which was Held and Noticed only in the Estate of Simon Bernstein is a Compliance Order to obtain all the "Originals" and files/documents from Tescher & Spallina so proper Discovery and Production could occur to prove validity but instead results in an improperly schedule Trial in Shirley's Trust case which was not Noticed for Sept. 15, 2015 as required in the procedural rules of the Court.

12. Licensed attorney Peter Feaman and his client alleged Creditor William Stansbury further being Witnesses as both claimed to have observed Donald Tescher at the Courthouse after the validity trial yet was not produced by Alan Rose suggesting Tescher's presence was under Alan Rose's control.
13. Thus, Brian O'Connell and Joy Foglietta should further be called as Necessary Witnesses in relation to the integrity of proceedings and were further factual Witnesses in relation to missing documents, missing production, missing business records and intertwined in conduct with Alan Rose in sudden emerging "original" documents from the St. Andrew's Home allegedly for the Oppenheimer matters and other dispositive Estate and Trust documents yet Creditor William Stansbury had previously stated that his Florida licensed attorney Peter Feaman suggested that a Meeting at his Office and or Brian O'Connell's Office and inviting the Palm Beach County Sheriff's for Criminal investigation and prosecution of Ted Bernstein in relation to the missing Tangible Personal Property ("TTP") should occur, thus intertwining all of the various parties as witnesses in relation to any Guardianship hearing and necessity.



14. While I understand it was filed in a different case number, Steven Lessne is intertwined with Rose on numerous issues including not only the sudden emergence of “original” documents in the Oppenheimer case but further the sharp practices conduct wherein Lessne has **directly mislead this Court** by an almost identical sharp practice of Alan Rose where Southern District of New York Judge Hon. Shira Scheindlin is again knowingly misquoted wherein Lessne claims Judge Scheindlin issued some nationwide injunction against me again misquoting language “proposed” by Proskauer Rose where in actuality the language Judge Scheindlin determined in the Order was as follows: “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). Dated: 14 New York, New York August 29, 2013 Opposition at 13. 7<sup>8</sup> “.

15. Thus, the only injunctive limitation determined by SDNY Judge Scheindlin is that if I file motions “**in this case**”, being the SDNY case, I “**may be subject to additional monetary sanctions**”, thus showing Lessne himself directly misleading this Court as a Florida licensed attorney.

16. The Court should note that Lessne left his firm Gray Robinson and took with him the Bernstein / Oppenheimer case as he transitioned to Alan Rose’s prior law firm Gunster.

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<sup>8</sup> August 29, 2013 Order the Most Honorable Shira A. Scheindlin  
<http://www.iviewit.tv/20130829%20Scheindlin%20Order%20Sanctioning%20Bernstein.pdf>

17. To the extent any Order of Judge Colin remains valid, he has already ruled upon motions by Alan Rose and Ted Bernstein on Guardianship and the related matters and DENIED those matters. See below Orders Colin in Rose Denial Guardian Shirley Trust Construction stating no Guardian necessary and Oppenheimer denial of same, This renewed attempt on virtually the same grounds constitutes further harassment and a 2<sup>nd</sup> bite at apple hoping for a better outcome than with Judge Colin.

a. Oppenheimer Denial

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20141107%20Omnibus%20Order%20Colin%20Oppenheimer%20Case.pdf>

b. Rose Trust Construction Denial

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140814%20Order%20Judge%20Martin%20Colin%20NO%20GUARDIAN%20FOR%20ELIOT%20CHILDREN.pdf>

c. Order Denying Contempt Against Eliot -

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150504%20Order%20on%20Motion%20to%20Hold%20Eliot%20Bernstein%20in%20Contempt%20DENIED.pdf>

18. There has been no “construction” hearing scheduled much less any full and fair hearing after proper discovery and depositions.

19. Moreover, alleged Creditor William Stansbury’s attorney has previously written to Rose directly regarding Rose’s conflicts of interest and other matters of testimony relevant at any hearing as follows:

- a. August 08, 2014 Feaman Letters to Rose

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140808%20Response%20to%20Motion%20for%20Contempt%20-%20Exhibit%20Feaman%20Letter%20to%20Alan%20Re%20St%20Andrews%20Tuition.pdf>

- b. Pleading filed by PR Attorney Brian O'Connell in Shirley Trust – Ted NOT A VALID TRUSTEE IN SIMON -

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150217%20Answer%20-%20Affirmative%20Defenses%20O'Connell%20States%20Ted%20is%20NOT%20VALID%20TRUSTEE.pdf>

- c. January 16, 2015 Nevada District Court Ruling - Crystal Cox ruling Eliot and Crystal not associated -

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150116%20Cox%20Bernstein%20Nevada%20RICO%20Order%20Denying%20Motions%20for%20Summary%20Judgement.pdf>

20. I plead and re-allege the following in further opposition to any continued improper attempts at a gag order which should be denied and stricken but certainly would require an adversarial evidentiary hearing first not part of the Uniform Motion Calendar Hearing of Jan. 14, 2016 and certainly not in 10 minutes.

21. I have already had to reschedule medical/dental related appointments due to Alan Rose's actions this New Year, I am currently on prescription medication since January 02, 2016, including painkillers and muscle relaxers and am not fit to attend hearings, which is part of the reason for my unavailability this month. This scheduling and notice is improper and

further harassment and this is not the first time Alan Rose has deployed these tactics as the record for the cases reflects.

22. This is nothing but more of the same “sharp practices” and legal process abuses that Alan Rose and Trustee Ted Bernstein have perpetuated throughout the litigation.
23. Florida Licensed attorney ( presently ) Alan Rose and his client Ted Bernstein fail to point out to this Court their continuing Conflicts of Interest since both Alan Rose and Ted Bernstein have actively worked Against the Interests of the “grandchildren” to Shirley and Simon Bernstein by trying to block \$1.7 in Life Insurance proceeds from coming into the Estate.
24. Both attorney Alan Rose and Ted Bernstein have been involved in actions which directly were contrary to the best interests of minor children by refusing to agree to a Continuance of the validity trial in Dec. 2015 even for 30 days so my minor children could have Counsel by Candice Schwager, Esq. and yet now try to claim to come to this court for the welfare of minor children. See,
  - a. December 12, 2015 Attorney Candice Schwager Pro Hac Vice Letter to Court  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151212%20Candice%20Schwager%20Pro%20Hac%20Vice%20ECF%20Filing%20Stamped%20Copy.pdf>  
fand
  - b. December 15, 2015 Phillips Trial Stay  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20ESIGNED%20Phillips%20Trial%20Stay%20ECF%20STAMPED%20COPY.pdf>
25. Ted Bernstein and Alan Rose have articulated no adequate basis to impose a Gag order.

26. In fact according to the Email Letter sent by attorney Schwager today to Alan Rose (see <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160106%20Schwager%20Letter%20to%20Alan%20Rose%20to%20Cancel%20Hearings.pdf> ) to seek his voluntary withdrawal of this Hearing, even one of the cases cited by Alan Rose actually has the District Court of Appeals reversing a Trial Court's Order closing a Trial from the public: "The orders of the trial court sealing the file and closing the proceedings are REVERSED. The public shall be permitted access to the court file and the transcript or reporter's notes of any proceedings in the trial court. ERVIN, J., concurs. NIMMONS, J., concurs, with written opinion."
- <https://casetext.com/case/florida-freedom-newspapers-v-sirmons>
27. There was minimal if virtually any naming of the "grandchildren" and/or "minor children" in the Trial in any event and I should have every right to inspect and have my own copy of the Transcript and this appears to be nothing more than the bully sharp practices of Alan Rose and Ted Bernstein in trying to deny due process and access to the courts and the ability to seek proper appeal, collateral attack and other motions concerning the trial.
28. As attorney Schwager pointed out in her letter, "Thus, it truly appears that your motion is more of a "smoke-screen" and "sharp practices" which are more designed to further delay, obstruct and hinder the due process rights of Eliot Bernstein and his minor children and perhaps others in the truth seeking processes by this motion which must be withdrawn."
29. In one breathe, Alan Rose and Ted Bernstein rush to push a validity Trial through that had been requested years before by Plaintiff Eliot and do so in a manner to Deny Counsel to Minor Children but now that the hour of Truth is at hand where Ted Bernstein's business partner / former business partner Robert Spallina's testimony Admitting to mail fraud, fraudulently creating an Invalid Trust and Fraud Upon the Court in these matters and related

Testimony is about to be available as it should be, Alan Rose and Ted Bernstein are now suddenly ( and frantically ) the big heroes for minor children and rushing in by an improperly Noticed Hearing to gag truth without providing any specific justification that this will benefit any minor children.

30. Yet, as stated by the very case Alan Rose and Ted Bernstein have cited for this Court, “ Preserving the independence and integrity of the judicial process through open and publicly scrutinized judicial proceedings is the issue.”
31. “A strong and independent judiciary is the bulwark of a free society. If there were no public access to proceedings before the trial judge, there would be no safeguard for judicial independence nor any assurance of judicial integrity.”
32. “It is the existence of the right of access that is critical to the court's autonomy, not the public's exercise of that right. Knowing the public can attend these proceedings and review judicial records helps guarantee that those matters will be conducted with due regard for the public's interest in a fair and impartial judiciary.” See, <https://casetext.com/case/florida-freedom-newspapers-v-sirmons>.
33. Minor children ultimately have to grow up and learn the laws of civil societies.
34. There is nothing in the Transcripts that relates to the actions and behaviors of the minor children and thus Alan Rose and Ted Bernstein have shown *nothing specific of a compelling nature* with respect to the minor children and this motion should be struck from the Calendar and denied.
35. Instead the Trial consisted of testimony and actions by Ted Bernstein’s business partners and his former counsel to him as fiduciary Robert Spallina and Donald Tescher who admitted to (i) illegally using the Mails to mail a fraudulently created invalid trust to the three minor

children's prior counsel Christine Yates, (ii) that his law firm deposited fraudulent documents in the Court record in the cases, (iii) that he fraudulently used a deceased Personal Representative to fraudulently close the Estate of Shirley Bernstein in these matters leading to the reopening of the Estate of Shirley and three years of litigation costs and expenses and (iv) that he was under an SEC Consent order for Felony Insider Trading charges and other matters.

36. The SEC Consent Orders<sup>9</sup> for Spallina and Tescher are already of Public Record by the Washington, DC Office of the US SEC itself naming Robert Spallina and Donald Tescher, Ted Bernstein's business partners and former disgraced counsel to him as fiduciary in these matters, who he and Alan Rose allowed to "hold onto" Original records even after Spallina's admitting to fraud that benefited his client Ted directly and also having the firm's paralegal notary public Kimberly Moran admit to criminal charges in this matter of forging documents, fraudulently notarizing them, including Post Mortem for Simon Bernstein and committing multiple frauds on the Court and beneficiaries in these matters.

37. See, "**FOR IMMEDIATE RELEASE 2015-213** *Washington D.C., Sept. 28, 2015* — The Securities and Exchange Commission today charged five Florida residents – including two lawyers and an accountant – with insider trading in advance of the acquisition of Pharmasset

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<sup>9</sup> September 28, 2015 SEC Press Release Regarding SPALLINA and TESCHER INSIDER TRADING CHARGES, "SEC Charges Five With Insider Trading, Including Two Attorneys and an Accountant"

<http://www.sec.gov/news/pressrelease/2015-213.html>

and

September 28, 2015 SEC Government Complaint filed against TESCHER and SPALLINA @

<http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf>

and

October 01, 2015 SEC Consent Orders Felony Insider Trading SPALLINA signed September 16, 2015 and TESCHER signed June 15, 2014

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/2015%20Spallina%20and%20Tesch%20SEC%20Settlement%20Consent%20Orders%20Insider%20Trading.pdf>

Inc. by Gilead Sciences Inc. In a complaint filed in federal court in Newark, New Jersey, the SEC alleged that attorneys Robert L. Spallina and Donald R. Tescher and accountant Steven G. Rosen illegally traded on confidential information obtained from a mutual client who served on the board of directors of Princeton, New Jersey-based Pharmasset.”

38. Spallina, Tescher, Rosen, Palermo, and Markowitz collectively agreed to pay approximately \$489,000 to settle the charges. The settlements are subject to court approval.

39. “Lawyers and accountants occupy special positions of trust and confidence and are required to protect the information entrusted to them by their clients,” said Joseph G. Sansone, Co-Chief of the SEC’s Market Abuse Unit. “It is illegal for them to steal their clients’ confidential information to trade securities for their own profit or to tip others.” See, <http://www.sec.gov/news/pressrelease/2015-213.html>

40. Thus, those matters regarding Ted Bernstein’s business partners and prior counsel to him as fiduciaries are already a matter of public record being made public by the federal government.

41. However in the December 15, 2015 Hearing Spallina states to Your Honor that he had not pled guilty to either felony or misdemeanor criminal conduct and yet the Consent Order signed by Spallina directly contradicts his testimony before this Court and this Court should take Judicial Notice and report such misconduct.

42. That SPALLINA perjured his testimony and further misled this court as he did plead guilty of criminal misconduct and the SEC Consent signed by SPALLINA states,

“2. Defendant [Robert Spallina has agreed to plead guilty to criminal conduct relating to certain matters alleged in the complaint in this action and acknowledges that his conduct violated the federal securities laws. Specifically, Defendant has agreed to plead guilty to a one count information which charges him with committing securities fraud involving insider trading in the securities of



Pharmasset, Inc. in a matter to be filed in the United States District Court for the District of New Jersey, (the “Criminal Action”).”

43. Yet, in a December 15, 2015 hearing under sworn oath as a witness in a Validity Hearing before Judge PHILLIPS, SPALLINA perjured himself and stated the following from the hearing transcript Page 93 Lines 14-17<sup>10</sup>;

14 · · · · · THE COURT: You can answer the question, which  
15 · · · · · is, did you plead to a felony?  
16 · · · · · MR. BERNSTEIN: Sorry, sir.  
17 · · · · · THE WITNESS: I have not.

44. Further, in the SEC Consent signed by SPALLINA reads,

“12. Defendant understands and agrees to comply with the term of 17 C.P.R. f 202,S(e). which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." As part of Defendant's agreement to comply with the terms of Section 202.5(e), Defendant acknowledges that he has agreed to plead guilty for related conduct as described in paragraph 2 above, and: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations; (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint; and (iv) stipulates for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C.. §523. that the allegations in the complaint are true...”

45. No compelling circumstances are shown by Ted Bernstein and his attorney Alan Rose to gag any part of the Trial herein other than what my attorney Candice Schwager says in her Letter Email that the standard in federal court for Pleadings is to simply abbreviate the minor child’s name instead of spelling it out such as “J.B.”, “D.B”, etc. Where none of the parents of the minor children have objected on their children’s behalf either.

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<sup>10</sup> December 15, 2015 PHILLIPS VALIDITY HEARING TRANSCRIPT

46. Nothing else more than that should happen here.
47. Alan Rose and Ted Bernstein's desperate attempt to hide and conceal the Truth of the Trial is just like what the District Court of Appeals found offensive in the case their papers cited, "In essence, one of the parties wished to conduct the proceedings in private to prevent the disclosure of certain information the party would otherwise prefer not be made public. The information is of a somewhat general nature and not specifically tied to a domestic relations case.<sup>8</sup>The information is not related to the marital relationship nor its breakup, to the welfare of the children, nor to the marital property."
48. "This may be so, but we do not find this reason to be sufficiently compelling, rising to the level that would deny the party an opportunity to receive a fair trial, to justify closing these proceedings." District Court of Appeal of Florida, First District. 508 So.2d 462 (Fla. Dist. Ct. App. 1987 ) <https://casetext.com/case/florida-freedom-newspapers-v-sirmons>
49. Having acted to repeatedly Deny minor children Counsel by denial of proper Trust funds and thus deny minor children rights, these actions now by Ted Bernstein and Alan Rose are a sham and must be denied.
50. Ted Bernstein would have this Court disregard and deny the actual history of fraud and abusive, bullying, extortive, illegal and coercive tactics and conduct of he and his business partners and his former counsel against Minor children as if Ted Bernstein had the Court on his own Payroll. See, May 6, 2013 Emergency Motion<sup>11</sup> and See Motion on St. Andrew's School<sup>12</sup>,

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<sup>11</sup> May 06, 2013 Bernstein Emergency Petition Florida Probate Simon and Shirley Estate Cases @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Orginal%20Large.pdf>

<sup>12</sup> August 24, 2014 Emergency Motion <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140824%20Amended%20Emergency%20Motion%20to%20Compel%20Eliot%20School%20Saint%20Andrews%20Payments.pdf>

51. I, Eliot Bernstein, further renews and reminds this Court that it lacks jurisdiction to hear the matter as this Court was mandatorily disqualified at least as of Dec. 4, 2015<sup>13</sup> and was further moved to mandatorily disqualify Dec.28, 2015<sup>14</sup> and thus no further action may be taken at this time beyond mandatory Disqualification.

WHEREFORE, it is respectfully prayed for an Order mandatorily Disqualifying Judge John L. Phillips, striking or alternatively Continuing the motions of Steven Lessnee and Oppenheimer until after a properly scheduled, noticed and held Case Management Conference for a “complex” case, proper Discovery, depositions and proper evidentiary hearings held first, sanctions against Alan Rose and Ted Bernstein and such other and further relief as may be just and proper.

Dated: January 13, 2016

**/s/Eliot Ivan Bernstein**

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### **CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by E-mail Electronic Transmission; Court ECF; this 13th day of January, 2016.

<sup>13</sup> December 04, 2015 Disqualification of Judge Phillips

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20SIGNED%20NOTARIZED%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.pdf>

<sup>14</sup> Dec 28, 2015 Disqualification of Judge Phillips

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151228%20FINAL%20SIGNED%20NOTARIZED%20Second%20Disqualification%20of%20Judge%20Phillips%20after%20Validity%20Hearing%20on%20December%202015.%202015%20ECF%20STAMPED%20COPY.pdf>

and

Corrections

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20CORRECTIONS%20to%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.pdf>

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