

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

CASE NO.: 50-2014-CP-003698-XXXX-NB

FOURTH DISTRICT CASE NO.: 4D16-1478

ELIOT IVAN BERNSTEIN  
Appellant (s),

VS.

THEODORE STUART BERSTEIN AS TRUSTEE OF THE SHIRLEY TRUST  
Appellee (s)

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**IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA**

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#	Effective Date	Count	Description
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181	4/5/2016		PETITIONER EVIDENCE
182	4/5/2016		PETITIONER EVIDENCE
183	4/5/2016		PETITIONER EVIDENCE
184	4/5/2016		PETITIONER EVIDENCE
185	4/5/2016		PETITIONER EVIDENCE
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209	5/4/2016		MEMORANDUM
210	5/5/2016		AUTOMATIC RECEIPT APPELLATE FILING
211	5/5/2016		AUTOMATIC RECEIPT APPELLATE FILING
212	5/5/2016		TRUE COPY
213	5/5/2016		ACKNOWLEDGMENT OF NEW CASE
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216	5/23/2016		RESPONDENT EVIDENCE
217	5/23/2016		PETITIONER EVIDENCE
218	5/23/2016		PETITIONER EVIDENCE
219	5/23/2016		PETITIONER EVIDENCE
220	6/9/2016		TRUE COPY

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**Case Description: SHIRLEY BERNSTEIN**

<b>#</b>	<b>Effective Date</b>	<b>Count</b>	<b>Description</b>
221	6/22/2016		NOTICE OF MEDIATION

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON;  
PAMELA B. SIMON, Individually and as Trustee  
f/b/o Molly Simon under the Simon L. Bernstein  
Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually,  
as Trustee f/b/o D.B., Ja. B. and Jo. B. under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on  
behalf of his minor children D.B., Ja. B. and Jo. B.;  
JILL IANTONI, Individually, as Trustee f/b/o J.I.  
under the Simon L. Bernstein Trust Dtd 9/13/12, and  
on behalf of her Minor child J.I.; MAX FRIEDSTEIN;  
LISA FRIEDSTEIN, Individually, as Trustee f/b/o  
Max Friedstein and C.F., under the Simon L.  
Bernstein Trust Dtd 9/13/12, and on behalf of her  
minor child, C.F.,

Defendants.

**MOTION TO MODIFY FINAL ORDER APPROVING SALE**  
**DATED MAY 6, 2015 AND FOR FURTHER INJUNCTIVE RELIEF**

Plaintiff, Ted S. Bernstein (the "Trustee"), as Successor Trustee, moves for entry of an Order modifying in part the *Final Order Granting Successor Trustee's Motion to Approve Sale of Trust Property* dated May 6, 2015 (the "Sale Order"), and for further injunctive relief, and states:

1. On May 6, 2015, this Court approved the Trustee's Motion to sell the Trust's property located within the St. Andrews Country Club community in Boca Raton. The sale was initially scheduled to close on or before March 31, 2015, in an all cash transaction, with the buyer accepting

the property "as is." The urgency was created because the St. Andrews Country Club was raising the required equity membership fee from \$95,000 to \$125,000, an increase of \$30,000. Upon learning of the possible sale, Eliot Bernstein objected to it and threatened to file a lis pendens.

2. This Court held a hearing on the Trustee's motion to approve sale on March 25, at uniform motion calendar. Based upon Eliot Bernstein's objections, the Court deferred ruling and scheduled an evidentiary hearing for the next day. At the evidentiary hearing, the Trustee and the Trustee's licensed realtor testified as to: the lengthy marketing process that had been undertaken in an effort to sell this property; the listing was more than 1,000 days old; the offer received was by far the highest and best received to date and likely in the near future; the offer was consistent with an appraisal, which was admitted into evidence; there were extensive carry costs associated with the property; and the announced \$30,000 increase in the club equity membership contribution was a significant factor in this deal. After hearing this testimony, and again based upon Eliot Bernstein's objections and request for time to obtain counter-evidence, the trial court denied the Motion to Approve the Sale on an emergency basis, and deferred the ruling pending a second evidentiary hearing.

3. At an evidentiary hearing held on May 6, 2015, the Court afforded Eliot Bernstein the opportunity to present evidence, through documents or testimony. Despite already having delayed the sale for more than five weeks, Eliot Bernstein presented no witnesses at the evidentiary hearing. Nor did he testify himself. Further, Eliot Bernstein produced no documentary evidence to refute the testimony of the Trustee's licensed real estate agent or the appraisal that was in evidence. Eliot did present a single piece of paper printed off the internet, purporting to be from the Zillow website. The trial court sustained the Trustee's objection to this document. At the conclusion of the

hearing on May 6, the trial court entered the Sale Order, a final order approving the sale of the property and authorizing the Trustee to take all reasonable steps to conclude the transaction. Eliot has never appealed the Sale Order, but he did file a Petition for All Writs with the Florida Supreme Court prior to the closing, which prevented the title company from issuing clear title until that appeal was resolved.

4. As part of the Sale Order, Judge Colin required the Trustee to provide all beneficiaries with a copy of the closing statement and bank records confirming the receipt of funds, and ordered the Trustee's counsel to hold the funds in a separate escrow account. By this Motion, the Trustee seeks to modify the Sale Order with regard to these requirements.

5. First, it is impractical and of no benefit to the trust to require counsel to open a separate escrow account to hold these sale proceeds. Having conferred with the undersigned's bank, the interest to be earned on the monies if placed in a separate account outside of the law firm's IOTA account is 0.15%. Over the course of a year, assuming all of the net sales proceeds sat in that account for a full year, the interest to be earned would be \$500. It is anticipated the funds will not sit in the account for anywhere near a year, meaning there will be virtually no benefit to the estate from imposing this requirement on the Trustee's counsel, and there will be expense incurred by the Trustee's counsel in setting up and maintaining a separate escrow account. Thus, the Trustee requests that the Court modify the Order to allow the proceeds to remain in the law firm's IOTA account until such time as the Court orders their release and disbursement to the Trustee, to be held with the other assets of the Trust.

6. Second, the Sale Order requires the funds be held pending further order of the Court. Now that the sale is concluded, and once the Trustee has provided the beneficiaries documents

relating to the transaction, there is no reason for the funds to be segregated away from the general trust assets.

7. Third, to conclude this sale the Trust was forced to incur substantial attorneys' fees, solely as a result of the obstructionist and delay tactics of Eliot Bernstein. The Trustee and the Trustee's counsel request permission to have those legal fees paid from the sale proceeds. In total, the Trustee incurred more than \$50,000 in attorneys' fees alone to conclude the transaction, including four hearing and appellate work; working with the title company; dealings and interactions with the buyer caused by Eliot's filings which continually delayed potential closing; and advising and representing the Trustee. The Trustee has reviewed the invoices submitted by counsel and believes the time and expense are reasonable, valuable and provided a substantial benefit to the Trust. The Trustee requests permission to pay the sum of \$40,000 immediately from the sale proceeds, which the law firm has agreed to accept if the matter is resolved without the need for an extensive evidentiary hearing or retention of experts. These fees should be approved. If there is an objection of Eliot Bernstein, which might necessitate an evidentiary hearing, the Trust and its counsel will incur additional attorneys' fees, negating the opportunity for a discount.

8. Fourth, while the Trustee has no opposition to providing a copy of the HUD-1 and proof of receipt of funds to all beneficiaries, these documents are personal, private and confidential, and should not be shared with anyone in the world. In particular, these documents should not be posted on the internet. The buyer is a private citizen which entered into an arms length contract to purchase property the Trust was anxiously trying to sell for more than three years. The buyer now owns Fee Simple Title, which is both marketable and insurable, as evidenced by the title insurance policy purchased by seller as part of the closing of the transaction. Further, as a condition of buyer

closing, seller was required to escrow \$25,000 as a limited indemnity fund, in the event that buyer is subjected to any litigation or harassment by Eliot Bernstein, as defined in the sale contract. Notwithstanding his disappointment over being disinherited by his parents and his apparent disappointment with the sale amount, there is no legitimate reason why Eliot Bernstein should have any further involvement with this property, contact with the buyer, or interference with the buyer's quiet and peaceful enjoyment of the property. In the Sale Order, Judge Colin provided the following:

All beneficiaries and persons subject to the jurisdiction of this Court, including Eliot Bernstein, are ordered to take no action to interfere with or otherwise hinder or delay the sale of the House.

9. The buyer has witnessed firsthand the devastating attacks by Eliot Bernstein through the internet on his brother (the Trustee) and others. As part of the final closing negotiations, once Eliot had exhausted all of his extraordinary writ and appellate maneuvers, buyer and its counsel insisted on a limited indemnity<sup>1</sup> to protect the buyer from litigation, interference or harassment by Eliot Bernstein. To assuage concerns of the buyer and induce it to close, the Sale Contract was amended to include the following:

INJUNCTIVE PROTECTION AND/OR LIMITED INDEMNITY FOR ATTORNEYS' FEES. Seller agrees to file a motion, and participate in any hearing set by the Court, at Seller's sole expense, seeking a permanent injunction after the closing to bar and prevent Eliot Bernstein and those acting in concert with him from having any contact of any kind with the Buyers, including no contact by mail, email or telephone; to forbid Eliot from attempting to learn their identities; to forbid Eliot from publishing or publicizing their identities anywhere in the world, including online or anywhere on any internet website, webpage, blog or otherwise; and to enjoin Eliot from filing any action against Buyers anywhere in the world (the "Injunction"). If successful, thereafter upon request of Buyer, Seller will take necessary and reasonable action to enforce the Injunction.

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<sup>1</sup> The indemnity is limited to \$25,000 to pay legal expenses incurred by buyer dealing with any Eliot issue. This money is held in escrow, but is able to be released immediately to the Trustee upon entry of an injunctive relief order.



The Trustee requests the Court enter an Order enjoining all beneficiaries and Eliot Bernstein, over whom this Court has jurisdiction, together with all persons acting in concert with them, from doing any of the above described actions or taking any action against the buyer. The Trustee believes that paragraph 3 of the Sale Order covers this, but so there is clarity and lack of any possible confusion, the Trustee requests that the Court enter the additional injunctive relief sought herein.<sup>2</sup>

10. Finally, to the extent that the Trustee provides an accounting, copies of the HUD-1 and bank records, the Trustee requests that those documents be ordered to remain confidential and to not be shared with anyone, and be subject to the same injunctive relief entered above. Eliot's delay tactics in this particular instance were financially devastating to the Trust. In addition to the extra \$30,000 club membership that Trust was required to pay when the closing was delayed past March 31, the Trust incurred substantial additional expenses and fees between March 31 and the final closing date of January 15, 2016. In particular, the Trust received reduced proceeds and incurred additional expenses totaling more than \$230,000 as shown in Appendix A.

11. Because Eliot is not individually a beneficiary, it is unclear whether these amounts could be surcharged against Eliot (who is indigent according to all of his court filings) or surcharged

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<sup>2</sup> In between the evidentiary hearings from March 25 to May 6, and beyond, Eliot published a number of inflammatory articles on the internet which list the address of the property with the heading "buyer beware." These tactics were designed to prevent the sale or discourage any potential buyers from having interest in the property. This information serves no public purpose, and only could cause harm or embarrassment to the Trustee or to the buyer. In addition, now that the buyer has paid its money, there is no reason to allow materials to be on the internet which could impair the buyer's ability to sell the property to someone else, at present or in the future. The Court has afforded Eliot due process, and should enforce its orders and prevent further tactics designed to thwart those valid, final and non-appealable orders. Thus, the Trustee requests that the Court order Eliot Bernstein to remove all materials from the internet that reference the address of this property or otherwise mention it in any way, shape or form.

against the interest of Eliot's minor children, for whom he purported to serve as guardian. Because the Trustee does not believe Eliot is a suitable or competent guardian to represent the interest of his children, which is the subject of an evidentiary hearing to be held on February 25, 2016, the Trustee believes it will be appropriate to defer making any decision on a surcharge action until after the Court decides whether or not to appoint a guardian ad litem for Eliot's children.

12. Moving forward, however, there is no reason to allow Eliot Bernstein to burn additional Trust assets by harassing the buyers or trying to educate the world on the "alleged fraud" that has occurred within this Court system. No one, and certainly not the buyer, has any interest in this matter becoming public, as it was the subject of multiple evidentiary hearings in the trial court and full appellate review to the extent such was sought. In other words, Eliot Bernstein has received all the process he is due with regard to the Sale Order, which is now final and non-appealable, and that should be the end of it for all time. To the extent Eliot does action calculated and virtually guaranteed to cost the Trust \$25,000, the Court should hold him accountable and the Trustee certainly reserves the right to seek surcharge against the inheritance of the minors for whom he purports to serve as guardian.

WHEREFORE, the Trustee requests that the trial court modify the Sale Order and enter additional injunctive relief as requested in this Motion.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by:  Facsimile and  U.S. Mail;  U.S. Mail;  Email Electronic Transmission;  FedEx;  Hand Delivery this 28th day of January, 2016.

MRACHEK, FITZGERALD, ROSE, KONOPKA,  
THOMAS & WEISS, P.A.  
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West Palm Beach, FL 33401  
(561) 655-2250 Telephone / (561) 655-5537 Facsimile  
Email: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)  
Secondary: [mchandler@mrachek-law.com](mailto:mchandler@mrachek-law.com)  
Attorneys for Ted S. Bernstein

By: /s/ Alan B. Rose  
Alan B. Rose (Fla. Bar No. 961825)

**SERVICE LIST Case No.: 502014CP003698XXXXNBIJ**

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
2753 NW 34th Street  
Boca Raton, FL 33434  
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(561) 886-7628 - Cell  
(561) 245-8644 - Facsimile  
Email: Eliot I. Bernstein ([iviewit@iviewit.tv](mailto:iviewit@iviewit.tv))

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Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her  
children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a minor  
[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

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Brian M. O'Connell, Esq.  
Joielle A. Foglietta, Esq.  
Ciklin Lubitz Martens & O'Connell  
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[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

Appendix A

<b>Description</b>	<b>Amount</b>
Increased Club equity contribution	\$30,000.00
Additional interest on Trust's secured line of credit	\$28,332.45
Additional property taxes	\$16,062.76
Additional insurance	\$19,162.40
Mandatory club dues and expenses	\$26,151.14
Mandatory HOA Fees	\$10,005.55
Utilities and maintenance	\$5,317.98
Repair costs <sup>3</sup>	\$31,902.50
Legal fees: Buyer	\$15,000.00
Legal fees: Seller	\$50,000.00
<b>TOTAL</b>	<b>\$231,934.78</b>

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<sup>3</sup> Although the original contract was scheduled to close "as is, where is," the buyers had the right to inspect the property before closing. In the extended gap between the original closing date and late summer, serious additional issues were discovered with the house. These issues, again, are of no concern to anyone other than the buyer, and the issues should remain confidential subject to injunctive relief to prevent Eliot Bernstein from publicizing them on the internet.

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON;  
PAMELA B. SIMON, Individually and as Trustee  
f/b/o Molly Simon under the Simon L. Bernstein  
Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually,  
as Trustee f/b/o D.B., Ja. B. and Jo. B. under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on  
behalf of his minor children D.B., Ja. B. and Jo. B.;  
JILL IANTONI, Individually, as Trustee f/b/o J.I.  
under the Simon L. Bernstein Trust Dtd 9/13/12, and  
on behalf of her Minor child J.I.; MAX FRIEDSTEIN;  
LISA FRIEDSTEIN, Individually, as Trustee f/b/o  
Max Friedstein and C.F., under the Simon L.  
Bernstein Trust Dtd 9/13/12, and on behalf of her  
minor child, C.F.,

Defendants.

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**ORDER DETERMINING ELIOT BERNSTEIN LACKS STANDING INDIVIDUALLY  
AND STRIKING ELIOT'S FILINGS, AND DEFERRING RULING ON THE  
APPOINTMENT OF A GUARDIAN AD LITEM AND OTHER RELIEF SOUGHT**

THIS CAUSE came before the Court for hearing on January 14, 2016 on Successor  
Trustee's *Motion for Appointment of a Guardian Ad Litem to Represent the Interests of Eliot  
Bernstein's Children; For A Gag Order to Protect Guardian and Others; and to Strike Eliot's  
Filings* (the "Motion"). The Court, having considered the record, heard argument of counsel and  
being otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES

SHARON L. TROCK, CLERK  
PALM BEACH COUNTY, FL  
NORTH COUNTY BRANCH

16 FEB -3 PM 2:21

FILED

1. The Motion is GRANTED in part as set forth in this Order and DEFERRED in remaining part pending an evidentiary hearing as requested by Eliot Bernstein and his wife.

2. By Final Judgment dated December 16, 2015, this Court has determined that Simon Bernstein's Will dated July 25, 2012 is valid and enforceable according to its terms. The Final Judgment is valid, binding and in full force and effect.

3. Based upon the Court's determination of the validity of Simon's Will, Simon Bernstein exercised a power of appointment he held over assets in the Shirley Bernstein Trust, in favor of his "then living grandchildren." Eliot Bernstein is not a grandchild of Simon or Shirley Bernstein. Based upon the exercise of the power of appointment, Eliot Bernstein is not a beneficiary of the Shirley Bernstein Trust. As a result, Eliot Bernstein lacks individual standing to participate in this proceeding, as he is not a beneficiary of either the Shirley Bernstein Trust or the Shirley Bernstein Estate.

4. Accordingly, Eliot Bernstein is barred from any further participation in his individual capacity in this action, and is removed individually as a party. Any and all pending motions, claims, or other filings by Eliot Bernstein, individually, in this case are hereby stricken from the record, and no further individual filings will be permitted except for a Notice of Appeal of the Final Judgment, should he desire to file one.

5. Having determined that Eliot Bernstein lacks individual standing, the Court next will consider whether a Guardian ad Litem should be appointed to represent the interests of the children of Eliot and Candice Bernstein, each of whom has been determined to be a beneficiary of the Shirley Bernstein Trust, and whether to enter a confidentiality order as requested by the

Trustee in the Motion. These matters will be addressed at an evidentiary hearing to be set by separate order of this Court.

DONE and ORDERED in Chambers, North County Courthouse in Palm Beach Gardens, Florida, on this 1 day of ~~January~~, 2016.

*Feb.*

  
HONORABLE JOHN L. PHILLIPS  
Circuit Court Judge

Copies to: Attached Service List



**SERVICE LIST Case No.: 502014CP003698XXXXNBIJ**

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
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Counsel for Molly Simon, Alexandra  
Bernstein, Eric Bernstein, Michael Bernstein

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and C.F., Minors; and Max Friedstein  
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MRACHEK  
FITZGERALD  
ROSE  
KONOPKA  
THOMAS  
& WEISS, P.A.

DE#149

Judge Here was no  
objection Filed to his  
order dated 1/19/16

WRITER'S DIRECT DIAL NUMBER: (561) 355-6991  
WRITER'S E-MAIL ADDRESS: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)

Ted Bernstein  
required  
2-1-16  
JD

January 14, 2016

VIA EMAIL

The Honorable John L. Phillips  
North County Courthouse  
3188 PGA Boulevard  
Room 1414 | Courtroom 3  
Palm Beach Gardens, FL 33410

Re: Ted Bernstein, etc., et al. v. Alexandra Bernstein, et al.  
Case Number(s): 2014CP003698XXXXNB IH

Dear Judge Phillips:

Regarding the hearing held this morning, January 14, 2015, attached is a proposed *Order Determining Eliot Bernstein Lacks Standing Individually And Striking Eliot's Filings, and Deferring Ruling on the Appointment of a Guardian Ad Litem and Other Relief Sought.*

I believe this proposed Order is consistent with the Court's ruling this morning, granting the relief sought in the Motion. I circulated a draft of the proposed Order, and received the following response from Eliot Bernstein:

Mr. Rose,

As you are and should be aware, to the extent any Order of Judge Colin is valid and remains in effect, the law of the case by Judge Colin's Orders has upheld my Standing in both Shirley and Simon and Denied your client Ted Bernstein in this regard and further that you are aware and were aware of the Outstanding Order of Production of Judge Colin that was never complied with at the time you mislead Judge Phillips' Court and moved in Shirley on Sept. 15, 2015.

For these reasons and more, I Object to the entirety of the Proposed Order and will be submitting my own Proposed Order by tomorrow, as I mentioned on the record today I am heavily medicated due to a dental problem.

The Honorable John L. Phillips  
January 14, 2016  
Page 2

Absent some Medical or other Emergency, the Date February 25 at 3:15pm does work, however, 1 hour is Insufficient, I think it should be at least one full working day and thus I object to the time being limited to one hour. Also, you are not properly serving notice to all parties, including all of the Counter Defendants.

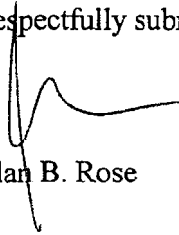
Thank you.

On behalf of my client, the Trustee, we request that you enter the enclosed form proposed Order or whatever Order Your Honor believes is consistent with your ruling today.

We also have enclosed a Notice of Evidentiary Hearing for February 25th, consistent with your ruling and the scheduling information from your judicial assistant. I advise you that Mr. Eliot Bernstein also objects to your Honor's ruling that the evidentiary hearing be scheduled for one hour.

We appreciate Your Honor's time and attention to these matters.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alan B. Rose". The signature is written in a cursive style with a prominent vertical stroke on the left side.

Alan B. Rose

Enclosures

cc: All parties listed on the Service List

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

**Objections to Proposed Order of Alan  
Rose / Ted Bernstein**

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON;  
PAMELA B. SIMON, Individually and as Trustee  
f/b/o Molly Simon under the Simon L. Bernstein Trust  
Dtd 9/13/12; ELIOT BERNSTEIN, individually, as  
Trustee f/b/o D.B., Ja. B. and Jo. B. under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on behalf  
of his minor children D.B., Ja. B. and Jo. B.;  
JILL IANTONI, Individually, as Trustee f/b/o J.I.  
under the Simon L. Bernstein Trust Dtd 9/13/12,  
and on behalf of her Minor child J.I.;  
MAX FRIEDSTEIN; LISA FRIEDSTEIN, Individually,  
as Trustee f/b/o Max Friedstein and C.F., under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on behalf  
of her minor child, C.F.,

Defendants.

---

**OBJECTIONS TO PROPOSED ORDER OF ALAN B. ROSE AND TED BERNSTEIN'S  
PROPOSED "ORDER ON PLAINTIFF'S MOTION TO MODIFY FINAL ORDER APPROVING  
SALE DATED MAY 6, 2015 AND FOR FURTHER INJUNCTIVE RELIEF" AND PROPOSED  
ALTERNATIVE ORDER**

1. I oppose all relief sought by Alan Rose and Ted Bernstein for all the reasons raised in the papers in opposition and all prior papers before Judge Phillips.

2. That Florida licensed attorney Alan Rose on behalf of Ted Bernstein misled this Court on Sept. 15, 2015<sup>1</sup> including whether all four cases had been properly Noticed<sup>2</sup> and where due to this misinformation at the case management conference a Trial was improperly set in Shirley Bernstein's Trust case in violation of Florida Civil Rules of Procedure 1.200<sup>3</sup> and in violation of due process while the PRs of the Simon Bernstein Estate Brian O'Connell and Joy Foglietta stood silent despite their office having sent the Notice for the Case Management Conference in the first instance,

4 MR. ROSE: I'm not planning on doing the  
5 whole hearing, but briefly there are,  
6 technically, four other cases that all were  
7 assigned. I think we've noticed a status  
8 conference in all four cases.

That Florida licensed attorney Alan Rose requested January 14, 2016 at 12:17pm<sup>4</sup> that Eliot Bernstein submit comments to a proposed Order from a January 14, 2016 hearing by 3pm that same day or else he would file with the Court as an unopposed Order and Eliot replied and 3:30pm<sup>5</sup> on January that he would try to get his changes to him timely on January 15th, 2016 to submit to the Court together with his proposed Order (Eliot did not know at the time that Rose was supposed to give him five days under the rules);

3. Mr. Rose in violation of ADMINISTRATIVE ORDER 5.204-5/09<sup>6</sup> then ignored said received email indicating that Eliot would send comments and a proposed order to him the next day and instead sent a letter to Judge Phillips with his proposed Order only to the Court on January 14,

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<sup>1</sup> Sept 15, 2015 Hearing Transcript

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

<sup>2</sup> August 03, 2015 Notice of Hearing Status Conference for Simon Bernstein Estate Case Only

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150803%20Notice%20of%20Hearing%20for%20Sept%2015%202015%20930am%20Case%20Management.pdf>

<sup>3</sup>Florida Rules of Civil Procedure 1.200

[http://phonl.com/fl\\_law/rules/frcp/frcp1200.htm](http://phonl.com/fl_law/rules/frcp/frcp1200.htm)

<sup>4</sup> January 14, 2016 Email Rose

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160114%20at%2012.12pm%20Alan%20Rose%20Proposed%20Order%20Email.pdf>

<sup>5</sup> January 14, 2016 Eliot Email to Rose with Dr. Report

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160114%20at%203.30pm%20Eliot%20response%20to%20Rose%20re%20Order.pdf>

<sup>6</sup><http://15thcircuit.co.palm-beach.fl.us/documents/10179/15133/5.204.pdf>

2016 at 4:15pm<sup>7</sup> without waiting for Eliot's comments and proposed order and this too in violation of Administrative Order 5.204-5/09<sup>8</sup> and further asked for an immediate ruling that day from Judge Phillips, knowing there are five days for my response and proposed order to be sent to him before seeking relief with the court as if unopposed with no counter order. This further evidences Mr. Rose's continued Sharp Practices and violation and contempt of the court decorum, efforts to obstruct due process and tortiously interfere with the fair administration of justice;

4. Florida licensed attorney Alan Rose on behalf of Ted Bernstein having further misled this Court about the status of the case and the time necessary for a proper validity Trial at the September 15, 2015 case management conference and left no time for a proper trial for the 10 witnesses called by the Trustee or for Eliot to properly cross examine witnesses available that day leaving Eliot and this Court with insufficient time for a proper trial / hearing which was improperly held without proper pre-trial procedures to determine outstanding discovery and requests for production and proper witnesses.
5. That the January 14, 2016 hearing for standing was also improperly scheduled at a UMC hearing by Alan Rose, despite needing an evidentiary hearing as requested by Eliot at the hearing to give testimony and have any witnesses present but which Eliot was denied opportunity for such by this Court;
6. Where Judge Phillips asked Eliot at the January 14, 2016 hearing what statute gave him standing as a named Beneficiary in the Shirley Trust document that Phillips has Ordered to be valid and when Eliot, a Pro Se litigant, did not know off the top of his head the Florida Statute giving

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<sup>7</sup> January 14, 2016 4:15 pm Alan Rose Letter to Judge Phillips  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160114%204.06pm%20ExParte%20Letter%20to%20Judge%20Phillips%20Alan%20Rose%20Proposed%20Order.pdf>

<sup>8</sup><http://15thcircuit.co.palm-beach.fl.us/documents/10179/15133/5.204.pdf>

named beneficiaries standing in a Trust case where they are named, Judge Phillips, who is supposed to know the statutes himself improperly ruled against Eliot's standing for this sole reason of his lack of knowing the statute at the hearing and based solely on the claims of Alan Rose and not on the merits after proper hearing with testimony from both sides or giving Eliot a chance to find the correct statute to preserve his standing. Judge Phillips, then quite rudely told Eliot if he did not like it to get a lawyer despite the fact that a prior motion for a Continuance of the validity trial itself was filed timely before Trial so that Texas attorney Candice Schwager could get admitted pro hac vice yet attorney Alan Rose denied Candice Schwager any such courtesy even though it was to benefit the minor children and Alan Rose has further denied Candice Schwager access to document production to further her review of the case while this Court improperly stated the motion for continuance was untimely when the statute permits it to be made even at the time of trial and where it was filed in writing before the trial.

7. That Florida Statutes 733.707, 736.0103, 731.201 (2)(4)(9)(11)(20) and (23) give Eliot standing as a Beneficiary, Heir and Interested Person and Trustee of the Eliot Bernstein Family Trust in this case and the Simon Estate, the Simon Trust and the Shirley Estate.
8. That for instance in the Shirley Trust case addressed herein, Eliot and his two sisters are the beneficiaries of Shirley's Trust at the time it become irrevocable with a defined class of beneficiaries in stone upon her death, as stated in the trust;

ARTICLE II. AFTER MY DEATH - E. Disposition of Trusts Upon Death of Survivor of My Spouse and Me.

2. Disposition of Balance. Any parts of the Marital Trust and the Family Trust my spouse does not or cannot effectively appoint (including any additions upon my spouse's death), or all of the Family Trust if my spouse did not survive me, shall be divided among and **held in separate Trusts for my lineal descendants then living, per stirpes [emphasis added]**. Any assets allocated under this Subparagraph 11.D. to my children (**as that term is defined under this Trust [emphasis added]**), shall be distributed to the then serving Trustees of each of their respective Family Trusts, established by my spouse

as grantor on even date herewith (the "Family Trusts" which term includes any successor trust thereto), to be held and administered as provided under said Trusts. The provisions of the Family Trusts are incorporated herein by reference, and if any of the Family Trusts are not then in existence and it is necessary to accomplish the foregoing dispositions, the current Trustee of this Trust is directed to take such action to establish or reconstitute such applicable trust(s), or if the Trustee is unable to do so, said assets shall be held in separate trusts for such lineal descendants and administered as provided in Subparagraph 11.E. below. Each of my lineal descendants for whom a separate Trust is held hereunder shall hereinafter be referred to as a "beneficiary," with their separate trusts to be administered as provided in Subparagraph 11.E. below.

and

F. Trusts for Beneficiaries. The Trustee shall pay to a beneficiary the net income of such beneficiary's trust. The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the principal of such beneficiary's trust as is proper for the Welfare of such individuals. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any child of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of my lineal descendants and their spouses (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:

1. for his or her lineal descendants then living, per stirpes; or
2. if he or she leaves no lineal descendant then living, per stirpes for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living who is also a lineal descendant of my spouse.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

### ARTICLE III. GENERAL - E1 - Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "child," "children" and "lineal descendant" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the



pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person. **Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me [Emphasis Added],**

That the trust language is clear that Ted and Pamela and their lineal descendants, at the time of Shirley's death were not beneficiaries and Eliot and his two sisters Lisa and Jill are. Further, the Court should note that Ted is considered predeceased for ALL PURPOSES OF DISPOSITIONS of the Shirley Trust, which would disqualify him as a Trustee to make dispositions, including holding hearings for construction and validity or making any disbursements and thus further reason to strike the Validity Hearing on December 15, 2015 as a Sham Hearing conducted by a deceased person under the trust.

9. Similarly, at Judge Phillips' validity hearing Order on December 16, 2016, Eliot was never shown a copy of beforehand or had chance to submit comments and a counter order to Rose was also issued in violation of ADMINISTRATIVE ORDER 5.204-5/09\*<sup>9</sup>, the order issued contains rulings on issues that were not Noticed to be Heard, not Scheduled for the Trial and in fact not heard at the hearing at all, no testimony or anything from either party on the ruled on items as evidenced in the transcript and thus the December 16, 2015 Order should further be stricken as an improper Void Order and for other far more serious reasons further defined herein. That the Rose Proposed Order for the January 14, 2016 hearing feeds off the December 16, 2016 Order and for this reason the December 16, 2016 Order and the Proposed Order should be stricken.

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<sup>9</sup> Administrative Order Regarding Preparation of Order - ADMINISTRATIVE ORDER 5.204-5/09\*

10. That Eliot further stated to the Court that the hearing was improperly scheduled by Rose when he knew Eliot had filed in December a Notice of Unavailability for the month of January and further learned that he was under medical care and prescription medications<sup>10</sup> making him medically unfit during the time of the January 14, 2016 hearing and again, using sharp practice unbecoming of an Attorney at Law, Rose scheduled the hearing and would not withdraw it despite knowing Eliot was not well and was still seeking to have counsel admitted to protect the children.
11. Eliot stated on the record that he was medically unfit and on heavy medications for any hearing that day and yet Judge Phillips ignored the request to postpone and schedule a proper evidentiary hearing to determine standing and rushed to rule without even having proper testimony on any of the items in Rose's Proposed Order.
12. That having declared in a September 15, 2015 hearing "love"<sup>11</sup> for Judge Colin and pre-judging that he would not question Colin's actions that have been called into question and alleged as Fraud by the Court and that he would not find that Colin did something wrong, wholly prejudiced Eliot's position and denies him fundamental due process rights.
13. Having further reviewed the Record of the Cases having determined that an outstanding Order by Judge Colin for Production<sup>12</sup> against prior fiduciaries Tescher & Spallina was never performed or complied with fundamentally prejudicing a proper validity Trial. In fact it was learned at the December 15, 2015 trial that NONE of the Original Dispositive Documents were available for inspection at the hearing and that Trustee Ted Bernstein claimed under oath he had

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<sup>10</sup> Dr. Ronik Seecharan Letter

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160114%20Seecharan%20Letter%20Regarding%20procedure.pdf>

<sup>11</sup> September 15, 2015 Hearing Transcript Page 27 Lines 14-25 and Page 28 Lines 1-6

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

<sup>12</sup> February 18, 2014 Order to Turn Over 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>

never seen the original trust he operates under nor took any steps to validate the documents in light of the fact that his prior counsel SPALLINA had admittedly fraudulently created a Shirley Trust document at the December 15, 2015 hearing he testified at as to the validity of the documents he admitted fraud in creating and then sent the fraudulent trust via mail to Attorney at Law Christine Yates representing Eliot's minor children and finally it was learned at the hearing that Tescher and Spallina had violated the Colin Court Order to turn over their records in entirety and still possessed Original dispositive documents;

14. That the totality of the related cases should have determined this case to be a "complex" case and the case management conference should have been conducted properly as such, again such deprivation of rights severely prejudiced the outcome;
15. That proper pre-trial procedures thus were not followed and must be corrected in furtherance of justice;
16. That missing necessary witnesses and missing discovery were existent at the time of the validity trial including but not limited to witnesses Notary Publics who signed documents, Kimberly Moran and Lindsay Baxley (where Governor Rick Scott's Notary Public Division has already prosecuted in conjunction with the Palm Beach County Sheriff Moran for fraudulent notarization in these matters and Lindsay Baxley aka Lindsay Giles was also found to have improperly notarized a Will and Amended Trust of Simon) and Witnesses to the Execution of the alleged documents, Traci Kratish, Esq., Diana Banks, Rachel Walker and a John Doe signor, as well as, other witnesses William Stansbury and Donald Tescher, Esq. thus necessitating a new Trial after proper pre-trial proceedings are completed and a Case-Management Conference for a "complex" case is held before a non-conflicted and non-adverse judge;

17. That the circumstances of Judge Colin's handling of the case and specifically, including but not limited to, hearings held on Sept. 13, 2013<sup>13</sup> whereupon alleged Trustee Ted Bernstein appeared on the record claiming his fiduciary status as fiduciary for the Estate at a time he had not yet been appointed, a year after Simon's death at the time of the hearing, yet remaining silent as to various Frauds upon the Court admitted by his counsel, including an April 9, 2012 Petition for Discharge<sup>14</sup> claiming all beneficiaries had properly waived their interests and rights and Simon was in possession of them on that date. Ted Bernstein having known this to be false, as he did not complete his own Waiver until August 01, 2012 and therefore knew this statement that Simon had the completed Waivers in April 2012 to be false and further fraudulent actions involving the fiduciaries Tescher and Spallina who were acting as Simon's counsel at the time of the alleged signing and Ted's counsel when it was finally delivered to the Court as if Simon were delivering it alive Post Mortem months after his death while still acting as PR.
18. For clarification of this complex Post Mortem scheme, it should be noted that when Simon died, Ted was NOT appointed Successor PR by the Court while he maintained to the family on the day Simon died that he was acting as PR and acted as such and yet Ted was not appointed by Colin and issued Letters until October 13, 2013 after the hearing September 13, 2013 hearing that Colin threatened to read him Miranda's, leading to a series of bad rulings of Colin's that were designed to protect rather than have prosecuted those officers of his court involved in these frauds on the Court and the Beneficiaries. Yet, Ted's counsel Tescher and Spallina never filed for Letters for Ted when Simon died and instead they (Ted and his counsel Tescher and Spallina)

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<sup>13</sup> September 13, 2013 Colin Hearing - Mirand Warnings and more  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spallina%20Tescher%20Ted%20Manceri.pdf>

<sup>14</sup> April 09, 2012 Alleged Simon Full Discharge Waiver Deposited by him with the Court after he passed away.  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120409%20Petition%20for%20Discharge%20Full%20Waiver%20Shirley%20SIGNED%2020120409%20NOT%20FILED%20UNTIL%2020121024.pdf>

all choose to use Simon as PR for months after he died to file fraudulently filed documents and in some instance forged and fraudulently notarized for Simon Post Mortem, all these criminal acts committed as part of a complex legal scam to create the appearance that Simon closed his wife's estate properly before he died and made changes to Beneficiaries and Fiduciaries and documents prior to his own death.

19. Ted introduced his friends Tescher and Spallina to his father to do estate planning so as that Ted could get business in return from them.
20. Spallina and Tescher, Ted's close business associates that he retained as his counsel to represent him as Personal Representative and Trustee and Ted Bernstein further sat idly by as he learned that his mother's estate was closed by his deceased father acting as PR at a time after his death and while Ted was claiming he was the PR (prior to Letters issued in October 2013) through a series of fraudulent acts of his counsel Spallina and Tescher and the totality of the circumstances indicating Judge Colin is a necessary and material fact witness as Eliot Bernstein attempted to inform this Court on July 30, 2015 and Sept. 15, 2015 and at Trial Dec. 15th, 2015 and further by opposition herein;
21. That Judge Colin having issued prior Orders denying Ted Bernstein's motions to deny Eliot's Standings and that Eliot Bernstein has standing in all cases before this Court until proper hearings and trial determine otherwise;
22. Eliot Bernstein was sued individually in this action and Eliot has filed a counter complaint that also gives him individual standing. Eliot is also the alleged Trustee of his children's trusts, trusts that to this day he still has not been given a copy of. Eliot is also a beneficiary of the Simon Estate, the Shirley Bernstein Trust and the Shirley Bernstein Estate. Eliot also is alleged to be a beneficiary of Simon's Trust, as Simon's 2012 Amended Trust, allegedly done days before his

death, was improperly constructed, leaving Eliot still a beneficiary. Eliot is an interested party individually in all cases.

23. That a continuance should have been granted for Eliot Bernstein for all hearings to determine if his minor children's counsel Candice Schwager could be admitted pro hac vice or otherwise be afforded additional time to retain counsel of his choosing as the minor children have not been represented at any hearings, despite Rose's own contention that the children need independent counsel and where the Court should demand deposit of adequate funds from the Trusts or from the parties responsible for the need for counsel, Tescher and Spallina, into a proper account for no less than \$100,000.00 for immediate retention of counsel for the minors, thereby negating any need for guardians (who would then need to get counsel and so a guardian would only add additional expenses);
24. Hampering this effort to retain counsel for the minor children is Rose and his client Ted, as alleged Successor Trustee, refusal to turn over records to counsel Schwager<sup>15</sup> acting on behalf of Eliot and his minor children whom she is retained to represent but cannot enter the cases until she is approved Pro Hac Vice, a determination she will be making after getting the necessary case files from the fiduciaries. Currently, efforts underway to provide Eliot and his children with local counsel for Schwager have proved unsuccessful and perhaps that is because Eliot has exposed Fraud on the Court and alleges Fraud by the Court and several South Florida lawyers and judges involved, leading to a blackballing effect whereby many contacted will not even return calls after learning of who is involved in the case and many are already aware and instantly refuse.

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<sup>15</sup> Rose Letter Refusing to turn over documents to Attorney at Law Candice Schwager  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160106%20Rose%20Denying%20to%20talk%20or%20give%20information%20to%20Attorney%20Schwager.pdf>

25. The refusal to turn over documents by fiduciaries including Ted Bernstein have plagued this case from the start and continue to this day and in fact are what forced Eliot to seek counsel and Court relief to get documents statutorily owed to him in the first place as he and his children were denied dispositive documents for months after the death of his father and years after the death of his mother by Ted, Spallina, Tescher and others. Production requests are still outstanding and unheard by the Court, including records of the Court in toto due to the Fraud on the Court, which requires now discovery.
26. That no construction hearings have been held on the Wills, Trusts and instruments herein and / or not fully and fairly heard to determine beneficiaries, standing, valid trustees (where the PR of Simon's Estate Brian O'Connell has asserted an affirmative defense to the complaint in the Shirley Trust Construction case that Ted is NOT A VALID trustee serving in the Simon Trust under the terms of the trust<sup>16</sup> and if true would call for a rehearing of the validity hearing entirely with a new legally proper Trustee who is valid, not conflicted and not adverse to Beneficiaries as Ted is;
27. That hearings should be held on the removal of Ted Bernstein instantly by this Court from all fiduciary capacities PRIOR TO ANY ACTIONS involving Ted proceeding further and as the referenced September 13, 2013 hearing transcript footnoted herein already shows, Judge Colin had at that time of the first hearing in September 13, 2013 enough evidence involving TWO criminal acts learned and admitted to in the hearing involving Fraud on the Court and Fraud on the Beneficiaries, to state that he had enough evidence at that moment to read Ted and his counsel Spallina, Tescher (who did not appear but was represented) and Manceri their Miranda

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<sup>16</sup> Brian O'Connell pleading Ted is NOT A VALID Trustee Under Simon L Bernstein Amended and Restated Trust, Page 7  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150217%20Answer%20%20Affirmative%20Defenses%20O'Connell%20States%20Ted%20is%20NOT%20VALID%20TRUSTEE.pdf>

Warnings, twice, yet no action has since been taken by Colin or the Phillips Court to remedy such actions that leave Ted and his counsel with “unclean hands” and involvement in criminal activities;

28. That the present motions of Ted Bernstein and Alan Rose should be stayed indefinitely;
29. That this Court having given reason to Eliot Bernstein that he would not receive a fair trial and having not received fair trials based upon the findings herein should now for this reason and others stated in two disqualification petitions filed against Judge Phillips, voluntarily mandatorily Disqualify from these proceedings.
30. Further, Judge Phillips is also now a necessary material and fact witness to the improper Post Recusal steering of the cases by Judge Colin to his Court, first to Judge Coates, a former Proskauer Rose Partner and where Proskauer is Counter Defendant in this action and also Coates formerly was retained by Eliot’s Iviewit technology companies at the heart of the estate and trust matters, yet Coates took the cases and files and concealed in Court in this case his prior involvement with Eliot and Simon Bernstein’s companies when he was a Proskauer Partner and held a hearing where he then Sua Sponte recused himself (after getting all the court’s confidential and non published records sent to him) and then passed the cases to Judge Phillips, the alleged intended target all along of Colin’s improper Post Recusal steering as cited in the disqualification motions filed<sup>17</sup> and <sup>18</sup> and thus Phillips should also instantly disqualify and void

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<sup>17</sup> December 04, 2015 First Disqualification of Phillips  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20SIGNED%20NOTARIZED%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.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>

<sup>18</sup> December 28, 2015 Second Disqualification of Phillips

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151228%20FINAL%20SIGNED%20NOTARIZED>



his orders as required by Judicial Canons as he will soon be subpoenaed for deposition and as a witness to relevant matters about the case steering, for his acts outside the color of law in taking this case while knowing of his witness status, if not made a defendant in any further proceedings, state and federal, for continued Fraud by the Court and aiding and abetting and more.

31. That Judge Phillips knowing he is a material and fact witness and now potential defendant of charges of Fraud By the Court in these cases has an adverse interest to Eliot, his wife and their minor children that reflect in his intent to deprive Eliot and his three minor children and lovely wife of their fundamental due process rights.
32. Phillips has threatened Eliot and his wife Candice repeatedly with contempt for nothing other than to create false record, while at the December 15, 2015 hearing an attorney at law, Spallina and an officer the court commits and admits Fraud on the Court, Fraud on the Beneficiaries, Mail Fraud and more, yet at the same hearing Phillips is too busy threatening Candice and then removing her from participating and forcing her from the bench with Eliot as the records of the hearings reflect and simultaneously doing nothing when Spallina admits criminal misconduct in the proceedings directly involving the cases before him. This adverse interest and conflict with Eliot is because Eliot has accused Phillips, Judge Colin and Judge Coates of being part of the improper Post Recusal steering by Colin and transfer of the cases by Colin (who recused 1 day after denying a disqualification motion that alleged **FRAUD BY THE COURT OF COLIN**). Judge Phillips rude and threatening behaviors reflected in the transcripts of the hearings appear entirely in retaliation and to suppress Eliot's rights to fair hearings and Eliot fears that he and his children have not and cannot receive due process in the Phillips court.

33. The Proposed Order of Rose now attempts to remove Eliot's standing and his prior pleadings filed on behalf of himself and as Guardian of his minor children and remove his standing in the matters through this improper proposed Order without due process and in violation of Administrative Orders. The Order Rose has prepared for Phillips to sign does not accurately reflect the truth of the proceedings and is designed to remove Eliot's rights to his inheritancy through further denial of due process and procedure, even moving the court to attempt Gag Orders on Eliot and to suppress distribution of the December 15, 2016 hearing that exposes new frauds on the court and more.

34. That the Court should take **JUDICIAL NOTICE** and REPORT THE FOLLOWING CRIMINAL MISCONDUCT AND NEW FRAUD ON THE COURT INFORMATION ADMITTED TO BEFORE JUDGE PHILLIPS UNDER OATH BY SPALLINA, the sole witness to the validity hearing before Judge Phillips, who in the hearing violated his signed SEC consent Order for criminal conduct involving insider trading and admitted to new crimes under oath, including Fraud on the Court, Fraud on Beneficiaries, Mail Fraud and more in the December 15, 2016 hearing. **Spallina Perjured his testimony about not having pled to felony or misdemeanor charges as the SEC Order shows he plead to criminal conduct thus mandating it be either felony or misdemeanor criminal conduct.**

35. The following information is cause for impeachment of Spallina's testimony made with "unclean hands" and voiding of the validity hearings ruling due to the criminal conduct learned and committed in the Court on December 15, 2015 by Spallina, a court appointed officer of the court and a court appointed fiduciary in these matters. Therefore, immediate actions should be taken by the Court to notify proper authorities, including but not limited to, the SEC of the violation of his Consent Order that Spallina signed as evidenced in the referenced herein Consent Order, the

FBI regarding the newly admitted Mail Fraud, the Sheriff department regarding the newly admitted Fraud on the Court, Fraud on Beneficiaries and their counsel and the misuse of a deceased person's identity to close another deceased person's estate (now fully admitted), the Inspector General of the Courts due to the Fraud on the Court and alleged Fraud by the Court, the Chief Judge and where the Court is the scene of fresh new crimes of continued Fraud on the Court in these matters, this Court should disqualify itself entirely from the matters as it appears that one cannot investigate oneself or one's court and judicial friends and loves without a MASSIVE APPEARANCE OF IMPROPRIETY;

- a. On or about September 28, 2015, the SEC out of Washington, DC publicly announced Insider Trading and related charges in a separate action against Florida attorneys and Third-Party Defendants herein SPALLINA and TESCHER. That SPALLINA pled guilty of criminal misconduct and the SEC Consent signed by SPALLINA states,  
  
“2. Defendant 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”).”<sup>19</sup>
- b. December 15, 2015 hearing under sworn oath as a witness in a Validity Hearing before Judge PHILLIPS, SPALLINA stated the following from the hearing transcript Page 93 Lines 14-22<sup>20</sup>;

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<sup>19</sup> September 28, 2015 SEC Government Complaint filed against TESCHER and SPALLINA @ <http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf>

<sup>20</sup> December 15, 2015 PHILLIPS VALIDITY HEARING TRANSCRIPT <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20Hearing%20Transcript%20Phillips%20Validity%20Hearing.pdf>

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.  
18. . . . . THE COURT: Okay. Next question.  
19. BY MR. BERNSTEIN:  
20. . . . Q. Have you pled guilty to a misdemeanor?  
21. . . . A. **I have not. [emphasis added]**  
22. . . . Q. Were you involved in a insider trading case?  
23. . . . . MR. ROSE: Objection. Relevance.  
24. . . . . THE COURT: Sustained. Next question.

c. 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...”

d. SPALLINA further states under sworn testimony at the Validity Hearing regarding the trust documents he created being valid admits to fraudulently altering a Shirley Trust Document and sending to Attorney at Law Christine Yates, Esq. representing the minor children of Eliot via the mail, Page 95 Lines 14-25 and Page 96 Line 1-19,

14. . . . Q. Mr. Spallina, have you been in discussion with  
15. the Palm Beach County Sheriff's Office regarding the

16· ·Bernstein matters?  
17· ······MR. ROSE:· Objection.· Relevance.  
18· ······THE COURT:· Overruled.  
19· ······You can answer that.  
20· ······THE WITNESS:· Yes, I have.  
21· ·BY MR. BERNSTEIN:  
22· ··· Q.· ·And did you state to them that you  
23· ·fraudulently altered a Shirley trust document and then  
24· ·sent it through the mail to Christine Yates?  
25· ··· A.· ·Yes, I did.  
·1· ··· Q.· ·Have you been charged with that by the Palm  
·2· ·Beach County Sheriff yet?  
·3· ··· A.· ·No, I have not.  
·4· ··· Q.· ·Okay.· How many times were you interviewed by  
·5· ·the Palm Beach County Sheriff?  
·6· ······MR. ROSE:· Objection.· Relevance.  
·7· ······THE COURT:· Sustained.  
8· ·BY MR. BERNSTEIN:  
·9· ··· Q.· ·Did you mail a fraudulently signed document to  
10· ·Christine Yates, the attorney for Eliot Bernstein's  
11· ·minor children?  
12· ······MR. ROSE:· Objection.· Relevance.  
13· ······THE COURT:· Overruled.  
14· ······THE WITNESS:· Yes.  
15· ·BY MR. BERNSTEIN:  
16· ··· Q.· ·And when did you acknowledge that to the  
17· ·courts or anybody else?· When's the first time you came  
18· ·about and acknowledged that you had committed a fraud?  
19· ··· A.· ·**I don't know that I did do that [emphasis added].**

e. SPALLINA then perjures himself in self contradiction when he tries to claim that his law firm did not mail Fraudulent documents to the court and commits here further FRAUD ON THE COURT when he then slips up and admits that his legal assistant and notary public Kimberly Moran, already prosecuted in these matters for fraudulent notarization and who has admitted forgery of six persons in these matters then sent the fraudulent documents back to the court when he states;

10· ·BY MR. BERNSTEIN:  
11· ··· Q.· ·And what was she convicted for?  
12· ··· A.· ·She had notarized the waiver releases of  
13· ·accounting that you and your siblings had previously  
14· ·provided, and we filed those with the court.

15 · · · · Q · · We filed those with the court.  
16 · · · · · Your law firm submitted fraudulent documents  
17 · · to the court?  
18 · · · · A · · No · We filed -- we filed your original  
19 · · documents with the court that were not notarized, and  
20 · · the court had sent them back.  
21 · · · · Q · · And then what happened?  
22 · · · · A · · And then Kimberly forged the signatures and  
23 · · notarized those signatures and sent them back.

- f. That not only does SPALLINA admit to Felony criminal acts that have not yet been investigated but admits that his office members are also involved in proven Fraudulent Creation of a Shirley Trust and where MORAN has already admitted six counts of forgery for six separate parties (including for a deceased Simon and for Eliot) and fraudulent notarizations of such documents when Spallina states in the hearing Pages 102-103,

102

20 · · · · · MR. BERNSTEIN: · Sure.  
21 · · BY MR. BERNSTEIN:  
22 · · · · Q · · You've testified here about Kimberly Moran.  
23 · · · · · Can you describe your relationship with her?  
24 · · · · A · · She's been our long-time assistant in the  
25 · · office.

103

· 1 · · · · Q · · Was she convicted of felony fraudulent  
· 2 · · notarization in the Estate of Shirley Bernstein?  
· 3 · · · · · MR. ROSE: · Objection · Relevance.  
· 4 · · · · · THE COURT: · Overruled.  
· 5 · · · · · You're asking if she was convicted of a felony  
· 6 · · · · with respect to the Estate of Shirley Bernstein?  
· 7 · · · · · You can answer the question.  
· 8 · · · · · MR. BERNSTEIN: · Correct.  
· 9 · · · · · THE WITNESS: · I believe she was.

- g. SPALLINA then claims that it is “standard operating procedure” for he and his clients to sign sworn Final Waivers under penalty of perjury with knowingly and irrefutably false statements and admitting that the April 09, 2012 Full Waiver

(already referenced and linked herein) submitted to this Court by Spallina's law firm in October of 2012 by Simon Bernstein, at a time after his death on September 13, 2012 and yet still acting as the Personal Representative, signed under penalty of perjury allegedly by Simon Bernstein and witnessed by Spallina, contained knowingly false statements . Then SPALLINA had a deceased Simon file that alleged sworn document with the Court as Personal Representative on a date after his death as part of a Fraud on the Court and Fraud on the Beneficiaries and Interested Parties. SPALLINA states in testimony as follows,

Pages 108-110

17 · · · · Q · · Okay · Are you aware of an April 9th full  
18 · waiver that was allegedly signed by Simon and you?  
19 · · · · A · · Yeah · That was the waiver that he had signed.  
20 · And then in the May meeting, we discussed the five of  
21 · you, all the children, getting back the waivers of the  
22 · accountings.  
23 · · · · Q · · Okay · And in that April 9th full waiver you  
24 · used to close my mother's estate, does Simon state that  
25 · he has all the waivers from all of the parties?  
·1 · · · · A · · He does · We sent out -- he signed that, and  
·2 · we sent out the waivers to all of you.  
·3 · · · · Q · · Okay · So on April 9th of 2012, Simon signed,  
·4 · with your presence, because your signature's on the  
·5 · document, a document stating he had all the waivers in  
·6 · his possession from all of his children.  
·7 · · · · · Had you sent the waivers out yet as of  
·8 · April 9th?

...

20 · BY MR. BERNSTEIN:

21 · · · · Q · · April 9th, 2012, you have a signed full waiver  
22 · of Simon's that says that he is in possession of all of  
23 · the signed waivers of all of the parties?  
24 · · · · A · · Standard operating procedure, to have him  
25 · sign, and then to send out the documents to the kids.

·..

·1 · · · · Q · · Was Simon in possession -- because it's a  
·2 · sworn statement of Simon saying, I have possession of  
·3 · these waivers of my children on today, April 9th,  
·4 · correct, the day you two signed that?

·5· . . . . . Okay. So if you hadn't sent out the waivers  
·6· yet to the --  
·7· . . . A. I'm not certain when the waivers were sent  
·8· out.  
·9· . . . Q. Were they sent out after the --  
10· . . . A. I did not send them out.  
11· . . . Q. Okay. More importantly, when did you receive  
12· those? Was it before April 9th or on April 9th?  
13· . . . A. We didn't receive the first one until May.  
14· And it was your waiver that we received.  
15· . . . Q. So how did you allow Simon, as his attorney,  
16· to sign a sworn statement saying he had possession of  
17· all of the waivers in April if you didn't get mine 'til  
18· May?  
19· . . . . MR. ROSE: Objection. I think it's relevance  
20· . . . and cumulative. He's already answered.  
21· . . . . THE COURT: What's the relevance?  
22· . . . . MR. BERNSTEIN: Oh, this is very relevant.  
23· . . . . THE COURT: What is the relevance on the issue  
24· . . . that I have to rule on today?  
25· . . . . MR. BERNSTEIN: On the validity? Well, it's  
1· . . . relevant. If any of these documents are relevant,  
·2· . . . this is important if it's a fraud.  
·3· . . . . THE COURT: I'll sustain the objection.  
·4· . . . . MR. BERNSTEIN: Okay. Can I -- okay.  
·5· BY MR. BERNSTEIN:  
·6· . . . Q. When did you get -- did you get back prior to  
·7· Simon's death all the waivers from all the children?  
·8· . . . A. No, we did not.  
·9· . . . Q. So in Simon's April 9th document where he  
10· says, he, Simon, on April 9th has all the waivers from  
11· his children while he's alive, and you didn't even get  
12· one 'til after he passed from one of his children, how  
13· could that be a true statement?  
14· . . . . MR. ROSE: Objection. Relevance. Cumulative.  
15· . . . . THE COURT: Sustained.

h. Finally, SPALLINA also perjures himself under sworn oath at the hearing when testifying to the status of his Florida Bar license, which at this time he is listed as



“Not Eligible to Practice Law in Florida”<sup>21</sup> when he states in the December 15, 2015 hearing,

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7· ·BY MR. BERNSTEIN:

8· ··· Q· ·Mr. Spallina, you were called today to provide  
9· ·some expert testimony, correct, on the --

10· ··· A· ·No, I was not.

11· ··· Q· ·Oh, okay. · You're just going based on your  
12· ·doing the work as Simon Bernstein's attorney and Shirley  
13· ·Bernstein's attorney?

14· ··· A· ·Yes.

15· ··· Q· ·Okay. · Are you still an attorney today?

16· ··· A· ·I am not practicing.

17· ··· Q· ·Can you give us the circumstances regarding  
18· ·that?

19· ··· A· ·I withdrew from my firm.

Pages 120-121

19· ·BY MR. BERNSTEIN:

20· ··· Q· ·Did you -- are you a member of the Florida  
21· ·Bar?

22· ··· A· ·Yes, I am.

23· ··· Q· ·Currently?

24· ··· A· ·Yes, I am.

25· ··· Q· ·Okay. · You said before you surrendered your  
·1· ·license.

·2· ··· A· ·I said I withdrew from my firm. · It wasn't  
·3· ·that I was not practicing.

- i. Spallina further Perjures his testimony when asked if the Fraudulent Shirley Trust he created by Post Mortem fraudulently altering a Shirley Amendment and disseminated through the mail attempted to change the beneficiaries of the Shirley Trust and he answered no. Yet, the following analysis shows different;

22· ·BY MR. BERNSTEIN:

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<sup>21</sup> [https://www.floridabar.org/wps/portal/flbar/home/attysearch/mprofile!/ut/p/a1/jc\\_LDolwEAXQT-ptthRaWo6mkRazxgdCNYUWaKLowfr\\_42LioOrtJzs3cYZ41zA\\_dLftdNZyH7vjYvTxACM3dBrawxEHIOI3ZqgSEHEE7qimxJMMNktoDIOr2qqtF7RM\\_8sjMoRf-T3zn8RJNQO5BXKtp0AxeYNIRTj-HTx\\_eJ2II7ycdg2C6e8\\_WXgh/dl5/d5/L2dBISEvZ0FBIS9nQSEh/?mid=497381](https://www.floridabar.org/wps/portal/flbar/home/attysearch/mprofile!/ut/p/a1/jc_LDolwEAXQT-ptthRaWo6mkRazxgdCNYUWaKLowfr_42LioOrtJzs3cYZ41zA_dLftdNZyH7vjYvTxACM3dBrawxEHIOI3ZqgSEHEE7qimxJMMNktoDIOr2qqtF7RM_8sjMoRf-T3zn8RJNQO5BXKtp0AxeYNIRTj-HTx_eJ2II7ycdg2C6e8_WXgh/dl5/d5/L2dBISEvZ0FBIS9nQSEh/?mid=497381)

23. . . . Q. Did the fraudulently altered document change  
24. the beneficiaries that were listed in Shirley's trust?  
25. . . . A. **They did not [emphasis added].**

Now comparing the language in the two documents the Court can see that this statement is wholly untrue. From the alleged Shirley Trust document,

“Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM"), **and their respective lineal descendants [emphasis added]** shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL !ANTONI and LISA S. FRIEDSTEIN, and their lineal descendants all predecease the survivor of my spouse and me, then TED and PAM, and their respective lineal descendants shall not be deemed to have predeceased me and shall be eligible beneficiaries for purposes of the dispositions made hereunder.”<sup>22</sup>

Then the language from the fraudulent amendment states;

2. I hereby amend the last sentence of Paragraph E. of Article III. to read as follows:

"Notwithstanding the foregoing, as my spouse and I have adequately provided for them during our lifetimes, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM '), shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their respective lineal descendants all predecease the survivor of my spouse and me, then TED and PAM shall not be deemed to have predeceased the survivor of my spouse and me and shall become eligible beneficiaries for purposes of the dispositions made hereunder."

Clearly the fraudulent amendment attempts to remove from the predeceased language regarding TED and PAMELA’s lineal descendants from being excluded by removing them from the original trust language as being considered predeceased and thus change the beneficiaries of the Shirley Trust. In fact, adding Ted and Pam’s lineal descendants back into the trust would give them a chance to convert improperly %40 of the value to their families from %0.

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<sup>22</sup> Shirley Trust Page 7

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/Shirley%20Trust%20plus%20fraudulent%20amendment%202.pdf>

This perjury by Spallina, acting already with proven unclean hands and admitted to crimes in the Estates and Trusts of Simon and Shirley Bernstein changed the outcome of the validity hearing adding cause for a rehearing and voiding the Order that resulted, which were already void and of no effect since Judge Phillips should have already voluntarily mandatorily disqualified himself from the proceedings prior to holding any hearings.

36. That as for Ted being qualified as a fiduciary, the following passage from the December 15, 2015 hearing that Ted called for to prove the validity of the dispositive documents after his former counsel admitted criminal activities shows that Ted, who used this disgraced attorney Spallina as his star and only witness to validate the documents, did nothing to validate the documents himself as Trustee to protect the beneficiaries harmed by his former counsels actions, his friend and business associate when he states, under oath,

Page 206-210

25 · · · · Q · · Okay · Ted, you were made aware of Robert  
1 · Spallina's fraudulent alteration of a trust document of  
2 · your mother's when?  
3 · · · · A · I believe that was in the early 2013 or '14.  
4 · · · · Q · Okay · And when you found out, you were the  
5 · fiduciary of Shirley's trust, allegedly?  
6 · · · · A · I'm not sure I understand the question.  
7 · · · · Q · When you found out that there was a fraudulent  
8 · alteration [sic] of a trust document, were you the  
9 · fiduciary in charge of Shirley's trust?  
10 · · · · A · I was trustee, yes · I am trustee, yes.  
11 · · · · Q · And your attorneys, Tescher and Spallina, and  
12 · their law firm are the one who committed that fraud,  
13 · correct, who altered that document?  
14 · · · · A · That's what's been admitted to by them,  
15 · correct.  
16 · · · · Q · Okay · So you became aware that your counsel  
17 · that you retained as trustee had committed a fraud,  
18 · correct?  
19 · · · · A · Correct.  
20 · · · · Q · What did you do immediately after that?  
21 · · · · A · The same day that I found out, I contacted

22· ·counsel· I met with counsel on that very day· I met  
23· ·with counsel the next day· I met with counsel the day  
24· ·after that.

25· ···· Q· ·Which counsel?

·1· ···· A· ·Alan Rose.

···

P 209-210

24· ·BY MR. BERNSTEIN:

25· ···· Q· ·Have you seen the original will and trust of  
·1· ·your mother's?

·2· ···· A· ·Can you define original for me?

·3· ···· Q· ·The original.

·4· ···· A· ·The one that's filed in the court?

·5· ···· Q· ·Original will or the trust.

·6· ···· A· ·I've seen copies of the trusts.

·7· ···· Q· ·Have you done anything to have any of the

·8· ·documents authenticated since learning that your

·9· ·attorneys had committed fraud in altering dispositive

10· ·documents that you were in custody of?

11· ······ MR. ROSE:· Objection· Relevance.

12· ······ THE COURT:· Overruled.

13· ······ THE WITNESS:· I have not.

14· ·BY MR. BERNSTEIN:

15· ···· Q· ·So you as the trustee have taken no steps to

16· ·validate these documents; is that correct?

17· ···· A· ·Correct.

37. Finally, as reported by the Palm Beach Post<sup>23</sup> and others in an evolving story of

Probate/Guardian abuse emanating from Florida's courts, similar to the bank and mortgage frauds that found judges and lawyers fraudulently conveying properties through "robosigning" aka bank fraud, forgery and more, Florida's Judges are coming under fire for their bizarre behaviors of probate/guardianship abuses and basically grave robbing Florida's elderly as has been evidenced herein, where dead person's identities are used to commit Fraud on the Court and when discovered covered up by further Fraud by the Court in conjunction with the lawyers and guardians and judges.

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<sup>23</sup> <http://www.mypalmbeachpost.com/guardianships-elizabeth-savitt/>  
and  
<http://aaapg.net/florida-the-judges-wife-a-frequent-court-appointed-guardian/>

WHEREFORE, the proposed Order of Ted Bernstein is Objected to herein and an Alternate Order submitted.

Dated: February 9, 2016 □

**/s/Eliot Ivan Bernstein**

Eliot Ivan Bernstein  
2753 NW 34th St  
Boca Raton, FL 33434  
561-245-8588  
iviewit@iviewit.tv

**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 9th day of February, 2016.

**/s/Eliot Ivan Bernstein**

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON;  
PAMELA B. SIMON, Individually and as Trustee  
f/b/o Molly Simon under the Simon L. Bernstein Trust  
Dtd 9/13/12; ELIOT BERNSTEIN, individually, as  
Trustee f/b/o D.B., Ja. B. and Jo. B. under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on behalf  
of his minor children D.B., Ja. B. and Jo. B.;  
JILL IANTONI, Individually, as Trustee f/b/o J.I.  
under the Simon L. Bernstein Trust Dtd 9/13/12,  
and on behalf of her Minor child J.I.;  
MAX FRIEDSTEIN; LISA FRIEDSTEIN, Individually,  
as Trustee f/b/o Max Friedstein and C.F., under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on behalf  
of her minor child, C.F.,

Defendants.

**ALTERNATE ORDER**

THIS CAUSE came before the Court for hearing on January 14, 2016 on Successor Trustee Ted Bernstein and Alan Rose's Motion for Appointment of a Guardian Ad Litem to Represent the Interests of Eliot Bernstein's Children and other relief, and Eliot I. Bernstein having filed Opposition and appeared in Opposition. The Court, having considered the record, heard argument of counsel and the parties and having reconsidered the record and being otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:



1. Strike the Proposed Order of Alan B. Rose and Ted Bernstein in entirety;
2. That Florida Statutes 733.707, 736.0103, 731.201 (2)(4)(9)(11)(20) and (23) give Eliot standing as a Beneficiary, Heir and Interested Person and Trustee of the Eliot Bernstein Family Trust in this case and the Simon Estate, the Simon Trust and the Shirley Estate.
3. That there was no Construction Hearing held, Noticed or Scheduled;
4. That proper pre-trial procedures thus were not followed and must be corrected in furtherance of justice;
5. That the present motions of Ted Bernstein and Alan Rose are stayed indefinitely;
6. Judge Phillips mandatorily disqualify himself and void ALL orders for all the reasons stated in the disqualifications and for newly discovered factual admissions of fraud on the court learned at the December 15, 2015 hearing and further fraud on the court continued through perjured statements made under oath in testimony by a former officer of the court and former fiduciary constituting perjury, obstruction and more;
7. Instantly report new Admissions before this Court and perjurious statements made in the December 15, 2016 validity hearing by attorney at law, former officer of the court and former fiduciary in the Simon Bernstein Estate and Trust, Robert Spallina's admissions of his newly admitted Fraud on the Court, Fraud on Beneficiaries, Mail Fraud and Violations of his signed SEC Consent Order for Securities Fraud and Insider Trading to all the proper authorities, including but not limited to, the Inspector General of the Courts, the Chief Judge of 15th Judicial,
8. That the new Court demand deposit of adequate funds from the Trusts or from bonding of the responsible parties for causing the need for counsel into a proper account for no less than \$100,000.00 for immediate retention of counsel of Eliot's choosing for the minor

children as they have not been represented at hearings despite their standing as alleged beneficiaries and despite the fact that the conflict arises due to the fraud on the court by the prior fiduciaries and their counsel as proven already and or provide leave to Eliot Bernstein to re-apply immediately for funds for Counsel upon a new Judge presiding.

DONE and ORDERED in Chambers, North County Courthouse in Palm Beach Gardens, Florida, on this \_\_\_th day of February, 2016.

---

HONORABLE JOHN L. PHILLIPS  
Circuit Court Judge

Copies to: Attached Service List

**SERVICE LIST**

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

**Objections to Proposed Order of Alan  
Rose / Ted Bernstein**

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON;  
PAMELA B. SIMON, Individually and as Trustee  
f/b/o Molly Simon under the Simon L. Bernstein Trust  
Dtd 9/13/12; ELIOT BERNSTEIN, individually, as  
Trustee f/b/o D.B., Ja. B. and Jo. B. under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on behalf  
of his minor children D.B., Ja. B. and Jo. B.;  
JILL IANTONI, Individually, as Trustee f/b/o J.I.  
under the Simon L. Bernstein Trust Dtd 9/13/12,  
and on behalf of her Minor child J.I.;  
MAX FRIEDSTEIN; LISA FRIEDSTEIN, Individually,  
as Trustee f/b/o Max Friedstein and C.F., under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on behalf  
of her minor child, C.F.,

Defendants.

---

**OBJECTIONS TO PROPOSED ORDER OF ALAN B. ROSE AND TED BERNSTEIN'S  
PROPOSED "ORDER ON PLAINTIFF'S MOTION TO MODIFY FINAL ORDER APPROVING  
SALE DATED MAY 6, 2015 AND FOR FURTHER INJUNCTIVE RELIEF" AND PROPOSED  
ALTERNATIVE ORDER**

1. I oppose all relief sought by Alan Rose and Ted Bernstein for all the reasons raised in the papers in opposition and all prior papers before Judge Phillips.

2. That Florida licensed attorney Alan Rose on behalf of Ted Bernstein misled this Court on Sept. 15, 2015<sup>1</sup> including whether all four cases had been properly Noticed<sup>2</sup> and where due to this misinformation at the case management conference a Trial was improperly set in Shirley Bernstein's Trust case in violation of Florida Civil Rules of Procedure 1.200<sup>3</sup> and in violation of due process while the PRs of the Simon Bernstein Estate Brian O'Connell and Joy Foglietta stood silent despite their office having sent the Notice for the Case Management Conference in the first instance,

4 MR. ROSE: I'm not planning on doing the  
5 whole hearing, but briefly there are,  
6 technically, four other cases that all were  
7 assigned. I think we've noticed a status  
8 conference in all four cases.

That Florida licensed attorney Alan Rose requested January 14, 2016 at 12:17pm<sup>4</sup> that Eliot Bernstein submit comments to a proposed Order from a January 14, 2016 hearing by 3pm that same day or else he would file with the Court as an unopposed Order and Eliot replied and 3:30pm<sup>5</sup> on January that he would try to get his changes to him timely on January 15th, 2016 to submit to the Court together with his proposed Order (Eliot did not know at the time that Rose was supposed to give him five days under the rules);

3. Mr. Rose in violation of ADMINISTRATIVE ORDER 5.204-5/09<sup>6</sup> then ignored said received email indicating that Eliot would send comments and a proposed order to him the next day and instead sent a letter to Judge Phillips with his proposed Order only to the Court on January 14,

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<sup>1</sup> Sept 15, 2015 Hearing Transcript

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

<sup>2</sup> August 03, 2015 Notice of Hearing Status Conference for Simon Bernstein Estate Case Only

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150803%20Notice%20of%20Hearing%20for%20Sept%2015%202015%20930am%20Case%20Management.pdf>

<sup>3</sup>Florida Rules of Civil Procedure 1.200

[http://phonl.com/fl\\_law/rules/frcp/frcp1200.htm](http://phonl.com/fl_law/rules/frcp/frcp1200.htm)

<sup>4</sup> January 14, 2016 Email Rose

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160114%20at%2012.12pm%20Alan%20Rose%20Proposed%20Order%20Email.pdf>

<sup>5</sup> January 14, 2016 Eliot Email to Rose with Dr. Report

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160114%20at%203.30pm%20Eliot%20response%20to%20Rose%20re%20Order.pdf>

<sup>6</sup><http://15thcircuit.co.palm-beach.fl.us/documents/10179/15133/5.204.pdf>

2016 at 4:15pm<sup>7</sup> without waiting for Eliot's comments and proposed order and this too in violation of Administrative Order 5.204-5/09<sup>8</sup> and further asked for an immediate ruling that day from Judge Phillips, knowing there are five days for my response and proposed order to be sent to him before seeking relief with the court as if unopposed with no counter order. This further evidences Mr. Rose's continued Sharp Practices and violation and contempt of the court decorum, efforts to obstruct due process and tortiously interfere with the fair administration of justice;

4. Florida licensed attorney Alan Rose on behalf of Ted Bernstein having further misled this Court about the status of the case and the time necessary for a proper validity Trial at the September 15, 2015 case management conference and left no time for a proper trial for the 10 witnesses called by the Trustee or for Eliot to properly cross examine witnesses available that day leaving Eliot and this Court with insufficient time for a proper trial / hearing which was improperly held without proper pre-trial procedures to determine outstanding discovery and requests for production and proper witnesses.
5. That the January 14, 2016 hearing for standing was also improperly scheduled at a UMC hearing by Alan Rose, despite needing an evidentiary hearing as requested by Eliot at the hearing to give testimony and have any witnesses present but which Eliot was denied opportunity for such by this Court;
6. Where Judge Phillips asked Eliot at the January 14, 2016 hearing what statute gave him standing as a named Beneficiary in the Shirley Trust document that Phillips has Ordered to be valid and when Eliot, a Pro Se litigant, did not know off the top of his head the Florida Statute giving

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<sup>7</sup> January 14, 2016 4:15 pm Alan Rose Letter to Judge Phillips  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160114%204.06pm%20ExParte%20Letter%20to%20Judge%20Phillips%20Alan%20Rose%20Proposed%20Order.pdf>

<sup>8</sup><http://15thcircuit.co.palm-beach.fl.us/documents/10179/15133/5.204.pdf>

named beneficiaries standing in a Trust case where they are named, Judge Phillips, who is supposed to know the statutes himself improperly ruled against Eliot's standing for this sole reason of his lack of knowing the statute at the hearing and based solely on the claims of Alan Rose and not on the merits after proper hearing with testimony from both sides or giving Eliot a chance to find the correct statute to preserve his standing. Judge Phillips, then quite rudely told Eliot if he did not like it to get a lawyer despite the fact that a prior motion for a Continuance of the validity trial itself was filed timely before Trial so that Texas attorney Candice Schwager could get admitted pro hac vice yet attorney Alan Rose denied Candice Schwager any such courtesy even though it was to benefit the minor children and Alan Rose has further denied Candice Schwager access to document production to further her review of the case while this Court improperly stated the motion for continuance was untimely when the statute permits it to be made even at the time of trial and where it was filed in writing before the trial.

7. That Florida Statutes 733.707, 736.0103, 731.201 (2)(4)(9)(11)(20) and (23) give Eliot standing as a Beneficiary, Heir and Interested Person and Trustee of the Eliot Bernstein Family Trust in this case and the Simon Estate, the Simon Trust and the Shirley Estate.
8. That for instance in the Shirley Trust case addressed herein, Eliot and his two sisters are the beneficiaries of Shirley's Trust at the time it become irrevocable with a defined class of beneficiaries in stone upon her death, as stated in the trust;

ARTICLE II. AFTER MY DEATH - E. Disposition of Trusts Upon Death of Survivor of My Spouse and Me.

2. Disposition of Balance. Any parts of the Marital Trust and the Family Trust my spouse does not or cannot effectively appoint (including any additions upon my spouse's death), or all of the Family Trust if my spouse did not survive me, shall be divided among and **held in separate Trusts for my lineal descendants then living, per stirpes [emphasis added]**. Any assets allocated under this Subparagraph 11.D. to my children (**as that term is defined under this Trust [emphasis added]**), shall be distributed to the then serving Trustees of each of their respective Family Trusts, established by my spouse



as grantor on even date herewith (the "Family Trusts" which term includes any successor trust thereto), to be held and administered as provided under said Trusts. The provisions of the Family Trusts are incorporated herein by reference, and if any of the Family Trusts are not then in existence and it is necessary to accomplish the foregoing dispositions, the current Trustee of this Trust is directed to take such action to establish or reconstitute such applicable trust(s), or if the Trustee is unable to do so, said assets shall be held in separate trusts for such lineal descendants and administered as provided in Subparagraph 11.E. below. Each of my lineal descendants for whom a separate Trust is held hereunder shall hereinafter be referred to as a "beneficiary," with their separate trusts to be administered as provided in Subparagraph 11.E. below.

and

F. Trusts for Beneficiaries. The Trustee shall pay to a beneficiary the net income of such beneficiary's trust. The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the principal of such beneficiary's trust as is proper for the Welfare of such individuals. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any child of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of my lineal descendants and their spouses (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:

1. for his or her lineal descendants then living, per stirpes; or
2. if he or she leaves no lineal descendant then living, per stirpes for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living who is also a lineal descendant of my spouse.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

ARTICLE III. GENERAL - E1 - Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "child," "children" and "lineal descendant" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the

pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person. **Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me [Emphasis Added],**

That the trust language is clear that Ted and Pamela and their lineal descendants, at the time of Shirley's death were not beneficiaries and Eliot and his two sisters Lisa and Jill are. Further, the Court should note that Ted is considered predeceased for ALL PURPOSES OF DISPOSITIONS of the Shirley Trust, which would disqualify him as a Trustee to make dispositions, including holding hearings for construction and validity or making any disbursements and thus further reason to strike the Validity Hearing on December 15, 2015 as a Sham Hearing conducted by a deceased person under the trust.

9. Similarly, at Judge Phillips' validity hearing Order on December 16, 2016, Eliot was never shown a copy of beforehand or had chance to submit comments and a counter order to Rose was also issued in violation of ADMINISTRATIVE ORDER 5.204-5/09\*<sup>9</sup>, the order issued contains rulings on issues that were not Noticed to be Heard, not Scheduled for the Trial and in fact not heard at the hearing at all, no testimony or anything from either party on the ruled on items as evidenced in the transcript and thus the December 16, 2015 Order should further be stricken as an improper Void Order and for other far more serious reasons further defined herein. That the Rose Proposed Order for the January 14, 2016 hearing feeds off the December 16, 2016 Order and for this reason the December 16, 2016 Order and the Proposed Order should be stricken.

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<sup>9</sup> Administrative Order Regarding Preparation of Order - ADMINISTRATIVE ORDER 5.204-5/09\*

10. That Eliot further stated to the Court that the hearing was improperly scheduled by Rose when he knew Eliot had filed in December a Notice of Unavailability for the month of January and further learned that he was under medical care and prescription medications<sup>10</sup> making him medically unfit during the time of the January 14, 2016 hearing and again, using sharp practice unbecoming of an Attorney at Law, Rose scheduled the hearing and would not withdraw it despite knowing Eliot was not well and was still seeking to have counsel admitted to protect the children.
11. Eliot stated on the record that he was medically unfit and on heavy medications for any hearing that day and yet Judge Phillips ignored the request to postpone and schedule a proper evidentiary hearing to determine standing and rushed to rule without even having proper testimony on any of the items in Rose's Proposed Order.
12. That having declared in a September 15, 2015 hearing "love"<sup>11</sup> for Judge Colin and pre-judging that he would not question Colin's actions that have been called into question and alleged as Fraud by the Court and that he would not find that Colin did something wrong, wholly prejudiced Eliot's position and denies him fundamental due process rights.
13. Having further reviewed the Record of the Cases having determined that an outstanding Order by Judge Colin for Production<sup>12</sup> against prior fiduciaries Tescher & Spallina was never performed or complied with fundamentally prejudicing a proper validity Trial. In fact it was learned at the December 15, 2015 trial that NONE of the Original Dispositive Documents were available for inspection at the hearing and that Trustee Ted Bernstein claimed under oath he had

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<sup>10</sup> Dr. Ronik Seecharan Letter

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160114%20Seecharan%20Letter%20Regarding%20procedure.pdf>

<sup>11</sup> September 15, 2015 Hearing Transcript Page 27 Lines 14-25 and Page 28 Lines 1-6

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

<sup>12</sup> February 18, 2014 Order to Turn Over 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>

never seen the original trust he operates under nor took any steps to validate the documents in light of the fact that his prior counsel SPALLINA had admittedly fraudulently created a Shirley Trust document at the December 15, 2015 hearing he testified at as to the validity of the documents he admitted fraud in creating and then sent the fraudulent trust via mail to Attorney at Law Christine Yates representing Eliot's minor children and finally it was learned at the hearing that Tescher and Spallina had violated the Colin Court Order to turn over their records in entirety and still possessed Original dispositive documents;

14. That the totality of the related cases should have determined this case to be a "complex" case and the case management conference should have been conducted properly as such, again such deprivation of rights severely prejudiced the outcome;
15. That proper pre-trial procedures thus were not followed and must be corrected in furtherance of justice;
16. That missing necessary witnesses and missing discovery were existent at the time of the validity trial including but not limited to witnesses Notary Publics who signed documents, Kimberly Moran and Lindsay Baxley (where Governor Rick Scott's Notary Public Division has already prosecuted in conjunction with the Palm Beach County Sheriff Moran for fraudulent notarization in these matters and Lindsay Baxley aka Lindsay Giles was also found to have improperly notarized a Will and Amended Trust of Simon) and Witnesses to the Execution of the alleged documents, Traci Kratish, Esq., Diana Banks, Rachel Walker and a John Doe signor, as well as, other witnesses William Stansbury and Donald Tescher, Esq. thus necessitating a new Trial after proper pre-trial proceedings are completed and a Case-Management Conference for a "complex" case is held before a non-conflicted and non-adverse judge;

17. That the circumstances of Judge Colin's handling of the case and specifically, including but not limited to, hearings held on Sept. 13, 2013<sup>13</sup> whereupon alleged Trustee Ted Bernstein appeared on the record claiming his fiduciary status as fiduciary for the Estate at a time he had not yet been appointed, a year after Simon's death at the time of the hearing, yet remaining silent as to various Frauds upon the Court admitted by his counsel, including an April 9, 2012 Petition for Discharge<sup>14</sup> claiming all beneficiaries had properly waived their interests and rights and Simon was in possession of them on that date. Ted Bernstein having known this to be false, as he did not complete his own Waiver until August 01, 2012 and therefore knew this statement that Simon had the completed Waivers in April 2012 to be false and further fraudulent actions involving the fiduciaries Tescher and Spallina who were acting as Simon's counsel at the time of the alleged signing and Ted's counsel when it was finally delivered to the Court as if Simon were delivering it alive Post Mortem months after his death while still acting as PR.
18. For clarification of this complex Post Mortem scheme, it should be noted that when Simon died, Ted was NOT appointed Successor PR by the Court while he maintained to the family on the day Simon died that he was acting as PR and acted as such and yet Ted was not appointed by Colin and issued Letters until October 13, 2013 after the hearing September 13, 2013 hearing that Colin threatened to read him Miranda's, leading to a series of bad rulings of Colin's that were designed to protect rather than have prosecuted those officers of his court involved in these frauds on the Court and the Beneficiaries. Yet, Ted's counsel Tescher and Spallina never filed for Letters for Ted when Simon died and instead they (Ted and his counsel Tescher and Spallina)

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<sup>13</sup> September 13, 2013 Colin Hearing - Mirand Warnings and more  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spallina%20Tescher%20Ted%20Manceri.pdf>

<sup>14</sup> April 09, 2012 Alleged Simon Full Discharge Waiver Deposited by him with the Court after he passed away.  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120409%20Petition%20for%20Discharge%20Full%20Waiver%20Shirley%20SIGNED%2020120409%20NOT%20FILED%20UNTIL%2020121024.pdf>

all choose to use Simon as PR for months after he died to file fraudulently filed documents and in some instance forged and fraudulently notarized for Simon Post Mortem, all these criminal acts committed as part of a complex legal scam to create the appearance that Simon closed his wife's estate properly before he died and made changes to Beneficiaries and Fiduciaries and documents prior to his own death.

19. Ted introduced his friends Tescher and Spallina to his father to do estate planning so as that Ted could get business in return from them.

20. Spallina and Tescher, Ted's close business associates that he retained as his counsel to represent him as Personal Representative and Trustee and Ted Bernstein further sat idly by as he learned that his mother's estate was closed by his deceased father acting as PR at a time after his death and while Ted was claiming he was the PR (prior to Letters issued in October 2013) through a series of fraudulent acts of his counsel Spallina and Tescher and the totality of the circumstances indicating Judge Colin is a necessary and material fact witness as Eliot Bernstein attempted to inform this Court on July 30, 2015 and Sept. 15, 2015 and at Trial Dec. 15th, 2015 and further by opposition herein;

21. That Judge Colin having issued prior Orders denying Ted Bernstein's motions to deny Eliot's Standings and that Eliot Bernstein has standing in all cases before this Court until proper hearings and trial determine otherwise;

22. Eliot Bernstein was sued individually in this action and Eliot has filed a counter complaint that also gives him individual standing. Eliot is also the alleged Trustee of his children's trusts, trusts that to this day he still has not been given a copy of. Eliot is also a beneficiary of the Simon Estate, the Shirley Bernstein Trust and the Shirley Bernstein Estate. Eliot also is alleged to be a beneficiary of Simon's Trust, as Simon's 2012 Amended Trust, allegedly done days before his

death, was improperly constructed, leaving Eliot still a beneficiary. Eliot is an interested party individually in all cases.

23. That a continuance should have been granted for Eliot Bernstein for all hearings to determine if his minor children's counsel Candice Schwager could be admitted pro hac vice or otherwise be afforded additional time to retain counsel of his choosing as the minor children have not been represented at any hearings, despite Rose's own contention that the children need independent counsel and where the Court should demand deposit of adequate funds from the Trusts or from the parties responsible for the need for counsel, Tescher and Spallina, into a proper account for no less than \$100,000.00 for immediate retention of counsel for the minors, thereby negating any need for guardians (who would then need to get counsel and so a guardian would only add additional expenses);
24. Hampering this effort to retain counsel for the minor children is Rose and his client Ted, as alleged Successor Trustee, refusal to turn over records to counsel Schwager<sup>15</sup> acting on behalf of Eliot and his minor children whom she is retained to represent but cannot enter the cases until she is approved Pro Hac Vice, a determination she will be making after getting the necessary case files from the fiduciaries. Currently, efforts underway to provide Eliot and his children with local counsel for Schwager have proved unsuccessful and perhaps that is because Eliot has exposed Fraud on the Court and alleges Fraud by the Court and several South Florida lawyers and judges involved, leading to a blackballing effect whereby many contacted will not even return calls after learning of who is involved in the case and many are already aware and instantly refuse.

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<sup>15</sup> Rose Letter Refusing to turn over documents to Attorney at Law Candice Schwager  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160106%20Rose%20Denying%20to%20talk%20or%20give%20information%20to%20Attorney%20Schwager.pdf>

25. The refusal to turn over documents by fiduciaries including Ted Bernstein have plagued this case from the start and continue to this day and in fact are what forced Eliot to seek counsel and Court relief to get documents statutorily owed to him in the first place as he and his children were denied dispositive documents for months after the death of his father and years after the death of his mother by Ted, Spallina, Tescher and others. Production requests are still outstanding and unheard by the Court, including records of the Court in toto due to the Fraud on the Court, which requires now discovery.
26. That no construction hearings have been held on the Wills, Trusts and instruments herein and / or not fully and fairly heard to determine beneficiaries, standing, valid trustees (where the PR of Simon's Estate Brian O'Connell has asserted an affirmative defense to the complaint in the Shirley Trust Construction case that Ted is NOT A VALID trustee serving in the Simon Trust under the terms of the trust<sup>16</sup> and if true would call for a rehearing of the validity hearing entirely with a new legally proper Trustee who is valid, not conflicted and not adverse to Beneficiaries as Ted is;
27. That hearings should be held on the removal of Ted Bernstein instantly by this Court from all fiduciary capacities PRIOR TO ANY ACTIONS involving Ted proceeding further and as the referenced September 13, 2013 hearing transcript footnoted herein already shows, Judge Colin had at that time of the first hearing in September 13, 2013 enough evidence involving TWO criminal acts learned and admitted to in the hearing involving Fraud on the Court and Fraud on the Beneficiaries, to state that he had enough evidence at that moment to read Ted and his counsel Spallina, Tescher (who did not appear but was represented) and Manceri their Miranda

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<sup>16</sup> Brian O'Connell pleading Ted is NOT A VALID Trustee Under Simon L Bernstein Amended and Restated Trust, Page 7  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150217%20Answer%20%20Affirmative%20Defenses%20O'Connell%20States%20Ted%20is%20NOT%20VALID%20TRUSTEE.pdf>



Warnings, twice, yet no action has since been taken by Colin or the Phillips Court to remedy such actions that leave Ted and his counsel with “unclean hands” and involvement in criminal activities;

28. That the present motions of Ted Bernstein and Alan Rose should be stayed indefinitely;
29. That this Court having given reason to Eliot Bernstein that he would not receive a fair trial and having not received fair trials based upon the findings herein should now for this reason and others stated in two disqualification petitions filed against Judge Phillips, voluntarily mandatorily Disqualify from these proceedings.
30. Further, Judge Phillips is also now a necessary material and fact witness to the improper Post Recusal steering of the cases by Judge Colin to his Court, first to Judge Coates, a former Proskauer Rose Partner and where Proskauer is Counter Defendant in this action and also Coates formerly was retained by Eliot’s Iviewit technology companies at the heart of the estate and trust matters, yet Coates took the cases and files and concealed in Court in this case his prior involvement with Eliot and Simon Bernstein’s companies when he was a Proskauer Partner and held a hearing where he then Sua Sponte recused himself (after getting all the court’s confidential and non published records sent to him) and then passed the cases to Judge Phillips, the alleged intended target all along of Colin’s improper Post Recusal steering as cited in the disqualification motions filed<sup>17</sup> and <sup>18</sup> and thus Phillips should also instantly disqualify and void

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<sup>17</sup> December 04, 2015 First Disqualification of Phillips  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20SIGNED%20NOTARIZED%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.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>

<sup>18</sup> December 28, 2015 Second Disqualification of Phillips

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151228%20FINAL%20SIGNED%20NOTARIZED>

his orders as required by Judicial Canons as he will soon be subpoenaed for deposition and as a witness to relevant matters about the case steering, for his acts outside the color of law in taking this case while knowing of his witness status, if not made a defendant in any further proceedings, state and federal, for continued Fraud by the Court and aiding and abetting and more.

31. That Judge Phillips knowing he is a material and fact witness and now potential defendant of charges of Fraud By the Court in these cases has an adverse interest to Eliot, his wife and their minor children that reflect in his intent to deprive Eliot and his three minor children and lovely wife of their fundamental due process rights.
32. Phillips has threatened Eliot and his wife Candice repeatedly with contempt for nothing other than to create false record, while at the December 15, 2015 hearing an attorney at law, Spallina and an officer the court commits and admits Fraud on the Court, Fraud on the Beneficiaries, Mail Fraud and more, yet at the same hearing Phillips is too busy threatening Candice and then removing her from participating and forcing her from the bench with Eliot as the records of the hearings reflect and simultaneously doing nothing when Spallina admits criminal misconduct in the proceedings directly involving the cases before him. This adverse interest and conflict with Eliot is because Eliot has accused Phillips, Judge Colin and Judge Coates of being part of the improper Post Recusal steering by Colin and transfer of the cases by Colin (who recused 1 day after denying a disqualification motion that alleged **FRAUD BY THE COURT OF COLIN**). Judge Phillips rude and threatening behaviors reflected in the transcripts of the hearings appear entirely in retaliation and to suppress Eliot's rights to fair hearings and Eliot fears that he and his children have not and cannot receive due process in the Phillips court.

33. The Proposed Order of Rose now attempts to remove Eliot's standing and his prior pleadings filed on behalf of himself and as Guardian of his minor children and remove his standing in the matters through this improper proposed Order without due process and in violation of Administrative Orders. The Order Rose has prepared for Phillips to sign does not accurately reflect the truth of the proceedings and is designed to remove Eliot's rights to his inheritancy through further denial of due process and procedure, even moving the court to attempt Gag Orders on Eliot and to suppress distribution of the December 15, 2016 hearing that exposes new frauds on the court and more.

34. That the Court should take **JUDICIAL NOTICE** and REPORT THE FOLLOWING CRIMINAL MISCONDUCT AND NEW FRAUD ON THE COURT INFORMATION ADMITTED TO BEFORE JUDGE PHILLIPS UNDER OATH BY SPALLINA, the sole witness to the validity hearing before Judge Phillips, who in the hearing violated his signed SEC consent Order for criminal conduct involving insider trading and admitted to new crimes under oath, including Fraud on the Court, Fraud on Beneficiaries, Mail Fraud and more in the December 15, 2016 hearing. **Spallina Perjured his testimony about not having pled to felony or misdemeanor charges as the SEC Order shows he plead to criminal conduct thus mandating it be either felony or misdemeanor criminal conduct.**

35. The following information is cause for impeachment of Spallina's testimony made with "unclean hands" and voiding of the validity hearings ruling due to the criminal conduct learned and committed in the Court on December 15, 2015 by Spallina, a court appointed officer of the court and a court appointed fiduciary in these matters. Therefore, immediate actions should be taken by the Court to notify proper authorities, including but not limited to, the SEC of the violation of his Consent Order that Spallina signed as evidenced in the referenced herein Consent Order, the

FBI regarding the newly admitted Mail Fraud, the Sheriff department regarding the newly admitted Fraud on the Court, Fraud on Beneficiaries and their counsel and the misuse of a deceased person's identity to close another deceased person's estate (now fully admitted), the Inspector General of the Courts due to the Fraud on the Court and alleged Fraud by the Court, the Chief Judge and where the Court is the scene of fresh new crimes of continued Fraud on the Court in these matters, this Court should disqualify itself entirely from the matters as it appears that one cannot investigate oneself or one's court and judicial friends and loves without a MASSIVE APPEARANCE OF IMPROPRIETY;

- a. On or about September 28, 2015, the SEC out of Washington, DC publicly announced Insider Trading and related charges in a separate action against Florida attorneys and Third-Party Defendants herein SPALLINA and TESCHER. That SPALLINA pled guilty of criminal misconduct and the SEC Consent signed by SPALLINA states,  
  
“2. Defendant 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”).”<sup>19</sup>
- b. December 15, 2015 hearing under sworn oath as a witness in a Validity Hearing before Judge PHILLIPS, SPALLINA stated the following from the hearing transcript Page 93 Lines 14-22<sup>20</sup>;

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<sup>19</sup> September 28, 2015 SEC Government Complaint filed against TESCHER and SPALLINA @ <http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf>

<sup>20</sup> December 15, 2015 PHILLIPS VALIDITY HEARING TRANSCRIPT <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20Hearing%20Transcript%20Phillips%20Validity%20Hearing.pdf>

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.  
18. . . . . THE COURT: Okay. Next question.  
19. BY MR. BERNSTEIN:  
20. . . . Q. Have you pled guilty to a misdemeanor?  
21. . . . A. **I have not. [emphasis added]**  
22. . . . Q. Were you involved in a insider trading case?  
23. . . . . MR. ROSE: Objection. Relevance.  
24. . . . . THE COURT: Sustained. Next question.

c. 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...”

d. SPALLINA further states under sworn testimony at the Validity Hearing regarding the trust documents he created being valid admits to fraudulently altering a Shirley Trust Document and sending to Attorney at Law Christine Yates, Esq. representing the minor children of Eliot via the mail, Page 95 Lines 14-25 and Page 96 Line 1-19,

14. . . . Q. Mr. Spallina, have you been in discussion with  
15. the Palm Beach County Sheriff's Office regarding the

16· ·Bernstein matters?  
17· ······MR. ROSE:· Objection.· Relevance.  
18· ······THE COURT:· Overruled.  
19· ······You can answer that.  
20· ······THE WITNESS:· Yes, I have.  
21· ·BY MR. BERNSTEIN:  
22· ··· Q.· ·And did you state to them that you  
23· ·fraudulently altered a Shirley trust document and then  
24· ·sent it through the mail to Christine Yates?  
25· ··· A.· ·Yes, I did.  
·1· ··· Q.· ·Have you been charged with that by the Palm  
·2· ·Beach County Sheriff yet?  
·3· ··· A.· ·No, I have not.  
·4· ··· Q.· ·Okay.· How many times were you interviewed by  
·5· ·the Palm Beach County Sheriff?  
·6· ······MR. ROSE:· Objection.· Relevance.  
·7· ······THE COURT:· Sustained.  
8· ·BY MR. BERNSTEIN:  
·9· ··· Q.· ·Did you mail a fraudulently signed document to  
10· ·Christine Yates, the attorney for Eliot Bernstein's  
11· ·minor children?  
12· ······MR. ROSE:· Objection.· Relevance.  
13· ······THE COURT:· Overruled.  
14· ······THE WITNESS:· Yes.  
15· ·BY MR. BERNSTEIN:  
16· ··· Q.· ·And when did you acknowledge that to the  
17· ·courts or anybody else?· When's the first time you came  
18· ·about and acknowledged that you had committed a fraud?  
19· ··· A.· ·**I don't know that I did do that [emphasis added].**

e. SPALLINA then perjures himself in self contradiction when he tries to claim that his law firm did not mail Fraudulent documents to the court and commits here further FRAUD ON THE COURT when he then slips up and admits that his legal assistant and notary public Kimberly Moran, already prosecuted in these matters for fraudulent notarization and who has admitted forgery of six persons in these matters then sent the fraudulent documents back to the court when he states;

10· ·BY MR. BERNSTEIN:  
11· ··· Q.· ·And what was she convicted for?  
12· ··· A.· ·She had notarized the waiver releases of  
13· ·accounting that you and your siblings had previously  
14· ·provided, and we filed those with the court.

15 · · · · Q · · We filed those with the court.  
16 · · · · · Your law firm submitted fraudulent documents  
17 · · to the court?  
18 · · · · A · · No · We filed -- we filed your original  
19 · · documents with the court that were not notarized, and  
20 · · the court had sent them back.  
21 · · · · Q · · And then what happened?  
22 · · · · A · · And then Kimberly forged the signatures and  
23 · · notarized those signatures and sent them back.

- f. That not only does SPALLINA admit to Felony criminal acts that have not yet been investigated but admits that his office members are also involved in proven Fraudulent Creation of a Shirley Trust and where MORAN has already admitted six counts of forgery for six separate parties (including for a deceased Simon and for Eliot) and fraudulent notarizations of such documents when Spallina states in the hearing Pages 102-103,

102

20 · · · · · MR. BERNSTEIN: · Sure.  
21 · · BY MR. BERNSTEIN:  
22 · · · · Q · · You've testified here about Kimberly Moran.  
23 · · · · · Can you describe your relationship with her?  
24 · · · · A · · She's been our long-time assistant in the  
25 · · office.

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·1 · · · · Q · · Was she convicted of felony fraudulent  
·2 · · notarization in the Estate of Shirley Bernstein?  
·3 · · · · · MR. ROSE: · Objection · Relevance.  
·4 · · · · · THE COURT: · Overruled.  
·5 · · · · · You're asking if she was convicted of a felony  
·6 · · · · with respect to the Estate of Shirley Bernstein?  
·7 · · · · · You can answer the question.  
·8 · · · · · MR. BERNSTEIN: · Correct.  
·9 · · · · · THE WITNESS: · I believe she was.

- g. SPALLINA then claims that it is “standard operating procedure” for he and his clients to sign sworn Final Waivers under penalty of perjury with knowingly and irrefutably false statements and admitting that the April 09, 2012 Full Waiver

(already referenced and linked herein) submitted to this Court by Spallina's law firm in October of 2012 by Simon Bernstein, at a time after his death on September 13, 2012 and yet still acting as the Personal Representative, signed under penalty of perjury allegedly by Simon Bernstein and witnessed by Spallina, contained knowingly false statements . Then SPALLINA had a deceased Simon file that alleged sworn document with the Court as Personal Representative on a date after his death as part of a Fraud on the Court and Fraud on the Beneficiaries and Interested Parties. SPALLINA states in testimony as follows,

Pages 108-110

17 · · · · Q · · Okay · Are you aware of an April 9th full  
18 · waiver that was allegedly signed by Simon and you?  
19 · · · · A · · Yeah · That was the waiver that he had signed.  
20 · And then in the May meeting, we discussed the five of  
21 · you, all the children, getting back the waivers of the  
22 · accountings.  
23 · · · · Q · · Okay · And in that April 9th full waiver you  
24 · used to close my mother's estate, does Simon state that  
25 · he has all the waivers from all of the parties?  
·1 · · · · A · · He does · We sent out -- he signed that, and  
·2 · we sent out the waivers to all of you.  
·3 · · · · Q · · Okay · So on April 9th of 2012, Simon signed,  
·4 · with your presence, because your signature's on the  
·5 · document, a document stating he had all the waivers in  
·6 · his possession from all of his children.  
·7 · · · · · Had you sent the waivers out yet as of  
·8 · April 9th?

...

20 · BY MR. BERNSTEIN:

21 · · · · Q · · April 9th, 2012, you have a signed full waiver  
22 · of Simon's that says that he is in possession of all of  
23 · the signed waivers of all of the parties?  
24 · · · · A · · Standard operating procedure, to have him  
25 · sign, and then to send out the documents to the kids.

·..

·1 · · · · Q · · Was Simon in possession -- because it's a  
·2 · sworn statement of Simon saying, I have possession of  
·3 · these waivers of my children on today, April 9th,  
·4 · correct, the day you two signed that?



·5· . . . . . Okay. So if you hadn't sent out the waivers  
·6· yet to the --  
·7· . . . A. I'm not certain when the waivers were sent  
·8· out.  
·9· . . . Q. Were they sent out after the --  
10· . . . A. I did not send them out.  
11· . . . Q. Okay. More importantly, when did you receive  
12· those? Was it before April 9th or on April 9th?  
13· . . . A. We didn't receive the first one until May.  
14· And it was your waiver that we received.  
15· . . . Q. So how did you allow Simon, as his attorney,  
16· to sign a sworn statement saying he had possession of  
17· all of the waivers in April if you didn't get mine 'til  
18· May?  
19· . . . . MR. ROSE: Objection. I think it's relevance  
20· . . . and cumulative. He's already answered.  
21· . . . . THE COURT: What's the relevance?  
22· . . . . MR. BERNSTEIN: Oh, this is very relevant.  
23· . . . . THE COURT: What is the relevance on the issue  
24· . . . that I have to rule on today?  
25· . . . . MR. BERNSTEIN: On the validity? Well, it's  
1· . . . relevant. If any of these documents are relevant,  
·2· . . . this is important if it's a fraud.  
·3· . . . . THE COURT: I'll sustain the objection.  
·4· . . . . MR. BERNSTEIN: Okay. Can I -- okay.  
·5· BY MR. BERNSTEIN:  
·6· . . . Q. When did you get -- did you get back prior to  
·7· Simon's death all the waivers from all the children?  
·8· . . . A. No, we did not.  
·9· . . . Q. So in Simon's April 9th document where he  
10· says, he, Simon, on April 9th has all the waivers from  
11· his children while he's alive, and you didn't even get  
12· one 'til after he passed from one of his children, how  
13· could that be a true statement?  
14· . . . . MR. ROSE: Objection. Relevance. Cumulative.  
15· . . . . THE COURT: Sustained.

h. Finally, SPALLINA also perjures himself under sworn oath at the hearing when testifying to the status of his Florida Bar license, which at this time he is listed as

“Not Eligible to Practice Law in Florida”<sup>21</sup> when he states in the December 15, 2015 hearing,

Page 91

7· ·BY MR. BERNSTEIN:

8· ··· Q· ·Mr. Spallina, you were called today to provide  
9· ·some expert testimony, correct, on the --

10· ··· A· ·No, I was not.

11· ··· Q· ·Oh, okay. · You're just going based on your  
12· ·doing the work as Simon Bernstein's attorney and Shirley  
13· ·Bernstein's attorney?

14· ··· A· ·Yes.

15· ··· Q· ·Okay. · Are you still an attorney today?

16· ··· A· ·I am not practicing.

17· ··· Q· ·Can you give us the circumstances regarding  
18· ·that?

19· ··· A· ·I withdrew from my firm.

Pages 120-121

19· ·BY MR. BERNSTEIN:

20· ··· Q· ·Did you -- are you a member of the Florida  
21· ·Bar?

22· ··· A· ·Yes, I am.

23· ··· Q· ·Currently?

24· ··· A· ·Yes, I am.

25· ··· Q· ·Okay. · You said before you surrendered your  
·1· ·license.

·2· ··· A· ·I said I withdrew from my firm. · It wasn't  
·3· ·that I was not practicing.

- i. Spallina further Perjures his testimony when asked if the Fraudulent Shirley Trust he created by Post Mortem fraudulently altering a Shirley Amendment and disseminated through the mail attempted to change the beneficiaries of the Shirley Trust and he answered no. Yet, the following analysis shows different;

22· ·BY MR. BERNSTEIN:

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<sup>21</sup> [https://www.floridabar.org/wps/portal/flbar/home/attysearch/mprofile!/ut/p/a1/jc\\_LDolwEAXQT-ptthRaWo6mkRazxgdCNYUWaKLowfr\\_42LioOrtJzs3cYZ41zA\\_dLftdNZyH7vjYvTxACM3dBrawxEHIOI3ZqgSEHEE7qimxJMMNktoDIOr2qqtF7RM\\_8sjMoRf-T3zn8RJNQO5BXKtp0AxeYNIRTj-HTx\\_eJ2II7ycdg2C6e8\\_WXgh/dl5/d5/L2dBISEvZ0FBIS9nQSEh/?mid=497381](https://www.floridabar.org/wps/portal/flbar/home/attysearch/mprofile!/ut/p/a1/jc_LDolwEAXQT-ptthRaWo6mkRazxgdCNYUWaKLowfr_42LioOrtJzs3cYZ41zA_dLftdNZyH7vjYvTxACM3dBrawxEHIOI3ZqgSEHEE7qimxJMMNktoDIOr2qqtF7RM_8sjMoRf-T3zn8RJNQO5BXKtp0AxeYNIRTj-HTx_eJ2II7ycdg2C6e8_WXgh/dl5/d5/L2dBISEvZ0FBIS9nQSEh/?mid=497381)

23. . . . Q. Did the fraudulently altered document change  
24. the beneficiaries that were listed in Shirley's trust?  
25. . . . A. **They did not [emphasis added].**

Now comparing the language in the two documents the Court can see that this statement is wholly untrue. From the alleged Shirley Trust document,

“Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM"), **and their respective lineal descendants [emphasis added]** shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL !ANTONI and LISA S. FRIEDSTEIN, and their lineal descendants all predecease the survivor of my spouse and me, then TED and PAM, and their respective lineal descendants shall not be deemed to have predeceased me and shall be eligible beneficiaries for purposes of the dispositions made hereunder.”<sup>22</sup>

Then the language from the fraudulent amendment states;

2. I hereby amend the last sentence of Paragraph E. of Article III. to read as follows:

"Notwithstanding the foregoing, as my spouse and I have adequately provided for them during our lifetimes, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM '), shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their respective lineal descendants all predecease the survivor of my spouse and me, then TED and PAM shall not be deemed to have predeceased the survivor of my spouse and me and shall become eligible beneficiaries for purposes of the dispositions made hereunder."

Clearly the fraudulent amendment attempts to remove from the predeceased language regarding TED and PAMELA’s lineal descendants from being excluded by removing them from the original trust language as being considered predeceased and thus change the beneficiaries of the Shirley Trust. In fact, adding Ted and Pam’s lineal descendants back into the trust would give them a chance to convert improperly %40 of the value to their families from %0.

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<sup>22</sup> Shirley Trust Page 7  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/Shirley%20Trust%20plus%20fraudulent%20amendment%202.pdf>

This perjury by Spallina, acting already with proven unclean hands and admitted to crimes in the Estates and Trusts of Simon and Shirley Bernstein changed the outcome of the validity hearing adding cause for a rehearing and voiding the Order that resulted, which were already void and of no effect since Judge Phillips should have already voluntarily mandatorily disqualified himself from the proceedings prior to holding any hearings.

36. That as for Ted being qualified as a fiduciary, the following passage from the December 15, 2015 hearing that Ted called for to prove the validity of the dispositive documents after his former counsel admitted criminal activities shows that Ted, who used this disgraced attorney Spallina as his star and only witness to validate the documents, did nothing to validate the documents himself as Trustee to protect the beneficiaries harmed by his former counsels actions, his friend and business associate when he states, under oath,

Page 206-210

25 · · · · Q · · Okay · Ted, you were made aware of Robert  
1 · Spallina's fraudulent alteration of a trust document of  
·2 · your mother's when?  
·3 · · · · A · I believe that was in the early 2013 or '14.  
·4 · · · · Q · Okay · And when you found out, you were the  
·5 · fiduciary of Shirley's trust, allegedly?  
·6 · · · · A · I'm not sure I understand the question.  
·7 · · · · Q · When you found out that there was a fraudulent  
·8 · alteration [sic] of a trust document, were you the  
·9 · fiduciary in charge of Shirley's trust?  
10 · · · · A · I was trustee, yes · I am trustee, yes.  
11 · · · · Q · And your attorneys, Tescher and Spallina, and  
12 · their law firm are the one who committed that fraud,  
13 · correct, who altered that document?  
14 · · · · A · That's what's been admitted to by them,  
15 · correct.  
16 · · · · Q · Okay · So you became aware that your counsel  
17 · that you retained as trustee had committed a fraud,  
18 · correct?  
19 · · · · A · Correct.  
20 · · · · Q · What did you do immediately after that?  
21 · · · · A · The same day that I found out, I contacted

22· ·counsel· I met with counsel on that very day· I met  
23· ·with counsel the next day· I met with counsel the day  
24· ·after that.

25· ···· Q· ·Which counsel?

·1· ···· A· ·Alan Rose.

···

P 209-210

24· ·BY MR. BERNSTEIN:

25· ···· Q· ·Have you seen the original will and trust of  
·1· ·your mother's?

·2· ···· A· ·Can you define original for me?

·3· ···· Q· ·The original.

·4· ···· A· ·The one that's filed in the court?

·5· ···· Q· ·Original will or the trust.

·6· ···· A· ·I've seen copies of the trusts.

·7· ···· Q· ·Have you done anything to have any of the

·8· ·documents authenticated since learning that your

·9· ·attorneys had committed fraud in altering dispositive

10· ·documents that you were in custody of?

11· ······ MR. ROSE:· Objection· Relevance.

12· ······ THE COURT:· Overruled.

13· ······ THE WITNESS:· I have not.

14· ·BY MR. BERNSTEIN:

15· ···· Q· ·So you as the trustee have taken no steps to

16· ·validate these documents; is that correct?

17· ···· A· ·Correct.

37. Finally, as reported by the Palm Beach Post<sup>23</sup> and others in an evolving story of

Probate/Guardian abuse emanating from Florida's courts, similar to the bank and mortgage frauds that found judges and lawyers fraudulently conveying properties through "robosigning" aka bank fraud, forgery and more, Florida's Judges are coming under fire for their bizarre behaviors of probate/guardianship abuses and basically grave robbing Florida's elderly as has been evidenced herein, where dead person's identities are used to commit Fraud on the Court and when discovered covered up by further Fraud by the Court in conjunction with the lawyers and guardians and judges.

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<sup>23</sup> <http://www.mypalmbeachpost.com/guardianships-elizabeth-savitt/>  
and  
<http://aaapg.net/florida-the-judges-wife-a-frequent-court-appointed-guardian/>

WHEREFORE, the proposed Order of Ted Bernstein is Objected to herein and an Alternate Order submitted.

Dated: February 9, 2016 □

**/s/Eliot Ivan Bernstein**

Eliot Ivan Bernstein  
2753 NW 34th St  
Boca Raton, FL 33434  
561-245-8588  
iviewit@iviewit.tv

**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 9th day of February, 2016.

**/s/Eliot Ivan Bernstein**

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON;  
PAMELA B. SIMON, Individually and as Trustee  
f/b/o Molly Simon under the Simon L. Bernstein Trust  
Dtd 9/13/12; ELIOT BERNSTEIN, individually, as  
Trustee f/b/o D.B., Ja. B. and Jo. B. under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on behalf  
of his minor children D.B., Ja. B. and Jo. B.;

JILL IANTONI, Individually, as Trustee f/b/o J.I.  
under the Simon L. Bernstein Trust Dtd 9/13/12,  
and on behalf of her Minor child J.I.;

MAX FRIEDSTEIN; LISA FRIEDSTEIN, Individually,  
as Trustee f/b/o Max Friedstein and C.F., under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on behalf  
of her minor child, C.F.,

Defendants.

**ALTERNATE ORDER**

THIS CAUSE came before the Court for hearing on January 14, 2016 on Successor Trustee Ted Bernstein and Alan Rose's Motion for Appointment of a Guardian Ad Litem to Represent the Interests of Eliot Bernstein's Children and other relief, and Eliot I. Bernstein having filed Opposition and appeared in Opposition. The Court, having considered the record, heard argument of counsel and the parties and having reconsidered the record and being otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:

1. Strike the Proposed Order of Alan B. Rose and Ted Bernstein in entirety;
2. That Florida Statutes 733.707, 736.0103, 731.201 (2)(4)(9)(11)(20) and (23) give Eliot standing as a Beneficiary, Heir and Interested Person and Trustee of the Eliot Bernstein Family Trust in this case and the Simon Estate, the Simon Trust and the Shirley Estate.
3. That there was no Construction Hearing held, Noticed or Scheduled;
4. That proper pre-trial procedures thus were not followed and must be corrected in furtherance of justice;
5. That the present motions of Ted Bernstein and Alan Rose are stayed indefinitely;
6. Judge Phillips mandatorily disqualify himself and void ALL orders for all the reasons stated in the disqualifications and for newly discovered factual admissions of fraud on the court learned at the December 15, 2015 hearing and further fraud on the court continued through perjured statements made under oath in testimony by a former officer of the court and former fiduciary constituting perjury, obstruction and more;
7. Instantly report new Admissions before this Court and perjurious statements made in the December 15, 2016 validity hearing by attorney at law, former officer of the court and former fiduciary in the Simon Bernstein Estate and Trust, Robert Spallina's admissions of his newly admitted Fraud on the Court, Fraud on Beneficiaries, Mail Fraud and Violations of his signed SEC Consent Order for Securities Fraud and Insider Trading to all the proper authorities, including but not limited to, the Inspector General of the Courts, the Chief Judge of 15th Judicial,
8. That the new Court demand deposit of adequate funds from the Trusts or from bonding of the responsible parties for causing the need for counsel into a proper account for no less than \$100,000.00 for immediate retention of counsel of Eliot's choosing for the minor

children as they have not been represented at hearings despite their standing as alleged beneficiaries and despite the fact that the conflict arises due to the fraud on the court by the prior fiduciaries and their counsel as proven already and or provide leave to Eliot Bernstein to re-apply immediately for funds for Counsel upon a new Judge presiding.

DONE and ORDERED in Chambers, North County Courthouse in Palm Beach Gardens, Florida, on this \_\_\_th day of February, 2016.

---

HONORABLE JOHN L. PHILLIPS  
Circuit Court Judge

Copies to: Attached Service List

**SERVICE LIST**

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	<p>Pamela Simon  President  STP Enterprises, Inc.  303 East Wacker Drive  Suite 210  Chicago IL 60601-5210  psimon@stpcorp.com</p>	<p><b>Counter Defendant</b>  Mark R. Manceri, Esq., and  Mark R. Manceri, P.A.,  2929 East Commercial  Boulevard  Suite 702  Fort Lauderdale, FL 33308  mrmlaw@comcast.net  mrmlaw1@gmail.com</p>
<p><b>Counter Defendant</b>  L. Louis Mrachek, Esq.  PAGE, MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS &amp; WEISS, P.A.  505 South Flagler Drive, Suite 600  West Palm Beach, Florida 33401  lmrachek@mrachek-law.com</p>	<p><b>Counter Defendant</b>  Charles D. Rubin  Managing Partner  Gutter Chaves Josepher Rubin  Forman Fleisher Miller PA  Boca Corporate Center  2101 NW Corporate Blvd., Suite 107  Boca Raton, FL 33431-7343  crubin@floridatx.com</p>	<p><b>Counter Defendant</b>  Kimberly Moran  Tescher &amp; Spallina, P.A.  Wells Fargo Plaza  925 South Federal Hwy Suite 500  Boca Raton, Florida 33432  kmoran@tescherspallina.com</p>
<p><b>Counter Defendant</b>  Lindsay Baxley aka Lindsay Giles  Life Insurance Concepts  950 Peninsula Corporate Circle  Suite 3010  Boca Raton, FL 33487  lindsay@lifeinsuranceconcepts.c</p>	<p><b>Counter Defendant</b>  Estate of Simon Bernstein  Personal Representative  Brian M. O'Connell, Partner  Ciklin Lubitz Martens &amp; O'Connell  515 N Flagler Drive</p>	<p>Jill Iantoni  2101 Magnolia Lane  Highland Park, IL 60035  jilliantoni@gmail.com</p>

om	20th Floor West Palm Beach, FL 33401 boconnell@ciklinlubitz.com jfoglietta@ciklinlubitz.com	
Lisa Friedstein 2142 Churchill Lane Highland Park, IL 60035 Lisa@friedsteins.com lisa.friedstein@gmail.com lisa@friedsteins.com	Pamela Beth Simon 950 N. Michigan Avenue Apartment 2603 Chicago, IL 60611 psimon@stpcorp.com	

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

Probate Division

Case No.: 502014CP003698XXXXNBIJ

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended, Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON;  
PAMELA B. SIMON, Individually and as Trustee  
f/b/o Molly Simon under the Simon L. Bernstein  
Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually,  
as Trustee f/b/o D.B., Ja. B. and Jo. B. under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on behalf  
of his minor children D.B., Ja. B. and Jo. B.;  
JILL IANTONI, Individually, as Trustee f/b/o J.I. under  
the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf  
of her Minor child J.I.; MAX FRIEDSTEIN; LISA FRIEDSTEIN,  
Individually, as Trustee f/b/o Max Friedstein and C.F.,  
under the Simon L. Bernstein Trust Dtd 9/13/12, and on  
behalf of her minor child, C.F., Defendants.

\_\_\_\_\_/

**AMENDED OPPOSITION TO MOTION TO MODIFY AND FINAL ORDER APPROVING SALE  
RULE 9.310. STAY PENDING REVIEW OF ALL CASES OF JUDGE PHILLIPS**

Now comes Eliot Ivan Bernstein, acting in the following capacities, Eliot Ivan Bernstein  
on Behalf of his Minor Children; Eliot Ivan Bernstein as Trustee f/b/o D.B., Ja. B. and Jo. B;  
Eliot Ivan Bernstein as Trustee of the Beneficiary "Eliot Bernstein Family Trust" and Eliot  
Bernstein as a named Beneficiary ("PETITIONER"), who respectfully petitions and pleads and  
shows this court as follows:

1. I am Eliot Bernstein and I make this statement in opposition to the Motion to Modify an Order of Sale filed by Alan Rose and Ted Bernstein.
2. I further make this statement for a Stay pending review under Florida Rules of Appellate Procedure 9.310 to Stay all cases Judge John G. Phillips is Assigned to pending review of an Appeal and Writ of Prohibition against Judge Phillips who should already be mandatorily Disqualified, such other cases being under Case Numbers:

Judge Martin Colin / Howard Coates / John Phillips Estate & Trust Cases

Estate and Trust Cases, Simon, Shirley and Eliot Children Cases Transferred from Colin to Coates to Phillips

1. Case # 502012CP004391XXXXSB – Simon Bernstein Estate
2. Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
3. Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
4. Case # 502014CP003698XXXXSB – Shirley Trust Construction
5. Case # 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case OLD CASE # 502014CA014637XXXXMB
6. Case # TBD – Creditor Claim – Eliot v. Estate of Simon Judge Coates Case
7. Case ID: 502015CP002717XXXXNB Judge David E. French Cases
8. Case # 2012CP004391 IX – Simon Bernstein Estate

3. The motion should be struck from the Calendar as it is not appropriate for a UMC Calendar motion as it requires an Evidentiary hearing and can not be heard in 5 minutes.
4. The motion should further be struck from the Calendar as it was filed as a “sharp practice” by attorney Alan Rose continuing sharp practices herein and specifically knowing that I had filed for Unavailability due to being on medication and medical treatment and that other hearings were specifically re-scheduled for this reason.
5. The motion should be denied as Ted Bernstein is not a proper Trustee and should be removed as Trustee or alternatively the motion should not be heard until after a proper hearing to remove

Ted Bernstein as Trustee and a proper investigation of multiple frauds upon the court in these matters, including recent fraudulent activity at a validity hearing held December 15, 2015 before this Court, involving officers and fiduciaries of the court.

6. The motion should further be denied and struck from the Calendar as it is filed by Alan Rose who must be Disqualified as a Material and Fact Witness under Florida Rules being a material and fact witness to the discovery, possession and chain of custody of multiple “original” documents and underlying instruments herein, as well as being a counter defendant in the stayed counter complaint in this case and finally as an alleged participant of the fraud on the court and fraud on the beneficiaries that continues to this day.
7. Judge Colin had specific concerns about the proceeds of the house sale going into Rose’s firm account. He stated on the record that no proceeds were to be used for legal fees or available to the trustee without a court order. The proceeds were not to be commingled or held by rose’s firm for fees or any back payments or anyway for them to access the money.
8. The money was to be frozen and untouched by any of them. Attorney fees from the trust are barred when there is a breach of duty claim in an adversary proceeding and there are multiple breach of fiduciary claims against Ted Bernstein.
9. The proceeds were to be held away from Ted Bernstein acting as trustee as well because of claims I have filed for breach of duty and upcoming pending hearings to remove Ted.
10. Additionally, there is no proper Sale contract for the Home as there is no known buyer and no determination that an arm’s length transaction has occurred.
11. There are NO ACCOUNTINGS IN FIVE YEARS in the Shirley Trust and thus selling assets appears improper without beneficiaries having any accountings to determine the value of their inheritancy, in violation of Probate Rules and Statutes.



12. Ted Bernstein has failed in his fiduciary duties to properly account and has illegally withheld documents and records away from beneficiaries to make decisions on anything with informed consent and information and this violates the fiduciaries duties to transparency wholly.
13. There has been no backup documentation provided justifying any such attorney fees claimed by Ted Bernstein and Alan Rose and there should be a full evidentiary hearing before any such fees are awarded and before any modification of any Order of Sale.
14. The underlying Order of Sale is invalid and should be vacated as Judge Colin knew and should have known he already should have been mandatorily disqualified as being a material and fact witness to fraud upon the Court in his Court committed by the Tescher and Spallina law firm that Ted Bernstein brought into the lives of Simon and Shirley Bernstein and who acted as Ted Bernstein's counsel as Trustee in this case and where Robert Spallina has admitted fraudulently altering a Shirley Trust and mailing it to various parties and whereby the fraudulent language added directly benefited Ted Bernstein and his family financially, where they had previously been considered predeceased for ALL purposes of dispositions of the Shirley Trust and as beneficiaries.

#### **RULE 9.310. STAY PENDING REVIEW**

15. This Court should now grant a Stay pending review of an Appeal and Writ of Prohibition pending with the 4th DCA as Judge Phillips should already have mandatorily been disqualified herein and the Stay should apply to all cases Judge Phillips is in related to this matter.
16. The Writ of Prohibition<sup>1</sup> and the original motion for Disqualification establish the grounds for granting the stay and this Court of Judge John Phillips is well aware of such grounds<sup>2</sup>.

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<sup>1</sup> January 29, 2016 Writ of Prohibition Phillips  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160129%20FINAL%20ESIGNED%204thDCA%20>

17. Such stay should be granted without the requirement of any bonding by Eliot I. Bernstein.
18. That the Court should take **JUDICIAL NOTICE** and REPORT THE FOLLOWING  
 CRIMINAL MISCONDUCT AND NEW FRAUD ON THE COURT INFORMATION  
 ADMITTED TO BEFORE JUDGE PHILLIPS UNDER OATH BY SPALLINA, the sole  
 witness to the validity hearing before Judge Phillips, who in the hearing violated his signed SEC  
 consent Order for criminal conduct involving insider trading and admitted to new crimes under  
 oath, including Fraud on the Court, Fraud on Beneficiaries, Mail Fraud and more in the  
 December 15, 2016 hearing. **Spallina Perjured his testimony about not having pled to  
 felony or misdemeanor charges as the SEC Order shows he plead to criminal conduct thus  
 mandating it be either felony or misdemeanor criminal conduct.**
19. The following information is cause for impeachment of Spallina’s testimony made with  
 “unclean hands” and voiding of the validity hearings ruling due to the criminal conduct learned  
 and committed in the Court on December 15, 2015 by Spallina, a court appointed officer of the

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January 29, 2016 Writ of Prohibition Phillips Appendix A  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160129%20FINAL%20ESIGNED%20APPENDIX%204thDCA%20WRIT%20PROHIBITION%20FIRST%20PHILLIPS%20DISQUALDENIAL1.28.16%20ECF%20STAMPED%20COPY.pdf>

<sup>2</sup> December 04, 2015 1st Disqualification Motion Judge John L. Phillips  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20SIGNED%20NOTARIZED%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L.%20Phillips%20ECF%20STAMPED.pdf>

December 04, 2015 1st Disqualification Judge John L. Phillips Corrections  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20CORRECTIONS%20to%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L.%20Phillips%20ECF%20STAMPED.pdf>

December 28, 2015 2nd Disqualification Judge John L. 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>

court and a court appointed fiduciary in these matters. Therefore, immediate actions should be taken by the Court to notify proper authorities, including but not limited to, the SEC of the violation of his Consent Order that Spallina signed as evidenced in the referenced herein Consent Order, the FBI regarding the newly admitted Mail Fraud, the Sheriff department regarding the newly admitted Fraud on the Court, Fraud on Beneficiaries and their counsel and the misuse of a deceased person's identity to close another deceased person's estate (now fully admitted), the Inspector General of the Courts due to the Fraud on the Court and alleged Fraud by the Court, the Chief Judge and where the Court is the scene of fresh new crimes of continued Fraud on the Court in these matters, this Court should disqualify itself entirely from the matters as it appears that one cannot investigate oneself or one's court and judicial friends and loves without a MASSIVE APPEARANCE OF IMPROPRIETY;

- a. On or about September 28, 2015, the SEC out of Washington, DC publicly announced Insider Trading and related charges in a separate action against Florida attorneys and Third-Party Defendants herein SPALLINA and TESCHER. That SPALLINA pled guilty of criminal misconduct and the SEC Consent signed by SPALLINA states,

“2. Defendant 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”).”<sup>3</sup>

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<sup>3</sup> September 28, 2015 SEC Government Complaint filed against TESCHER and SPALLINA @ <http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf>

- b. December 15, 2015 hearing under sworn oath as a witness in a Validity Hearing before Judge PHILLIPS, SPALLINA stated the following from the hearing

transcript Page 93 Lines 14-22<sup>4</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.  
18 · · · · · THE COURT: · Okay. · Next question.  
19 · BY MR. BERNSTEIN:  
20 · · · · Q. · Have you pled guilty to a misdemeanor?  
21 · · · · A. · **I have not. [emphasis added]**  
22 · · · · Q. · Were you involved in a insider trading case?  
23 · · · · · MR. ROSE: · Objection. · Relevance.  
24 · · · · · THE COURT: · Sustained. · Next question.

- c. 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...”

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<sup>4</sup> December 15, 2015 PHILLIPS VALIDITY HEARING TRANSCRIPT  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20Hearing%20Transcript%20Phillips%20Validity%20Hearing.pdf>

d. SPALLINA further states under sworn testimony at the Validity Hearing regarding the trust documents he created being valid admits to fraudulently altering a Shirley Trust Document and sending to Attorney at Law Christine Yates, Esq. representing the minor children of Eliot via the mail, Page 95 Lines 14-25 and Page 96 Line 1-19,

14 · · · · Q · · Mr. Spallina, have you been in discussion with  
15 · the Palm Beach County Sheriff's Office regarding the  
16 · Bernstein matters?

17 · · · · · MR. ROSE: · Objection. · Relevance.

18 · · · · · THE COURT: · Overruled.

19 · · · · · You can answer that.

20 · · · · · THE WITNESS: · Yes, I have.

21 · · BY MR. BERNSTEIN:

22 · · · · Q · · And did you state to them that you  
23 · fraudulently altered a Shirley trust document and then  
24 · sent it through the mail to Christine Yates?

25 · · · · A · · Yes, I did.

·1 · · · · Q · · Have you been charged with that by the Palm  
·2 · Beach County Sheriff yet?

·3 · · · · A · · No, I have not.

·4 · · · · Q · · Okay. · How many times were you interviewed by  
·5 · the Palm Beach County Sheriff?

·6 · · · · · MR. ROSE: · Objection. · Relevance.

·7 · · · · · THE COURT: · Sustained.

8 · · BY MR. BERNSTEIN:

·9 · · · · Q · · Did you mail a fraudulently signed document to  
10 · Christine Yates, the attorney for Eliot Bernstein's  
11 · minor children?

12 · · · · · MR. ROSE: · Objection. · Relevance.

13 · · · · · THE COURT: · Overruled.

14 · · · · · THE WITNESS: · Yes.

15 · · BY MR. BERNSTEIN:

16 · · · · Q · · And when did you acknowledge that to the  
17 · courts or anybody else? · When's the first time you came  
18 · about and acknowledged that you had committed a fraud?

19 · · · · A · · **I don't know that I did do that [emphasis added].**

e. SPALLINA then perjures himself in self contradiction when he tries to claim that his law firm did not mail Fraudulent documents to the court and commits here further FRAUD ON THE COURT when he then slips up and admits that his legal

assistant and notary public Kimberly Moran, already prosecuted in these matters for fraudulent notarization and who has admitted forgery of six persons in these matters then sent the fraudulent documents back to the court when he states;

10 · BY MR. BERNSTEIN:

11 · · · · Q · And what was she convicted for?

12 · · · · A · She had notarized the waiver releases of

13 · accounting that you and your siblings had previously

14 · provided, and we filed those with the court.

15 · · · · Q · We filed those with the court.

16 · · · · · Your law firm submitted fraudulent documents

17 · to the court?

18 · · · · A · No · We filed -- we filed your original

19 · documents with the court that were not notarized, and

20 · the court had sent them back.

21 · · · · Q · And then what happened?

22 · · · · A · And then Kimberly forged the signatures and

23 · notarized those signatures and sent them back.

- f. That not only does SPALLINA admit to Felony criminal acts that have not yet been investigated but admits that his office members are also involved in proven Fraudulent Creation of a Shirley Trust and where MORAN has already admitted six counts of forgery for six separate parties (including for a deceased Simon and for Eliot) and fraudulent notarizations of such documents when Spallina states in the hearing Pages 102-103,

102

20 · · · · · MR. BERNSTEIN: · Sure.

21 · BY MR. BERNSTEIN:

22 · · · · Q · You've testified here about Kimberly Moran.

23 · · · · · Can you describe your relationship with her?

24 · · · · A · She's been our long-time assistant in the

25 · office.

103

· 1 · · · · Q · Was she convicted of felony fraudulent

· 2 · notarization in the Estate of Shirley Bernstein?

· 3 · · · · · MR. ROSE: · Objection · Relevance.

· 4 · · · · · THE COURT: · Overruled.

· 5 · · · · · You're asking if she was convicted of a felony

· 6 · · · · with respect to the Estate of Shirley Bernstein?

·7· . . . . . You can answer the question.  
·8· . . . . . MR. BERNSTEIN:· Correct.  
·9· . . . . . THE WITNESS:· I believe she was.

g. SPALLINA then claims that it is “standard operating procedure” for he and his clients to sign sworn Final Waivers under penalty of perjury with knowingly and irrefutably false statements and admitting that the April 09, 2012 Full Waiver (already referenced and linked herein) submitted to this Court by Spallina’s law firm in October of 2012 by Simon Bernstein, at a time after his death on September 13, 2012 and yet still acting as the Personal Representative, signed under penalty of perjury allegedly by Simon Bernstein and witnessed by Spallina, contained knowingly false statements . Then SPALLINA had a deceased Simon file that alleged sworn document with the Court as Personal Representative on a date after his death as part of a Fraud on the Court and Fraud on the Beneficiaries and Interested Parties. SPALLINA states in testimony as follows,

Pages 108-110

17· . . . Q· ·Okay· Are you aware of an April 9th full  
18· waiver that was allegedly signed by Simon and you?  
19· . . . A· ·Yeah· That was the waiver that he had signed.  
20· And then in the May meeting, we discussed the five of  
21· you, all the children, getting back the waivers of the  
22· accountings.  
23· . . . Q· ·Okay· And in that April 9th full waiver you  
24· used to close my mother's estate, does Simon state that  
25· he has all the waivers from all of the parties?  
·1· . . . A· ·He does· We sent out -- he signed that, and  
·2· we sent out the waivers to all of you.  
·3· . . . Q· ·Okay· So on April 9th of 2012, Simon signed,  
·4· with your presence, because your signature's on the  
·5· document, a document stating he had all the waivers in  
·6· his possession from all of his children.  
·7· . . . . . Had you sent the waivers out yet as of  
·8· April 9th?

· . . .  
20· BY MR. BERNSTEIN:

21 · · · · Q · · April 9th, 2012, you have a signed full waiver  
22 · of Simon's that says that he is in possession of all of  
23 · the signed waivers of all of the parties?

24 · · · · A · · Standard operating procedure, to have him  
25 · sign, and then to send out the documents to the kids.

· ..

· 1 · · · · Q · · Was Simon in possession -- because it's a  
· 2 · sworn statement of Simon saying, I have possession of  
· 3 · these waivers of my children on today, April 9th,  
· 4 · correct, the day you two signed that?

· 5 · · · · · Okay · So if you hadn't sent out the waivers  
· 6 · yet to the --

· 7 · · · · A · · I'm not certain when the waivers were sent  
· 8 · out.

· 9 · · · · Q · · Were they sent out after the --

10 · · · · A · · I did not send them out.

11 · · · · Q · · Okay · More importantly, when did you receive  
12 · those? Was it before April 9th or on April 9th?

13 · · · · A · · We didn't receive the first one until May.

14 · And it was your waiver that we received.

15 · · · · Q · · So how did you allow Simon, as his attorney,  
16 · to sign a sworn statement saying he had possession of  
17 · all of the waivers in April if you didn't get mine 'til  
18 · May?

19 · · · · · MR. ROSE: · Objection · I think it's relevance  
20 · · · · and cumulative · He's already answered.

21 · · · · · THE COURT: · What's the relevance?

22 · · · · · MR. BERNSTEIN: · Oh, this is very relevant.

23 · · · · · THE COURT: · What is the relevance on the issue  
24 · · · · that I have to rule on today?

25 · · · · · MR. BERNSTEIN: · On the validity? · Well, it's  
1 · · · · relevant · If any of these documents are relevant,

· 2 · · · · this is important if it's a fraud.

· 3 · · · · · THE COURT: · I'll sustain the objection.

· 4 · · · · · MR. BERNSTEIN: · Okay · Can I -- okay.

· 5 · BY MR. BERNSTEIN:

· 6 · · · · Q · · When did you get -- did you get back prior to  
· 7 · Simon's death all the waivers from all the children?

· 8 · · · · A · · No, we did not.

· 9 · · · · Q · · So in Simon's April 9th document where he  
10 · says, he, Simon, on April 9th has all the waivers from  
11 · his children while he's alive, and you didn't even get  
12 · one 'til after he passed from one of his children, how  
13 · could that be a true statement?

14 · · · · · MR. ROSE: · Objection · Relevance · Cumulative.

15 · · · · · THE COURT: · Sustained.



- h. Finally, SPALLINA also perjures himself under sworn oath at the hearing when testifying to the status of his Florida Bar license, which at this time he is listed as “Not Eligible to Practice Law in Florida<sup>5</sup>” when he states in the December 15, 2015 hearing,

Page 91

7· ·BY MR. BERNSTEIN:

·8· ··· Q· ·Mr. Spallina, you were called today to provide  
·9· ·some expert testimony, correct, on the --

10· ··· A· ·No, I was not.

11· ··· Q· ·Oh, okay· You're just going based on your  
12· ·doing the work as Simon Bernstein's attorney and Shirley  
13· ·Bernstein's attorney?

14· ··· A· ·Yes.

15· ··· Q· ·Okay· Are you still an attorney today?

16· ··· A· ·I am not practicing.

17· ··· Q· ·Can you give us the circumstances regarding  
18· ·that?

19· ··· A· ·I withdrew from my firm.

Pages 120-121

19· ·BY MR. BERNSTEIN:

20· ··· Q· ·Did you -- are you a member of the Florida  
21· ·Bar?

22· ··· A· ·Yes, I am.

23· ··· Q· ·Currently?

24· ··· A· ·Yes, I am.

25· ··· Q· ·Okay· You said before you surrendered your  
·1· ·license.

·2· ··· A· ·I said I withdrew from my firm· It wasn't

·3· ·that I was not practicing.

- i. Spallina further Perjures his testimony when asked if the Fraudulent Shirley Trust he created by Post Mortem fraudulently altering a Shirley Amendment and

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<sup>5</sup> [https://www.floridabar.org/wps/portal/flbar/home/attysearch/mprofile!/ut/p/a1/jc\\_LDolwEAXQT-ptthRaWo6mkRazxgdCNYUWaKLowfr\\_42LioOrtJzs3cYZ41zA\\_dLfTdNZyH7vjYvTxACM3dBrawxEHIOI3ZqgSEHEE7qimxJMMNktoDIOr2qgtF7RM\\_8sjMoRf-T3zn8RJNQO5BXKtp0AxeYNIRTj-HTx\\_eJ2II7ycdg2C6e8\\_WXgh/dl5/d5/L2dBISEvZ0FBIS9nQSEh/?mid=497381](https://www.floridabar.org/wps/portal/flbar/home/attysearch/mprofile!/ut/p/a1/jc_LDolwEAXQT-ptthRaWo6mkRazxgdCNYUWaKLowfr_42LioOrtJzs3cYZ41zA_dLfTdNZyH7vjYvTxACM3dBrawxEHIOI3ZqgSEHEE7qimxJMMNktoDIOr2qgtF7RM_8sjMoRf-T3zn8RJNQO5BXKtp0AxeYNIRTj-HTx_eJ2II7ycdg2C6e8_WXgh/dl5/d5/L2dBISEvZ0FBIS9nQSEh/?mid=497381)

disseminated through the mail attempted to change the beneficiaries of the Shirley Trust and he answered no. Yet, the following analysis shows different;

22. BY MR. BERNSTEIN:

23. Q. Did the fraudulently altered document change

24. the beneficiaries that were listed in Shirley's trust?

25. A. **They did not [emphasis added].**

Now comparing the language in the two documents the Court can see that this statement is wholly untrue. From the alleged Shirley Trust document,

“Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM"), **and their respective lineal descendants [emphasis added]** shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL !ANTONI and LISA S. FRIEDSTEIN, and their lineal descendants all predecease the survivor of my spouse and me, then TED and PAM, and their respective lineal descendants shall not be deemed to have predeceased me and shall be eligible beneficiaries for purposes of the dispositions made hereunder.”<sup>6</sup>

Then the language from the fraudulent amendment states;

2. I hereby amend the last sentence of Paragraph E. of Article III. to read as follows:

"Notwithstanding the foregoing, as my spouse and I have adequately provided for them during our lifetimes, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM '), shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their respective lineal descendants all predecease the survivor of my spouse and me, then TED and PAM shall not be deemed to have predeceased the survivor of my spouse and me and shall become eligible beneficiaries for purposes of the dispositions made hereunder."

20. Clearly the fraudulent amendment attempts to remove from the predeceased language regarding TED and PAMELA’s lineal descendants from being excluded by removing them from the

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<sup>6</sup> Shirley Trust Page 7

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/Shirley%20Trust%20plus%20fraudulent%20amendment%202.pdf>

original trust language as being considered predeceased and thus change the beneficiaries of the Shirley Trust. In fact, adding Ted and Pam's lineal descendants back into the trust would give them a chance to convert improperly 40% of the value to their families from 0%.

21. This perjury by Spallina, acting already with proven unclean hands and admitted to crimes in the Estates and Trusts of Simon and Shirley Bernstein changed the outcome of the validity hearing adding cause for a rehearing and voiding the Order that resulted, which were already void and of no effect since Judge Phillips should have already voluntarily mandatorily disqualified himself from the proceedings prior to holding any hearings.
22. That as for Ted being qualified as a fiduciary, the following passage from the December 15, 2015 hearing that Ted called for to prove the validity of the dispositive documents after his former counsel admitted criminal activities shows that Ted, who used this disgraced attorney Spallina as his star and only witness to validate the documents, did nothing to validate the documents himself as Trustee to protect the beneficiaries harmed by his former counsels actions, his friend and business associate when he states, under oath,

Page 206-210

25. . . . Q. . Okay. Ted, you were made aware of Robert  
1. Spallina's fraudulent alteration of a trust document of  
2. your mother's when?  
3. . . . A. . I believe that was in the early 2013 or '14.  
4. . . . Q. . Okay. And when you found out, you were the  
5. fiduciary of Shirley's trust, allegedly?  
6. . . . A. . I'm not sure I understand the question.  
7. . . . Q. . When you found out that there was a fraudulent  
8. alteration [sic] of a trust document, were you the  
9. fiduciary in charge of Shirley's trust?  
10. . . . A. . I was trustee, yes. I am trustee, yes.  
11. . . . Q. . And your attorneys, Tescher and Spallina, and  
12. their law firm are the one who committed that fraud,  
13. correct, who altered that document?  
14. . . . A. . That's what's been admitted to by them,  
15. correct.

16. . . . Q. . . Okay. . . So you became aware that your counsel  
17. that you retained as trustee had committed a fraud,  
18. correct?

19. . . . A. . . Correct.

20. . . . Q. . . What did you do immediately after that?

21. . . . A. . . The same day that I found out, I contacted  
22. counsel. I met with counsel on that very day. I met  
23. with counsel the next day. I met with counsel the day  
24. after that.

25. . . . Q. . . Which counsel?

1. . . . A. . . Alan Rose.

...

P 209-210

24. BY MR. BERNSTEIN:

25. . . . Q. . . Have you seen the original will and trust of  
1. your mother's?

2. . . . A. . . Can you define original for me?

3. . . . Q. . . The original.

4. . . . A. . . The one that's filed in the court?

5. . . . Q. . . Original will or the trust.

6. . . . A. . . I've seen copies of the trusts.

7. . . . Q. . . Have you done anything to have any of the  
8. documents authenticated since learning that your  
9. attorneys had committed fraud in altering dispositive  
10. documents that you were in custody of?

11. . . . . MR. ROSE: . . Objection. . . Relevance.

12. . . . . THE COURT: . . Overruled.

13. . . . . THE WITNESS: . . I have not.

14. BY MR. BERNSTEIN:

15. . . . Q. . . So you as the trustee have taken no steps to

16. validate these documents; is that correct?

17. . . . A. . . Correct.

23. Finally, as reported by the Palm Beach Post<sup>7</sup> and others in an evolving story of

Probate/Guardian abuse emanating from Florida's courts, similar to the bank and mortgage  
frauds that found judges and lawyers fraudulently conveying properties through "robosigning"  
aka bank fraud, forgery and more, Florida's Judges are coming under fire for their bizarre

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<sup>7</sup> <http://www.mypalmbeachpost.com/guardianships-colin-savitt>  
and

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/Pacenti%20Articles%20Compiled%20as%20of%20Feb%2002%202016.pdf> (Large File = Patience)

<http://aaapg.net/florida-the-judges-wife-a-frequent-court-appointed-guardian/>

behaviors of probate/guardianship abuses and basically grave robbing Florida's elderly as has been evidenced herein, where dead person's identities are used to commit Fraud on the Court and when discovered covered up by further Fraud by the Court in conjunction with the lawyers and guardians and judges.

WHEREFORE, it is respectfully prayed for an Order Staying this case and all related cases pending review by the 4th DCA and striking such motion by Ted Bernstein from the Calendar or alternatively postponing the hearing on such motion until after motions to remove Ted Bernstein as a Trustee and fiduciary are fully heard and further granting a full evidentiary hearing should Ted Bernstein survive a proper hearing on motions to be removed as Trustee and for such other and further relief as may be just and proper.

Dated: February 10, 2016

**/s/Eliot Ivan Bernstein**

Eliot Ivan Bernstein on Behalf of his Minor Children; Eliot Ivan Bernstein as Trustee f/b/o D.B., Ja. B. and Jo. B; Eliot Ivan Bernstein as Trustee of the Beneficiary Eliot Bernstein Family Trust and Eliot Bernstein as a Named Beneficiary.

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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 10<sup>th</sup> day of February, 2016.

**/s/Eliot Ivan Bernstein**

Eliot Ivan Bernstein on Behalf of his  
Minor Children; Eliot Ivan Bernstein  
as Trustee f/b/o D.B., Ja. B. and Jo.  
B; Eliot Ivan Bernstein as Trustee of  
the Beneficiary Eliot Bernstein  
Family Trust and Eliot Bernstein as a  
Named Beneficiary.

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<p><b>Counter Defendant</b>  Lindsay Baxley aka Lindsay  Giles  Life Insurance Concepts  950 Peninsula Corporate  Circle  Suite 3010  Boca Raton, FL 33487  lindsay@lifeinsuranceconce  pts.com</p>	<p><b>Counter Defendant</b>  Estate of Simon Bernstein  Personal Representative  Brian M. O'Connell, Partner  Ciklin Lubitz Martens &amp;  O'Connell  515 N Flagler Drive  20th Floor  West Palm Beach, FL 33401  boconnell@ciklinlubitz.com  jfoglietta@ciklinlubitz.com</p>	<p>Jill Iantoni  2101 Magnolia Lane  Highland Park, IL 60035  jilliantoni@gmail.com</p>
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**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA**

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBJ

Plaintiff,

v.

ALEXANDRA BERNSTEIN; et al.

Defendants.

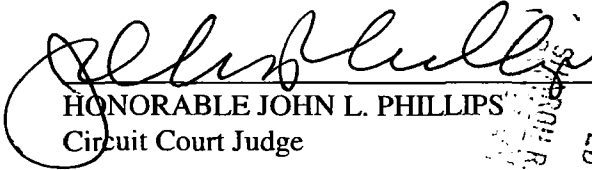
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**ORDER ON PLAINTIFF'S MOTION TO MODIFY FINAL ORDER APPROVING SALE  
DATED MAY 6, 2015 AND FOR FURTHER INJUNCTIVE RELIEF**

THIS CAUSE came before the Court for hearing on February 4, 2016 on Successor Trustee's *Motion to Modify Final Order Approving Sale Dated May 6, 2015 and for Further Injunctive Relief* (the "Motion"). The Court, having considered the record, heard argument of counsel and being otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:

1. Eliot Bernstein's request to strike the Motion is DENIED.
2. Eliot Bernstein's motion for a stay pending appellate review is DENIED.
3. Based upon the objections of Eliot Bernstein to the Motion, the Trustee shall schedule the Motion for a 30-minute evidentiary hearing.

DONE and ORDERED in Chambers, North County Courthouse in Palm Beach Gardens, Florida, on this 16 day of February, 2016.

  
HONORABLE JOHN L. PHILLIPS  
Circuit Court Judge

Copies to: Attached Service List

FILED  
2016 FEB 17 PM 12:18  
STEPHEN R. BUCK, CLERK  
CIRCUIT COURT  
PALM BEACH COUNTY, FLORIDA

## SERVICE LIST

Case No.: 502014CP003698XXXXNBIJ

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and Eliot and Candice Bernstein,  
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**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA**

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNB

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON;  
PAMELA B. SIMON, Individually and as Trustee  
f/b/o Molly Simon under the Simon L. Bernstein  
Trust Dtd 9/13/12; ELIOT BERNSTEIN,  
individually, as Trustee f/b/o D.B., Ja. B. and Jo. B.  
under the Simon L. Bernstein Trust Dtd 9/13/12, and  
on behalf of his minor children D.B., Ja. B. and Jo.  
B.; JILL IANTONI, Individually, as Trustee f/b/o J.I.  
under the Simon L. Bernstein Trust Dtd 9/13/12, and  
on behalf of her Minor child J.I.; MAX  
FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as  
Trustee f/b/o Max Friedstein and C.F., under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on behalf  
of her minor child, C.F.,

Defendants.

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**ORDER ON SUCCESSOR TRUSTEE'S MOTION TO  
APPOINT A GUARDIAN AD LITEM; FOR A GAG ORDER TO PROTECT THE  
GUARDIAN AND OTHERS; AND TO STRIKE ELIOT BERNSTEIN'S FILINGS**

THIS CAUSE came before the Court for evidentiary hearing on February 25, 2016, on  
Successor Trustee's Motion for Appointment of a Guardian Ad Litem to Represent the Interests of  
Eliot Bernstein's Children etc. (the "Motion"). The Court, having considered the record, heard  
argument of counsel and being otherwise fully advised in the premises, hereby


ORDERS AND ADJUDGES:

2016 MAR -2 PM 1:08  
FILED

SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
NORTH COUNTY BRANCH  
MAR 2 PM 1:09  
FILED

1. This Court determined after a trial held on December 15, 2015 that the beneficiaries of The Shirley Bernstein Trust Agreement dated 5/20/2008 (the "Trust") are Simon Bernstein's "then living grandchildren." Under that ruling, Simon's children – including Eliot Bernstein – are not beneficiaries of the Trust. This Court entered a written order dated February 1, 2016, determining Eliot Bernstein lacks standing to participate in this proceeding and striking his individual filings.

2. Eliot Bernstein's three children are among the class of Trust beneficiaries. Eliot seeks to use his role as parent and natural guardian of three trust beneficiaries to give him standing to continue his involvement in this case. The primary issue now raised is whether Eliot Bernstein should be permitted to continuing representing the interests of his minor children, as their parent and natural guardian, in this Trust Proceeding.

3. ~~Despite his status as natural guardian, Eliot will not be permitted to do so, and~~ <sup>T</sup> the Court will appoint a Guardian ad Litem, because there is a conflict of interest between the parent and the children, and because Eliot Bernstein has proven to be an inadequate representative of the best interests of his children. 

4. First, as to the conflict, Eliot's position throughout the case and at trial was that he was a beneficiary of the Trust. He continued <sup>d</sup>advancing that position after trial by prosecuting an appeal of the December 16, 2015 Final Judgment. Eliot's individual interests are in conflict with the interests of his children. Under Florida law, a court should appoint a guardian ad litem when a parent's interest conflicts with the interest of her or her minor child. *Mistretta v. Mistretta*, 566 So. 2d 836, 837-38 (Fla. 1st DCA 1990)(best interests of a minor are **not** fully protected when adverse to the interests of the parent); *Florida Nat. Bank & Trust Co. at Miami v. Blake*, 155 So. 2d 798 (Fla. 3d DCA 1963) (court should have appointed a guardian ad litem for minor child when it was

apparent that the interests of the minor conflicted with the interests of the mother and father); *Gilbertson v. Boggs*, 743 So. 2d 123 (Fla. 4th DCA 1999) (guardian ad litem should have been appointed <sup>when</sup> ~~then~~ the parents' interests were adverse to the minor child).

5. Second, Fla. Stat. 731.303(4) provides: "If the court determines that representation of the interest would otherwise be inadequate, the court may, at any time, appoint a guardian ad litem to represent the interests of ... a minor ..." Based upon the evidence presented and the Court's observations at the trial in December 2015 and at the evidentiary hearing on February 25, 2016, and

based upon the Court's review of various motions filed by Eliot Bernstein since the trial, it is <sup>in fact, his actions are adverse + destructive to the children's interest.</sup> apparent Eliot Bernstein is not an adequate representative of the best interests of his children. <sup>JB</sup>

6. Eliot Bernstein states that his agenda includes ridding the court system of corruption among judges, lawyers and fiduciaries, regardless of the cost <sup>to</sup> the beneficiaries. He appears to have no interest in the swift and efficient administration of the Shirley Bernstein Trust. He has taken actions to hinder and delay the administration of the Trust, and caused waste of Trust assets to respond to his assertions.

7. To the extent not already covered by this Court's Order dated February 1, 2016, Eliot Bernstein is barred from any further participation in this action, whether individually or as purported parent and natural guardian. Any and all pending motions, claims, or other filings by Eliot Bernstein,

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<sup>1</sup> In addition, under section 744.3025, the court *may* appoint a guardian ad litem to represent a minor's interest before approving a settlement of the minor's portion of any cause of action in which the gross settlement of the claim exceeds \$15,000 if the court believes a guardian ad litem is necessary to protect the minor's interest, and "shall appoint a guardian ad litem to represent the minor's interest before approving a settlement of the minor's claim in a case in which the gross settlement involving a minor equals or exceeds \$50,000." Here, it is likely that there will be a settlement at some point in which each of minors receives a substantial distribution, and it is likely Eliot will oppose any such settlement.

on behalf of his children, <sup>are</sup> ~~is~~ hereby stricken from the record, without prejudice to the rights of the Guardian Ad Litem to take whatever actions are deemed appropriate.

8. The parties shall attempt to mutually agree on a guardian ad litem. The Court will appoint whomever the parties agree upon within the next three business days. Eliot Bernstein may

participate in such discussions. To the extent the parties, including Eliot Bernstein, are unable to agree on a guardian ad litem, ~~upon notice from the Trustee's counsel the Court shall randomly~~ <sup>each of the parties shall submit a list of three</sup>

~~names of potential Guardian Ad Litem's, each of whom has agreed to appoint a guardian ad litem for Ja.B., Jo.B. and D.B. or schedule a further hearing to appoint a~~ <sup>accept the appointment if selected. These lists shall be filed</sup>

~~suitable Guardian Ad Litem.~~ <sup>with the Clerk with courtesy copy to the undersigned, no later than 10 days from this date.\*</sup>

9. The Guardian Ad Litem will have full power and autonomy to represent the interests of the children of Eliot Bernstein, subject to the jurisdiction and review of this Court. The Guardian Ad Litem will be entitled to petition the Court for an award of attorneys' fees to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by Ja.B., Jo.B, and/or D.B.

10. To protect the integrity and independence of the guardian, Eliot Bernstein and all persons acting in concert with him: (a) shall <sup>not</sup> ~~make no effort to~~ contact, email or otherwise

communicate with the Guardian Ad Litem except at the request of the Guardian Ad Litem; (b) shall

~~make no statement of any kind about the guardian, nor post information about the guardian on the~~

~~internet in any fashion; and (c) shall not in any way threaten or harass the guardian. This Court alone~~

~~shall supervise the guardian, and all information concerning this guardianship shall be treated as~~

~~private and confidential.~~ Any violation of this order may subject the violator to severe sanctions for


contempt of court. The Court will use the full measure of its coercive powers to ensure compliance

with this Order.

<sup>proposed</sup>  
\* Parties shall furnish an Order appointing GATL with the lists. The Court will act without further hearing on the appointment, if possible.

11. The Court reserves jurisdiction to enforce all terms of this Order, and to oversee the service of the guardian ad litem appointed.

DONE and ORDERED in Chambers, North County Courthouse on 3-1-16, 2016.

  
HONORABLE JOHN L. PHILLIPS

cc: Attached service list

**SERVICE LIST Case No.: 502014CP003698XXXXNBIJ**

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and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON;  
PAMELA B. SIMON, Individually and as Trustee  
f/b/o Molly Simon under the Simon L. Bernstein  
Trust Dtd 9/13/12; ELIOT BERNSTEIN,  
individually, as Trustee f/b/o D.B., Ja. B. and Jo. B.  
under the Simon L. Bernstein Trust Dtd 9/13/12,  
and on behalf of his minor children D.B., Ja. B. and  
Jo. B.; JILL IANTONI, Individually, as Trustee  
f/b/o J.I. under the Simon L. Bernstein Trust Dtd  
9/13/12, and on behalf of her Minor child J.I.; MAX  
FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as  
Trustee f/b/o Max Friedstein and C.F., under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on  
behalf of her minor child, C.F.,

Defendants.

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**AMENDED MOTION TO MODIFY FINAL ORDER APPROVING SALE DATED  
MAY 6, 2015, FOR FURTHER INJUNCTIVE RELIEF, AND FOR ORDER TO SHOW  
CAUSE WHY ELIOT BERNSTEIN SHOULD NOT BE HELD IN CONTEMPT OF COURT**

Plaintiff, Ted S. Bernstein (the "Trustee"), as Successor Trustee, moves for entry of an Order modifying in part the *Final Order Granting Successor Trustee's Motion to Approve Sale of Trust Property* dated May 6, 2015 (the "Sale Order"), for further injunctive relief, and for an order to show cause, and states:

1. On May 6, 2015, this Court approved the Trustee's Motion to sell the Trust's property located within the St. Andrews Country Club community in Boca Raton. The sale was initially

scheduled to close on or before March 31, 2015, in an all cash transaction, with the buyer accepting the property "as is." The urgency was created because the St. Andrews Country Club was raising the required equity membership fee from \$95,000 to \$125,000, an increase of \$30,000. Upon learning of the possible sale, Eliot Bernstein objected to it and threatened to file a lis pendens.

2. This Court held a hearing on the Trustee's motion to approve sale on March 25, at uniform motion calendar. Based upon Eliot Bernstein's objections, the Court deferred ruling and scheduled an evidentiary hearing for the next day. At the evidentiary hearing, the Trustee and the Trustee's licensed realtor testified as to: the lengthy marketing process that had been undertaken in an effort to sell this property; the listing was more than 1,000 days old; the offer received was by far the highest and best received to date and likely in the near future; the offer was consistent with an appraisal, which was admitted into evidence; there were extensive carry costs associated with the property; and the announced \$30,000 increase in the club equity membership contribution was a significant factor in this deal. After hearing this testimony, and again based upon Eliot Bernstein's objections and request for time to obtain counter-evidence, the trial court denied the Motion to Approve the Sale on an emergency basis, and deferred the ruling pending a second evidentiary hearing.

3. At an evidentiary hearing held on May 6, 2015, the Court afforded Eliot Bernstein the opportunity to present evidence, through documents or testimony. Despite already having delayed the sale for more than five weeks, Eliot Bernstein presented no witnesses at the evidentiary hearing. Nor did he testify himself. Further, Eliot Bernstein produced no documentary evidence to refute the testimony of the Trustee's licensed real estate agent or the appraisal that was in evidence. Eliot did present a single piece of paper printed off the internet, purporting to be from the Zillow

website. The trial court sustained the Trustee's objection to this document. At the conclusion of the hearing on May 6, the trial court entered the Sale Order, a final order approving the sale of the property and authorizing the Trustee to take all reasonable steps to conclude the transaction. Eliot has never appealed the Sale Order, but he did file a Petition for All Writs with the Florida Supreme Court prior to the closing, which prevented the title company from issuing clear title until that appeal was resolved.

4. As part of the Sale Order, Judge Colin required the Trustee to provide all beneficiaries with a copy of the closing statement and bank records confirming the receipt of funds, and ordered the Trustee's counsel to hold the funds in a separate escrow account. By this Motion, the Trustee seeks to modify the Sale Order with regard to these requirements.

5. First, it is impractical and of no benefit to the trust to require counsel to open a separate escrow account to hold these sale proceeds. Having conferred with the undersigned's bank, the interest to be earned on the monies if placed in a separate account outside of the law firm's IOTA account is 0.15%. Over the course of a year, assuming all of the net sales proceeds sat in that account for a full year, the interest to be earned would be \$500. It is anticipated the funds will not sit in the account for anywhere near a year, meaning there will be virtually no benefit to the estate from imposing this requirement on the Trustee's counsel, and there will be expense incurred by the Trustee's counsel in setting up and maintaining a separate escrow account. Thus, the Trustee requests that the Court modify the Order to allow the proceeds to remain in the law firm's IOTA account until such time as the Court orders their release and disbursement to the Trustee, to be held with the other assets of the Trust.

6. Second, the Sale Order requires the funds be held pending further order of the Court. Now that the sale is concluded, and once the Trustee has provided the beneficiaries documents relating to the transaction, there is no reason for the funds to be segregated away from the general trust assets.

7. Third, to conclude this sale the Trust was forced to incur substantial attorneys' fees, solely as a result of the obstructionist and delay tactics of Eliot Bernstein. The Trustee and the Trustee's counsel request permission to have those legal fees paid from the sale proceeds. In total, the Trustee incurred more than \$50,000 in attorneys' fees alone to conclude the transaction, including four hearing and appellate work; working with the title company; dealings and interactions with the buyer caused by Eliot's filings which continually delayed potential closing; and advising and representing the Trustee. The Trustee has reviewed the invoices submitted by counsel and believes the time and expense are reasonable, valuable and provided a substantial benefit to the Trust. The Trustee requests permission to pay the sum of \$40,000 immediately from the sale proceeds, which the law firm has agreed to accept if the matter is resolved without the need for an extensive evidentiary hearing or retention of experts. These fees should be approved. If there is an objection of Eliot Bernstein, which might necessitate an evidentiary hearing, the Trust and its counsel will incur additional attorneys' fees, negating the opportunity for a discount.

8. Fourth, while the Trustee has no opposition to providing a copy of the HUD-1 and proof of receipt of funds to all beneficiaries, these documents are personal, private and confidential, and should not be shared with anyone in the world. In particular, these documents should not be posted on the internet. The buyer is a private citizen which entered into an arms length contract to purchase property the Trust was anxiously trying to sell for more than three years. The buyer now

owns Fee Simple Title, which is both marketable and insurable, as evidenced by the title insurance policy purchased by seller as part of the closing of the transaction. Further, as a condition of buyer closing, seller was required to escrow \$25,000 as a limited indemnity fund, in the event that buyer is subjected to any litigation or harassment by Eliot Bernstein, as defined in the sale contract. Notwithstanding his disappointment over being disinherited by his parents and his apparent disappointment with the sale amount, there is no legitimate reason why Eliot Bernstein should have any further involvement with this property, contact with the buyer, or interference with the buyer's quiet and peaceful enjoyment of the property. In the Sale Order, Judge Colin provided the following:

All beneficiaries and persons subject to the jurisdiction of this Court, including Eliot Bernstein, are ordered to take no action to interfere with or otherwise hinder or delay the sale of the House.

9. The buyer has witnessed firsthand the devastating attacks by Eliot Bernstein through the internet on his brother (the Trustee) and others. As part of the final closing negotiations, once Eliot had exhausted all of his extraordinary writ and appellate maneuvers, buyer and its counsel insisted on a limited indemnity<sup>1</sup> to protect the buyer from litigation, interference or harassment by Eliot Bernstein. To assuage concerns of the buyer and induce it to close, the Sale Contract was amended to include the following:

INJUNCTIVE PROTECTION AND/OR LIMITED INDEMNITY FOR ATTORNEYS' FEES. Seller agrees to file a motion, and participate in any hearing set by the Court, at Seller's sole expense, seeking a permanent injunction after the closing to bar and prevent Eliot Bernstein and those acting in concert with him from having any contact of any kind with the Buyers, including no contact by mail, email or telephone; to forbid Eliot from attempting to learn their identities; to forbid Eliot from publishing or publicizing their identities anywhere in the world, including

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<sup>1</sup> The indemnity is limited to \$25,000 to pay legal expenses incurred by buyer dealing with any Eliot issue. This money is held in escrow, but is able to be released immediately to the Trustee upon entry of an injunctive relief order.

online or anywhere on any internet website, webpage, blog or otherwise; and to enjoin Eliot from filing any action against Buyers anywhere in the world (the "Injunction"). If successful, thereafter upon request of Buyer, Seller will take necessary and reasonable action to enforce the Injunction.

The Trustee requests the Court enter an Order enjoining all beneficiaries and Eliot Bernstein, over whom this Court has jurisdiction, together with all persons acting in concert with them, from doing any of the above described actions or taking any action against the buyer. The Trustee believes that paragraph 3 of the Sale Order covers this, but so there is clarity and lack of any possible confusion, the Trustee requests that the Court enter the additional injunctive relief sought herein.<sup>2</sup>

10. Finally, to the extent that the Trustee provides an accounting, copies of the HUD-1 and bank records, the Trustee requests that those documents be ordered to remain confidential and to not be shared with anyone, and be subject to the same injunctive relief entered above. Eliot's delay tactics in this particular instance were financially devastating to the Trust. In addition to the extra \$30,000 club membership that Trust was required to pay when the closing was delayed past March 31, the Trust incurred substantial additional expenses and fees between March 31 and the final closing date of January 15, 2016. In particular, the Trust received reduced proceeds and incurred additional expenses totaling more than \$230,000 as shown in Appendix A.

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<sup>2</sup> In between the evidentiary hearings from March 25 to May 6, and beyond, Eliot published a number of inflammatory articles on the internet which list the address of the property with the heading "buyer beware." These tactics were designed to prevent the sale or discourage any potential buyers from having interest in the property. This information serves no public purpose, and only could cause harm or embarrassment to the Trustee or to the buyer. In addition, now that the buyer has paid its money, there is no reason to allow materials to be on the internet which could impair the buyer's ability to sell the property to someone else, at present or in the future. The Court has afforded Eliot due process, and should enforce its orders and prevent further tactics designed to thwart those valid, final and non-appealable orders. Thus, the Trustee requests that the Court order Eliot Bernstein to remove all materials from the internet that reference the address of this property or otherwise mention it in any way, shape or form.

11. Because Eliot is not individually a beneficiary, it is unclear whether these amounts could be surcharged against Eliot (who is indigent according to all of his court filings) or surcharged against the interest of Eliot's minor children, for whom he purported to serve as guardian. Because the Trustee does not believe Eliot is a suitable or competent guardian to represent the interest of his children, which is the subject of an evidentiary hearing to be held on February 25, 2016, the Trustee believes it will be appropriate to defer making any decision on a surcharge action until after the Court decides whether or not to appoint a guardian ad litem for Eliot's children.

12. Moving forward, however, there is no reason to allow Eliot Bernstein to burn additional Trust assets by harassing the buyers or trying to educate the world on the "alleged fraud" that has occurred within this Court system. No one, and certainly not the buyer, has any interest in this matter becoming public, as it was the subject of multiple evidentiary hearings in the trial court and full appellate review to the extent such was sought. In other words, Eliot Bernstein has received all the process he is due with regard to the Sale Order, which is now final and non-appealable, and that should be the end of it for all time. To the extent Eliot does action calculated and virtually guaranteed to cost the Trust \$25,000, the Court should hold him accountable and the Trustee certainly reserves the right to seek surcharge against the inheritance of the minors for whom he purports to serve as guardian.

13. In addition to the foregoing, the Trustee amends this Motion to seek entry of an Order to Show Cause directed to Eliot Bernstein as to why he is not in contempt of court for violating prior court orders. At a hearing on the Trustee's Motion for Approval, the Court enjoined Eliot Bernstein:

THE COURT: So we're going to take this one small step at a time, but I'm ordering an injunction against you not to contact the buyers directly or indirectly with respect to any information concerning this transaction. Understood?

MR. ELIOT BERNSTEIN: Yes. I've never contacted any buyers. (T. 5)

14. Later at the same hearing, the issue of publishing on the internet was raised:

THE COURT: I've already ordered him not to do anything directly or indirectly -- contact any aspect of this transaction -- with the buyer. That's direct or indirect. (T. 12)

15. The transaction closed on January 15, 2016, after a nine-and-a-half month delay due to Eliot objecting and demanding an evidentiary hearing, during which he presented no evidence, and then appealing various rulings. On February 1, 2016, the Warranty Deed and various closing documents, affidavits, etc., were recorded.

16. Since then, someone (either Eliot or someone believed to be acting in concert with him) has contacted the buyer, Lions Head Land Trust, and posted numerous blogs on the web describing the transaction and naming persons involved, including: the title lawyer paid by the Trust and the closing agent; the Buyer's legal entity; the Buyer's incorporator; the Buyer's lawyer; the beneficial owners of Lions Head Land Trust. A listing of the "headlines" of these posts is attached as Appendix B.

17. The Trustee requests an order directing Eliot Bernstein to immediately remove or cause to be removed all web blogposts concerning any of these trusts and estate matters, including everything to do with or mentioning the sale of property; and/or entry of an order to show cause why he should not be held in contempt of court.

WHEREFORE, the Trustee requests that the trial court modify the Sale Order and enter additional injunctive relief as requested in this Motion; enter an Order to Show Cause; and grant such other relief as is just.



**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by:  Facsimile **and**  U.S. Mail;  U.S. Mail;  Email Electronic Transmission;  FedEx;  Hand Delivery this 3rd day of March, 2016.

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Attorneys for Ted S. Bernstein

By: /s/ Alan B. Rose  
Alan B. Rose (Fla. Bar No. 961825)

**SERVICE LIST Case No.: 502014CP003698XXXXNBIJ**

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
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Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her  
children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
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Appendix A

<b>Description</b>	<b>Amount</b>
Increased Club equity contribution	\$30,000.00
Additional interest on Trust's secured line of credit	\$28,332.45
Additional property taxes	\$16,062.76
Additional insurance	\$19,162.40
Mandatory club dues and expenses	\$26,151.14
Mandatory HOA Fees	\$10,005.55
Utilities and maintenance	\$5,317.98
Repair costs <sup>3</sup>	\$31,902.50
Legal fees: Buyer	\$15,000.00
Legal fees: Seller	\$50,000.00
<b>TOTAL</b>	<b>\$231,934.78</b>

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<sup>3</sup> Although the original contract was scheduled to close "as is, where is," the buyers had the right to inspect the property before closing. In the extended gap between the original closing date and late summer, serious additional issues were discovered with the house. These issues, again, are of no concern to anyone other than the buyer, and the issues should remain confidential subject to injunctive relief to prevent Eliot Bernstein from publicizing them on the internet.

## APPENDIX "B"

These are some of the blog headlines in the past two weeks:

- Lion Head Land Trust is OWNER of 7020 Lion Head PERIOD
- Is there a Trustee for Lion Head Land Trust? Was that XXXXX XXXXX? We know the incorporator so what is going on here?
- Old Republic National Title provided title insurance for Simon Bernstein Estate Case home located at 7020 Lion Head Lane Boca Raton Florida. Ted S. Bernstein CLOSED the Deal as the Seller. 22 days later the resident of the home dies under suspicious circumstances.
- XXXXX XXXXX Law is the Closing Agent LLC where 7020 Lions Head Lane Boca Raton was CLOSED for the Sale of the property, as seen on the warranty deed.
- Did Leilani Ochoada even know XXXXX XXXXX? Or did Florida Lawyer XXXX XXXX set all this up to hide XXXXX's ownership of 7020 Lion Head Lane in Boca Raton? Did Lawyer Laurence Pino trick an unsuspecting woman into pretending to own a corporation? If so Why? If not then who did, or did she suspect there was more to all this?
- It appears that Orlando attorney XXXX XXXX set up a Bogus Corporation for XXXX XXXX? But why? Was it to protect assets? To defer liability? To hide assets? Or was it to hide XXXX XXXXX, was he in danger from someone?
- And why did XXXX XXXXX Florida attorney choose Leilani Ochoada as his mark? What did he say to her, threaten her with or promise her to get her to go along with all this?
- Per the warranty deed you see only Ted S. Bernstein, his attorney Alan Rose as witness and another witness. And you see the Buyer as Lion Head Land Trust Inc. of which is incorporated by Leilani Ochoada. You see no trace of a XXXX XXXX or a XXXX XXXX. You only see this one woman left to take the heat, the liability, the media on all this. Why?
- XXXX XXXX found Dead at 7020 Lion Head Lane Boca Raton. Judge Martin Colin, Judge John Philips, the Boca Raton Sheriff and more have known of the dangers in the Simon Bernstein Case for years. Will they Do SOME actual investigations now or are the Florida Judges and Supreme Court too Powerful.
- Maybe Orlando attorney XXXX XXXX set up a phony corporation for XXXX XXXX to help him avoid taxes, hide assets, deter debt, get a mortgage or some other illegal activity on either of their parts.

IN THE CIRCUIT COURT OF THE  
15<sup>TH</sup> JUDICIAL CIRCUIT, IN AND FOR  
PALM BEACH COUNTY

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,  
Plaintiff,

PROBATE DIVISION  
CASE NO.: 502014CP003698XXXXNB  
DIVISION: IH

v.

ALEXANDRA BERNSTEIN; ERIC  
BERNSTEIN; MICHAEL BERNSTEIN;  
MOLLY BERNSTEIN; PAMELA B. SIMON,  
individually and as Trustee f/b/o Molly Simon  
under the Simon L. Bernstein Trust Dtd 9/13/12;  
ELIOT BERNSTEIN, individually, as Trustee  
f/b/o D.B., Ja.B. and Jo. B. under the  
Simon L. Bernstein Trust dtd 9/13/12,  
and on behalf of his minor children D.B.,  
Ja. B. and Jo. B.; JILL IANTONI, individually,  
as Trustee f/b/o J.I. under the Simon L. Bernstein  
Trust Dtd 9/13/12, and on behalf of her minor  
child, J.I.; MAX FRIEDSTEIN; LISA FRIEDSTEIN,  
individually, as Trustee f/b/o Max Friedstein and C.F.,  
under the Simon L. Bernstein Trust Dtd 9/13/12, and  
on behalf of her minor child, C.F.,  
Defendants.

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**MOTION FOR PROTECTIVE ORDER AS TO DEPOSITION OF  
WILLIAM STANSBURY AND APPEARANCE AT EVIDENTIARY HEARING/TRIAL**

COMES NOW William Stansbury, by and through his undersigned counsel, and moves  
this Court for the entry of a Protective Order with regard to two subpoenas served upon him on  
March 10, 2016 demanding him to appear for the taking of his deposition and to appear at a  
hearing scheduled for April 8, 2016, and states as follows:

1. On March 10, 2016, non-party William Stansbury was served (through counsel)  
with two subpoenas:

- a. Subpoena Duces Tecum to William Stansbury for appearance at deposition (a copy of which is attached hereto as **Exhibit "A"**); and
- b. Subpoena Duces Tecum to appear at evidentiary hearing/trial (a copy of which is attached hereto as **Exhibit "B"**).

--- **Statement of the Case** ---

2. This is an action brought by TED BERNSTEIN as Successor Trustee of the Shirley Bernstein Trust against all of the beneficiaries of the Shirley Bernstein Trust, plus Eliot Bernstein.

3. This action is a two-count complaint. (A copy of the Complaint is attached hereto as **Exhibit "C."**) The Motion filed by the Trustee on January 28, 2016, which is now set to be heard before the Court on April 8, 2016 at 9:45 a.m., involves the sale of the former homestead of Shirley and Simon Bernstein (Lion's Head property) and requests relief as to Eliot Bernstein concerning holding the proceeds of the sale of the homestead and further injunctive relief against Eliot Bernstein. A copy of the Motion is attached hereto as **Exhibit "D."**

4. William Stansbury is not a party to this action. The trial of this action as to Count II took place on December 15, 2015, and Stansbury was not involved other than as an observer. Stansbury has had no involvement in the administration of the Shirley Bernstein Trust. The Shirley Bernstein Trust is not a defendant in the case pending by William Stansbury against the Simon Bernstein Estate.

--- **Retaliatory Subpoenas** ---

5. This matter has devolved into retaliatory litigation tactics by Ted Bernstein as he seeks to involve William Stansbury in this action solely in an effort to cause William Stansbury

to incur fees and otherwise become involved in this case because William Stansbury has taken action in collateral matters adverse to that of Ted Bernstein.

6. Ted Bernstein is retaliating against William Stansbury as a result of Mr. Stansbury's issues which are adverse to Ted Bernstein on the following matters:

- a. Ted Bernstein is an individual Plaintiff in an action pending in the United States District Court for the Northern District of Illinois (the "Chicago litigation") in which he is claiming that he and the other adult children of Simon Bernstein are beneficiaries of a life insurance policy on the life of Simon Bernstein in the approximate amount of \$1,700,000.00. Mr. Stansbury believes that these insurance proceeds actually belong to the Estate of Simon Bernstein against which is pending his approximate \$2.5 million dollar claim for unpaid compensation. He therefore attempted to intervene in that action, which was vigorously opposed by Ted Bernstein. The Court denied the intervention but thereafter, after the original Personal Representatives of the Estate of Simon Bernstein (Tescher and Spallina) resigned as Personal Representatives, the Curator, Ben Brown, Esq. and subsequently the Successor Personal Representative, Brian O'Connell, Esq. became convinced that the Estate did have a valid interest in and to the insurance proceeds at issue in the Chicago litigation, and the Estate has now intervened in that case. Mr. Stansbury is funding the fees incurred by the Estate in that action. The intervention of the Estate now threatens Ted Bernstein because the life insurance proceeds of approximately \$1.7 million could, now that the Estate has intervened, not go to Ted Bernstein and the adult children, but rather to

the Simon Bernstein Trust, which is the sole monetary beneficiary of the Simon Bernstein Estate. The Estate's attorneys in Chicago feel so strongly about the merits of the Estate's position that they are willing to take this case on a contingency fee basis.

- b. Because the Simon Bernstein Trust could be the recipient of the life insurance proceeds coming from Illinois, it clearly puts Ted Bernstein in a conflict of interest position as, on the one hand, he is the Plaintiff in the Chicago litigation where he is trying to keep the funds away from the Simon Bernstein Trust while, on the other hand, he is holding the position of Successor Trustee of the Simon Bernstein Trust, which is the sole beneficiary of the Simon Bernstein Estate where the life insurance proceeds would be paid should he not prevail as Plaintiff. Therefore, he has a clear and direct conflict of interest. Mr. Stansbury filed a Petition to Remove Ted Bernstein as the Successor Trustee of the Simon Bernstein Trust based upon this conflict, as well as the fact that Ted Bernstein is facially not qualified to hold the position of Successor Trustee according to the plain language of the Trust. Simon Bernstein specifically disinherited Ted Bernstein in his Trust, writing that, for all purposes of the Trust, Ted Bernstein was considered to have pre-deceased him.
- c. Ted Bernstein has additional reasons to want to harass William Stansbury. Mr. Stansbury has also filed his Amended Petition to account for missing property (furniture and fixtures) from the oceanfront condominium owned by the Shirley Bernstein Trust, but which personal property inside was the property



of the Simon Bernstein Estate, and also to account for missing jewelry of the Simon Bernstein Estate. By Mr. Stansbury's Petition, Ted Bernstein is placed squarely in a position to account for the missing property. This also would give Ted Bernstein incentive to harass Mr. Stansbury.

- d. Ted Bernstein's attorney admitted to this Court at the status conference held on March 7, 2016 that the furniture and fixtures contained within the oceanfront condominium in Boca Raton belonged to the Simon Bernstein Estate but was sold along with the condo. He admitted that the Shirley Bernstein Trust, over which Ted Bernstein is the Successor Trustee, needed to reimburse the Estate of Simon Bernstein for the value of that furniture which he had no authority to sell. The sale of that oceanfront condominium took place two years ago and yet no reimbursement has been forthcoming. Mr. Stansbury, among others, brought this to the attention of the Court, further buttressing his position that the Subpoenas issues in this matter are only for harassment purposes.
- e. The proceeds of the sale of the oceanfront condominium, which took place two years ago, based on information and belief, were distributed to 7 of the 10 grandchildren of Simon and Shirley Bernstein. However, by the terms of the Shirley Bernstein Trust, Ted Bernstein's children were excluded as beneficiaries but received a share of the proceeds nonetheless. Mr. Stansbury has made the interested parties to this litigation aware of that as well.

--- Stansbury's Conduct is Not Relevant to the Issues Before the Court to be Heard on  
April 8, 2016 ---

7. Ted Bernstein has seized on one e-mail written by Kevin Hall that mentioned the name of William Stansbury to justify the issuance of the Subpoenas. Mr. Stansbury is clearly not involved as a witness in the matters before the Court on April 8, 2016. He is not a party and there is no justifiable reason to involve Mr. Stansbury other than the desire of Ted Bernstein to harass Mr. Stansbury.

8. The only connection Mr. Stansbury has to this litigation is as set forth in the e-mail from Kevin Hall to Alan Rose, wherein Mr. Stansbury's name is mentioned. A copy of the e-mail is attached hereto as **Exhibit "E."** There is no evidence that Mr. Stansbury has been or is involved in any way with the sale of the Lion's Head property which is the subject of the Motion for which he was subpoenaed, or any involvement after the sale concerning the Lion's Head property.

9. Further, the deposition date of March 29, 2016 was not cleared with counsel for Mr. Stansbury. Counsel for Mr. Stansbury is not available on that day. Finally, the location of the deposition is set for the office of counsel for Ted Bernstein in West Palm Beach. Mr. Stansbury resides in Boynton Beach and his deposition could easily be accomplished at the office of his attorney also located in Boynton Beach.

WHEREFORE, for all the foregoing reasons, William Stansbury requests this Honorable Court to enter a Protective Order protecting him from attending the deposition on March 29, 2016, and quashing the Subpoena on him for the hearing set for April 8, 2016, which does not involve him in any way.

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Peter M. Feaman

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically and served in the Florida Courts E-Filing Portal to all parties on the service list below on this \_\_\_\_\_ day of March, 2016:

**Eliot Bernstein, individually and Eliot and Candice Bernstein, as Parents and Natural Guardians of D.B., Ja.B. and Jo.B., Minors**  
2753 Northwest 34<sup>th</sup> Street  
Boca Raton, Florida 33434  
Email: [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)

**Alan Rose, Esquire**  
Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A.  
505 South Flagler Drive, Suite 600  
West Palm Beach, Florida 33401  
Email: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)

**John P. Morrissey, Esq.**  
330 Clematis Street, Suite 213  
West Palm Beach, Florida 33401  
Email: [john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com)  
*Counsel for Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein*

**Pamela Beth Simon**  
303 East Wacker Drive, Suite 2725  
Chicago, Illinois 60601  
Email: [psimon@stpcorp.com](mailto:psimon@stpcorp.com)

**Lisa Friedstein, individually and as trustee for her children, and as natural guardian for M.F. and C.F., Minors; and Max Friedstein**  
Email: [lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

**Brian M. O'Connell, Esquire**  
**Joielle A. Foglietta, Esq.**  
Ciklin, Lubitz, Martens & O'Connell  
515 North Flagler Drive, 20<sup>th</sup> Floor  
West Palm Beach, Florida 33401  
Email: [boconnell@eiklinlubitz.com](mailto:boconnell@eiklinlubitz.com)  
[jfoglietta@ciklinlubitz.com](mailto:jfoglietta@ciklinlubitz.com)  
[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com)  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

**Jill Iantoni, individually and as trustee for her children, and as natural guardian for J.I. a minor**  
Email: [jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

PETER M. FEAMAN, P.A.  
3695 West Boynton Beach Blvd., #9  
Boynton Beach, FL 33436  
Telephone: (561) 734-5552  
Facsimile: (561) 734-5554  
Service: [service@feamanlaw.com](mailto:service@feamanlaw.com)  
[mkoskey@feamanlaw.com](mailto:mkoskey@feamanlaw.com)

By: \_\_\_\_\_  
Peter M. Feaman  
Florida Bar No. 0260347

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

TED BERNSTEIN, as Trustee of the Shirley  
Bernstein Trust Agreement dated May 20, 2008,  
as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON; PAMELA  
B. SIMON, Individually and as Trustee f/b/o Molly  
Simon under the Simon L. Bernstein Trust Dtd 9/13/12;  
ELIOT BERNSTEIN, individually, as Trustee f/b/o D.B.,  
Ja. B. and Jo. B. under the Simon L. Bernstein Trust Dtd  
9/13/12, and on behalf of his minor children D.B., Ja. B.  
and Jo. B.; JILL IANTONI, Individually, as Trustee f/b/o  
J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, and  
on behalf of her Minor child J.I.; MAX FRIEDSTEIN;  
LISA FRIEDSTEIN, Individually, as Trustee f/b/o Max  
Friedstein and C.F., under the Simon L. Bernstein Trust  
Dtd 9/13/12, and on behalf of her minor child, C.F.,

Defendants.

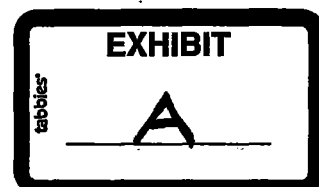
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3.10.2014  
1130am

**SUBPOENA DUCES TECUM TO WILLIAM STANSBURY FOR  
APPEARANCE AT DEPOSITION**

THE STATE OF FLORIDA

TO: William Stansbury  
C/O Peter Feaman, Esq.  
PETER M. FEAMAN, P.A.  
3695 West Boynton Beach Boulevard, Suite 9  
Boynton Beach, FL 33436

**YOU ARE COMMANDED** to appear before a person authorized by law to take depositions  
at the law firm of Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A., 505 S. Flagler



Drive, Suite 600, West Palm Beach, FL 33401 (Telephone: (561) 655-2250) on March 29, 2016 at 10:00 a.m. for the taking of your deposition in this action, and to have with you at that time and place the documents identified on the attached Exhibit "A."

If you fail to appear, you may be in contempt of court.

You are subpoenaed to appear by the following attorneys, and unless excused from this subpoena by these attorneys or the Court, you shall respond to this subpoena as directed.

Dated on March 9, 2016.

  
\_\_\_\_\_  
ALAN B. ROSE, ESQ.  
For the Court

MRACHEK, FITZGERALD, ROSE,  
KONOPKA, THOMAS & WEISS, P.A.  
505 S. Flagler Drive, Suite 600  
West Palm Beach, FL 33401  
Phone: 561-655-2250  
Fax: 561-655-5537  
*Attorneys for Plaintiff, Ted Bernstein*  
Alan B. Rose  
Florida Bar Number: 961825

**EXHIBIT A**

YOU ARE REQUESTED to bring the following documents:

**Definitions**

"Documents" shall mean and include all writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations, specifically including all letters, emails, text messages, phone messages, notes, deed, title reports, or written communication of any kind—stored in any medium whether in paper or electronic format.

"Property" shall mean 7020 Lions Head Lane, Boca Raton, Florida 33496.

"Eliot" shall mean Eliot Ivan Bernstein, including any agents, employees or others acting on his behalf.

"Stansbury" shall mean William Elwood "Bill" Stansbury, together with his wife Eileen E. Stansbury and any and all agents, employees or others acting on his behalf, including his attorney, Peter M. Feaman, Esquire, or anyone employed by or affiliated with the Law Offices of Peter M. Feaman. (This request does not seek any documents sent solely between William Stansbury and his counsel, and includes only documents which were sent to or received from a third-party outside of the attorney-client relationship.)

"Hall" shall mean Kevin R. Hall.

"Cox" shall mean Crystal Cox.

**Documents Requested**

1. All documents sent by Stansbury to Eliot concerning the Property.
2. All documents sent by Eliot to Stansbury concerning the Property.
3. All documents sent by Stansbury to Hall concerning the Property.
4. All documents sent by Hall to Stansbury concerning the Property.
5. All documents sent by Stansbury to Cox concerning the Property.

6. All documents sent by Cox to Stansbury concerning the Property.
7. All documents sent by Stansbury relating to the Property to anyone else other than Eliot, Hall or Cox.
8. All documents sent by Stansbury to Cox, or Cox to Stansbury, on any matter.
9. All documents sent to Cox or Hall by anyone for which copies (bcc: or cc:) were provided to Stansbury.
10. All documents, including checks, canceled checks, credit card receipts or other documents showing any payments made by Stansbury to or on behalf of Eliot or his family, from and after May 6, 2015 to the present.
11. All documents evidencing any oral or written agreements between Stansbury and Eliot concerning (i) the Property; (ii) the Trusts or Estates of Simon Bernstein and/or Shirley Bernstein, (iii) the Illinois litigation; or (iv) any other subject matter.
12. All documents relating to the Property, including any internet research, title reports, deeds, notes, pictures, or otherwise in the possession of Stansbury relating to the Property.
13. All documents concerning Lions Head Land Trust, Lions Head Land Trust, Inc., Mitchell and Deborah Huhem, Leilani Ochoada, Larry Pino, and anyone else involved in any way as an owner, participant, professional, lawyer, title examiner, etc. in the real estate transaction under which title of the Property transferred from the Shirley Bernstein Trust to the Lions Head Land Trust.



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

TED BERNSTEIN, as Trustee of the Shirley  
Bernstein Trust Agreement dated May 20, 2008,  
as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON; PAMELA  
B. SIMON, Individually and as Trustee f/b/o Molly  
Simon under the Simon L. Bernstein Trust Dtd 9/13/12;  
ELIOT BERNSTEIN, individually, as Trustee f/b/o D.B.,  
Ja. B. and Jo. B. under the Simon L. Bernstein Trust Dtd  
9/13/12, and on behalf of his minor children D.B., Ja. B.  
and Jo. B.; JILL IANTONI, Individually, as Trustee f/b/o  
J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, and  
on behalf of her Minor child J.I.; MAX FRIEDSTEIN;  
LISA FRIEDSTEIN, Individually, as Trustee f/b/o Max  
Friedstein and C.F., under the Simon L. Bernstein Trust  
Dtd 9/13/12, and on behalf of her minor child, C.F.,

Defendants.

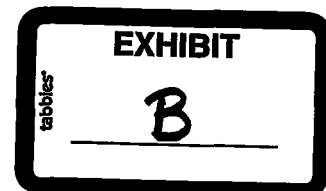
1659 LRO  
3 10 2014  
1130am

**SUBPOENA DUCES TECUM TO WILLIAM STANSBURY FOR  
APPEARANCE AT EVIDENTIARY HEARING/TRIAL**

THE STATE OF FLORIDA

TO: William Stansbury  
C/O Peter Feaman, Esq.  
PETER M. FEAMAN, P.A.  
3695 West Boynton Beach Boulevard, Suite 9  
Boynton Beach, FL 33436

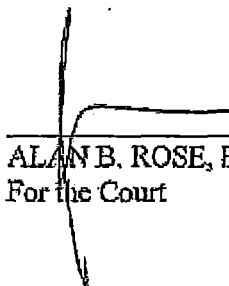
**YOU ARE COMMANDED** to appear before the Honorable John L. Phillips, Judge of the  
Circuit Court, at the North Branch of the Palm Beach County Courthouse, 3188 PGA Boulevard,



Palm Beach Gardens, FL 33410 *Courtroom 3* on April 8, 2016 at 9:45 A.M. to testify in this action and to have with you at that time, the documents outlined in Exhibit A attached to this Subpoena. If you fail to appear, you may be in contempt of court.

You are subpoenaed to appear by the following attorneys and unless excused from this subpoena by these attorneys or the Court, you shall respond to this subpoena as directed.

DATED this 9<sup>th</sup> day of March, 2016.

  
ALAN B. ROSE, ESQ.  
For the Court

MRACHEK, FITZGERALD, ROSE,  
KONOPKA, THOMAS & WEISS, P.A.  
505 S. Flagler Drive, Suite 600  
West Palm Beach, FL 33401  
Phone: 561-655-2250  
Fax: 561-655-5537  
*Attorneys for Plaintiff, Tod Bernstein*  
Alan B. Rose  
Florida Bar Number: 961825

**EXHIBIT A**

YOU ARE REQUESTED to bring the following documents:

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8. All documents sent by Stansbury to Cox, or Cox to Stansbury, on any matter.
9. All documents sent to Cox or Hall by anyone for which copies (bcc: or cc:) were provided to Stansbury.
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11. All documents evidencing any oral or written agreements between Stansbury and Eliot concerning (i) the Property; (ii) the Trusts or Estates of Simon Bernstein and/or Shirley Bernstein, (iii) the Illinois litigation; or (iv) any other subject matter.
12. All documents relating to the Property, including any internet research, title reports, deeds, notes, pictures, or otherwise in the possession of Stansbury relating to the Property.
13. All documents concerning Lions Head Land Trust, Lions Head Land Trust, Inc., Mitchell and Deborah Huhem, Leilani Ochoada, Larry Pino, and anyone else involved in any way as an owner, participant, professional, lawyer, title examiner, etc. in the real estate transaction under which title of the Property transferred from the Shirley Bernstein Trust to the Lions Head Land Trust.

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

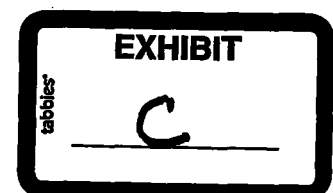
ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON;  
PAMELA B. SIMON, Individually and as Trustee  
f/b/o Molly Simon under the Simon L. Bernstein  
Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually,  
as Trustee f/b/o D.B., Ja. B. and Jo. B. under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on  
behalf of his minor children D.B., Ja. B. and Jo. B.;  
JILL IANTONI, Individually, as Trustee f/b/o J.I.  
under the Simon L. Bernstein Trust Dtd 9/13/12, and  
on behalf of her Minor child J.I.; MAX FRIEDSTEIN;  
LISA FRIEDSTEIN, Individually, as Trustee f/b/o  
Max Friedstein and C.F., under the Simon L.  
Bernstein Trust Dtd 9/13/12, and on behalf of her  
minor child, C.F.,

Defendants.

---

**AMENDED COMPLAINT**

Plaintiff, TED BERNSTEIN, as trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended (the "Trust"), pursuant to leave granted by and instructions from this Court to file an Amended Complaint, hereby files this Amended Complaint against and provides notice to those interested in the Trust and in the testamentary documents of Simon L. Bernstein and Shirley Bernstein, namely Defendants, ALEXANDRA BERNSTEIN; ERIC BERNSTEIN; MICHAEL BERNSTEIN; MOLLY SIMON; PAMELA B. SIMON, Individually and as Trustee



f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually, as Trustee f/b/o D.B., Ja. B., and Jo. B. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of his minor children D.B., Ja. B., and Jo. B.; JILL IANTONI, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her Minor child J.I.; MAX FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as Trustee f/b/o Max Friedstein and C.F. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child, C.F. (collectively, "Defendants").

Plaintiff hereby sues Defendants, and states:

1. Plaintiff Ted Bernstein is over the age of 18, a resident of Palm Beach County, Florida and is the Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, under Article IV.C.1 of the Trust ("Trustee.")
2. Shirley Bernstein died on December 8, 2010, and at the time of her passing was a resident of Palm Beach County, Florida.
3. Prior to her death, Shirley Bernstein created a trust known as the Shirley Bernstein Trust Agreement dated May 20, 2008 ("Shirley's Trust").
4. Shirley Bernstein was a resident of Palm Beach County, Florida when she created Shirley's Trust.
5. An authentic copy of Shirley's Trust is attached as Exhibit "A".
6. Shirley's Trust, Exhibit A, is clear and unambiguous.
7. Shirley Bernstein was survived by her husband, Simon L. Bernstein.
8. The marriage between Shirley and Simon L. Bernstein was the first and only marriage for each of them.

9. The marriage lasted 52 years, and during that time Shirley and Simon had five natural born children. Neither Simon nor Shirley had any other children.

10. The five children of Shirley and Simon are Plaintiff Ted Bernstein, and Defendants Pamela B. Simon, Eliot Bernstein, Jill Iantoni and Lisa Friedstein, each of whom is living, over the age of 18 and a lineal descendant of Shirley.

11. Shirley Bernstein was the original sole trustee of Shirley's Trust and, upon her death, was succeeded as sole trustee by Simon L. Bernstein.

12. Simon L. Bernstein died on September 13, 2012.

13. Simon L. Bernstein was succeeded as sole trustee of Shirley's Trust by son Ted Bernstein, who presently serves as sole trustee of Shirley's Trust.

14. It is believed that Shirley Bernstein amended Shirley's Trust by executing a document titled "First Amendment to Shirley Bernstein Trust Agreement" dated November 18, 2008. An authentic copy of the First Amendment to Shirley Bernstein Trust Agreement dated November 18, 2008 is attached as Exhibit "B". This First Amendment has no bearing on the issue in this case.

15. There is another document which purports to have the same title, "First Amendment to Shirley Bernstein Trust Agreement", which also purportedly is dated November 18, 2008. Such document, which the Trustee first learned of in mid-January 2014, is not a valid amendment to Shirley's Trust, and has no bearing on this issue in this case.

16. With regard to the Shirley Trust, the only genuine and authentic trust documents signed by Shirley during her lifetime are Exhibits "A" and "B".

17. Pursuant to Shirley's Trust, upon Shirley's death, a "Family Trust" is created pursuant to Article II, ¶ C.1.

18. Pursuant to Shirley's Trust, no "Marital Trust" is created, as that term is used in Article II of Shirley's Trust.

19. Article II, ¶ E. 1. of Shirley's Trust granted to Shirley's surviving spouse, Simon L. Bernstein, a limited or special power of appointment over the Family Trust to or for the benefit of Shirley Bernstein's "lineal descendants and their spouses."

20. The Shirley Trust was funded by assets transferred to it during Shirley's life and also was funded by the residue of her estate.

21. After Shirley's death, the beneficiary of the Shirley Trust was Simon L. Bernstein during the remainder of his life.

22. Upon Simon's death, the Shirley Trust provided to Simon a Limited Power to appoint the trust's assets "to or for the benefit of one of more of my [Shirley's] lineal descendants and their spouses."

23. The Shirley Trust provides an alternate or default disposition for any parts of the trust that Simon does not or cannot effectively appoint: such assets "shall be divided among and held in separate Trusts for my [Shirley] lineal descendants then living, *per stirpes*."

24. Simon exercised his Special Power in Article II in the Will of Simon L. Bernstein dated July 25, 2012 ("Simon's Will").

25. An authentic copy of Simon's Will is attached as Exhibit "C".



26. Simon's Will specifically references Shirley's Trust and the power given to him under subparagraph E.1 of Article II of Shirley's Trust. The relevant provision of Simon's Will reads:

Under Subparagraph E.1. of Article II of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, (the "Shirley Trust"), I was granted a special power of appointment upon my death to direct the disposition of the remaining assets of the Marital Trust and Family Trust established under the Shirley Trust. Pursuant to the power granted to me under the Shirley Trust, upon my death, I hereby direct the then serving Trustees of the Marital Trust and the Family Trust to divide the remaining assets into equal shares for my then living grandchildren and distribute said shares to the then serving Trustees of their respective trusts established under Subparagraph II.B. of my Existing Trust, as referenced below, and administered pursuant to Subparagraph II.C. thereunder.

27. In essence, through his Special Power, Simon directed Shirley's Trustee to divide the remaining trust assets into equal shares for his then living grandchildren, to be added to trusts established for each such grandchild under Simon's Trust.

28. The persons identified by Simon, "his then living grandchildren," all appear to be among the class of permitted appointees as defined in the Shirley Trust to be Shirley's "lineal descendants and their spouses".

29. Because Simon exercised his power of appointment, the assets in the Shirley Trust do not pass under the Shirley Trust to the alternate, default beneficiaries: "my lineal descendants then living, *per stirpes*."

30. The class of permissible appointees for Simon's power (Shirley's "lineal descendants and their spouses") is different that the class of alternate/default beneficiaries (Shirley's "lineal descendants *then living*, *per stirpes*").

31. Because Simon L. Bernstein exercised his Special Power in favor of his [and also Shirley's] grandchildren, none of Shirley's and Simon's children is a beneficiary under the Shirley Trust. Thus, it appears that neither Ted, Pam, Eliot, Lisa or Jill are to receive any portion of the assets in the Shirley Trust.

32. Pursuant to Article IV.C.1., upon Simon's death, Ted became the Successor Trustee of the Shirley Trust. Ted also serves as the Successor Personal Representative of Shirley's Estate.

33. Sometime after Simon's death, a significant asset of Shirley's Trust (a condominium) was sold. The decision was made to make a partial interim distribution to all of the beneficiaries of the Shirley Trust. At the time of this decision, the Trustee was not aware of any question or issue as to Simon's right to appoint the assets to his ten grandchildren.

34. The Trustee attempted to make a partial interim distribution to the trusts for all ten living grandchildren of Simon, into a separate trust for each grandchild under the Simon L. Bernstein Trust Dtd 9/13/12, with the respective parent of each grandchild as the trustee.

35. The Trustee was able to complete the partial interim distributions to the trusts for seven of the ten living grandchildren of Simon, but not to Eliot's children. Despite having tried on numerous occasions, the Trustee was unable to make a partial interim distribution to the trusts for the other three living grandchildren (Eliot's minor children) because Eliot refused to accept these distributions.

36. The Trustee believes that there is a disagreement between and among the children and grandchildren of Shirley Bernstein as to effect of the exercise of the power of appointment

by Simon L. Bernstein and which persons are entitled to receive a distribution from the Shirley Trust.

37. The disagreement and dispute involves the interpretation of the Shirley Trust and the construction of Article III.E.1 of Shirley's Trust, which defines who is Shirley Bernstein's "child", "children", and "lineal descendant" "for the purposes of the dispositions made under this Trust."

38. Article III.E.1 of Shirley's Trust states that, "for purposes of the dispositions made under this Trust, my children, Ted S. Bernstein ("*TED*") and Pamela B. Simon ("*PAM*") and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me [Shirley]".

39. At the time of Simon's death, there were ten grandchildren who were alive: Alexandra Bernstein, Eric Bernstein, Michael Bernstein, Molly Simon, D.B., Ja. B., Jo. B., J.I., Max Friedstein and C.F.

40. If the exclusionary language of Article III.E.1 of Shirley's Trust applies to Simon's exercise of his Special Power, then Simon's then living grandchildren, at the time of his death, could be construed to include only D.B., Ja. B., Jo. B., J.I., Max Friedstein and C.F.

41. If the exclusionary language of Article III.E.1 of Shirley's Trust does not apply to Simon's exercise of his Special Power, then the appointment would be in favor of all ten grandchildren identified in ¶40.

42. A telephone conference occurred in May 2012 between and among Simon L. Bernstein, his lawyer Robert Spallina, each of Shirley's and Simon's children (Ted, Pam, Eliot, Jill and Lisa), and some or all of their spouses.

43. Based upon the discussions during that telephone call, there is no uncertainty that Simon L. Bernstein advised each of his children that Shirley's and Simon's wealth was going to be divided equally among all ten grandchildren.

44. Each of Simon's children, including Eliot, acknowledged and agreed with Simon's stated decision to leave all of his and Shirley's wealth to the ten grandchildren.

45. Despite Simon L. Bernstein's stated intentions and his actual exercise of his Special Power through his Will, the Trustee presently is uncertain whether to distribute assets in favor of ten or only six grandchildren, or otherwise.

46. Palm Beach County, Florida is where the Trustee administers Shirley's Trust, is the location where the books and records of Shirley's Trust are kept, and is the principal place of administration of Shirley's Trust.

47. This proceeding seeks the intervention of this Court in the administration Shirley's Trust by an interested person, the Trustee, and declaratory relief.

48. This Court has subject matter jurisdiction pursuant to Sections 736.0203 and 736.0201, Florida Statutes.

49. Pursuant to Article III.I, Shirley's Trust is governed by the laws of the State of Florida.

50. This is a judicial proceeding concerning Shirley's Trust pursuant to Section 736.0201, Florida Statutes.

51. Venue is proper in this Court pursuant to Section 736.0204, Florida Statutes.

52. Venue is appropriate in the Probate Division of this Court pursuant to Administrative Order 6.102-9/08.

53. Plaintiff Trustee is entitled to retain counsel pursuant to Article IV.A.29 of Shirley's Trust and Section 736.0816 (20), Florida Statutes.

54. Plaintiff Trustee has retained the undersigned counsel, and has agreed to pay it reasonable attorney's fees and to reimburse it for costs and may do so from Shirley's Trust.

**Defendants and Potential Beneficiaries**

55. Defendants Alexandra Bernstein, Eric Bernstein, and Michael Bernstein are lineal descendants of Ted S. Bernstein.<sup>1</sup> Each is over the age of 18 and claims a beneficial interest in the Shirley Trust.

56. Defendant Molly Simon is a lineal descendant of Defendant Pamela B. Simon. She is over the age of 18 and claims a beneficial interest in the Shirley Trust.

57. Defendant Pamela B. Simon, Individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12, is over the age of 18. As Trustee, she claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

---

<sup>1</sup> Ted S. Bernstein is the Trustee of three separate trusts created f/b/o Alexandra, Eric and Michael Bernstein under the Simon L. Bernstein Trust Dtd 9/13/12. Solely in the capacity as Trustee of each of these three trusts, each of which received an partial interim distribution, Ted S. Bernstein has signed a Receipt of Partial Distribution, agreeing to return the distribution if the Court determines that the distribution should not have been made. Ted S. Bernstein believes that the power of appointment was validly exercised by Simon L. Bernstein and that the prior partial interim distributions were proper; however, individually he takes no position in this lawsuit and agrees to abide by any final, non-appealable order entered by this Court with respect to the construction of the Shirley Trust. Ted S. Bernstein, individually, makes no claim of entitlement to any individual right to receive any devise, bequest, inheritance or beneficial interest in any portion of the Shirley Trust or her estate.

58. D.B., Ja. B. and Jo. B. are minors and are lineal descendants of Defendant Eliot Bernstein, who is their father and claims on behalf of each minor child a beneficial interest in the Shirley Trust.

59. Eliot Bernstein, Individually, as Trustee f/b/o D.B., Ja. B. and Jo. B. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of his minor children D.B., Ja. B. and Jo. B., is over the age of 18. As Trustee, he claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

60. J.I. is a minor and a lineal descendant of Jill Iantoni, who is her mother and claims on behalf of her minor child a beneficial interest in the Shirley Trust

61. Jill Iantoni, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, is over the age of 18. As Trustee, she claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

62. Defendant Max Friedstein is a lineal descendant of Defendant Lisa Friedstein. He is over the age of 18 and claims a beneficial interest in the Shirley Trust

63. C.F. is a minor and lineal descendant of Lisa Friedstein, who is her mother and claims on behalf of her minor child a beneficial interest in the Shirley Trust.

64. Lisa Friedstein, Individually, as Trustee f/b/o Max Friedstein and C.F. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child, C.F., is over the age of 18. As Trustee, she claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

65. Each of the Defendants is subject to personal jurisdiction pursuant to Section 736.0202, Florida Statutes.

## COUNT I –DECLARATORY AND OTHER RELIEF

66. Trustee restates the allegations contained in Paragraphs 1 to 65.

67. This is a cause of action to ascertain beneficiaries, to determine a question arising in the administration or distribution of Shirley's Trust, to obtain a declaration of rights, and to instruct and discharge the trustee.

68. This cause of action seeks a declaration and other relief or intervention by this Court as to who should receive Shirley's Trust; whether and to what extent Simon L. Bernstein's exercise of his limited or special power of appointment pursuant to his will should be given effect; which if either of the documents titled First Amendment of Shirley's Trust is valid; to whom the Trustee should distribute the assets of Shirley's Trust; and a discharge of the Trustee.

69. It is in doubt as to whether Eliot Bernstein adequately represents the interests of his minor children and whether there are conflicts of interest between Eliot and the interests of his minor children, each of whom is expressly named in the Special Power.

70. This is an action for declaratory relief pursuant to Chapter 86 of the Florida Statutes and seeking the intervention of the Court in the administration of the Trust, pursuant to Section 736.0201, Florida Statutes.

71. The Trustee, and the Trust, will suffer irreparable harm if relief is not granted.

72. There is no other adequate remedy at law.

73. The relief sought constitutes and deals with a bona fide question between the Trustee and the Defendants.

74. The declaration sought deals with a present state of facts or presents a controversy as to a state of facts.

75. The Trustee has a justiciable question and has a bona fide, actual, and present practical need for a declaration from this Court.

76. The Trustee's rights, duties, and obligations are dependent upon the facts or law applicable to the facts.

77. The seeds of litigation are ripening such that a declaration from this Court will benefit the Trust.

78. Further, to the extent that the Court determines any prior interim distribution to have been improper, Plaintiff seeks supplemental relief in the form of an order directing and compelling the recipients of the any and all such distributions to return the funds. To date, funds were distributed to Lisa Friedstein, as Trustee for Max Friedstein and C.F.; Jill Iantoni, as Trustee for J.I.; Pamela B. Simon, as Trustee for Molly; and Ted S. Bernstein, as Trustee for Alexandra, Eric and Michael. Eliot as Trustee for his three children refused the interim distribution, even though it appears that his minor children should receive some distribution under the exercise of the Special Power. Each of the trustees who received a distribution for their children signed a Receipt of Partial Distribution, agreeing to return the distribution of the Court determines that the distribution should not have been made.

**WHEREFORE**, Plaintiff prays that this Court: (i) make a declaration and otherwise intervene in the administration of the Trust, as aforesaid; (ii) instruct the trustee to whom to distribute the assets of Shirley's Trust; (iii) declare whether the power of appointment was validly exercised by Simon in accordance with his stated wishes; (iv) determine who are the proper recipients of distributions of the assets of the Shirley Trust pursuant to the power of



appointment, and if appropriate, direct the return of any funds distributed; (v) grant the Plaintiff Trustee his attorneys' fees and costs and other relief as may be just and proper.

**COUNT II – DECLARATORY JUDGMENT AS TO VALIDITY  
OF TESTAMENTARY DOCUMENTS**

79. Trustee restates the allegations contained in paragraphs 1-65 and 70-78.

80. This is an action, filed at the direction of the Court, for declaratory judgment to determine the validity, authenticity and enforceability of certain wills and trusts executed by Simon Bernstein and Shirley Bernstein, as follows:

- a. Shirley Bernstein Trust Agreement dated May 20, 2008 (“Shirley Trust”, attached as Exhibit “A”);
- b. First Amendment to Shirley Bernstein Trust Agreement dated November 18, 2008 (“Shirley First Amendment”, Exhibit “B”);
- c. Will of Simon L. Bernstein dated July 25, 2012 (“Simon Will”, Exhibit “C”);
- d. Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012 (“Simon Trust”, Exhibit “D”);
- e. Will of Shirley Bernstein dated May 20, 2008 (“Shirley Will”, Exhibit “E”).

(collectively, the “Testamentary Documents”).

81. Certain of the potential beneficiaries named herein have raised questions concerning the validity, authenticity and enforceability of the Testamentary Documents, including issues relating to the authenticity and genuineness of the signatures; the formalities of execution; and other issues.

82. The Trustee asserts that the Testamentary Documents are valid, genuine and enforceable, and requests that the Court enter a Final Judgment determining that the documents are valid, genuine and enforceable.

83. Specifically, Exhibits "A" and "E" were properly signed and executed by Shirley Bernstein on May 20, 2008, in the presence of two subscribing witnesses and a notary.

84. The Shirley Will has been admitted to probate.

85. Exhibit "B" was properly signed and executed by Shirley Bernstein on November 18, 2008, in the presence of two subscribing witnesses and a notary.

86. Exhibits "C" and "D" were properly signed and executed by Simon L. Bernstein on July 25, 2012, in the presence of two subscribing witnesses and a notary.

87. The Simon Will has been admitted to probate.

88. At the time of signing their respective Testamentary Documents, Shirley Bernstein and Simon L. Bernstein were competent and legally able to execute testamentary documents, and were not acting under any such undue influence or other disability as could cause the documents to be unenforceable under Florida law.

**WHEREFORE**, Plaintiff prays that this Court: (i) make a declaration and otherwise intervene in the administration of the Will and Trust as aforesaid; (ii) enter a judgment under the claim set forth in Count II for declaratory judgment that the Testamentary Documents are genuine, valid and fully enforceable according to their terms; (iii) determine who are the proper recipients of distributions and if appropriate, direct the return of any funds distributed; (iv) grant the Plaintiff Trustee his attorneys' fees and costs and other relief as may be just and proper.

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by:  Facsimile **and**  U.S. Mail;  U.S. Mail;  Email Electronic Transmission;  FedEx;  Hand Delivery this 3rd day of October, 2014.

**ATTORNEYS FOR PLAINTIFF**

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KONOPKA, THOMAS & WEISS, P.A.**  
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By: /s/ Alan B. Rose  
Alan B. Rose  
Fla. Bar No. 961825

## SERVICE LIST

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and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
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Eric Bernstein, Michael Bernstein

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Counsel for Lisa Sue Friedstein, individually and  
as trustee for her children, and as natural guardian  
for M.F. and C.F., Minors; Jill Marla Iantoni,  
individually and as trustee for her children, and as  
natural guardian for J.I. a minor

Pamela Beth Simon  
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### COURTESY COPY ONLY:

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBJJ

Plaintiff,

v.

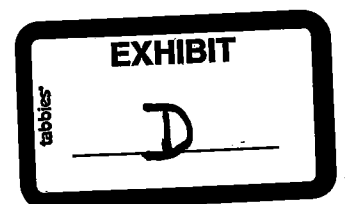
ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON;  
PAMELA B. SIMON, Individually and as Trustee  
f/b/o Molly Simon under the Simon L. Bernstein  
Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually,  
as Trustee f/b/o D.B., Ja. B. and Jo. B. under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on  
behalf of his minor children D.B., Ja. B. and Jo. B.;  
JILL IANTONI, Individually, as Trustee f/b/o J.I.  
under the Simon L. Bernstein Trust Dtd 9/13/12, and  
on behalf of her Minor child J.I.; MAX FRIEDSTEIN;  
LISA FRIEDSTEIN, Individually, as Trustee f/b/o  
Max Friedstein and C.F., under the Simon L.  
Bernstein Trust Dtd 9/13/12, and on behalf of her  
minor child, C.F.,

Defendants.

**MOTION TO MODIFY FINAL ORDER APPROVING SALE**  
**DATED MAY 6, 2015 AND FOR FURTHER INJUNCTIVE RELIEF**

Plaintiff, Ted S. Bernstein (the "Trustee"), as Successor Trustee, moves for entry of an Order modifying in part the *Final Order Granting Successor Trustee's Motion to Approve Sale of Trust Property* dated May 6, 2015 (the "Sale Order"), and for further injunctive relief, and states:

1. On May 6, 2015, this Court approved the Trustee's Motion to sell the Trust's property located within the St. Andrews Country Club community in Boca Raton. The sale was initially scheduled to close on or before March 31, 2015, in an all cash transaction, with the buyer accepting



the property "as is." The urgency was created because the St. Andrews Country Club was raising the required equity membership fee from \$95,000 to \$125,000, an increase of \$30,000. Upon learning of the possible sale, Eliot Bernstein objected to it and threatened to file a lis pendens.

2. This Court held a hearing on the Trustee's motion to approve sale on March 25, at uniform motion calendar. Based upon Eliot Bernstein's objections, the Court deferred ruling and scheduled an evidentiary hearing for the next day. At the evidentiary hearing, the Trustee and the Trustee's licensed realtor testified as to: the lengthy marketing process that had been undertaken in an effort to sell this property; the listing was more than 1,000 days old; the offer received was by far the highest and best received to date and likely in the near future; the offer was consistent with an appraisal, which was admitted into evidence; there were extensive carry costs associated with the property; and the announced \$30,000 increase in the club equity membership contribution was a significant factor in this deal. After hearing this testimony, and again based upon Eliot Bernstein's objections and request for time to obtain counter-evidence, the trial court denied the Motion to Approve the Sale on an emergency basis, and deferred the ruling pending a second evidentiary hearing.

3. At an evidentiary hearing held on May 6, 2015, the Court afforded Eliot Bernstein the opportunity to present evidence, through documents or testimony. Despite already having delayed the sale for more than five weeks, Eliot Bernstein presented no witnesses at the evidentiary hearing. Nor did he testify himself. Further, Eliot Bernstein produced no documentary evidence to refute the testimony of the Trustee's licensed real estate agent or the appraisal that was in evidence. Eliot did present a single piece of paper printed off the internet, purporting to be from the Zillow website. The trial court sustained the Trustee's objection to this document. At the conclusion of the

hearing on May 6, the trial court entered the Sale Order, a final order approving the sale of the property and authorizing the Trustee to take all reasonable steps to conclude the transaction. Eliot has never appealed the Sale Order, but he did file a Petition for All Writs with the Florida Supreme Court prior to the closing, which prevented the title company from issuing clear title until that appeal was resolved.

4. As part of the Sale Order, Judge Colin required the Trustee to provide all beneficiaries with a copy of the closing statement and bank records confirming the receipt of funds, and ordered the Trustee's counsel to hold the funds in a separate escrow account. By this Motion, the Trustee seeks to modify the Sale Order with regard to these requirements.

5. First, it is impractical, and of no benefit to the trust to require counsel to open a separate escrow account to hold these sale proceeds. Having conferred with the undersigned's bank, the interest to be earned on the monies if placed in a separate account outside of the law firm's IOTA account is 0.15%. Over the course of a year, assuming all of the net sales proceeds sat in that account for a full year, the interest to be earned would be \$500. It is anticipated the funds will not sit in the account for anywhere near a year, meaning there will be virtually no benefit to the estate from imposing this requirement on the Trustee's counsel, and there will be expense incurred by the Trustee's counsel in setting up and maintaining a separate escrow account. Thus, the Trustee requests that the Court modify the Order to allow the proceeds to remain in the law firm's IOTA account until such time as the Court orders their release and disbursement to the Trustee, to be held with the other assets of the Trust.

6. Second, the Sale Order requires the funds be held pending further order of the Court. Now that the sale is concluded, and once the Trustee has provided the beneficiaries documents

relating to the transaction, there is no reason for the funds to be segregated away from the general trust assets.

7. Third, to conclude this sale the Trust was forced to incur substantial attorneys' fees, solely as a result of the obstructionist and delay tactics of Eliot Bernstein. The Trustee and the Trustee's counsel request permission to have those legal fees paid from the sale proceeds. In total, the Trustee incurred more than \$50,000 in attorneys' fees alone to conclude the transaction, including four hearing and appellate work; working with the title company; dealings and interactions with the buyer caused by Eliot's filings which continually delayed potential closing; and advising and representing the Trustee. The Trustee has reviewed the invoices submitted by counsel and believes the time and expense are reasonable, valuable and provided a substantial benefit to the Trust. The Trustee requests permission to pay the sum of \$40,000 immediately from the sale proceeds, which the law firm has agreed to accept if the matter is resolved without the need for an extensive evidentiary hearing or retention of experts. These fees should be approved. If there is an objection of Eliot Bernstein, which might necessitate an evidentiary hearing, the Trust and its counsel will incur additional attorneys' fees, negating the opportunity for a discount.

8. Fourth, while the Trustee has no opposition to providing a copy of the HUD-1 and proof of receipt of funds to all beneficiaries, these documents are personal, private and confidential, and should not be shared with anyone in the world. In particular, these documents should not be posted on the internet. The buyer is a private citizen which entered into an arms length contract to purchase property the Trust was anxiously trying to sell for more than three years. The buyer now owns Fee Simple Title, which is both marketable and insurable, as evidenced by the title insurance policy purchased by seller as part of the closing of the transaction. Further, as a condition of buyer



closing, seller was required to escrow \$25,000 as a limited indemnity fund, in the event that buyer is subjected to any litigation or harassment by Eliot Bernstein, as defined in the sale contract. Notwithstanding his disappointment over being disinherited by his parents and his apparent disappointment with the sale amount, there is no legitimate reason why Eliot Bernstein should have any further involvement with this property, contact with the buyer, or interference with the buyer's quiet and peaceful enjoyment of the property. In the Sale Order, Judge Colin provided the following:

All beneficiaries and persons subject to the jurisdiction of this Court, including Eliot Bernstein, are ordered to take no action to interfere with or otherwise hinder or delay the sale of the House.

9. The buyer has witnessed firsthand the devastating attacks by Eliot Bernstein through the internet on his brother (the Trustee) and others. As part of the final closing negotiations, once Eliot had exhausted all of his extraordinary writ and appellate maneuvers, buyer and its counsel insisted on a limited indemnity<sup>1</sup> to protect the buyer from litigation, interference or harassment by Eliot Bernstein. To assuage concerns of the buyer and induce it to close, the Sale Contract was amended to include the following:

INJUNCTIVE PROTECTION AND/OR LIMITED INDEMNITY FOR ATTORNEYS' FEES. Seller agrees to file a motion, and participate in any hearing set by the Court, at Seller's sole expense, seeking a permanent injunction after the closing to bar and prevent Eliot Bernstein and those acting in concert with him from having any contact of any kind with the Buyers, including no contact by mail, email or telephone; to forbid Eliot from attempting to learn their identities; to forbid Eliot from publishing or publicizing their identities anywhere in the world, including online or anywhere on any internet website, webpage, blog or otherwise; and to enjoin Eliot from filing any action against Buyers anywhere in the world (the "Injunction"). If successful, thereafter upon request of Buyer, Seller will take necessary and reasonable action to enforce the Injunction.

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<sup>1</sup> The indemnity is limited to \$25,000 to pay legal expenses incurred by buyer dealing with any Eliot issue. This money is held in escrow, but is able to be released immediately to the Trustee upon entry of an injunctive relief order.

The Trustee requests the Court enter an Order enjoining all beneficiaries and Eliot Bernstein, over whom this Court has jurisdiction, together with all persons acting in concert with them, from doing any of the above described actions or taking any action against the buyer. The Trustee believes that paragraph 3 of the Sale Order covers this, but so there is clarity and lack of any possible confusion, the Trustee requests that the Court enter the additional injunctive relief sought herein.<sup>2</sup>

10. Finally, to the extent that the Trustee provides an accounting, copies of the HUD-1 and bank records, the Trustee requests that those documents be ordered to remain confidential and to not be shared with anyone, and be subject to the same injunctive relief entered above. Eliot's delay tactics in this particular instance were financially devastating to the Trust. In addition to the extra \$30,000 club membership that Trust was required to pay when the closing was delayed past March 31, the Trust incurred substantial additional expenses and fees between March 31 and the final closing date of January 15, 2016. In particular, the Trust received reduced proceeds and incurred additional expenses totaling more than \$230,000 as shown in Appendix A.

11. Because Eliot is not individually a beneficiary, it is unclear whether these amounts could be surcharged against Eliot (who is indigent according to all of his court filings) or surcharged

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<sup>2</sup> In between the evidentiary hearings from March 25 to May 6, and beyond, Eliot published a number of inflammatory articles on the internet which list the address of the property with the heading "buyer beware." These tactics were designed to prevent the sale or discourage any potential buyers from having interest in the property. This information serves no public purpose, and only could cause harm or embarrassment to the Trustee or to the buyer. In addition, now that the buyer has paid its money, there is no reason to allow materials to be on the internet which could impair the buyer's ability to sell the property to someone else, at present or in the future. The Court has afforded Eliot due process, and should enforce its orders and prevent further tactics designed to thwart those valid, final and non-appealable orders. Thus, the Trustee requests that the Court order Eliot Bernstein to remove all materials from the internet that reference the address of this property or otherwise mention it in any way, shape or form.

against the interest of Eliot's minor children, for whom he purported to serve as guardian. Because the Trustee does not believe Eliot is a suitable or competent guardian to represent the interest of his children, which is the subject of an evidentiary hearing to be held on February 25, 2016, the Trustee believes it will be appropriate to defer making any decision on a surcharge action until after the Court decides whether or not to appoint a guardian ad litem for Eliot's children.

12. Moving forward, however, there is no reason to allow Eliot Bernstein to burn additional Trust assets by harassing the buyers or trying to educate the world on the "alleged fraud" that has occurred within this Court system. No one, and certainly not the buyer, has any interest in this matter becoming public, as it was the subject of multiple evidentiary hearings in the trial court and full appellate review to the extent such was sought. In other words, Eliot Bernstein has received all the process he is due with regard to the Sale Order, which is now final and non-appealable, and that should be the end of it for all time. To the extent Eliot does action calculated and virtually guaranteed to cost the Trust \$25,000, the Court should hold him accountable and the Trustee certainly reserves the right to seek surcharge against the inheritance of the minors for whom he purports to serve as guardian.

WHEREFORE, the Trustee requests that the trial court modify the Sale Order and enter additional injunctive relief as requested in this Motion.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by:  Facsimile **and**  U.S. Mail;  U.S. Mail;  Email Electronic Transmission;  FedEx;  Hand Delivery this 28th day of January, 2016.

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Attorneys for Ted S. Bernstein

By: /s/ Alan B. Rose  
Alan B. Rose (Fla. Bar No. 961825)

**SERVICE LIST Case No.: 502014CP003698XXXXNBIJ**

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and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
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Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

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children, and as natural guardian for M.F. and  
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[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

Appendix A

<b>Description</b>	<b>Amount</b>
Increased Club equity contribution	\$30,000.00
Additional interest on Trust's secured line of credit	\$28,332.45
Additional property taxes	\$16,062.76
Additional insurance	\$19,162.40
Mandatory club dues and expenses	\$26,151.14
Mandatory HOA Fees	\$10,005.55
Utilities and maintenance	\$5,317.98
Repair costs <sup>3</sup>	\$31,902.50
Legal fees: Buyer	\$15,000.00
Legal fees: Seller	\$50,000.00
<b>TOTAL</b>	<b>\$231,934.78</b>

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<sup>3</sup> Although the original contract was scheduled to close "as is, where is," the buyers had the right to inspect the property before closing. In the extended gap between the original closing date and late summer, serious additional issues were discovered with the house. These issues, again, are of no concern to anyone other than the buyer, and the issues should remain confidential subject to injunctive relief to prevent Eliot Bernstein from publicizing them on the internet.

Attn: Alan Rose from Kevin Hall 3.7.16 Re: Lions Head Land Trust

Kevin Hall

Mon 3/7/2016 3:55 PM

To: arose@mrachek-law.com <arose@mrachek-law.com>; wesgator@msn.com <wesgator@msn.com>; pfeaman@feamanlaw.com <pfeaman@feamanlaw.com>; leilaniochoada@gmail.com <leilaniochoada@gmail.com>; leilani@cmrei.com <leilani@cmrei.com>; schwagerlawfirm@live.com <schwagerlawfirm@live.com>; iviewit@gmail.com <iviewit@gmail.com>; iviewit@iviewit.tv <iviewit@iviewit.tv>; tourcandy@gmail.com <tourcandy@gmail.com>; caroline@cprogers.com <caroline@cprogers.com>; marc.garber@flastergreenberg.com <marc.garber@flastergreenberg.com>; marcgarber@gmail.com <marcgarber@gmail.com>; mmulrooney@venable.com <mmulrooney@venable.com>;

Cc: Kevin Hall <kh.itconsultingsalesoffices@gmail.com>;

📎 1 attachment (20 MB)

KRHResearchLEILANIOCHOADALIONSHEADBOCA2016\_02\_18 12-33-12 kh.itconsultingsales Outgoing to +14076085448 .mp3;

Mr. Rose,

Leilani Ochoada was not contacted on "behalf" of Eliot I. Bernstein.

As you may recall, I came in to Eliot Bernstein's life as a "related" case person in New York after being introduced to other "related case" persons from someone from Washington, D.C., that I had first come into contact with on or around Sept. 2007 who was part of a group that was investigating complaints from persons who had contact with the U.S. Attorneys and FBI in New York.

Prior to my first call with this person from Washington, DC, I had already had direct personal experience and done work and events with Executive Detail of the NYS Police, a Governor ( Mario Cuomo ), US Secret Service Agents and persons protected by the US Secret Service, members of the US Senate including the US Senate Intelligence and Judiciary Committee person Diane Feinstein, other members of the US Judiciary Committee, US Armed Services Committee, US House Intelligence Committee, other former Governors and more. I also maintain a variety of relatives in State law enforcement positions and contacts in both law enforcement and the military as well.

During this first call this person from Washington, DC indicated he had done work for the US Justice Department, specifically the IRS and the US Postal Inspector's Office, asked me if I was aware of DOJ Agents with greater powers and authority over regular FBI Agents, and this person was directly involved in corruption between the NYS Discipline and Bar Committees and Appellate Division Departments specifically focusing on Manhattan and Wall Street attorneys and, to the best of my recollection, inquired during this first call if I had knowledge of the "Iviewit" case which at that time in 2007 I had never heard of before. This person from Washington, DC was later determined to have also been involved in cases out of Chicago and Boston and other cases in Florida including Estate cases in Palm Beach county. I have maintained communications with this person from Wash, DC. as needed since 2007 and was on the phone with him and others in relation to activities of the US Attorney for the Southern District of New York as recently as late January 2016 and was on the phone with him in relation to Estate corruption cases with Florida and NY ties just a week or so ago with several parties having been involved with NY's Moreland Commission.

I am sure by now you have reviewed my LinkedIn profile and determined I maintain rights in "Iviewit" interests and perhaps have reviewed the Complaint to the SEC of 2009 and Petition to the White House and White House Counsel's Office and the US Attorney General's Office and Federal agencies I have been involved with in furtherance of my interests in "Iviewit"

I was just on the phone today, Monday, March 7, 2016 at or around 2 pm EST with the FBI and specifically provided Leilani Ochoada's name and phone number as someone I had spoken to on or about Feb. 18th, 2016 and that several days after this the body of Mitch Huhem was allegedly found deceased at the St. Andrews Boca Raton, FL property and where issues of Witnesses who may be in danger etc were raised as Eliot Bernstein previously had his mini-van Car-bombed and apparently or allegedly your client Ted Bernstein raised a suggestion in Sept. of 2012 that Simon Bernstein may have been poisoned or murdered on the night of his passing and sought an autopsy and coroner's

000173

EXHIBIT

investigation and allegedly reported this to the Palm Beach County Sheriff's Dept.

For the record, Eliot I. Bernstein never asked, instructed, authorized or directed me to have any contact with Leilani Ochoada or had any knowledge I was doing so at the time. I did this on my own initiative after getting information from William Stansbury about the Deed Transfer on file that you apparently signed as a Notary and Witness regarding the St. Andrews Boca Raton, Florida property and then from information I personally looked up at [www.sunbiz.org](http://www.sunbiz.org) where I quickly found:

1) [www.sunbiz.org](http://www.sunbiz.org) showed the name of the Registered Agent for Lions Head Land Trust Inc. as a dissolved company since 1997; I then had a subsequent call to the Florida Secretary of State where a person confirmed this Filing of Lions Head Land Trust Inc. should "not have been overlooked" by Internal Florida Secretary of State examiners and was initiating a request to the Examiner and an investigation with her Director as she worked in the Director's Office;

2) My own initiated google searches showed the Tallahassee, FL address listed with the Secretary of State for Lions Head Land Trust Inc came up to a business with a DIFFERENT name and a phone call to that Business initiated again by myself at my own direction on Feb. 18th had the person working there claiming Any use of their Tallahassee, FL address was not proper by Lions Head Land Trust, Inc. and that their company was not ISL, Inc. as indicated in the Lions Head Land Trust Inc filings;

3) whereupon a further google search that I, KRH, personally did and made of my own free will and volition and upon my own direction having Interests in "Iviewit", I then reached a business named CMREI in Orlando, FL whereupon I spoke with a person who went by the name of Leilani Ochoada who claimed to know Nothing about the Lions Head Land Trust filing, thought it may be Identity theft, had not Authorized this at all, had never lived in Boca Raton, FL, never bought any property and was not aware of it etc etc.

4) I informed Eliot Bernstein that Leilani Ochoada said she would come forward with a Sworn Statement and even do a Recorded call giving proper consent to the call later that day as she claimed she was Not a Buyer of this property and had no knowledge of it and provided no consent to anyone to do so in her name.

Thus, later that same day at my Suggestion Leilani Ochoada agreed to get on a Recorded Call whereupon I INITIATED a Call to Eliot Bernstein after Leilani Ochoada was on the call and Eliot Bernstein already had reason to believe this person was NOT a Buyer or Involved with Lions Head Land Trust Inc. and instead was a Victim of some type of Fraud.

Leilani Ochoada agreed to have a draft of her statement typed up of the call she was having with myself and Eliot Bernstein who I initiated on to the call and the draft of her Statement was as follows:

**Leilani Statement** which she confirmed was correct by email:

Leilani has:

- \* no knowledge of Lions Head Land Trust, Inc. at all
- \* never authorized anyone to use her name as an Incorporator
- \* until Feb. 18th 2016 had no knowledge any entity was incorporated by filings at the Fla Secretary of State under her name and had no involvement with any land transaction involving 7020 Lions Head Lane, Boca Raton, FL
- \* initially believed it was some form of identity theft
- \* never lived at any Boca Raton, FL address in general and never at 7020 Lions Head Land Trust Inc.
- \* never knew about any land deal with Mitch Huhem Laurence Pino or anything related to this property
- \* no absolutely nothing about the Articles of Incorporation and the addresses and companies named there
- \* consider it unauthorized fraudulent use of her name
- \* attorney Laurence Pino never had Leilani's permission to incorporate any entity using her name as an Incorporator either by signed document or Electroncially



\* Pino has not been able to produce any written document that you allegedly signed with his office

\* Pino's Exec Assistant Cathy can not find Any document signed by Leilani after reviewing the files

So, Mr. Rose, I have been told you have been suggesting in legal papers that Leilani Ochoada is a "Buyer" at the St. Andrew's property? Is this True? She certainly never claimed to me that she was a "Buyer" in any sense and as shown by her statement drafted above quite to the contrary. Thus, are you claiming Leilani is the "Buyer" in this situation? To facilitate review, I have attached the MP3 Recording of the Call that both Leilani Ochoada and Eliot Bernstein agreed and consented to have Recorded.

Please note that I have copied this communication to William Stansbury and his attorney Peter Feaman and Leilani herself and Eliot and the attorney from Texas Candice Schwager and other attorney contacts of Eliot and others in order to quickly clarify matters and put the issues to rest.

I am curious, however, if you found any of the "Iviewit Stock" that Simon Bernstein had when you were at the 7020 Lions Head Lane Boca Raton, Fl home or if you know where all those Files and Records went?

Thank you in advance for your cooperation.

Glad I could be of assistance.

Regards,



Kevin R. Hall  
IT Consulting Sales Offices  
P.O. Box 756  
Kinderhook, NY 12106  
518-755-8128 Cell  
518-635-0668 office  
Skype ID = kh.itconsultingsales  
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**CONFIDENTIALITY NOTICE:**

This message and any attachments are covered by the Electronic Communications Privacy Act, 18 U.S.C. SS 2510-2521. This e-mail message is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message or call (518) 635-0668. If you are the intended recipient but do not wish to receive communications through this medium, please so advise the sender immediately.

On Mon, Mar 7, 2016 at 12:55 PM, Alan Rose <[ARose@mrachek-law.com](mailto:ARose@mrachek-law.com)> wrote:

Kevin R. Hall

IT Consulting Sales Offices

P.O. Box 756

Kinderhook, NY 12106

Dear Mr. Hall:

You may recall that I represent Ted S. Bernstein, Trustee.

I am writing to confirm that you were you involved in contacting Leilani Ochoada on behalf of Eliot Bernstein to obtain information on the trust which purchased the Bernstein residence at 7020 Lions Head Lane?

Can you share you confirm that? And, are you authorized to advise what you learned from that call or would we need to depose Mr. Eliot Bernstein?.

Also, can you confirm that Eliot Bernstein was on the telephone with you and spoke directly to Ms. Ochoada?

Thanks in advance for responding.

Alan Rose

Counsel for Successor Trustee of Shirley Bernstein Trust Agreement

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIH

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON;  
PAMELA B. SIMON, Individually and as Trustee  
f/b/o Molly Simon under the Simon L. Bernstein  
Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually,  
as Trustee f/b/o D.B., Ja. B. and Jo. B. under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on  
behalf of his minor children D.B., Ja. B. and Jo. B.;  
JILL IANTONI, Individually, as Trustee f/b/o J.I.  
under the Simon L. Bernstein Trust Dtd 9/13/12, and  
on behalf of her Minor child J.I.; MAX FRIEDSTEIN;  
LISA FRIEDSTEIN, Individually, as Trustee f/b/o  
Max Friedstein and C.F., under the Simon L.  
Bernstein Trust Dtd 9/13/12, and on behalf of her  
minor child, C.F.,

Defendants.

---

**NOTICE TO COURT REGARDING SELECTION OF GUARDIAN AD LITEM**

Plaintiff, Ted S. Bernstein (the "Trustee"), as Successor Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, notifies this Court as follows pursuant to the Order entered in this case, and the companion Order entered in Case No. 502014CP002815XXXXNB, on March 1, 2016:

1. The parties have conferred in good faith, including with Eliot and Candice Bernstein, as required by the Court's Order. Eliot and Candice have suggested no one, and have not agreed to

the appointment of retired judge Diana Lewis, the only person the Trustee prefers who is willing to undertake this matter (albeit reluctantly given the internet hostility).

2. Thus, the Trustee proposed that the Court appoint Diana Lewis as guardian ad litem for Eliot's children, Jo.b, Ja.B. and D.B. (the "Beneficiaries").

3. As of the date of this filing, Eliot and Candice Bernstein have not proposed an alternate guardian ad litem.

4. In an effort to comply with this Court's directive for each party to "submit a list of three names of potential guardian ad litem, each of whom has agreed to accept the appointment if selected," *see Order entered in Case No. 502014CP003698XXXXNB, ¶ 8*, Trustee, through the undersigned, contacted a number of former judges, probate lawyers and several other Florida attorneys located in Palm Beach County; however, none of them would agree to accept the appointment if selected. Diana Lewis is willing to undertake this role, but has expressed concerns about the internet blogging issues, which have intensified. <http://tedbernsteinreport.blogspot.com/>

5. Trustee consents to the appointment of retired judge Diana Lewis, or any Florida-licensed lawyer located in Palm Beach County that is selected by the Court, as guardian ad litem. To the extent necessary, the undersigned will continue to search for suitable candidates, and requests should it be necessary that the Court will impose further confidentiality limitations or gag order solely to protect the guardian.

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by:  Facsimile and U.S. Mail;  U.S. Mail;  Email Electronic Transmission;  FedEx;  Hand Delivery this 15<sup>th</sup> day of March, 2016.

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Attorneys for Ted S. Bernstein

By: /s/ Alan B. Rose  
Alan B. Rose (Fla. Bar No. 961825)

**SERVICE LIST Case No.: 502014CP003698XXXXNBIH**

Eliot Bernstein and Candice Bernstein,  
as Parents of D.B., Ja. B. and Jo. B, Minors  
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Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her  
children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
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Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a minor  
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[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

IN THE CIRCUIT COURT OF THE  
15<sup>TH</sup> JUDICIAL CIRCUIT, IN AND FOR  
PALM BEACH COUNTY

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,  
Plaintiff,

PROBATE DIVISION  
CASE NO.: 502014CP003698XXXXNB  
DIVISION: IH

v.

ALEXANDRA BERNSTEIN; ERIC  
BERNSTEIN; MICHAEL BERNSTEIN;  
MOLLY BERNSTEIN; PAMELA B. SIMON,  
individually and as Trustee f/b/o Molly Simon  
under the Simon L. Bernstein Trust Dtd 9/13/12;  
ELIOT BERNSTEIN, individually, as Trustee  
f/b/o D.B., Ja.B. and Jo. B. under the  
Simon L. Bernstein Trust dtd 9/13/12,  
and on behalf of his minor children D.B.,  
Ja. B. and Jo. B.; JILL IANTONI, individually,  
as Trustee f/b/o J.I. under the Simon L. Bernstein  
Trust Dtd 9/13/12, and on behalf of her minor  
child, J.I.; MAX FRIEDSTEIN; LISA FRIEDSTEIN,  
individually, as Trustee f/b/o Max Friedstein and C.F.,  
under the Simon L. Bernstein Trust Dtd 9/13/12, and  
on behalf of her minor child, C.F.,  
Defendants.

---

**RESPONSE AND OBJECTIONS TO SUBPOENA DUCES TECUM FOR DEPOSITION**

COMES NOW William Stansbury, by and through his undersigned counsel, and files this  
his response and objections to the Subpoena Duces Tecum served upon him through counsel on  
March 10, 2016, as follows:

1. None
2. One email.
3. None
4. One email.

5. None
6. None
7. None
8. None
9. Objection as an invasion of privacy, overly broad and not relevant to the subject matter of this proceeding. None.
10. Objection based upon invasion of privacy, and not relevant to the subject matter of this proceeding. None.
11. None
12. Objection based upon invasion of privacy, and not relevant to the subject matter of this proceeding. None.
13. None.



Peter M. Feaman

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically and served in the Florida Courts E-Filing Portal to all parties on the service list below this 16 day of March, 2016:

**Eliot Bernstein, individually and Eliot and Candice Bernstein, as Parents and Natural Guardians of D.B., Ja.B. and Jo.B., Minors**  
2753 Northwest 34<sup>th</sup> Street  
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*Counsel for Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein*

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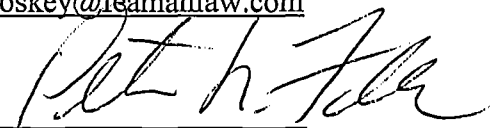
**Lisa Friedstein, individually and as trustee for her children, and as natural guardian for M.F. and C.F., Minors; and Max Friedstein**  
Email: [lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

**Brian M. O'Connell, Esquire**  
**Joielle A. Foglietta, Esq.**  
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**Jill Iantoni, individually and as trustee for her children, and as natural guardian for J.I. a minor**  
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[mkoskey@feamanlaw.com](mailto:mkoskey@feamanlaw.com)

By: \_\_\_\_\_



Peter M. Feaman  
Florida Bar No. 0260347

IN THE CIRCUIT COURT OF THE  
15<sup>TH</sup> JUDICIAL CIRCUIT, IN AND FOR  
PALM BEACH COUNTY

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,  
Plaintiff,

PROBATE DIVISION  
CASE NO.: 502014CP003698XXXXNB  
DIVISION: IH

v.

ALEXANDRA BERNSTEIN; ERIC  
BERNSTEIN; MICHAEL BERNSTEIN;  
MOLLY BERNSTEIN; PAMELA B. SIMON,  
individually and as Trustee f/b/o Molly Simon  
under the Simon L. Bernstein Trust Dtd 9/13/12;  
ELIOT BERNSTEIN, individually, as Trustee  
f/b/o D.B., Ja.B. and Jo. B. under the  
Simon L. Bernstein Trust dtd 9/13/12,  
and on behalf of his minor children D.B.,  
Ja. B. and Jo. B.; JILL IANTONI, individually,  
as Trustee f/b/o J.I. under the Simon L. Bernstein  
Trust Dtd 9/13/12, and on behalf of her minor  
child, J.I.; MAX FRIEDSTEIN; LISA FRIEDSTEIN,  
individually, as Trustee f/b/o Max Friedstein and C.F.,  
under the Simon L. Bernstein Trust Dtd 9/13/12, and  
on behalf of her minor child, C.F.,  
Defendants.

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**MOTION FOR PROTECTIVE ORDER AS TO DEPOSITION OF  
WILLIAM STANSBURY AND APPEARANCE AT EVIDENTIARY HEARING/TRIAL**

COMES NOW William Stansbury, by and through his undersigned counsel, and moves this Court for the entry of a Protective Order with regard to two subpoenas served upon him on March 10, 2016 demanding him to appear for the taking of his deposition and to appear at a hearing scheduled for April 8, 2016, and states as follows:

1. On March 10, 2016, non-party William Stansbury was served (through counsel) with two subpoenas:

- a. Subpoena Duces Tecum to William Stansbury for appearance at deposition (a copy of which is attached hereto as **Exhibit "A"**); and
- b. Subpoena Duces Tecum to appear at evidentiary hearing/trial (a copy of which is attached hereto as **Exhibit "B"**).

--- **Statement of the Case** ---

2. This is an action brought by TED BERNSTEIN as Successor Trustee of the Shirley Bernstein Trust against all of the beneficiaries of the Shirley Bernstein Trust, plus Eliot Bernstein.

3. This action is a two-count complaint. (A copy of the Complaint is attached hereto as **Exhibit "C."**) The Motion filed by the Trustee on January 28, 2016, which is now set to be heard before the Court on April 8, 2016 at 9:45 a.m., involves the sale of the former homestead of Shirley and Simon Bernstein (Lion's Head property) and requests relief as to Eliot Bernstein concerning holding the proceeds of the sale of the homestead and further injunctive relief against Eliot Bernstein. A copy of the Motion is attached hereto as **Exhibit "D."**

4. William Stansbury is not a party to this action. The trial of this action as to Count II took place on December 15, 2015, and Stansbury was not involved other than as an observer. Stansbury has had no involvement in the administration of the Shirley Bernstein Trust. The Shirley Bernstein Trust is not a defendant in the case pending by William Stansbury against the Simon Bernstein Estate.

--- **Retaliatory Subpoenas** ---

5. This matter has devolved into retaliatory litigation tactics by Ted Bernstein as he seeks to involve William Stansbury in this action solely in an effort to cause William Stansbury

to incur fees and otherwise become involved in this case because William Stansbury has taken action in collateral matters adverse to that of Ted Bernstein.

6. Ted Bernstein is retaliating against William Stansbury as a result of Mr. Stansbury's issues which are adverse to Ted Bernstein on the following matters:

- a. Ted Bernstein is an individual Plaintiff in an action pending in the United States District Court for the Northern District of Illinois (the "Chicago litigation") in which he is claiming that he and the other adult children of Simon Bernstein are beneficiaries of a life insurance policy on the life of Simon Bernstein in the approximate amount of \$1,700,000.00. Mr. Stansbury believes that these insurance proceeds actually belong to the Estate of Simon Bernstein against which is pending his approximate \$2.5 million dollar claim for unpaid compensation. He therefore attempted to intervene in that action, which was vigorously opposed by Ted Bernstein. The Court denied the intervention but thereafter, after the original Personal Representatives of the Estate of Simon Bernstein (Tescher and Spallina) resigned as Personal Representatives, the Curator, Ben Brown, Esq. and subsequently the Successor Personal Representative, Brian O'Connell, Esq. became convinced that the Estate did have a valid interest in and to the insurance proceeds at issue in the Chicago litigation, and the Estate has now intervened in that case. Mr. Stansbury is funding the fees incurred by the Estate in that action. The intervention of the Estate now threatens Ted Bernstein because the life insurance proceeds of approximately \$1.7 million could, now that the Estate has intervened, not go to Ted Bernstein and the adult children, but rather to

the Simon Bernstein Trust, which is the sole monetary beneficiary of the Simon Bernstein Estate. The Estate's attorneys in Chicago feel so strongly about the merits of the Estate's position that they are willing to take this case on a contingency fee basis.

- b. Because the Simon Bernstein Trust could be the recipient of the life insurance proceeds coming from Illinois, it clearly puts Ted Bernstein in a conflict of interest position as, on the one hand, he is the Plaintiff in the Chicago litigation where he is trying to keep the funds away from the Simon Bernstein Trust while, on the other hand, he is holding the position of Successor Trustee of the Simon Bernstein Trust, which is the sole beneficiary of the Simon Bernstein Estate where the life insurance proceeds would be paid should he not prevail as Plaintiff. Therefore, he has a clear and direct conflict of interest. Mr. Stansbury filed a Petition to Remove Ted Bernstein as the Successor Trustee of the Simon Bernstein Trust based upon this conflict, as well as the fact that Ted Bernstein is facially not qualified to hold the position of Successor Trustee according to the plain language of the Trust. Simon Bernstein specifically disinherited Ted Bernstein in his Trust, writing that, for all purposes of the Trust, Ted Bernstein was considered to have pre-deceased him.
- c. Ted Bernstein has additional reasons to want to harass William Stansbury. Mr. Stansbury has also filed his Amended Petition to account for missing property (furniture and fixtures) from the oceanfront condominium owned by the Shirley Bernstein Trust, but which personal property inside was the property

of the Simon Bernstein Estate, and also to account for missing jewelry of the Simon Bernstein Estate. By Mr. Stansbury's Petition, Ted Bernstein is placed squarely in a position to account for the missing property. This also would give Ted Bernstein incentive to harass Mr. Stansbury.

- d. Ted Bernstein's attorney admitted to this Court at the status conference held on March 7, 2016 that the furniture and fixtures contained within the oceanfront condominium in Boca Raton belonged to the Simon Bernstein Estate but was sold along with the condo. He admitted that the Shirley Bernstein Trust, over which Ted Bernstein is the Successor Trustee, needed to reimburse the Estate of Simon Bernstein for the value of that furniture which he had no authority to sell. The sale of that oceanfront condominium took place two years ago and yet no reimbursement has been forthcoming. Mr. Stansbury, among others, brought this to the attention of the Court, further buttressing his position that the Subpoenas issues in this matter are only for harassment purposes.
- e. The proceeds of the sale of the oceanfront condominium, which took place two years ago, based on information and belief, were distributed to 7 of the 10 grandchildren of Simon and Shirley Bernstein. However, by the terms of the Shirley Bernstein Trust, Ted Bernstein's children were excluded as beneficiaries but received a share of the proceeds nonetheless. Mr. Stansbury has made the interested parties to this litigation aware of that as well.

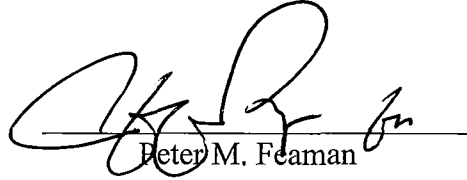
--- Stansbury's Conduct is Not Relevant to the Issues Before the Court to be Heard on  
April 8, 2016 ---

7. Ted Bernstein has seized on one e-mail written by Kevin Hall that mentioned the name of William Stansbury to justify the issuance of the Subpoenas. Mr. Stansbury is clearly not involved as a witness in the matters before the Court on April 8, 2016. He is not a party and there is no justifiable reason to involve Mr. Stansbury other than the desire of Ted Bernstein to harass Mr. Stansbury.

8. The only connection Mr. Stansbury has to this litigation is as set forth in the e-mail from Kevin Hall to Alan Rose, wherein Mr. Stansbury's name is mentioned. A copy of the e-mail is attached hereto as **Exhibit "E."** There is no evidence that Mr. Stansbury has been or is involved in any way with the sale of the Lion's Head property which is the subject of the Motion for which he was subpoenaed, or any involvement after the sale concerning the Lion's Head property.

9. Further, the deposition date of March 29, 2016 was not cleared with counsel for Mr. Stansbury. Counsel for Mr. Stansbury is not available on that day. Finally, the location of the deposition is set for the office of counsel for Ted Bernstein in West Palm Beach. Mr. Stansbury resides in Boynton Beach and his deposition could easily be accomplished at the office of his attorney also located in Boynton Beach.

WHEREFORE, for all the foregoing reasons, William Stansbury requests this Honorable Court to enter a Protective Order protecting him from attending the deposition on March 29, 2016, and quashing the Subpoena on him for the hearing set for April 8, 2016, which does not involve him in any way.



Peter M. Feaman

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically and served in the Florida Courts E-Filing Portal to all parties on the service list below on this 15<sup>th</sup> day of March, 2016:

**Eliot Bernstein, individually and Eliot and Candice Bernstein, as Parents and Natural Guardians of D.B., Ja.B. and Jo.B., Minors**  
2753 Northwest 34<sup>th</sup> Street  
Boca Raton, Florida 33434  
Email: [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)

**Alan Rose, Esquire**  
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**John P. Morrissey, Esq.**  
330 Clematis Street, Suite 213  
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Email: [john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com)  
*Counsel for Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein*

**Pamela Beth Simon**  
303 East Wacker Drive, Suite 2725  
Chicago, Illinois 60601  
Email: [psimon@stpcorp.com](mailto:psimon@stpcorp.com)


**Lisa Friedstein, individually and as trustee for her children, and as natural guardian for M.F. and C.F., Minors; and Max Friedstein**  
Email: [lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

**Brian M. O'Connell, Esquire**  
**Joielle A. Foglietta, Esq.**  
Ciklin, Lubitz, Martens & O'Connell  
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Email: [boconnell@ciklinlubitz.com](mailto:boconnell@ciklinlubitz.com)  
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[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com)  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

**Jill Iantoni, individually and as trustee for her children, and as natural guardian for J.I. a minor**  
Email: [jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)



PETER M. FEAMAN, P.A.  
3695 West Boynton Beach Blvd., #9  
Boynton Beach, FL 33436  
Telephone: (561) 734-5552  
Facsimile: (561) 734-5554  
Service: [service@feamanlaw.com](mailto:service@feamanlaw.com)  
[mkoskey@feamanlaw.com](mailto:mkoskey@feamanlaw.com)

By:   
Peter M. Feaman  
Florida Bar No. 0260347

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

TED BERNSTEIN, as Trustee of the Shirley  
Bernstein Trust Agreement dated May 20, 2008,  
as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON; PAMELA  
B. SIMON, Individually and as Trustee f/b/o Molly  
Simon under the Simon L. Bernstein Trust Dtd 9/13/12;  
ELIOT BERNSTEIN, individually, as Trustee f/b/o D.B.,  
Ja. B. and Jo. B. under the Simon L. Bernstein Trust Dtd  
9/13/12, and on behalf of his minor children D.B., Ja. B.  
and Jo. B.; JILL IANTONI, Individually, as Trustee f/b/o  
J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, and  
on behalf of her Minor child J.I.; MAX FRIEDSTEIN;  
LISA FRIEDSTEIN, Individually, as Trustee f/b/o Max  
Friedstein and C.F., under the Simon L. Bernstein Trust  
Dtd 9/13/12, and on behalf of her minor child, C.F.,

Defendants.

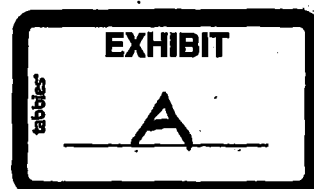
1659428  
3.10.2014  
1130am

**SUBPOENA DUCES TECUM TO WILLIAM STANSBURY FOR  
APPEARANCE AT DEPOSITION**

THE STATE OF FLORIDA

TO: William Stansbury  
C/O Peter Feaman, Esq.  
PETER M. FEAMAN, P.A.  
3695 West Boynton Beach Boulevard, Suite 9  
Boynton Beach, FL 33436

**YOU ARE COMMANDED** to appear before a person authorized by law to take depositions  
at the law firm of Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A., 505 S. Flagler



Drive, Suite 600, West Palm Beach, FL 33401 (Telephone: (561) 655-2250) on March 29, 2016 at 10:00 a.m. for the taking of your deposition in this action, and to have with you at that time and place the documents identified on the attached Exhibit "A."

If you fail to appear, you may be in contempt of court.

You are subpoenaed to appear by the following attorneys, and unless excused from this subpoena by these attorneys or the Court, you shall respond to this subpoena as directed.

Dated on March 9, 2016.

  
\_\_\_\_\_  
ALAN B. ROSE, ESQ.  
For the Court

MRACHEK, FITZGERALD, ROSE,  
KONOPKA, THOMAS & WEISS, P.A.  
505 S. Flugler Drive, Suite 600  
West Palm Beach, FL 33401  
Phone: 561-655-2250  
Fax: 561-655-5537  
*Attorneys for Plaintiff, Ted Bernstein*  
Alan B. Rose  
Florida Bar Number: 961825

**EXHIBIT A**

YOU ARE REQUESTED to bring the following documents:

**Definitions**

"Documents" shall mean and include all writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations, specifically including all letters, emails, text messages, phone messages, notes, deed, title reports, or written communication of any kind—stored in any medium whether in paper or electronic format.

"Property" shall mean 7020 Lions Head Lane, Boca Raton, Florida 33496.

"Eliot" shall mean Eliot Ivan Bernstein, including any agents, employees or others acting on his behalf.

"Stansbury" shall mean William Elwood "Bill" Stansbury, together with his wife Eileen B. Stansbury and any and all agents, employees or others acting on his behalf, including his attorney, Peter M. Feaman, Esquire, or anyone employed by or affiliated with the Law Offices of Peter M. Feaman. (This request does not seek any documents sent solely between William Stansbury and his counsel, and includes only documents which were sent to or received from a third-party outside of the attorney-client relationship.)

"Hall" shall mean Kevin R. Hall.

"Cox" shall mean Crystal Cox.

**Documents Requested**

1. All documents sent by Stansbury to Eliot concerning the Property.
2. All documents sent by Eliot to Stansbury concerning the Property.
3. All documents sent by Stansbury to Hall concerning the Property.
4. All documents sent by Hall to Stansbury concerning the Property.
5. All documents sent by Stansbury to Cox concerning the Property.

6. All documents sent by Cox to Stansbury concerning the Property.
7. All documents sent by Stansbury relating to the Property to anyone else other than Eliot, Hall or Cox.
8. All documents sent by Stansbury to Cox, or Cox to Stansbury, on any matter.
9. All documents sent to Cox or Hall by anyone for which copies (bcc: or cc:) were provided to Stansbury.
10. All documents, including checks, canceled checks, credit card receipts or other documents showing any payments made by Stansbury to or on behalf of Eliot or his family, from and after May 6, 2015 to the present.
11. All documents evidencing any oral or written agreements between Stansbury and Eliot concerning (i) the Property; (ii) the Trusts or Estates of Simon Bernstein and/or Shirley Bernstein, (iii) the Illinois litigation; or (iv) any other subject matter.
12. All documents relating to the Property, including any internet research, title reports, deeds, notes, pictures, or otherwise in the possession of Stansbury relating to the Property.
13. All documents concerning Lions Head Land Trust, Lions Head Land Trust, Inc., Mitchell and Deborah Huhem, Leilani Ochoada, Larry Pino, and anyone else involved in any way as an owner, participant, professional, lawyer, title examiner, etc. in the real estate transaction under which title of the Property transferred from the Shirley Bernstein Trust to the Lions Head Land Trust.

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

TED BERNSTEIN, as Trustee of the Shirley  
Bernstein Trust Agreement dated May 20, 2008,  
as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON; PAMELA  
B. SIMON, Individually and as Trustee f/b/o Molly  
Simon under the Simon L. Bernstein Trust Dtd 9/13/12;  
ELIOT BERNSTEIN, individually, as Trustee f/b/o D.B.,  
Ja. B. and Jo. B. under the Simon L. Bernstein Trust Dtd  
9/13/12, and on behalf of his minor children D.B., Ja. B.  
and Jo. B.; JILL IANTONI, Individually, as Trustee f/b/o  
J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, and  
on behalf of her Minor child J.I.; MAX FRIEDSTEIN;  
LISA FRIEDSTEIN, Individually, as Trustee f/b/o Max  
Friedstein and C.F., under the Simon L. Bernstein Trust  
Dtd 9/13/12, and on behalf of her minor child, C.F.,

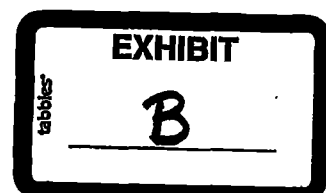
Defendants.

SUBPOENA DUCES TECUM TO WILLIAM STANSBURY FOR  
APPEARANCE AT EVIDENTIARY HEARING/TRIAL

THE STATE OF FLORIDA

TO: William Stansbury  
C/O Peter Feaman, Esq.  
PETER M. FEAMAN, P.A.  
3695 West Boynton Beach Boulevard, Suite 9  
Boynton Beach, FL 33436

YOU ARE COMMANDED to appear before the Honorable John L. Phillips, Judge of the  
Circuit Court, at the North Branch of the Palm Beach County Courthouse, 3188 PGA Boulevard,



Palm Beach Gardens, FL 33410 *Courtroom 3* on **April 8, 2016** at **9:45 A.M.** to testify in this action and to have with you at that time, the documents outlined in **Exhibit A** attached to this Subpoena. If you fail to appear, you may be in contempt of court.

You are subpoenaed to appear by the following attorneys and unless excused from this subpoena by these attorneys or the Court, you shall respond to this subpoena as directed.

DATED this 9<sup>th</sup> day of March, 2016.

  
ALAN B. ROSE, ESQ.  
For the Court

MRACHEK, FITZGERALD, ROSE,  
KONOPKA, THOMAS & WEISS, P.A.  
505 S. Flagler Drive, Suite 600  
West Palm Beach, FL 33401  
Phone: 561-655-2250  
Fax: 561-655-5537  
*Attorneys for Plaintiff, Ted Bernstein*  
Alan B. Rose  
Florida Bar Number: 961825

**EXHIBIT A**

YOU ARE REQUESTED to bring the following documents:

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8. All documents sent by Stansbury to Cox, or Cox to Stansbury, on any matter.
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11. All documents evidencing any oral or written agreements between Stansbury and Eliot concerning (i) the Property; (ii) the Trusts or Estates of Simon Bernstein and/or Shirley Bernstein, (iii) the Illinois litigation; or (iv) any other subject matter.
12. All documents relating to the Property, including any internet research, title reports, deeds, notes, pictures, or otherwise in the possession of Stansbury relating to the Property.
13. All documents concerning Lions Head Land Trust, Lions Head Land Trust, Inc., Mitchell and Deborah Huhem, Leilani Ochoada, Larry Pino, and anyone else involved in any way as an owner, participant, professional, lawyer, title examiner, etc. in the real estate transaction under which title of the Property transferred from the Shirley Bernstein Trust to the Lions Head Land Trust.

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

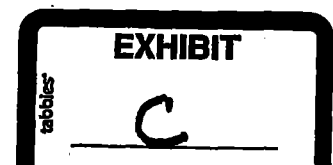
v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON;  
PAMELA B. SIMON, Individually and as Trustee  
f/b/o Molly Simon under the Simon L. Bernstein  
Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually,  
as Trustee f/b/o D.B., Ja. B. and Jo. B. under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on  
behalf of his minor children D.B., Ja. B. and Jo. B.;  
JILL IANTONI, Individually, as Trustee f/b/o J.I.  
under the Simon L. Bernstein Trust Dtd 9/13/12, and  
on behalf of her Minor child J.I.; MAX FRIEDSTEIN;  
LISA FRIEDSTEIN, Individually, as Trustee f/b/o  
Max Friedstein and C.F., under the Simon L.  
Bernstein Trust Dtd 9/13/12, and on behalf of her  
minor child, C.F.,

Defendants.

**AMENDED COMPLAINT**

Plaintiff, TED BERNSTEIN, as trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended (the "Trust"), pursuant to leave granted by and instructions from this Court to file an Amended Complaint, hereby files this Amended Complaint against and provides notice to those interested in the Trust and in the testamentary documents of Simon L. Bernstein and Shirley Bernstein, namely Defendants, ALEXANDRA BERNSTEIN; ERIC BERNSTEIN; MICHAEL BERNSTEIN; MOLLY SIMON; PAMELA B. SIMON, Individually and as Trustee



f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually, as Trustee f/b/o D.B., Ja. B., and Jo. B. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of his minor children D.B., Ja. B., and Jo. B.; JILL IANTONI, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her Minor child J.I.; MAX FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as Trustee f/b/o Max Friedstein and C.F. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child, C.F. (collectively, "Defendants").

Plaintiff hereby sues Defendants, and states:

1. Plaintiff Ted Bernstein is over the age of 18, a resident of Palm Beach County, Florida and is the Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, under Article IV.C.1 of the Trust ("Trustee.")
2. Shirley Bernstein died on December 8, 2010, and at the time of her passing was a resident of Palm Beach County, Florida.
3. Prior to her death, Shirley Bernstein created a trust known as the Shirley Bernstein Trust Agreement dated May 20, 2008 ("Shirley's Trust").
4. Shirley Bernstein was a resident of Palm Beach County, Florida when she created Shirley's Trust.
5. An authentic copy of Shirley's Trust is attached as Exhibit "A".
6. Shirley's Trust, Exhibit A, is clear and unambiguous.
7. Shirley Bernstein was survived by her husband, Simon L. Bernstein.
8. The marriage between Shirley and Simon L. Bernstein was the first and only marriage for each of them.

9. The marriage lasted 52 years, and during that time Shirley and Simon had five natural born children. Neither Simon nor Shirley had any other children.

10. The five children of Shirley and Simon are Plaintiff Ted Bernstein, and Defendants Pamela B. Simon, Eliot Bernstein, Jill Iantoni and Lisa Friedstein, each of whom is living, over the age of 18 and a lineal descendant of Shirley.

11. Shirley Bernstein was the original sole trustee of Shirley's Trust and, upon her death, was succeeded as sole trustee by Simon L. Bernstein.

12. Simon L. Bernstein died on September 13, 2012.

13. Simon L. Bernstein was succeeded as sole trustee of Shirley's Trust by son Ted Bernstein, who presently serves as sole trustee of Shirley's Trust.

14. It is believed that Shirley Bernstein amended Shirley's Trust by executing a document titled "First Amendment to Shirley Bernstein Trust Agreement" dated November 18, 2008. An authentic copy of the First Amendment to Shirley Bernstein Trust Agreement dated November 18, 2008 is attached as Exhibit "B". This First Amendment has no bearing on the issue in this case.

15. There is another document which purports to have the same title, "First Amendment to Shirley Bernstein Trust Agreement", which also purportedly is dated November 18, 2008. Such document, which the Trustee first learned of in mid-January 2014, is not a valid amendment to Shirley's Trust, and has no bearing on this issue in this case.

16. With regard to the Shirley Trust, the only genuine and authentic trust documents signed by Shirley during her lifetime are Exhibits "A" and "B".

17. Pursuant to Shirley's Trust, upon Shirley's death, a "Family Trust" is created pursuant to Article II, ¶ C.1.

18. Pursuant to Shirley's Trust, no "Marital Trust" is created, as that term is used in Article II of Shirley's Trust.

19. Article II, ¶ E. 1. of Shirley's Trust granted to Shirley's surviving spouse, Simon L. Bernstein, a limited or special power of appointment over the Family Trust to or for the benefit of Shirley Bernstein's "lineal descendants and their spouses."

20. The Shirley Trust was funded by assets transferred to it during Shirley's life and also was funded by the residue of her estate.

21. After Shirley's death, the beneficiary of the Shirley Trust was Simon L. Bernstein during the remainder of his life.

22. Upon Simon's death, the Shirley Trust provided to Simon a Limited Power to appoint the trust's assets "to or for the benefit of one of more of my [Shirley's] lineal descendants and their spouses."

23. The Shirley Trust provides an alternate or default disposition for any parts of the trust that Simon does not or cannot effectively appoint: such assets "shall be divided among and held in separate Trusts for my [Shirley] lineal descendants then living, *per stirpes*."

24. Simon exercised his Special Power in Article II in the Will of Simon L. Bernstein dated July 25, 2012 ("Simon's Will").

25. An authentic copy of Simon's Will is attached as Exhibit "C".

26. Simon's Will specifically references Shirley's Trust and the power given to him under subparagraph E.1 of Article II of Shirley's Trust. The relevant provision of Simon's Will reads:

Under Subparagraph E.1. of Article II of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, (the "Shirley Trust"), I was granted a special power of appointment upon my death to direct the disposition of the remaining assets of the Marital Trust and Family Trust established under the Shirley Trust. Pursuant to the power granted to me under the Shirley Trust, upon my death, I hereby direct the then serving Trustees of the Marital Trust and the Family Trust to divide the remaining assets into equal shares for my then living grandchildren and distribute said shares to the then serving Trustees of their respective trusts established under Subparagraph II.B. of my Existing Trust, as referenced below, and administered pursuant to Subparagraph II.C. thereunder.

27. In essence, through his Special Power, Simon directed Shirley's Trustee to divide the remaining trust assets into equal shares for his then living grandchildren, to be added to trusts established for each such grandchild under Simon's Trust.

28. The persons identified by Simon, "his then living grandchildren," all appear to be among the class of permitted appointees as defined in the Shirley Trust to be Shirley's "lineal descendants and their spouses".

29. Because Simon exercised his power of appointment, the assets in the Shirley Trust do not pass under the Shirley Trust to the alternate, default beneficiaries: "my lineal descendants then living, *per stirpes*."

30. The class of permissible appointees for Simon's power (Shirley's "lineal descendants and their spouses") is different than the class of alternate/default beneficiaries (Shirley's "lineal descendants *then living*, *per stirpes*").

31. Because Simon L. Bernstein exercised his Special Power in favor of his [and also Shirley's] grandchildren, none of Shirley's and Simon's children is a beneficiary under the Shirley Trust. Thus, it appears that neither Ted, Pam, Eliot, Lisa or Jill are to receive any portion of the assets in the Shirley Trust.

32. Pursuant to Article IV.C.1., upon Simon's death, Ted became the Successor Trustee of the Shirley Trust. Ted also serves as the Successor Personal Representative of Shirley's Estate.

33. Sometime after Simon's death, a significant asset of Shirley's Trust (a condominium) was sold. The decision was made to make a partial interim distribution to all of the beneficiaries of the Shirley Trust. At the time of this decision, the Trustee was not aware of any question or issue as to Simon's right to appoint the assets to his ten grandchildren.

34. The Trustee attempted to make a partial interim distribution to the trusts for all ten living grandchildren of Simon, into a separate trust for each grandchild under the Simon L. Bernstein Trust Dtd 9/13/12, with the respective parent of each grandchild as the trustee.

35. The Trustee was able to complete the partial interim distributions to the trusts for seven of the ten living grandchildren of Simon, but not to Eliot's children. Despite having tried on numerous occasions, the Trustee was unable to make a partial interim distribution to the trusts for the other three living grandchildren (Eliot's minor children) because Eliot refused to accept these distributions.

36. The Trustee believes that there is a disagreement between and among the children and grandchildren of Shirley Bernstein as to effect of the exercise of the power of appointment

by Simon L. Bernstein and which persons are entitled to receive a distribution from the Shirley Trust.

37. The disagreement and dispute involves the interpretation of the Shirley Trust and the construction of Article III.E.1 of Shirley's Trust, which defines who is Shirley Bernstein's "child", "children", and "lineal descendant" "for the purposes of the dispositions made under this Trust."

38. Article III.E.1 of Shirley's Trust states that, "for purposes of the dispositions made under this Trust, my children, Ted S. Bernstein ("*TED*") and Pamela B. Simon ("*PAM*") and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me [Shirley]".

39. At the time of Simon's death, there were ten grandchildren who were alive: Alexandra Bernstein, Eric Bernstein, Michael Bernstein, Molly Simon, D.B., Ja. B., Jo. B., J.I., Max Friedstein and C.F.

40. If the exclusionary language of Article III.E.1 of Shirley's Trust applies to Simon's exercise of his Special Power, then Simon's then living grandchildren, at the time of his death, could be construed to include only D.B., Ja. B., Jo. B., J.I., Max Friedstein and C.F.

41. If the exclusionary language of Article III.E.1 of Shirley's Trust does not apply to Simon's exercise of his Special Power, then the appointment would be in favor of all ten grandchildren identified in ¶40.

42. A telephone conference occurred in May 2012 between and among Simon L. Bernstein, his lawyer Robert Spallina, each of Shirley's and Simon's children (Ted, Pam, Eliot, Jill and Lisa), and some or all of their spouses.



43. Based upon the discussions during that telephone call, there is no uncertainty that Simon L. Bernstein advised each of his children that Shirley's and Simon's wealth was going to be divided equally among all ten grandchildren.

44. Each of Simon's children, including Eliot, acknowledged and agreed with Simon's stated decision to leave all of his and Shirley's wealth to the ten grandchildren.

45. Despite Simon L. Bernstein's stated intentions and his actual exercise of his Special Power through his Will, the Trustee presently is uncertain whether to distribute assets in favor of ten or only six grandchildren, or otherwise.

46. Palm Beach County, Florida is where the Trustee administers Shirley's Trust, is the location where the books and records of Shirley's Trust are kept, and is the principal place of administration of Shirley's Trust.

47. This proceeding seeks the intervention of this Court in the administration Shirley's Trust by an interested person, the Trustee, and declaratory relief.

48. This Court has subject matter jurisdiction pursuant to Sections 736.0203 and 736.0201, Florida Statutes.

49. Pursuant to Article III.I, Shirley's Trust is governed by the laws of the State of Florida.

50. This is a judicial proceeding concerning Shirley's Trust pursuant to Section 736.0201, Florida Statutes.

51. Venue is proper in this Court pursuant to Section 736.0204, Florida Statutes.

52. Venue is appropriate in the Probate Division of this Court pursuant to Administrative Order 6.102-9/08.

53. Plaintiff Trustee is entitled to retain counsel pursuant to Article IV.A.29 of Shirley's Trust and Section 736.0816 (20), Florida Statutes.

54. Plaintiff Trustee has retained the undersigned counsel, and has agreed to pay it reasonable attorney's fees and to reimburse it for costs and may do so from Shirley's Trust.

#### Defendants and Potential Beneficiaries

55. Defendants Alexandra Bernstein, Eric Bernstein, and Michael Bernstein are lineal descendants of Ted S. Bernstein.<sup>1</sup> Each is over the age of 18 and claims a beneficial interest in the Shirley Trust.

56. Defendant Molly Simon is a lineal descendant of Defendant Pamela B. Simon. She is over the age of 18 and claims a beneficial interest in the Shirley Trust.

57. Defendant Pamela B. Simon, Individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12, is over the age of 18. As Trustee, she claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

---

<sup>1</sup> Ted S. Bernstein is the Trustee of three separate trusts created f/b/o Alexandra, Eric and Michael Bernstein under the Simon L. Bernstein Trust Dtd 9/13/12. Solely in the capacity as Trustee of each of these three trusts, each of which received an partial interim distribution, Ted S. Bernstein has signed a Receipt of Partial Distribution, agreeing to return the distribution if the Court determines that the distribution should not have been made. Ted S. Bernstein believes that the power of appointment was validly exercised by Simon L. Bernstein and that the prior partial interim distributions were proper; however, individually he takes no position in this lawsuit and agrees to abide by any final, non-appealable order entered by this Court with respect to the construction of the Shirley Trust. Ted S. Bernstein, individually, makes no claim of entitlement to any individual right to receive any devise, bequest, inheritance or beneficial interest in any portion of the Shirley Trust or her estate.

58. D.B., Ja. B. and Jo. B. are minors and are lineal descendants of Defendant Eliot Bernstein, who is their father and claims on behalf of each minor child a beneficial interest in the Shirley Trust.

59. Eliot Bernstein, Individually, as Trustee f/b/o D.B., Ja. B. and Jo. B. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of his minor children D.B., Ja. B. and Jo. B., is over the age of 18. As Trustee, he claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

60. J.I. is a minor and a lineal descendant of Jill Iantoni, who is her mother and claims on behalf of her minor child a beneficial interest in the Shirley Trust

61. Jill Iantoni, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, is over the age of 18. As Trustee, she claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

62. Defendant Max Friedstein is a lineal descendant of Defendant Lisa Friedstein. He is over the age of 18 and claims a beneficial interest in the Shirley Trust

63. C.F. is a minor and lineal descendant of Lisa Friedstein, who is her mother and claims on behalf of her minor child a beneficial interest in the Shirley Trust.

64. Lisa Friedstein, Individually, as Trustee f/b/o Max Friedstein and C.F. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child, C.F., is over the age of 18. As Trustee, she claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

65. Each of the Defendants is subject to personal jurisdiction pursuant to Section 736.0202, Florida Statutes.

**COUNT I –DECLARATORY AND OTHER RELIEF**

66. Trustee restates the allegations contained in Paragraphs 1 to 65.

67. This is a cause of action to ascertain beneficiaries, to determine a question arising in the administration or distribution of Shirley's Trust, to obtain a declaration of rights, and to instruct and discharge the trustee.

68. This cause of action seeks a declaration and other relief or intervention by this Court as to who should receive Shirley's Trust; whether and to what extent Simon L. Bernstein's exercise of his limited or special power of appointment pursuant to his will should be given effect; which if either of the documents titled First Amendment of Shirley's Trust is valid; to whom the Trustee should distribute the assets of Shirley's Trust; and a discharge of the Trustee.

69. It is in doubt as to whether Eliot Bernstein adequately represents the interests of his minor children and whether there are conflicts of interest between Eliot and the interests of his minor children, each of whom is expressly named in the Special Power.

70. This is an action for declaratory relief pursuant to Chapter 86 of the Florida Statutes and seeking the intervention of the Court in the administration of the Trust, pursuant to Section 736.0201, Florida Statutes.

71. The Trustee, and the Trust, will suffer irreparable harm if relief is not granted.

72. There is no other adequate remedy at law.

73. The relief sought constitutes and deals with a bona fide question between the Trustee and the Defendants.

74. The declaration sought deals with a present state of facts or presents a controversy as to a state of facts.

75. The Trustee has a justiciable question and has a bona fide, actual, and present practical need for a declaration from this Court.

76. The Trustee's rights, duties, and obligations are dependent upon the facts or law applicable to the facts.

77. The seeds of litigation are ripening such that a declaration from this Court will benefit the Trust.

78. Further, to the extent that the Court determines any prior interim distribution to have been improper, Plaintiff seeks supplemental relief in the form of an order directing and compelling the recipients of the any and all such distributions to return the funds. To date, funds were distributed to Lisa Friedstein, as Trustee for Max Friedstein and C.F.; Jill Iantoni, as Trustee for J.I.; Pamela B. Simon, as Trustee for Molly; and Ted S. Bernstein, as Trustee for Alexandra, Eric and Michael. Eliot as Trustee for his three children refused the interim distribution, even though it appears that his minor children should receive some distribution under the exercise of the Special Power. Each of the trustees who received a distribution for their children signed a Receipt of Partial Distribution, agreeing to return the distribution of the Court determines that the distribution should not have been made.

**WHEREFORE**, Plaintiff prays that this Court: (i) make a declaration and otherwise intervene in the administration of the Trust, as aforesaid; (ii) instruct the trustee to whom to distribute the assets of Shirley's Trust; (iii) declare whether the power of appointment was validly exercised by Simon in accordance with his stated wishes; (iv) determine who are the proper recipients of distributions of the assets of the Shirley Trust pursuant to the power of

appointment, and if appropriate, direct the return of any funds distributed; (v) grant the Plaintiff Trustee his attorneys' fees and costs and other relief as may be just and proper.

**COUNT II – DECLARATORY JUDGMENT AS TO VALIDITY  
OF TESTAMENTARY DOCUMENTS**

79. Trustee restates the allegations contained in paragraphs 1-65 and 70-78.

80. This is an action, filed at the direction of the Court, for declaratory judgment to determine the validity, authenticity and enforceability of certain wills and trusts executed by Simon Bernstein and Shirley Bernstein, as follows:

- a. Shirley Bernstein Trust Agreement dated May 20, 2008 (“Shirley Trust”, attached as Exhibit “A”);
- b. First Amendment to Shirley Bernstein Trust Agreement dated November 18, 2008 (“Shirley First Amendment”, Exhibit “B”);
- c. Will of Simon L. Bernstein dated July 25, 2012 (“Simon Will”, Exhibit “C”);
- d. Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012 (“Simon Trust”, Exhibit “D”);
- e. Will of Shirley Bernstein dated May 20, 2008 (“Shirley Will”, Exhibit “E”).

(collectively, the “Testamentary Documents”).

81. Certain of the potential beneficiaries named herein have raised questions concerning the validity, authenticity and enforceability of the Testamentary Documents, including issues relating to the authenticity and genuineness of the signatures; the formalities of execution; and other issues.

82. The Trustee asserts that the Testamentary Documents are valid, genuine and enforceable, and requests that the Court enter a Final Judgment determining that the documents are valid, genuine and enforceable.

83. Specifically, Exhibits "A" and "E" were properly signed and executed by Shirley Bernstein on May 20, 2008, in the presence of two subscribing witnesses and a notary.

84. The Shirley Will has been admitted to probate.

85. Exhibit "B" was properly signed and executed by Shirley Bernstein on November 18, 2008, in the presence of two subscribing witnesses and a notary.

86. Exhibits "C" and "D" were properly signed and executed by Simon L. Bernstein on July 25, 2012, in the presence of two subscribing witnesses and a notary.

87. The Simon Will has been admitted to probate.

88. At the time of signing their respective Testamentary Documents, Shirley Bernstein and Simon L. Bernstein were competent and legally able to execute testamentary documents, and were not acting under any such undue influence or other disability as could cause the documents to be unenforceable under Florida law.

**WHEREFORE**, Plaintiff prays that this Court: (i) make a declaration and otherwise intervene in the administration of the Will and Trust as aforesaid; (ii) enter a judgment under the claim set forth in Count II for declaratory judgment that the Testamentary Documents are genuine, valid and fully enforceable according to their terms; (iii) determine who are the proper recipients of distributions and if appropriate, direct the return of any funds distributed; (iv) grant the Plaintiff Trustee his attorneys' fees and costs and other relief as may be just and proper.

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by:  Facsimile **and**  U.S. Mail;  U.S. Mail;  Email Electronic Transmission;  FedEx;  Hand Delivery this 3rd day of October, 2014.

**ATTORNEYS FOR PLAINTIFF**

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By: /s/ Alan B. Rose  
Alan B. Rose  
Fla. Bar No. 961825



## SERVICE LIST

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and Eliot and Candice Bernstein,  
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Counsel for Lisa Sue Friedstein, individually and  
as trustee for her children, and as natural guardian  
for M.F. and C.F., Minors; Jill Marla Iantoni,  
individually and as trustee for her children, and as  
natural guardian for J.I. a minor

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### COURTESY COPY ONLY:

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON;  
PAMELA B. SIMON, Individually and as Trustee  
f/b/o Molly Simon under the Simon L. Bernstein  
Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually,  
as Trustee f/b/o D.B., Ja. B. and Jo. B. under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on  
behalf of his minor children D.B., Ja. B. and Jo. B.;  
JILL IANTONI, Individually, as Trustee f/b/o J.I.  
under the Simon L. Bernstein Trust Dtd 9/13/12, and  
on behalf of her Minor child J.I.; MAX FRIEDSTEIN;  
LISA FRIEDSTEIN, Individually, as Trustee f/b/o  
Max Friedstein and C.F., under the Simon L.  
Bernstein Trust Dtd 9/13/12, and on behalf of her  
minor child, C.F.,

Defendants.

**MOTION TO MODIFY FINAL ORDER APPROVING SALE  
DATED MAY 6, 2015 AND FOR FURTHER INJUNCTIVE RELIEF**

Plaintiff, Ted S. Bernstein (the "Trustee"), as Successor Trustee, moves for entry of an Order modifying in part the *Final Order Granting Successor Trustee's Motion to Approve Sale of Trust Property* dated May 6, 2015 (the "Sale Order"), and for further injunctive relief, and states:

1. On May 6, 2015, this Court approved the Trustee's Motion to sell the Trust's property located within the St. Andrews Country Club community in Boca Raton. The sale was initially scheduled to close on or before March 31, 2015, in an all cash transaction, with the buyer accepting



the property "as is." The urgency was created because the St. Andrews Country Club was raising the required equity membership fee from \$95,000 to \$125,000, an increase of \$30,000. Upon learning of the possible sale, Eliot Bernstein objected to it and threatened to file a lis pendens.

2. This Court held a hearing on the Trustee's motion to approve sale on March 25, at uniform motion calendar. Based upon Eliot Bernstein's objections, the Court deferred ruling and scheduled an evidentiary hearing for the next day. At the evidentiary hearing, the Trustee and the Trustee's licensed realtor testified as to: the lengthy marketing process that had been undertaken in an effort to sell this property; the listing was more than 1,000 days old; the offer received was by far the highest and best received to date and likely in the near future; the offer was consistent with an appraisal, which was admitted into evidence; there were extensive carry costs associated with the property; and the announced \$30,000 increase in the club equity membership contribution was a significant factor in this deal. After hearing this testimony, and again based upon Eliot Bernstein's objections and request for time to obtain counter-evidence, the trial court denied the Motion to Approve the Sale on an emergency basis, and deferred the ruling pending a second evidentiary hearing.

3. At an evidentiary hearing held on May 6, 2015, the Court afforded Eliot Bernstein the opportunity to present evidence, through documents or testimony. Despite already having delayed the sale for more than five weeks, Eliot Bernstein presented no witnesses at the evidentiary hearing. Nor did he testify himself. Further, Eliot Bernstein produced no documentary evidence to refute the testimony of the Trustee's licensed real estate agent or the appraisal that was in evidence. Eliot did present a single piece of paper printed off the internet, purporting to be from the Zillow website. The trial court sustained the Trustee's objection to this document. At the conclusion of the

hearing on May 6, the trial court entered the Sale Order, a final order approving the sale of the property and authorizing the Trustee to take all reasonable steps to conclude the transaction. Eliot has never appealed the Sale Order, but he did file a Petition for All Writs with the Florida Supreme Court prior to the closing, which prevented the title company from issuing clear title until that appeal was resolved.

4. As part of the Sale Order, Judge Colin required the Trustee to provide all beneficiaries with a copy of the closing statement and bank records confirming the receipt of funds, and ordered the Trustee's counsel to hold the funds in a separate escrow account. By this Motion, the Trustee seeks to modify the Sale Order with regard to these requirements.

5. First, it is impractical and of no benefit to the trust to require counsel to open a separate escrow account to hold these sale proceeds. Having conferred with the undersigned's bank, the interest to be earned on the monies if placed in a separate account outside of the law firm's IOTA account is 0.15%. Over the course of a year, assuming all of the net sales proceeds sat in that account for a full year, the interest to be earned would be \$500. It is anticipated the funds will not sit in the account for anywhere near a year, meaning there will be virtually no benefit to the estate from imposing this requirement on the Trustee's counsel, and there will be expense incurred by the Trustee's counsel in setting up and maintaining a separate escrow account. Thus, the Trustee requests that the Court modify the Order to allow the proceeds to remain in the law firm's IOTA account until such time as the Court orders their release and disbursement to the Trustee, to be held with the other assets of the Trust.

6. Second, the Sale Order requires the funds be held pending further order of the Court. Now that the sale is concluded, and once the Trustee has provided the beneficiaries documents

relating to the transaction, there is no reason for the funds to be segregated away from the general trust assets.

7. Third, to conclude this sale the Trust was forced to incur substantial attorneys' fees, solely as a result of the obstructionist and delay tactics of Eliot Bernstein. The Trustee and the Trustee's counsel request permission to have those legal fees paid from the sale proceeds. In total, the Trustee incurred more than \$50,000 in attorneys' fees alone to conclude the transaction, including four hearing and appellate work; working with the title company; dealings and interactions with the buyer caused by Eliot's filings which continually delayed potential closing; and advising and representing the Trustee. The Trustee has reviewed the invoices submitted by counsel and believes the time and expense are reasonable, valuable and provided a substantial benefit to the Trust. The Trustee requests permission to pay the sum of \$40,000 immediately from the sale proceeds, which the law firm has agreed to accept if the matter is resolved without the need for an extensive evidentiary hearing or retention of experts. These fees should be approved. If there is an objection of Eliot Bernstein, which might necessitate an evidentiary hearing, the Trust and its counsel will incur additional attorneys' fees, negating the opportunity for a discount.

8. Fourth, while the Trustee has no opposition to providing a copy of the HUD-1 and proof of receipt of funds to all beneficiaries, these documents are personal, private and confidential, and should not be shared with anyone in the world. In particular, these documents should not be posted on the internet. The buyer is a private citizen which entered into an arms length contract to purchase property the Trust was anxiously trying to sell for more than three years. The buyer now owns Fee Simple Title, which is both marketable and insurable, as evidenced by the title insurance policy purchased by seller as part of the closing of the transaction. Further, as a condition of buyer

closing, seller was required to escrow \$25,000 as a limited indemnity fund, in the event that buyer is subjected to any litigation or harassment by Eliot Bernstein, as defined in the sale contract. Notwithstanding his disappointment over being disinherited by his parents and his apparent disappointment with the sale amount, there is no legitimate reason why Eliot Bernstein should have any further involvement with this property, contact with the buyer, or interference with the buyer's quiet and peaceful enjoyment of the property. In the Sale Order, Judge Colin provided the following:

All beneficiaries and persons subject to the jurisdiction of this Court, including Eliot Bernstein, are ordered to take no action to interfere with or otherwise hinder or delay the sale of the House.

9. The buyer has witnessed firsthand the devastating attacks by Eliot Bernstein through the internet on his brother (the Trustee) and others. As part of the final closing negotiations, once Eliot had exhausted all of his extraordinary writ and appellate maneuvers, buyer and its counsel insisted on a limited indemnity<sup>1</sup> to protect the buyer from litigation, interference or harassment by Eliot Bernstein. To assuage concerns of the buyer and induce it to close, the Sale Contract was amended to include the following:

INJUNCTIVE PROTECTION AND/OR LIMITED INDEMNITY FOR ATTORNEYS' FEES. Seller agrees to file a motion, and participate in any hearing set by the Court, at Seller's sole expense, seeking a permanent injunction after the closing to bar and prevent Eliot Bernstein and those acting in concert with him from having any contact of any kind with the Buyers, including no contact by mail, email or telephone; to forbid Eliot from attempting to learn their identities; to forbid Eliot from publishing or publicizing their identities anywhere in the world, including online or anywhere on any internet website, webpage, blog or otherwise; and to enjoin Eliot from filing any action against Buyers anywhere in the world (the "Injunction"). If successful, thereafter upon request of Buyer, Seller will take necessary and reasonable action to enforce the Injunction.

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<sup>1</sup> The indemnity is limited to \$25,000 to pay legal expenses incurred by buyer dealing with any Eliot issue. This money is held in escrow, but is able to be released immediately to the Trustee upon entry of an injunctive relief order.

The Trustee requests the Court enter an Order enjoining all beneficiaries and Eliot Bernstein, over whom this Court has jurisdiction, together with all persons acting in concert with them, from doing any of the above described actions or taking any action against the buyer. The Trustee believes that paragraph 3 of the Sale Order covers this, but so there is clarity and lack of any possible confusion, the Trustee requests that the Court enter the additional injunctive relief sought herein.<sup>2</sup>

10. Finally, to the extent that the Trustee provides an accounting, copies of the HUD-1 and bank records, the Trustee requests that those documents be ordered to remain confidential and to not be shared with anyone, and be subject to the same injunctive relief entered above. Eliot's delay tactics in this particular instance were financially devastating to the Trust. In addition to the extra \$30,000 club membership that Trust was required to pay when the closing was delayed past March 31, the Trust incurred substantial additional expenses and fees between March 31 and the final closing date of January 15, 2016. In particular, the Trust received reduced proceeds and incurred additional expenses totaling more than \$230,000 as shown in Appendix A.

11. Because Eliot is not individually a beneficiary, it is unclear whether these amounts could be surcharged against Eliot (who is indigent according to all of his court filings) or surcharged

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<sup>2</sup> In between the evidentiary hearings from March 25 to May 6, and beyond, Eliot published a number of inflammatory articles on the internet which list the address of the property with the heading "buyer beware." These tactics were designed to prevent the sale or discourage any potential buyers from having interest in the property. This information serves no public purpose, and only could cause harm or embarrassment to the Trustee or to the buyer. In addition, now that the buyer has paid its money, there is no reason to allow materials to be on the internet which could impair the buyer's ability to sell the property to someone else, at present or in the future. The Court has afforded Eliot due process, and should enforce its orders and prevent further tactics designed to thwart those valid, final and non-appealable orders. Thus, the Trustee requests that the Court order Eliot Bernstein to remove all materials from the internet that reference the address of this property or otherwise mention it in any way, shape or form.

against the interest of Eliot's minor children, for whom he purported to serve as guardian. Because the Trustee does not believe Eliot is a suitable or competent guardian to represent the interest of his children, which is the subject of an evidentiary hearing to be held on February 25, 2016, the Trustee believes it will be appropriate to defer making any decision on a surcharge action until after the Court decides whether or not to appoint a guardian ad litem for Eliot's children.

12. Moving forward, however, there is no reason to allow Eliot Bernstein to burn additional Trust assets by harassing the buyers or trying to educate the world on the "alleged fraud" that has occurred within this Court system. No one, and certainly not the buyer, has any interest in this matter becoming public, as it was the subject of multiple evidentiary hearings in the trial court and full appellate review to the extent such was sought. In other words, Eliot Bernstein has received all the process he is due with regard to the Sale Order, which is now final and non-appealable, and that should be the end of it for all time. To the extent Eliot does action calculated and virtually guaranteed to cost the Trust \$25,000, the Court should hold him accountable and the Trustee certainly reserves the right to seek surcharge against the inheritance of the minors for whom he purports to serve as guardian.

WHEREFORE, the Trustee requests that the trial court modify the Sale Order and enter additional injunctive relief as requested in this Motion.



CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by:  Facsimile **and** U.S. Mail;  U.S. Mail;  Email Electronic Transmission;  FedEx;  Hand Delivery this 28th day of January, 2016.

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Attorneys for Ted S. Bernstein

By: /s/ Alan B. Rose  
Alan B. Rose (Fla. Bar No. 961825)

**SERVICE LIST Case No.: 502014CP003698XXXXNBIJ**

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
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Eric Bernstein, Michael Bernstein

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children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
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Appendix A

<b>Description</b>	<b>Amount</b>
Increased Club equity contribution	\$30,000.00
Additional interest on Trust's secured line of credit	\$28,332.45
Additional property taxes	\$16,062.76
Additional insurance	\$19,162.40
Mandatory club dues and expenses	\$26,151.14
Mandatory HOA Fees	\$10,005.55
Utilities and maintenance	\$5,317.98
Repair costs <sup>3</sup>	\$31,902.50
Legal fees: Buyer	\$15,000.00
Legal fees: Seller	\$50,000.00
<b>TOTAL</b>	<b>\$231,934.78</b>

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<sup>3</sup> Although the original contract was scheduled to close "as is, where is," the buyers had the right to inspect the property before closing. In the extended gap between the original closing date and late summer, serious additional issues were discovered with the house. These issues, again, are of no concern to anyone other than the buyer, and the issues should remain confidential subject to injunctive relief to prevent Eliot Bernstein from publicizing them on the internet.

Attn: Alan Rose from Kevin Hall 3.7.16 Re: Lions Head Land Trust

Kevin Hall

Mon 3/7/2016 3:55 PM

To: arose@mrachek-law.com <arose@mrachek-law.com>; wesgator@msn.com <wesgator@msn.com>; pfeaman@feamanlaw.com <pfeaman@feamanlaw.com>; leilaniochoada@gmail.com <leilaniochoada@gmail.com>; leilani@cmrei.com <leilani@cmrei.com>; schwagerlawfirm@live.com <schwagerlawfirm@live.com>; iviewit@gmail.com <iviewit@gmail.com>; iviewit@iviewit.tv <iviewit@iviewit.tv>; tourcandy@gmail.com <tourcandy@gmail.com>; caroline@cprogers.com <caroline@cprogers.com>; marc.garber@flastergreenberg.com <marc.garber@flastergreenberg.com>; marcrgarber@gmail.com <marcrgarber@gmail.com>; mmulrooney@venable.com <mmulrooney@venable.com>;

Cc: Kevin Hall <kh.itconsultingsalesoffices@gmail.com>;

📎 1 attachment (20 MB)

KRHRResearchLEILANIOCHOADALIONSHEADBOCA2016\_02\_18 12-33-12 kh.itconsultingsales Outgoing to +14076085448 .mp3;

Mr. Rose,

Leilani Ochoada was not contacted on "behalf" of Eliot I. Bernstein.

As you may recall, I came in to Eliot Bernstein's life as a "related" case person in New York after being introduced to other "related case" persons from someone from Washington, D.C., that I had first come into contact with on or around Sept. 2007 who was part of a group that was investigating complaints from persons who had contact with the U.S. Attorneys and FBI in New York.

Prior to my first call with this person from Washington, DC, I had already had direct personal experience and done work and events with Executive Detail of the NYS Police, a Governor ( Mario Cuomo ), US Secret Service Agents and persons protected by the US Secret Service, members of the US Senate including the US Senate Intelligence and Judiciary Committee person Diane Feinstein, other members of the US Judiciary Committee, US Armed Services Committee, US House Intelligence Committee, other former Governors and more. I also maintain a variety of relatives in State law enforcement positions and contacts in both law enforcement and the military as well.

During this first call this person from Washington, DC indicated he had done work for the US Justice Department, specifically the IRS and the US Postal Inspector's Office, asked me if I was aware of DOJ Agents with greater powers and authority over regular FBI Agents, and this person was directly involved in corruption between the NYS Discipline and Bar Committees and Appellate Division Departments specifically focusing on Manhattan and Wall Street attorneys and, to the best of my recollection, inquired during this first call if I had knowledge of the "Iviewit" case which at that time in 2007 I had never heard of before. This person from Washington, DC was later determined to have also been involved in cases out of Chicago and Boston and other cases in Florida including Estate cases in Palm Beach county. I have maintained communications with this person from Wash, DC. as needed since 2007 and was on the phone with him and others in relation to activities of the US Attorney for the Southern District of New York as recently as late January 2016 and was on the phone with him in relation to Estate corruption cases with Florida and NY ties just a week or so ago with several parties having been involved with NY's Moreland Commission.

I am sure by now you have reviewed my LinkedIn profile and determined I maintain rights in "Iviewit" interests and perhaps have reviewed the Complaint to the SEC of 2009 and Petition to the White House and White House Counsel's Office and the US Attorney General's Office and Federal agencies I have been involved with in furtherance of my interests in "Iviewit"

I was just on the phone today, Monday, March 7, 2016 at or around 2 pm EST with the FBI and specifically provided Leilani Ochoada's name and phone number as someone I had spoken to on or about Feb. 18th, 2016 and that several days after this the body of Mitch Huhem was allegedly found deceased at the St. Andrews Boca Raton, FL property and where issues of Witnesses who may be in danger etc were raised as Eliot Bernstein previously had his mini-van Car-bombed and apparently or allegedly your client Ted Bernstein raised a suggestion in Sept. of 2012 that Simon Bernstein may have been poisoned or murdered the night of his passing and sought an autopsy and coroner's

000226

EXHIBIT

investigation and allegedly reported this to the Palm Beach County Sheriff's Dept.

For the record, Eliot I. Bernstein never asked, instructed, authorized or directed me to have any contact with Leilani Ochoada or had any knowledge I was doing so at the time. I did this on my own initiative after getting information from William Stansbury about the Deed Transfer on file that you apparently signed as a Notary and Witness regarding the St. Andrews Boca Raton, Florida property and then from information I personally looked up at [www.sunbiz.org](http://www.sunbiz.org) where I quickly found:

1) [www.sunbiz.org](http://www.sunbiz.org) showed the name of the Registered Agent for Lions Head Land Trust Inc. as a dissolved company since 1997; I then had a subsequent call to the Florida Secretary of State where a person confirmed this filing of Lions Head Land Trust Inc. should "not have been overlooked" by Internal Florida Secretary of State examiners and was initiating a request to the Examiner and an investigation with her Director as she worked in the Director's Office;

2) My own initiated google searches showed the Tallahassee, FL address listed with the Secretary of State for Lions Head Land Trust Inc came up to a business with a DIFFERENT name and a phone call to that Business initiated again by myself at my own direction on Feb. 18th had the person working there claiming Any use of their Tallahassee, FL address was not proper by Lions Head Land Trust, Inc. and that their company was not ISL, Inc. as indicated in the Lions Head Land Trust Inc filings;

3) whereupon a further google search that I, KRH, personally did and made of my own free will and volition and upon my own direction having Interests in "Iviewit", I then reached a business named CMREI in Orlando, FL whereupon I spoke with a person who went by the name of Leilani Ochoada who claimed to know Nothing about the Lions Head Land Trust filing, thought it may be Identity theft, had not Authorized this at all, had never lived in Boca Raton, FL, never bought any property and was not aware of it etc etc.

4) I informed Eliot Bernstein that Leilani Ochoada said she would come forward with a Sworn Statement and even do a Recorded call giving proper consent to the call later that day as she claimed she was Not a Buyer of this property and had no knowledge of it and provided no consent to anyone to do so in her name.

Thus, later that same day at my Suggestion Leilani Ochoada agreed to get on a Recorded Call whereupon I INITIATED a Call to Eliot Bernstein after Leilani Ochoada was on the call and Eliot Bernstein already had reason to believe this person was NOT a Buyer or Involved with Lions Head Land Trust Inc. and instead was a Victim of some type of Fraud.

Leilani Ochoada agreed to have a draft of her statement typed up of the call she was having with myself and Eliot Bernstein who I initiated on to the call and the draft of her Statement was as follows:

**Leilani Statement** which she confirmed was correct by email:

Leilani has:

- \* no knowledge of Lions Head Land Trust, Inc. at all
- \* never authorized anyone to use her name as an Incorporator
- \* until Feb. 18th 2016 had no knowledge any entity was incorporated by filings at the Fla Secretary of State under her name and had no involvement with any land transaction involving 7020 Lions Head Lane, Boca Raton, FL
- \* initially believed it was some form of identity theft
- \* never lived at any Boca Raton, FL address in general and never at 7020 Lions Head Land Trust Inc.
- \* never knew about any land deal with Mitch Huhem Laurence Pino or anything related to this property
- \* no absolutely nothing about the Articles of Incorporation and the addresses and companies named there
- \* consider it unauthorized fraudulent use of her name
- \* attorney Laurence Pino never had Leilani's permission to incorporate any entity using her name as an Incorporator either by signed document or Electroncially

\* Pino has not been able to produce any written document that you allegedly signed with his office

\* Pino's Exec Assistant Cathy can not find Any document signed by Leilani after reviewing the files

So, Mr. Rose, I have been told you have been suggesting in legal papers that Leilani Ochoada is a "Buyer" at the St. Andrew's property? Is this True? She certainly never claimed to me that she was a "Buyer" in any sense and as shown by her statement drafted above quite to the contrary. Thus, are you claiming Leilani is the "Buyer" in this situation? To facilitate review, I have attached the MP3 Recording of the Call that both Leilani Ochoada and Eliot Bernstein agreed and consented to have Recorded.

Please note that I have copied this communication to William Stansbury and his attorney Peter Feaman and Leilani herself and Eliot and the attorney from Texas Candice Schwager and other attorney contacts of Eliot and others in order to quickly clarify matters and put the issues to rest.

I am curious, however, if you found any of the "Iviewit Stock" that Simon Bernstein had when you were at the 7020 Lions Head Lane Boca Raton, FL home or if you know where all those Files and Records went?

Thank you in advance for your cooperation.

Glad I could be of assistance.

Regards,



Kevin R. Hall  
IT Consulting Sales Offices  
P.O. Box 756  
Kinderhook, NY 12106  
518-755-8128 Cell  
518-635-0668 office  
Skype ID = kh.itconsultingsales  
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**CONFIDENTIALITY NOTICE:**

This message and any attachments are covered by the Electronic Communications Privacy Act, 18 U.S.C. SS 2510-2521. This e-mail message is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message or call (518) 635-0668. If you are the intended recipient but do not wish to receive communications through this medium, please so advise the sender immediately.

On Mon, Mar 7, 2016 at 12:55 PM, Alan Rose <[ARose@mrachek-law.com](mailto:ARose@mrachek-law.com)> wrote:

Kevin R. Hall

IT Consulting Sales Offices

P.O. Box 756

Kinderhook, NY 12106

000228

Dear Mr. Hall:

You may recall that I represent Ted S. Bernstein, Trustee.

I am writing to confirm that you were you involved in contacting Leilani Ochoada on behalf of Eliot Bernstein to obtain information on the trust which purchased the Bernstein residence at 7020 Lions Head Lane?

Can you share you confirm that? And, are you authorized to advise what you learned from that call or would we need to depose Mr. Eliot Bernstein?.

Also, can you confirm that Eliot Bernstein was on the telephone with you and spoke directly to Ms. Ochoada?

Thanks in advance for responding.

Alan Rose

Counsel for Successor Trustee of Shirley Bernstein Trust Agreement

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIH

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON;  
PAMELA B. SIMON, Individually and as Trustee  
f/b/o Molly Simon under the Simon L. Bernstein  
Trust Dtd 9/13/12; ELIOT BERNSTEIN,  
individually, as Trustee f/b/o D.B., Ja. B. and Jo. B.  
under the Simon L. Bernstein Trust Dtd 9/13/12, and  
on behalf of his minor children D.B., Ja. B. and Jo.  
B.; JILL IANTONI, Individually, as Trustee f/b/o J.I.  
under the Simon L. Bernstein Trust Dtd 9/13/12, and  
on behalf of her Minor child J.I.; MAX  
FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as  
Trustee f/b/o Max Friedstein and C.F., under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on behalf  
of her minor child, C.F.,

Defendants.

---

**ORDER APPOINTING DIANA LEWIS AS GUARDIAN AD LITEM FOR  
ELIOT BERNSTEIN's CHILDREN, JO.B.; JA. B.; and D.B.**

THIS CAUSE came before the Court at an evidentiary hearing held on February 25, 2016, on Successor Trustee's Motion for Appointment of a Guardian Ad Litem to Represent the Interests of Eliot Bernstein's Children etc. (the "Motion"). Having considered the Motion and the arguments of the parties, taken judicial notice of the matters requested in the Motion, and being otherwise duly advised in the premises, the Court entered an Order in this matter, and a companion order in Case No. 502014CP002815XXXXNB, granting motions to appoint a guardian ad litem for Eliot's



children, Jo.B., Ja.B. and D.B., and setting forth a protocol for selecting a guardian ad litem. Having received the parties' notices contemplated under the companion order, the Court hereby appoints a guardian ad litem as follows:

1. Diana Lewis is hereby appointed as the guardian ad litem for Jo.B., Ja.B. and D.B. in this case, with sole and exclusive authority to represent their interests in this case. The guardian ad litem shall be entitled to petition the Court for reasonable compensation for his/her services, to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by the Jo.B., Ja.B. and D.B. from the Shirley Bernstein Trust u/a/d May 20, 2008, as amended, the Simon Bernstein Trust, and/or the Estates of Simon or Shirley Bernstein.

2. The guardian ad litem shall file an acceptance of appointment with this Court, with a copy to the parties listed at the end of this Order, within 5 business of the date of this Order; otherwise, the parties shall notify the Court by letter that the appointment has not been accepted, in which case the Court will either appoint an alternate guardian ad litem without further hearing or hold an additional hearing to select an alternate guardian ad litem.

3. The guardian ad litem shall have sufficient time after his/her acceptance of this appointment to within which to prepare necessary court filings and prepare for mediation as ordered by the Court at a hearing held on March 7, in the related case of Estate of Simon Bernstein.

4. Trustee and the guardian ad litem shall confer in good faith regarding a resolution of this matter and/or a time frame within which to try any unresolved issues.

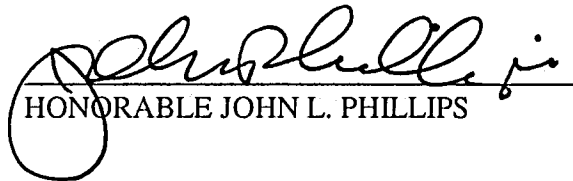
5. Pursuant to the Order dated March 1, 2016, the Guardian Ad Litem will have full power and autonomy to represent the interests of the children of Eliot Bernstein, subject to the jurisdiction and review of this Court. The Guardian Ad Litem will be entitled to petition the Court

for an award of attorneys' fees to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by Ja.B., Jo.B, and/or D.B.

6. To protect the integrity and independence of the guardian, Eliot Bernstein and all persons acting in concert with him: (a) shall not contact, email or otherwise communicate with the Guardian Ad Litem except at the request of the Guardian Ad Litem; and (b) shall not in any way threaten or harass the guardian. This Court alone shall supervise the guardian. Any violation of this order may subject the violator to severe sanctions for contempt of court. The Court will use the full measure of its coercive powers to ensure compliance with this Order.

7. The guardian ad litem shall notify this Court and Trustee of any actions taken by Eliot and/or Candice Bernstein which interfere with the guardian ad litem's duties hereunder.

DONE and ORDERED in Chambers, North County Courthouse on 4-4, 2016.

  
HONORABLE JOHN L. PHILLIPS

cc: Attached service list

**SERVICE LIST Case No.: 502014CP003698XXXXNBIH**

Eliot Bernstein and Candice Bernstein,  
as Parents of  
D.B., Ja. B. and Jo. B, Minors  
2753 NW 34th Street  
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(561) 245-8588 - Telephone  
(561) 886-7628 - Cell  
(561) 245-8644 - Facsimile  
Email: Eliot I. Bernstein ([iviewit@iviewit.tv](mailto:iviewit@iviewit.tv))

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Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for  
her children, and as natural guardian for M.F.  
and C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a minor  
[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

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[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIH

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON;  
PAMELA B. SIMON, Individually and as Trustee  
f/b/o Molly Simon under the Simon L. Bernstein Trust  
Dtd 9/13/12; ELIOT BERNSTEIN, individually, as  
Trustee f/b/o D.B., Ja. B. and Jo. B. under the Simon  
L. Bernstein Trust Dtd 9/13/12, and on behalf of his  
minor children D.B., Ja. B. and Jo. B.; JILL  
IANTONI, Individually, as Trustee f/b/o J.I. under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on behalf  
of her Minor child J.I.; MAX FRIEDSTEIN; LISA  
FRIEDSTEIN, Individually, as Trustee f/b/o Max  
Friedstein and C.F., under the Simon L. Bernstein  
Trust Dtd 9/13/12, and on behalf of her minor child,  
C.F.,

Defendants.

\_\_\_\_\_ /

**NOTICE OF FILING AND OF SERVING NOTICE OF ACCEPTANCE**

Plaintiff, Ted S. Bernstein (the "Trustee"), as Successor Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, hereby gives notice of filing the attached, *Notice of Acceptance of Appointment as Guardian Ad Litem for Jo.B., Ja.B., and D.B.* as requested by appointed Guardian Ad Litem, Diana Lewis.

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by:  Facsimile and U.S. Mail;  U.S. Mail;  Email Electronic Transmission;  FedEx;  Hand Delivery this 7<sup>th</sup> day of April, 2016.

MRACHEK, FITZGERALD, ROSE, KONOPKA,  
THOMAS & WEISS, P.A.  
505 South Flagler Drive, Suite 600  
West Palm Beach, FL 33401  
(561) 655-2250 Telephone / (561) 655-5537 Facsimile  
Email: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)  
Secondary: [mchandler@mrachek-law.com](mailto:mchandler@mrachek-law.com)  
*Attorneys for Ted S. Bernstein*

By: /s/ Alan B. Rose  
Alan B. Rose (Fla. Bar No. 961825)

**SERVICE LIST Case No.: 502014CP003698XXXXNBIH**

Eliot Bernstein and Candice Bernstein,  
as Parents of D.B., Ja. B. and Jo. B, Minors  
2753 NW 34th Street  
Boca Raton, FL 33434  
(561) 245-8588 - Telephone  
(561) 886-7628 - Cell  
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Email: Eliot I. Bernstein ([iviewit@iviewit.tv](mailto:iviewit@iviewit.tv))

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Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

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children, and as natural guardian for M.F. and  
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[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

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

TED BERNSTEIN, as Trustee  
Of the Shirley Bernstein Trust Agreement  
Dated May 20, 2008, as amended.

Plaintiff,

v.

Probate Division  
Case No.:2014CP003698 (IH)

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMO;  
PAMELA B. SIMON, Individually and as  
Trustee f/b/o Molly Simon under the  
Simon L. Bernstein Trust Dtd. 9/13/12;  
ELIOT BERNSTEIN, individually as Trustee  
f/b/o D.B., Ja. B and Jo. B. under the  
Simon L. Bernstein Trust Dtd. 9/13/12  
and on behalf of his minor children  
D.B., Ja.B. and Jo.B.; JILL IANTONI,  
individually, as Trustee f/b/o of J.I.  
under the Simon L. Bernstein Trust Dtd.  
9/13/12, and on behalf of her Minor child  
J.I.; MAX FRIEDSTEIN; LISA FRIEDSTEIN,  
individually, as Trustee f/b/o Max  
Friedman and C.F., under the Simon L.  
Bernstein Trust Dtd 9/13/12, and on  
bealf of her minor child, C.F.,

Defendants.

---

**NOTICE OF ACCEPTANCE OF APPOINTMENT AS GUARDIAN AD LITEM FOR  
Jo.B., Ja.B. AND D.B. IN THE ABOVE STYLED CASE**

COMES NOW Diana Lewis and notifies the court of her  
**acceptance** of appointment as Guardian *ad litem* for Eliot  
Bernstein's minor children, Jo.B., Ja.B. and D.B. pursuant to  
this court's order dated April 4, 2016, and the terms and  
conditions set forth therein.

Page Two  
Case no.: 2014CP003698 (IH)

**CERTIFICATE OF SERVICE**

I CERTIFY that a true and correct copy of the foregoing has been furnished to the parties by E-mail Electronic Transmission on the attached Service List for Case No.: 2014CP003698 (IH) this 7<sup>th</sup> day of April, 2016.

ADR & MEDIATIONS SERVICES, LLC  
Diana Lewis  
2765 Tecumseh Drive  
West Palm Beach, FL 33409  
(561) 758-3017 Telephone  
Email: dzlewis@aol.com

By: /s/ Diana Lewis  
Diana Lewis (Fla. Bar No. 351350)  
(Mediator No.:32461 R)



**SERVICE LIST Case No.: 502014CP003698XXXXNBIH**

Eliot Bernstein and Candice Bernstein,  
as Parents of  
D.B., Ja. B. and Jo. B, Minors  
2753 NW 34th Street  
Boca Raton, FL 33434  
(561) 245-8588 - Telephone  
(561) 886-7628 - Cell  
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Email: Eliot I. Bernstein ([iviewit@iviewit.tv](mailto:iviewit@iviewit.tv))

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([john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com))  
Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

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her children, and as natural guardian for M.F.  
and C.F., Minors; and Max Friedstein  
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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

ALEXANDRA BERNSTEIN; et al.

Defendants.

ORDER ON PLAINTIFF'S AMENDED MOTION TO MODIFY FINAL ORDER  
APPROVING SALE DATED MAY 6, 2015 AND FOR FURTHER INJUNCTIVE RELIEF

THIS CAUSE came before the Court for hearing on <sup>APRIL 8</sup> ~~February 4,~~ 2016 on Successor Trustee's  
*Amended Motion to Modify Final Order Approving Sale Dated May 6, 2015, for Further Injunctive  
Relief, and for Order to Show Cause Why Eliot Bernstein Should Not Be Held in Contempt of Court*

*ELIOT BERNSTEIN made no appearance this date.*  
(the "Motion"). The Court, having considered the record, heard argument of counsel and being  
otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:

1. Plaintiff's Motion, to the extent it seeks to modify the Final Order Approving Sale dated May 6, 2015 (the "Sale Order"), is GRANTED as provided in this Order.
2. The Court has been advised that the Trust's sale of real estate at 7020 Lions Head Lane, Boca Raton, Florida, in the St. Andrews Country Club (the "Property") closed on January 15, 2016. The net sales proceeds have been received by the Trustee in the Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. Trust Account, as required by the Sale Order.
3. The Trustee's request for permission to pay its counsel, Mrachek, Fitzgerald, Rose et al., the sum of \$40,000 as a reduced and discounted attorneys' fees solely from March 21, 2015,

through January 15, 2016, and relating solely to the approval and consummation of sale of the Property, is granted. The law firm has agreed to this reduction in the fees incurred in handling the litigation and closing relating to the real estate transaction. This amount may be paid immediately from the sale proceeds held in the law firm's trust account.

4. The Sale Order is modified to remove the requirement that a separate interest-bearing escrow account be opened. The \$25,000 portion of the sale proceeds required to be held in escrow as part of the sale may be held in the law firm's general IOTA account, and the remaining funds may be disbursed to the Trustee immediately.

5. The Trustee shall provide to all beneficiaries (i) a redacted copy of the HUD-1 (to protect the name of the buyer); (ii) an accounting of the sale; and (iii) proof of receipt of funds. This information shall be treated and considered as personal, private and confidential information which may not be shared by any recipient with anyone except: a parent, child, attorney, accountant or other professional advisor who has a legitimate need to know. In no event may any of these documents or the information contained in them relating to the sale be published, recorded, disseminated or posted on the internet by any of the beneficiaries or interested persons, including Eliot Bernstein and those acting in concert with any beneficiary or Eliot Bernstein.

6. All beneficiaries and interested persons, specifically including Eliot Bernstein, already have been ordered to take no action to interfere with or otherwise hinder or delay the sale of the House. Specifically, the Sale Order provides:

All beneficiaries and persons subject to the jurisdiction of this Court, including Eliot Bernstein, are ordered to take no action to interfere with or otherwise hinder or delay the sale of the House.

7. Now that the sale has closed, the beneficiaries Eliot Bernstein shall have no further involvement with the property at 7020 Lions Head Lane; shall not contact with the buyer; and shall not interfere with the buyer's quiet and peaceful enjoyment of the property. More specifically, all beneficiaries and interested persons, specifically including Eliot Bernstein, and those acting in concert with any beneficiary or Eliot Bernstein, are hereby enjoined from: (i) having any contact of any kind with the Buyers, including no contact by mail, email or telephone; (ii) attempting to learn the buyer's identity(s); (iii) publishing, publicizing or mentioning the buyer's identity(s) anywhere in the world, including online or anywhere on any internet website, webpage, blog or otherwise; and (iv) from filing any action against buyer anywhere in the world (the "Injunction").

8. The buyer witnessed firsthand the devastating attacks by Eliot Bernstein through the internet on his brother (the Trustee) and others. As part of the final closing negotiations, after Eliot had exhausted all of his extraordinary writ and appellate maneuvers, buyer and its counsel insisted on a limited indemnity<sup>1</sup> to protect the buyer from litigation, interference or harassment by Eliot Bernstein. The contract provides the following:

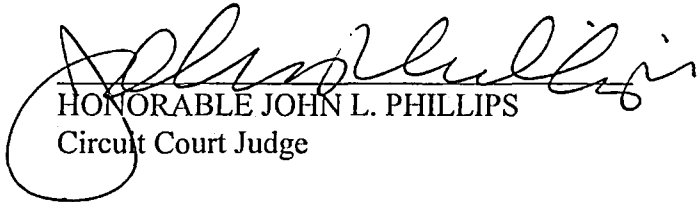
INJUNCTIVE PROTECTION AND/OR LIMITED INDEMNITY FOR ATTORNEYS' FEES. Seller agrees to file a motion, and participate in any hearing set by the Court, at Seller's sole expense, seeking a permanent injunction after the closing to bar and prevent Eliot Bernstein and those acting in concert with him from having any contact of any kind with the Buyers, including no contact by mail, email or telephone; to forbid Eliot from attempting to learn their identities; to forbid Eliot from publishing or publicizing their identities anywhere in the world, including online or anywhere on any internet website, webpage, blog or otherwise; and to enjoin Eliot from filing any action against Buyers anywhere in the world (the "Injunction"). If successful, thereafter upon request of Buyer, Seller will take necessary and reasonable action to enforce the Injunction.

---

<sup>1</sup> The indemnity is limited to \$25,000 to pay legal expenses incurred by buyer dealing with any Eliot issue. This money is held in escrow, but is able to be released immediately to the Trustee upon entry of an injunctive relief order.

~~9. The Trustee requests the Court enter an Order enjoining all beneficiaries and Eliot Bernstein, over whom this Court has jurisdiction, together with all persons acting in concert with them, from doing any of the above described actions or taking any action against the buyer. The Trustee believes that paragraph 3 of the Sale Order covers this, but so there is clarity and lack of any possible confusion, the Trustee requests that the Court enter the additional injunctive relief sought herein. Information was published on the internet between the Court's earlier hearings,<sup>2</sup> but once the closing occurred and the Deed was recorded, Eliot and others have directly contacted persons affiliated with the Buyer, in an effort to learn and confirm the identity of the persons who beneficially own Lions Head Land Trust.~~

DONE and ORDERED in Chambers, North County Courthouse in Palm Beach Gardens, Florida, on this 8 day of April, 2016.

  
HONORABLE JOHN L. PHILLIPS  
Circuit Court Judge

Copies to: Attached Service List

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<sup>2</sup> In between the evidentiary hearings from March 25 to May 6, and beyond, Eliot published a number of inflammatory articles on the internet which list the address of the property with the heading "buyer beware." These tactics were designed to prevent the sale or discourage any potential buyers from having interest in the property. Now that the buyer has paid its money, there is no reason to allow materials to be on the internet which could impair the buyer's ability to sell the property to someone else.

**SERVICE LIST Case No.: 502014CP003698XXXXNBIJ**

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
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Eric Bernstein, Michael Bernstein

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children, and as natural guardian for M.F. and  
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[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

ALEXANDRA BERNSTEIN; et al.

Defendants.


ORDER DENYING MOTION FOR ORDER SHOW CAUSE

THIS CAUSE came before the Court for hearing on April 8, 2016, on the portion of Successor Trustee's *Amended Motion to Modify Final Order Approving Sale Dated May 6, 2015, for Further Injunctive Relief, and for Order to Show Cause Why Eliot Bernstein Should Not Be Held in Contempt of Court* (the "Motion") which sought entry of an Order to Show Cause. The Court, having considered the record, received evidence and heard argument of counsel and being otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:

1. There is not clear and convincing evidence of a violation of the Final Order

Approving Sale dated May 6, 2015, because the injunctive provisions of that Order do not specifically address post-closing conduct. Thus, the request for a show cause order is denied.

DONE and ORDERED in Chambers, North County Courthouse in Palm Beach Gardens, Florida, on this 19 day of April, 2016.

  
HONORABLE JOHN L. PHILLIPS  
Circuit Court Judge

Copies to: Attached Service List

SERVICE LIST Case No.: 502014CP003698XXXXNBIJ

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
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(561) 886-7628 - Cell  
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Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her  
children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

ALEXANDRA BERNSTEIN; et al.

Defendants.

\_\_\_\_\_/

**TRUSTEE'S NOTICE OF COMPLIANCE WITH REQUIREMENTS OF  
APRIL 8, 2016, ORDER ON PLAINTIFF'S AMENDED MOTION TO MODIFY  
FINAL ORDER APPROVING SALE DATED MAY 6, 2015 ETC.**

Plaintiff, Ted S. Bernstein (the "Trustee"), as Successor Trustee, gives notice of compliance with the Court's Order dated April 8, 2016, as follows:

1. On April 25, 2016, the Trustee provided to each beneficiary: (i) a copy of the HUD-1; and (ii) proof of receipt of funds. In addition, the Trustee provided the signed contract addenda and a summary accounting of the transaction. Pursuant to the order, all of these documents were stamped CONFIDENTIAL and are to be treated as personal, private and confidential, and should not be shared with anyone in the world, nor posted on the internet.

WHEREFORE, the Trustee gives notice of compliance with the Court's order.

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by:  Facsimile **and**  U.S. Mail;  U.S. Mail;  Email Electronic Transmission;  FedEx;  Hand Delivery this 25th day of April, 2016.

MRACHEK, FITZGERALD, ROSE, KONOPKA,  
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Secondary: [mchandler@mrachek-law.com](mailto:mchandler@mrachek-law.com)  
Attorneys for Ted S. Bernstein

By: /s/ Alan B. Rose  
Alan B. Rose (Fla. Bar No. 961825)

**SERVICE LIST Case No.: 502014CP003698XXXXNBIJ**

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Guardian ad Litem for D.B., Ja. B. and Jo. B  
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Counsel for Molly Simon, Alexandra Bernstein,  
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[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Iantoni, individually and as trustee for her  
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Pamela Beth Simon  
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Email: [psimon@stpcorp.com](mailto:psimon@stpcorp.com)

**NOTICE OF COMPLIANCE ONLY,  
WITHOUT COPIES OF DOCUMENT:**

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

TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERNSTEIN TRUST  
TRUST AGREEMENT DATED MAY 20, 2008  
AS AMENDED,

Plaintiff(s)

v.

ALEXANDRA BERNSTEIN; ET AL.

Defendant(s).

PROBATE DIVISION IH  
CASE NO. 502014CP003698XXXXNB

**NOTICE OF APPEAL**

ELIOT BERNSTEIN

v.

ESTATE OF SIMON BERNSTEIN

Appellant / Petitioner(s)

Appellee / Respondent(s)

**NOTICE OF APPEAL**

**NOTICE IS GIVEN** that Eliot Ivan Bernstein, Appellant-Petitioner, appeals to the Fourth ( 4th )  
District Court of Appeals from the Order of Palm Beach County Judge John L. Phillips sitting in

the Probate Division dated April 04, 2016 titled "ORDER APPOINTING DIANA LEWIS AS GUARDIAN AD LITEM FOR ELIOT BERNSTEIN's CHILDREN, JO.B.; JA. B.; and D.B."

and hereby appeals from each and every part of said Order.

Dated: May 02, 2016

**/s/Eliot Ivan Bernstein**  
Eliot Ivan Bernstein  
2753 NW 34th St  
Boca Raton, FL 33434  
561-245-8588  
iviewit@iviewit.tv

**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 2nd day of May, 2016.

By: **/s/ Eliot Ivan Bernstein**  
Eliot Ivan Bernstein  
2753 NW 34th St.  
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561-245-8588  
iviewit@iviewit.tv

**SERVICE LIST**

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<p>mkoskey@feamanlaw.com</p>	
<p>Gary R. Shendell, Esq. Kenneth S. Pollock, Esq. Shendell &amp; Pollock, P.L. 2700 N. Military Trail, Suite 150 Boca Raton, FL 33431 (561)241-2323 - Telephone (561)241-2330-Facsimile Email: gary@shendellpollock.com ken@shendellpollock.com estella@shendellpollock.com britt@shendellpollock.com grs@shendellpollock.com</p>	<p>Counter Defendant Robert Spallina, Esq. Donald Tescher, Esq. Tescher &amp; Spallina 925 South Federal Hwy., Suite 500 Boca Raton, Florida 33432</p>
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<p>Counter Defendant Mark R. Manceri, Esq., and Mark R. Manceri, P.A., 2929 East Commercial Boulevard Suite 702 Fort Lauderdale, FL 33308 mrmlaw@comcast.net</p>	<p>Counter Defendant Donald Tescher, Esq., Tescher &amp; Spallina, P.A. Wells Fargo Plaza 925 South Federal Hwy Suite 500 Boca Raton, Florida 33432 dtescher@tescherspallina.com</p>
<p>Theodore Stuart Bernstein 880 Berkeley Boca Raton, FL 33487 tbernstein@lifeinsuranceconcepts.com</p>	<p>Counter Defendant TESCHER &amp; SPALLINA, P.A.. Wells Fargo Plaza 925 South Federal Hwy Suite 500 Boca Raton, Florida 33432 dtescher@tescherspallina.com</p>
<p>Theodore Stuart Bernstein Life Insurance Concepts, Inc. 950 Peninsula Corporate Circle Suite 3010 Boca Raton, FL 33487 tbernstein@lifeinsuranceconcepts.com</p>	<p>Counter Defendant Alan B. Rose, Esq. PAGE, MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS &amp; WEISS, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 561-355-6991 arose@pm-law.com arose@mrachek-law.com</p>
<p>Pamela Beth Simon 950 N. Michigan Avenue Apartment 2603</p>	<p>Counter Defendant L. Louis Mrachek, Esq. PAGE, MRACHEK, FITZGERALD, ROSE,</p>

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<p>William McCabe Oppenheimer &amp; Co., Inc. 85 Broad St Fl 25 New York, NY 10004 William.McCabe@opco.com</p>	<p>STP Enterprises, Inc. 303 East Wacker Drive Suite 210 Chicago IL 60601-5210 psimon@stpcorp.com</p>
<p>Charles D. Rubin Managing Partner Gutter Chaves Josepher Rubin Forman Fleisher Miller PA Boca Corporate Center 2101 NW Corporate Blvd., Suite 107 Boca Raton, FL 33431-7343 crubin@floridatx.com</p>	<p>Ralph S. Janvey Krage &amp; Janvey, L.L.P. Federal Court Appointed Receiver Stanford Financial Group 2100 Ross Ave, Dallas, TX 75201 rjanvey@kjllp.com</p>

<p>Kimberly Moran  Teschler &amp; Spallina, P.A.  Wells Fargo Plaza  925 South Federal Hwy Suite 500  Boca Raton, Florida 33432  kmoran@tescherspallina.com</p>	<p>Lindsay Baxley aka Lindsay Giles  Life Insurance Concepts  950 Peninsula Corporate Circle  Suite 3010  Boca Raton, FL 33487  lindsay@lifeinsuranceconcepts.com</p>
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<p>Estate of Simon Bernstein  Brian M O'Connell Pa  515 N Flagler Drive  West Palm Beach, FL 33401  boconnell@ciklinlubitz.com</p>	<p>Counter Defendant  Steven Lessne, Esq.  Gray Robinson, PA  225 NE Mizner Blvd #500  Boca Raton, FL 33432  steven.lessne@gray-robinson.com</p>
<p>Byrd F. "Biff" Marshall, Jr.  President &amp; Managing Director  Gray Robinson, PA  225 NE Mizner Blvd #500  Boca Raton, FL 33432  biff.marshall@gray-robinson.com</p>	<p>Steven A. Lessne, Esq.  Gunster, Yoakley &amp; Stewart, P.A.  777 South Flagler Drive, Suite 500 East  West Palm Beach, FL 33401  Telephone: (561) 650-0545  Facsimile: (561) 655-5677  E-Mail Designations:  slessne@gunster.com  jhoppel@gunster.com  eservice@gunster.com</p>
<p>T&amp;S Registered Agents, LLC  Wells Fargo Plaza  925 South Federal Hwy Suite 500  Boca Raton, Florida 33432  dtescher@tescherspallina.com</p>	<p>David Lanciotti  Executive VP and General Counsel  LaSalle National Trust NA  CHICAGO TITLE LAND TRUST COMPANY, as  Successor  10 South LaSalle Street  Suite 2750  Chicago, IL 60603  David.Lanciotti@ctt.com</p>
<p>Joseph M. Leccese  Chairman</p>	<p>Brian Moynihan  Chairman of the Board and Chief Executive Officer</p>



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Phone:(980) 335-3561

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

Eliot Ivan Bernstein  
Plaintiff/Petitioner or in the Interest Of  
vs.  
Tescher & Spallina, P.A. et al.  
Defendant/Respondent

CASE NO. 502014CP003698X2

**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 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 I am working to pay  
(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")

Second Job <u>Inventor</u> Yes <input checked="" type="checkbox"/> No _____ \$ <u>0.00</u>	Veterans' benefits..... Yes \$ <u>no</u> No _____
Social Security benefits	Workers compensation..... Yes \$ <u>no</u> No _____
For you..... Yes \$ <u>no</u> No _____	Income from absent family members..... Yes \$ <u>no</u> No _____
For child(ren)..... Yes \$ <u>no</u> No _____	Stocks/bonds..... Yes \$ <u>no</u> No _____
Unemployment compensation..... Yes \$ <u>no</u> No _____	Rental income..... Yes \$ <u>no</u> No _____
Union payments..... Yes \$ <u>no</u> No _____	Dividends or interest..... Yes \$ <u>no</u> No _____
Retirement/pensions..... Yes \$ <u>no</u> No _____	Other kinds of income not on the list..... Yes \$ <u>no</u> No _____
Trusts..... Yes \$ <u>unknown</u> No _____	Gifts..... Yes \$ <u>no</u> 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")

Cash..... Yes \$ <u>no</u> No _____	Savings account..... Yes \$ <u>no</u> No _____
Bank account(s)..... Yes \$ <u>no</u> No _____	Stocks/bonds..... Yes \$ <u>na</u> No _____
Certificates of deposit or money market accounts..... Yes \$ <u>no</u> No _____	Homestead Real Property*..... Yes \$ <u>no</u> No _____
Boats*..... Yes \$ <u>no</u> No _____	Motor Vehicle*..... Yes \$ <u>no</u> No _____
	Non-homestead real property/real estate*..... Yes \$ <u>no</u> 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 and patent royalties *father's owed 14*

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 4th day of September, 20 14.  
09/30/1963 68958008  
Date of Birth Driver's License or ID Number

*[Signature]*  
Signature of Applicant for Indigent Status  
Print Full Legal Name Eliot Bernstein  
Phone Number: 561-246-8588

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

*[Signature]*



Kelly Gold Frank  
COMMISSION # FF000732  
EXPIRES: MAR. 25, 2017  
WWW.AARONNOTARY.COM

RECEIVED, 1/6/2016 9:14 AM, Clerk, Fourth District Court of Appeal

**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 6 day of JAN, 2016

Clerk of the Circuit Court by \_\_\_\_\_

This form was completed with the assistance of: \_\_\_\_\_

Clerk/Deputy Clerk/Other authorized person.

**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 \_\_\_\_\_







Schwager Firm

Litigation Family  
Guardianship

Candice Schwager  
SCHWAGER FIRM  
1417 Ramada Dr.  
Houston, Texas 77062  
T 832.315.8489  
F 832.514.4738  
[candiceschwager@icloud.com](mailto:candiceschwager@icloud.com)

**Via Facsimile: 561-655-5537**

**arose@mrachek-law.com**

Alan M. Rose,  
Mrachek, Fitzgerald, Rose, Konopka, Thomas, & Weiss, P.A.  
505 South Flagler Drive, Suite 600  
West Palm Beach, FL 33401

*Re: Voluntary Request for Stay of Trial Dec. 15th @ 9:30 am; Judge John L. Phillips, North Branch of Palm Beach County Case No. Case # 502014CP003698XXXXSB – Shirley Bernstein Trust Construction and related CASE Numbers below (believed to be at North Branch NB now):*

1. Case # 502012CP004391XXXXSB – Simon Bernstein Estate
2. Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
4. Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
5. Case # 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case

2014CP003698  
EB  
2-25-16

Dear Mr. Rose:

I am writing to advise you that I am preliminarily retained and in the process of reviewing information to permit me to complete a proper Retainer and apply Pro Hac Vice in Florida as Trial Counsel for Eliot I. Bernstein and / or his minor children and am requesting that your office Voluntarily remove the matter from the Trial Calendar for Dec. 15th at 9:30 am EST.

Being from the State of Texas as a licensed attorney in good standing who is not presently licensed in the State of Florida, I understand I need "Local Counsel" in Florida to support my Pro Hac Vice application, however, I further understand that even obtaining a proper "Local Counsel" may take considerable time and when Eliot Bernstein has interviewed with prior Local Counsel providing case information and strategy, the local counsel then showed up in Court on behalf of your client Ted Bernstein instead.

Thus, simply for these reasons I am requesting that you voluntarily move the action off the Trial Calendar for Dec. 15th, 2015.

My preliminary review shows me this case is quite complex and perhaps should have been designated as such under Florida Rules of Civil Procedure.

In any event, there is a considerable number of documents, pleadings and relevant filings I will need to review to be properly prepared for Trial and voluntarily request that you move to stay the action for at least 30 days.

My understanding is that Eliot Bernstein even recently attempted to be heard before Judge Phillips at a Case-Management Conference held on Sept. 15, 2015 on the issue of having funds from the Trust to pay for Counsel for his children but did not get an opportunity to be fully heard before the Court and was otherwise denied on this day.

I also understand that Eliot I. Bernstein had previously filed even before that Case-Management Conference and applied to the Estate and the Trust for these funds but has so far been denied or not heard.

Thus, please confirm in writing by email at your earliest convenience by Monday morning 9 a.m., EST if you are moving to Stay the Trial or even withdraw the pleading altogether. I will be checking my email all weekend so please try to respond as timely as possible.

In the event you choose not to so move Voluntarily and stay the Trial scheduled for Dec. 15, 2015, it appears from my preliminary review that there are several grounds upon which to mandate a Stay of the Trial and even your removal as Trial Counsel upon grounds of being a necessary and material fact witness for the Trial.

I also understand that you have been sued in two counter-suits in these Florida proceedings and have a likely conflict of interest in representing Ted Bernstein as Trustee in the Trial on validity of Trusts and Wills of Shirley Bernstein and Simon Bernstein and that prior Judge Colin did not let you out of these cases as a counter defendant prior to his sudden recusal within 24 hours of denying a motion for mandatory Disqualification filed by Eliot Bernstein and thereafter Judge Colin acted to transfer the matters to the North Branch.

I have preliminarily reviewed the Transcript of Proceedings ( not signed by Stenographer ) of Sept. 15, 2015 and see many disturbing issues in a Trial moving forward on Dec. 15th, 2015 before Judge Phillips.

I also am reviewing related filings, pleadings and matters in the federal District Court of the Northern District of Illinois where Ted Bernstein is a party and the Estate of Simon Bernstein has been permitted to intervene and am investigating relief in the federal venue should I not hear back from

your office in a timely manner to voluntarily Stay the Trial scheduled before Judge Phillips on Dec. 15th, 2015.

Again, these are complicated cases with a volume of paper and pleadings and documents to review and request at least 30 days, I also think due to the complexity, especially with frauds relating to fiduciaries and counsel in the matters, the court should set this trial as a complex proceeding and follow those pre-trial prerequisites.

### **Improperly NOTICED Trial**

Simply reviewing the Notice that Eliot Bernstein was sent from the PR Brian O'Connell's office clearly shows the Case was Noticed to be heard in the Estate of Simon Bernstein.

RULE 1.200. PRETRIAL PROCEDURE (a) Case Management Conference, provides in part: "**The matter to be considered shall be specified in the order or notice setting the conference.**"

Yet, a simple review of the Transcript from the Case Management Conference Noticed in the Estate of Simon Bernstein before Judge Phillips on Sept. 15, 2015 shows that you either Mistakenly or Knowingly presented False Information before the Court claiming that All 4 Cases were Noticed. I further noticed that neither Florida Licensed attorneys Brian O'Connell, nor Juy Foglieta, who were both present and who had sent the NOTICE for the Conference stood up to Correct the Record on this day and instead went along with you and Judge Phillips Scheduling and Moving in the Shirley Bernstein case when the case was only Noticed for Simon Bernstein Estate.

I know at least here in Texas and in most states of the nation lawyers have Professional Obligations to Correct matters before Courts and Tribunals although I also know Courts have inherent authority to correct mistakes and preserve the integrity of the proceedings although I have not seen from Eliot Bernstein any notice that Judge Phillips has corrected this yet despite



being specifically pointed to it in a recent Motion for Mandatory Disqualification filed against Judge Phillips.

Of course I have further seen where Licensed attorney Peter Feaman on behalf of the Creditor William Stansbury noticed you about a Conflict of Interest in your representation of Ted Bernstein and the conflicting actions Ted Bernstein is taking in the Illinois Federal litigation and yet you have taken no action to address this conflict.

I further see where Licensed attorney Peter Feaman noticed the PR Brian O'Connell back in Aug. of 2014 that he had an Absolute Duty to take action to Remove Ted Bernstein but not only has he failed to so move, but now is taking action to not even present his Defense at Trial that was scheduled at a Conference his Office NOTICED for Simon Bernstein's case.

**Case - Management and Due-Process Issues:**

All of this is very problematic from a Due Process and ethical perspective particularly where almost None of the Standard Pre-Trial Case Management Rules have been followed or even allowed to be Discussed by Eliot Bernstein on Sept. 15, 2015 creating a further basis to Stay the current Trial.

These Rules include items such as:

**RULE 1.200. PRETRIAL PROCEDURE (a) Case Management Conference:**

[http://www.floridabar.org/TFB/TFBResources.nsf/0/10C69DF6FF15185085256B29004BF823/\\$FILE/Civil.pdf](http://www.floridabar.org/TFB/TFBResources.nsf/0/10C69DF6FF15185085256B29004BF823/$FILE/Civil.pdf)

“At such a conference the court may:

(1) schedule or reschedule the service of motions, pleadings, and other papers;

(2) set or reset the time of trials, subject to rule 1.440(c); (3) coordinate the progress of the action if the complex litigation factors contained in rule 1.201(a)(2)(A)–(a)(2)(H) are present; (4) limit, schedule, order, or expedite discovery; (5) consider the possibility of obtaining admissions of fact and voluntary exchange of documents and electronically stored information, and stipulations regarding authenticity of documents and electronically stored information; (6) consider the need for advance rulings from the court on the admissibility of documents and electronically stored information; (7) discuss as to electronically stored information, the possibility of agreements from the parties regarding the extent to which such evidence should be preserved, the form in which such evidence should be produced, and whether discovery of such information should be conducted in phases or limited to particular individuals, time periods, or sources; (8) schedule disclosure of expert witnesses and the discovery of facts known and opinions held by such experts; (9) schedule or hear motions in limine; (10) pursue the possibilities of settlement; (11) require filing of preliminary stipulations if issues can be narrowed; (12) consider referring issues to a magistrate for findings of fact; and (13) schedule other conferences or determine other matters that may aid in the disposition of the action. (b) Pretrial Conference. After the action is at issue the court itself may or shall on the timely motion of any party require the parties to appear for a conference to consider and determine: (1) the simplification of the issues; (2) the necessity or desirability of amendments to the pleadings; (3) the possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof; (4) the limitation of the number of expert witnesses; (5) the potential use of juror notebooks; and (6) any matters permitted under subdivision (a) of this rule

Nowhere in the Sept. 15, 2015 Conference Transcript is there any Discussion or Determination by the Court on: 1) Outstanding Discovery including requests for Production by Eliot Bernstein; 2) the need for Pre-Trial Depositions; 3) Disclosure of Expert Witnesses particularly in a case that already has Admitted Document Fraud in Documents filed with

the Court where Forensic Experts are likely necessary; 4) and many other pre-trial issues as outlined in the Case Management rules.

**Disqualification as Necessary and Material Fact Witness**

Of greater concern is that you apparently are attempting to proceed to an Improperly Noticed Trial rushed without proper Case Management on behalf of a Trustee that both the PR, Creditor and Eliot Bernstein has said is Invalid based upon Trust language.

Yet, having preliminarily reviewed your May 20, 2015 Email about alleged "Original" Documents in a related Oppenheimer Trust and your subsequent June 4, 2015 letter issued upon your Law Firm Letterhead apparently providing further information on "Original" ( actually "Duplicate Original" ) documents in Your Possession but have failed to include a Sworn Affidavit detailing the ***entire links in the Chain of Custody*** for this "Original" Best Evidence and in this regard, my preliminary review is that you most likely must be Disqualified under Florida ***RULE 4-3.7 LAWYER AS WITNESS*** grounds and are intertwined in the Chain of Custody and Possession of these Originals and other items with the PR Brian O'Connell and attorney Joy Foglietta and other staff at the Ciklin law firm.

I understand from Eliot Bernstein that, contrary to the express statement in your June 4, 2015 letter on your Law Firm Letterhead, it was not you that hand-delivered this package to Eliot Bernstein but instead was the PR Brian O'Connell, further involving the PR in the chain of document and evidence custody.

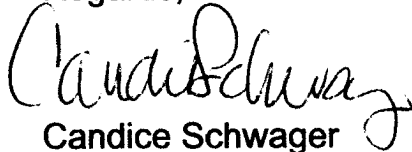
As you plan to use dispositive documents as Exhibits (any originals, duplicates, etc.) at trial please submit these records directly to the court bates stamped so that I may know nothing happened to them in transit and they do not become confused with any of the fraudulent documents already in circulation, I will then obtain them directly from the court.

Another issue of concern is payment of attorney's fees for both Eliot and his minor children and as I will be reviewing the dispositive documents once I access them from the court for the terms I am of the understanding that beneficiary legal fees may be paid through wills and trusts for counsel, especially where this benefits the estates and trusts and the need for counsel was caused by serious breaches by the fiduciaries and counsel in these matters which has caused conflicts in beneficiaries and need for validity and construction hearings and more. I would presume forensic expenses will also be encumbered by the estates and trusts once we determine who we will have examine them. I would assume the same for Eliot and his children's costs for pre-trial expenses including but not limited to witnesses, depositions, etc.

I further understand there may be other Trust and business documents that anyone that is an "interested" party would standardly review with respect to Simon's Business Records and the Discovery requested by Mr. Eliot Bernstein from both your client and PR O'Connell.

Thus, based upon all the reasons, I am respectfully requesting that you Voluntarily move to Stay the Trial to investigate these matters, get Local counsel, and admitted Pro Hac Vice. Please respond by Monday morning.

Regards,

  
Candice Schwager

CC. Brian O'Connell - [boconnell@sicklinlubitz.com](mailto:boconnell@sicklinlubitz.com)

Peter Feaman [pfeaman@feamanlaw.com](mailto:pfeaman@feamanlaw.com)

John Morrissey - [john@morrisseylaw.com](mailto:john@morrisseylaw.com)

Jill Lantoni - [jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

Lisa Friedstein - [lisa@friedsteins.com](mailto:lisa@friedsteins.com)



Candice Schwager  
SCHWAGER FIRM  
Tel: 832.315.8489  
Fax: 832.514.4738  
candiceschwager@icloud.com

December 11, 2015

**Via Facsimile:**

Court Coordinator  
15<sup>th</sup> Judicial Circuit of Florida  
NORTH COUNTY COURTHOUSE  
3188 PGA BLVD.  
PALM BEACH GARDENS, FLORIDA 33410

*Re: EMERGENCY Application to appear pro hac vice and request for abatement or stay until counsel obtains local counsel and is admitted; Case Numbers (are believed to all be in North Branch now);*

1. Case # 502014CP003698XXXXSB – Shirley Trust Construction
2. Case # 502012CP004391XXXXSB – Simon Bernstein Estate
3. Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
4. Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
5. Case # 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case

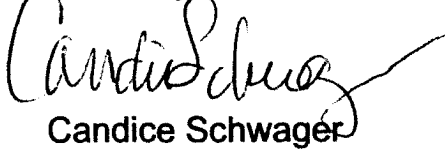
*Circuit Court of ;  
15th Judicial Circuit of Florida*

**NORTH COUNTY COURTHOUSE  
3188 PGA BLVD.  
PALM BEACH GARDENS, FLORIDA 33410**

Dear Sir or Madam:

Please accept the attached Motion to Abate and Stay until such time as I can obtain local counsel and have my application pro hac vice to appear on behalf of Eliot Bernstein's minor children, which I expect to be brief, given I have a regular attorney who has agreed previously agreed to assist me as local counsel in Florida. Thank you for granting abatement or stay until I can enter the case, as Eliot Bernstein's rights are being comprised in terms of due process.

Sincerely,



Candice Schwager  
SBN 34005603  
1417 Ramada Dr.  
Houston, Texas 77062  
832.315.8489  
832.514.4738  
[candiceschwager@icloud.com](mailto:candiceschwager@icloud.com)

CC: All counsel of record

## **Eliot Ivan Bernstein**

---

**From:** Candice Schwager <attycandie@gmail.com>  
**Sent:** Friday, December 11, 2015 5:58 PM  
**To:** Alan Rose  
**Cc:** Candice Schwager; boconnell@sicklinlubitz.com; pfeaman@feamanlaw.com; john@morrisseylaw.com; jilliantoni@gmail.com; lisa@friedsteins.com; Eliot Ivan Bernstein; Eliot Ivan Bernstein; Eliot Ivan Bernstein  
**Subject:** Re: Scanned document from HP ePrint user

I should have it filed by Monday so your objection will likely be moot

Candice L. Schwager  
SCHWAGER FIRM  
T: 832.315.8489  
F: 832.514.4738  
[candiceschwager@icloud.com](mailto:candiceschwager@icloud.com)  
<http://www.schwagerfirm.com>

On Dec 11, 2015, at 4:53 PM, Alan Rose <[ARose@mrachek-law.com](mailto:ARose@mrachek-law.com)> wrote:

We do not agree.

We intend to move forward with the properly noticed trial on December 15<sup>th</sup>, pursuant to the Order dated September 24, 2015.

I am copying Eliot because you have not appeared as counsel formally, but only for his knowledge.

Alan B. Rose, Esq.  
[arose@Mrachek-Law.com](mailto:arose@Mrachek-Law.com)  
561.355.6991  
<image002.jpg>

505 South Flagler Drive  
Suite 600  
West Palm Beach, Florida 33401  
561.655.2250 Phone  
561.655.5537 Fax

**CONFIDENTIALITY NOTE:** THE INFORMATION CONTAINED IN THIS TRANSMISSION IS LEGALLY PRIVILEGED AND CONFIDENTIAL, INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU RECEIVE A COPY OF

THIS COMMUNICATION IN ERROR, PLEASE **IMMEDIATELY** (1) REPLY BY E-MAIL TO US, AND (2) DELETE THIS MESSAGE.

**TAX DISCLOSURE NOTE:** To ensure compliance with requirements imposed by the Internal Revenue Service (Circular 230), we inform and advise you that any tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, by any taxpayer for the purpose of (1) avoiding penalties that may be imposed under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any transactions or matters addressed herein.

If there any documents attached to this email with the suffix .pdf, those documents are in Adobe PDF format, If you have difficulty viewing these attachments, you may need to download the free version of Adobe Acrobat Reader, available at: <http://www.adobe.com>

**From:** Candice Schwager [<mailto:candiceschwager@icloud.com>]  
**Sent:** Friday, December 11, 2015 5:34 PM  
**To:** Alan Rose; [boconnell@sicklinlubitz.com](mailto:boconnell@sicklinlubitz.com); [pfeaman@feamanlaw.com](mailto:pfeaman@feamanlaw.com); [john@morrisseylaw.com](mailto:john@morrisseylaw.com); [jilliantoni@gmail.com](mailto:jilliantoni@gmail.com); [lisa@friedsteins.com](mailto:lisa@friedsteins.com)  
**Cc:** Candice Schwager  
**Subject:** Fwd: Scanned document from HP ePrint user

Candice L. Schwager  
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T: 832.315.8489  
F: 832.514.4738  
[candiceschwager@icloud.com](mailto:candiceschwager@icloud.com)  
<http://www.schwagerfirm.com>

Begin forwarded message:

**From:** [eprintcenter@hp.com](mailto:eprintcenter@hp.com)  
**Date:** December 11, 2015 at 4:25:41 PM CST  
**To:** [candiceschwager@icloud.com](mailto:candiceschwager@icloud.com)  
**Subject:** Scanned document from HP ePrint user

This email and attachment are sent on behalf of [candiceschwager@icloud.com](mailto:candiceschwager@icloud.com).

If you do not want to receive this email in future, you may contact [candiceschwager@icloud.com](mailto:candiceschwager@icloud.com) directly or you may consult your email application for spam or junk email filtering options.

Regards,  
HP Team  
<filename-1.pdf>



## **Eliot Ivan Bernstein**

---

**From:** Alan Rose <ARose@mrachek-law.com>  
**Sent:** Wednesday, January 6, 2016 10:13 PM  
**To:** candice@schwagerfirm.com  
**Cc:** iviewit@iviewit.tv; john@jmorrisseylaw.com; psimon@stpcorp.com; jlliantoni@gmail.com; lisa@friedsteins.com; boconnell@ciklinlubitz.com; jfoglietta@ciklinlubitz.com; service@feamanlaw.com; mkoskey@feamanlaw.com; guy@gtlife.net; kh.itconsultingsalesoffices@gmail.com; tourcandy@gmail.com; iviewit@gmail.com  
**Subject:** Re: Eliot Bernstein Reschedule Tomorrow Hearing and Jan 14, 2016

Unless and until you are admitted in this matter by order of the court, please do not communicate with me at all.

As far as the meeting, you were permitted to attend by telephone as a one time courtesy to Eliot Bernstein. Based upon the conduct of you, Elliot and the unauthorized third person who was a surprise participant, we will not make the same mistake again. The meeting was an election of a manager, not a soapbox for pursuing your improper agenda. The meeting was conducted fairly in accordance with Florida law.

Please do not communicate with me any further. Unless Judge Phillips orders the parties to communicate with you, you'll receive no further response from me.

Alan B. Rose  
Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A.

On Jan 6, 2016, at 7:45 PM, "[candice@schwagerfirm.com](mailto:candice@schwagerfirm.com)" <[candice@schwagerfirm.com](mailto:candice@schwagerfirm.com)> wrote:

Alan B. Rose, Esq.  
Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A.  
505 South Flagler Drive  
Suite 600  
West Palm Beach, Florida 33401  
[arose@Mrachek-Law.com](mailto:arose@Mrachek-Law.com)

Alan,

As you are aware, I provided you a Letter request prior to the alleged validity Trial before Probate Judge John L. Phillips of the North Branch in Palm Beach County seeking a voluntary continuance of the Trial which appears in all respects to have been improperly if not in fact illegally scheduled for Dec. 15, 2015 as I sought to be admitted Pro Hac Vice to represent the minor children of Eliot Bernstein and to the extent not conflicted, Eliot Bernstein as well.

A copy of the letter which also included a Notice of Abatement filed with the Florida Court is attached.

See,

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151212%20Candice%20Schwager%20Pro%20Hac%20Vice%20ECF%20Filing%20Stamped%20Copy.pdf>

As you are further aware, I was on a Conference call with your office just yesterday, Jan. 5, 2016 and others purporting to be a Meeting of the Members of Bernstein Holdings, LLC and yet, not only did you appear to speak over the Objections I was raising generally to the Meeting and actions being taken by Ted Bernstein based upon my information review to date, at no time did you raise or attempt to raise any issue after the Meeting with respect to any imminent concern for the minor children in this case.

Nor did you attempt to email or contact me after the Meeting of yesterday, Jan. 5, 2016 in reference to the minor children and yet are now seeking some hearing on an emergency basis scheduled for tomorrow Jan. 7, 2016 and I must now again voluntarily request that you immediately move to reschedule your Motion as improperly noticed upon Eliot Bernstein with knowledge that I am seeking pro hac vice admission.

Please respond immediately about withdrawing and/or re-scheduling your improperly Noticed Hearing for tomorrow and the other improperly scheduled hearing on January 14, 2016 since as you know Eliot filed a motion for unavailability for the month of January and will not be able to attend. Also your service notice states that you made efforts to resolve the matters with Eliot acting Pro Se before scheduling and this was also never done.

I also note that the case you cited in your Motion of Florida Freedom Newspapers v. Sirmons District Court of Appeal of Florida, First District, 508 So.2d 462 (Fla. Dist. Ct. App. 1987) actually reversed the Trial Court's closing of Trial information from the public, noting as follows:

"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>

As you are aware and most definitely should be aware since your client Ted Bernstein is the central involved party, there is inter-related litigation in the US District Court for the Northern District of Illinois and being admitted in the federal courts I am aware that it is **only the names of minor children** which are not redacted, nor withheld under federal pleading standards but simply abbreviated. Example, J.B. or D.B. for Eliot's minor children as I am sure you are aware.

I do not believe even this, however, provides any authority or basis for the Transcripts ( "records" ) of a Trial to be altered and tampered with and highly object to any altering of any Transcript since neither I, nor Eliot Bernstein nor other parties have even reviewed the Transcript in the first instance.

I understand from Eliot Bernstein that any reference to minor children in the Transcripts should be minimal.

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.

After all, Mr. Rose, neither you nor your client Ted Bernstein, nor even Judge Phillips himself apparently were concerned about the rights and welfare of minor children such as having Counsel for important evidentiary hearings and trials as evidenced by your improper refusal to voluntarily remove the action from the Trial calendar on Dec. 15, 2015. It appears more that you and your client Ted Bernstein may be more concerned about the subject of Ted Bernstein's business partner and/or former business partner Robert Spallina's testimony. A history of fraud in the courts of the Florida probate court from this case is not itself any basis for confidentiality and in fact the public interest is greater served by transparency and certainly this is not an "emergency" justifying your improper notice and practices.

As you may recall from my prior Letter, it appears that your office must mandatorily disqualify anyhow as being a material fact witness and this appears to be further strengthened by the documents you recently disseminated as part of the Notice of Meeting of Members of the Bernstein Holdings, LLC.

Moreover, I understand upon information and belief that your client Ted Bernstein is the subject of a federal investigation by the US Dept of Labor in relation to his Plan Administrator / Trustee / Fiduciary role in the Arbitrage International pension matters, a material fact that I have not seen disclosed in either your Notice of Meeting, during the Meeting or in prior disclosures.

The minor children will be better served by having full and proper Disclosures and productions from your office and client Ted Bernstein.

I will be supplementing my written requests to you about yesterday's "Meeting" of the Members of Bernstein Holdings, LLC, however, please respond first to re-scheduling this improperly noticed hearing on your motion.

Regards,

Candice Schwager  
SCHWAGER FIRM  
832.315.8489  
Fax 832.514.4738  
[candice@schwagerfirm.com](mailto:candice@schwagerfirm.com)  
<http://www.schwagerfirm.com>

**EXHIBIT A - LIST OF COUNTER COMPLAINT DEFENDANTS TO BE INCLUDED  
IN THE AMENDED COMPLAINT**

2014EP 003698  
M.  
2-25-16

**EXHIBIT A**  
**COUNTER COMPLAINT DEFENDANTS / PARTIES**

**COUNTER-DEFENDANTS/THIRD PARTY DEFENDANTS FOR AMENDED COMPLAINT AND PARTY DESIGNATIONS**

1. Hon. Jorge Labarga, Chief Justice of the Florida Supreme Court, professionally;
2. Hon. Jorge Labarga, Chief Justice of the Florida Supreme Court, personally;
3. Judge Martin Colin, professionally;
4. Judge Martin Colin, personally;
5. Judge David French, professionally;
6. Judge David French, personally;
7. Judge Howard Coates, professionally;
8. Judge Howard Coates, personally;
9. Judge John Phillips, professionally;
10. Judge John Phillips, personally;
11. The State of Florida;
12. The Florida Supreme Court;
13. The 4th District Court of Appeals;
14. Palm Beach County Probate and Circuit Courts;
15. The County of Palm Beach;
16. The Palm Beach County Sheriff;
17. Detective Ryan Miller;
18. Detective David Groover;
19. Detective Andrew Panzer;
20. Captain Carol Gregg;
21. Theodore Bernstein, personally;
22. Theodore Bernstein, as alleged Trustee of the Shirley Trust;
23. Theodore Bernstein as Personal Representative of the Shirley Estate;
24. Theodore Bernstein as alleged Trustee of the Simon Bernstein Irrevocable Insurance Trust Dtd. 6/21/95;
25. Theodore Bernstein, acting in any fiduciary capacity, corporate and company capacity and trustee capacity relevant herein;
26. Pamela Beth Simon, personally;
27. Pamela Beth Simon, acting in any fiduciary capacity, corporate and company capacity and trustee capacity relevant herein;
28. Lisa Sue Friedstein, personally;
29. Lisa Sue Friedstein, as Natural Guardian of minor CF;
30. Jill Marla Iantoni, personally;
31. Jill Marla Iantoni, as Natural Guardian of minor JI;
32. David B. Simon, Esq., professionally;
33. David B. Simon, Esq., personally;
34. Adam Simon, Esq., professionally;
35. Adam Simon, Esq., personally;

36. The Simon Law Firm and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
37. Robert L. Spallina, Esq., personally;
38. Robert L. Spallina, Esq., professionally;
39. Robert L. Spallina, Esq., former alleged Co-Trustee of the Simon Bernstein Trust;
40. Robert L. Spallina, Esq., former alleged Co-Personal Representative of the Simon Bernstein Estate;
41. Donald R. Tescher, Esq. personally;
42. Donald R. Tescher, Esq. professionally;
43. Donald R. Tescher, Esq. former alleged Co-Trustee of the Simon Bernstein Trust;
44. Donald R. Tescher, Esq. former alleged Co-Personal Representative of the Simon Bernstein Estate;
45. Gutter Chaves Josepher Rubin Forman Fleisher Miller PA F.K.A. Tescher Gutter Chaves Josepher Rubin Ruffin & Forman PA and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
46. Tescher & Spallina, P.A. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
47. T&S Registered Agents, LLC and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
48. Kimberly Francis Moran, personally;
49. Kimberly Francis Moran, professionally;
50. Lindsay Baxley aka Lindsay Giles, personally;
51. Lindsay Baxley aka Lindsay Giles, professionally;
52. Alan B. Rose, Esq. – personally;
53. Alan B. Rose, Esq. – professionally;
54. Page, Mrachek, Fitzgerald & Rose, P.A. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
55. Ciklin Lubitz Martens & O'Connell and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
56. Brian O'Connell, Esq., personally;
57. Brian O'Connell, Esq., professionally;
58. Brian O'Connell, Esq., fiduciary;
59. Joielle "Joy" A. Foglietta, Esq., personally;
60. Joielle "Joy" A. Foglietta Esq., professionally;
61. Joielle "Joy" A. Foglietta Esq., fiduciary;

62. Albert Gortz, Esq., personally;
63. Albert Gortz, Esq., professionally;
64. Proskauer Rose, LLP and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
65. Hopkins & Sutter and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
66. Foley & Lardner LLP and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
67. Greenberg Traurig, LLP and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
68. Jon Swergold, Esq., personally;
69. Jon Swergold, Esq., professionally;
70. Gerald R. Lewin, CPA, personally;
71. Gerald R. Lewin, CPA, professionally;
72. CBIZ, Inc. (NYSE: CBZ) and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
73. John Morrissey, Esq., personally;
74. John Morrissey, Esq., professionally;
75. John P. Morrissey, P.A. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
76. Mark R. Manceri, Esq., personally;
77. Mark R. Manceri, Esq., professionally;
78. Mark R. Manceri, Esq., P.A. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
79. Pankauski Law Firm PLLC and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
80. John J. Pankauski, Esq., personally;
81. John J. Pankauski, Esq., professionally;
82. Steven A. Lessne, Esq., personally;
83. Steven A. Lessne, Esq., professionally;
84. GrayRobinson, P.A. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
85. GUNSTER and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;

86. Brandan J. Pratt, Esq., personally;
87. Brandan J. Pratt, Esq., professionally;
88. Huth & Pratt and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
89. Stanford Financial Group and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers, Receivers and Fiduciaries;
90. Oppenheimer & Co. Inc. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
91. Oppenheimer Trust Company of Delaware and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
92. Janet Craig, personally;
93. Janet Craig, professionally;
94. Janet Craig, fiduciary;
95. Huntington Worth, personally;
96. Huntington Worth, professionally;
97. Huntington Worth, fiduciary;
98. William McCabe, Esq., personally;
99. William McCabe, Esq., professionally;
100. Legacy Bank of Florida and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
101. JP Morgan Chase & Co. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
102. LaSalle National Trust, NA and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
103. Chicago Title Land Trust and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
104. Heritage Union Life and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;



105. Jackson National Life and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
106. Reassure America Life Insurance Company and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
107. WiltonRe and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
108. First Arlington National Bank as Trustee of S.B. Lexington, Inc. Employee Death Benefit Trust and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
109. United Bank of Illinois and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
110. Bank of America, Alleged successor in interest to LaSalle National Trust, N.A. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
111. Wilmington Trust Company and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
112. Regency Title dba US Title of Florida and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
113. Old Republic National Title Insurance Company and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
114. Nestler Poletto Sotheby's International Realty and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
115. Bernstein Family Realty, LLC and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
116. Bernstein Holdings, LLC and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
117. Bernstein Family Investments, LLLP and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns,

- Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
118. S.T.P. Enterprises, Inc., and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
  119. S.B. Lexington, Inc. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
  120. National Service Association, Inc. (of Illinois) and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
  121. Life Insurance Concepts, Inc. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
  122. LIC Holdings, Inc. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
  123. LIC Holdings, LLC and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
  124. Arbitrage International Management LLC and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
  125. Arbitrage International Marketing, Inc. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
  126. Arbitrage International Holdings, LLC and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
  127. National Services Pension Plan and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
  128. Arbitrage International Marketing Inc. 401 (k) Plan and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
  129. Simon L. Bernstein Trust Agreement (2008) and its current and former trustees, fiduciaries and counsel;

130. Simon L. Bernstein Irrevocable Trust Agreement (2008) and its current and former trustees, fiduciaries and counsel;
131. Simon L. Bernstein Estate and Will of Simon L. Bernstein (2008) and its current and former trustees, fiduciaries and counsel;
132. Simon L. Bernstein Estate and Will of Simon L. Bernstein (2012) and its current and former trustees, fiduciaries and counsel;
133. Simon L. Bernstein Amended and Restated Trust Agreement (2012) and its current and former trustees, fiduciaries and counsel;
134. Wilmington Trust 088949-000 Simon L. Bernstein Irrevocable Trust and its current and former trustees, fiduciaries and counsel;
135. Estate and Will of Shirley Bernstein (2008) and its current and former trustees, fiduciaries and counsel;
136. Shirley Bernstein Trust Agreement (2008) and its current and former trustees, fiduciaries and counsel;
137. Shirley Bernstein Irrevocable Trust Agreement (2008) and its current and former trustees, fiduciaries and counsel;
138. Simon Bernstein Irrevocable Insurance Trust dated 6/21/1995 (currently missing and legally nonexistent) and its current and former trustees, fiduciaries and counsel;
139. Shirley Bernstein Marital Trust and Family Trust created under the Shirley Bernstein Trust (2008) and its current and former trustees, fiduciaries and counsel;
140. S.B. Lexington, Inc. 501(C)(9) VEBA TRUST and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
141. Trust f/b/o Joshua Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012 and its current and former trustees, fiduciaries and counsel;
142. Trust f/b/o Daniel Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012 and its current and former trustees, fiduciaries and counsel;
143. Trust f/b/o Jake Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012 and its current and former trustees, fiduciaries and counsel;
144. Eliot Bernstein Family Trust dated May 20, 2008 and its current and former trustees, fiduciaries and counsel;
145. Daniel Bernstein Irrevocable Trust dated September 7, 2006 and its current and former trustees, fiduciaries and counsel;
146. Jake Bernstein Irrevocable Trust dated September 07, 2006 and its current and former trustees, fiduciaries and counsel;
147. Joshua Z. Bernstein Irrevocable Trust dated September 07, 2006 and its current and former trustees, fiduciaries and counsel;
148. Traci Kratish, Fiduciary;
149. Christopher Prindle, personally;
150. Christopher Prindle, professionally;
151. Peter Montalbano, personally;
152. Peter Montalbano, professionally;
153. Steven Greenwald, personally;
154. Steven Greenwald, professionally;
155. Louis B. Fournet; professionally;

- 156. Louis B. Fournier, personally;
- 157. Alexandra Bernstein;
- 158. Michael Bernstein;
- 159. Eric Bernstein;
- 160. Molly Simon;
- 161. Max Friedstein;
- 162. John and Jane Doe State Defendants,

**EXHIBIT A - LIST OF POTENTIAL DEFENDANTS TO BE ADDED TO COUNTER COMPLAINT BASED ON NEED TO OBTAIN DISCOVERY AND POTENTIAL COMPANY - VEHICLE TO HIDE-MOVE ASSETS ETC**

- 163. John Hancock
- 164. Delray Medical Center;
- 165. Ronald V. Alvarez, Esquire, is a mediator;
- 166. CFC of Delaware, LLC.
- 167. Life Insurance Connection, Inc.
- 168. TSB Holdings, LLC
- 169. TSB Investments LLLP
- 170. Life Insurance Concepts, LLC
- 171. Life Insurance Innovations, Inc.
- 172. National Service Association, Inc. (of Florida)
- 173. Total Brokerage Solutions LLC
- 174. Cambridge Financing Company
- 175. National Service Association, Inc.
- 176. National Service Corp (FLORIDA)
- 177. Simon L. Bernstein Irrevocable Trust U/A 9/7/06
- 178. Shirley Bernstein Irrevocable Trust U/A 9/7/06
- 179. Simon Bernstein 2000 Insurance Trust (dated august 15, 2000)
- 180. Shirley Bernstein 2000 Insurance Trust (dated august 15, 2000)
- 181. 2000 Last Will and Testament of Simon L. Bernstein
- 182. 2000 Last Will and Testament of Shirley Bernstein
- 183. Jill Iantoni Family Trust dated May 20, 2008
- 184. Lisa Friedstein Family Trust dated May 20, 2008
- 185. Daniel Bernstein Irrevocable Trust 07-JUL-10 049738
- 186. Jake Bernstein Irrevocable Trust 07-JUL-10 0497381
- 187. Joshua Z Bernstein Irrevocable Trust 07-JUL-10 0497381
- 188. Simon Bernstein Irrevocable Trust dated 6/21/95
- 189. Simon Bernstein Trust, NA
- 190. S.B. Lexington, Inc. Employee Death Benefit Trust
- 191. Simon Bernstein Trust Agreement dated May 13, 2008
- 192. Saint Andrews School Boca Raton

RECEIVED, 1/29/2016 3:17 PM, Clerk, Fourth District Court of Appeal

IN THE DISTRICT COURT OF APPEAL OF  
THE STATE OF FLORIDA FOURTH  
DISTRICT, 1525 PALM BEACH LAKES  
BLVD., WEST PALM BEACH, FL 33401

CASE NO.: 4D16-0064

L.T. No.: 2014CP003698XXXXNB

ELIOT IVAN BERNSTEIN v. TED BERNSTEIN, AS TRUSTEE. ET AL.

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Appellant / Petitioner(s)

Appellee / Respondent(s)

**WARNING: POTENTIAL CONFLICTS OF INTEREST OF THIS COURT**

**PETITION FOR ALL WRITS, WRIT OF PROHIBITION, WRIT OF MANDAMUS AND  
PETITION TO STAY CASES AND TEMPORARILY RESTRAIN SALE, TRANSFER,  
DISPOSITION OF ANY ASSET AND FOR PRESERVATION OF ALL EVIDENCE**

Now comes ELIOT IVAN BERNSTEIN (“PETITIONER”) who respectfully petitions  
and pleads and shows this court as follows:

1. This is a Petition for All Writs and is a Writ of of Prohibition as Directed and Determined  
by the 4th DCA, a Writ of Mandamus and an application for a Temporary Restraining Order-  
Stay prohibiting any transfer, sale or disposition of any assets herein under the Estates and Trusts  
of Simon and Shirley Bernstein and Trusts of PETITIONER’S minor children and further  
requiring the parties, including the courts where there has been proven Fraud on the Court, to  
preserve any and all evidence, documents, records, notes, statements, properties and materials  
relating to these Estate and Trust matters in all cases stated in the caption.

2. It is respectfully submitted that Hon. Judge John L. Phillips ( “Phillips” ) has failed to  
perform mandatory duties under Florida law by failing to mandatorily Disqualify himself under

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the Judicial Canons and as required by law by instead proceeding to act outside of his jurisdiction to hold an improperly scheduled Trial.

3. In so doing Judge Phillips has acted in excess of his jurisdiction and outside the law and must be prohibited by the writ herein. Because the Orders of Judge Phillips who should have mandatorily Disqualified are a nullity and void and must be officially voided, there are no valid and proper Orders under which the parties are acting and thus the parties herein and each case listed in the caption shall be temporarily restrained from any further transfers, sale, disposition or compromise of any asset herein pending proper determinations of authority to act, proper determinations of who is and should be Trustee, the Personal Representative and what Dispositive documents prevail and other substantive orders in the case.

#### **BASIS FOR INVOKING JURISDICTION**

4. This is an Original Proceeding filed in the Florida Supreme Court pursuant to Florida Rule of Civil Procedure 9.100(b) and 9.030 for extraordinary writs.

Florida Rule of Appellate Procedure Provides:

**Original Jurisdiction.** The Supreme Court may issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction, and may issue writs of mandamus and quo warranto to state officers and state agencies. The supreme court or any justice may issue writs of habeas corpus returnable before the supreme court or any justice, a district court of appeal or any judge thereof, or any circuit judge.

5. This Court has jurisdiction to issue writs of mandamus, prohibition and any other writ within the exercise of its judicial authority. See *McFadden vs. Fourth Dist. Court of Appeal*, 682 So.2d 1068 (Fla. 1996).

Florida Rule of Appellate procedure 9.100(h) provides:

**Order to Show Cause.** If the petition demonstrates a preliminary basis for relief, a departure from the essential requirements of law that will cause material injury for which there is no adequate remedy by appeal, or that review of final administrative action would not provide an adequate remedy, the court may issue an order either directing the respondent to show cause, within the time set by the court, why relief should not be granted or directing the respondent to otherwise file, within the time set by the court, a response to the petition. In prohibition proceedings, the issuance of an order directing the respondent to show cause shall stay further proceedings in the lower tribunal.

6. Upon information and belief, Judge John L. Phillips is a Palm Beach County Judge sitting in the North Branch acting as a Probate Judge herein.

7. As such, Judge John L. Phillips actually knows and should know he has an Oath to uphold the US Constitution and State Constitution of Florida.

8. As such, at all times relevant herein, Judge John L. Phillips actually knows and should know that fundamental US Constitutional Due Process requires fair Notice and an Opportunity to be Heard at a meaningful time and in a meaningful manner.

9. Moreover, Judge Phillips knew and had to know Florida Rule of Civil Procedure 1.200 Pre-Trial Procedure Case Management Conference provides that “The matter to be considered shall be specified in the order or notice setting the conference.” and further has provisions for determining a “complex case” and provisions relating to compliance with Discovery and production requests, determination of witnesses, pre-trial depositions, expert witnesses and other pre-trial procedures, yet Judge Phillips knowingly moved on Sept. 15, 2015 to order a “Trial” in a case that was Not Noticed to be Heard at the Case Management Conference and further demonstrated bias, prejudice, lack of impartiality creating a reasonable fear that Eliot Bernstein would not receive a fair trial and was denying due process by denying Eliot Bernstein proper notice and opportunity to be heard at the Case Management Conference of Sept. 15, 2015,

10. During the pendency of a Petition for All Writs filed by Petitioner Eliot I. Bernstein at the Florida Supreme Court including Writs of Prohibition and Mandamus and a request for a Stay and injunction at the Florida Supreme Court with respect to Judge Martin Colin, the current PR of the Simon Bernstein Estate Brian O'Connell of the Ciklin law firm brought into the Estate by Creditor Stansbury attorney Peter Feaman filed for a Status Conference after the case was transferred to Judge Phillips.

11. It is expressly noted that the re-filed Petition for All Writs with the Florida Supreme Court on June 30, 2015 expressly included a request for a Stay and Injunctive and other relief by the Florida Supreme Court further raising the novel and important Statewide issue of whether the Florida Courts themselves could be a proper forum consistent with due process to even hear the Bernstein matters herein for a variety of reasons including but not limited to current Chief Judge Labarga's involvement in the frauds upon the Florida Courts in the Proskauer Billing lawsuit.

12. It was expressly noted that the Proskauer Rose firm had "billed" for Estate Planning work involving Simon Bernstein and Bernstein family matters and further had been determined that Judge Coates who the case was originally transferred to after Judge Colin's "recusal" coming 24 hours after denial of a Disqualification motion himself had been a Proskauer Rose partner during the times of the original thefts of the underlying Technologies and Intellectual properties that were part of the Estate planning of Simon and Shirley Bernstein. The Court should note that Coates was a billing Proskauer Partner to the technology companies and that Proskauer is also a Counter Defendant in a stayed Counter Complaint of Bernstein's in a case he took over from Colin.



13. A status conference was scheduled by the Personal Representative O'Connell firm and held before Judge John L. Phillips at the North Branch on July 30, 2015.

14. During this Status Conference, Petitioner Bernstein attempted to Object before Judge Phillips to raise the issues of the pending Petition for All Writs and related relief and Judge Phillips, upon information and belief being words heard by Petitioner, Judge Phillips indicated this Petition would be discussed at a Case Management Conference that was being scheduled.

15. Again on July 30, 2015 at the Status Conference, Judge Phillips indicated at or near the close the issue of the Petition for All Writs filed by Petitioner Eliot Bernstein would be addressed at the Case Management Conference.

16. Petitioner Bernstein was acting Pro Se and without Florida Licensed counsel at this time and has been denied counsel and the funds for counsel from the Trusts and Estates part of which were specifically designed to plan for Eliot Bernstein and his immediate family including the minor children.

17. On several occasions during the pendency of the Petition for All Writs and at all relevant times herein, Petitioner Bernstein sought support from Creditor Stansbury and his licensed attorney Peter Feaman, Esq. for his Petition for All Writs and other relief making similar requests of the PR Brian O'Connell at the Ciklin law firm.

18. Prior to a Case Management Conference held by Judge Phillips at the North Branch on Sept. 15, 2015, Petitioner Bernstein specifically sought determination from the PR O'Connell firm on the Plan and Scheduling of issues to be heard and to further avoid delay and cost having been rendered indigent status by the continuing frauds herein.

19. Judge Phillips had actual knowledge and knew and at all times should have known that the Case Management Conference was Noticed and Scheduled for the Simon Bernstein case, not the Shirley Bernstein Trust case in the instant matter or other related cases.

20. After close of business hours on the eve of the Case Management Conference scheduled with Judge Phillips for Sept. 15, 2015, Petitioner Bernstein received a Filing by attorney Alan Rose on behalf of Ted Bernstein, still acting as Trustee despite licensed attorney Peter Feaman previously urging PR O'Connell in August of 2014 to file his own Petition to remove Ted Bernstein claiming he had an "absolute duty" or words to that effect to do so, including but not limited to, on grounds of the express language which Disqualified Ted and failures to account and waste of assets in the case as neither PR O'Connell nor Creditor attorney Peter Feaman took subsequent action to Remove Ted Bernstein despite the fact that Judge Colin who had denied Creditor Stansbury standing had now been suspiciously "Recused" within 24 hours of denying a subsequent mandatory Disqualification exposing not only Proven Fraud Upon the Court but also alleging Fraud By the Court and where Colin became a necessary and material fact witness to the fraud upon the Court committed by Ted as an alleged fiduciary and his court appointed attorneys Tescher and Spallina before Colin, all of them acting in fiduciary capacities in these matters.

21. Creditor Stansbury attorney had previously written to Alan Rose about his own "conflicts of interest" in representing Ted Bernstein yet had taken no further action by the time the Case Management Conference was held by Judge Phillips on Sept. 15, 2015 to cure the conflicts he was aware of.

**Judge Phillips Must be Mandatorily Disqualified for "Pre-Judging" the Case and for Bias, Prejudice and Reasonable Fear of Inability to Obtain a Fair Trial and Due Process**

22. While never permitting Petitioner Bernstein to be Heard on his Petition for All Writs at the Case Management Conference on Sept. 15, 2015 despite two specific representations to the contrary on July 30, 2015 by Judge Phillips, Judge Phillips fundamentally prejudiced the case and created the reasonable fear that Petitioner would never receive fair trial right from the outset of the Case Management Conference by claiming: “ I'm not here to question some other judge's order. You won't have me saying he was wrong. “

23. While this statement was in response to Creditor attorney Feaman questioning the Transfer to the North Branch, Judge Phillips determined from the outset and pre-judged Petitioner Bernstein's Petition for All Writs which sought to Void Judge Colin's Orders and declared him a necessary and material fact witness and further improperly prejudged all motions relating to the propriety of the prior Orders of Judge Colin.

24. Judge Phillips must be mandatorily disqualified on these grounds alone.

25. Yet Judge Phillips pre-judging, bias, prejudice and knowing misstatement of law and procedure in Florida went further saying,

“ If somebody made a mistake and you all think there's relief that should be granted to correct his mistake that's what the 4th is for. Please have a seat.”

26. The improper transfer to Phillips was already appealed at the Supreme Court of Florida by the Petition for All Writs at the time of the statement above and thus Phillips should have waited for a determination from the Supreme Court but did not and moved ahead.

27. It was only confirmed and discovered by Petitioner on Dec. 3, 2015 by Licensed attorney Peter Feaman that, contrary to Judge Phillips gross misstatement of law during the Sept. 15, 2015

Case Management Conference that Florida has Rule 1.540 that permits a Trial Judge to in fact void such orders.<sup>1</sup>

28. Further, the Florida Supreme Court has confirmed that Trial Courts and Judges in Florida have inherent power and authority to correct frauds in the court and preserve the integrity of proceedings.<sup>2</sup> Judge Phillips thus not only falsely represented his powers to a Pro Se party but could have simply brought up in Case Management if he wanted Eliot Bernstein to file a separate Stay despite the Stay request and Writs pending that Phillips said would be discussed or could have otherwise set a schedule for the filing and hearing of any motions regarding Judge Colin.

29. This Florida Supreme Court case makes it clear that “Finally, allegations of an attorney’s filing of fraudulent documents in connection with his or her client’s lawsuit would warrant a referral of that attorney to The Florida Bar for a possible violation of the Code of Professional Responsibility. See *id.* at 954 & n.2.” (emphasis added).<sup>3</sup>

30. The failure to take appropriate action as required by the Judicial Canons and Rules against attorneys Tescher & Spallina by Judge Colin is precisely one of the grounds upon why his Orders should be voided and yet Judge Phillips made it crystal clear from the outset at the Case Management Conference on Sept. 15, 2015 he would be taking no such action with Judge Colin and later goes on to compound the bias, prejudice and reasonable fear of not getting a fair trial when he professes his “love” for Judge Colin who is a material and fact witness as set forth above who should have his Orders voided.

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<sup>1</sup> See, [http://phonl.com/fl\\_law/rules/frcp/frcp1540.htm](http://phonl.com/fl_law/rules/frcp/frcp1540.htm)

<sup>2</sup> See, *Pino v the Bank of New York*, Feb. 2013, <http://www.floridasupremecourt.org/decisions/2013/sc11-697.pdf>

<sup>3</sup> See, <http://www.floridasupremecourt.org/decisions/2013/sc11-697.pdf>

31. The remainder of the Transcript makes it clear how Judge Phillips prejudged and pre-determined any claims of Petitioner Bernstein by improperly cutting off and denying any fair opportunity for Eliot Bernstein to be heard on any issue thus demonstrating bias and prejudice as a further basis to mandate Disqualification.

32. This is further compounded and egregious where Pro se Petitioner Bernstein was having to be the one to try and step up and notify Judge Phillips that even licensed attorney PR O'Connell deemed Ted Bernstein to be invalid yet O'Connell failed to do so even though it was O'Connell's office as PR in the Simon Bernstein Estate that brought the matter on to be heard before Phillips in the first instance in the Simon Bernstein Estate at the Case Management Conference of Sept. 15, 2015.

33. Instead, Judge Phillips commits even further egregious and knowing Due process violations by permitting Alan Rose who has been claimed by Feaman to have conflicts of interest ( not raised before Phillips but raised during Judge Colin's handling of the case ) and claimed by both Feaman and O'Connell to be representing a Trustee Ted Bernstein who isn't "valid" under the language of the trust that precludes him and yet Phillips denies Eliot Bernstein to be heard there and instead allows Alan Rose to co-opt O'Connell's Management Conference to Schedule a Trial in Shirley Bernstein's Trust case the instant case before this Court which was never Noticed to be Heard in the first instance denying due process both on the count of improper Notice and on a fair Opportunity to be heard.

34. Judge Phillips clearly knew he was in the Simon Bernstein case and Petitioner Bernstein and Attorney at Law Peter Feaman attempted to clarify the matter and thus Phillips knew what he was doing when he improperly noticed a Trial to be scheduled in Shirley Bernstein when the

case was noticed for Simon Bernstein and thus Judge Phillips failure to sua sponte correct the matter on his own motion is further proof of bias, prejudice and reasonable fear of the inability to obtain a fair trial all of which mandates that Judge Phillips must be mandatorily disqualified.

35. The net effect of the due process violations and knowingly improper conduct by Judge Phillips is to again Deny Petitioner Eliot Bernstein fair opportunity to be heard and to even have Trial Counsel similar to the fraud upon the Court committed by Labarga in the Proskauer Billing lawsuit where it is later shown to Judge Colin that Ted Bernstein's attorneys Tescher & Spallina involved in the fraud are intimately involved with the Proskauer firm in the Boca Raton, Florida community and Proskauer is directly involved in these estate and trust matters as well.

36. It was only recently discovered during the week on or about Dec. 1, 2015 that the 4th DCA denied Petitioner's Writs as "moot" when no possible legal determination could be properly determined on "mootness" for the Mandamus petition and voiding of Judge Colin's Orders and determination of Colin as a necessary and material fact witness nor could the application for a Stay and Injunctive relief be determined as "moot" bringing the case back to that portion of the Writ and Petition that was filed in the Florida Supreme Court as to the novel and important statewide issue of whether the State of Florida and Florida Courts can provide due process in the Eliot Bernstein family matters based upon inherent conflicts of interest and fraud upon the Court and by the Court.

37. Yet, despite the fact that the 4th DCA just ruled and a reasonable argument could be made that not only should Judge Colin's Order denying Creditor Stansbury out of the Shirley and Simon Estates and Trusts be "re-heard" filed by Feaman, Feaman could have reasonably determined that until the 4th DCA spoke on Petitioner Bernstein's Petitions, there was a

reasonable basis to hold off before Phillips on a motion to Stay and Disqualify as unless someone had improper “inside” knowledge of what the 4th DCA was going to do, the 4th DCA could have issued a Show Cause Order for the Writs to be responded to thereby creating the Stay of the lower court rendering action before Phillips unnecessary and moot yet it had been just discovered Dec. 3rd, 2015 that Feaman would not take any such action before Phillips leaving Eliot Bernstein standing alone pro se at an improperly scheduled trial before Phillips on Dec. 15th, 2015 even though Feaman’s client Creditor Stansbury has sued Ted Bernstein and Tescher and Spallina in their fiduciary capacities both in the Civil court of Judge Kelley and the Estate cases all further calling into question the integrity of proceedings before Phillips as a further basis to disqualify.

38. The Petition for All Writs brought up very serious actions in the case including but not limited to alleged fraud by the court, proven fraud and fraud on the court, beneficiaries, including allegations of fraud by the original Personal Representatives and Trustees, the attorneys Tescher & Spallina<sup>4</sup>, who were directly involved in the drafting of specific Trust and Estate documents directly at issue before Judge Phillips.

39. The Petition for All Writs further brought up that, not only has one of the direct employees who was under the direction, control and management of Attorneys Tescher & Spallina, a Paralegal-Notary named Kimberly Moran, Admitted to Criminal charges in her acts of forging and fraud in preparation of FIVE Notarizations on dispositive documents of likely beneficiaries and a sixth POST MORTEM forgery for Simon Bernstein in the case in documents

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<sup>4</sup> Tescher and Spallina have recently been charged by the Securities & Exchange Commission for charges of Insider Trading. See <http://www.wsj.com/articles/sec-charges-five-with-insider-trading-over-2011-gilead-deal-1443460420> and <http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf>

the law firm of Tescher & Spallina, P.A. **then fraudulently deposited** with the Palm Beach Court of Martin Colin and then later Attorney Spallina admitted to Palm Beach County Sheriff officers that he and his partner, Donald Tescher, Esq., further fraudulently altered a Shirley Bernstein trust document but also that Palm Beach County Probate Court Judge Martin Colin was a direct material and fact Witness to the fraud in and upon the Court and thus was mandated to Disqualify himself from the proceedings from the start and void his Orders, not simply issue a Recusal and thus further should have been a Witness for any Trial that Judge Phillips was trying to schedule although proceeding to improperly schedule the Trial in a case Not Noticed for the Case Management Conference.

40. Colin's Recusal came a day after denying his own Disqualification Motion filed by Eliot Bernstein seeking to strike and void entirely all Colin's Orders for the proven and multiple Frauds on the Court that have occurred and reset the case and replace all parties involved in the Frauds, including but not limited to, counsel, courts officials and court appointed fiduciaries involved or potentially involved with the prior frauds and frauds on the court in the cases. As Colin interfered and steered the transfer of the cases to the North District and ultimately Phillips after his recusal, this would be cause to reset the whole jurisdiction and transfer and further brought up the improprieties of Judge Phillips even acting at the Case Management Conference in the first instance by the improper Transfer by Colin, yet all of this was pre-judged and pre-determined by Phillips demonstrating bias, prejudice, lack of impartiality and denying due process.

41. In fact, the precise circumstances of the "Recusal" and Transfer of this case leading to Judge John L. Phillips presiding was brought up and pending before the Florida Supreme Court



at the time of the Case Management Conference of Sept. 15, 2015 and had been pending at all times Judge John L. Phillips has presided in this case.

42. In fact, proceeding without determination of the transfer issues raised in the All Writ Petition further denies due process, allegedly continues a fraud on the court and continues to cause waste, fraud and abuse for all parties and for all of the following reasons:

a. As noted in the Petition for All Writs, not only is Mandamus sought to force Judge Colin to issue a mandatory Disqualification in this case, not a Recusal, but further seeks Prohibition as Judge Colin, upon receiving the last motion for Disqualification on or about May 14, 2015, initially Denies the motion as insufficient and then, within 24 hours or less Sua Sponte “recuses” himself and afterwards proceeds to have “conversations” with other Judges in the Palm Beach Court Southern District interfering with the transfer process, in a case where Colin was already Petitioned to be a Material Fact Witness in the Fraud upon his Court and alleged fraud involving him directly as part of a larger Fraud by the Court. Colin’s Order and actions steer the case to the North District where the cases first ended up before one Judge Coates who ultimately at the first hearing, after denying any conflict with Petitioner, he suddenly Sua Sponte recused himself for multiple conflicts that should have precluded his involvement and mandated his mandatory disqualification before a hearing was even scheduled (wasting more time and costs of 5-10 attorneys who attended) and sending the cases before Judge John L. Phillips. It should be noted that this improper acceptance of the cases by Coates gave Coates and Proskauer (a counter defendant) highly privileged access to court records of Colin before the Sua Sponte recusal based on his inability to deny his conflicts he had concealed in taking the cases.

b. That Eliot Petitioned in the All Writ that Colin in fact allegedly knowingly transferred the case to Coates to give Proskauer Rose the confidential court files for their use in the matters they are involved in and giving them unfair advantage and knowing after gaining access to the files Coates would be forced out by his conflicts with Eliot and Iviewit. It should be noted that North District is the furthest courthouse approx 20-30 miles traveled for all parties involved, including 5-10 attorneys per hearing, fueling even more estate waste fraud and abuse as those attorney all have offices minutes away from the Palm Beach Main Courthouse.

c. Judge Coates also is alleged to maintain an interest in the Iviewit Companies as Proskauer Rose the law firm was a direct shareholder in the companies involved and where these companies and the Intellectual Properties which are suspended at the USPTO and are still under ongoing investigations and legal actions that directly implicate Proskauer and its partners, associates, of counsel et al.

d. Ironically enough, the first Judge where this case was steered by Judge Martin Colin's direct involvement while he was knowingly claimed to be a material and fact witness happens to be Judge Coates who just happened to not only turn out to formerly be a Partner at Proskauer Rose but who was reminded at the only appearance of this case in his Court in July of 2015 that Judge Coates was personally known to Eliot I. Bernstein as having worked at a Proskauer office right "across the hall" from their client Eliot I. Bernstein and the Iviewit companies in Boca Raton, Florida where some of the original Thefts of the Technology rights and inventions were occurring at the time and that his former firm Proskauer was not only conflicted in these matters but also was a Counter Defendant in the very matters before him that he was adjudicating upon.

e. Judge Coates ultimately recused himself on his own initiative from all of the cases herein although one case out of six, appears to have mistakenly not had a Recusal Order issued presently.

f. That it is alleged that the intended party that Colin may have intended to steer the cases to all along was Judge Phillips, as it is suspected Colin knew that Judge Coates was a former Proskauer Rose partner and that Eliot had included Proskauer in the Estate Cases before him now as Counter Defendants in certain actions in these matters and that Eliot had sued Proskauer previously and was pursuing them currently in other federal civil and criminal actions ongoing.

g. Further, the Petition for All Writs brought up whether the State of Florida Courts, presently headed by Chief Judge Jorge Labarga, can even be a fair and proper jurisdiction to hear any of these matters for a variety of reasons including but not limited to Judge Labarga's direct involvement in a prior case involving False Billing and Fraudulent Patent Applications filed in part by the international law firm of Proskauer Rose (where Judge Coates worked) involving Eliot I. Bernstein and his father Simon's Intellectual Property rights valued by Leading Experts in the digital video and imaging fields as worth Billions.

h. Moreover, the Petition for All Writs brought up for review and petitions and pleads making it clear that Eliot I. Bernstein seeks as relief the Vacating and Voiding of All Orders of Judge Martin Colin certainly at least from the time when he became a material and fact witness to the fraudulent dispositive documents being filed by Officers of the Court from the Tescher & Spallina law firm in Colin's court that were used to

illegally seize dominion and control of the Estates and Trusts fiduciary capacities, illegally alter beneficiaries and loot the Estates and Trusts of Simon and Shirley Bernstein of millions of dollars and yet despite a mandatory disqualification on his own initiative as proscribed by judicial cannon and statute continued to adjudicate outside the color of law. Colin then denied motions to voluntarily disqualify himself filed by Eliot.

i. For Phillips to act on Colin's prior Orders, as he does, without first knowing if the Orders of Colin will be stricken, "putting the cart before the horse," again causes fraud, waste and abuse of the Court and all parties time and monies, especially if the Colin Orders are stricken and all actions must then be reversed.

j. The All Writs Petition made it clear that under law Eliot I. Bernstein has the right to seek challenge, voiding and vacating of any such Orders in all jurisdictions where Fraud Upon the Court has occurred.

k. Yet, while the Petition for All Writs was first filed and pending ( and remains pending ) at the Florida Supreme Court, the current PR of Simon Bernstein's Estate Brian O'Connell's office filed prematurely to bring the cases onto the docket before Judge John L. Phillips for a Conference to set a schedule for other conferences and hearings to be held although PR O'Connell's office did not file or propose any Order for which motions and hearings should be held and this first appearance occurred before Judge John L. Phillips on or about July 30, 2015.

l. Approximately 7-8 lawyers for other parties appeared and Eliot I. Bernstein appeared in person at this first appearance before Judge John L. Phillips on July 30, 2015 and while Judge Phillips himself took No Notice or Acknowledgement on

his own action of the pending Petition for All Writs at the Florida Supreme Court in this case where hundreds of millions of dollars and properties are alleged to have been looted and illegally distributed, where admissions of crimes have already occurred in the filings before the Court, where murder has been alleged by Ted Bernstein to state authorities, Judge John L. Phillips did at least say twice on the Record during this first appearance when Eliot I. Bernstein brought up the pending Petition for All Writs that this Petition would be addressed at the next Court appearance and ultimately the parties were directed to work amongst themselves to arrive at a proposed schedule to hear matters by the next appearance.

m. Despite this direction by the Court and despite the fact that it was the PR of Simon Bernstein's Estate Brian O'Connell's office who had called for the original conference before Judge Phillips, on the *eve of the night before the second appearance on September 15, 2015 and after close of business hours at 5:18pm* no proposed Schedule had been made by the PR Brian O'Connell but instead attorney Alan Rose, attorney for alleged successor Trustee Ted Bernstein who is a business partner with Attorneys Tescher & Spallina and Ted's prior counsel who are at the center of the fraud upon the Court, proceeded to file an *after hours after close of business filing* with Judge John L. Phillips seeking to completely re-do and change the Schedule for the next morning to now be a schedule to attack and attempt to neutralize Eliot and appoint Guardians for Eliot Bernstein's children and Eliot Bernstein where no pleading for such had been made.

n. The Exhibit has material misrepresentations of case information and attempts to shift the court's focus from rectifying and dealing with the fraud on the court

and other frauds on beneficiaries to an assault of Slanderous and Defamatory information and case twisting to portray Petitioner Eliot as a cause of the problems in the matter and attempt to annihilate his and his children's rights and Judge Phillips held the hearing threatening contempt to Eliot and searching to see if there were guardianship pleadings regarding Eliot. Some of the key points of misrepresentation by Rose to Phillips are as follows:

o. The TRUSTEE'S OMNIBUS STATUS REPORT AND REQUEST FOR CASE MANAGEMENT CONFERENCE starts as follows,

“The overarching issue in these cases is Eliot Bernstein. He is not named as a beneficiary of anything; yet he alone has derailed these proceedings for more than two years and has harassed and attacked the prior judges, fiduciaries and their counsel.”

i. That in fact, Ted Bernstein and his clients, business partners and Attorneys at Law, Tescher and Spallina and their co conspirators, Alan B. Rose, Esq. and approximately six other lawyers who have all resigned due to irreconcilable differences with Ted after the Law Firm Tescher & Spallina, PA was found to have COMMITTED A FRAUD ON THE COURT AND FRAUD ON THE BENEFICIARIES, which has derailed with intent the proceedings and inheritances and cost the injured parties millions more while the fraud was NOT LEGALLY remedied by Judge Colin but instead carefully and craftily continued. That the crimes were uncovered, prosecuted in part and led to arrest, all due to the efforts of Eliot Bernstein and where Alan Rose is a central suspect in the alleged crimes under ongoing investigations, has numerous

conflicts and adverse interests (also a counter defendant in the matters at hand) and so one can see how he tries to twist the truth to a new Judge Phillips.

ii. If Judge Phillips had reviewed the record and determined who and why the hearings were held and who caused problems with the Estates and Trusts by committing FELONY CRIMINAL ACTS, he would have noticed that Eliot only reported the crimes. The costs incurred by all Beneficiaries, Creditors, Interested Parties, the courts, etc. are wholly attributable to Ted Bernstein and his minion of attorneys at law who have tried to defend the criminal acts done, attorneys at law, Donald Tescher, Robert Spallina, Alan B. Rose, et al. This toxic pleading by Rose should have led to sanctions by Judge Phillips for wholly distorting the record.

iii. The second sentence of the TRUSTEE'S OMNIBUS STATUS REPORT AND REQUEST FOR CASE MANAGEMENT CONFERENCE filing of Rose states,

“With regard to Judge Colin's final action before recusing himself, Eliot's delay of the Trust's sale of real estate is going on six months, and already his objections and "appeal" to the Florida Supreme Court have cost the Trust more than \$125,000. These sums are not insignificant in this case – these are relatively small trusts and estates which likely will have between \$1 million to \$2 million left to distribute in the end. Even less with every billable hour incurred, especially if things continue on their current path.”

Wherein the delay in sale of real property again stems from a court order whereby it was found that Alan Rose and Ted Bernstein had failed to notify beneficiaries and interested parties of the sale of Simon's home in an undisclosed transaction with undisclosed terms and conditions of the sale and Judge Colin ceased the proposed sale. Again costs incurred by the failure of the fiduciary and his counsel to follow probate rules and statutes. Rose's estimation for a value of the Estates and Trusts years after the decedents deaths exhibits another glaring violation of probate rules and statutes by the alleged fiduciary Ted Bernstein and the former fiduciaries in that NO ACCOUNTINGS have been provided for Shirley's Trust and in Simon Trust, accounting does not start with an opening balance done after the decedent's death for over two years and the prior accountings by Tescher and Spallina that were required upon their removal for fraud and more were never done and never requested by Ted in violation of probate rules and statutes and accounting rules.

p. The next sentence is wholly false, whereby Rose states,

“For reasons which will become apparent to the Court, although these matters should be fully concluded by now – Shirley died first, nearly five years ago, and Simon followed nearly three years ago – it feels like we still are closer to the starting line than the finish line. **The sole reason [emphasis added]** for the lack of progress is their disinherited son, Eliot Bernstein.”

First off Eliot is not a disinherited son by Shirley Bernstein as when she died the Eliot Bernstein Family Trust was a one-third beneficiary of the Shirley Trust, which became irrevocable upon her death and only due to the frauds proven and alleged and through fraudulent documents submitted in the matters to the



courts and others, the beneficiaries have come into question, the fiduciaries are in question, as well as the validity of the dispositive documents. Where the Governor Rick Scott has already found that documents attempting to disinherit Eliot in Simon case, a Will and Amended Trust allegedly signed 48 days prior to Simon's death, are again improperly notarized and the Governor's office has taken action against another notary in these matters and the documents are still being investigated as wholly fraudulent. Alan Rose is knowledgeable of these crimes of his colleagues Tescher and Spallina and Ted who recruited him and yet attempts to spin the truth to the newly appointed Judge Phillips in efforts to hide and conceal the fraud and the true cause of why the matter is before him and Phillips claiming he is "stupid" in the hearing acts as if he has read nothing in the docket and goes along with Rose's story, precluding Eliot from responding to the wholly false claims.

q. The next statement in Rose's diatribe of lies reads,

"If the Court were to appoint a guardian ad litem ("Guardian") for Eliot's three kids, who are beneficiaries of both trusts, everything else could be resolved quickly and easily between the remaining parties. Instead, while Eliot continues to turn the courtroom into his private circus and continues his online attacks, the limited assets in these estates and trusts continue to dwindle. This has been going on far too long, and now that this Court is overseeing these matters, 1 Eliot must be stopped before it is too late to salvage anything for the beneficiaries."

Rose fails to mention to this Court and in fact lies at the second hearing and states there have been no guardianship pleadings in the Simon and Shirley cases for a Guardian, where he is fully cognizant he filed and had heard a

guardianship hearing and was denied by Judge Colin as there was absolutely no basis for a guardian as already exhibited herein. From the hearing transcript Rose states,

10 THE COURT: Is there a motion for  
11 appointment of a GAL? Has a motion been filed  
12 by someone?

13 MR. ROSE: I think the -- my understanding  
14 is the beneficiaries were about to file one. I  
15 don't think they filed yet. There is a pending  
16 motion to appoint an attorney for the children.  
17 It's sort of a similar issue. Maybe  
18 Mr. O'Connell can -- it's on one of his lists  
19 of motions.

...

14 THE COURT: Okay. Great. This is the way  
15 I intend to proceed -- I love Marty Colin.  
16 This guy is a judge that's been around a long  
17 time. I know him. He's an entirely different  
18 guy than me. I expect that your experience  
19 with Judge Colin has been different than  
20 sitting here with me. Am I right? I never  
21 appeared in front of him as a judge -- I never  
22 appeared in front of him while he's a judge and  
23 while I was a lawyer. He appeared in front of  
24 me while he was a lawyer and I was a judge. I  
25 don't know how he is as a judge but I am pretty

1 sure he's a different guy than me. Nice guy.  
2 I like him. But we're different judges. Your  
3 experiences with Judge Colin, put them aside.  
4 You're having an experience with me now. We  
5 have to do it the way I do it or else I'll mess  
6 up.

7 The second thing I have on my list of  
8 things to ask you about that I've been jotting  
9 down here is this request for guardian ad  
10 litem. I think I remember asking and being  
11 told that no one has filed a formal request for  
12 appointment of a guardian ad litem; is that  
13 correct?

14 MR. O'CONNELL: Correct.

15 **MR. ROSE: In these four cases no one has**  
16 **done that yet.**

43. One look at the docket and the court could see that multiple attempts have been made by Rose et al. to try and gain guardianship and have failed repeatedly. Further, Eliot's children are not beneficiaries under the Shirley Bernstein Trust as of the date December 08, 2010 when it became irrevocable with Ted Bernstein, Pamela Bernstein Simon and their lineal descendants considered predeceased for all purposes of the Shirley Trust. Per Robert Spallina who drafted the documents, when under interrogation by Palm Beach County Sheriff officers stated,

“SPALLINA REITERATED THAT HER DOCUMENTS READ THAT UPON SIMON'S DEATH, EVERYTHING (HER ASSETS) WENT TO JILL, LISA, AND ELIOT.” Further Spallina states, “HE SAID SIMON TOLD HIM THAT HE WANTED TO MAKE THE NECESSARY CHANGES TO HAVE BOTH TRUSTS READ THAT THE 10 GRANDCHILDREN WERE THE BENEFICIARIES. HE TOLD ME THAT HE TOLD SIMON (SI AS HE CALLS HIM) THAT HE COULD NOT MAKE THOSE CHANGES TO SHIRLEY'S TRUST BECAUSE SHE HAD WROTE TED AND PAM AND THEIR CHILDREN AS PREDECEASED IN HER TRUST. SPALLINA REITERATED THAT SIMON CAN DO WHATEVER HE WANTS WITH HIS ESTATE, BUT ALL HE CAN DO WITH SHIRLEY'S TRUST IS GIVE IT TO LISA, JILL, AND ELIOT'S CHILDREN.”

44. Yet, Alan Rose continues to attempt to perpetrate this Fraud on the Court that Eliot is not a beneficiary in efforts to try and eliminate Eliot, the bane of his existence, in part why he can no longer represent parties other than himself as a Counter Defendant and also due to his direct involvement in continuing the fraud through toxic vexatious slanderous filings and continued fraud upon the court and beneficiaries.

45. That Eliot had tried at the first hearing and at the second hearing of Phillips to put forth an order for case management into the record but Judge Phillips repeatedly denied his efforts, chastising him for speaking, threatening contempt and other bantering of Eliot to deny his rights and precluding his statement from the record. The statement was as follows:

**PETITIONER'S STATEMENT ABOUT WHAT SHOULD HAVE HAPPENED AT  
STATUS CONFERENCE - ORDER FOR HEARINGS IF DUE PROCESS WAS  
AFFORDED**

1. Determine Non Conflicted Venue – Federal/State, if Federal transfer cases to Federal Court, all of them, Simon Estate has already intervened and been accepted in the Federal Court under Judge Robert Blakey, if State with Federal Monitor oversight to restrict further state run fraud on the court.
2. Reset all probate/trust cases due to Fraud on the Court and Fraud by the Court as prescribed by law and strike all previous orders, remove invalid pleadings filed by parties involved in the fraud on the court and fraud on the beneficiaries et al.
3. Remove all parties involved directly or retained by any party involved in the prior fraud on the court, including but not limited to Alan B. Rose, Esq. and Ted S. Bernstein both directly involved and benefiting from the prior fraud on the court and Upon information and belief, Judge John L. Phillips is a Palm Beach County Judge sitting in the North Branch acting as a Probate Judge herein.
4. Remove all cases out of Palm Beach county, possibly state, perhaps have judge from other state or fed monitor of state court hear proceedings to parse the multiple conflicts.
5. Return ALL assets and personal properties of Simon and Shirley Bernstein to the court, including home and condo sold and any other tangible personal property or distributions made.
6. Have Spallina Tescher et al. involved in the fraud return all fees and put up bonding or other sources of funding for Court costs, attorney fees for innocent injured parties from the fraud now necessitating these legal costs and to fund for independent forensic document examination and forensic accountings caused by their intentional interference with expectancies and causing adversity and turmoil between parties.
7. Immediate court ordered production of all parties involved in the fraud of all documents, accounts, records of any sort, including the courts records, all certified, including but not limited to:
8. Depositions, Interrogatories, etc. paid for by bad actors.
9. As Tescher and Spallina have provide upon their COURT ORDERED production of records after the court learned of their admitted fraudulent alteration of a Shirley Trust document to Palm Beach County Sheriff investigators, NO original documents, including but not limited to, all the Dispositive Documents they alleged to have executed with Simon and Shirley, the court should immediately seize all of their records and demand the original documents. It is alleged that virtually all of the records (approximately 9000 pages) of production produced by Tescher and Spallina are fraudulent and were carefully crafted for months after their law firm was found committing fraud on the court and fraud on

the beneficiaries to try and cover up their crimes further. It should be noted in the first hearing before Judge Colin, when he infamously stated that he had enough evidence at that time to read attorneys at law and fiduciaries Tescher and Spallina and their client, alleged fiduciary Ted Bernstein, their Miranda warnings, that attorney Spallina stated after admitting that documents had been submitted to the Court and others that were fraudulently notarized, including Post Mortem for Simon, that he knew of nothing else in the cases wrong at the time or done fraudulently. Yet several months later, while being investigated by Palm Beach County Sheriff investigators admitted to fraudulently altering himself, after discussions with his partner Donald R. Tescher, Esq, a Shirley Trust document. This concealment of the truth, along with Colin's allowing attorneys and fiduciaries involved in the original fraudulent activity to continue, turned into almost two years of proceedings attempting to demonize Eliot Bernstein as the cause and seek guardians and contempt proceedings and more, all bleeding the Estates and Trusts in court costs and attorney fees with scienter.

10. All of Simon Bernstein's business records and properties remain missing and unaccounted for and must be returned to the Court and distributed to the beneficiaries, fiduciaries and interested parties for examination.

11. Parties needing to produce all records and assets at this time, include but are not limited to, Alan B. Rose, Ted Bernstein, Gerald Lewin, Proskauer Rose LLP, Foley & Lardner LLP (including Hopkins Sutter documents acquired by Foley & Lardner ) Steven Lessne, Esq., Brian O'Connell, Esq., Judge Martin Colin, Judge David French, Judge Howard Coates, Judge John Phillips, Steven Greenwald, Esq., Traci Kratish, Esq., Oppenheimer Trust Company of New Jersey, Oppenheimer Trust Company of Delaware, JP Morgan, Heritage Union Life Insurance Company and all successors, LaSalle National Trust Company and others.

12. The Court must demand untampered with, signed and verified IRS certified tax returns for Simon and Shirley including for all companies owned, trusts, etc.

13. Distribute immediate Emergency funds to Eliot and his family who have been harmed for three years with no caveats attached to the funds other than to be reduced fairly when beneficiaries are determined and construction hearings completed.

14. Hold hearings to remove Ted Bernstein, Alan Rose, Esq. and John Morrissey, Esq. as Fiduciaries and/or Counsel.

15. Hold Will and Trust Construction hearings after hearings to remove Ted, as it would be wasteful to everyone to hold construction hearings where fiduciaries with adverse interests and conflicts are allowed to argue before the court and pervert the record and then have to overturn such rulings and proceedings conducted with fraudulent fiduciaries and counsel acting in violation of law and ethics rules.

16. Have hearings to determine new successor trustees. Corporate Trustee with Eliot as a Co-trustee to save legal costs by accessing records that have been suppressed and insure no further fraud occurs).
17. Determine Authenticity.
18. Determine Beneficiaries.

#### **OTHER ISSUES REQUIRING DISQUALIFICATION**

46. That Alan Rose, Esq. denied to Judge Phillips that guardian pleadings for Eliot and his children were filed in the Court when it was approximately year earlier where Alan Rose argued his own pleading for guardianship which was denied by the Court on August 20, 2014, with the court claiming, "In addition, to the extent that it would be necessary, the Court waives any requirement for the appointment of a guardian ad litem and further finds that, in respect to the Agreement and this Order, the Agreement is in the best interests of the minor children and that Eliot and Candice Bernstein adequately represent the interests of their minor children." It should be noted that Alan Rose and Ted Bernstein then went on to violate this Court order to pay for three minor children's school tuition that was court ordered and all three children were without notice removed from school after the second day when the Trustee Ted and his counsel Alan Rose failed to comply with the Order leading to massive damages to the children in their school futures.

47. This second appearance before Judge Phillips also generating fees for approximately 5-7 attorneys, all having to drive over 40 miles and all wasting time and money for a third hearing in approximately four months to achieve nothing but churning of legal bills and scheduling a hearing in a different case than was scheduled for hearing.

48. Sure enough, the next morning before Judge John L. Phillips, Judge Phillips proceeds to allow attorney Alan Rose to take over the schedule and course of proceedings despite the fact

that not only did his filing come after close of business hours the night before but also despite the fact that 2 other Florida licensed attorneys, the PR Brian O'Connell of the Estate of Simon Bernstein and attorney Peter Feaman for a Creditor William Stansbury who is suing Ted Bernstein and the Estate both agreed that the first Order of business should be a hearing to remove Ted Bernstein as an alleged Trustee and both had already filed motions before Judge Colin showing that Ted Bernstein is not properly acting as a Trustee and that he and his counsel Rose were alleged to be violating ethical cannons and fiduciary duties, yet Phillips ignored this information and moved in favor of Rose's request.

49. This last minute after close of business hours filing by Alan Rose and Judge Phillips conduct in permitting this after hours business filing to take over the case that day on September 15, 2015 under the circumstances and history of this case is sufficient to demonstrate lack of impartiality, bias and prejudice against Eliot I. Bernstein and a reasonable fear that he will not receive a fair trial before Judge Phillips sufficient to mandate Disqualification by Judge Phillips itself.

50. Still, the express words and conduct of Judge Phillips itself during this appearance culminating in the Order issued September 24, 2015 further provide the factual basis to mandate the Disqualification of Judge John L. Phillips since a careful and proper review of said Audio transcripts of said proceeding (it is presumed that Judge Phillips recorded the hearings as is his typical practice) will demonstrate notable bias and prejudice toward Eliot I. Bernstein creating the reasonable fear that he can not receive a fair trial before Judge Phillips.

51. It is noted that Candice Bernstein, wife of Eliot Bernstein, contacted the Court of Judge John L. Phillips the day after this appearance on or about Sept. 16\_, 2015 to determine how to

obtain an audio transcript and yet over 10 days later, neither Candice nor Eliot Bernstein have heard back from the Court of Judge Phillips in this request further demonstrating bias, prejudice and lack of impartiality and creating the reasonable fear that a fair trial can not occur before Judge Phillips and thus mandating Disqualification.

52. At the time of this second appearance before Judge John L. Phillips on Sept. 15, 2015, at no time anytime during this appearance did Judge Phillips even acknowledge the pending Petition for All Writs at the Florida Supreme Court which brings up very serious alleged criminal acts, fraudulent acts, acts showing Judge Colin as a material and fact witness, acts implicating the validity of ALL orders of Judge Colin, acts calling into question Chief Judge LaBarga himself, acts calling into question the transfer of the cases to Judge Phillips himself as the intended receipt of the cases through Colin's direct interference Post Recusal and whether as a matter of fundamental US Constitutional Due Process the Florida Courts can even be a proper jurisdiction to hear these cases and yet not only does Judge John L. Phillips wholly disregard this petition as if it did not even exist, but further acts with express words and conduct to deny and cut off and deprive Eliot I. Bernstein's fair Opportunity to be heard due process rights throughout the proceeding this day.

53. That at the second hearing, while demanding the scheduling of a hearing in a different case, Phillips requested the parties to identify how much time a Shirley Trust construction would take. When Rose stated it would take a day, Eliot Bernstein objected and stated that additional time of a day or two would be required as it would have to first entail a hearing to remove Ted Bernstein as Trustee first, as is allowed under Florida Probate Statute for a Trust Construction but Phillips again rudely cut off Eliot's request and moved forward scheduling only a day for the Trust Construction to be heard. The problem for Ted and Rose, also ignored by Judge Phillips is



that if Ted is not a valid Trustee as claimed by the PR and others how can he conduct further hearings and further, if the outcome of the Trust Construction does not come out as intended by Rose, Ted Bernstein and his lineal descendants will receive nothing and thus Ted cannot impartially represent the trust when his own pecuniary interest is at stake, creating an imparsable conflict of interest that makes him have adverse interests to certain alleged beneficiaries.

54. That at the second hearing scheduling conference Judge Phillips denied to hear a Petition for Attorney fees to be paid by the Estate for Eliot and his minor children beneficiaries, where the need for legal representation is a direct cause of proven frauds of on the court and the beneficiaries by the prior removed fiduciaries Tescher and Spallina and the current alleged fiduciary Ted Bernstein and then instead of providing payment for counsel, scheduled the trust construction hearing whereby Judge Phillips knew Eliot and his minor children would be deprived counsel at the hearing. Where Judge Phillips should have seen the need for counsel caused by the fraud which force trust construction and validity hearings on the victims and ordered those who directly caused the disputes through fraudulently altering the dispositive documents in the matters and causing the need for counsel now to post bonding or other remedies to cover such costs and not order the Estate to pay them further harming the beneficiaries.

55. These actions here not only demonstrate the lack of impartiality of Judge Phillips but further the competency of this Judge, both which mandate Disqualification.

56. Judge Phillips knew and should have known that due process is a fundamental US Constitutional right and the fair Opportunity to be heard is a part of that right.

57. Judge Phillips knew and should have known that a Petition such as the Petition for All Writs which calls up for review the fundamental fairness of the Florida Courts to act in these cases is central to any ability to move the case forward in his Court.

58. Yet without deciding, determining, or even acknowledging these Petitions by Eliot I. Bernstein, and the seriousness of the claims made, Judge Phillips not only denies Eliot Bernstein the fair opportunity to be heard by cutting him off repeatedly and not providing a fair opportunity but instead Judge Phillips goes even further making the fatal error of proclaiming actual “Love” for Judge Martin Colin, such that Judge Phillips proclaims his “Love” for Judge Martin Colin twice on the record without ever acknowledging, hearing, deciding or determining whether Colin is a Material Fact Witness or a participant in the Fraud In his Court, without permitting Eliot Bernstein the fair opportunity to be heard to proclaim that Judge Colin is a material and fact witness and instead Judge Phillips permits the attorney for Ted Bernstein, Alan B. Rose, Esq. who is at the center of the fraud with Tescher & Spallina to take over the proceedings, not even having the PR Brian O’Connell be heard who was the attorney who first Noticed the Conference that lead to this appearance in the first instance.

59. As pointed out in the Petition for All Writs pending with the Florida Supreme Court, Judge Martin Colin somehow had allowed attorneys Tescher & Spallina as well as alleged Trustee Ted Bernstein to Not provide any Accounting in the cases of the Simon and Shirley Bernstein Trusts for YEARS, violating Probate Rules and Statutes, despite being notified expressly by an Emergency filing made by Eliot I. Bernstein in May of 2015 detailing various acts of fraud and wrongdoing upon the court and before the Court in an Estate that should be worth in the millions, may in fact be worth be billions but somehow has been depleted to perhaps

\$2 million or less at this time without Accountings or accountability by fiduciaries and attorneys at law moving in fraud.

60. Proskauer Rose also was involved in prior Estate Planning for Simon Bernstein who was a 30% shareholder in the Iviewit Technologies and now where current alleged Trustee Ted Bernstein alleged on the night of Simon Bernstein's passing that this may be "murder" and called with others for a Sheriff's investigation and Coroner's investigation claiming Simon's girlfriend may have poisoned him.

61. Estate Planning was done at great expense to Simon and Eliot by Proskauer in addition to the Intellectual Property work, as Proskauer felt it was best to distribute the stock of the Iviewit companies into irrevocable trusts created for their children while the stock was at a relatively low value after seed investments, including from Wayne Huizenga and other institutional investors, the company had a Private Placement Memo with Wachovia, contracts with Fortune 100 companies for licensing of the IP and had Goldman Sachs preparing to go IPO at the height of the internet boom before the controlled bust, where it was anticipated the stock price would skyrocket. The intellectual properties being backbone technologies now power over 90% of internet transmissions. With the stocks transferred pre-IPO the growth would grow in the children of Eliot and Simon and skip taxes on the growth and transfer of the stocks that occur if it was done post-IPO, therefore the estate plans were being rushed as things were moving light speed toward IPO and Simon prepared plans as did Eliot for his children. Further bias, prejudice, lack of impartiality and a reasonable fear that a fair trial can not be held is demonstrated by Judge Phillips issuing the Order for Construction the Shirley Bernstein Trust case, which case and pleadings were not Noticed to be Heard at the second hearing as it was a hearing in the Simon Bernstein Estate and when Eliot Bernstein attempted to clarify the matter

and set straight the case being heard before the court that day the bias and prejudice was further exaggerated by Judge Phillips repeatedly denying Eliot I. Bernstein fair opportunity to be heard to even clarify on the Record which Case Judge Phillips was even discussing and issuing Orders under.

62. Due process requires fair notice and an opportunity to be heard. The Shirley Bernstein Trust case was not Noticed for hearing at the time of the appearance in Simon's Estate case noticed by the PR Brian O'Connell and the resulting VOID Order was issued on a pleading in the Shirley Trust case.

63. The Order issued by Judge Phillips in a case Not noticed to be heard and denying opportunity to even clarify on the record all the while disregarding any of the fundamental due process issues raised in the Petition for All Writs embodies all the grounds that mandate disqualification at this time particularly where the "rush" to Schedule a Trial in a case Not Noticed for Case Management specifically disregarded the outstanding Orders of Judge Colin for Tescher and Spallina to turn over all originals to the successor PR and yet the Trial proceeded to be scheduled without determination of Production and Discovery, without determination of proper Witnesses, without determination of the need for Experts in a case where clear document fraud and fraud upon the Court had already been admitted and proven.

64. Attorney at Law and new PR O'Connell has already Petitioned the Court that Ted is invalid as Trustee under the terms of the Trust and Attorney at Law Peter Feaman for the creditor William Stansbury has made a written statement entered into the court record that Ted and Alan Rose should be removed and are acting improperly in the Federal Insurance Case under Judge John Robert Blakey involving the Estate of Simon and more and yet Phillips in the second

hearing held by him allows Alan Rose to run the hearing scheduled by the PR O'Connell who virtually says nothing on the record and turn the hearing into a discussion about Shirley Bernstein's trust and schedule with Phillips a hearing for trust construction in Shirley's Trust which Rose was petitioning for without proper notice.

65. Rose also attempts to schedule a hearing to have a guardian placed on Eliot Bernstein and his children. where no motion was filed for such guardianship and no notice of hearing was scheduled for one and where Rose when asked by Phillips if a motion for guardianship had been filed, stated one had not been filed and factually failed to Disclose that in a prior Hearing for guardianship Rose was denied a Guardian motion for Eliot Bernstein and his children a year earlier on the same flawed logic he claimed to Phillips.

66. Judge Phillips must mandatorily be disqualified as his impartiality is reasonably questioned on multiple grounds as further set forth herein including but not limited to his "pre-judging" and "pre-determination" in the case that he would not do anything to find Judge Colin "wrong" prior to Petitioner even being heard on Sept. 15, 2015, further based upon Judge Phillips professed "love" for Judge Colin who is a necessary and material fact witness, for his due process violations in Ordering a Trial in Shirley Bernstein's Estate when the Conference was only "Noticed" for Simon Bernstein's Estate and for other grounds as set forth herein.

67. Judge Phillips impartiality is challenged as despite now being a material and fact witness in the matter, he did not clarify or rectify this matter first before determining if he could adjudicate, or allow the Florida Supreme Court to determine if the Colin transfer was improper, before taking ANY judicial action in the matters.

68. Instead, Judge John L. Phillips began acting in the matters and in fact held two hearings, including issuing an Order on Sept. 24, 2015 thereby scheduling a Trial date of December 15, 2015 on a claim for construction filed by Attorney Alan B. Rose, Esq. on behalf of an alleged trustee Ted Bernstein and further enforcing a prior Stay Order of Judge Martin Colin who was petitioned for mandatory Disqualification by Eliot I. Bernstein as a material and fact witness to fraud in the Court, upon the Court and potentially by the Court and further that this Order by Judge John L. Phillips was issued despite the pendency of a Petition for All Writs at the Supreme Court of Florida seeking Mandamus and Prohibition in relation to the conduct of Judge Martin Colin and further seeking injunctive relief and other redress.<sup>5</sup>

69. Judge John L. Phillips, both by express words, conduct and by omission has committed acts that mandate Disqualification since the judge's impartiality might reasonably be questioned in this proceeding as defined herein.

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<sup>5</sup> See Petition for All Writs by Eliot I. Bernstein @ See All Writ Filed with the Florida Supreme Court @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150609%20FINAL%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20Disqualification%20ECF%20STAMPED%20COPY.pdf>

and

See Amended All Writ Filed with the Florida Supreme Court @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150630%20FINAL%20REDO%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20Disqualification%20ECF%20STAMPED%20COPY.pdf>

and

See VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR IMMEDIATE DISQUALIFICATION OF JUDGE MARTIN COLIN @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin>

and

Colin Order Denying Disqualification @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150518ORDERDenyingDisqualificationColin.pdf>

and

See Colin Sua Sponte Recusals @

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150519%20Colin%20Recusals%20Clerk%20Reassigns.pdf>

**CANON 3E(1)(a) - ...the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding.**

70. Judge John L. Phillips is further mandated to be Disqualified again both by express words, conduct and by omissions demonstrating bias and prejudice against Eliot I. Bernstein, a party in this proceeding as defined herein.

**CANON 3E(1)(d)(iv) - ...the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person: (iv) is to the judge's knowledge likely to be a material witness in the proceeding;**

71. As already stated above Judge Phillips has knowledge that he is likely to be a material and fact witness in the improper Transfer of the case by Judge Colin and should have disqualified on that ground alone.

72. For the reasons set forth herein, Florida Probate Judge John L. Phillips must be mandatorily disqualified from this case and all related cases under the US and State Constitution. Disqualification is mandatory under Florida Rule of Judicial Administration Rule 2.330 and Florida Statute 38.10.

73. In 1994, the U.S. Supreme Court held that "Disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified." *Liteky v. U.S.*, 114 S.Ct. 1147, 1162 (1994). Positive proof of the partiality of a judge is not a requirement, only the appearance of partiality. *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988); *Levine v. United States*, 362 U.S. 610 (1960);

74. Should a judge not disqualify himself, the judge is in violation of the Due Process Clause of the U.S. Constitution. *United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause.") "[A] fundamental requirement of due process is the opportunity to be heard . . . at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (internal quotation marks and citation omitted). *Garraghty v. Va. Dep't of Corr.*, 52 F.3d 1274, 1282 (4th Cir. 1995); *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976);

75. Judges do not have discretion not to disqualify themselves. By law, they are bound to follow the law. Should a judge not disqualify himself as required by law, then the judge has given another example of his "appearance of partiality" which further disqualifies the judge. Should a judge not disqualify himself, then the judge is violation of the Due Process Clause of the U.S. Constitution. *United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996).

76. Disqualification is Mandatory under the Code of Judicial Conduct, Canon 3  
"A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently" Section E.  
Disqualification. (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:  
(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person: (iv) is to the judge's knowledge likely to be a material witness in the proceeding."

77. *State ex rel. Brown v. Dewell*, 131 Fla. 566, 573, 179 So. 695, 697- 98 (1938). *See also Hayslip v. Douglas*, 400 So. 2d 553 (Fla. 4th DCA 1981). **The question of disqualification focuses on those matters from which a litigant may reasonably question a judge's**



**impartiality rather than the judge's perception of his ability to act fairly and impartially.**

*State v. Livingston*, 441 So. 2d 1083, 1086 (Fla. 1983) (emphasis added). In a case where the PETITIONER'S liberty is at stake, the court "should be especially sensitive to the basis for the fear." *Chastine v. Broome*, 629 So. 2d 293, 294 (Fla. 4th DCA 1993). The circumstances of this case are of such a nature that they are "sufficient to warrant fear on PETITIONER'S part] that he would not receive a fair hearing by the assigned judge." *Suarez v. Dugger*, 527 So. 2d 191, 192 (Fla. 1988).

78. The writ of prohibition is issued when a judge improperly denies a motion for recusal or disqualification and appropriately directs the Judge to refrain from exceeding its jurisdiction. *Carroll v. Fla. State Hosp.*, 885 So. 2d 485 (Fla. 1st D.C.A. 2004) (noting that prohibition is the appropriate way to review a trial judge's order denying a motion to disqualify).

79. WRIT OF PROHIBITION is proper to prevent an inferior court or tribunal from improperly exercising jurisdiction over a controversy and if a petition for a writ of prohibition demonstrates a preliminary basis for entitlement to relief, the court can issue an order to show cause why relief should not be granted. Once a show cause order issues in prohibition, it automatically stays the lower court proceeding. Fla. R. App. P. 9.100(h).

80. The writ of prohibition is issued when a judge improperly denies a motion for recusal or disqualification and appropriately directs the Judge to refrain from exceeding its jurisdiction. *Carroll v. Fla. State Hosp.*, 885 So. 2d 485 (Fla. 1st D.C.A. 2004) (noting that prohibition is the appropriate way to review a trial judge's order denying a motion to disqualify).

The Court further stated:

In *Metropolitan Dade County v. Martinsen*, 736 So. 2d 794, 795 (Fla. 3d DCA 1999), this Court restated the well-settled principle "that a party who has been guilty of fraud or misconduct in the prosecution or defense of a civil proceeding should not be permitted to continue to employ the very institution it has subverted to achieve her ends." *Hanono v. Murphy*, 723 So. 2d 892, 895 (Fla. 3d DCA 1998) (citing *Carter v. Carter*, 88 So. 2d 153, 157 (Fla. 1956)).

81. That COLIN influencing the matters after recusal appears further obstruction and may have given Proskauer inside information and records with intent and scienter in further efforts to derail PETITIONER'S rights and thus Judge Phillips should have disqualified as a material and fact witness on this issue alone or at minimum provided fair opportunity to Eliot Bernstein to be heard on the issues herein.

82. This is the exact same divisive and devious conduct exhibited herein – these state actors are employing the very institution they have subverted to achieve their ends.

83. Where a judge fails to disqualify, there is no jurisdiction to act and any order issued is illegal and void. *Kilbourn v. Thompson*, 103 U.S. 168 (1881). In *Kilbourn*, the Sergeant-at-Arms of the United States House of Representatives was held not to have immunity for ordering that the PLAINTIFF be arrested under a warrant issued by the House for refusing to testify because they lacked jurisdiction to issue such an order. *Id.* The court held that the House *did not have jurisdiction* to conduct the particular investigation. The Sergeant at Arms was liable for false arrest and could not assert the issuance of the warrant as a defense. *Id.* An order that exceeds the jurisdiction of the court is void, and can be attacked in any proceeding in any court where the validity of the judgment comes into issue. See *Pennoyer v. Neff* (1877) 95 US 714; *Windsor v. McVeigh* (1876) 93 US 274; A void judgment is no judgment at all and "a court must vacate any

judgment entered in excess of its jurisdiction." *Lubben v. Selective Service System Local Bd. No. 27*, 453 F.2d 645 (1st Cir. 1972). *Kalb v. Feuerstein* (1940) 308 US 433.

84. "A void judgment does not create any binding obligation. *Kalb v. Feuerstein* (1940) 308 US 433. If a court grants relief, which, under the circumstances, it hasn't any authority to grant, its judgment is to that extent void." An illegal order is forever void. A void order is *void ab initio* and does not have to be declared void by a judge. The law is established by the *U.S. Supreme Court in Valley v. Northern Fire & Marine Ins. Co.*, 254 U.S. 348, (1920) as well as other state courts, in *People v. Miller*. "Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities..." *Valley v. Northern Fire and Marine Ins. Co.*, 254 U.S. 348.

85. Thus, because Judge Phillips should have disqualified and acted outside his jurisdiction, all such Orders of Judge Phillips should now be vacated and voided.

#### **All Prior Orders of Judge Phillips should be Vacated as Void and a legal nullity**

86. "Procedural due process promotes fairness in government decisions by requiring the government to follow appropriate procedures when its agents decide to deprive any person of life, liberty or property." *John Corp. v. City of Houston*, 214 F.3d 573, 577 (5th Cir. 2000) (internal citations and quotations omitted). "Substantive due process, by barring certain government actions regardless of the fairness of the procedures used to implement them, serves to prevent governmental power from being used for purposes of oppression." *Id.* In order to establish either a substantive or procedural due process violation, a plaintiff must first establish

the denial of a constitutionally protected property interest. See *Bryan v. City of Madison*, 213 F.3d 267, 276 (5th Cir. 2000).

**LEGAL AUTHORITIES**  
**MANDATORY DISQUALIFICATION**

87. Judge Phillips had a statutory duty and was mandated by judicial canons to disqualify himself on his own initiative years before his *Sua Sponte Recusal* on May 20, 2015 and after PETITIONER filed a Petition to Disqualify on May 14, 2015 that was legally sufficient within Fla. Stat. 38.10 and Fla. Rules Jud. Admin 2.330 and Judicial Canons.

88. The Florida Code of Judicial Conduct Canon 3 provides states:

A Judge SHALL disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (a) the judge has a personal bias or prejudice concerning the party or a party's lawyers.

89. Disqualification is mandatory under Florida Rule of Judicial Administration Rule 2.330 and Florida Statute 38.10. In 1994, the U.S. Supreme Court held that "Disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified." *Liteky v. U.S.*, 114 S.Ct. 1147, 1162 (1994). Positive proof of the partiality of a judge is not a requirement, only the appearance of partiality. *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988); *Levine v. United States*, 362 U.S. 610 (1960);

90. Should a judge not disqualify himself, the judge is violation of the Due Process Clause of the U.S. Constitution. *United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a

tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause.") "[A] fundamental requirement of due process is the opportunity to be heard . . . at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (internal quotation marks and citation omitted). *Garraghty v. Va. Dep't of Corr.*, 52 F.3d 1274, 1282 (4th Cir. 1995); *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976);

91. Judges do not have discretion not to disqualify themselves. By law, they are bound to follow the law. Should a judge not disqualify himself as required by law, then the judge has given another example of his "appearance of partiality" which further disqualifies the judge. Should a judge not disqualify himself, then the judge is violation of the Due Process Clause of the U.S. Constitution. *United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996).

92. Disqualification is Mandatory under the Code of Judicial Conduct, Canon 3

"A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently" Section E. Disqualification. (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person: (iv) is to the judge's knowledge likely to be a material witness in the proceeding."

93. The issues before this Court are the failure of Phillips to mandatorily Disqualify and the "legal sufficiency" of the motion to Disqualify filed by PETITIONER and more importantly the failure of COLIN to mandatorily disqualify on his own initiative versus waiting for PRO SE PETITIONER to file sufficient pleadings. In order to demonstrate legal sufficiency, PETITIONER needed to show:

...a well-grounded fear that he will not receive a fair [hearing] at the hands of the judge. It is not a question of how the judge feels; it is a question of what feeling resides in the affiant's mind and the basis for such feeling.'

State ex rel. Brown v. Dewell, 131 Fla. 566, 573, 179 So. 695, 697- 98 (1938). See also Hayslip v. Douglas, 400 So. 2d 553 (Fla. 4th DCA 1981). The question of disqualification focuses on those matters from which a litigant may reasonably question a judge's impartiality rather than the judge's perception of his ability to act fairly and impartially. State v. Livingston, 441 So. 2d 1083, 1086 (Fla. 1983) (emphasis added). In a case where the PETITIONER'S liberty is at stake, the court "should be especially sensitive to the basis for the fear." Chastine v. Broome, 629 So. 2d 293, 294 (Fla. 4th DCA 1993). The circumstances of this case are of such a nature that they are "sufficient to warrant fear on PETITIONER'S part] that he would not receive a fair hearing by the assigned judge." Suarez v. Dugger, 527 So. 2d 191, 192 (Fla. 1988).

94. PETITIONER and his minor children are entitled to a full and fair proceeding, including a fair determination of the issues by a neutral, detached judge. Holland v. State, 503 So. 2d 1354 (Fla. 1987); Easter v. Endell, 37 F.3d 1343 (8th Cir. 1994). Due process guarantees the right to a neutral, detached judiciary in order "to convey to the individual a feeling that the government has dealt with him fairly, as well as to minimize the risk of mistaken deprivations of protected interests." Carey v. Piphus, 435 U.S. 247, 262 (1978). Principles of due process demand that this case be heard by another judge selected without COLIN'S prejudice and for COLIN to disqualify himself and remove his Orders issued outside his jurisdiction and outside the color of law:

The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision making process. See *Carey v. Phipus*, 435 U.S. 247, 259-262, 266- 267 (1978). The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. See *Matthews v. Eldridge*, 424 U.S. 319, 344 (1976). At the same time, it preserves both the appearance and reality of fairness, ‘generating the feeling, so important to a popular government, that justice has been done,’ *Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 172, (1951) (Frankfurter, J., concurring), by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980).

95. The disqualification rules require judges to avoid even the appearance of impropriety and COLIN’S self-dealing actions after knowing he would be a material and fact witness to crimes that occurred in his court by officers and fiduciaries he appointed, in which his own actions became questionable, establishes a prima facie case of appearance of impropriety:

It is the established law of this State that every litigant...is entitled to nothing less than the cold neutrality of an impartial judge. It is the duty of the court to scrupulously guard this right of the litigant and to refrain from attempting to exercise jurisdiction in any manner where his qualification to do so is seriously brought into question. The exercise of any other policy tends to discredit and place the judiciary in a compromising attitude which is bad for the administration of justice. *Crosby v. State*, 97 So.2d 181 (Fla. 1957); *State ex rel. Davis v. Parks*, 141 Fla. 516,

194 So. 613 (1939); Dickenson v. Parks, 104 Fla. 577, 140 So. 459 (1932); State ex rel. Mickle v. Rowe, 100 Fla. 1382, 131 So. 3331 (1930).

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The prejudice of a judge is a delicate question for a litigant to raise but when raised as a bar to the trial of a cause, if predicated on grounds with a modicum of reason, the judge in question should be prompt to recuse himself. No judge under any circumstances is warranted in sitting in the trial of a cause whose neutrality is shadowed or even questioned. Dickenson v. Parks, 104 Fla. 577, 140 So. 459 (1932); State ex rel. Aguiar v. Chappell, 344 So.2d 925 (Fla. 3d DCA 1977).

96. The United States Supreme Court has stated:

...the inquiry must be not only whether there was actual bias on respondent's part, but also whether there was 'such a likelihood of bias or an appearance of bias that the judge was unable to hold the balance between vindicating the interests of the court and the interests of the accused.' Ungar v. Sarafite, 376 U.S. 575, 588 (1964). 'Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties,' but due process of law requires no less. In re Murchison, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942 (1955). Taylor v. Hayes, 418 U.S. 488, 501 (1974) (emphasis added).

97. The appearance of impropriety violates state and federal constitutional rights to due process. A fair hearing before an impartial tribunal is a basic requirement of due process. See In re Murchison, 349 U.S. 133 (1955). "Every litigant is entitled to nothing less than the cold neutrality of an impartial judge." State ex rel. Mickle v. Rowe, 131 So. 331, 332 (Fla. 1930). Absent a fair tribunal, there can be no full and fair hearing.

98. In Partin v Solange et al, 2015 WL 2089081 (Fla.App. 4 Dist., 2015), the court granted the petition to disqualify stating the lower court judge cut-off petitioners' counsel and expressed



his prejudgment of the matter and in another hearing, the lower court judge made acerbic comments about petitioners and exhibited overall hostility toward both petitioners and their counsel. Not only did Phillips engage in this similar egregious conduct towards PETITIONER from the start but his disqualification is also mandated because of his direct involvement and handling of the fraudulently notarized and forged documents posited in his court and other direct involvement in the matters that eroded PETITIONER'S rights to fair and impartial due process under law by retaliating for two years against PETITIONER instead.

99. The Due Process Clause serves to protect use of fair procedures to prevent the wrongful deprivation of interests and is a guarantee of basic fairness. *Johnson v. Mississippi*, 403 U.S. 212, 216 (1971); *Peters v. Kiff*, 407, U.S. 493, 502 (1972). "[A] fundamental requirement of due process is the opportunity to be heard . . . at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) *Garraghty v. Va. Dep't of Corr.*, 52 F.3d 1274, 1282 (4th Cir. 1995); Denying access to important records, evidence, and witnesses and mistreating PETITIONER and his minor children as a pro se party are violations of Equal Protection and due process of law. Pro se parties are a distinct minority class in judicial proceedings.

100. Judge Phillips should have demanded that the minor children and PETITIONER were represented by counsel, forced bonding of the fiduciaries and officers he appointed involved in the criminal acts, posted bonds for the court, reported the misconduct, removed all parties involved in the fraud instead of allowing them to continue to participate for months and even to this day, disqualified himself and instead Phillips took opposite actions to harm PETITIONER and his minor children and delay their inheritances by continuing the Fraud on the court, Fraud in the court and Fraud by the court, to intentionally cause catastrophic financial ruin

upon PETITIONER and his minor children by continuing to hold fraudulent proceedings and illegally issue orders.

101. None of the orders issued by a judge who has been disqualified or should have been disqualified by law are valid. They are void as a matter of law, and are of no legal force or effect. The orders issued by COLIN are null and void and of no force and effect as they are procured by fraud, without jurisdiction, the result of unlawful rulings, are unconstitutional and violate due process causing criminal Obstruction of Justice.

**ALL ORDERS OF JUDGE Phillips ARE A NULLITY AND ARE VOID**

102. Where a judge fails to disqualify, there is no jurisdiction to act and any order issued is illegal and void. *Kilbourn v. Thompson*, 103 U.S. 168 (1881). In *Kilbourn*, the Sergeant-at-Arms of the United States House of Representatives was held not to have immunity for ordering that the PLAINTIFF be arrested under a warrant issued by the House for refusing to testify because they lacked jurisdiction to issue such an order. *Id.* The court held that the House did not have jurisdiction to conduct the particular investigation. The Sergeant at Arms was liable for false arrest and could not assert the issuance of the warrant as a defense. *Id.* An order that exceeds the jurisdiction of the court is void, and can be attacked in any proceeding in any court where the validity of the judgment comes into issue. See *Pennoyer v. Neff* (1877) 95 US 714; *Windsor v. McVeigh* (1876) 93 US 274; A void judgment is no judgment at all and "a court must vacate any judgment entered in excess of its jurisdiction." *Lubben v. Selective Service System Local Bd. No. 27*, 453 F.2d 645 (1st Cir. 1972). *Kalb v. Feuerstein* (1940) 308 US 433.

103. "A void judgment does not create any binding obligation. *Kalb v. Feuerstein* (1940) 308 US 433. If a court grants relief, which, under the circumstances, it hasn't any

authority to grant, its judgment is to that extent void." An illegal order is forever void. A void order is void ab initio and does not have to be declared void by a judge. The law is established by the U.S. Supreme Court in Valley v. Northern Fire & Marine Ins. Co., 254 U.S. 348, (1920) as well as other state courts, in People v. Miller. "Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities..." Valley v. Northern Fire and Marine Ins. Co., 254 U.S. 348

**I. PETITION TO STAY CASES AND TEMPORARILY RESTRAIN ANY SALE, TRANSFER, DISPOSITION OF ANY ASSET OR PROPERTY AND PRESERVATION OF EVIDENCE**

104. Petitioners must establish the following four elements:

- (1) a substantial likelihood that the plaintiffs will prevail on the merits; (2) a substantial threat that plaintiffs will suffer irreparable injury if the injunction is not granted; (3) the threatened injury to plaintiffs outweighs the threatened harm the injunction may do to the defendant; and (4) granting the preliminary injunction will not disserve the public interest. Church v. City of Huntsville, 30 F.3d 1332, 1342 (11th Cir.1994).

105. The mandamus petition herein and filed motion for mandatory Disqualification clearly shows said motion was legally sufficient and Judge Phillips should have mandatorily disqualified. Thus Petitioners have a substantial likelihood to prevail on this application. In addition to an illegal sale of real property being the home of deceased Simon Bernstein imminently scheduled for sale by June 10, 2015, Petitioners have shown loss of property, loss of records, loss of documents and evidence, loss of trusts and inheritances and other issues of irreparable harm. Granting a temporary stay and injunction against further threatened injury to

Petitioners outweighs and harm to Respondent –defendants. Granting a temporary stay is in the public interest until a neutral court can sort out the frauds and conflicts and proper parties and proper trustees and proper trusts and instruments.

106. PETITIONER has suffered at the hands of the Florida court system for thirteen years and has been denied INTELLECTUAL PROPERTIES and due process to seek redress as the alleged criminals are almost all attorneys at law in their various capacities as private lawyers, judges, prosecutors and politicians.

107. PETITIONER again cannot get redress or due process in the Florida court system and seeks to have the cases moved from the Florida court system as due to his pursuit of Supreme Court Justices, the Florida Bar and many Florida Lawyers and Law Firms and therefore PETITIONER fears he cannot get a fair and impartial hearing and adequate remedy of law by any party that is a member of the Florida Bar.

108. PETITIONER has properly filed a legally sufficient motion to remove JUDGE Phillips for disqualification on several grounds but who refused to follow Judicial Canons and Law and thus has caused severe harms to PETITIONER and his three minor children as the record reflects.

109. That COATES had reviewed the case file and stated on the record that he was NOT CONFLICTED with PETITIONER and the matters until PETITIONER reminded JUDGE COATES that despite his desire to stay on the case that he had JUDICIAL CANONS that could make his retaining the case violate them, whereby JUDGE COATES after several attempts to claim NO CONFLICT suddenly SUA SPONTE recused himself.

110. That due to this nefarious setup of PETITIONER'S cases to further stymie and delay and interfere with PETITIONER'S due process and procedure rights PETITIONER fears that no matter how or who the cases are transferred to in Florida that PETITIONER cannot receive due process and any successor to Judge Coates was part of a forgone plan to derail due process.

## **II. CONCLUSION AND PRAYER**

WHEREFORE, PETITIONER seeks a WRIT OF PROHIBITION to prohibit Phillips from:

1. Acting in excess of his lawful jurisdiction;
2. Attempting to enforce the ANY ORDER of Judge Phillips;
3. Taking any action in this matter other than vacating and voiding all Orders and immediately disqualifying himself;
4. Prohibition is invoked for the protection of PETITIONER and his minor children, whose safety and well being are in danger if this WRIT is denied for lack of a legal remedy.

WHEREFORE, PETITIONER seeks a WRIT OF MANDAMUS, compelling Judge Phillips to:

5. abide by the laws of the State of Florida, Federal law and the United States Constitution and cease acting beyond his jurisdiction immediately;
6. set aside the ALL ORDERS as void ab initio immediately;

7. set aside all other Orders in his Court as void ab initio immediately as they are the product of fraud on, in and by the court; and,

8. immediately disqualify himself from this case and take no further action.

**WHEREFORE**, PETITIONER seeks a 30 day STAY ORDER for all cases in order to move the cases to a conflict free venue, either state or federal and further:

9. Immediately Disqualify Judge Phillips and prohibit him from acting further herein and/or issue a Show Cause order to respond herein;

10. IMMEDIATELY SEIZE ALL ASSETS AND PROPERTIES OF THE ESTATES AND TRUSTS of Simon and Shirley Bernstein and have all assets that have been converted through the fraudulent orders immediately be returned and put in protective custody by this Court, until all matters of document fraud, trust constructions, trust validity, fraud and breaches of fiduciary duties can be adjudicated by a fair and impartial court of law; and,

11. And for such other and further relief as to this Court may seem just and proper.

DATED: January 29, 2016

Respectfully submitted,

**/s/Eliot Ivan Bernstein**

Eliot Ivan Bernstein  
2753 NW 34th St  
Boca Raton, FL 33434  
561-245-8588  
iviewit@iviewit.tv

**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 29th day of January, 2016.

/s/ Eliot Ivan Bernstein  
 Eliot Ivan Bernstein  
 2753 NW 34th St.  
 Boca Raton, FL 33434  
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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.  
\_\_\_\_\_ /

**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

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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%20Brian%20O'Connell%20re%20Ted%20and%20Alan%20Conflicts.pdf>
- c. [Peter%20Feaman%20Letter%20to%20Attorney%20Personal%20Representative%20Brian%20O'Connell%20re%20Ted%20and%20Alan%20Conflicts.pdf](http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140919%20Feaman%20Letter%20to%20Brian%20O'Connell%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%20O'Connell%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 replead 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>  
f
  - and
  - 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%20Tescher%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 mandatory 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>

**/s/Eliot Ivan Bernstein**

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**SERVICE LIST**

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<p><b>COUNTER DEFENDANT</b> Neil Wolfson President &amp; Chief Executive Officer Wilmington Trust Company 1100 North Market Street Wilmington, DE 19890-0001 nwolfson@wilmingtontrust.com</p>	<p><b>COUNTER DEFENDANT</b> Ralph S. Janvey Krage &amp; Janvey, L.L.P. Federal Court Appointed Receiver Stanford Financial Group 2100 Ross Ave, Dallas, TX 75201 rjanvey@kjllp.com</p>	<p><b>COUNTER DEFENDANT</b> James Dimon Chairman of the Board and Chief Executive Officer JP Morgan Chase &amp; CO. 270 Park Ave. New York, NY 10017-2070 Jamie.dimon@jpmchase.com</p>
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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.

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**ORDER FROM APRIL 20, 2015 CONTINUED HEARING ON  
RESPONDENTS' OBJECTION TO FINAL ACCOUNTING**

On March 17, 2015, the Court conducted a one-hour evidentiary hearing on Respondents' "Objection to Final Accounting; Petition for Formal, Detailed Audited and Forensic Accounting" (the "Objection") and considered and overruled objections numbered 1 through 5. On April 20, 2015, the Court conducted an additional 2 ½ hour evidentiary hearing on the Objection. At the April 20, 2015 hearing, the Court ~~verbally~~<sup>verbally</sup> ordered as follows:

1. Objections 6 through 9 are overruled.
2. Objection 10 is overruled based upon the testimony of Petitioner's President, Hunt Worth, that the statements produced by Petitioner for accounts titled (i) "Simon Bernstein Irrevocable Trust U/A 9/7/06 FBO Daniel Bernstein" (OPP0011-0036), (ii) "Simon Bernstein

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Irrevocable Trust U/A 9/7/06 FBO Jake Bernstein” (OPP0037-0062), and (iii) “Simon Bernstein Irrevocable Trust U/A 9/7/06 FBO Joshua Z Bernstein” (OPP0063-0089) relate solely to the three irrevocable trusts settled by Simon Bernstein, entitled “Daniel Bernstein Irrevocable Trust Dated September 7, 2006,” “Jake Bernstein Irrevocable Trust Dated September 7, 2006,” and “Joshua Bernstein Irrevocable Trust Dated September 7, 2006,” respectively.<sup>1</sup>

3. Objection 11 fails to state a legally-recognized objection.
4. Objections 14 through 17 are overruled.
5. Objection 18 fails to state a legally-recognized objection.
6. Objections 19 through 22 are overruled.
7. Objections 24 and 25 are overruled.
8. With regard to objection 27, Petitioner shall file a supplement to the Final

Accountings to clarify: (i) that Petitioner has not conducted a forensic accounting of, or independently valued, LIC Holdings, Inc. (“LIC”), (ii) that Petitioner is not purporting to assign a value to the 1.33% interest of LIC that each trust owns, (iii) that there have been no transactions related to the shares of LIC held by the trusts (sale of shares, dividends, etc.) during Petitioner’s trusteeship, and (iv) that Petitioner intends to transfer the shares of LIC held by the

trusts, in kind, to the person or entity designated by the Court to receive the trusts’ assets. *NOTWITH- STANDING, THE ABBREVIATION OF “O” IN THE ACCOUNTING IS SIMILAR AS NOT AN APPROPRIATE VALUE OF THE LIC SHARES.*

9. With regard to objections 12, 13, 23, 26, and 28 through 90, in light of Respondents’ claim that they have had insufficient time to review the backup documents produced by Petitioner, Respondents shall file a notice with this Court, on or before June 1,

<sup>1</sup> Documents Bates-stamped OPP0001-1521 were admitted into evidence as Petitioner’s Exhibit 1 at the March 17, 2015 hearing, without objection. The three above-described trust documents were admitted into evidence at the March 17, 2015 hearing as Exhibits 6 through 8, respectively.



Copies furnished to:

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**CERTIFICATE OF CLERK**

STATE OF FLORIDA        )

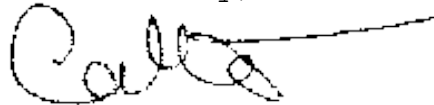
COUNTY OF PALM BEACH )

I, SHARON R. BOCK, Clerk of Circuit Court for the County of Palm Beach, State of Florida, do hereby certify that the foregoing pages        to        inclusive, consists of original papers and proceedings in Civil Action Case Number:

**as appears from the records and files of my office which have** been directed to be included in said Record, pursuant to Florida Rules of Appellate Procedure, 9.200(a)(1).

IN WITNESS WHEREOF,  
I have hereunto set my hand and affixed the seal  
of said Court this        day of        ,        A.D.

SHARON R. BOCK, Clerk of Circuit Court  
Palm Beach County, Florida

By: 

Deputy Clerk

