

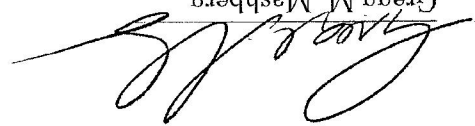


sanctions, both monetary and injunctive, against Plaintiff Elliot I. Bernstein ("Bernstein"), and for such other and further relief as this Court may deem just and proper.

Dated: April 5, 2013

Respectfully Submitted,

PROSKAUER ROSE LLP

By: 

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Christopher C. Wheeler, Steven C. Krane (deceased),  
and the Estate of Stephen R. Kaye*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
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ELIOT I. BERNSTEIN, et al.,  
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:  
Plaintiffs,  
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:  
- against -  
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:  
PROSKAUER  
DEFENDANTS'  
MOTION FOR  
DEPARTMENTAL DISCIPLINARY COMMITTEE, et al.,  
SANTIONS  
PURSUANT TO FED.  
R. CIV. P. 11  
:  
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Defendants Proskauer Rose LLP, Kenneth Rubenstein, Christopher C. Wheeler, the late Stephen C. Krane, and the Estate of Stephen R. Kaye (collectively, the "Proskauer Defendants") submit this memorandum of law in support of their Motion for Sanctions against *pro se* Plaintiff Elliot I. Bernstein ("Bernstein") pursuant to Rule 11 of the Federal Rules of Civil Procedure.<sup>1</sup>

### PRELIMINARY STATEMENT

Bernstein has ignored this Court's explicit warning that if he makes any additional

frivolous filings he may be subject to sanctions, either on motion of the parties or *sua sponte* by

the Court.<sup>2</sup> Bernstein's current motion to reopen is clearly vexatious and frivolous and the

Proskauer Defendants respectfully urge the Court to impose sanctions.

This Court dismissed Bernstein's underlying case on August 8, 2008.<sup>3</sup> The Second

Circuit dismissed his appeal *sua sponte* because it lacked "an arguable basis in law or fact."<sup>4</sup>

Last July, Bernstein filed a frivolous and vexatious motion to reopen.<sup>5</sup> The Court denied that

motion out-of-hand and, in so doing, gave him the sanctions warning.<sup>6</sup>

<sup>1</sup> Pursuant to Rule 11(c)(2) of the Federal Rules of Civil Procedure, the Proskauer Defendants will refrain from filing their motion for sanctions and this supporting memorandum with the Court if Bernstein withdraws his Second Motion to Reopen within twenty-one days of having been served with the motion and supporting memorandum.

<sup>2</sup> Dkt. No. 141.

<sup>3</sup> *Bernstein v. New York*, 591 F. Supp. 2d 448 (S.D.N.Y. 2008) (Dkt. No. 107).

<sup>4</sup> Dkt. No. 115.

<sup>5</sup> Dkt. No. 138.

<sup>6</sup> Dkt. No. 141.

<sup>9</sup> For the sake of brevity, the Proskauer Defendants repeat only the facts necessary to the instant motion. Familiarity with other facts related to this case is assumed.

<sup>8</sup> Dkt. No. 143.

<sup>7</sup> Dkt. No. 142.

Even before serving the Amended Complaint, Plaintiffs sought to disqualify the New York Attorney General (the "NYAG") from representing any of the State Defendants based on alleged conflicts of interest. This Court rejected Plaintiff's request, writing that "the Attorney General does not face an improper conflict of interest in representing the State Defendants. If, however, the Attorney General concludes that an investigation of defendants is warranted, then various common-law claims.

and officials allegedly responsible for the misappropriation and cover up. Plaintiffs also alleged complaints that Iviewit had filed in New York and Florida against scores of attorneys, law firms intellectual property and (ii) the alleged interference with various attorney disciplinary asserted several federal claims arising out of (i) the alleged misappropriation of Iviewit's *pro se* action in December 2007. Over 1,100 paragraphs in length, the Amended Complaint Bernstein (together with co-plaintiff P. Stephen Lamont ("Lamont")) commenced this

### FACTS<sup>9</sup>

hope that his abuse of the judicial process will stop, sanctions are necessary. Bernstein's flagrant disregard of this Court's warnings make clear that if there is any substantively baseless and, indeed is utterly frivolous. offered a legitimate basis for seeking again to reopen this action. Rather, his filing is untimely, is forth in the Proskauer Defendants' opposition to Bernstein's motion,<sup>8</sup> Bernstein has not remotely Undeterred, Bernstein filed his second motion to reopen on February 28, 2013.<sup>7</sup> As set



<sup>15</sup> Dkt. No. 141. Acting apart from Bernstein, his co-plaintiff, Lamont, moved this Court in 2010 to reopen the docket pursuant to Rule 60(b)(6), based on the dismissal of *Anderson*, which motion this Court denied, ruling that Lamont had no federally protected interest in the attorney disciplinary process. *Bernstein v. Appellate Div. First Dep't Disciplinary Comm.*, No. 07 Civ. 11196 (SAS), 2010 U.S. Dist. LEXIS 132830, at \*7 (S.D.N.Y. Dec. 15, 2010), *appeal dismissed*,

<sup>14</sup> 614 F. Supp. 2d 404 (S.D.N.Y. 2009), *aff'd sub nom. Anderson v. Cahill*, 417 Fed. Appx. 92 (2d Cir. 2011); 07-Civ. 9599 (SAS) (Dkt. No. 132).

<sup>13</sup> Dkt. No. 115.

<sup>12</sup> *Bernstein*, 591 F. Supp. 2d at 470 (Dkt. No. 107).

<sup>11</sup> Dkt. No. 11.

<sup>10</sup> Dkt. No. 7.

parties or by this Court *sua sponte*.”<sup>15</sup>

of Civil Procedure 11. Monetary and/or injunctive sanctions may be imposed upon motion of the additional frivolous filings in this case could subject [Bernstein] to sanctions under Federal Rule voluminous, and an egregious abuse of judicial resources,” and warned Bernstein that “any Court denied the motion on August 15, 2012, finding it to be “frivolous, vexatious, overly 286 pages, named nearly four thousand defendants, and lacked any coherent rationale. This developments in another case in this Court, *Anderson v. New York*.<sup>14</sup> This motion totaled some On July 27, 2012, Bernstein filed his first motion to reopen, making much of alleged “lack[ed] an arguable basis in law or fact.”<sup>13</sup>

The Second Circuit dismissed Bernstein’s appeal *sua sponte*, holding that his appeal with the Court expressing its doubts that Plaintiffs could ever state a legally cognizable claim.<sup>12</sup> with prejudice. Bernstein’s request for leave to file a second amended complaint was denied, On August 8, 2008, this Court dismissed all of Bernstein’s federal claims on the merits, reconsideration on March 21, 2008.<sup>11</sup>

independent counsel would be required.”<sup>10</sup> The Court denied Plaintiffs’ request for

Bernstein now disregards the Court's clear warning and continues to abuse the judicial process with his second motion to reopen.<sup>16</sup> The current motion is predicated on alleged conversations that he had with New York State employees in 2011 – *almost two years prior to the filing of this motion*. Bernstein alleges that an individual – who (based upon the purported transcript) clearly had no idea who Bernstein was or the nature of his claims – conceded that the State had a conflict of interest and would have to obtain independent counsel to defend against his claims.<sup>17</sup>

Bernstein's current motion to reopen is clearly frivolous. As detailed in the Proskauer Defendants' Opposition to Plaintiff's Second Motion to Reopen,<sup>18</sup> these alleged two-year-old conversations are substantively meaningless, do not constitute grounds to reopen and, in any event, merely address claims previously considered and rejected five years ago.<sup>19</sup>

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No. 10-5303-cv, slip op. (2d Cir. May 5, 2011) (Dkt. Nos. 128, 135). Undeterred, and again acting without Bernstein's involvement, in 2011 Lamont commenced a watered-down version of this action in District Court for the District of Columbia. Mimicking Bernstein's "conflicts" obsession, he initially moved to disqualify the NYAG. Senior District Judge Barbara J. Rothstein denied the disqualification motion and went on to dismiss the action on grounds of *res judicata* (relying on this Court's decision in *Bernstein*). *Lamont v. Proskauer Rose, LLP*, 881 F. Supp. 2d 105, 111-14 (D.D.C. 2012).

<sup>16</sup> Dkt. No. 142.

<sup>17</sup> See Affirmation of Eliot I. Bernstein (the "Bernstein Aff."), ¶¶15-17 (Dkt. No. 142).

<sup>18</sup> Dkt. No. 143.

<sup>19</sup> See Dkt. Nos. 7, 11.

ARGUMENT

BERNSTEIN SHOULD BE SANCTIONED BECAUSE HIS MOTION IS  
FRIVOLOUS AND LACKS ANY GOOD FAITH BASIS IN LAW OR FACT

**A. General Principles**

Rule 11 is designed to “deter frivolous claims and curb abuses of the legal system,

thereby speeding up and reducing the costs of litigation.”<sup>20</sup> Filings that have a “complete lack of a factual and legal basis” have been found to “needlessly increas[e] litigation costs” and thereby harass Defendants.<sup>21</sup> In appropriate cases, *pro se* litigants are subject to sanctions.<sup>22</sup> *Pro se*

litigants who show contempt for the judicial system, harass defendants and cause the court and litigants to waste resources, are not entitled to deference and may be sanctioned by the court.<sup>23</sup>

This Court has already concluded that Bernstein has crossed the line from acceptable

conduct, although it did not impose sanctions, anticipating that he would “get the message” and refrain from further sanctionable conduct. He has not. His second motion to reopen is, as

demonstrated in the Proskauer Defendants’ opposition papers, frivolous in every respect. The

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<sup>20</sup> *Binghamton Masonic Temple, Inc. v. Bares*, 168 F.R.D. 121, 126 (N.D.N.Y. 1996) (citation omitted).

<sup>21</sup> *Id.* at 128.

<sup>22</sup> *See, e.g., Ex’r of N.Y. Estate of Kates v. Pressley & Pressley, P.A.*, No. 11-CV-3221 (JFB)(ARL), 2013 U.S. Dist. LEXIS 16873, at \*15-16, 24-25 (E.D.N.Y. Feb. 7, 2013) (enjoining

*pro se* plaintiffs from further filings in the Eastern District of New York arising from or relating to the claims at issue and denying their Rule 59(e) motion where this was the Plaintiff’s “fourth attempt” at litigating the same claims in the same court); *Schwartz v. Nordstrom, Inc.*, 94 Civ. 1005 (CSH), 1994 U.S. Dist. LEXIS 15203, at \*8-9 (S.D.N.Y. Oct. 24, 1994) (imposing \$3,000 monetary sanction on *pro se* plaintiff for commencing numerous lawsuits against Nordstrom and its attorneys where plaintiff had been previously warned he had no cognizable cause of action).

<sup>23</sup> *See Lipin v. Hunt*, 573 F. Supp. 2d 836, 845 (S.D.N.Y. 2008) (noting that “a court’s special solicitude towards *pro se* litigants does not extend to the willful, obstinate refusal to play by the basic rules of the system upon whose very power the plaintiff is calling to vindicate his rights.”) (internal quotations and citation omitted).

<sup>25</sup> *Safir v. U.S. Lines Inc.*, 792 F.2d 19, 24 (2d Cir. 1986); *see also Positano v. New York*, 12-CV-2288 (ADS) (AKT), 2013 U.S. Dist. LEXIS 32488, at \*23-25 (E.D.N.Y. Mar. 7, 2013) (imposing injunctive sanctions on *pro se* plaintiff for bringing repeated claims under civil rights statutes that he had been warned were without merit due to absolute judicial immunity and the Eleventh Amendment and applying the five factor test set forth in *Safir*).

<sup>24</sup> *McKoy v. Potter*, 08 Civ. 9428 (PKC), 2009 U.S. Dist. LEXIS 39623, at \*16 (S.D.N.Y. Apr. 20, 2009) (citations and internal quotations omitted).

harassment.  
Bernstein's conduct meets all these factors, and this Court should end his five-year campaign of

parties.<sup>25</sup>  
vexatious litigation is likely to continue to abuse the judicial process and harass other  
Ultimately, the question the court must answer is whether a litigant who has a history of  
(5) whether other sanctions would be adequate to protect the courts and other parties.  
other parties or has posed an unnecessary burden on the courts and their personnel; and  
litigant is represented by counsel; (4) whether the litigant has caused needless expense to  
does the litigant have an objective good faith expectation of prevailing?; (3) whether the  
harassing or duplicative lawsuits; (2) the litigant's motive in pursuing the litigation, e.g.,  
(1) the litigant's history of litigation and in particular whether it entailed vexatious,

consider the following factors to determine if a party like Bernstein should be enjoined:

In considering injunctive relief in the context of Rule 11, the district court should  
meritless grounds and enjoin him from pursuing future litigation without leave of the court."<sup>24</sup>  
sanction a prolific litigant who abuses the judicial process by repeatedly suing defendants on  
further filings. "[T]he All Writs Act, 28 U.S.C. § 1651, gives district courts [authority] to  
*Pro se* or not, Bernstein is an archetypal vexatious litigant who must be enjoined from

**B. Bernstein Should Be Enjoined from Any Further Filings Arising from the Same Claims**

now in order.  
motion is untimely and substantively baseless. Bernstein has had his last chance. Sanctions are

(1) Bernstein's litigious history demonstrates that nothing short of an injunction will

deter him from pursuing his repeatedly rejected claims. Indeed, a pattern of baseless filings

warrants injunctive sanctions.<sup>26</sup> Before filing the instant case, Bernstein filed numerous attorney

disciplinary complaints, including against the Proskauer Defendants, which he alleged were not

investigated by the states of New York or Florida.<sup>27</sup> As far as the Proskauer Defendants can

discern, the crux of both of Bernstein's frivolous motions to reopen have been that conflicts of

interest existed that prevented investigations by the State Defendants into the alleged attorney

disciplinary "cover-up." But this issue has been litigated repeatedly since the outset of this case

in 2008. Indeed, the Court rejected his motion to disqualify the NYAG, finding there was no

conflict of interest.<sup>28</sup> It denied Plaintiffs' request for reconsideration of this decision,<sup>29</sup> and then

held that "plaintiffs have no cognizable interest in attorney disciplinary procedures or in having

certain claims investigated."<sup>30</sup> The Second Circuit showed no patience for any of Bernstein's

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<sup>26</sup> See *Bridgewater Operating Corp. v. Feldstein*, 346 F.3d 27, 28-30 (2d Cir. 2003) (enjoining further federal filings by plaintiff related to the property at issue where plaintiff had filed suit in New York state and federal courts and the Southern District of Florida); *Satterfield v. Pfizer, Inc.*, 04-CV-3782 (KMW)(GWG), 98-CV-8040 (KMG)(GMG), 2005 U.S. Dist. LEXIS 14923, at \*5, 47-48 (S.D.N.Y. July 13, 2005), *aff'd*, 208 Fed. App'x. 59 (2d Cir. 2006) (enjoining *pro se* plaintiff from further filings in any state or federal action arising from the same claims where plaintiff instituted two actions in the Southern District of New York, a state and federal lawsuit in Delaware, and made attorney-disciplinary complaints); *Ex v. of N.Y. Estate of Kates*, 2013 U.S. Dist. LEXIS 16873, at \*15-16, 24-25 (enjoining *pro se* plaintiffs from further filings in the Eastern District of New York arising from or relating to the claims at issue and denying their Rule 59(e) motion where this was the Plaintiff's "fourth attempt" at litigating the same claims in the same court).

<sup>27</sup> See *Bernstein*, 591 F. Supp. 2d at 456 (Dkt. No. 107).

<sup>28</sup> Dkt. No. 7.

<sup>29</sup> Dkt. No. 11.

<sup>30</sup> *Bernstein*, 591 F. Supp. 2d at 468 (Dkt. No. 107).

claims and dismissed his appeal *sua sponte*.<sup>31</sup> Bernstein then waited nearly four years to bring his first so-called “emergency motion to reopen” in 2012, which this Court properly rejected, while warning Bernstein he risked sanctions if he continued filing frivolous motions. Bernstein, characteristically, ignored the Court’s warning and has now filed another baseless motion to reopen, again seeking to litigate claims that have been repeatedly rejected.

(2) Nor does Bernstein have any objective, good-faith basis to believe that he will prevail on his “conflicts” claim.<sup>32</sup> This Court, in dismissing his amended complaint, wrote that Plaintiffs had:

burdened this Court and hundreds of defendants, many of whom are not alleged to have engaged in wrongdoing, with more than one thousand paragraphs of allegations, but have not been able to state a legally cognizable federal claim against a single defendant. There is no reason to believe they will ever be able to do so.<sup>33</sup>

That the Second Circuit wrote that Bernstein’s claims lack any “arguable basis in law or fact” only underscores that Bernstein is on notice his claims are baseless.<sup>34</sup> This includes his basic contentions that Plaintiffs are entitled to an investigation of the attorney disciplinary process as well as Plaintiffs’ perennial claim that the NYAG is “conflicted.”<sup>35</sup>

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<sup>31</sup> Dkt. No. 115.

<sup>32</sup> See *McKoy*, 2009 U.S. Dist. LEXIS 39623, at \*19. See also *Safir*, 792 F.2d at 24 (imposing an injunction on a prolific *pro se* litigant who “has repeatedly asserted the same claims in slightly altered guise”); *Malley v. N.Y. City Bd. of Educ.*, 112 F.3d 69, 69 (2d Cir. 1997) (finding injunctive sanctions appropriate where plaintiff had been warned about the unmeritorious nature of his claims, but failed to heed this warning).

<sup>33</sup> *Bernstein*, 591 F. Supp. 2d at 470 (Dkt. No. 107).

<sup>34</sup> Dkt. No. 115.

<sup>35</sup> *Bernstein*, 591 F. Supp. 2d at 460, 469 (Dkt. No. 107); *Bernstein*, 2010 U.S. Dist. LEXIS 132830, at \*7 (Dkt. No. 128).

<sup>37</sup> See *Schwartz*, 1994 U.S. Dist. LEXIS 15203, at \*8-9 (imposing \$3,000 monetary sanction on *pro se* plaintiff for commencing numerous lawsuits against Nordstrom and its attorneys where plaintiff had been previously warned he had no cognizable cause of action). See also *Jones v. City of Buffalo*, 96-CV-0739E(F), 1998 U.S. Dist. LEXIS 6070, at \*18-20 (W.D.N.Y. Apr. 22, 1998) (imposing a \$2,500 sanction on *pro se* litigant for repeated abusive filings that attempted to relitigate previous decisions).

<sup>36</sup> See *Satterfield*, 2005 U.S. Dist. LEXIS 14923, at \*47.

like Bernstein.<sup>37</sup> For all the reasons set forth above, Bernstein's abusive filings place him Courts in the Second Circuit have imposed monetary sanctions on vexatious *pro se* litigants

### C. Monetary Sanctions Should Be Imposed on Bernstein

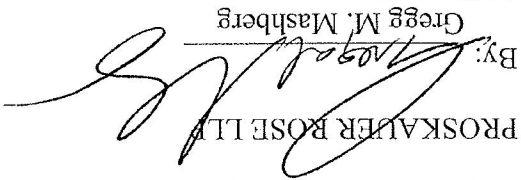
Bernstein making any filings in this or any other court without first obtaining leave. For all these reasons, any order of sanctions should include an injunction against any other litigant is immune from an injunction and the consequences if he were to violate it. himself to the risk of sanctions. While he may consider himself judgment proof, neither he nor conduct. Yet, he proceeded to file another frivolous motion, *knowing* that he was subjecting the Court could have been clearer that Bernstein faced sanctions if he continued his abusive Bernstein's history of abusive conduct calls out for injunctive relief. It is hard to imagine how (5) Finally, while the Court should, as discussed below, impose monetary sanctions, parties have unquestionably been unnecessary.

Court to review and the Proskauer Defendants to respond. These burdens on the Court and the (4) This is the second frivolous motion to reopen that Bernstein has required the underlying frivolous lawsuit<sup>36</sup> frivolous motion, which follows on the heels of a frivolous motion to reopen, not to mention the his abusive conduct must stop. He "must bear full responsibility for bringing" the current (3) Although not represented by counsel, Bernstein cannot disclaim responsibility for his frivolous filings. He has been admonished by the Court and warned by opposing counsel that

38 While this amount is obviously less than the cost of opposing the motion to reopen and preparing this motion, the goal of the Proskauer Defendants is to end this wasteful process as promptly and as simply as possible. The Proskauer Defendants suggest that the Court direct that any monetary sanctions paid by Bernstein be contributed to the Lawyers' Fund for Client Protection of the State of New York, or other appropriate organization identified by the Court.

*Attorneys pro se and Attorneys for  
Defendants Kenneth Rubenstein,  
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By:   
PROSKAUER ROSE LLP  
Gregg M. Mashberg

Respectfully submitted,

Dated: New York, New York  
April 5, 2013

For the foregoing reasons, the Proskauer Defendants respectfully request that the Court grant their motion for Rule 11 sanctions, including (1) an order enjoining Bernstein from filing any further motions on this docket and enjoining him from filing another action in any court related to the subject matter of this action without prior leave of the Court; and (2) an order imposing monetary sanctions in an amount of not less than \$3,500.

**CONCLUSION**

directly in the cross hairs of an order of monetary sanctions in an amount of not less than \$3,500.<sup>38</sup>



**Proskauer Defendants' Motion for Sanctions,  
Bernstein, et al. v. Appellate Division First Department  
Departmental Disciplinary Committee, et al.,  
Civil Action No. 07-11196 (SAS) (S.D.N.Y.)**

**Declaration of Gregg M. Mashberg in Support  
of the Proskauer Defendants' Motion for Sanctions**

**EXHIBIT 1:**

Gregg M. Mashberg  
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*Attorneys pro se and Attorneys for Kenneth Rubenstein,  
Christopher C. Wheeler, Steven C. Krane (deceased),  
and the Estate of Stephen R. Kaye*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ELIOT I. BERNSTEIN, et al.,  
: Plaintiffs,  
: - against -  
: DECLARATION OF  
: GREGG M.  
: MASHBERG IN  
: SUPPORT OF THE  
: PROSKAUER  
: DEFENDANTS'  
: MOTION FOR  
: SANCTIONS  
-----X

I, GREGG M. MASHBERG, depose and say upon personal knowledge as follows:  
1. I am admitted to practice before this Court and appear on behalf of Defendants Proskauer Rose LLP, Kenneth Rubenstein, Christopher C. Wheeler, the late Steven C. Krane, and the Estate of Stephen R. Kaye (collectively, the "Proskauer Defendants"). I make this declaration on the basis of personal knowledge and in support of the Proskauer Defendants' Motion for Sanctions.  
2. I certify that, on March 21, 2013, in compliance with § IV.B of the Court's Individual Rules and Procedures, I caused to be sent to Mr. Bernstein a letter requesting that he withdraw his Second Motion to Reopen because it was frivolous. I personally emailed

the letter to Mr. Bernstein. To date, I have not received a response to this letter from Mr. Bern-

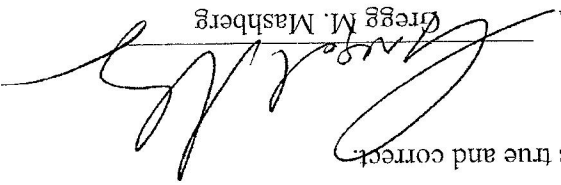
stein.

3. Attached as Exhibit A is an affidavit of service showing that, pursuant to Rule

11(c)(2), Fed. R. Civ. P., the Proskauer Defendants served their Rule 11 motion for sanctions on

Mr. Bernstein at least 21 days prior to filing it.

I declare under penalty of perjury that the foregoing is true and correct.

  
Gregg M. Mashberg

Executed on April 5, 2013.



**Proskauer Defendants' Motion for Sanctions,  
Bernstein, et al. v. Appellate Division First Department  
Departmental Disciplinary Committee, et al.,  
Civil Action No. 07-11196 (SAS) (S.D.N.Y.)**

**Affidavit of Service**

**EXHIBIT A:**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
:  
:  
ELIOT I. BERNSTEIN, et al.,  
:  
Plaintiffs,  
:  
- against -  
:  
AFFIDAVIT OF  
:  
SERVICE  
:  
APPELLATE DIVISION, FIRST DEPARTMENT  
:  
DEPARTMENTAL DISCIPLINARY COMMITTEE, et al.,  
:  
Defendants.  
:  
:  
-----X

STATE OF NEW YORK )  
) ss.:  
COUNTY OF NEW YORK )  
BENJAMIN M. RATTNER, being duly sworn, deposes and states:

1. I am not a party to this action, am over the age of eighteen years and reside in Rye, New York.

2. On April 5, 2013, I served true copies of the Proskauer Defendants' Notice of Motion for Sanctions Pursuant to Fed. R. Civ. P. 11, the Proskauer Defendants' Motion for Sanctions Pursuant to Fed. R. Civ. P. 11, the Declaration of Gregg M. Mashberg with the exhibit annexed thereto, a Proposed Order, and, pursuant to Local Civil Rule 7.2, copies of cases and other authorities cited in the Proskauer Defendants' Motion for Sanctions Pursuant to Fed. R. Civ. P. 11 that are unpublished or reported exclusively on computerized databases, upon the following:

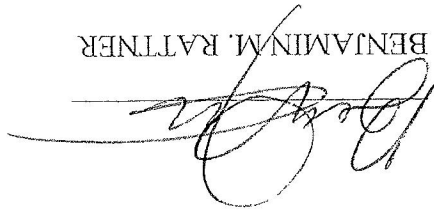
Eliot I. Bernstein  
2753 Northwest 34<sup>th</sup> Street  
Boca Raton, FL 33434

*Plaintiff Pro Se*

3. Service was effectuated by first class mail by enclosing true copies of the

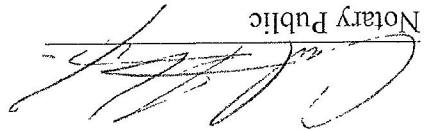
above-mentioned documents in a prepaid properly addressed wrapper to the above-referenced parties and placing them in an official depository under the exclusive care and custody of the United States Postal Service with the City and State of

New York.

  
BENJAMIN M. RATTNER

Sworn before me this

5<sup>th</sup> day of April 2013

  
Notary Public

CARL FORBES, JR.  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 02FO6235659  
Qualified in Kings County  
My Commission Expires February 14, 2015





**Proskauer Defendants' Motion for Sanctions,  
Bernstein, et al. v. Appellate Division First Department  
Departmental Disciplinary Committee, et al.,  
Civil Action No. 07-11196 (SAS) (S.D.N.Y.)**

**Proposed Order**

**EXHIBIT 2:**

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*Attorneys pro se and Attorneys for Kenneth Rubenstein,  
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and the Estate of Stephen R. Kaye*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
:  
:  
:  
ELIOT I. BERNSTEIN, et al.,  
:  
Plaintiffs,  
:  
- against -  
:  
**PROPOSED ORDER**  
:  
APPELLATE DIVISION, FIRST DEPARTMENT  
DEPARTMENTAL DISCIPLINARY COMMITTEE, et al.,  
:  
Defendants.  
:  
:  
-----X

The Court having considered the Proskauer Defendants' Motion for Sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure, and 28 U.S.C. § 1651, it is hereby **ORDERED**, that the Proskauer Defendants' motion is **GRANTED**; it is **FURTHER ORDERED**, that Plaintiff Eliot I. Bernstein shall pay \$ \_\_\_\_\_ .00 to \_\_\_\_\_ as a sanction for filing a frivolous Second Motion to Reopen the Docket in this action; and it is **FURTHER ORDERED**, that Bernstein is hereby enjoined from filing any action in any court related to the subject matter of this action without first obtaining leave of the Court. In seeking leave, Bernstein must certify that the claim or claims he wishes to present are new

claims never before raised and disposed of on the merits by any court. He must also certify that the claim or claims are not frivolous or asserted in bad faith. Additionally, the motion for leave to file must be captioned "Application Pursuant to Court Order Seeking Leave to File." Bernstein must affix a copy of this order to any such motion, as well as a copy of the pleading he seeks leave to file. Failure to comply strictly with the terms of this injunction will be sufficient grounds for denying leave to file, and such other remedy or sanction that the Court may deem appropriate.

**SO ORDERED**, this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

SHIRA A. SCHEINDLIN  
United States District Judge

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