

UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF ILLINOIS EASTERN DIVISION

SIMON BERNSTEIN IRREVOCABLE
INSURANCE TRUST DTD 6/21/95, et al.,

Plaintiffs,

v.

HERITAGE UNION LIFE INSURANCE
CO.,

Defendant.

Case No. 1:13-cv-3643
Judge John Robert Blakey
Magistrate Mary M. Rowlan

HERITAGE UNION LIFE INSURANCE
COMPANY,

Counter-Plaintiff,

v.

CROSS PLAINTIFF ELIOT IVAN
BERNSTEIN MOTION FOR
RELIEF FROM SUMMARY
JUDGMENT ORDER PURSUANT
TO FED. R. CIV. P. 60(b)(3)

SIMON BERNSTEIN IRREVOCABLE
INSURANCE TRUST DTD 6/21/95,

Counter-Defendant,

and

FIRST ARLINGTON NATIONAL BANK,
et al.,

Third-Party Defendants.

ELIOT IVAN BERNSTEIN,

Cross-Plaintiff,

v.

TED BERNSTEIN, et al.,

Cross-Defendants,

and

PAMELA B. SIMON, et al.,

Third-Party Defendants,

BRIAN M. O'CONNELL, as Personal
Representative of the Estate of
Simon L. Bernstein,

Intervenor.

**MOTION FOR RELIEF FROM SUMMARY JUDGMENT ORDER PURSUANT TO
FED. R. CIV. P. 60(b), 60(b)(3) and FED R. CIV. P. 60(a)**

Cross Plaintiff Eliot Ivan Bernstein (“ELIOT”), Pro Se, respectfully moves, pursuant to Fed. R. Civ. P. 60(b) and Fed. R. Civ. P. 60(a) for relief from this Court’s Order of January 30, 2017, in SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DTD 6/21/95, et al., v. HERITAGE UNION LIFE INSURANCE CO., Civ No. 1:13-cv-3643, (Dkt. #273), “MEMORANDUM OPINION AND ORDER” issued by the most Honorable Judge John Robert Blakey. There was a prior Round 1 Summary Judgment Order issued in this case by Judge Blakey for the Court’s reference, (Dkt. #220).

Cases

Barlow v. Colgate Palmolive Co. 772 F.3d 1001, 1010 (4th Cir. 2014).

Statutes

18 U.S.C. §1341

18 U.S.C. §1983

18 U.S.C. §1951(b)

18 U.S.C. §2

18 U.S.C. §2511

28 U.S.C. §1447(d)

Rules

Federal Rule of Civil Procedure Rule 60(b)

Federal Rule of Civil Procedure 52(a)

STANDARD OF REVIEW

1. Federal Rule of Civil Procedure 60(b) allows a party to seek relief from a final judgment for (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void;..or..(6) any other reason that justifies relief. F.R.C.P. 60(b). Rule 60 motions should be granted where there is a showing that justice demands it, as in this case. F.R.C.P. 60(b).
2. Eliot Bernstein is entitled to relief from the Court's Order issued against him on January 30, 2017 ("ORDER"), (Dkt #273), denying him standing and removing him from the proceedings based upon Intervenor Brian M. O'Connell and his counsel and Ted Bernstein and his counsel, Adam Simon and Co-Counsel Alan B. Rose, knowingly making fraudulent representations to this Court and the Florida probate court--that Eliot was not a beneficiary of the estate of Simon Bernstein and as such did not have standing to participate in proceedings.
3. O'Connell and Ted alleged to have secured a knowingly inaccurate order in the Florida probate court and misrepresented such order to this Court stating to this Court that it was ruled that Eliot Bernstein was not a beneficiary of his father's estate and an alleged "testamentary" trust in order to then use such claims to deceive this Honorable Judge into granting their Motions for Summary Judgment using Collateral Estoppel against Eliot Bernstein on the same basis, knowing this Honorable Judge would defer to claims made by counsel about the Florida probate judge's wholly erroneous and misrepresented findings on the issue.

4. The ORDER made several notable claims relying on the false and misleading “Statement of Undisputed Facts” put forth by Plaintiffs in their Motion for Summary Judgment, including but not limited to the following statements,

“Judge John L. Phillips presided over a joint trial of the Probate Actions in December of 2015. A full recitation of Judge Phillips’ findings is unnecessary here, but relevant portions of his final orders include:...

- The beneficiaries of the testamentary trust identified in the Will of Simon Bernstein are “Simon Bernstein’s then living grandchildren,” while “Simon’s children – including Eliot Bernstein – are not beneficiaries.”

(ORDER Page 5 of 21 PageID #:13274)

and,

“First, Eliot cannot sustain cognizable damages related to the disposition of the Estate or the testamentary trust in light of the Probate Court’s rulings. The Probate Court found, *inter alia*, that Simon Bernstein’s “children – including Eliot – are not beneficiaries” of the Will of Simon Bernstein or the related testamentary trust. [240] at 11. Instead, Simon Bernstein’s grandchildren (including Eliot’s children) are the testamentary trust’s beneficiaries.”

and,

“These findings [of the FL probate court] have preclusive effect in this case,⁴ such that Eliot cannot demonstrate cognizable damages relative to the disposition of the Estate or the testamentary trust.”

FACTS AND PROCEDURAL BACKGROUND

5. O’Connell and Ted’s Motions for Summary Judgment were filed May 25, 2016 (Dkt. #'s 245-249) and May 21, 2016 respectively (Dkt. #'s 239-243). Plaintiffs Memorandum of Law submitted with their Summary Judgment Motion falsely stated (Dkt. #241 Page 3 of 17 PageID #:4255):

“To the contrary, **Eliot has lost standing to participate in the Probate Actions on his own behalf after it was determined that the testamentary documents at issue in the Probate Actions are in fact valid, genuine and enforceable.** Judge John L. Philips also determined that Simon Bernstein’s grandchildren are the beneficiaries of his Estate, and none of his children are beneficiaries, including Eliot.” [emphasis added]¹

6. Based upon Plaintiffs’ misconduct and fraud, this court issued its Memorandum Opinion and Order (“ORDER”) on January 30, 2017 (Dkt #273), granting summary judgment against Eliot on the basis primarily that he was not a beneficiary of his father’s estate and an alleged “testamentary” trust in the Estate of Simon and therefore did not have standing to participate. At no time have Plaintiffs legitimately believed this knowingly false statement of fact, but instead propagated fraud in at least two courts of law in order to tortiously interfere with Eliot’s inheritance and the rights of Eliot’s three children, as well by removing his due process rights by removing his standing.

7. Page 10 of 17 of the same document (Dkt. #241, PageID #:4262) falsely states the following:

“Eliot’s Claims make reference to the fact that the Estate of Simon Bernstein may be entitled to the Policy Proceeds. But as determined by the Probate Court, Eliot is not a beneficiary and has no standing to act on behalf of the Estate or participate at all in the Probate litigation in Florida. (SoF, ¶¶33-¶34). The Estate is already adequately represented in the instant litigation by its personal representative and local counsel. (SoF, ¶25). Also, the interests of

¹ This Court should note that the Simon Trust at Issue in the Florida Courts exhibited further herein is not a “testamentary trust” as the Court states in its ORDER as illustrated above but in fact it is an “Inter-vivos” living trust funded prior to death. This Court’s ORDER reflects this wrong language and this is factually incorrect as it relied upon statements made by opposing counsel in their Summary Judgment pleading. The Court should note that the Florida Probate Court also wrongly claims this Simon Trust as “testamentary” as it has no subject matter jurisdiction over inter-vivos trusts, which are civil court cases and thus the Probate Court in FL acted outside its jurisdiction in hearing this Simon Trust case in the Probate court.

Eliot's children in the Estate are now being represented solely by the guardian ad litem. (SoF, ¶33-¶34)."

8. Page 11 of 17 of the same document (Dkt. #241, PageID #:4263) restates the same fraudulent facts to ensure that Eliot's claims were dismissed and he was denied standing in the Florida probate court and this Court.

"Despite Eliot's pending appeals, the doctrine of collateral estoppel applies, and acts to settle material issues in the instant litigation. The Probate Orders entered after trial include findings that (i) Eliot is not beneficiary of the Estate of Simon Bernstein; (ii) appoint a guardian ad litem for Eliot's children; and (iii) Eliot has no standing in the Probate Actions on behalf of himself, the Estate or his children."

9. In Movant's Statement of Undisputed Material Facts In Support of their Motion for Summary Judgment, Plaintiffs state that Judge Phillips in the Florida Probate Court, ruled that Eliot was not an heir after a December 15, 2015 validity hearing, but failed to attach a copy of an Order stating such and instead attached an Order issued December 16, 2015 determining only that the documents were valid and enforceable by their terms, (Dkt. #240-11, Exhibit #10, PageID #:4191-PageID #:4196.)

10. Plaintiffs knew that the Order they attached from the validity hearing did not address any beneficiary or standing related issues in the construction of the Wills or Trusts of Simon and Shirley Bernstein, nor could it have done so as the hearing was limited to "validity" only and no "construction" was done of any of the documents to determine the terms of the dispositive documents being validated.

11. Further, it was alleged to this Court that Eliot was determined after the "validity" hearing to not be a beneficiary with standing of his parents Trusts as well as their Wills and where the trusts were misrepresented to this Court and the Florida probate court further misrepresented

them to be “testamentary” trusts, however given that they were executed and funded prior to death as illustrated further herein they are factually Inter-vivos trusts and are not within the Probate court’s jurisdiction under Florida law, as only testamentary trusts are. Section 736.0203 of the Florida Trust Code defines subject matter jurisdiction as follows: “[t]he circuit court has original jurisdiction in this state of all proceedings arising under this code.” Section 736.0201 defines more specifically the role of the courts in trust proceedings. It provides that judicial proceedings concerning trusts be governed by the Florida Rules of Civil Procedure, clarifying that “[a] proceeding for the construction of a testamentary trust may be filed in the probate proceeding for the testator’s estate” [emphasis added] subjecting it to the Florida Probate Rules should the case be filed there. Fla. Stat. 736.0201 (1)(5).

12. Ted Bernstein and his counsel Adam Simon and co-counsel Alan Rose’s misconduct is outrageous and merits severe sanctions given the two years of chaotic court proceedings and hundreds of thousands in attorneys’ fees spent to deny Eliot the right to participate in hearings in the Florida courts through abuse of process with the goal of violating 42 U.S.C. 1983 through the deprivation of the right to due process and equal protection guaranteed by the 14th Amendment as they illegally and tortiously interfered with Eliot and his children’s inheritance rights through this scheme and artifice to defraud.

13. This intentional deception upon the Florida Probate court was not rectified until Judge Phillips retired and Judge Rosemarie Scher took the bench, leading to Judge Scher’s finding that Eliot was in fact a named beneficiary of the estate of Simon Bernstein and had standing to participate, after evidentiary hearings which occurred February 16, 2017, March 02, 2017 and March 16, 2017, in 15th Judicial Circuit Probate Court Case #502012CP004391XXXXNB and subsequent Orders issued confirming such.

14. Intervenor Brian O’Connell inexplicably stated on the record under oath, as personal representative of the estate, that Eliot was, in fact, a beneficiary with standing in the estate of Simon Bernstein and Alan Rose similarly recanted his prior claims to the Probate court that were then mimicked in this Court by Ted and Adam Simon. See, (Exhibit 1 - Transcript of Feb 16, 2017 Hearing), (Exhibit 2 – Transcript of March 02 2017 Hearing) and [Exhibit 3 - Transcript of March 16, 2017 Hearing.)

15. Four documents were consistently relied upon in Alan Rose, Adam Simon, Ted and O’Connell’s efforts to defraud Eliot Bernstein and the courts, including: The four documents² that were part of the Final Order of Count II (Dkt. #240-11, Exhibit #10, PageID #:4191-PageID #:4196) issued by Judge Phillips on December 16, 2015 after the sham “validity” hearing on December 15, 2105 that Plaintiffs and their counsel relied on in their Summary Judgment to make claims that Eliot was not a beneficiary with standing of his father’s estate and are as follows:

- a. The Will of Shirley Bernstein dated May 20, 2008. See (Exhibit 4 – “Will of Shirley Bernstein” dated May 20, 2008) that expressly states that ELIOT and his siblings are beneficiaries,
- b. The Inter-Vivos Trust of Shirley Bernstein funded prior to her death, See, (Exhibit 5 - “Shirley Bernstein Trust Agreement dated May 20, 2008) that has ELIOT as one of three of five children as a beneficiary. When Shirley passed away on December 08, 2010 this Inter-vivos trust became IRREVOCABLE with Eliot and two of his three sisters, Plaintiffs Lisa Friedstein and Jill Iantoni, as the ONLY PERMISSIBLE CLASS OF BENEFICIARIES FOREVER SET IN STONE. Ted and Plaintiff Pamela Simon and

² That it was determined at the hearing that none of the parties, fiduciaries or their counsel knew where the Original Simon and Shirley Trust and Will documents are and they were not present for examination at the hearing, only alleged copies, see Exhibit 24 - December 15, 2015 Hearing.

their lineal descendants were considered predeceased for all purposes of disposition of Shirley's trust at the time it became IRREVOCABLE.

Each beneficiary of Shirley's trust had a separate trust created and funded on May 20, 2008, namely the "Eliot Bernstein Family Trust," the "Jill Iantoni Family Trust" and the "Lisa Friedstein Family Trust" all of which were suppressed at the "validity hearing" despite being a part of the Simon and Shirley Inter-vivos trusts being validated and in violation of Fl. trust code. The Eliot Bernstein Family Trust is exhibited herein as (Exhibit 6 – "Eliot Bernstein Family Trust" dated May 20, 2008).

- c. The 2012 Will of Simon Bernstein (Exhibit 7 – "Will of Simon L. Bernstein" dated July 25, 2012), which allegedly replaced the 2008 Will of Simon Bernstein done with Shirley Bernstein that was not part of the "validity" hearing. The 2012 Will allegedly was signed weeks before Simon's passing on September 13, 2012. Both Wills have the five children of Simon as Beneficiaries despite Ted and his counsels claims to this Court in their Summary Judgment papers, already exhibited herein, that the 10 grandchildren of Simon are the beneficiaries of Simon and Shirley's Estates, which this Court then relied upon in making its ORDER and dismissing Eliot from this lawsuit on claims he was not a beneficiary and did not have standing in his father's estate.
- d. The Inter-vivos trust of Simon Bernstein funded prior to his death, see (Exhibit 8 - "Simon L. Bernstein Trust Agreement" dated May 20, 2008) that has Eliot as one of three of five children listed as a beneficiary. This Inter-vivos trust was not made part of the "validity hearing" and instead only the below alleged Amendment and Restatement was submitted, again in violation of statutes to have all parts of the trusts present at any validity hearing.

Similar to Shirley's trust, each beneficiary of this Simon Inter-vivos trust had a separate trust created held thereunder and funded on May 20, 2008, again the "Eliot Bernstein Family Trust," the "Jill Iantoni Family Trust" and the "Lisa Friedstein Family Trust" all of which were suppressed at the sham "validity hearing" despite being a part of the 2008 Simon Bernstein Trust Agreement and in violation of Fl. trust code. The Eliot Bernstein Family Trust is already exhibited herein as (Exhibit 6), and,

- i. The 2012 Amendment and Restatement of the "Simon L. Bernstein Trust Agreement" dated May 20, 2008 was the only part of the trust made available at the "validity" hearing and not the controlling 2008 Simon L. Bernstein Trust Agreement. See, (Exhibit 9 - "Simon L. Bernstein Amended and Restated Trust Agreement" dated July 25, 2012") which amended the 2008 trust agreement and was allegedly executed several weeks prior to Simon's passing on September 13, 2012. The amended trust excludes Eliot and ALL of his siblings as beneficiaries leaving only the then living grandchildren who have trusts held thereunder as beneficiaries, namely the grandchildren who are part of the Eliot Family Trust, Jill Iantoni Family Trust and Lisa Friedstein Family Trust established and held thereunder as part of the controlling 2008 Simon trust.

There has been no construction hearing of this Amendment to the 2008 Simon Bernstein Trust Agreement dated May 20, 2008 but it appears that only 6 of the 10 grandchildren (Eliot's three children and his two siblings Jill and Lisa's children) will ultimately be found to be beneficiaries of the Amended 2008 Simon Trust document if it is upheld after a proper and legal validity and construction hearing in the proper venue to determine the terms of the trust and who the beneficiaries are

and if it was induced under great duress placed upon by Ted and sister Pamela when they were informed they were wholly disinherited with their lineal descendants in the 2008 Simon Trust and the 2008 Shirley Trust. Again the Probate court had no jurisdiction to hear the validity or any alleged construction of this and the other Inter-vivos trusts rendering any/all judgments void.

16. After two years of this fraud on the court, fraud on certain of the beneficiaries and interested parties that removed Eliot from the proceedings, derailed the entire proceedings in the Florida probate court and ultimately led to the issuance by this Court of an ORDER granting summary judgment against Eliot Bernstein on the mistaken belief that he was not a beneficiary and had no standing in his father's estate, this Court appropriately deferring to the FL state probate court's alleged determination of the issues, Intervenor Brian O'Connell and Alan Rose inexplicably had a sudden about face and admitted in hearings before the new Judge Scher that Eliot is a beneficiary and has standing--a fact they clearly knew all along. Ted, Intervenor O'Connell and their counsel however have all failed to notify this Court of their change of story.

17. The February 16, 2017 hearing transcript before Judge Scher already exhibited herein (Exhibit 1) includes O'Connell's change of heart as Attorney Peter Feaman ("Feaman") representing the creditor William Stansbury in the Simon Estate case cross examined him concerning the issue,

3 Q. Correct? And Mr. Bernstein is not a
4 monetary beneficiary of the estate, is he?
5 A. As a trustee he is a beneficiary,
6 residuary beneficiary of the estate. And then he
7 would be a beneficiary as to tangible personal
8 property.

(Exhibit 1 - Feb 16, 2107 Hearing, Page 17 of the Transcript)

18. Cornered, O'Connell confirmed what Eliot fought for two years to establish that was wasting judicial resources and deceiving the Probate court that Eliot was in fact a beneficiary with standing and Eliot further had O'Connell confirm this during his cross examination:

18 BY MR. ELIOT BERNSTEIN OF BRIAN O'CONNELL:
19 Q. Okay, so beneficiary?
20 A. Right.
21 Thank you. Which will go to the
22 bigger point of the fraud going on here, by the
23 way."

(Exhibit 1 - Feb 16, 2017 Hearing, Page 35 of the Transcript)

19. Attorney Alan Rose contradicted prior representations to the Florida Probate court in numerous pleadings and hearings claiming Eliot was not a beneficiary and did not have standing in his father's estate, agreeing now with O'Connell that Eliot is and was, in fact, a beneficiary with standing in Simon Bernstein's estate. Rose admits on record in the March 02, 2017 hearing that contrary to his prior statements to the Probate court over the course of two years that were then mimicked to this Court by Ted and Adam Simon, that Eliot does have standing, as a beneficiary. Rose stated in the hearing,

3 MR. ROSE: Just for the record, I conceded
4 at the last hearing that he had limited
13:52:35 5 standing. I did not say that he did not have
6 standing." [emphasis added]

(Exhibit 2 - March 02, 2017 Hearing Page 139 of the Transcript)

"8 MR. ROSE: That's the end of the story.
9 He is clearly a beneficiary. We have never
10 denied he is a beneficiary for a very narrow
11 purpose. But based on the rulings it is
12 exactly that which is a very narrow purpose."

(Exhibit 2 - March 02, 2017 Hearing Page 143 of the Transcript)

20. Attorney Feaman while questioning witness O'Connell in the same March 02, 2017 hearing handed him a pleading filed in September of 2015 entitled "Trustee's Omnibus Status Report and Request for Case Management Conference" filed by Ted and authored by Rose and Rose stated on the record the following in response:

7 BY MR. FEAMAN:

8 Q. You were here when Mr. O'Connell said that
9 Mr. Eliot is a beneficiary of the Simon Bernstein
10 estate, correct?

11 A. I was here when he said it. I have said
12 it. I don't dispute it. I have told the judge
13 that. I don't understand. For tangible personal
14 property.

15 Q. Okay.

16 THE COURT: What am I being handed?

17 BY MR. FEAMAN:

18 Q. I am handing you a pleading that you filed
19 in September 2015 entitled Trustee's Omnibus Status
20 Report and Request for Case Management Conference.
21 And the very first page you said, relating to
22 Mr. Eliot, he is not a named -- he is not named as
23 a beneficiary of anything. And it's in the Estate
24 of Simon Bernstein. So my question is when did you
25 suddenly become aware that he is a beneficiary of

(Exhibit - 2 March 02, 2017 Hearing Page 212 of the Transcript)

1 the estate?

2 A. That sentence is -- I now see that
3 sentence is technically wrong. It's not -- I am
4 talking about where the money is and the money is
15:12:37 5 in the trust. He is not a beneficiary of the
6 trust. I may have made a misstatement.

7 THE COURT: Are you asking me to take this
8 into evidence?

9 MR. FEAMAN: Yes.

15:12:45 10 THE COURT: Objection?

11 MR. ROSE: No. It's in the court file.

12 THE COURT: I know. Let me just mark it.

13 MR. FEAMAN: No further questions.” [emphasis added]

(Exhibit 2 - March 02, 2017 Hearing Page 213 of the Transcript)

21. Alan Rose committed fraud on the court in Filing #32030300 to the 15th Judicial Judge JOHN L. PHILLIPS, dated September 14, 2015, in the “TRUSTEE'S OMNIBUS STATUS REPORT AND REQUEST FOR CASE MANAGEMENT CONFERENCE” see, (Exhibit 10 - Omnibus Status Report] accusing Eliot of the very misconduct he was engaged in when he stated,

“Introduction - 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.” [emphasis added]

22. On January 4, 2016, Rose repeated in a filing titled “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” [Exhibit 11 - Motion for Appointment of GAL³], the affirmative statement of Ted Bernstein, his client, that

³ The Guardian was not appointed randomly but instead a long term family friend of PR Brian O’Connell and a former judge in the Palm Beach courts (not re-elected by the People of the State of Florida) Diana Lewis. Lewis was inserted as GAL over ELIOT’S children to preclude ELIOT from protecting and representing his minor children as their natural guardian and thereby the minor children’s rights and the adult child’s rights were usurped illegally through this legal process abuse that has obstructed justice and denied due process. Outrageously despite two of ELIOT’S children who are both adults now notifying Diana Lewis that her predatory guardianship over them is over and to cease and desist any further actions on their behalf, she continues to kidnap their legal rights and enter into settlements, on their behalf, destroy trusts and LLC’s with Oppenheimer Trust Company that were set up by their grandparents while they were alive for them and destroying companies set up to protect their home and more.

“Eliot Bernstein, Individually, is not a beneficiary of either Simon’s or Shirley’s Trusts or Estates. Instead, his three sons are among the beneficiaries of both Simon and Shirley’s Trusts, in amounts to be determined by further proceedings. **Eliot lacks standing to continue his individual involvement in this case.”**
[emphasis added]

23. After two years of derailing multiple judicial proceedings O’Connell, Ted, and Rose suddenly agree that Eliot is a beneficiary with standing and after three evidentiary hearings Judge Rosemarie Scher ruled that Eliot is a beneficiary with standing to participate in his father’s estate proceedings and issued findings of fact and conclusions of law to eliminate further dispute.

From an Order issued by Judge Scher, See (Exhibit 12- March 03, 2017 Scher Order)

Hon. Judge Rosemarie Scher states,

“Present before the Court were Peter Feaman, Esquire on behalf of William Stansbury; Alan Rose, Esquire on behalf of Ted Bernstein, Trustee, Brian O’Connell as Personal Representative, **Eliot Bernstein as interested party.**” [emphasis added].

24. On March 2, 2017, the Hon. Judge Rosemarie Scher overruled the erroneous alleged order to reflect that for all purposes going forward, ELIOT BERNSTEIN is a beneficiary with standing to participate when she confirmed in the hearing before her that she “overruled” any prior claims by that court or its court appointed officers and fiduciaries that Eliot did in fact have standing in his father’s estate in the following exchange:

9 forthcoming. And I think we'll be able to show
10 that there's been fraud on this Court. The
11 other date in that hearing if you look at the
12 transcript Mr. Rose claimed that I had no
13 standing, and you overruled that, or whatever
14 you call it, you did.
15 THE COURT: I did.”

(Exhibit 2 - March 02, 2017 Hearing Page 127 of the Transcript)

25. Hon. Judge Rosemarie Scher issued further findings of fact, conclusions of law in an Order dated April 2017, see (Exhibit 13 - April 27, 2017 Scher Order) after hearings held on February 16, 2017, March 02, 2017 and March 16, 2017 further enforcing that Eliot Bernstein is a beneficiary of the Simon Bernstein Estate and further giving him standing, which wholly contradicts Plaintiffs unsupported claim in the Summary Judgment that Eliot is not a beneficiary and had no standing that this Court then relied upon in dismissing Eliot from this lawsuit citing Collateral Estoppel based on an alleged Florida Court ruling and statements by officers of this Court (Attorneys and Fiduciaries) stating Eliot was not a beneficiary and did not have standing. Hon. Judge Rosemarie Scher states in her April 27, 2017 Order on Page 7 Paragraph 17,

“17. Elliot Bernstein joins Stansbury's opposition to the appointment of Mrachek Firm. Elliot is a residuary beneficiary of any tangible property of the Estate.”

This Order established Eliot as a beneficiary.

26. Standing is a foundational issue that should never have taken over three years to determine as Ted, Rose and the fiduciaries in charge of the trusts and estates depleted the assets through fraud and intentional deception. In order to now rectify the injustices wrought upon Eliot and his family by the frauds of these fiduciaries, Eliot re-affirmed in a June 2, 2017 hearing that Judge Scher expressly overruled the prior finding that deprived him of standing as a beneficiary and that this fraud discovered had to be brought to the attention of this Court by those parties responsible and those parties aware of the frauds. As such, this Honorable Judge is asked to reinstate Eliot Bernstein in the case to participate in full and avoid the further deprivation of rights Rose, Ted and O'Connell conspired to accomplish. From a hearing held in the Florida

Probate Court on June 02, 2017 before Judge Scher, see (Exhibit 14 - June 02, 2017 Hearing Transcript) the following exchange was made by Eliot to the court,

15 MR. ELIOT BERNSTEIN: Oh, okay. So I was
16 thrown out of the Illinois litigation because
17 they told that court that I was not a
18 beneficiary of my father's estate and I had no
19 standing. And Judge Blakey relied on this
20 Court's statement that I was not a beneficiary
21 and had no standing in my father's estate to
22 throw me out on a summary judgment, saying I
23 had no standing and therefore in Florida res
24 judicata and yada yada yada.
25 The bottom line is that was all

(Exhibit 14 - Page 36)

1 orchestrated. This whole Florida court is
2 being manipulated to create another fraud on a
3 federal court. And everybody who is aware that
4 I am a beneficiary with standing should have
5 already notified federal Judge Blakey that
6 Mr. Rose misled this Court to gain those orders
7 by Judge Phillips. And that's where I will
8 close it up.
9 THE COURT: And that's good.

(Exhibit 14 - Page 37)

27. This entire outrageous deception upon the state and federal court did not even slow the co-conspirators down in their scheme to defraud Eliot of his inheritance rights. Instead, Ted, Adam Simon, O'Connell and Rose ignored the ruling and proceeded full steam ahead into settlement negotiations and executed settlements in both the Florida court and this Court, omitting Eliot to steal what is rightfully his inheritance by maintaining the fraudulent narrative that he was not a beneficiary with standing and therefore not a necessary party to the settlement

discussions or the executed settlements. The parties entered into a Settlement Agreement, see (Exhibit 15 - July 17, 2017 Signed Illinois Settlement Excluding Eliot from Settlement Discussions and Execution) with no notice to Eliot to settle this Federal lawsuit before this Court and regardless of his status as a beneficiary and submitted the fraudulent executed Settlement Agreement not to this Court for approval but to Judge Scher for her approval and to further defraud this court yet again into acknowledging a Settlement Agreement that was void for failing to include a necessary party, Eliot Bernstein and fraud. See (Exhibit 16 - Oct 19, 2017 Scher Order on Illinois Federal Lawsuit Settlement) and (Exhibit 17 - October 19, 2017 Hearing Transcript.)

28. If the foregoing deception failed to shock the conscience of the Judge, the fact that the Florida probate court assumed subject matter jurisdiction over INTER-VIVOS TRUSTS in violation of the Florida Trust Code should exasperate the Court. The Code is unambiguous in mandating LIVING TRUSTS be heard in civil court and merely permitting testamentary trusts to be considered in pending probate matters. The Court should take Judicial Notice of the following Inter-vivos trust case dockets and make them in whole part of this Court's record which were erroneously heard and considered and allegedly validated in the Florida Probate court in absence of subject matter jurisdiction and then further misrepresented to this Court as "testamentary" trusts, leading to a host of void orders:

- a. Case # 502014CP003698XXXXNB – "Shirley Bernstein Trust Agreement" dated May 20, 2008, a living Inter-vivos trust - (Exhibit 18 - Shirley Trust Docket)
- b. Case # 502015CP001162XXXXNB – "Simon L. Bernstein Amended and Restated Trust Agreement" dated July 25, 2012, a living Inter-vivos trust (Exhibit 19 - Simon Trust Docket)

29. The Estate cases that had these Inter-vivos trusts of Simon and Shirley Bernstein heard by a Probate court under the estate cases as alleged “testamentary” trusts in addition to the separate Probate actions listed above are as follows and the Court should take Judicial Notice of the following estate case dockets and make them in whole part of this Court’s record:

- a. Case # 502012CP004391XXXXSB – Simon Bernstein Estate (Exhibit 20 - Simon Estate Docket)
- b. Case # 502011CP000653XXXXSB – Shirley Bernstein Estate (Exhibit 21 - Shirley Estate Docket)

30. The Florida probate proceedings were so wrought with fraud as to vitiate the entire proceedings, leaving this Court broad discretion to determine the rights and liabilities of the parties--particularly with respect to the INTER-VIVOS TRUSTS settled by Simon and Shirley Bernstein for the benefit of their “children,” which included Eliot Bernstein. For purposes of illustration, Simon L. Bernstein’s Codicil to his Will, dated July 25, 2012 already exhibited herein specifically defines his “children” to include:

“TED S. BERNSTEIN, PAMELA B. SIMON, **ELIOT BERNSTEIN**, JILL IANTONI and LISA S. FRIEDSTEIN.
[emphasis added]

31. This Court was also intentionally misinformed by its Court appointed officers (Attorneys and Fiduciaries) in their Motion for Summary Judgment that ELIOT was not a beneficiary of his mother’s Estate when her Will expressly include Eliot as a beneficiary.

WILL OF SHIRLEY BERNSTEIN
Dated May 20, 2008

I, SHIRLEY BERNSTEIN, of Palm Beach County, Florida, hereby
revoke all my prior Wills and Codicils and make this Will. My

spouse is SIMON L. BERNSTEIN ("SIMON"). My children are TED S. BERNSTEIN ("TED"), PAMELA B. SIMON, ELIOT BERNSTEIN [EMPHASIS ADDED], JILL IANTONI and LISA S. FRIEDSTEIN.

32. This false statement of fact to the Florida Probate court created another Order that was based upon intentional deception and fraud on the court that is not accurate either regarding Eliot not being a beneficiary and not having standing in his mother's estate. Thus, this Order was clearly erroneous too and Eliot is again having to pursue legal remedies to overturn the Order procured by the same co-conspirators' frauds. Ted had received upon his mother's death in addition to a copy of the Will, a Petition for Administration in the Shirley Estate that was filed on Feb. 10, 2011 (Exhibit 22 – Shirley Petition for Administration) filed in the Florida Probate Court, which clearly shows all five children of Shirley, including Ted as a beneficiary of the Estate of Shirley.

33. To establish to this Court that Ted and co-conspirator counselors Alan Rose and Adam Simon knew that Eliot was a beneficiary in Simon's Estate with standing prior to misleading this Court with scienter that he was not to disable his due process rights, Ted received upon his father's death in addition to a copy of the Will showing all five children as beneficiaries, a Petition for Administration (Exhibit 23 - Simon Petition for Administration) filed in the Florida Probate Court on October 02, 2012, which clearly shows all five children of Simon, including Ted as a beneficiary of the Estate of Simon. Yet, Tet and his counsel claim in their Summary Judgment that,

“To the contrary, Eliot has lost standing to participate in the Probate Actions on his own behalf after it was determined that the testamentary documents at issue in the Probate Actions are in fact valid, genuine and enforceable. **Judge John L. Philips also determined that Simon Bernstein's grandchildren are the**

beneficiaries of his Estate, and none of his children are beneficiaries, including Eliot.” [emphasis added]

34. Alan Rose, Ted Bernstein, Brian O’Connell, and their co-conspirators and agents / representatives cannot be trusted to tell the truth to this Honorable Judge, as evidenced by their repeated, undeterred fraud on federal and state courts to steal Eliot and his children’s inheritance.

35. The fraud is all encompassing to the outrageous extent of Florida court appointed officers (Attorneys and Fiduciaries and Guardian,) including but not limited to, Ted Bernstein, Adam Simon, Alan Rose, Robert Spallina, Donald Tescher and their agents and representatives filing this Federal lawsuit over a non-existent trust, entitled “Simon L. Bernstein Irrevocable Insurance Trust dtd 6/95” that no executed copy has ever been produced to affirm the terms of or if Ted is in fact a Successor Trustee as he claims. The Court in its Round 1 Summary Judgment Order denying Summary Judgment to Plaintiffs eloquently pointed to the fact that the initial claim for the proceeds was made by former Co-Personal Representative in the Estate of Simon Bernstein, Robert Spallina, who claimed to be Successor Trustee of the legally non-existent trust and then when this lawsuit was filed it was filed by Ted acting as the alleged Trustee instead. These schemes and artifices to defraud Eliot of insurance benefits was the motivation to manufacture a lawsuit concerning a trust that never even existed, involving an insurance policy that has not ever been produced to this Court, despite funds being interpled to the Court based on the “Policy” terms.

36. Proof of the schemes lies in the fact that despite funds of the alleged “Policy” being interpled into this court, none of these co-conspirators have produced an actual “Policy” or an actual trust to date--revealing the entire production was a sham--to cover up fiduciary theft and using the Court to attempt to facilitate a crime. Attorneys, Tescher and Spallina, the former Co-Personal Representatives and Co-Trustees of Simon’s Estate and Simon’s Trusts have admitted

their law firm forged dispositive documents and deposited them in the Florida probate proceedings, acknowledging fraudulently notarized and forged documents being filed with the Florida probate court, including Post Mortem forgeries of Simon Bernstein's signature used to fraudulently close his deceased wife's estate that when the fraud was proven led to the Estate being reopened, which it remains open to this date.

37. In this Court's ORDER the Court also mistakenly defines that a "Policy" exists and "Policy Proceeds" are at stake when factually the Court is not in possession of any bona fide policy issued by the insurance carrier and is only in possession of parole evidence that a policy exists and the terms of it, such as, who the beneficiaries are, what the face amount is, who the owner is and other information that is contractually defined in the legally binding policy issued. No party to this lawsuit has produced a policy to the Court, including the carrier.

38. Spallina⁴ has further admitted ironically in the December 15, 2015 "validity" hearing (Exhibit 24 – December 15, 2015 Hearing Transcript, Page 95 - Lines 12-25, Page 96 – Lines 8-19) that while acting as Ted's counsel for Ted as Fiduciary of the Shirley Bernstein Trust Agreement dated May 20, 2008 that Spallina forged a copy of this Shirley Bernstein trust document, which altered the beneficiaries of the Shirley trust that he had drafted years earlier while acting as Simon and Shirley's Estate planner, two years after the decedent passed in January of 2013 and sent this forged trust to Eliot Bernstein and his children's counsel, Christine C. Yates, Esq. of Tripp Scott Law Firm in Ft. Lauderdale, FL to deceive them of who the true and proper beneficiaries of Shirley's trust were.

39. This fraud was in effort to benefit Ted and Pamela Simon's families, who were omitted from the Shirley's Trust the date it became irrevocable upon her death as being considered

⁴ TESCHER and SPALLINA after resigning from all Bernstein family matters after their law firm committed fraud were subsequently arrested by the SEC in a non-related Insider Trading Scheme and and subsequently surrendered their law licenses. (Exhibit 34 – TESCHER and SPALLINA SEC Consents)

predeceased for all purposes of dispositions as stated in the express terms of that trust. Ted Bernstein and his attorneys' actions have been nothing but fraud since the start and he even attempted with his close personal friends and counsel, Spallina and Tescher, to reinsert his lineal descendants post-mortem when the Shirley trust was no longer subject to revocation through this fraudulent trust Spallina created and disseminated.

40. Further, Spallina at the "validity" hearing claimed that the fraudulent trust did not alter the beneficiaries of the Shirley trust when in fact it did through a fraudulent and forged amendment, this false statement to the court also violates the terms of his consent with the SEC and is yet another example of these reprobates in the probate court willingness to lie and deceive the court and the beneficiaries and interested parties, see (Exhibit 25 - Fraudulently Altered Amendment Shirley Trust) and (Exhibit 26 - Alleged Original Amendment that was Fraudulently Altered.)

41. The forged version omits the intentional exclusion of Ted and Pamela Simon **and their lineal descendants**. Where the actual alleged language of the 2008 "Shirley Bernstein Trust Agreement" reads,

"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..."

42. The language that was fraudulently inserted in the Forged 2008 "Shirley Bernstein Trust Agreement" removes the language excluding Ted and Pamela Simon's lineal descendants from inheritancy in the IRREVOCABLE trust of Shirley giving them a possible 40% stake in the Shirley Trust if it were determined through the frauds that the grandchildren are beneficiaries

instead of Eliot, Jill and Lisa who are the only permissible class of beneficiaries as of the date of Shirley's death on December 08, 2010 when the trust became IRREVOCABLE. From the fraudulent and forged 2008 "Shirley Bernstein Trust Agreement" it is clear that Spallina altered language to change the possible beneficiaries of her trust:

“NOW THEREFORE, by executing this instrument, I hereby amend the Trust Agreement as follows:

1. I hereby delete Paragraph B. of Article II. in its entirety.
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...”

43. The fraud continues to completely permeate all court proceedings in which Ted Bernstein, Alan Rose, Adam Simon, Pamela Simon, and their co-conspirators discussed herein are involved. Undeterred by being caught red handed by Hon. Rosemarie Scher, Rose and Ted still continue to use a fraudulent appointment of a Guardian Ad Litem for Eliot's ADULT CHILDREN, knowing they are over the age of 18 and competent to act on their own behalf but still using her to gain consent for settlements and more, despite knowing that they are adults and all having received Cease and Desist letters from the children notifying them to cease the illegal acts being done in their names.

44. A predatory guardianship was placed on Joshua Bernstein by Judge Phillips as a minor when he in fact at the time of the initiation of the Guardian Ad Litem Joshua was factually an adult and no adult guardianship proceedings were ever held for him, thereby kidnapping his legal rights as an adult by claiming him to be a minor. For a detailed analysis of how this fraud was committed, see (Exhibit 27 - July 11, 2017 Joshua Bernstein Cease and Desist Letter to Diana

Lewis.) Despite receiving the Cease and Desist Letter from Joshua, Lewis continues to act on Joshua's behalf with no legal authority including acting to give his consent in the proposed Settlement of this lawsuit.

45. Jacob Bernstein had to issue a Cease and Desist Letter to Diana Lewis, see (Exhibit 28 - July 11, 2017 Jacob Bernstein Cease and Desist Letter to GAL Diana Lewis) after he turned 18 years old on January 01, 2017 to attempt to have her cease acting on his behalf and Lewis has refused to terminate the "minor" guardianship when he was no longer a minor as required by law and instead continues to act on his behalf including in the proposed Settlement of this lawsuit.

46. Diana Lewis, the fraudulently appointed Guardian Ad Litem appointed in an evidentiary hearing in the Probate court and not through a formal GAL hearing in that division, continues to appear in Court as a Guardian Ad Litem for Eliot's adult sons, consenting to the destruction of trusts created in their names, mismanaging the assets intended solely for them, billing ludicrous and fraudulent amounts for services rendered and entering them into sham settlement agreements without any notice to Eliot's adult sons, who are the only persons legally authorized to act on their behalf in any of these matters.

47. The fraudulent scheme and artifices to defraud of these criminal fiduciaries, attorneys and guardian have created a nightmare for Eliot Bernstein and his entire family that will not end as he is forced to endure the continual egregious deprivation of his rights to property, watching thieves steal his inheritance without recourse because these attorneys have managed to deceive the Florida probate court, civil court, appeals court and Supreme Court if that is possible--to intentionally harm Eliot and his family. After more than four years of fighting for minimal due process rights in terms of mere notice and the opportunity to be heard in a proceeding not tainted with fraud, the deception continues, prompting Eliot Bernstein to pray this Court makes the

insanity stop as more fully described in Eliot's "All Writs Injunction" (Dkts #214-216) that even predicated that this fraud to remove Eliot from the proceedings through fraudulent claims of collateral estoppel and more were in progress and that this Court can now plainly see were executed and worked.

48. Eliot's rights have been so categorically denied due to the corruption of these fiduciaries, he is now being precluded from filing appeals of adverse rulings pro se, violating the Open Courts provision of the Florida Constitution and guarantee of redress for wrongs in the United States Constitution. Eliot is indigent and cannot afford counsel but has been barred from filing in the Florida appeals court to vacate the fraudulently obtained orders and expose further the fraud on the Probate court without a Florida attorney, the perfect catch 22. See, (Exhibit 29 - August 23, 2017 4th DCA Order Prohibiting Eliot Filing Pro Se). The 4th DCA stated in its Order:

"The Clerk of this Court is directed to no longer accept any paper filed by Eliot Ivan Bernstein unless the document has been reviewed and signed by a member in good standing of the Florida Bar who certifies that a good faith basis exists for each claim presented."

49. The 4th DCA then issued an Order dismissing an appeal filed by Eliot for failure to prosecute it when the reason for this failure was due to the fact that Eliot cannot find nor afford an attorney to prosecute the case for him and the court refuses to allow him to do so pro se. This violates the equal protection clause of the 14th Amendment to the United States Constitution and 42 U.S.C. 1983. See, (Exhibit 30 - Nov. 01 2017 4th DCA Order Dismissing Appeal Lack of Prosecution.)

50. Eliot is similarly prohibited from entering evidence or speaking for any length of time and prohibited from questioning a witness for more than four minutes in the same probate proceedings with Judge Scher who has witnessed the fraud that has kept Eliot out of proceedings

based on false claims to that court and who recently determined he is a beneficiary with standing, yet she continues to move forward despite the frauds as if nothing has happened, see (Exhibit 31 - Oct 19, 2017 Hearing Transcript Regarding Settlement of Illinois Federal Lawsuit.)

51. Judge Rosemarie Scher had no jurisdiction to approve the settlements involving Simon and Shirley Bernstein's Inter vivos Trusts, including the alleged Plaintiff in this case, the non-existent and Inter-vivos "Simon Bernstein Irrevocable Insurance Trust dtd 6/95" in the Probate court but did so anyway, rendering the ORDERS void; yet they are treated as if valid and enforceable, which excluded Eliot and his children from all right and benefit to their rightful inheritance.

52. In her Order dated April 27, 2017, see (Exhibit 13 - April 27, 2017 Order), Page 11 Paragraph #32), Judge Scher found "Mr. O'Connell to be credible." But nonetheless, stated that it "cannot ignore the fact that the Estate and Ted are adverse in the Illinois lawsuit" declining to appoint Ted Bernstein as Administrator Ad Litem while the Illinois action is still pending.

53. Remarkably, after learning of the fraud upon her court, Judge Scher accepted retaliatory pleadings by Ted and Alan Rose to hold Eliot in contempt of court and to hold it over Eliot's head as a weapon issued an Order on September 15, 2017, see (Exhibit 32 – Scher September 15, 2017 Order) and scheduled the hearing for Thursday, March 22, 2018 at 1:30 p.m. The contempt charge is centered upon the fact that Eliot sent the Cease and Desist letters of his Adult children to the Guardian Ad Litem on their behalf to keep confidential their private email addresses and ignoring the substance of the fraud disclosed in the Cease and Desist letters sent that were submitted by Ted and Rose in their pleading.

54. Dkt. #289 is hereby incorporated by reference with all exhibits and all arguments in support of this Motion and all relief sought.

55. Dkts. #214-215 are hereby incorporated by reference with all exhibits and all arguments in support of this Motion and all relief sought.

56. Eliot can hardly conceive of a case in which justice mandates that the court vacate the ORDER dismissing his claims based on findings of the Florida Court that have since been overruled and overturned, such that the ORDER granting summary judgment against Eliot Bernstein is no longer valid. The circumstances here satisfy the prerequisites for relief under Rule 60(b).

57. Fiduciaries and Counsels misrepresentations have warranted Rule 60(b)(3) relief, particularly because it “completely sabotaged the federal trial machinery” by fraudulently defeating Eliot Bernstein’s right to a federal forum. See, e.g., *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1346 (5th Cir. 1978) reversing denial of Rule 60(b)(3) motion because defendant suppressed information called for upon discovery and prevented plaintiff from fully and fairly presenting her case); see also *Boddicker v. Esurance, Inc.*, 770 F.Supp.2d 1016 (D.S.D. 2011) (the district court vacated, under Rule 60(b)(3), its summary judgment order that relied on defendant’s misrepresentation).

58. Fiduciary and Attorney fraud is hardly something unique or isolated, but widespread and the subject of almost every news publication but the metastasis of this cancer continues to spread unabated. Unless this Honorable Judge intervenes and issues appropriate rulings based upon evidence and legitimate estate planning documents and trusts, rather than forged instruments by a cottage group of fiduciaries and attorneys that might as well be deemed the Probate mafia, Eliot Bernstein and his children, the intended beneficiaries of Shirley and Simon Bernstein’s generous provision for their futures, will be robbed of everything they are rightfully entitled to under

federal and state law, denied any semblance of due process and denied equal protection of the law.

59. Given fraud vitiates everything it touches, this Court can easily render judgment that the proferred orders of Ted Bernstein, Alan Rose, Adam Simon, Pamela Simon and the corrupt fiduciaries engaging in flagrant theft--are void ab initio.

60. Eliot has written this Motion under great physical duress and medical malady that is “life threatening” as is more fully explained in (Exhibit 33 – “MOTION TO POSTPONE AND RESCHEDULE NOVEMBER 15, 2017 HEARING” – EXHIBIT 1 – “AFFIDAVIT OF CANDICE BERNSTEIN IN SUPPORT OF ELIOT BERNSTEIN’S MOTION TO POSTPONE AND RESCHEDULE NOVEMBER 15, 2017 HEARING”) and prays that this Court understands this has affected his ability to file in a healthy state of mind and if the Court finds any procedural errors, etc. allows Eliot to refile an amended motion.

61. That only this week on November 06, 2017 or thereabout after conversation with this Court’s clerks lasting approximately 15 minutes, Eliot Bernstein was reinstated by Clerk Nadine as a filer in ECF system as no one could determine how or why he was removed as no order was issued to remove him and no reason existed. Eliot being Pro Se did not initially know that he was improperly removed and believed he was prohibited from filing with the Court when he was dismissed on Summary Judgment despite the need to file appeals and motions such as this 60(a) and 60(b). Further, even after reinstatement in the ECF filing system Eliot is not being served process by the ECF system or opposing parties as of 11/08/2017 when filings were filed by opposing parties and this is severely interfering with his rights to be noticed, respond and file necessary pleadings.

Wherefore, ELIOT BERNSTEIN respectfully prays for this Court to retain jurisdiction over the inter vivos trusts, given the “res” of these trusts is not within the subject matter jurisdiction of any court for a determination of the rights and liabilities of the parties. Eliot Bernstein respectfully prays for this Rule 60b Motion to be granted and for the ORDER granting summary judgment against him (primarily on the basis of him not being a beneficiary of the Simon Bernstein Estate and claim that he lacked standing--now proven herein to be a fraudulent and misleading claim to this Court that has been proven false by new orders of the Probate court) be vacated and set aside.

Eliot prays that this Court seeing the fraud that has denied Eliot due process and procedure for almost a year in this Court and almost two in the Florida probate court and other Florida courts, review and consider Eliot’s “All Writs Injunction” (Dkts #214-216) and the reliefs sought therein as these fraudulent acts further support his claims therein and entitle him to the reliefs sought thereunder.

Eliot Bernstein further prays for appointment of pro bono counsel to protect his rights as he is physically incapable of protecting himself due to severe physical and stress related health problems he has experienced that have almost ended his life multiple time in the past few years. (See Exhibit 33 – EXHIBIT 1 - Affidavit of Candice Bernstein). Eliot seeks the Court to approve his In Forma Pauperis Indigent Application submitted to this Court already as he is indigent and qualifies for such appointment and thanks the Court for the same.

DATED: November 09, 2017

Respectfully submitted,

/s/ Eliot Ivan Bernstein

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th of November, 2017, I electronically filed the foregoing with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner.

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