

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA

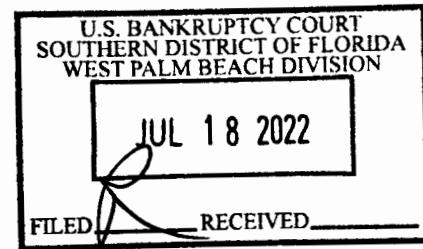
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**Case Number: 22-13009-EPK**

Chapter: 7/11

In Re Bernstein Family Realty, LLC ,

Debtor.



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CREDITOR AND INTERESTED PARTY ELIOT BERNSTEIN CREDITOR  
AND ACTING BFR MANAGER CORRECTION-AMENDED NOTICE  
EXHIBIT TO DE NOs. 54-56

1. I am Eliot Bernstein, an interested party and listed Creditor in the case and  
Acting Manager of Bernstein Family Realty, LLC ( BFR ).

2. I provide Notice of a Corrected Exhibit ( Letter to Trustee Bakst ) after  
seeing that a Letter to the Trustee had missing pages 2-10 of the Exhibit.

On July 14, 2022, I spoke to the Clerk, Randy, who stated that they were  
blank sheets of paper he found in the Exhibit. However, the pages were  
never scanned into the official stamped document as blank pages, as the  
exhibit goes from page 1 to page 11 with no pages in between at all.

3. I am refiling the Exhibit herein and seek return by the Clerk of the original  
Exhibit document filed as my submission did not have any blank pages and  
would like included the blank sheets of paper.

4. This shall correct the Exhibit on file and uploaded.
5. Any Order based on the filing with the incorrect Exhibit should be re-examined with this Amended Exhibit.

**WARNING --** Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571. Petitioners request that an order for relief be entered against the debtor under the chapter of 11 U.S.C. specified in this petition. If a petitioning creditor is a corporation, attach the corporate ownership statement required by Bankruptcy Rule 1010(b). If any petitioner is a foreign representative appointed in a foreign proceeding, attach a certified copy of the order of the court granting recognition.

I have examined the information in this document and have a reasonable belief that the information is true and correct.

Petitioners or Petitioners' Representative Attorneys

Name and mailing address of petitioner

ELIOT BERNSTEIN

---

Name

2753 NW 34TH STREET

---

Number Street

BOCA RATON, FL 33434

---

City State ZIP Code

Name and mailing address of petitioner's representative, if any

---

Name

---

Number Street

---

City State ZIP Code

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

Executed on July 14, 2022

MM / DD / YYYY

---

Signature of petitioner or representative, including representative's title  
ELIOT BERNSTEIN, CREDITOR - INTERESTED PARTY

**EXHIBIT 1**  
**Case 22-13009-EPK**

**TRUSTEE BAKST NOTIFICATION OF FRAUDS ON BANKRUPTCY  
COURT**

Michael R. Bakst, Trustee  
P.O. Box 407  
West Palm Beach, FL 33402  
baksttrustee@gmlaw.com  
Phone: 561-838-4523

Dear Trustee Bakst,

**"Time stands still** until judicious valid Justice protects all jurists and Courts from void injudicious miscarriages of Justice ("Justicides") they commit ("Jurisprudence") as duly proved in attached TSS LKJMJOL A1-A4.<sup>1</sup> " Attorney at Law, Lalit K. Jain, Esquire

I write to you today as an interested party in the above referenced case and creditor in the action. As you are now aware from the June 08, 2022 hearing transcript<sup>2</sup>, **Attorney at Law and Officer of the Court**, Inger Garcia, Esq. reported on the record to the Bankruptcy Court a fraud on the Bankruptcy Court, a fraud on a FL State Court, Creditors and Debtors and the Trustee. Ms. Garcia's statements awoke the Court to the fact that a dead person had motioned the Court for hearing and the Court was hearing the motion filed by the dead person. This fraud was achieved by attorney Bradley Shraiberg, Esq. with false oaths to the Court regarding his representation of a dead person and fraudulent motions filed with the Court using the deceased person. Shraiberg has been representing a dead person since the start of these proceedings as part of a more complex series of frauds taking place in these matters, that started in the Florida State Court. These frauds were done knowingly and with the intent to deceive the Court and the parties involved in an effort to steal assets of the BFR Estate.

Some background information will help you understand the fraud in and on the US Federal Bankruptcy court and others.

1. Walter Sahm died on January 05, 2021, see attached Exhibit Walter Sahm Death Certificate<sup>3</sup>.
2. On August 05, 2021 (8 months after his death) Walter Sahm while deceased, as if alive, filed for Summary Judgment on - FL 15th Judicial Case #50-2018-CA-002317-XXXX-MB Docket #85 "MOTION FOR SUMMARY FINAL JUDGMENT OF FORECLOSURE, TAXATION OF COSTS, AND AWARD OF ATTORNEYS' FEES." Attorney Robert Sweetapple, Esq. filed this.
3. On December 23, 2021 (nearly a year after death) - Walter Sahm while deceased, as if alive, was awarded Final Judgment in his name as if alive, not in the name of his Estate. - FL 15th Judicial Case #50-2018-CA-002317-XXXX-MB Docket #88 "FINAL JUDGMENT FORECLOSURE, , AMOUNT OF FJ \$353,574.68, SALE DATE 04/20/2022, SIGNED DATE 12/21/2021 - J KASTRENAKES BOOK 33193 PAGE 500-504".

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<sup>1</sup> Exhibit 1 - Attorney Lalit K. Jain, Esq. - Memorandum of Law - Please verify at [www.TruthIsPrudence.Com](http://www.TruthIsPrudence.Com) .

<sup>2</sup> Exhibit 2 - June 08, 2022 Hearing Transcript

<sup>3</sup> Exhibit 3 - Walter Sahm Death Certificate

4. On April 04, 2022 A Suggestion of Death was filed - FL 15th Judicial Case #50-2018-CA-002317-XXXX-MB Docket #155 "NOTICE OF CORRECTION OF DATES OF SUGGESTION OF DEATH AND SUPPLEMENTAL 1.530 (F/B DFT ELIOT I. BERNSTEIN)" notifying the parties of Walter Sahm's death. It defies belief that even after this Suggestion of Death was put into the record in Kastrenakes Court, which should have abated the case until a substitution for Walter was made by his Estate, counsel continued to move knowingly and with bad intent further using deceased Walter, including continuing the fraud in and on the Federal Bankruptcy Court.
5. On April 14, 2022 The Final Judgment in Walter Sahm's name was then used in a "Proof of Publication" regarding the sale of the home that is part of the BFR Estate - FL 15th Judicial Case #50-2018-CA-002317-XXXX-MB Docket #167 "NOTICE OF FORECLOSURE SALE."
6. On April 25, 2022 (nearly a year and half after Walter's death) Bradley Shraiberg, Esq. entered a Notice of Appearance for the deceased Walter Sahm to the Bankruptcy Court in this case, which states "PLEASE TAKE NOTICE that Bradley S. Shraiberg, Esq. of Shraiberg Page, P.A., hereby enters notice of appearance as counsel for Walter E. Sahm and Patricia Sahm (together, "Secured Creditors")..."
7. Bradley Shraiberg appeared before the Court representing a deceased party repeatedly and even after a suggestion of death was filed in the Bankruptcy Court continued the fraud and this was all part of more elaborate frauds taking place in these matters and efforts to defraud the BFR Estate of property.

From the June 08, 2022 transcript I quote attorney Inger Garcia, Esq.:

13 THE COURT: Ms. Garcia.

14 MS. GARCIA: Hi, Your Honor. Thank you. I

15 don't know what to say except I'm a little bit shocked

16 at what's being represented to the court. I'm so sorry

17 because I completely respect the court system and all

20 the attorneys and I'm fairly new to the case, but I

21 can say this. Under 11USC305, I'm requesting the court

22 to do what's in the best interest of the creditors and

1 the debtors. Now, I did send the trustee just prior to

2 the hearing a copy of the insurance that proves this

3 property is insured. They did insure it timely, but it

4 wasn't titled correctly, so I got the properly titled

5 correctly insurance today, so this property is not at

6 risk. Number two, this joinder that was filed for

7 Walter Saum and Patricia Saum was filed with a dead  
8 man and at the last hearing counsel represented that  
9 Walter Saum just passed away recently. I have the  
10 death certificate and I provided it also to the  
11 trustee that he died 18 months ago. The final judgment  
12 was done in the name of a dead man. I plan on going  
13 back to the state court to Judge Castranacis  
14 (phonetic) who I respect because he was my professor  
15 in law school, got me my first job with the State  
16 Attorney Janet Reno. He's an incredible judge. He was  
17 misled in the court, and I want to go back to that  
18 court and correct his final judgment, but in the  
19 meanwhile, Judge, I'm asking don't convert it to a 7.  
20 There's many issues. There's an investment trust that  
21 spawns this property. Mr. Rose knows, him and I have  
22 been going back and forth that I'm trying to get

1 \$300,000 release to pay Mr. Marshal to defend his case  
2 if needed. So, to me, I'm sorry, Judge, I'm very sad  
3 and very upset after 30 years of practicing law that  
4 these people come in here and tell you the best  
5 interest is a Chapter 7, when it's a dismissal without  
6 prejudice. **Give us a chance to get the money from the**  
**7 attorney who are filing for dead people and who**  
**8 control money that are preventing us from paying this**  
**9 mortgage and let our clients do this correctly, so**  
**10 please do not convert this to a Chapter 7 and hurt**  
**11 this client. This is their family home for years.**  
**12 These are three young teenagers who are trying to do**  
**13 the best they can.**

**And further**

22. ·MS. GARCIA: Your Honor, all I can address on

- 1 that issue is that in the underlying case this entity
- 2 is part of the final judgment as it exists and nobody
- 3 brought up to that point either, so I think Judge
- 4 Castranacis needs to be informed of what's really
- 5 going on so he can void the final judgment admittio
- 6 (**phonetic**) **fraud on the court**.

Mr. Shraiberg filed a notice of appearance for a deceased Walter Sahm who had been dead for a year and a half before his representation began before the Bankruptcy Court. Mr. Shraiberg continued this fraud by then preparing pleadings for a deceased party and then representing him at hearings. The dead Walter Sahm then filed a joinder motion to the US Attorney motion heard on June 08, 2022.

The initial notice of appearance filed in the Bankruptcy Court by Shraiberg was and is for a deceased person and this act alone appears to violate all of the following;

- 18 U.S. Code § 152 - Concealment of assets; **false oaths and claims**; bribery;
- 18 U.S. Code § 1341 - **Frauds and swindles**; and
- 18 U.S.C. § 1519. Destruction, alteration, or **falsification of records in Federal investigations and bankruptcy**.

When criminal activity is suspected, the trustee must notify the United States Trustee immediately. 18 U.S.C. § 3057. In all cases where the trustee suspects criminal activity, the trustee must immediately notify the United States Trustee so that the recording of the meeting of creditors may be properly secured and stored to preserve its later use in a criminal proceeding. 28 U.S.C. § 586. I would assume that Heidi Feinberg, Esq., acting as US Trustee in the case and who was present when Ms. Garcia exposed the frauds, would have already taken these steps and began to fulfill her fiduciary duties to report fraud, especially where the allegations were made by a Florida Licensed Attorney.

These frauds also concealed via fraud a necessary party from the proceedings both in the State Court and the Bankruptcy Court, the Estate of Walter Sahm, where the Estate and the PR, are and have always been necessary parties as is now evidenced by the attempt of Mr. Shraiberg to now substitute the Estate of Walter Sahm. A bit too late for attempting to cover the crime up. Thereby, all hearings and pleadings should be void as a necessary party was intentionally concealed from the proceedings through fraud.

Further, Ms. Garcia, Esq. as an Officer of the Court also reported to the Bankruptcy Court that the final judgment the Sahm's possess and are asserting as a creditor claim from the StateCourt, was gained through a similar fraud on that court of using a deceased Walter Sahm to both file for Summary

Judgment and a deceased Walter was issued a Final Judgment in his name that is now before the Bankruptcy Court, not in the name of his estate or the PR's name, all part of an elaborate and ongoing fraud to steal property of the BFR Estate. All of this obstruction via simulated legal process to gain real property represents numerous other frauds, which must now also be investigated.

It appears that Mr. Shraiberg was continuing the fraud on the Bankruptcy Court that began in the State Court with Judge Kastrenakes. Shraiberg is asserting to this Court a final judgment that was fraudulently gained and is in a deceased Walter's name individually and it appears he did not want to disrupt the apple cart by explaining just exactly how that came to be to the Bankruptcy Court and knowing that judgment was void he continued to act as if he were unaware of his alleged clients death. Despite knowing that Walter was dead, it was not until the day after the June 08, 2022 hearing, after Ms. Garcia, Esq. exposed the fraud on the record, that Shraiberg acknowledged that his client was dead since January 2021 and tried to substitute Walter's Estate. However the final judgment he holds as a creditor claim is not in the Estate of Walter Sahm and thus I am uncertain if they are a proper party before the Court or more fraud in effort to cover up the other fraud.

Shraiberg then tried substituting the Estate and an alleged PR, Joanna Sahm, to replace Walter, as if this would somehow cure the ongoing frauds. No letters testamentary were presented to prove such substitution valid or legal and at this time no notice of appearance has been filed by counsel to represent the Estate of Walter. We are concerned that the Sahm's are not even aware of the frauds their attorneys are committing in their names and Joanna Sahm may not be aware of her breaches of fiduciary duties if she is the PR and involved in concealing the Estate from the State and Federal court actions.

Further, Mr. Shraiberg misled the court repeatedly in the hearings in both State and Federal Court that Walter Sahm's interest in the mortgage and final judgment was somehow transferred by Tenants by the Entirety to his wife Patricia upon the death of Walter Sahm and thus he claimed no harm no foul. This claim is apparently false and misleading as Mr. Shraiberg has now substituted the Estate of Walter Sahm, not Patricia Sahm and thus by his own admission and substitution the interest did not pass to Walter's wife but instead to his Estate. This also exposes that the Estate was a necessary party in the State Court immediately after Walter's death and thus the fraudulently obtained final judgment issued to a deceased person in that court is void.

Now that the Bankruptcy Court and you have information from attorney Garcia that the current note held by the Sahm's was obtained and issued improperly by "FRAUD ON THE COURT" and that the name on the note being a dead person is therefore also void before the Bankruptcy Court, then any sale of the property based upon these frauds would constitute a fraudulent transfer of property to whomever it is proposed to be sold to and by whomever sells it. It would be unconscionable for you or the Court to now move forward with any sale by advancing this fraud through any action that would be considered as continuing the fraud instead of curing it. For this Bankruptcy Court to further advance the Sahm's judgment to sell any property or as cause to sell property, would be furthering an ongoing fraud on the court and all parties involved and any potential buyer.

I am writing to you to find out what duties and obligations you have to discharge as a US Trustee once it is proven a fraud on the Bankruptcy Court, exposed by a Court Officer, Inger Garcia Esq. has occurred, as is this case in this matter. It appears from just ethical bar rules as a lawyer you are required to report fraud and misconduct of other attorneys to the proper state, federal, civil and criminal authorities. I also believe concealing such crimes could be construed as Aiding and Abetting the crime in progress, Misprision of Felony for any failure to report the crimes and more. I believe that parties that participated in this fraud and those who are now material and fact witnesses (listed below) to the crimes should be removed immediately from the proceedings. I would recommend that the case be stayed due to the frauds and until the fraud is resolved criminally first and new conflict free parties are assigned to hear the case with all necessary parties legally at the table with non-conflicted counsel.

The Sarbanes-Oxley Act of 2002, created 18 U.S.C. § 1519. Section 1519 covers the alteration, destruction or falsification of records, documents or tangible objects, by any person, with intent to impede, obstruct or influence, the investigation or proper administration of any "matters" within the jurisdiction of any department or agency of the United States, or any bankruptcy proceeding, or in relation to or contemplation of any such matter or proceeding. It provides:

**"Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both."**

Finally, there is another deceased party perpetrating a fraud on the Bankruptcy Court in this matter and that concerns Ted Bernstein and his lawyer Alan Rose, Esq. Mr. Rose has claimed on the record at the June 08, 2022 hearing that he is representing "Ted S. Bernstein as Trustee of the Simon L. Bernstein Amended and Restated Trust" <sup>4</sup>, which he claims to hold a second mortgage to the home. However, a quick review of the trust, attached herein, and you will find that Ted Bernstein is considered Predeceased for **"All Purposes"** of the trust and is further precluded from being a Successor Trustee as he is related to Simon Bernstein, his father and therefore precluded.

From the attached Simon Bernstein Amended and Restated Trust, I quote;

**"Notwithstanding the foregoing, for all purposes of this Trust and the dispositions made hereunder, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me as I have adequately provided for them during my lifetime."**

AND

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<sup>4</sup> Exhibit 4 - 2012 Simon Bernstein Amended and Restated Trust

**"3. Successor Trustees Not Provided For. Whenever a successor Trustee or co-Trustee is required and no successor or other functioning mechanism for succession is provided for under the terms of this Trust Agreement , the last serving Trustee or the last person or entity designated to serve as Trustee of the applicable trust may appoint his or her successor, and if none is so appointed, the following persons shall appoint a successor Trustee (who may be one of the persons making the appointment):**

- a. The remaining Trustees, if any; otherwise,**
- b. A majority of the permissible current mandatory or discretionary income beneficiaries, including the natural or legal guardians of any beneficiaries who are Disabled.**

**A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust.**

A quick note, Ted's prior counsel, Robert Spallina and Donald Tescher, both disbarred now for criminal insider trading, were the Co-Trustees of Simon's trust but had to resign after admitting to Palm Beach Sheriff Deputies that Spallina had forged my mother's trust in an effort to include Ted's children back into that trust. Ted is also considered predeceased with his lineal descendants in my mother's trust. That confession of fraud by Spallina was after the law offices of Tesher & Spallina PA were found guilty by the Palm Beach County Sheriff of submitting 6 forged and fraudulently notarized documents for six separate parties to the State Court, including a document notarized by my deceased father, after his death.

Ted Bernstein, acting improperly as Trustee of Simon's Trust, purchased from the Estate of Simon Bernstein Personal Representative, Brian O'Connell, Esq., the 2nd mortgage involved in this bankruptcy case. Brian O'Connell, Esq. is currently in a Florida Supreme Court Bar Complaint<sup>5</sup>. Mr. O'Connell had further made a claim that Ted was not a validly serving trustee of the Simon trust and yet despite his knowledge that Ted was falsely serving he transferred/sold the mortgage to him.

The language from the attached filing<sup>6</sup> in my mother's trust case filed by O'Connell states:

**CIRCUIT COURT IN AND FOR THE 15th JUDICIAL CIRCUIT IN AND FOR PALM BEACH  
COUNTY, FLORIDA**  
**Filing # 23874665 E-Filed 02/17/2015**  
**Case No. 502014CP003698XXXXSB**

**"AFFIRMATIVE DEFENSE**

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<sup>5</sup> EXHIBIT 5 - BAR COMPLAINT - Filing # 150196551 E-Filed 05/24/2022 01:12:03 PM  
IN THE SUPREME COURT OF FLORIDA  
THE FLORIDA BAR, Supreme Court Case No. SC-Complainant, The Florida Bar File v. No. 2020-50,181(171)  
BRIAN MCKENNA O'CONNELL,  
Respondent.  
<sup>6</sup> EXHIBIT 6 - O'Connell Answer and Affirmative Defenses

1. First Affirmative Defense- Lack of Standing- Ted Bernstein lacks the requisite standing as he is not validly serving as Trustee of the Simon Trust, is not a beneficiary of the Simon Trust, and is not representing any minor child that is a beneficiary of the Simon Trust."

Yet, despite this statement by O'Connell it did not stop him from later selling the note to Ted, which has since been used in these fraudulent schemes and to extort my family further. There has been no Construction hearing on the Simon Bernstein Amended and Restated Trust which resulted in any Order that would have allowed Ted to violate the very terms of the Trust to bring him back to life from his Deceased status. Another, "Dead Man Walking" and committing fraud on all parties involved.

#### LIST OF MATERIAL AND FACT WITNESSES

1. Inger Garcia, Esq.
2. Leslie Ferderigos, Esq.
3. Judge Kastrenakes
4. Judge Erik Kimball
5. Heidi Feinman, Esq. US Trustee
6. David Marshall Brown, Esq.
7. Arthur Morburger, Esq.
8. Lalit K. Jain, Esq.
9. Luanne Fleming
10. Robin Austin
11. Ruth Fleming
12. Joshua Bernstein
13. Jacob Bernstein
14. Daniel Bernstein
15. Eliot Bernstein
16. Candice Bernstein
17. Luisa Esposito
18. Any other party that attended the June 08, 2022 Hearing

#### LIST OF PARTIES COMMITTING FRAUDS ON STATE AND FEDERAL COURTS & OTHER PARTIES

1. Alan Rose, Esq.
2. Ted Bernstein
3. Brian O'Connell, Esq.
4. Robert Sweetapple, Esq.
5. Bradley Shraiberg, Esq.
6. Cary Sabol, Esq.
7. JohnCappeller, Esq.
8. Patricia Sahm
9. Joanna Sahm

**10. Estate of Walter Sahm**

**LIST OF VICTIMS**

1. **Joshua Bernstein**
2. **Jacob Bernstein**
3. **Daniel Bernstein**
4. **Candice Bernstein**
5. **Eliot Bernstein**
6. **The Estate of Walter Sahm**
7. **Patricia Sahm**
8. **Joanna Sahm**
9. **Bernstein Family Realty, LLC**

**\*All parties who are involved in the legal representations of this matter, including Heidi Feinman, Esq. and Judge Kimball, other than Trustee Bakst who was not present at the hearings, are now conflicted with these matters, at minimum as Material and Fact Witnesses to the crimes they were alerted to. Each will need to be deposed as to their knowledge of the frauds, when they were first learned Walter Sahm was dead, what actions they have taken since learning of the frauds, have they reported the frauds as required, who have they reported these matters to, has the State Court been notified of the FRAUD exposed by attorney Garcia to the Bankruptcy Court, have the Chief Judges of both Courts been notified of the fraud, etc. Therefore, as Material and Fact witnesses at minimum they should all decline further involvement in the adjudication of these matters and have new conflict free parties replace them immediately. It should be noted that Ted Bernstein and Alan Rose were both aware that Walter Sahm was dead from their involvement in the State Court frauds, having been served a Suggestion of Death in that matter and failed to report this to the Bankruptcy Court and participated in the scheme from the start with Shraiberg.**

After reviewing the transcript of the June 08, 2022 hearing before Judge Kimball where he was notified by an Officer of the Court, Inger Garcia, Esq. of both fraud in his Court and in the State Court, I am concerned that Judge Kimball appears to be suffering some form of mental disease/dementia, as he appeared to wholly ignore the fact that a motion he was hearing was filed by a dead person or that there was fraud upon his Court and a State Court disclosed by an attorney to him. He has taken no action to remove Shraiberg and others for these frauds. It is well established that an attorney/client relationship ceases the moment the client dies and since Sahm was dead long before being retained by Shraiberg, all actions in his name were fraud by Shraiberg.

Not only did Judge Kimball ignore the fraud he further stated that it did not matter in making his decision and when I personally tried to inform him of the other ongoing frauds he limited me to only two sentences and then irrationally disconnected my connection to the hearing. I am also concerned if he has taken any action to report the fraud to proper state and federal, civil and criminal authorities as he is required to do. His failure to take any action to my knowledge to report and correct the fraud in the

Court may be due his severe prejudice against me displayed in his efforts to shut down my ability to represent myself before the Court, depriving me of my due processes rights and limiting my disclosure of the frauds taking place in his Court.

I was made aware after the hearing on June 08, 2022 that Inger Garcia, Esq. had sent US Trustee Heidi Feinman, Esq. an email informing her of the fraud being committed in and on the Bankruptcy Court and in fact that the US Trustee's motion to be heard that day had been joined via joinder filed by a deceased Walter Sahm. I am concerned if US Trustee Heidi Feinman, Esq. has failed to report the fraud reported to her directly by attorney Garcia to the proper authorities and if you have copies of their email transmissions. It would be also helpful to determine if Ms. Feinman tendered the email regarding the fraud sent to her by Garcia to any other parties, including Judge Kimball, prior to or after the June 08, 2022 hearing.

In response to your email dated July 5, 2022, any real estate agent or other party involved in the potentially fraudulent transfer of property should have to sign a release that they are fully cognizant of the potential fraud they may become involved in prior to any criminal investigation regarding the fraud and that they have advised any potential buyers of the myriad of problems that may arise in transferring title, etc.

Additionally, you should make record of the fact that Judge Kastrenakes has violated the Federal Bankruptcy Stay issued on his Court by the Bankruptcy Court as he issued an Order Docket 172 on 05/25/2022 "ORDER KASTRENAKES DTD 5/24/22: DFTS MOTION FOR REHEARING TO VACATE FINAL JUDGMENT OF FORECLOSURE DENIED KASTRENAKES DTD 5/24/22: DFTS MOTION FOR REHEARING TO VACATE FINAL JUDGMENT OF FORECLOSURE DENIED." <sup>7</sup>

Section 3057 of title 18 of the United States Code requires the trustee to report suspected violations of federal criminal law to the appropriate United States Attorney. Section 586 of title 28 imposes a similar duty on the United States Trustee to refer any matter that may constitute a violation of criminal law to the United States Attorney and, upon request, to assist the United States Attorney in prosecuting the matter. This statutory obligation does not provide for the referral of only those matters which will be prosecuted or for which there is proof beyond a reasonable doubt. Nor is it subject to any thresholds or guidelines established by the United States Attorneys' offices.

CC: Heidi Feinman - [heidi.a.feinman@usdoj.gov](mailto:heidi.a.feinman@usdoj.gov)

**Eliot I. Bernstein  
Youtube Inventor Destituted by All the Courts  
Now Helped by NY Attorney Lalit K Jain Esq.  
For Court-ordered Mandatory Relief and Restitution**

Iviewit Holdings, Inc. – DE

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<sup>7</sup> Exhibit 7 - Judge Kastrenakes Order

2753 N.W. 34th St.  
Boca Raton, Florida 33434-3459  
(561) 886.7628 (c)  
iviewit@iviewit.tv  
http://www.iviewit.tv

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**EXHIBIT 1**

► Unbiased legal help for judicious valid Justice honored by all Courts is amazing to end human behavior being animal behavior. ◀			
05.31.2022 Updated 07.04.2022	<b>LAW OFFICES OF LALIT K JAIN ESQ</b> Practice of Law in NY State, US Tax and District Courts, US Supreme Court, and all Courts in India.		Fon: 718-255-6576 Cell: 718-316-5921 Fax: 347-637-5498

*Time stands still until judicious valid Justice ("Truthisprudence")<sup>1</sup> protects all jurists<sup>2</sup> and Courts (A4)<sup>3</sup> from void injudicious miscarriages of Justice ("Justicides") they commit ("Jurisprudence").<sup>4</sup> Royal men, celebs, courts, churches, pundits, reporters, policemen, etc. welcome Truthisprudence to end their system of scapegoating ("SOS") or grand scheme of things<sup>5</sup> misusing taxes<sup>6</sup> and lawyers,<sup>7</sup> end human behavior being animal behavior using the common lie sold as the common law that out of wedlock babies are bastards making men rape,<sup>8</sup> impregnate and murder women,<sup>9</sup> and give mandatory relief to their victims.<sup>10</sup>*

*As time stands still and all cases are different, so, on the merits, same due process of law using excuses now makes Courts use this priceless memorandum of law with endnotes<sup>1-10</sup> ("LKJMOL") or unbiased scripture ("US") as the legal prescription ("K"), without appearance by Law Offices of Lalit K Jain Esq ("LKJESQ"), enforce the truthful common law of sperm+egg=father for infallible thus constitutional valid finality, end SOS as a Constitutional scam (A4) selling truthless ruthless acts as legal, official and truthful and help women control their lives to be or not to be baby-Creators protected from rapists.<sup>8</sup>*

<sup>1</sup> "[p20]...Court: ... I do find the defendant guilty...unless you want to be heard ...[p21] MR JAIN: Yes ...[p22]. Court:...Parties step up **real quick**. (Whereupon a **bench discussion** was held)...Court: After re-examining the statute **more closely**...as I **reread it, many, many more times**, my **initial** reading of it to convict was **incorrect [as injudicious thus illegal]**...[p23]...I **have to change** my verdict to **not guilty [as judicious thus legal]**. Case dismissed ...¶ Court Officer: You're free to go."

*People v Onuorah* Court's Oct 31, 2013 25-page Trial Transcript on www.TruthIsPrudence.Com is its proof.

*It is free to download, print and use to correct misstated Federal laws like § 26 US Code 401(a)(28) and to end Justicides in cases like Jassal v Jain, Lalit K Jain Esq v Reddy Care, Grillo v Nicoleita Legister, etc. since "[i]n all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein [without judicial retaliation against pro se attorneys-in-fact]." 28 USCode § 1654 - Appearance personally or by counsel.*

<sup>2</sup> "[Jurists aka] Judges perform an incredibly important function in our society, and they must be able to do their jobs without concern for their personal safety [knowing that self-invited death-threats will not end until Justice Kavanaugh and others end using their void Supreme Court of the United States ("SCOTUS") Rule 10: "A petition...will be granted only for compelling reasons....[but] is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law [or the correct application of an improperly stated rule of law like "out of wedlock babies are bastards" as legislated Justicial Plandemic proving injudicious, sold as judicious, judicial interventions]."] 06.08.2022, Moving Forward Hon Karine Jeanne-Pierre, 35<sup>th</sup> White House Press Secretary, Contact@KarineJean-Pierre.Com.

*"[571] ... Judges personify the justice system [of scapegoating or SOS] upon which the public relies to resolve all manner of controversy, civil and criminal. A society that empowers Judges to decide the fate of human beings and the disposition of property has the right to insist [572] upon the highest level of judicial honesty and integrity [ended by SCOTUS Rule 10]. A [lying] Judge's conduct that departs from this high standard erodes the public confidence in our justice system so vital to its effective functioning...["A judge...shall conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary [and yet not one breaking news by even one journalist or reporter breaks the deafening silence that ever injudicious SCOTUS Justices, selling lies as truth bullied by the injudicious sex-predators, to overturn 1973 Roe v Wade in their leaked draft, shall not be bullied by anyone to change their minds to become judicious and not overturn it]"; emphasis added]; Matter of Bailey, 67 NY2d, at 62-63...]. ... [573]...Determined sanction accepted, without costs, and Rudolph L. Mazzei is deemed removed...."*

*Matter of Mazzei v State Commission on Judicial Conduct, 1993, Ct App, 81 NY2d 568, 571-573.*

*Welcome to the Official www.TruthIsPrudence.Com with this LKJMOL for mandatory use in all Courts in all cases to rescue all people in billions from traffickings in Justice, humans, etc. as credible legacy of LKJESQ for biased to upgrade into unbiased system.™*

*LKJESQ@LKJESQ.COM / 61-22 Booth Street Rego Park NY 11374-1034.*

A1-A4

*AWK 07.04.2022*

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<sup>3</sup> "...where a court has jurisdiction to act *under the law*, it has a right to decide every question which occurs in the cause...But if it act *above the law*, its judgments and order are regarded as *nullities* [since common truth as law prevails over common lie as law], all [law (lie) enforcement officers ("LEOs")]... executing [nullities] are considered *in law* as trespassers [in law ("Outlaws") with no executive immunity for enforcing nullities]."

*Elliott v Lessee of Piersol, 1828*, 26 US (1 Pet.) 328, 340-341.

<sup>4</sup> *Truthisprudence* practiced everywhere would have prevented misjudgments by out of wedlock fathers doing out of wedlock sex as bastard fathers "on the loose" committing sex-crimes even in UK with powerful Queens same as in US with powerful Presidents torturing lives of babies, not yet conceived, scapegoated by fathers committing out of wedlock sex and by all conspiring Court-appointed Guardians-ad-Litem ("GALs").

.1 As "out of wedlock innocent babies doing no wrong are guilty bastard babies" is men's creative lie as twisted void law, so acting thereunder made all Courts of law Courts of lie aided and abetted by zealous lawyers as liars (A4) making democracies with votes and autocracies without votes 100% hypocrisies and evil governments causing Russia-Ukraine War, 2001 US Ground Zero, 1941-45 Holocaust, 1939-45 WWII, etc.

.2 Jurisprudence is the negative philosophy of fathers denying paternities creating evil rights to do wrongs aka *Justicides* ("State Created Danger") giving rise to valid causes of action for mandatory relief as positive philosophy of mothers accepting maternities reconfirming good duties to do right aka *Justice* ("State Confirmed Security") because "... [t]he law requires no one to do a vain thing [like commit void Justicides]."

*Strasbourger v Leerburger, Ct App, Hiscok, Ch. J., Cardozo, 1922*, 233 NY 55, 59, 60.

.3 "...In a government of [evil] laws, existence of the government will be imperiled if it fails to observe the [evil] law scrupulously. Our Government is the potent, the omnipresent teacher....If the Government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy. - to declare that the Government may commit crimes in order to secure the conviction of a private criminal - would bring terrible retribution...Against that pernicious doctrine this Court should resolutely set its face."

*Olmstead v US, 1928, Justice Brandeis*, 277 US 438, 485.

<sup>5</sup> "...But if you think that it is terribly important that the case came out wrong, you miss the point of the common law (lie). In the grand scheme of things [like unjudicious sold as judicious judicial interventions by Courts (A4) caught in Courts (A4) for traffickings in Justice], whether the right party won is really secondary."

*SCOTUS Justice Scalia, 1997, A Matter of Interpretation, Federal Courts and the Law*, p6.

<sup>6</sup> "Taxes [and fines] are what we [are forced to] pay for a civilized society [of Justice, not Justicides]."

*Compania General v Collector of Internal Revenue, 1927*, 275 US 87, 100, by Justice Holmes, Jr.

"Society in every state is a blessing but Government even in its best state is but a necessary evil; in its worst state an intolerable one [until Courts, Governments and People exonerate scapegoated babies not done by the Innocent Projects and lift the self-inflicted baby bastard curse ("BBC")]...."

*Common Sense by Thomas Paine in 1776 who confessed, not corrected, the same old system of scapegoating in most all non-sex-law-violation cases and almost all sex-law-violation cases of the rich and famous Weinstein, Epstein, Cosby and other sex-predators and the millions of poor and infamous, sex-predators in all nations alike.*

<sup>7</sup> "[8] ...when an opposing party is well represented [as an injured as pro-se attorney-in-fact to be made whole], a lawyer can [but not must] be a zealous [lying] advocate on behalf of a client [the injurer abusing due process of law as due process of lie] and at the same time assume that justice is being done [knowing that Justicide is crucifying Justice, that women have the right, but not the duty, to be baby-Creators, and yet Louisiana Judge Jeffrey C Cashe made Christa Averses give child support to rapist-father John for abusing his penile weapon as his freedom to rape and abandon her, and agreed to review his void custody order in July 15, 2022 hearing in Tangipahoa Parish, Louisiana. [tinyurl.com/2p8s2cxp](http://tinyurl.com/2p8s2cxp)]..."

*Model Rules of Professional Conduct: Preamble & Scope Preamble: A Lawyer's Responsibilities...[8].*

<sup>8</sup> "...if two policemen see a rape and watch it just for their own amusement, no violation of the Constitution [in 100% penile governments making police not stop/ticket/arrest/fine/prosecute rapists causing irreversible and irreparable injuries and killing but stop/ticket/arrest/fine/prosecute motorists not causing injuries and prove that sex-predators (legislators and jurists) for free rapes make good governments evil governments] ... (laughter)." *Winning legal argument by biased CJ Rehnquist, laughter at [tinyurl.com/pnu9lrj](http://tinyurl.com/pnu9lrj) from 39:00 to 41:00 minutes in the Nov 2, 1988 Court Transcript, see May It Please the Court...Transcripts of...Landmark Cases before the SCOTUS...1993, pp39-60 at pp46-47, DeShaney v Winnebago County, 1989, 489 US 189 (A4).*

Unbiased Scripture ("US") as Unbiased Memorandum of Law ("LKJMOL") with endnotes<sup>1-10</sup> 05.31.2022 UPG 07.04.2022.

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"It has to be stated that though the accused have not used any external weapon [like guns, knives, etc.], they have used **more powerful weapon** i.e. **penis** [as *unimpregnable men's personal free jack-hammer weapons*] with which each one of them have caused the most grievous injuries not only to the body of [an *impregnable woman*] but also to her mind *enduring pro-rape and anti-abortion laws purposely made by sex-predators*]." Scripted on page 202 in 232-page Apr 04, 2014 Decision at <http://tinyurl.com/plghcp2>, ¶336 In the Sessions Case No 846 of 2013 titled *The State of Maharashtra, Complainant v Vijay Mohan Jadhav aka Nanu, 18, et al., Accused, by Dr Mrs Phansalkar-Joshi in India, like Rehnquist in US, both jurists acting as breaking journalists.*

<sup>9</sup> "[p 401] ... **Protection of...women** [as *unbiased Creators of boys and girls*] is a [sexually sensitive] subject of **special concern to the state**...healthy [unraped] mothers are essential to vigorous offspring, the [mental and] physical well-being of woman becomes an object of [sensitive] **public interest and [sensitive] care...to preserve the strength and vigor of the race** [crucified by *Jurisprudence to be resurrected by Truthisprudence*]."

*People v Charles Schweinler Press, 1915, Ct App, Hiscock, J., Cardozo, J., 215 NY 395, 401, 409, 410, 411.*

.1 *In God we Trust for certainty of paternity. In Devil we Believe for uncertainty of paternity. Predators made this choice in retaliation against their prey. His-story of evil is evil History and living testimony to sex, lex and judicial predators scripting and selling evil religions forcing women to live and die with 24/7 fear of GODs since neither GOD nor DEVIL will punish guilty out-of-wedlock fathers.*

.2 *All people in billions and all Courts must agree with LKJESQ to end their own evil Justicidal Plandemic.*

.3 *Sperm+egg=father for valid Justice shall always be 100% indisputable fact and law to protect Creator's natural family institution from corruption by men's unnatural marriage and divorce ("MAD") institution making fathers as proof of sex-predators deny undeniable paternities and corrupt natural families.*

.4 *The void improperly stated rule of law is the legal trap for men's freedom for sex-abuse in retaliation against pregnant women's freedom of risk-free sex during pregnancy periods and self-proving conspiracy instead of check-and-balance and practice of lie as practice of law by self-proving sex predators as bipartisan politics.*

.5 *In retaliation against women and their amazing contributions in the baby-making-process full of pains, risks and complications from breastfeeding, nursing, etc., even their, but never men's, death, zealous men as twisted sex-masters, liars and lawmakers masterminded their fundamentally flawed foundation of all legal systems rooted in men's unnatural MAD laws to misuse women as sex-slaves.*

.6 *"Penis envy" coined by Freud is an open secret of retaliatory truth known to all. Twisted freedom fighters still die in search of, but never use, the truth: out-of-wedlock fathers are bastard fathers guilty of committing adulteries and rapes scapegoating their own innocent out-of-wedlock babies as guilty bastard babies.*

.7 *Sex causes pregnancy even without love or marriages misused by husbands to seed others' wives but make no bastards and also seed unwed women to scapegoat their own out of wedlock innocent babies doing no wrong as guilty bastards knowing that they themselves are doing wrongs committing out of wedlock sex.*

.8 *Family law for no scapegoatings is the legal solution to end MAD laws for scapegoatings as legal problems.*

.9 *Obvious lies in marriage vows (until "death do us part" instead of until "death or divorce do us part") are men's obvious evil motives in evil cults or cult-ures sold as good cults or cult-ures in all nations alike.*

.10 *Women in perpetuity will thank men who, at least now, will use self-correcting brains in self-healing bodies to make their belief in Truthisprudence prevail over their belief in Jurisprudence even if evil reporters, cartoonists and comedians on the streets or in Courts refuse 100% cooperation as proof of 100% hypocrisies.*

<sup>10</sup> "relief is not a discretionary matter; it is mandatory...[with properties held in constructive and/or deemed trusts and deterrent punitive awards as redress and restitution by the injurers to all their injured ("Mandatory Restitution") who cannot turn back time to live their lives without injuries]; no deterrent punitive awards are "grossly excessive," *TXO Production Corp. v Alliance Resources Corp., 1993, 509 US 443*", to help predators, lawyers and jurists as injurers begin using Truthisprudence and end using Jurisprudence].

*Orner v Shalala, Colo. 1994, 10<sup>th</sup> Cir, 30 F3d 1307, 1310; Limone v US, 2011, 815 FSupp2d 393.*

"A void act ... may be attacked in any forum, state or federal, where its validity may be drawn in issue [in all cases no matter how different since jurisdiction that is valid for doing valid Justice is lost as void for committing void Justicides and time stands still until void Justicdes are reversed and corrected into valid Justice instead]."

*Pennoyer v Neff, 1878, 95 US 714, 732-733, World-wide Volkswagen Corp. v Woodwon, 1980, 444 US 286.*

Unbiased Scripture ("US") as Unbiased Memorandum of Law ("LKJMOL") with endnotes<sup>1-10</sup> 05.31.2022 UPG 07.04.2022.  
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No. **96-57**

IN THE  
**SUPREME COURT OF THE UNITED STATES**  
 October Term, 1995

◆  
 ANDREW C. SCHIFFER,  
*Petitioner,*

vs.

TARRYTOWN BOAT CLUB, INC.,  
 and its BOARD OF DIRECTORS individually,  
 JOHN MILLAR, KEVIN McDERMOTT,  
 ROBERT ROSSI, EDWARD THOMAS,  
 DONALD BRAINARD, THOMAS KENBALY,  
 ANTHONY ISMAILOFF, and JOHN PUFF,  
*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI  
 TO NEW YORK STATE COURT OF APPEALS

**PETITION FOR A WRIT OF CERTIORARI**

LALIT K. JAIN  
*Counsel of Record for Petitioner*  
 61-22 Booth Street  
 Rego Park, N. Y. 11374-1034  
 718 476-9757

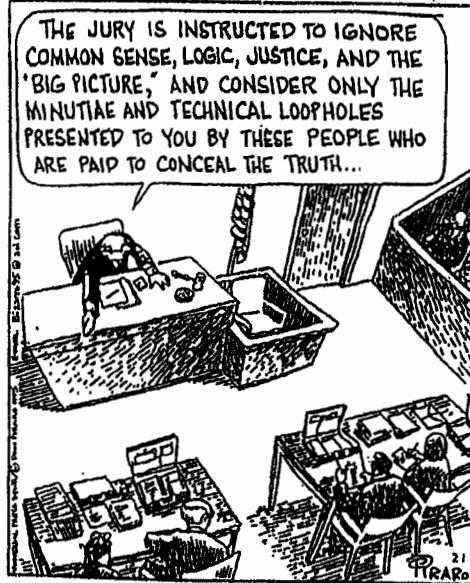
June 25, 1996 **DOCKETED JUL 12, 1996**  
**DENIED DEC 02, 1996**

**TWO UNSETTLING QUESTIONS**

Judgments are, as it were, the sayings of the law,  
 and are received as truth [even if not the truth].<sup>8</sup>

Personally ashamed but constitutionally constrained by  
 oath to support our Constitutions WE THE PEOPLE still  
 honor, Counsel presents very basic questions raised by the  
 judicial truth as received and judicial satire as published.

**BIZARRO**



*Judicia sunt tanquam iuris dicta, et pro veritate accipiuntur.*  
*Bl. Dicit., (6th ed.), p. 850. [Emphasis added].*

*Truth alone triumphs; not falsehood. This Indian National Motto mimicks the truth will set you free as the Biblical Statement of baby is bastard legally enshrined ("BIBLE") as a Biased Scripture ("BS"). Truthisprudence makes all Courts, Congresses and Churches end SOS as the Constitutional Scam. This unique unbiased LKJMOL rooted in In God we Trust and In God we Believe makes believers in truthless, ruthless, uncredible thus BSs like BIBLE upgrade into believers in this unique unbiased US. Jurisprudence is the lie, the whole lie, and nothing but the lie. It compelled an unbiased repeatedly bastardized attorney at law to coin Truthisprudence as its needed antonym for mandatory use by all jurists in all Courts to end self-proving iconic idiocies committed by psycho-the-rapists (aka psychotherapists) to-get-her (aka together) with jurists for free illicit sex and rapes.*

*Evil freedom is Courts of law misused as Courts of lie lying and relying on lying for void Justicides. It must upgrade into good freedom of Courts of truth always trutthing for valid Justice. Natural truth, peace and harmony end artificial truth, peace and harmony, end retaliation by men against women and babies based on sex and age, end any and all scapegoatings and perpetuate Truthisprudence that ended Jurisprudence on Oct 31, 2013.<sup>1</sup>*

*Nurture corrupts nature, not vice versa. Learn and live in truth knowing Justice always insures nature.*

A4 of A4

**EXHIBIT 2**

**U.S. BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA**

**RE: BERNSTEIN FAMILY REALTY, LLC.  
CASE NO.: 22-13009  
DATE: June 8, 2022**

**THE HONORABLE ERIK P. KIMBALL, PRESIDING**

**APPEARANCES:**

**HEIDI A. FEINMAN, ESQ.  
For: US Trustee**

**ALLEN ROSE, ESQ.  
For: Ted Bernstein**

**INGRID GARCIA, ESQ.  
For: Daniel Bernstein, Jacob Bernstein & Joshua  
Bernstein**

**BRAD SCHRABERG, ESQ.  
For: Patricia Saum**

**DAVID BROWN, ESQ.  
Officer of the Court**

**CANDICE BERNSTEIN, PRO SE**

**ELLIOTT BERNSTEIN, PRO SE**

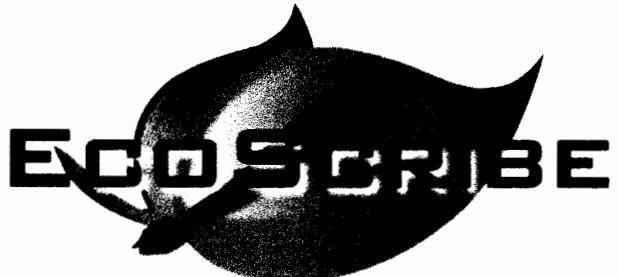
**DANIEL BERNSTEIN, PRO SE**

**CYNTHIA MISSOD, PRO SE**

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3       **U.S. BANKRUPTCY COURT**  
4       **SOUTHERN DISTRICT OF FLORIDA**  
5

6       **RE: BERNSTEIN FAMILY REALTY, LLC.**  
7       **CASE NO.: 22-13009**  
8       **DATE: June 8, 2022**

9       **THE HONORABLE ERIK P. KIMBALL, PRESIDING**  
10

11       **APPEARANCES:**  
12

13       **HEIDI A. FEINMAN, ESQ.**  
14       **For: US Trustee**

15       **ALLEN ROSE, ESQ.**  
16       **For: Ted Bernstein**

17       **INGRID GARCIA, ESQ.**  
18       **For: Daniel Bernstein, Jacob Bernstein & Joshua**  
19       **Bernstein**

20       **BRAD SCHRABERG, ESQ.**  
21       **For: Patricia Saum**

22       **DAVID BROWN, ESQ.**  
23       **Officer of the Court**

24       **CANDICE BERNSTEIN, PRO SE**

25       **ELLIOTT BERNSTEIN, PRO SE**

26       **DANIEL BERNSTEIN, PRO SE**

27       **CYNTHIA MISSOD, PRO SE**

RE: BERNSTEIN FAMILY REALTY, LLC.  
Court Proceeding June 08, 2022

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1 THE COURT: The next matter I have is  
2 Bernstein Family Realty, LLC. I have a large list,  
3 forgive me if I just take them in the order that I  
4 have them listed. Ms. Feinman.

5 MS. FEINMAN: Good afternoon, Your Honor,  
6 Heidi Feinman for the US Trustee.

7 THE COURT: Mr. Rose.

8 MR. ROSE: Good afternoon, Your Honor. Allen  
9 Rose for Ted S. Bernstein as successor trustee of the  
10 Simon L. Bernstein amended and restated trust.

11 THE COURT: Let's see, Ingrid Garcia.

12 MS. GARCIA: Good afternoon, Your Honor.  
13 Ingrid Garcia, I'm here for Daniel, Jacob and Josh  
14 Bernstein.

15 THE COURT: Thank you. Brad Schraberg  
16 (phonetic).

17 MR. SCHRABERG: Good afternoon, Your Honor,  
18 Brad Schraberg on behalf of secured creditor, Patricia  
19 Saum (phonetic).

20 THE COURT: David Brown.

21 MR. BROWN: Good afternoon, Your Honor. David  
22 Marshal Brown appearing as an officer of the court.

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1 THE COURT: Candice – that's an interesting  
2 introduction in this case. Candice Bernstein.

3 MS. BERNSTEIN: Hello, yes, Your Honor,  
4 Candace Bernstein.

5 THE COURT: Elliott Bernstein.

6 MR. ELLIOTT BERNSTEIN: Yes, Your Honor. Hi,  
7 I'm here appearing as an interested person and newly  
8 appointed manager of BFR.

9 THE COURT: Okay. Daniel Bernstein.

10 MR. DANIEL BERNSTEIN: Good afternoon, Your  
11 Honor. Daniel Bernstein.

12 THE COURT: Jacob Bernstein.

13 MR. JACOB BERNSTEIN: Hello, Your Honor, yes,  
14 I'm here.

15 THE COURT: Joshua Bernstein.

16 MR. JOSHUA BERNSTEIN: Hello, Your Honor, I'm  
17 here.

18 THE COURT: Louisa Esposito. I have Cynthia  
19 Missod (phonetic).

20 MS. MISSOD: Yes, Your Honor.

21 THE COURT: Gloria Helman.

22 MS. MISSOD: Yes, Your Honor, yes.

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1 THE COURT: Good, that was Cynthia Missod.  
2 Good morning or afternoon. Gloria Helman. Robert Sahan  
3 (phonetic). Is there anyone else who would like to  
4 appear on the Bernstein Family Realty, LLC case? All  
5 right. Ms. Feinman, I have your motion to dismiss and  
6 then there's a joinder which asks for, I believe  
7 that's Mr. Schraberg's client or clients ask instead  
8 that the case be converted. Ms. Feinman.

9 MS. FEINMAN: Yes, Your Honor, good  
10 afternoon. It is the US Trustee's emergency motion to  
11 dismiss or convert this case to Chapter 7, so there is  
12 an option for either avenue. Your Honor, I filed this  
13 on June 4th. The court set the notice of hearing was  
14 docketed on Monday and we, the US Trustee did send by  
15 overnight mail and regular mail to the Bernsteins and  
16 the debtor the notice of hearing in the motion, so I  
17 do know that it's been received. Your Honor, as you  
18 recall this is an involuntary Chapter 11 case that was  
19 filed on April 19th, 2022. The court entered the order  
20 granting the involuntary relief on May 23rd, 2022. It's  
21 the US Trustee's understanding that amongst other  
22 assets the debtor does own real property located at

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1 2753 Northwest 34th Street in Boca Raton.

2 THE COURT: Hold on a moment. If you are not  
3 speaking, can you please put yourself on mute, because  
4 I'm hearing some background noise. Thank you very much  
5 everyone. Ms. Feinman.

6 MS. FEINMAN: Thank you. Your Honor, you set  
7 a status conference on the involuntary petition for  
8 May 25th, especially in light of the fact that this is  
9 a debtor that is an entity that did not have counsel  
10 and at that status conference the Bernsteins did  
11 appear with Ms. Garcia, who is the individual  
12 Bernstein, I believe children's counsel and at that  
13 time you indicated that the debtor did need to get  
14 representation and you continued the matter to June  
15 1st, which was last week to give the debtor time to  
16 find additional counsel. At that hearing, Mr. Brown  
17 appeared as proposed counsel for the debtor and asked  
18 for certain extensions of time. One of the things  
19 again at that hearing that you raised and that the US  
20 Trustee was concerned about was that there was no  
21 matrix, a creditor matrix and that was in essence  
22 having a secret bankruptcy case because no creditors

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1 or parties in interest had knowledge other than Mr.  
2 Rose and Mr. Schraberg on behalf of their clients. I  
3 also raised the fact that we had begun hurricane  
4 season and we needed proof of insurance because there  
5 was real property. That's where we left it last week.  
6 I believe Mr. Brown had asked for an extension of time  
7 to file the plan – to file, excuse me, the schedules,  
8 but the court did enter an order granting that  
9 2016 disclosure of compensation by proposed counsel  
10 and application to be employed. Those three things had  
11 to be filed by June 3rd and that order further stated  
12 that the failure to comply with the terms of the order  
13 may result in a dismissal or conversion of the case  
14 without further notice or hearing. Separately, I did  
15 require, and I sent Mr. Brown an email asking for  
16 proof of insurance. Mr. Brown said the debtor had it,  
17 but then around 4 o'clock on June 3rd, I received a  
18 call from Mr. Brown saying he did not have the 2  
19 appropriate information to file with the court. So, I  
20 waited until Saturday, the 4th and I filed this  
21 emergency motion.  
22 Your Honor, as we sit here today which is

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1 now the 8th, I still do not have proof of insurance. We  
2 did go through as the court is well aware a tropical  
3 storm on Friday with very heavy rain at times. Without  
4 insurance I do not know if the house has been  
5 protected. I do not know if there's any damage. Again,  
6 we still have no matrix. Mr. Brown did not file an  
7 application to be employed. There's been no retainer  
8 agreement. There's been nothing. So, as we sit here  
9 today, we still have an entity that is not represented  
10 by counsel. We have property that we know of, that the  
11 US Trustee knows of, this is real property, but I do  
12 not know what other property is out there and I do not  
13 know who the creditors are. We cannot schedule a 341  
14 Meeting. We cannot move forward. Your Honor, this is a  
15 case in which there are – Mr. Schraberg represents  
16 creditors who I believe are judgment creditors. They  
17 are not protected as far as I could tell with respect  
18 to this property and they have a right to be and if  
19 this debtor is going to reorganize it should have  
20 taken the steps that it needed to reorganize, so Your  
21 Honor, under the various sections of 1112B4, I ask  
22 this court to dismiss or convert the case, since Mr.

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1 Schraberg is a creditor that I know of that is most –  
2 potentially his client is the most potentially harmed,  
3 I would leave it to him to decide how he feels best  
4 protected or his clients and he has filed a joinder in  
5 the motion and ask the court to convert the case. I  
6 have no basis not to agree with him at this point. If  
7 there's property of this estate that can be marketed  
8 and sold to pay creditors then that should happen,  
9 Your Honor, and so therefore under 1112B4H and  
10 1112B4C, I would ask that this court convert the case  
11 to Chapter 7. The failure to also to maintain  
12 insurance under 1112B4B to me is an indication of a  
13 gross mismanagement and that is inappropriate for any  
14 debtor to be in this Chapter 11. So again, Your Honor,  
15 I would agree with Mr. Schraberg if this is what he  
16 would like to do on behalf of his clients to convert  
17 the case, this case should be converted to Chapter 7.  
18 Thank you.

19 THE COURT: Mr. Schraberg.

20 MR. SCHRABERG: Thank you, Your Honor. As Ms.  
21 Feinman stated we join this motion for the reasons she  
22 stated as well as the reasons we set forth in our

RE: BERNSTEIN FAMILY REALTY, LLC.  
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1 joinder. We believe that it should be converted as  
2 opposed to dismiss and its primarily due to what we  
3 believe is litigation gamesmanship. This bankruptcy  
4 was filed as an involuntary by the three beneficiaries  
5 of the trust that own this on the eve of a foreclosure  
6 sale. We have a final judgment of foreclosure. This  
7 debtor has not appealed it, though I believe Mr.  
8 Bernstein, Elliott Bernstein has filed an appeal, but  
9 the actual debtor has not. The time to appeal has long  
10 since ran and on the eve of a foreclosure because they  
11 don't have the corporate authority to file a voluntary  
12 bankruptcy, they orchestrated an involuntary  
13 bankruptcy by three parties that we do not believe are  
14 creditors, they're equity holders. They're beneficial  
15 interest in the equity holder. It is for this reason  
16 that we need the independent trustee to come in, sell  
17 the property and use those proceeds to pay the  
18 creditors of this estate. I know Mr. Rose's clients is  
19 a creditor that would be in second position and if  
20 there is equity from a sale then the beneficiaries of  
21 these trusts will receive the distribution, but the  
22 gamesmanship needs to end and we're requesting that

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1 this case be converted so a trustee can sell it.

2 THE COURT: Before I go to Mr. Brown, anybody  
3 else wish to be heard on the motion in joinder. Mr.  
4 Rose. You're no mute, Mr. Rose.

5 MR. ROSE: Thank you, Your Honor. Good  
6 afternoon. I don't know how much detail you want or  
7 need about this, but I do want to make a few points. I  
8 am the person with the most historical knowledge  
9 because I've been in this case since 2014. Mr.  
10 Schraberg only got involved after the Chapter 11  
11 involuntary proceeding was commenced as well as Ms.  
12 Feinman. So, stop me if I'm boring you, stop me if you  
13 don't want the detail. If two weeks ago Mr. Schraberg  
14 made what we both acknowledge was a practical  
15 consideration of giving the debtor some time to get  
16 its feet under it and in the past two weeks nothing  
17 has happened that would compel anything other than a  
18 conversion to a Chapter 7. Ms. Feinman had said that,  
19 you know, amongst other assets, because she does not  
20 know whether or not there are other assets, but I  
21 believe I do from eight years of being involved in  
22 this case and this entity is a single purpose entity

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1 that owns one piece of property, it's a residence in  
2 Boca. The residence is occupied by the children of  
3 Simon Bernstein, Elliott, his wife and three children,  
4 essentially rent free for eight years. Mr. Schraberg's  
5 client has the first mortgage, it's a purchased money  
6 mortgage that currently stands with a \$353,000 final  
7 judgment that is no longer appealable. It was not  
8 appealed by the BFR Entity. It was appealed by Mr.  
9 Elliott Bernstein who is I guess a tenant or an  
10 occupant of the property, he appealed it, but the  
11 deadline to appeal has long since passed, so Mr.  
12 Schraberg's client is sitting there with a \$353,000  
13 first mortgage reduced to a judgment accruing interest  
14 at 18 percent plus attorneys fees in state court, and  
15 the state court judgment includes his past – the taxes  
16 that were paid by his client for the past six or seven  
17 of the past eight years and all the interest its  
18 accrued. My client holds a recorded second mortgage.  
19 We don't even show up in the creditor matrix, well not  
20 that – in the creditor list that was submitted by the  
21 alleged debtor, or now the Chapter 11 debtor. We have  
22 a \$365,000 mortgage on top of Mr. Schraberg's

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1 mortgage, and we would be entitled in state court to  
2 petition for the surplus if there were any and we  
3 would be entitled in this court to litigate whether  
4 our mortgage is valid. I don't think we need to debate  
5 today, but ours is of record. Mr. Bernstein would tell  
6 you that it's invalid, it was not intended to be a  
7 real mortgage and that they, you know, but that's not  
8 we have a single asset, a house in suburban Boca Raton  
9 at the height of the boom and I think we all know the  
10 boom some day will end and if it hasn't already ended  
11 it may end, you know, very soon and we would like to  
12 get this property sold. I would prefer it, you know,  
13 we're not in state court where everything is in favor  
14 of the defendant and the debtor. We're in Bankruptcy  
15 Court now at their choice and in Bankruptcy Court the  
16 priority is on the creditors of the debtor, and I  
17 think the creditors of the debtor including equity are  
18 better served with a very swift sale through a 363-  
19 process commenced by a Chapter 7 trustee. It's much  
20 preferable than a state court online auction. Now, we  
21 were, you know, less than 12 hours or 18 hours from a  
22 state court online auction when this case was

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1 commenced, so that's my client's general position. I  
2 have a lot to say about the - I don't know what the  
3 debtor's position is. I have a lot to say about why  
4 this could never be a Chapter 11, including the fact  
5 that they have to petition a state court to allow for  
6 some of the \$300,000 that is in the registry of the  
7 court for the benefit of three children that's Daniel,  
8 Jacob and Joshua to use and what they have proposed is  
9 something like \$75,000 or 25 percent of it for the  
10 professionals to run through a Chapter 11 proceeding  
11 and this is a little bit out. It's not in your record,  
12 Your Honor, but it's in my record and - but the point  
13 being, you don't need \$75,000 worth of professionals  
14 to sell a single-family home in suburban Boca Raton  
15 and so I don't think there's any possibility that a  
16 Chapter 11 would work. I don't believe a dismissal is  
17 in the best interest of the creditors or even the  
18 equity considering how far along we are in this  
19 court, and you could appoint a Chapter 7 trustee and  
20 that would be the most beneficial part. I can talk  
21 about the property values, you know, for years I  
22 thought our second mortgage was, you know, very under



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1 water. It's come to life a bit with this surge, but we  
2 don't know how long the surge is going to last. I  
3 could talk about if you have any questions about the  
4 way this property has been run for the past eight  
5 years, I would be glad to tell you, but I don't think  
6 there's ever been insurance on the property. The debts  
7 have – the taxes have been mostly paid with the  
8 exception of last year by Mr. Saum and there's never  
9 been, you know, anything other than Mr. Bernstein and  
10 his family staying in the house as long as possible  
11 until it gets foreclosed. There was some talk about –  
12 I don't know if you want me to talk about why the 11  
13 wouldn't work, if we're beyond that –

14 THE COURT: No, unless you feel it's relevant  
15 to one of the standards that Ms. Feinman cited. I  
16 think she actually left out 1112B4E, which is failure  
17 to comply with an order of the court, although that is  
18 raised in her motion.

19 MR. ROSE: I'll save any comment on why an 11  
20 wouldn't work, but it's between a 7 or a dismissal. I  
21 think Mr. Schraberg's client as the primary secured  
22 judgment creditor, his say should be the most

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1 important and the second position regardless of the  
2 alleged validity or invalidity of the mortgage that's  
3 recorded, we would prefer a Chapter 7, I think that  
4 would be the fastest way to justice and the fastest  
5 way to protect whatever value is in this property for  
6 whomever is entitled to it and I'd answer any  
7 questions or if there's anything that's said that I  
8 might need to respond to, but otherwise thank you for  
9 your time.

10 THE COURT: Thank you. Mr. Brown, I'm going  
11 to start with a question for you. What is your role at  
12 this point? You did not file a disclosure of  
13 compensation, nor is there an application to retain  
14 you. I noticed in the beginning you did not introduce  
15 yourself as proposed counsel to the debtor.

16 MR. BROWN: That was intentional, Your Honor.  
17 Everything is prepared. I have the matrix. I have the  
18 affidavit. I have the application, but what I  
19 didn't have was the actual retainer. So, I called Ms.  
20 Feinman immediately once the deadline ran as a  
21 courtesy, professional courtesy because we go back  
22 decades.

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1 THE COURT: Okay. Are you taking – are you  
2 going to take a position on behalf of the debtor at  
3 this hearing?

4 MR. BROWN: I'm kind of in an ethical  
5 quandary. I would only say that in the interest of  
6 judicial economy, just turning this over to a 7  
7 trustee who then turns it back over to the creditor is  
8 kind of a waste of time. I would just ask for a  
9 dismissal.

10 THE COURT: Would anybody else like to be  
11 heard?

12 MS. GARCIA: Yes, Your Honor.

13 THE COURT: Ms. Garcia.

14 MS. GARCIA: Hi, Your Honor. Thank you. I  
15 don't know what to say except I'm a little bit shocked  
16 at what's being represented to the court. I'm so sorry  
17 because I completely respect the court system and all  
20 the attorneys and I'm fairly new to the case, but I  
21 can say this. Under 11USC305, I'm requesting the court  
22 to do what's in the best interest of the creditors and

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1 the debtors. Now, I did send the trustee just prior to  
2 the hearing a copy of the insurance that proves this  
3 property is insured. They did insure it timely, but it  
4 wasn't titled correctly, so I got the properly titled  
5 correctly insurance today, so this property is not at  
6 risk. Number two, this joinder that was filed for  
7 Walter Saum and Patricia Saum was filed with a dead  
8 man and at the last hearing counsel represented that  
9 Walter Saum just passed away recently. I have the  
10 death certificate and I provided it also to the  
11 trustee that he died 18 months ago. The final judgment  
12 was done in the name of a dead man. I plan on going  
13 back to the state court to Judge Castranacis  
14 (phonetic) who I respect because he was my professor  
15 in law school, got me my first job with the State  
16 Attorney Janet Reno. He's an incredible judge. He was  
17 misled in the court, and I want to go back to that  
18 court and correct his final judgment, but in the  
19 meanwhile, Judge, I'm asking don't convert it to a 7.  
20 There's many issues. There's an investment trust that  
21 spawns this property. Mr. Rose knows, him and I have  
22 been going back and forth that I'm trying to get

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1 \$300,000 release to pay Mr. Marshal to defend his case  
2 if needed. So, to me, I'm sorry, Judge, I'm very sad  
3 and very upset after 30 years of practicing law that  
4 these people come in here and tell you the best  
5 interest is a Chapter 7, when it's a dismissal without  
6 prejudice. Give us a chance to get the money from the  
7 attorney who are filing for dead people and who  
8 control money that are preventing us from paying this  
9 mortgage and let our clients do this correctly, so  
10 please do not convert this to a Chapter 7 and hurt  
11 this client. This is their family home for years.  
12 These are three young teenagers who are trying to do  
13 the best they can. So, I'm asking this court to please  
14 consider the best interest of the creditors and the  
15 debtors. They are not being hurt by going back to the  
16 state court. We can go right back to the state court.  
17 They didn't file a release of stay within days, they  
18 could have done that. They set for six weeks  
19 themselves. They could have filed a motion for relief  
20 from stay and gone back to the state court themselves,  
21 but they didn't, because they want to take this  
22 property from these children. So, I'm asking you,

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1 please, Your Honor, from the interest of justice to  
2 dismiss it without prejudice, let's go back to the  
3 state court and if we need to come back to this court  
4 we will with counsel and do it properly.

5 THE COURT: Ms. Feinman, would you like to  
6 respond to that?

7 MS. FEINMAN: Your Honor, yes, Your Honor.  
8 First and foremost, I have no proof of insurance. Ms.  
9 Garcia never sent me any insurance. She did not send  
10 me insurance at her email at 1 o'clock this afternoon  
11 before the hearing, so as I sit here today, I have no  
12 insurance, but mostly and more importantly, Your Honor  
13 and you're right, I missed 1112B4E, it is in my  
14 motion. The debtor failed to comply with the court  
15 order. That in and of itself is enough for this court  
16 to do something. We have an entity that cannot be  
17 represented – well, can be represented, but is not  
18 represented and we have a situation where the largest  
19 creditor, which appears to be the largest creditor,  
20 Mr. Schraberg's client would like the case to be  
21 converted. I see no other reason not to do that, Your  
22 Honor. Mr. Schraberg can speak to the fact that Mr.

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1 Saum has passed away, but I think those are legal  
2 issues that he can address if the court would like,  
3 but at this point we are in a situation where we  
4 cannot let this case continue on the way it is. The  
5 debtors had significant time and has done nothing and  
6 so, Your Honor, if during the Chapter 7 the trustee  
7 and the debtor can reach some agreement to have a case  
8 dismissed that can always happen, but this case cannot  
9 consider – be considered in an 11 at this point, so I  
10 would continue with my request that the case be  
11 converted to a Chapter 7. Thank you.

12 THE COURT: Mr. Schraberg, at a recent  
13 hearing you suggested that your two clients were joint  
14 owners of the claim and when Mr. Saum died the other  
15 person became the sole owner of the claim. Would you  
16 like to add anything to that on that particular issue?

17 MR. SCHRABERG: Yes. May I say that's what  
18 happened. They were owners of this mortgage entity and  
19 by the entities at the time of his death, Patricia  
20 Saum became the 100 percent owner of the mortgage.  
21 There isn't going to be an issue with regard to our  
22 judgment. I want to – so there's – that is a red

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1 herring. The best interest of the creditors, there's  
2 nothing that Ms. Garcia said that can't be handled in  
3 this bankruptcy proceeding. What can't happen if this  
4 goes back to state court is a quick sale of this  
5 property at the height of this market where interest  
6 rates are rising, and nobody knows what's going to  
7 happen tomorrow in the market. Bankruptcy offers the  
8 ability to sell the property -

9 THE COURT: Let me short circuit this. Ms.  
10 Garcia's entire argument is based on the best interest  
11 of the indirect equity owners of the debtor, which is  
12 not what Section 1112 talks about, so you don't need  
13 to go any further with that. Ms. Garcia, were you  
14 representing the individuals who signed the  
15 involuntary petition at the time that it was filed?

16 MS. GARCIA: No, Your Honor.

17 THE COURT: It seems like a very creative  
18 solution to file an involuntary petition under  
19 circumstances where an entity has no manager who could  
20 sign a voluntary petition. I wonder whether there was  
21 somebody who advised them on that particular issue.

22 MS. GARCIA: Your Honor, all I can address on

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1 that issue is that in the underlying case this entity  
2 is part of the final judgment as it exists and nobody  
3 brought up to that point either, so I think Judge  
4 Castranacis needs to be informed of what's really  
5 going on so he can void the final judgment adnitio  
6 (phoenetic)fraud on the court.

7 THE COURT: Doesn't it seem like if your  
8 clients really wanted to continue litigating in the  
9 state court, they could have done that rather than  
10 commence this apparently ill-advised involuntary,  
11 which now they'd like to withdraw.

12 MS. GARCIA: I think it's in the best  
13 interest of everyone including the creditors to  
14 withdraw this, allow us to go back to state court and  
15 if the state court wants to set the sale, they can set  
16 the sale. In the meanwhile, it gives me an opportunity  
17 to do the right thing as an attorney for the children  
18 who this is their home for what, 20 plus years, this  
19 family, and there's a lot of issues, Your Honor.  
20 There's a lot of money that could have been used to  
21 pay. There's a trust fund that I need to seek  
22 accountants for to prove that there's millions of

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1 dollars that could have paid this judgment. So, we're  
2 being held back by creditors who have access to funds  
3 who are contesting access to funds for our clients to  
4 pay this. So, it's kind of a situation that's very  
5 unique and I just firmly believe this should be  
6 dismissed and allow us to go back to state court and  
7 to correct it there.

8 THE COURT: Let me start my ruling on  
9 something that isn't addressed in Section 1112. It's  
10 fairly basic. When an involuntary petition is filed,  
11 that is a very significant act. It is a significant  
12 act when an entity such as this files a voluntary  
13 petition, that exercises broad based powers that are  
14 available only to a person or entity that is involved  
15 in the Title 11 proceeding. An involuntary is  
16 typically used in order to attempt to collect on a  
17 debt from an entity where the creditors generally  
18 would benefit from a bankruptcy proceeding. It is  
19 extremely unusual, and the code is set up in such a  
20 way that if you file one and it was a very bad idea  
21 you could be held liable for that. This is not  
22 something that should be used lightly and here it

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1 looks like it was used strategically, but that has  
2 nothing to do with the court's analysis today nor Mr.  
3 Rose, and I don't mean to suggest any displeasure at  
4 all with your presentation, nor do a lot of the  
5 substantive issues that you reference have any impact  
6 on the court's decision. There is obviously cause  
7 under Section 1112B here and there are at least three.  
8 I'm going to leave off the fourth one, Ms. Feinman,  
9 because that usually requires presentation of  
10 independent evidence. After a hearing at which  
11 deadlines were specifically discussed, I entered an  
12 order requiring that certain things be done by a  
13 particular date and none of those things happened,  
14 there is therefore cause under Section 1112B4E,  
15 because the debtors failed to comply with an order of  
16 the court, an order which I note threatened conversion  
17 or dismissal without any further hearing and I'm  
18 having this hearing because Ms. Feinman filed a motion  
19 and I thought it better to hear the arguments and more  
20 importantly see whether the debtor actually had  
21 counsel who appeared with an application and had been  
22 paid a retainer which counsel is entitled to, that

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1 didn't happen. In addition, the United States Trustee  
2 is requesting information that has not been received.  
3 This is not a surprise, that was discussed at the last  
4 hearing. That is also independent cause under 1112B4H  
5 and finally, it is very important, and we are in the  
6 hurricane season and apparently the debtor's sole  
7 asset is a piece of real estate with a building on it.  
8 When the US Trustee asked for proof of insurance and  
9 it's not tendered, that means that I'm allowed to  
10 conclude that there isn't any that's adequate under  
11 the circumstances, that would also be cause under  
12 1112B4C. I'm not going to address the gross  
13 mismanagement argument, because again, that would  
14 require usually separate evidence. Each of those  
15 findings by itself would be sufficient to cause the  
16 court to determine that the case should be dismissed  
17 or converted. The only argument in favor of dismissal  
18 is that the debtors indirect equity owners who filed  
19 the voluntary petition ill advisedly apparently in  
20 order to avoid a foreclosure because the entity was  
21 unable to file a voluntary. That it would be in their  
22 interest for me to dismiss the case and let them go

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1 back to state court and do battle. No one else has  
2 weighed in on that side. The standard for the court is  
3 what's in the best interest of creditors in the estate  
4 and I'm confident that the estate and creditors are  
5 best served by conversion of this case so that an  
6 independent trustee can ascertain what should happen  
7 with the underlying property and so I will enter that  
8 order and Ms. Feinman would you like -

9 MR. ELLIOTT BERNSTEIN: Your Honor -

10 THE COURT: Hold on a moment. Would you like  
11 to tender -

12 MR. ELLIOTT BERNSTEIN: Your Honor -

13 THE COURT: Hold on a moment.

14 MR. ELLIOTT BERNSTEIN: Okay.

15 THE COURT: Would you like to tender it, or  
16 would you prefer that the court do its own order?  
17 Sometimes the US Trustee likes to tender the order.

18 MS. FEINMAN: I'm happy to tender the order,  
19 Your Honor.

20 THE COURT: Was that Mr. Elliott Bernstein, I  
21 believe speaking?

22 MR. ELLIOTT BERNSTEIN: That is, sir. First,

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1 just because I might - I'm on a lot of medicine and I  
2 have a 250 over 150 blood pressure and I'm in need of  
3 a bypass that I'm holding off to help out with my kids  
4 who just elected me, but just a few matters. I just  
5 heard counsel for the boys say that she sent the  
6 trustee the proof of insurance, so unless an officer  
7 of the court is lying to you, we do have proof of  
8 insurance, it is named in the trustee the way they  
9 wanted it with the address, etcetera. So, I'm not sure  
10 why she didn't get that email or why she's challenging  
11 that Ms. Garcia is a liar.

12 THE COURT: Mr. Bernstein, Mr. Bernstein,  
13 apparently the attempt to do that was today. It's  
14 late.

15 MR. ELLIOTT BERNSTEIN: It was done.

16 THE COURT: Okay. Mr. Bernstein, I've already  
17 ruled.

18 MR. ELLIOTT BERNSTEIN: Okay.

19 THE COURT: You can ask a question.

20 MR. ELLIOTT BERNSTEIN: Can I also put on the  
21 record - I also want to ask a question.

22 THE COURT: You get two sentences, Mr. Bernstein

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1 MR. ELLIOTT BERNSTEIN: Yeah, just for appeal  
2 and what not. I just need to know how did Walter Saum  
3 file a notice of hearing in this case when he's been  
4 dead for over a year and a half.

5 THE COURT: Mr. Bernstein, that had nothing  
6 to do with my ruling, literally nothing.

7 MR. ELLIOTT BERNSTEIN: No, I'm just asking -

8 THE COURT: Do you have anything else you'd  
9 like to ask? I'm going to give you one sentence.

10 MR. ELLIOTT BERNSTEIN: Yes. How did that  
11 dead man file a motion and why -

12 THE COURT: That's enough. I just muted Mr.  
13 Bernstein. All right. Does anybody else wish to be  
14 heard? Okay. Ms. Feinman, if you can please tender the  
15 order.

16 MS. FEINMAN: I will. Thank you, Your Honor.

17 THE COURT: Good afternoon, everyone.

18 MR. SCHRABERG: Thank you, Your Honor.

19

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1

2 (WHEREUPON THE RECORDING WAS CONCLUDED)

3 \* \* \* \* \*

4

5 **CERTIFICATE**

6

7

8 I, KELLY SELLERS, certify that the foregoing is a  
9 correct transcript from the official electronic  
10 sound recording of the proceedings in the above-  
11 entitled matter, to the best of my ability.

12

13 Signed this 5th day of July, 2022.

14   
15

16 Kelly Sellers, AD/T 544

17

18

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22

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**EXHIBIT 3**

## STATE OF FLORIDA

THIS DOCUMENT HAS A LIGHT BACKGROUND ON TRUE WATERMARKED PAPER. HOLD TO LIGHT TO VERIFY FLORIDA WATERMARK.  
**BUREAU of VITAL STATISTICS**

**AMENDED****CERTIFICATION OF DEATH****STATE FILE NUMBER:** 2021002655**DATE ISSUED:** APRIL 15, 2022**DECEDENT INFORMATION****DATE FILED:** JANUARY 12, 2021

NAME: WALTER E SAHM JR

DATE OF DEATH: JANUARY 5, 2021

SEX: MALE

AGE: 078 YEARS

DATE OF BIRTH: JANUARY 1, 1943

SSN: \*\*\*-\*\*-7482

BIRTHPLACE: EVANSVILLE, INDIANA, UNITED STATES

PLACE WHERE DEATH OCCURRED: INPATIENT

FACILITY NAME OR STREET ADDRESS: THE VILLAGES REGIONAL HOSPITAL

LOCATION OF DEATH: THE VILLAGES, SUMTER COUNTY, 32159

RESIDENCE: 8230 SE 177 WINTERTHUR LOOP, THE VILLAGES, FLORIDA 32162, UNITED STATES

COUNTY: MARION

OCCUPATION, INDUSTRY: SALES MANAGER, INSURANCE

EDUCATION: BACHELORS DEGREE

EVER IN U.S. ARMED FORCES? NO

HISPANIC OR HAITIAN ORIGIN? NO, NOT OF HISPANIC/HAITIAN ORIGIN

RACE: WHITE

**SURVIVING SPOUSE / PARENT NAME INFORMATION**

(NAME PRIOR TO FIRST MARRIAGE, IF APPLICABLE)

MARITAL STATUS: MARRIED

SURVIVING SPOUSE NAME: PATRICIA FARAGHER

FATHER'S/PARENT'S NAME: WALTER E SAHM SR

MOTHER'S/PARENT'S NAME: ANNE FREITAG

**INFORMANT, FUNERAL FACILITY AND PLACE OF DISPOSITION INFORMATION**

INFORMANT'S NAME: PATRICIA SAHM

RELATIONSHIP TO DECEDENT: WIFE

INFORMANT'S ADDRESS: 8230 SE 177 WINTERTHUR LOOP, THE VILLAGES, FLORIDA 32162, UNITED STATES

FUNERAL DIRECTOR/LICENSE NUMBER: ALEXIS GARCIA, F026901

FUNERAL FACILITY: NEPTUNE SOCIETY-SUMMERFIELD F064806

17350 SOUTH EAST 109TH TERRACE ROAD, SUMMERFIELD, FLORIDA 34491

METHOD OF DISPOSITION: CREMATION

PLACE OF DISPOSITION: SOUTHEASTERN CREMATORIES  
HUDSON, FLORIDA**CERTIFIER INFORMATION**

TYPE OF CERTIFIER: CERTIFYING PHYSICIAN

MEDICAL EXAMINER CASE NUMBER: NOT APPLICABLE

TIME OF DEATH (24 HOUR): 0351

DATE CERTIFIED: JANUARY 9, 2021

CERTIFIER'S NAME: PABLO DOLDY CARDONA

CERTIFIER'S LICENSE NUMBER: ME120187

NAME OF ATTENDING PRACTITIONER (IF OTHER THAN CERTIFIER): NOT ENTERED

DATE AMENDED: 05/21/2021 ANY CERTIFICATION ISSUED PRIOR TO THE AMENDED DATE MAY BE NULL AND VOID.

The first five digits of the decedent's Social Security Number have been redacted pursuant to §119.071(5), Florida Statutes.



, STATE REGISTRAR

REQ: 2023881554

THE ABOVE SIGNATURE CERTIFIES THAT THIS IS A TRUE AND CORRECT COPY OF THE OFFICIAL RECORD ON FILE IN THIS OFFICE.

WARNING: THIS DOCUMENT IS PRINTED OR PHOTOCOPIED ON SECURITY PAPER WITH WATERMARKS OF THE GREAT SEAL OF THE STATE OF FLORIDA. DO NOT ACCEPT WITHOUT VERIFYING THE PRESENCE OF THE WATERMARKS. THE DOCUMENT FACE CONTAINS A MULTICOLORED BACKGROUND, GOLD EMBOSSED SEAL, AND THERMOCHROMIC FL. THE BACK CONTAINS SPECIAL LINES WITH TEXT. THE DOCUMENT WILL NOT PRODUCE A COLOR COPY.

DH FORM 1046 (03-13)



\* 4 3 6 0 2 9 4 7 \*

CERTIFICATION OF VITAL RECORD

VOID IF ALTERED OR ERASED

VOID IF ALTERED OR ERASED



**EXHIBIT 4**

**SIMON L. BERNSTEIN**

**AMENDED AND RESTATED TRUST AGREEMENT**

*Prepared by:*

Tescher & Spallina, P.A.  
4855 Technology Way, Suite 720, Boca Raton, Florida 33431  
(561) 997-7008  
[www.tescherspallina.com](http://www.tescherspallina.com)

LAW OFFICES  
**TESCHER & SPALLINA, P.A.**



SIMON L. BERNSTEIN

AMENDED AND RESTATED TRUST AGREEMENT

This Amended and Restated Trust Agreement is dated this 26 day of July, 2012, and is between SIMON L. BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SIMON L. BERNSTEIN, of Palm Beach County, Florida and SIMON L. BERNSTEIN's successors, as trustee (referred to as the "*Trustee*," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee).

WHEREAS, on May 20, 2008, I created and funded the SIMON L. BERNSTEIN TRUST AGREEMENT (the "*Trust Agreement*," which reference includes any subsequent amendments of said trust agreement);

WHEREAS, Paragraph A. of Article I. of said Trust Agreement provides, *inter alia*, that during my lifetime I shall have the right at any time and from time to time by an instrument, in writing, delivered to the Trustee to amend or revoke said Trust Agreement, in whole or in part.

NOW, THEREFORE, I hereby amend and restate the Trust Agreement in its entirety and the Trustee accepts and agrees to perform its duties and obligations in accordance with the following amended provisions. Notwithstanding any deficiencies in execution or other issues in regard to whether any prior version of this Trust Agreement was a valid and binding agreement or otherwise created an effective trust, this amended and restated agreement shall constitute a valid, binding and effective trust agreement and shall amend and succeed all prior versions described above or otherwise predating this amended and restated Trust Agreement.

**ARTICLE I. DURING MY LIFE AND UPON MY DEATH**

A. **Rights Reserved.** I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement.

B. **Payments During My Life.** If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare. Any income not so paid shall be added to principal.

SIMON L. BERNSTEIN  
AMENDED AND RESTATED TRUST AGREEMENT

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C. **Upon My Death.** Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

#### **ARTICLE II. AFTER MY DEATH**

A. **Disposition of Tangible Personal Property.** If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

B. **Disposition of Trust Upon My Death.** Upon my death, the remaining assets in this trust shall be divided among and held in separate Trusts for my then living grandchildren. Each of my grandchildren for whom a separate trust is held hereunder shall hereinafter be referred to as a "beneficiary" with the separate Trusts to be administered as provided in Subparagraph II.C.

C. **Trusts for Beneficiaries.** The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the net income and principal of such beneficiary's trust as is proper for the Welfare of such individuals. Any income not so paid shall be added to principal each year. 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 grandchild 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 any of my lineal descendants (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:

SIMON L. BERNSTEIN  
AMENDED AND RESTATED TRUST AGREEMENT

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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.

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.

D. **Termination of Small Trust.** If at any time after my death in the opinion of the Trustee a separate trust holds assets of a value of less than \$50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

E. **Contingent Gift.** If at any time property of these Trusts is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if I had then owned such property and had then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.

F. **Protective Provision.** No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

G. **Maximum Duration.** Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years after the date of creation of this Agreement, nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

### ARTICLE III. GENERAL

SIMON L. BERNSTEIN  
AMENDED AND RESTATED TRUST AGREEMENT

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A. **Disability.** Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

B. **Timing of Income Distributions.** The Trustee shall make required payments of income at least quarterly.

C. **Substance Abuse.**

1. **In General.** If the Trustee reasonably believes that a beneficiary (other than myself) of any trust:

a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended. In that event, the following provisions of this Subparagraph III.C will apply.

2. **Testing.** The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. **Treatment.** If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an

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in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.

6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C., including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. Tax Savings Provision. Despite the provisions of this Subparagraph III.C., the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

D. Income on Death of Beneficiary. Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "child," "children," "grandchild," "grandchildren" 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 born of female lineal descendants, and (c) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is

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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. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, for all purposes of this Trust and the dispositions made hereunder, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me as I have adequately provided for them during my lifetime.

2. Code. "Code" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "Disabled" or being under "Disability" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "education" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. Needs and Welfare Distributions. Payments to be made for a person's "Needs" means payments necessary for such person's health (including lifetime residential or nursing home care), education, maintenance and support. Payments to be made for a person's "Welfare" means discretionary payments by the Trustee, from time to time, for such person's Needs and also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to

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such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

6. Per Stirpes. In a division "*per stirpes*" each generation shall be represented and counted whether or not it has a living member.

7. Related or Subordinate Party. A "*Related or Subordinate Party*" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

8. Spouse. A person's "*spouse*" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

a. the legal termination of the marriage to my descendant (whether before or after my death), or

b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

The trust will be administered as if that person had died upon the happening of the terminating event described above.

9. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such



Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.

**H. Presumption of Survivorship.** If any person shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

**I. Governing Law.** This Agreement is governed by the law of the State of Florida.

**J. Other Beneficiary Designations.** Except as otherwise explicitly and with particularity provided herein, (a) no provision of this trust shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this trust due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

**K. Release of Medical Information.**

1. **Disability of Beneficiary.** Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries and myself if a beneficiary) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested

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beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or at any time revokes an authorization within its term, the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

3. Ability to Amend or Revoke. The foregoing provisions of this paragraph shall not constitute a restriction on myself to amend or revoke the terms of this trust instrument under paragraph I.A hereof, provided I otherwise have legal capacity to do so.

4. Authorization to Issue Certificate. All required authorizations under this paragraph shall include the power of a physician or psychiatrist to issue a written certificate to the appropriate persons or entities as provided in Subparagraph III.E.3 hereof.

#### ARTICLE IV. FIDUCIARIES

A. Powers of the Trustee: During my life except while I am Disabled, the Trustee shall exercise all powers provided by law and the following powers, other than the power to retain assets, only with my written approval. While I am Disabled and after my death, the Trustee shall exercise said powers without approval, provided that the Trustee shall exercise all powers in a fiduciary capacity.

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the "estate"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any

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decline in the value thereof, all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.

2. Special Investments. The Trustee is expressly authorized (but not directed) to retain, make, hold, and dispose of investments not regarded as traditional for trusts, including interests or investments in privately held business and investment entities and enterprises, including without limitation stock in closely held corporations, limited partnership interests, joint venture interests, mutual funds, business trust interests, and limited liability company membership interests, notwithstanding (a) any applicable prudent investor rule or variation thereof, (b) common law or statutory diversification requirements (it being my intent that no such duty to diversify shall exist) (c) a lack of current cash flow therefrom, (d) the presence of any risk or speculative elements as compared to other available investments (it being my intent that the Trustee have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy), (e) lack of a reasonable rate of return, (f) risks to the preservation of principal, (g) violation of a Trustee's duty of impartiality as to different beneficiaries (it being my intent that no such duty exists for this purpose), and (h) similar limitations on investment under this Agreement or under law pertaining to investments that may or should be made by a Trustee (including without limitation the provisions of Fla. Stats. §518.11 and successor provisions thereto that would characterize such investments as forbidden, imprudent, improper or unlawful). The Trustee shall not be responsible to any trust created hereunder or the beneficiaries thereof for any loss resulting from any such authorized investment, including without limitation loss engendered by the higher risk element of that particular entity, investment, or enterprise, the failure to invest in more conservative investments, the failure to diversify trust assets, the prudent investor rule or variant thereof. Notwithstanding any provisions for distributions to beneficiaries hereunder, if the Trustee determines that the future potential investment return from any illiquid or closely held investment asset warrants the retention of that investment asset or that sufficient value could not be obtained from the sale or other disposition of an illiquid or closely held investment asset, the Trustee is authorized to retain that asset and if necessary reduce the distributions to beneficiaries due to lack of sufficient liquid or marketable assets. However, the preceding provisions of this Subparagraph shall not be exercised in a manner as to jeopardize the availability of the estate tax marital deduction for assets passing to or held in the a trust for my surviving spouse or that would otherwise qualify for the estate tax marital deduction but for such provisions, shall not override any express powers hereunder of my surviving spouse to demand conversion of unproductive property to productive property, or reduce any income distributions otherwise required hereunder for a trust held for the benefit of my surviving spouse or a "qualified subchapter S trust" as that term is defined in Code Section 1361(d)(3).

3. Distributions. To make any division or distribution pro rata or non-pro rata, in cash or in kind, and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares.

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4. Management. To manage, develop, improve, partition or change the character of an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

6. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of a trust and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

7. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to a trust. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

8. Real Property Matters. To subdivide, develop or partition real estate; to purchase or sell real property and to enter into contracts to do the same; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as the fiduciaries may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks; and to protect and conserve, or to lease, or to encumber, or otherwise to manage and dispose of real property to the extent such power is not otherwise granted herein or otherwise restricted herein.

9. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against a trust.

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole

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proprietorship, or other form (all of which business entities and enterprises are referred to herein as "*Business Entities*"). I vest the Trustee with the following powers and authority in regard to Business Entities:

- a. To retain and continue to operate a Business Entity for such period as the Trustee deems advisable;
- b. To control, direct and manage the Business Entities. In this connection, the Trustee, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the Trustee may select, including any associate, partner, officer or employee of the Business Entity;
- c. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the Trustee may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;
- d. To invest funds in the Business Entities, to pledge other assets of a trust as security for loans made to the Business Entities, and to lend funds from a trust to the Business Entities;
- e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the Trustee may deem advisable;
- f. To treat Business Entities as separate from a trust. In a Trustee's accounting to any beneficiary, the Trustee shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;
- g. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the Trustee may deem advisable in conformity with sound business practice;
- h. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the Trustee may determine. My Trustee is specifically authorised and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and
- i. To guaranty the obligations of the Business Entities, or pledge assets of a trust to secure such a guaranty.



11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida but without limiting the availability of the estate tax marital deduction, provided, unless otherwise provided in this instrument, the Trustee shall establish out of income and credit to principal reasonable reserves for depreciation, obsolescence and depletion, determined to be equitable and fair in accordance with some recognized reasonable and preferably uncomplicated trust accounting principle and; provided, further that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. With respect to any life insurance policies constituting an asset of a trust, to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the Trust; and in general, to exercise all other options, benefits, rights and privileges under such policies.

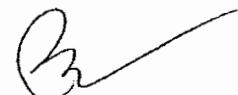
13. Continuing Power. To continue to have or exercise, after the termination of a trust, in whole or in part, and until final distribution thereof, all title, power, discretions, rights and duties conferred or imposed upon the Trustee by law or by this Agreement or during the existence of the trust.

14. Exoneration. To provide for the exoneration of the Trustee from any personal liability on account of any arrangement or contract entered into in a fiduciary capacity.

15. Agreements. To comply with, amend, modify or rescind any agreement made during my lifetime, including those regarding the disposition, management or continuation of any closely held unincorporated business, corporation, partnership or joint venture, and including the power to complete contracts to purchase and sell real estate.

16. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

17. Combination of Shares. To hold the several shares of a trust or several Trusts as a common fund, dividing the income proportionately among them, to assign undivided interests to the several shares or Trusts, and to make joint investments of the funds belonging to them. For such purposes and insofar as may be practicable, the Trustee, to the extent that division of the trust estate is directed hereby, may administer the trust estate physically undivided until actual division thereof becomes necessary to make distributions. The Trustee may hold, manage, invest and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and may allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several Trusts as a single estate shall not defer the vesting in possession of any whole or fractional share of a trust for the beneficiaries thereof at the times specified herein.



18. Reimbursement. To reimburse itself from a trust for reasonable expenses incurred in the administration thereof.

19. Reliance Upon Communication. To rely, in acting under a trust, upon any letter, notice, certificate, report, statement, document or other paper, or upon any telephone, telegraph, cable, wireless or radio message, if believed by the Trustee to be genuine, and to be signed, sealed, acknowledged, presented, sent, delivered or given by or on behalf of the proper person, firm or corporation, without incurring liability for any action or inaction based thereon.

20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

21. Service as Custodian. To serve as successor custodian for any beneficiary of any gifts that I may have made under any Transfer to Minors Act, if at the time of my death no custodian is named in the instrument creating the gift.

22. Removal of Assets. The Trustee may remove from the domiciliary state during the entire duration of a trust or for such lesser period as it may deem advisable, any cash, securities or other property at any time in its hands whether principal or not, and to take and keep the same outside the domiciliary state and at such place or places within or outside the borders of the United States as it may determine, without in any event being chargeable for any loss or depreciation to the trust which may result therefrom.

23. Change of Situs. The situs and/or applicable law of any trust created hereunder may be transferred to such other place as the Trustee may deem to be for the best interests of the trust estate. In so doing, the Trustee may resign and appoint a successor Trustee, but may remove such successor Trustee so appointed and appoint others. Each successor Trustee may delegate any and all fiduciary powers, discretionary and ministerial, to the appointing Trustee as its agent.

24. Fiduciary Outside Domiciliary State. In the event the Trustee shall not be able and willing to act as Trustee with respect to any property located outside the domiciliary state, the Trustee, without order of court, may appoint another individual or corporation (including any employee or agent of any appointing Trustee) to act as Trustee with respect to such property. Such appointed Trustee shall have all of the powers and discretions with respect to such property as are herein given to the appointing Trustee with respect to the remaining trust assets. The appointing Trustee may remove such appointed Trustee and appoint another upon ten (10) days notice in writing. All income from such property, and if such property is sold, exchanged or otherwise disposed of, the proceeds thereof, shall be remitted to the appointing Trustee, to be held and administered by it as Trustee hereunder. Such appointed Trustee may employ the appointing Trustee as agent in the administration of such property. No surety shall be required on the bond of the Trustee or agent acting under the provisions of this

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paragraph. No periodic court accounting shall be required of such appointed Trustee, it being my intention to excuse any statutory accounting which may ordinarily be required.

25. Additions. To receive and accept additions to the Trusts in cash or in kind from donors, executors, administrators, Trustee or attorneys in fact, including additions of my property by the Trustee or others as my attorneys in fact.

26. Title and Possession. To have title to and possession of all real or personal property held in the Trusts, and to register or hold title to such property in its own name or in the name of its nominee, without disclosing its fiduciary capacity, or in bearer form.

27. Dealing with Estates. To use principal of the Trusts to make loans to my estate, with or without interest, and to make purchases from my estate.

28. Agents. To employ persons, including attorneys, auditors, investment advisers, and agents, even if they are the Trustee or associated with the Trustee, to advise or assist the Trustee in the performance of its administrative duties and to pay compensation and costs incurred in connection with such employment from the assets of the Trust; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

29. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at its discretion, without compensating adjustments or reimbursements between any of the Trusts or any of the trust accounts or any beneficiaries.

B. Resignation. A Trustee may resign with or without cause, by giving no less than 30 days advance written notice, specifying the effective date of such resignation, to its successor Trustee and to the persons required and in the manner provided under Fla. Stats. §§736.0705(1)(a) and 736.0109. As to any required recipient, deficiencies in fulfilling the foregoing resignation requirements may be waived in a writing signed by such recipient. Upon the resignation of a Trustee, such Trustee shall be entitled to reimbursement from the trust for all reasonable expenses incurred in the settlement of accounts and in the transfer of assets to his or her successor.

C. Appointment of Successor Trustee.

1. Appointment. Upon a Trustee's resignation, or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee, I may appoint any person or persons as successor Trustee, and in default of such appointment by me, ROBERT L. SPALLINA and DONALD R. TESCHER shall serve together as successor co-Trustees, or either of them alone as Trustee if either of them is unable to serve. Notwithstanding the foregoing, if a named Trustee is not a U.S. citizen or resident at the time of commencement of his term as Trustee, such Trustee should give due consideration to declining to serve to avoid potential adverse U.S. income tax consequences by reason of the characterization of a trust



hereunder as a foreign trust under the Code, but shall not be construed to have any duty to so decline if such Trustee desires to serve.

2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph IV.C, subsequent to my death I specifically appoint the following person or persons as Trustee of the following Trusts under the following described circumstances provided that the foregoing appointments shall apply when and to the extent that no effective appointment is made below:

a. Trustee of Separate Trusts for My Grandchildren. Each grandchild of mine shall serve as co-Trustee with the immediate parent of such grandchild which parent is also a child of mine as to all separate trusts under which such grandchild is the sole current mandatory or discretionary income beneficiary upon attaining the age of twenty-five (25) years, and shall serve as sole Trustee of such trusts upon attaining the age of thirty-five (35) years. While serving alone as Trustee, a grandchild of mine may designate a co-Trustee that is not a Related or Subordinate Party to serve with such grandchild and such grandchild may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

b. Trustee of Separate Trusts for My Lineal Descendants Other Than My Grandchildren. In regard to a separate trust held for a lineal descendant of mine other than a grandchild of mine which lineal descendant is the sole current mandatory or discretionary income beneficiary, each such lineal descendant shall serve as co-Trustee, or sole Trustee if the preceding described Trustees cease or are unable to serve or to continue to serve, of his or her separate trust upon attaining age twenty-five (25) years. While serving alone as Trustee, a lineal descendant of mine other than a grandchild of mine may designate a co-Trustee to serve with such lineal descendant and such lineal descendant may remove and/or replace such co-Trustee with another from time to time.

3. Successor Trustees Not Provided For. Whenever a successor Trustee or co-Trustee is required and no successor or other functioning mechanism for succession is provided for under the terms of this Trust Agreement, the last serving Trustee or the last person or entity designated to serve as Trustee of the applicable trust may appoint his or her successor, and if none is so appointed, the following persons shall appoint a successor Trustee (who may be one of the persons making the appointment):

a. The remaining Trustees, if any; otherwise,

b. A majority of the permissible current mandatory or discretionary income beneficiaries, including the natural or legal guardians of any beneficiaries who are Disabled.

A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. The appointment will be by a written document executed by such person in the presence of two witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will. Notwithstanding the foregoing, a designation under this Subparagraph of a successor trustee to a corporate or entity trustee shall be limited to a corporate or

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entity trustee authorized to serve as such under Florida law with assets under trust management of no less than one billion dollars.

4. **Power to Remove Trustee.** Subsequent to my death, the age 35 or older permissible current mandatory or discretionary income beneficiaries from time to time of any trust established hereunder shall have the power to unanimously remove a Trustee of such trust at any time with or without cause, other than a named Trustee or successor Trustee designated hereunder, or a Trustee appointed by me during my lifetime or under my Will or otherwise at the time of my death, with the successor Trustee to be determined in accordance with the foregoing provisions.

D. **Method of Appointment of Trustee.** Any such appointment of a successor Trustee by a person shall be made in a written instrument executed by such person in the presence of two witnesses and acknowledged before a notary public which is delivered to such appointed Trustee during the lifetime of the person making such appointment, or any such appointment of a successor Trustee by a person may be made under the last Will of such person.

E. **Limitations on Removal and Replacement Power.** Any power to remove and/or replace a trustee hereunder that is granted to an individual (including such power when reserved to me) is personal to that individual and may not be exercised by a guardian, power of attorney holder, or other legal representative or agent.

F. **Successor Fiduciaries.** No Trustee is responsible for, nor has any duty to inquire into, the administration, acts or omissions of any executor, administrator, Personal Representative, or trustee or attorney-in-fact adding property to these Trusts, or of any predecessor Trustee. Each successor Trustee has all the powers, privileges, immunities, rights and title (without the execution of any instrument of transfer or any other act by any retiring Trustee) and all the duties of all predecessors.

G. **Liability and Indemnification of Trustee.**

1. **Liability in General.** No individual Trustee (that is, a Trustee that is not a corporation or other entity) shall be liable for any of his or her actions or failures to act as Trustee, even if the individual Trustee is found by a court to have been negligent or in breach of fiduciary duty, except for liability caused by his or her actions or failures to act done in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. Each Trustee that is a corporation or other entity will be liable for its actions or failures to act that are negligent or that breach its fiduciary duty, without contribution by any individual Trustee.

2. **Indemnification of Trustee.** Except in regard to liabilities imposed on a Trustee under Subparagraph IV.G.1, each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from the assets of the trust to protect it from liability, and may enforce these provisions for indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual



and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

3. Indemnification of Trustee - Additional Provisions. I recognize that if a beneficiary accuses a Trustee of wrongdoing or breach of fiduciary duty, the Trustee may have a conflict of interest that ordinarily would prevent it from paying legal fees and costs from the trust estate to defend itself. I do not want to put a financial burden on any individual named to serve as a Trustee. Just as important, I do not want an individual who has been selected to serve as a Trustee to be reluctant to accept the position, or while serving to be intimidated in the performance of the Trustee's duties because of the threats of lawsuits that might force the Trustee to pay fees and costs from the Trustee's personal resources. For this reason, I deliberately and intentionally waive any such conflict of interest with respect to any individual serving as Trustee so that he or she can hire counsel to defend himself or herself against allegations of wrongdoing or if sued for any reason (whether by a beneficiary or by someone else) and pay all fees and costs for his or her defense from the trust estate until the dispute is resolved. I understand and agree that a court may award, disallow or allocate fees and costs in whole or in part after the dispute is resolved, as provided by law. The Trustee will account for all such fees and costs paid by it as provided by law. This provision shall not apply to any Trustee that is a corporation or other entity.

H. Compensation, Bond. Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the trust. Reasonable compensation for a non-individual Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a non-individual Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During my lifetime the Trustee's fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by me in writing. Each Trustee shall serve without bond.

I. Maintenance of Records. The Trustee shall maintain accurate accounts and records. It shall render annual statements of the receipts and disbursements of income and principal of a trust upon the written request of any adult vested beneficiary of such trust or the guardian of the person of any vested beneficiary and the approval of such beneficiary shall be binding upon all persons then or thereafter interested in such trust as to the matters and transactions shown on such statement. The Trustee may at any time apply for a judicial settlement of any account. No Trustee shall be required to file any statutory or other periodic accountings of the administration of a trust.

J. Interested Trustee. The Trustee may act under this Agreement even if interested in these Trusts in an individual capacity, as a fiduciary of another trust or estate (including my estate) or in any other capacity. The Trustee may in good faith enter into a sale, encumbrance, or other transaction involving the investment or management of trust property for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests, without liability and without being voidable by a beneficiary. The Trustee is specifically authorized to make loans to, to receive loans from, or to sell, purchase or exchange assets in a transaction with (i) the

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Trustee's spouse, (ii) the Trustee's children or grandchildren, siblings, parents, or spouses of such persons, (iii) an officer, director, employee, agent, or attorney of the Trustee, or (iv) a corporation, partnership, limited liability company, or other business entity in which the Trustee has a financial interest, provided that in any transaction the trusts hereunder receive fair and adequate consideration in money or money's worth. The Trustee may renounce any interest or expectancy of a trust in, or an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the Trustee. Such renunciation shall not prohibit the Trustee from participating in the Trustee's individual capacity in such opportunity or expectancy.

**K. Third Parties.** No one dealing with the Trustee need inquire into its authority or its application of property.

**L. Merger of Trusts.** If the Trustee is also trustee of a trust established by myself or another person by will or trust agreement, the beneficiaries to whom income and principal may then be paid and the operative terms of which are substantially the same as those of a trust held under this Agreement, the Trustee in its discretion may merge either such trust into the other trust. The Trustee, in exercising its discretion, shall consider economy of administration, convenience to the beneficiaries, tax consequences and any other factor it considers important. If it is later necessary to reestablish the merged trust as separate trusts, it shall be divided proportionately to the value of each trust at the time of merger.

**M. Multiple Trustees.** If two Trustees are serving at any time, any power or discretion of the Trustees may be exercised only by their joint agreement. Either Trustee may delegate to the other Trustee the authority to act on behalf of both Trustees and to exercise any power held by the Trustees. If more than two Trustees are serving at any time, and unless unanimous agreement is specifically required by the terms of this Trust Agreement, any power or discretion of the Trustees may be exercised only by a majority. The Trustees may delegate to any one or more of themselves the authority to act on behalf of all the Trustees and to exercise any power held by the Trustees. Trustees who consent to the delegation of authority to other Trustees will be liable for the consequences of the actions of those other Trustees as if the consenting Trustees had joined the other Trustees in performing those actions. A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.

#### ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS

**A. GST Trusts.** I direct (a) that the Trustee shall divide any trust to which there is allocated any GST exemption into two separate Trusts (each subject to the provisions hereof) so that the generation-skipping tax inclusion ratio of one such trust is zero, (b) any property exempt from generation-skipping taxation shall be divided as otherwise provided herein and held for the same persons

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designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and issue, as such beneficiary may appoint, and any part of a trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such trust is zero, the amount of any other such Trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares. For purposes of funding any pecuniary payment to which there is allocated any GST exemption, such payment shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such distribution could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. Except as otherwise expressly provided herein, the valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this paragraph which are defined or explained in Chapter 13 of the Code or the regulations thereunder shall have the same meaning when used herein. I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the trust with the highest inclusion ratio has been exhausted by use, consumption, distribution or otherwise or is not reasonably available. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

**B. Individual Retirement Accounts.** In the event that this trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:

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1. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

a. No benefits from any IRA may be used or applied for the payment of any debts, taxes or other claims against my estate as set forth in the later paragraph captioned "Taxes", unless other assets of this trust are not available for such payment.

b. In the event that a beneficiary of any trust created under this Agreement has a testamentary general power of appointment or a limited power of appointment over all or any portion of any trust established under this Agreement, and if such trust is the beneficiary of any benefits from any IRA, the beneficiary shall not appoint any part of such trust to a charitable organization or to a lineal descendant of mine (or a spouse of a lineal descendant of mine) who is older than the beneficiary whose life expectancy is being used to calculate distributions from such IRA.

2. The Trustee shall deliver a copy of this Agreement to the custodian of any IRA of which this trust or any trust created under this Agreement is the named beneficiary within the time period prescribed Code Section 401(a)(9) and the Treasury Regulations thereunder, along with such additional items required thereunder. If the custodian of the IRA changes after a copy of this Agreement has been provided pursuant to the preceding sentence, the Trustee shall immediately provide a copy of this Agreement to the new custodian. The Trustee shall request each custodian to complete a receipt of the Agreement and shall attach such receipt to this Agreement. The Trustee shall provide a copy of each amendment of this Agreement to the custodian and shall obtain a receipt of such amendment.

C. Gift Transfers Made From Trust During My Lifetime. I direct that all gift transfers made from the trust during my lifetime be treated for all purposes as if the gift property had been first withdrawn by (or distributed to) me and then transferred by me to the donees involved. Thus, in each instance, even where title to the gift property is transferred directly from the name of the trust (or its nominee) into the name of the donee, such transfer shall be treated for all purposes as first a withdrawal by (or distribution of the property to) me followed by a gift transfer of the property to the donee by me as donor, the Trustee making the actual transfer in my behalf acting as my attorney in fact, this paragraph being, to that extent, a power of attorney from me to the Trustee to make such transfer, which power of attorney shall not be affected by my Disability, incompetence, or incapacity.

D. Gifts. If I am Disabled, I authorize the Trustee to make gifts from trust property during my lifetime for estate planning purposes, or to distribute amounts to my legally appointed guardian or to my attorney-in-fact for those purposes, subject to the following limitations:

1. Recipients. The gifts may be made only to my lineal descendants or to trusts primarily for their benefit, and in aggregate annual amounts to any one such recipient that do not exceed the exclusion amount provided for under Code Section 2503(b).



2. Trustee Limited. When a person eligible to receive gifts is serving as Trustee, the aggregate of all gifts to that person during the calendar year allowable under the preceding subparagraph I. shall thereafter not exceed the greater of Five Thousand Dollars (\$5,000), or five percent (5%) of the aggregate value of the trust estate. However, gifts completed prior to a recipient's commencing to serve as Trustee shall not be affected by this limitation.

3. Charitable Pledges. The Trustee may pay any charitable pledges I made while I was not Disabled (even if not yet due).

E. Death Costs. If upon my death the Trustee hold any United States bonds which may be redeemed at par in payment of federal estate tax, the Trustee shall pay the federal estate tax due because of my death up to the amount of the par value of such bonds and interest accrued thereon at the time of payment. The Trustee shall also pay from the trust all of my following death costs, but if there is an acting executor, administrator or Personal Representative of my estate my Trustee shall pay only such amounts of such costs as such executor, administrator or Personal Representative directs:

1. my debts which are allowed as claims against my estate,
2. my funeral expenses without regard to legal limitations,
3. the expenses of administering my estate,
  
4. the balance of the estate, inheritance and other death taxes (excluding generation-skipping transfer taxes unless arising from direct skips), and interest and penalties thereon, due because of my death with respect to all property whether or not passing under my Will or this Agreement (other than property over which I have a power of appointment granted to me by another person, and qualified terminable interest property which is not held in a trust that was subject to an election under Code Section 2652(a)(3) at or about the time of its funding) and life insurance proceeds on policies insuring my life which proceeds are not held under this trust or my probate estate at or by reason of my death), and
  
5. any gifts made in my Will or any Codicil thereto.

The Trustee may make any such payment either to my executor, administrator or Personal Representative or directly to the proper party. The Trustee shall not be reimbursed for any such payment, and is not responsible for the correctness or application of the amounts so paid at the direction of my executor, administrator, or Personal Representative. The Trustee shall not pay any of such death costs with any asset which would not otherwise be included in my gross estate for federal or state estate or inheritance tax purposes, or with any asset which otherwise cannot be so used, such as property received under a limited power of appointment which prohibits such use. Further, no payment of any such death costs shall be charged against or paid from the tangible personal property disposed of pursuant to the prior paragraph captioned "Disposition of Tangible Personal Property."



F. **Subchapter S Stock.** Regardless of anything herein to the contrary, in the event that after my death the principal of a trust includes stock in a corporation for which there is a valid election to be treated under the provisions of Subchapter S of the Code, the income beneficiary of such a trust is a U.S. citizen or U.S. resident for federal income tax purposes, and such trust is not an "electing small business trust" under Code Section 1361(e)(1) in regard to that corporation, the Trustee shall (a) hold such stock as a substantially separate and independent share of such trust within the meaning of Code Section 663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.

G. **Residence as Homestead.** I reserve the right to reside upon any real property placed in this trust as my permanent residence during my life, it being the intent of this provision to retain for myself the requisite beneficial interest and possessory right in and to such real property to comply with Section 196.041 of the Florida Statutes such that said beneficial interest and possessory right constitute in all respects "equitable title to real estate" as that term is used in Section 6, Article VII of the Constitution of the State of Florida. Notwithstanding anything contained in this trust to the contrary, for purposes of the homestead exemption under the laws of the State of Florida, my interest in any real property in which I reside pursuant to the provisions of this trust shall be deemed to be an interest in real property and not personally and shall be deemed my homestead.

*[remainder of page intentionally left blank]*

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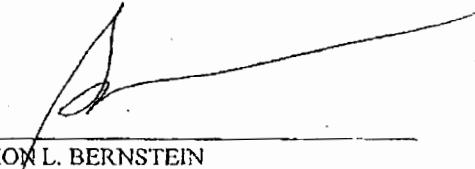
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IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Trust Agreement on the date first above written.

SETTLOR and TRUSTEE:

  
SIMON L. BERNSTEIN

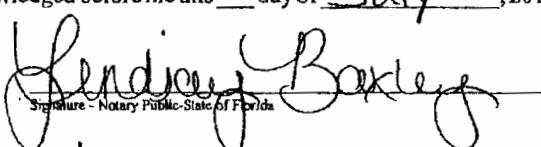
This instrument was signed by SIMON L. BERNSTEIN in our presence, and at the request of and in the presence of SIMON L. BERNSTEIN and each other, we subscribe our names as witnesses on this 25 day of July, 2012:

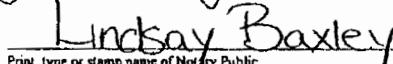
Print Name: ROBERT L. SPALLINA  
Address: 7387 WISTERIA AVENUE  
PARKLAND, FL 33076

Print Name: Kimberly Moran  
Address: 6362 Las Flores Drive  
Boca Raton, FL 33433

STATE OF FLORIDA  
ss.  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 25 day of July, 2012,  
by SIMON L. BERNSTEIN.

  
Signature - Notary Public - State of Florida

  
Print, type or stamp name of Notary Public

[Seal with Commission Expiration Date]  
NOTARY PUBLIC - STATE OF FLORIDA  
Lindsay Baxley  
Commission # EE092282  
Expires: MAY 10, 2015  
BONDED THRU ATLANTIC BONDING CO., INC.

Personally Known \_\_\_\_\_ or Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

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**EXHIBIT 5**

Filing # 150196551 E-Filed 05/24/2022 01:12:03 PM

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

Supreme Court Case  
No. SC-

The Florida Bar File  
No. 2020-50,181(17I)

BRIAN MCKENNA O'CONNELL,

Respondent.

/

**COMPLAINT OF THE FLORIDA BAR**

The Florida Bar, complainant, files this Complaint against Brian McKenna O'Connell, respondent, pursuant to the Rules Regulating The Florida Bar and alleges:

1. The respondent is and was at all times mentioned herein a member of The Florida Bar admitted on November 10, 1980 and is subject to the jurisdiction of the Supreme Court of Florida.
2. The respondent resided in and practiced law in Palm Beach County, Florida, at all times material.
3. The respondent was Board Certified by the Florida Bar from August 1, 1990 until July 31, 2020 in Wills, Trusts and Estates.
4. The respondent was an attorney with the law firm of Ciklin Lubitz, at all times material.

5. The Seventeenth Judicial Circuit Grievance Committee "I" found probable cause to file this complaint pursuant to Rule 3-7.4, of the Rules Regulating The Florida Bar, and this complaint has been approved by the presiding member of that committee.

**COUNT I – THE MISAPPROPRIATIONS**

6. The respondent represented Nancy C. Brown, hereinafter referred to as "Brown."
7. The respondent prepared the Nancy C. Brown Amended and Restated Revocable Trust, hereinafter referred to as "The Trust."
8. Brown, as settlor, executed The Trust on February 6, 2009.
9. The respondent, together with Wachovia Bank were named as the trustees of The Trust.
10. Subsequent to the execution of The Trust, Wachovia Bank resigned as the corporate trustee leaving respondent as the sole trustee, as reflected in the First Amendment to The Trust, dated December 8, 2011. **(The Trust and First Amendment to The Trust are attached hereto and incorporated herein as The Florida Bar's Exhibit 1.)**

11. The First Amendment to The Trust required respondent, as the sole trustee, to distribute to the following beneficiaries, as specific devises:

The sum of ONE THOUSAND FIVE HUNDRED (\$1,500)

DOLLARS shall be distributed to JOHN OLSON, if he survives Settlor.

The sum of FIVE THOUSAND (\$5,000) DOLLARS shall be distributed to SCHENELL M. FINN, if he survives Settlor.

12. The First Amendment to The Trust also required respondent, as the sole trustee, to distribute all the rest, residue and remainder of the residuary Trust Estate as follows:

[T]o such one or more charitable organizations qualified under Section 501(3)(c)(sic) of the Internal Revenue Code of 1986, as amended, as the Trustee, in the Trustee's sole discretion, shall determine".

(See The Florida Bar's Exhibit 1, page 2 of the First Amendment.)

13. Brown died on January 28, 2014.

14. The respondent administered Brown's estate and The Trust.

15. On or about March 6, 2014, respondent represented The Trust in the sale of Brown's home, with the sales proceeds of \$538,342.73, disbursed at closing to The Trust.

16. On or about March 7, 2014, respondent caused the proceeds of \$538,342.73 to be deposited into the trust account maintained at IberiaBank, Account ending in 9513, which respondent opened on or about the date of the sale of Brown's residence.

17. The respondent opened the IberiaBank account ending in 9513, on or about March 7, 2014, despite the existing account at Wachovia Bank, entitled "Nancy C Brown Rev Trust."

18. The respondent's personal bank account was also maintained at IberiaBank.

19. Ciklin Lubitz did their banking primarily at Wachovia Bank and Citibank, at all times material.

20. The respondent was the sole signatory on the IberiaBank Account ending in 9513 for The Trust.

21. A federal tax lien was filed in June of 2012 in the combined amount of \$1,006,240.00 against respondent's former residence located at 132 Cortez Road in West Palm Beach, Florida. That combined lien was finally paid and satisfied in 2021.

22. Multiple tax liens were also levied on properties owned by the respondent in Berrien County, Michigan by March of 2014.

23. From March 7, 2014 through June 4, 2014, in thirteen separate transactions, respondent misappropriated a total of \$506,455.30 from Brown's trust proceeds held in IberiaBank Account ending in 9513.

24. The following dates and amounts of the respondent's misappropriations are listed below:

**03/07/2014 \$42,000.00 (payable to Brian O'Connell)**  
**03/27/2014 \$40,575.00 (withdrawal for "Berrien County Treasurer")**  
**03/30/2014 \$36,000.00 (payable to Brian O'Connell)**  
**04/02/2014 \$19,000.00 (payable to Brian O'Connell)**  
**04/14/2014 \$250,000.00 (payable to Brian O'Connell)**  
**05/02/2014 \$40,000.00 (payable to Brian O'Connell)**  
**05/09/2014 \$3,188.50 (withdrawal for "Zazz Events")**  
**05/09/2014 \$10,000.00 (payable to Brian O'Connell)**  
**05/19/2014 \$40,000.00 (payable to Brian O'Connell)**  
**05/30/2014 \$15,000.00 (payable to Brian O'Connell)**  
**06/02/2014 \$2,500.00 (payable to Flagler Bank)**  
**06/02/2014 \$6,691.80 (payable to Flagler Bank)**  
**06/04/2014 \$1,500.00 (phone/in-person transfer)**

**Total \$506,455.30**

25. All of the thirteen separate withdrawals made by the respondent from the IberiaBank Trust Account ending in 9513 were for the personal benefit of the respondent and not for the interests of the beneficiaries.
26. Not a single one of the thirteen separate withdrawals from The Trust account was for the interests of the beneficiaries.
27. On or about June 10, 2014, a paralegal with the Ciklin Lubitz Firm questioned the withdrawals from The Trust's Account ending in 9513

with an email to the respondent with the subject line “The Brown Trust Account is down to \$30,000” which stated:

“What is going on with all of these checks and withdrawals?”

28. On or about June 14, 2014, the managing partner of the Ciklin Lubitz Firm and others met with the respondent and confronted him concerning the withdrawals from The Trust’s account at IberiaBank ending in 9513.

29. During the June 14, 2014, meeting the respondent told those present that he had “borrowed” the funds.

30. The respondent did not have any right or basis to “borrow” funds for his own personal benefit and not for the interests of the beneficiaries.

31. But for the intervention of the Ciklin Lubitz’ Firm’s paralegal, the respondent’s misappropriations would have gone undetected.

32. The Ciklin Lubitz Firm hired an attorney who concentrates his practice handling matters concerning ethics. That attorney advised members of the Ciklin Lubitz Firm that if the respondent replaced the misappropriated funds, the firm was not required to report the misconduct to The Florida Bar.

33. The respondent repaid the misappropriated funds, plus interest, over a six-month period. The first payment of \$252,294.53 was paid by the respondent on June 19, 2014. The final payment of \$265,604.87 was paid by the respondent on December 31, 2014.

34. The fact that respondent eventually paid back the misappropriated funds with interest does not excuse or mitigate the misconduct.

35. After several years, another member of the Ciklin Lubitz Firm filed a bar grievance after learning of the respondent's misappropriations and deceptions.

36. In his November 26, 2019 and July 14, 2020 responses to The Florida Bar, respondent claimed for the first time that his right or authority to "borrow" \$506,455.30 from The Trust for his personal benefit and not for the interests of the beneficiaries was permitted under sections 11.1 (A) and (D) of the trust. Those sections are set forth below:

(A) With regard to both real and personal property, for the purpose of obtaining funds for payment of taxes, claims and the costs of administration of Settlor's estate, if authorized, and for making distributions, conversion into cash, management of the property, and for every other proper purpose, they may acquire, invest, reinvest, exchange, lease, sell, borrow, mortgage, pledge, transfer and convey in such manner and on such terms without limit as to time as they may deem advisable, even for terms

beyond the expected term of the estate or any trust, and no purchaser or lender shall be liable to see to the propriety of the transaction, nor to the application of the proceeds.

(D) To cause any property, real or personal, belonging to the trust to be held or registered in the Trustee's name or in the name of a nominee or in such other form as the Trustee deems best without disclosing the trust relationship.

37. Section 11.1 of Brown's trust absolutely does not provide the respondent any right or authority to "borrow" funds from The Trust for his personal benefit and not for the interests of the beneficiaries.

38. In his November 26, 2019 and July 14, 2020 responses to The Florida Bar, respondent claimed for the first time that his right or authority to "borrow" \$506,455.30 from The Trust for his own personal benefit was also derived from the following Florida Statutes:

736.0802(2)(a) Subject to the rights of persons dealing with or assisting the trustee as provided in s. 736.1016, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

(a) The transaction was authorized by the terms of the trust;

736.0814(1) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute," "sole," or "uncontrolled," the trustee shall exercise a discretionary power in good

faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries. A court shall not determine that a trustee abused its discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion.

**736.0815 General powers of trustee. —**

(1) A trustee, without authorization by the court, may, except as limited or restricted by this code, exercise:

(b) Except as limited by the terms of the trust:

1. All powers over the trust property that an unmarried competent owner has over individually owned property.

**736.0816(19) Make loans out of trust property, including, but not limited to, loans to a beneficiary on terms and conditions that are fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans.**

39. Those statutes do not provide the respondent with any right or authority to "borrow" funds from The Trust for his own personal benefit and not for the interests of the beneficiaries.

**COUNT II – THE DECEPTIVE CHARITABLE CONTRIBUTIONS AND INCOME TAX RETURNS**

40. The charitable contributions were ultimately paid by respondent as follows:

6/19/14 Cardinal Newman - contribution to art room - \$75,000.00

6/19/14 Catholic Charities Elder Affairs Program \$175,000.00

12/30/14 Cardinal Newman High School \$199,588.03

12/30/14 St. Juliana Catholic School	\$40,000.00
12/30/14 University of Florida	\$20,000.00
12/30/14 Rosarian Academy	\$15,000.00

41. On or about December 30, 2014, the respondent forwarded a \$20,000.00 check to the University of Florida as a Law Review pledge on a starter check from the Trust's IberiaBank Account ending in 9313. The check was sent without a cover letter.

42. The respondent's file at the Ciklin Lubitz firm did contain a cover letter, which clearly identified the pledge as being a charitable contribution from the Trust. (The cover letter and check maintained in the Brown file is attached hereto and incorporated herein as The Florida Bar's Exhibit 2.)

43. The respondent caused that \$20,000.00 check to the University of Florida to be considered as his own personal contribution to the Law Review, as opposed to a contribution from The Trust.

44. After being confronted by The Florida Bar through its investigation, the respondent took action to "change" the name of the benefactor from his own name to the actual contributor – Nancy C. Brown concerning the contribution to the University of Florida.

45. Respondent's conduct of misrepresenting the \$20,000.00 bequest to the University of Florida as his own charitable contribution was dishonest, deceitful and a misrepresentation.

46. Consistent with respondent's misrepresentation to the University of Florida as to the true contributor, the respondent additionally took the \$20,000.00 bequest by Brown to the University of Florida as a charitable deduction on his own 2014 tax return. (A copy of the relevant pages of Brian O'Connell's 2014 tax return provided by him to The Florida Bar upon request is attached hereto and incorporated herein as The Florida Bar's Exhibit 3.)

47. When an individual submits his or her income tax return, he or she does so allege under penalties of perjury that he or she has examined the return and to the best of his or her knowledge and belief, the return and accompanying schedules are true, correct and complete.

48. Respondent's conduct of misrepresenting the \$20,000.00 bequest to the University of Florida as his own charitable contribution qualifying as a deduction on his 2014 Federal Income Tax return was not, "true, correct and complete", rather it was clearly dishonest, deceitful and a misrepresentation.

By the conduct set forth above, respondent violated R. Regulating Fla. Bar 3-4.3 [Misconduct and Minor Misconduct. The standards of professional conduct required of members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration of certain categories of misconduct as constituting grounds for discipline are not all-inclusive, nor is the failure to specify any particular act of misconduct to be construed as tolerance of the act of misconduct. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice may constitute a cause for discipline whether the act is committed in the course of the lawyer's relations as a lawyer or otherwise, whether committed within Florida or outside the state of Florida, and whether the act is a felony or a misdemeanor.]; 3-4.4 Criminal Misconduct. A determination or judgment by a court of competent jurisdiction that a member of The Florida Bar is guilty of any crime or offense that is a felony under the laws of that court's jurisdiction is cause for automatic suspension from the practice of law in Florida, unless the judgment or order is modified or stayed by the Supreme Court of Florida, as provided in these rules. The Florida Bar may initiate disciplinary action regardless of whether the respondent has been tried, acquitted, or convicted in a court for an alleged criminal misdemeanor or felony offense. The board may, in its discretion,

withhold prosecution of disciplinary proceedings pending the outcome of criminal proceedings against the respondent. If a respondent is acquitted in a criminal proceeding that acquittal is not a bar to disciplinary proceedings. Likewise, the findings, judgment, or decree of any court in civil proceedings is not necessarily binding in disciplinary proceedings.]; 4-8.4(b) [A lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.]; 4-8.4(c) [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule.] and 5-1.1(b) [Application of Trust Funds or Property to Specific Purpose. Money or other property entrusted to a lawyer for a specific purpose, including advances for fees, costs, and expenses, is held in trust and must be applied only to that purpose. Money and other property of clients coming into the hands of a lawyer are not subject to counterclaim or setoff for attorney's fees, and a

refusal to account for and deliver over the property on demand is conversion.].

WHEREFORE, The Florida Bar prays respondent will be appropriately disciplined in accordance with the provisions of the Rules Regulating The Florida Bar as amended.



Randi Klayman Lazarus, Bar Counsel  
The Florida Bar  
Fort Lauderdale Branch Office  
Lake Shore Plaza II  
1300 Concord Terrace, Suite 130  
Sunrise, Florida 33323  
(954) 835-0233  
Florida Bar No. 360929  
[rlazarus@floridabar.org](mailto:rlazarus@floridabar.org)  
[smiles@floridabar.org](mailto:smiles@floridabar.org)



Patricia Ann Toro Savitz, Staff Counsel  
The Florida Bar  
651 E. Jefferson Street  
Tallahassee, Florida 32399-2300  
(850) 561-5839  
Florida Bar No. 559547  
[psavitz@floridabar.org](mailto:psavitz@floridabar.org)

**CERTIFICATE OF SERVICE**

I certify that this document has been e-filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, with a copy provided via email to Michael Edward Dutko, at [michael@dutkoandkroll.com](mailto:michael@dutkoandkroll.com); and to John R. Howes, Esquire, at [johnrhowes@gmail.com](mailto:johnrhowes@gmail.com); a copy has been furnished by United States Mail via certified mail No. 7020 1810 0000 0813 8537, return receipt requested to Michael Edward Dutko, whose record bar address is Dutko & Kroll, P.A. 600 S. Andrews Avenue, Ste. 500, Fort Lauderdale, FL 33301-2851; and furnished by United States Mail via certified mail No. 7020 1810 0000 0813 8544 to John R. Howes whose record bar address is Howes Law Group, P.A., 633 S. Andrews Avenue, Fort Lauderdale, FL 33301 and via email to Randi Klayman Lazarus, Bar Counsel, [rlazarus@floridabar.org](mailto:rlazarus@floridabar.org) and [smiles@floridabar.org](mailto:smiles@floridabar.org), on this 24th day of May 2022.



Patricia Ann Toro Savitz  
Staff Counsel

**NOTICE OF TRIAL COUNSEL AND DESIGNATION OF PRIMARY EMAIL ADDRESS**

PLEASE TAKE NOTICE that the trial counsel in this matter is Randi Klayman Lazarus, Bar Counsel, whose address, telephone number and primary email addresses are The Florida Bar, Fort Lauderdale Branch Office, Lake Shore Plaza II, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323, (954)835-0233 and [rlazarus@floridabar.org](mailto:rlazarus@floridabar.org) and [smiles@floridabar.org](mailto:smiles@floridabar.org). Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Staff Counsel, The Florida Bar, 651 E Jefferson Street, Tallahassee, Florida 32399-2300, [psavitz@floridabar.org](mailto:psavitz@floridabar.org).

**MANDATORY ANSWER NOTICE**

RULE 3-7.6(h)(2), RULES REGULATING THE FLORIDA BAR, PROVIDES THAT A RESPONDENT SHALL ANSWER A COMPLAINT.

**EXHIBIT 6**

IN THE CIRCUIT COURT IN AND FOR THE 15<sup>TH</sup> 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

FILE NO: 502014CP003698XXXXSB

Plaintiff,

vs.

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; Elliot 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.

/

**ANSWER AND AFFIRMATIVE DEFENSE**

BRIAN M. O'CONNELL, as Successor Personal Representative of the Estate of SIMON L. BERNSTEIN ("Mr. O'Connell" or "Personal Representative"), hereby files his Answer and Affirmative Defense to the Amended Complaint dated October 3, 2014 ("Amended Complaint"), and states as follows:

1. Admit that Ted Bernstein is over the age of 18; without knowledge, therefore, denied as to Ted Bernstein's residency; the Shirley Bernstein Trust Agreement dated May 20,

Ted Bernstein, etc v Bernstein, et al  
FILE NO: 502014CP003698XXXXSB

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2008, as amended (“Shirley Trust”) speaks for itself, otherwise, without knowledge, therefore denied.

2. Admit.
3. The Shirley Trust speaks for itself, otherwise, without knowledge, therefore, denied.
4. Without knowledge, therefore, denied.
5. The Shirley Trust speaks for itself, otherwise, without knowledge, therefore, denied.
6. The Shirley Trust speaks for itself, otherwise, without knowledge, therefore, denied.
7. Admit.
8. Without knowledge.
9. Admit.
10. Admit.
11. The Shirley Trust speaks for itself, otherwise, without knowledge, therefore, denied.
12. Admit.
13. The Shirley Trust speaks for itself, otherwise, without knowledge, therefore, denied.
14. The document referenced in paragraph 14 of the Amended Complaint speaks for itself, otherwise, without knowledge therefore, denied.
15. The document referenced in paragraph 15 of the Amended Complaint speaks for itself, otherwise, without knowledge therefore, denied.

Ted Bernstein, etc v Bernstein, et al  
FILE NO: 502014CP003698XXXXSB

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16. Without knowledge, therefore, denied.
17. The Shirley Trust speaks for itself, otherwise, without knowledge, therefore, denied.
18. The Shirley Trust speaks for itself, otherwise, without knowledge, therefore, denied.
19. The Shirley Trust speaks for itself, otherwise, without knowledge, therefore, denied.
20. Without knowledge, therefore, denied.
21. The Shirley Trust speaks for itself, otherwise, without knowledge, therefore, denied.
22. The Shirley Trust speaks for itself, otherwise, without knowledge, therefore, denied.
23. The Shirley Trust speaks for itself, otherwise, without knowledge, therefore, denied.
24. The Will of Simon L. Bernstein dated July 25, 2012 (“Simon’s Will”) speaks for itself, otherwise, without knowledge.
25. Simon’s Will speaks for itself, otherwise, without knowledge as to the authenticity, therefore, denied.
26. Simon’s Will speaks for itself, otherwise, without knowledge, therefore, denied.
27. Simon’s Will speaks for itself, otherwise, without knowledge, therefore, denied.
28. Simon’s Will and the Shirley Trust speak for themselves, otherwise, without knowledge, therefore, denied.

Ted Bernstein, etc v Bernstein, et al  
FILE NO: 502014CP003698XXXXSB

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29. Simon's Will and the Shirley Trust speak for themselves, otherwise, without knowledge, therefore, denied.

30. Simon's Will and the Shirley Trust speak for themselves, otherwise, without knowledge, therefore, denied.

31. Simon's Will and the Shirley Trust speak for themselves, otherwise, without knowledge, therefore, denied.

32. The Shirley Trust speaks for itself, without knowledge as to Ted serving as the Successor Personal Representative of Shirley's Estate; otherwise, without knowledge, therefore, denied.

33. Without knowledge, therefore, denied.

34. Without knowledge, therefore, denied.

35. Without knowledge, therefore, denied.

36. Without knowledge, therefore, denied.

37. Without knowledge, therefore, denied.

38. The Shirley Trust speaks for itself, otherwise, without knowledge, therefore, denied.

39. Admit.

40. The Shirley Trust speaks for itself, otherwise, without knowledge, therefore, denied.

41. The Shirley Trust speaks for itself, otherwise, without knowledge, therefore, denied.

42. Without knowledge, therefore, denied.

43. Without knowledge, therefore, denied.

Ted Bernstein, etc v Bernstein, et al  
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44. Without knowledge, therefore, denied.

45. Without knowledge, therefore, denied.

46. Without knowledge, therefore, denied.

47. The action speaks for itself, otherwise, without knowledge, therefore, denied.

48. Without knowledge, therefore, denied.

49. The Shirley Trust speaks for itself, otherwise, without knowledge, therefore, denied.

50. Without knowledge, therefore, denied.

51. Without knowledge, therefore, denied.

52. Without knowledge, therefore, denied.

53. The Shirley Trust speaks for itself, otherwise, without knowledge, therefore, denied.

54. Without knowledge, therefore, denied.

55. Without knowledge, therefore, denied.

56. Without knowledge, therefore, denied.

57. Without knowledge, therefore, denied.

58. Without knowledge, therefore, denied.

59. Without knowledge, therefore, denied.

60. Without knowledge, therefore, denied.

61. Without knowledge, therefore, denied.

62. Without knowledge, therefore, denied.

63. Without knowledge, therefore, denied.

64. Without knowledge, therefore, denied.

Ted Bernstein, etc v Bernstein, et al  
FILE NO: 502014CP003698XXXXSB

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65. Without knowledge, therefore, denied.
66. Reallege and restate answers as stated above.
67. The action speaks for itself, otherwise, without knowledge, therefore, denied.
68. The action speaks for itself, otherwise, without knowledge, therefore, denied.
69. Without knowledge, therefore, denied.
70. The action speaks for itself, otherwise, without knowledge, therefore, denied.
71. Without knowledge, therefore, denied.
72. Without knowledge, therefore, denied.
73. Without knowledge, therefore, denied.
74. Without knowledge, therefore, denied.
75. Without knowledge, therefore, denied.
76. Without knowledge, therefore, denied.
77. Without knowledge, therefore, denied.
78. Without knowledge, therefore, denied.
79. Reallege and restate answers as stated above.
80. The action speaks for itself, otherwise, without knowledge, therefore, denied.
81. Admit.
82. The assertion and request in paragraph 82 of the Amended Complaint speaks for itself, otherwise, without knowledge, therefore, denied.
83. The documents referenced in paragraph 83 of the Amended Complaint speak for themselves, otherwise, without knowledge, therefore, denied.
84. Admit.

Ted Bernstein, etc v Bernstein, et al  
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85. The document referenced in paragraph 85 of the Amended Complaint speaks for itself, otherwise, without knowledge, therefore, denied.

86. The documents referenced in paragraph 86 of the Amended Complaint speak for themselves, otherwise, without knowledge, therefore, denied.

87. Admit.

88. Without knowledge, therefore, denied.

**AFFIRMATIVE DEFENSE**

1. First Affirmative Defense- Lack of Standing- Ted Bernstein lacks the requisite standing as he is not validly serving as Trustee of the Simon Trust, is not a beneficiary of the Simon Trust, and is not representing any minor child that is a beneficiary of the Simon Trust.

WHEREFORE, BRIAN M. O'CONNELL, as Personal Representative of the Estate of SIMON L. BERNSTEIN, hereby files his Answer and Affirmative Defense to the Amended Complaint, and requests attorneys' fees and costs and any other relief deemed just or proper by this Court.

I HEREBY CERTIFY that a true and correct of the foregoing was sent by e-mail service or U.S. Postal Service on the 17 day of February, 2015 to the parties on the attached Service List.



BRIAN M. O'CONNELL  
Florida Bar No: 308471  
ASHLEY N. CRISPIN  
Florida Bar No. 37495  
JOIELLE A. FOGLIETTA  
Florida Bar No: 94238

Ted Bernstein, etc v Bernstein, et al  
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Ciklin Lubitz Martens & O'Connell  
515 N. Flagler Dr., 20th Floor  
West Palm Beach, FL 33401  
Telephone: 561-832-5900  
Facsimile: 561-833-4209  
primary e-mail: [service@ciklinlubitz.com](mailto:service@ciklinlubitz.com)  
secondary e-mail: [slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

Ted Bernstein, etc v Bernstein, et al  
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**SERVICE LIST**

Alan B. Rose, Esq. <b>Page, Mrachek, Fitzgerald &amp; Rose, PA.</b> 505 S. Flagler Dr., Suite 600 West Palm Beach, FL 33401 (561) 355-6991 <a href="mailto:arose@mrachek-law.com">arose@mrachek-law.com</a> <a href="mailto:mchandler@mrachek-law.com">mchandler@mrachek-law.com</a> Attorney for Ted S. Bernstein	John P. Morrissey, Esq. 330 Clematis St., Suite 213 West Palm Beach, FL 33401 <a href="mailto:john@jmorrisseylaw.com">john@jmorrisseylaw.com</a> Attorney for Molly Simon et al	
Eliot Bernstein and Joshua, Jacob and Daniel <b>Bernstein, Minors</b> c/o Eliot and Candice Bernstein, Parents and Natural Guardians 2753 N.W. 34 <sup>th</sup> St. Boca Raton, FL 33434 <a href="mailto:iviewit@iviewit.tv">iviewit@iviewit.tv</a>	Pamela Beth Simon 950 N. Michigan Ave., Apt. 2603 Chicago, IL 60611 <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a>	Lisa Friedstein and Carley Friedstein, Minor c/o Jeffrey and Lisa Friedstein Parent and Natural Guardian 2142 Churchill Lane Highland Park, IL 60035 <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a> <a href="mailto:Lisa.friedstein@gmail.com">Lisa.friedstein@gmail.com</a> Beneficiary
Jill Iantoni and Julia Iantoni, a Minor c/o Guy and Jill Iantoni, her Parents & Natural Guardians 2101 Magnolia Lane Highland Park, IL 60035 <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a>	Max Friedstein 2142 Churchill Lane Highland Park, IL 60035	

**E hibit 7**

Filing # 150255499 E-Filed 05/25/2022 09:28:38 AM

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
CIVIL DIVISION DIV: "AF"  
CASE NO.: 2018CA002317AXX

WALTER E. SAHM, and  
PATRICIA SAHM,

Plaintiffs,

vs.

BERNSTEIN FAMILY REALTY, LLC, *et. al.*,

Defendants.

**OMNIBUS ORDER DENYING MOTIONS FOR REHEARING:**

THIS CAUSE came before the Court on the following Motions: (1) Defendant, Eliot Bernstein's *Pro Se* Motion for Rehearing to Vacate Final Judgment of Foreclosure (DE #90, 98), filed January 5, 2022 and January 6, 2022, respectively; (2) Defendants Joshua Bernstein, Jacob Bernstein, and Daniel Bernstein's Motion for Rehearing to Vacate Final Judgment of Foreclosure (DE ##91, 92), filed January 5, 2022; (3) Defendant, Candice Bernstein's *Pro Se* Motion for Rehearing to Vacate Final Judgment of Foreclosure (DE #93), filed January 5, 2022. The Court, having reviewed the Defendants' various Motions, the Plaintiffs' Response in Opposition (DE #119), filed February 10, 2022, Defendants Joshua Bernstein, Jacob Bernstein, and Daniel Bernstein's Amended Reply thereto (DE #123), filed February 17, 2022, having reviewed the court file and record, including the Final Judgment of Foreclosure (DE #88), entered December 23, 2021, and the bases therefore, and after being otherwise duly advised in the premises, it is hereby

**ORDERED and ADJUDGED** that Defendants Eliot Bernstein, Candice Bernstein, Joshua Bernstein, Jacob Bernstein, and Daniel Bernstein's Motions for Rehearing to Vacate Final Judgment of Foreclosure are all **DENIED**.

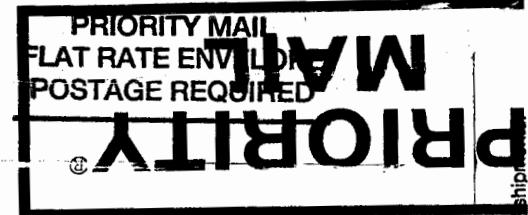
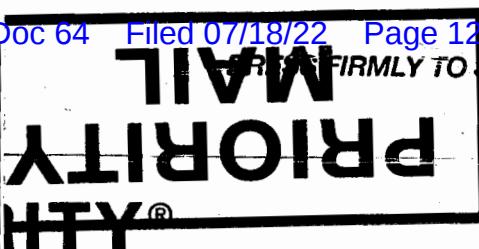
**DONE and ORDERED** in Chambers, at West Palm Beach, Palm Beach County, Florida, this 24 day of May, 2022.

  
JOHN S. KASTRENAKES  
Circuit Judge

**COPIES PROVIDED:**

All counsel of Record

RECEIVE FIRMLY  
The label is not for use with Priority Mail.  
mail is a violation of federal  
law.



FROM: Eliot Bernstein  
2153 NW 34th St  
Boca Raton, FL 33434

TO:  
United States Bankruptcy Court  
Southern District of Florida  
Clerk of the Court  
Flagler Waterview Bldg.  
1515 N. Flagler Drive  
Suite 801  
West Palm Beach, FL 33401



**Overnight  
Priority**