

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

CASE NO. 502014CP002815XXXXSB

OPPENHEIMER TRUST COMPANY  
OF DELAWARE, IN ITS CAPACITY  
AS RESIGNED TRUSTEE OF THE  
SIMON BERNSTEIN IRREVOCABLE  
TRUSTS CREATED FOR THE BENEFIT  
OF JOSHUA, JAKE AND DANIEL  
BERNSTEIN,

Petitioner,

v.

ELIOT AND CANDICE BERNSTEIN,  
IN THEIR CAPACITY AS PARENTS AND  
NATURAL GUARDIANS OF JOSHUA,  
JAKE AND DANIEL BERNSTEIN, MINORS,

Respondents,

/

**ANSWER AND COUNTER COMPLAINT**

**ANSWER**

COMES NOW, Eliot Ivan Bernstein (“Eliot”) and Candice Michelle Bernstein (“Candice”), both PRO SE, Eliot as Beneficiary and Interested Party both for himself personally and with Candice as Guardians for their three minor children (“Petitioners”) and hereby files this “ANSWER AND COUNTER COMPLAINT” and in support thereof states, as follows:

**ANSWER**

1. This is an action pursuant to Fla. Stat. § 736.0201 for (i) instructions regarding the delivery of trust property upon the sole trustee's resignation; (ii) approval of the resigned trustee's final accounting; and (iii) release and discharge of the resigned trustee.

**ANSWER** – Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

2. Petitioner, Oppenheimer Trust Company of Delaware ("Oppenheimer"), is a Delaware corporation with its principal place of business in Wilmington, Delaware.

**ANSWER** - Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

3. Respondents, Eliot and Candice Bernstein, are the parents and natural guardians of minors, Joshua, Jake and Daniel Bernstein, and reside with them in Palm Beach County, Florida. Joshua, Jake and Daniel Bernstein are the sole beneficiaries under three in-evocable trusts (the "Trusts") created by their late grandfather, Simon Bernstein, on September 7, 2006. Copies of the Trusts are attached hereto as Exhibits "A" through "C."

**ANSWER** – Admit in part, deny in part. Admit Eliot and Candice are the parents and natural guardians of minors, Joshua, Jacob (not Jake as claimed as his legal name is Jacob) and Daniel Bernstein. Petitioners lack sufficient information and knowledge regarding the remainder to form a belief as to the truth of the allegations of this paragraph and therefore deny the same.

4. Jurisdiction and venue are proper in Palm Beach County, Florida because the beneficiaries of the Trusts reside here.

**ANSWER** – Admit in part, deny in part. Admit the beneficiaries reside in Florida. Petitioners lack sufficient information and knowledge regarding the remainder to form a belief as to the truth of the allegations of this paragraph and therefore deny the same.

5. Gerald R. Lewin was the initial trustee of the Trusts.

**ANSWER - DENY**

6. On September 5, 2007, Mr. Lewin resigned as trustee and appointed Stanford Trust Company as his successor pursuant to Section 5.3 of the Trusts.

ANSWER - DENY. Gerald Lewin was never the trustee of the children's trusts and was never appointed Stanford Trust Company as his successor pursuant to Section 5.3 of the Trusts.

7. By virtue of an April 23, 2009 Order entered by the United States District Court for the Northern District of Texas in the matter of SEC v. Stanford International Bank, Ltd., et. al., Case No. 3-09CV0298-N, Stanford Trust Company was deemed to have resigned or been removed as fiduciary for any and all fiduciary accounts, including the Trusts. A copy of that Order is attached hereto as Exhibit "D." Stanford Trust Company's resignation/removal left the Trusts without a trustee.

**ANSWER** - Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

8. In 2010, Eliot and Candice Bernstein, as the parents and natural guardians of Joshua, Jake and Daniel Bernstein, filed Petitions to Appoint Successor Trustee for each of the Trusts in the Circuit Court in and for Palm Beach County, Case Nos. 50201 OCP003123XXXX.SB, 50201 OCP003125XXXXSB and 50201 OCP003128XXXXSB.

**ANSWER** - Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

9. On July 8, 2010, the Palm Beach Probate Court entered Final Orders on Petition to Appoint Successor Trustee, appointing Oppenheimer as the successor trustee of each of the Trusts. Copies

of those Orders and Oppenheimer's July 30, 2010 acceptance of the appointments are attached hereto as Composite Exhibits "E" through "G."

**ANSWER** - Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

10. By letter dated April 22, 2014 (the "Notice of Resignation"), Oppenheimer resigned as trustee effective May 26, 2014. A copy of the Notice of Resignation is attached hereto as Exhibit "H."

**ANSWER** - Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

11. In the Notice of Resignation, Oppenheimer advised Eliot and Candice Bernstein of their right and obligation to appoint a successor corporate trustee. To date, they have declined to do so.

**ANSWER** - Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

12. In addition to other relief requested herein, Oppenheimer requires instructions regarding the delivery of Trust assets in its possession to another trustee, or to Eliot and Candice Bernstein as the natural guardians of the beneficiaries.

**ANSWER** - Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

13. The Trusts provide, in relevant part, as follows:

5.2 Resignation. Any Trustee may resign by giving 30 days' written notice delivered personally or by mail to any then serving Co-Trustee and to the Settlor if he is then living and not disabled; otherwise to the next named successor Trustee, or if none, to the persons having power to appoint successor Trustees.

5.3 Power to Name Other Trustees. Whenever a successor Trustee is required and that position is not filled under the terms specified in this Trust Agreement, an individual Trustee ceasing to serve (other than a Trustee being removed) may appoint his or her successor, but if none is appointed, the remaining Trustees, if any, or the beneficiary shall appoint a successor Corporate Trustee. The appointment will be by a written document (including a testamentary instrument) delivered to the appointed Trustee. In no event may the Settler ever be appointed as the Trustee under this Trust Agreement nor shall a Successor trustee be appointed that will cause this trust to be a grantor trust.

**ANSWER** - Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

14. Similarly, Fla. Stat. § 736.0705, entitled "Resignation of trustee," provides, in relevant part, as follows:

(1) A trustee may resign:

(a) Upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees...

**ANSWER** - Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

15. Fla. Stat. § 736.0704, entitled "Vacancy in trusteeship; appointment of successor," provides, in relevant part, as follows:

(3) A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

(a) By a person named or designated pursuant to the terms of the trust to act as successor trustee.  
(b) By a person appointed by unanimous agreement of the qualified beneficiaries.

(c) By a person appointed by the court.

**ANSWER** - Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

16. Finally, Fla. Stat. § 736.0707 requires a resigned trustee to deliver trust property to a successor trustee or other person entitled to the property, and provides that the resigned trustee has the duties of a trustee, and the power necessary to protect the trust property, until the property is so delivered.

**ANSWER** - Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

17. Oppenheimer reincorporates the allegations set forth in paragraphs 1 through 16.

**ANSWER** - Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

18. Oppenheimer, as the resigned trustee, is required to deliver the Trust property in its possession to a successor trustee or another authorized person.

**ANSWER** - Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

19. Because Candice and Eliot Bernstein, as the natural guardians of the beneficiaries, have failed to appoint a successor corporate trustee, the Court must either (i) appoint a successor trustee to whom Oppenheimer may deliver the Trust property or (ii) terminate the Trusts and permit Oppenheimer to deliver the Trust property to Eliot and Candice Bernstein, as the natural guardians of the Trusts' beneficiaries.

**ANSWER** - Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

20. Oppenheimer reincorporates the allegations set forth in paragraphs 1through16.

**ANSWER** - Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

21. Oppenheimer, as the resigned trustee of the Trusts, requests review, settlement and approval of its final accounting to be filed herein, and for an order releasing and discharging Oppenheimer from all claims arising out of or related to its service as trustee.

**ANSWER** - Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

Filed on **Monday, June 30, 2014**

Eliot Bernstein, Pro Se, Individually and as legal guardian on behalf of his three minor children.

X\_\_\_\_\_

Candice Bernstein, Pro Se, as legal guardian on behalf of her three minor children.

X\_\_\_\_\_

#### **CERTIFICATE OF SERVICE**

I, ELIOT IVAN BERNSTEIN, HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to all parties on the following Service List, **Monday, June 30, 2014.**

Eliot Bernstein, Pro Se, Individually and as legal guardian on behalf of his three minor

children

X\_\_\_\_\_

**SERVICE LIST**

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

CASE NO. 502014CP002815XXXXSB

ELIOT AND CANDICE BERNSTEIN,  
IN THEIR CAPACITY AS PARENTS AND  
NATURAL GUARDIANS OF JOSHUA,  
JAKE AND DANIEL BERNSTEIN, MINORS,

HON.

Plaintiffs,

v.

OPPENHEIMER TRUST COMPANY  
OF DELAWARE AND **ALL AFFILIATES,**  
**SUBSIDIARIES**<sup>1</sup>;  
OPPENHEIMER TRUST COMPANY  
OF NEW JERSEY **AND ALL AFFILIATES,**  
**SUBSIDIARIES;**  
**LEGACY BANK** AND ALL AFFILIATES,  
SUBSIDIARIES;  
**STANFORD BANK** AND ALL AFFILIATES,  
SUBSIDIARIES;  
**JP MORGAN** AND ALL AFFILIATES,  
SUBSIDIARIES;  
BERNSTEIN FAMILY REALTY, LLC AND  
ALL AFFILIATES, SUBSIDIARIES;  
LIC HOLDINGS, LLC AND ALL AFFILIATES,  
SUBSIDIARIES;  
JANET CRAIG, INDIVIDUALLY;  
JANET CRAIG, PROFESSIONALLY AS  
ALLEGED TRUSTEE FOR JOSHUA,  
JACOB AND DANIEL BERNSTEIN,  
MINORS;  
JANET CRAIG, PROFESSIONALLY AS

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<sup>1</sup> "Subsidiary" herein means, with respect to any given Person, any corporation, partnership, limited liability company, trust, or other legal entity of which that Person or one of that Persons' Subsidiaries, in either case acting alone or with one or more of that Person's other Subsidiaries, owns, or has the power to vote or exercise a controlling influence with respect to, more than half of the capital stock or other ownership interest giving holders the right to do one or both of the following: (1) elect the board of directors or other governing body of that legal entity and (2) receive the net assets of that legal entity available for distribution to holders of all stock or other ownership interests upon liquidation or dissolution of that legal entity.

ALLEGED MANAGER OF BERNSTEIN FAMILY REALTY LLC;  
HUNT WORTH, INDIVIDUALLY;  
HUNT WORTH, PROFESSIONALLY;  
THEODORE STUART BERNSTEIN;  
THEODORE STUART BERNSTEIN AS ALLEGED MANAGER OF BERNSTEIN FAMILY REALTY LLC;  
THEODORE STUART BERNSTEIN AS PRESIDENT/CEO/DIRECTOR OF LIC HOLDINGS, LLC;  
ROBERT SPALLINA, ESQ., INDIVIDUALLY;  
ROBERT SPALLINA, ESQ., PROFESSIONALLY;  
DONALD R. TESCHER, ESQ., PERSONALLY;  
DONALD R. TESCHER, ESQ., PROFESSIONALLY;  
TESCHER & SPALLINA, P.A., (AND ALL PARTNERS, ASSOCIATES AND OF COUNSEL);  
MARK MANCERI, ESQ., PERSONALLY;  
MARK MANCERI, ESQ., PROFESSIONALLY;  
MARK R. MANCERI, P.A. (AND ALL PARTNERS, ASSOCIATES AND OF COUNSEL);  
PAGE, MRACHEK, FITZGERALD & ROSE, P.A. (AND ALL PARTNERS, ASSOCIATES AND OF COUNSEL);  
ALAN B. ROSE, ESQ. – PERSONALLY;  
ALAN B. ROSE, ESQ. – PROFESSIONALLY;  
PANKAUSKI LAW FIRM PLLC, (AND ALL PARTNERS, ASSOCIATES AND OF COUNSEL);  
JOHN J. PANKAUSKI, ESQ. – PERSONALLY;  
JOHN J. PANKAUSKI, ESQ. – PROFESSIONALLY;  
KIMBERLY FRANCIS MORAN – PERSONALLY;  
KIMBERLY FRANCIS MORAN – PROFESSIONALLY;  
LINDSAY BAXLEY AKA LINDSAY GILES – PERSONALLY;  
LINDSAY BAXLEY AKA LINDSAY GILES – PROFESSIONALLY;  
GERALD R. LEWIN, CPA – PERSONALLY;  
GERALD R. LEWIN, CPA – PROFESSIONALLY;  
CBIZ, INC. (NYSE: CBZ), (AND ALL PARTNERS, ASSOCIATES AND AFFILIATES);  
THE 2008 SIMON BERNSTEIN WILL;  
| THE 2012 SIMON BERNSTEIN WILL ~~AND ESTATE~~;  
| THE 2008 SIMON BERNSTEIN TRUST AGREEMENT;  
| THE 2012 SIMON BERNSTEIN AMENDED AND RESTATED TRUST AGREEMENT;  
| THE 2008 SHIRLEY BERNSTEIN WILL ~~AND ESTATE~~;

THE 2008 SHIRLEY BERNSTEIN TRUST AGREEMENT;  
THEODORE BERNSTEIN AS THE PERSONAL REPRESENTATIVE  
OF THE SHIRLEY BERNSTEIN WILL ~~AND ESTATE~~;  
THEODORE BERNSTEIN AS THE ALLEGED TRUSTEE OF THE  
SHIRLEY BERNSTEIN TRUST;  
ROBERT L. SPALLINA, ESQ. AS THE FORMER  
CO-PERSONAL REPRESENTATIVE, CO-TRUSTEE AND  
COUNSEL TO THE FORMER CO-PERSONAL  
REPRESENTATIVES ROBERT SPALLINA AND  
DONALD TESCHER OF THE SIMON BERNSTEIN  
2012 WILL ~~AND ESTATE~~ AND THE ALLEGED 2012  
SIMON BERNSTEIN AMENDED AND RESTATED TRUST;  
DONALD R. TESCHER, ESQ. AS THE FORMER CO-PERSONAL  
REPRESENTATIVE, CO-TRUSTEE AND COUNSEL TO THE  
FORMER CO-PERSONAL REPRESENTATIVES ROBERT  
SPALLINA AND DONALD TESCHER OF THE SIMON  
BERNSTEIN ALLEGED 2012 WILL ~~AND ESTATE~~ AND  
ALLEGED 2012 SIMON BERNSTEIN AMENDED AND  
RESTATED TRUST;  
THEODORE BERNSTEIN AS THE ALLEGED SUCCESSOR  
TRUSTEE OF THE ALLEGED ~~2012 SIMON BERNSTEIN WILL~~  
~~AND ESTATE AND~~ SIMON BERNSTEIN AMENDED  
AND RESTATED TRUST;

THE MISSING AND LEGALLY NONEXISTENT 1995 SIMON BERNSTEIN  
IRREVOCABLE INSURANCE TRUST;  
SIMON BERNSTEIN 2000 INSURANCE TRUST;  
THE 2000 LAST WILL AND TESTAMENT OF SIMON BERNSTEIN;  
THE 2000 LAST WILL AND TESTAMENT OF SHIRLEY BERNSTEIN;  
ALBERT GORTZ, ESQ. – PERSONALLY;  
ALBERT GORTZ, ESQ. – PROFESSIONALLY;  
PROSKAUER ROSE, LLP, (ALL PARTNERS, ASSOCIATES AND OF COUNSEL);  
SIMON BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;  
MARITAL TRUST AND FAMILY TRUST CREATED BY SHIRLEY BERNSTEIN,  
TRUSTEE OF THE SHIRLEY BERNSTEIN TRUST AGREEMENT DATED MAY 20, 2008;  
ELIOT BERNSTEIN FAMILY TRUST DATED MAY 20, 2008;  
DANIEL BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
JAKE BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
DANIEL BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 049738;  
JAKE BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;  
JOSHUA Z BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;  
LIFE INSURANCE CONCEPTS INC.;  
LIFE INSURANCE CONNECTION INC.;

LIFE INSURANCE INNOVATIONS, INC.;  
ARBITRAGE INTERNATIONAL MANAGEMENT LLC;  
ARBITRAGE INTERNATIONAL MARKETING, INC.;  
ARBITRAGE INTERNATIONAL HOLDINGS, LLC;  
BERNSTEIN HOLDINGS, LLC;  
BERNSTEIN FAMILY INVESTMENTS, LLLP;  
WILMINGTON TRUST 088949-000 SIMON L BERNSTEIN  
IRRECOVABLE TRUST;  
NATIONAL SERVICES PENSION PLAN;  
TRUST F/B/O JOSHUA BERNSTEIN UNDER THE SIMON L. BERNSTEIN TRUST DTD  
9/13/2012; TRUST F/B/O DANIEL BERNSTEIN UNDER THE SIMON L. BERNSTEIN  
TRUST DTD 9/13/2012;  
TRUST F/B/O JAKE BERNSTEIN UNDER THE SIMON L. BERNSTEIN TRUST DTD  
9/13/2012.  
JOHN AND JANE DOE'S (1-5000),

Defendants,

/

DECLARATION THAT THIS PROCEEDING AND OTHERS RELATED ARE ADVERSARY

The Undersigned, \_\_\_\_\_,  
alleges:

1. There is now pending in the above Estate and Trusts proceedings,
  - i. Simon Bernstein Estate Case No. \_\_\_\_
  - ii. Shirley Bernstein Estate Case No. \_\_\_\_
  - iii. Simon Bernstein Amended and Restated Trust
  - iv. Shirley Bernstein Trust Agreement
  - v. Trusts created for the benefit of Joshua, Jacob and Daniel Bernstein, Nos. \_\_\_\_
2. Pursuant to Florida Probate Rule, 5.025(b), the undersigned hereby declares the proceedings to be adversary.
3. Hereafter all proceedings relating thereto, as nearly as practicable, shall be construed similar to suits of a civil nature, and the Florida Rules of Civil Procedure shall govern.

Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.

Signed on \_\_\_\_\_,

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Declarant

Eliot Bernstein, Pro Se, Individually and as legal guardian on behalf of his three minor children.

2753 NW 34<sup>th</sup> Street  
Boca Raton, FL 33434

**SERVICE LIST**

ANSWER AND COUNTER COMPLAINT

**Monday, June 30, 2014**

**Page 13 of 47**

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

CASE NO. 502014CP002815XXXXSB

ELIOT AND CANDICE BERNSTEIN,  
IN THEIR CAPACITY AS PARENTS AND  
NATURAL GUARDIANS OF JOSHUA,  
JAKE AND DANIEL BERNSTEIN, MINORS,

HON.

Plaintiffs,

v.

OPPENHEIMER TRUST COMPANY  
OF DELAWARE AND **ALL AFFILIATES,**  
**SUBSIDIARIES**<sup>2</sup>;  
OPPENHEIMER TRUST COMPANY  
OF NEW JERSEY **AND ALL AFFILIATES,**  
**SUBSIDIARIES;**  
**LEGACY BANK** AND ALL AFFILIATES,  
SUBSIDIARIES;  
**STANFORD BANK** AND ALL AFFILIATES,  
SUBSIDIARIES;  
**JP MORGAN** AND ALL AFFILIATES,  
SUBSIDIARIES;  
BERNSTEIN FAMILY REALTY, LLC AND  
ALL AFFILIATES, SUBSIDIARIES;  
LIC HOLDINGS, LLC AND ALL AFFILIATES,  
SUBSIDIARIES;  
JANET CRAIG, INDIVIDUALLY;  
JANET CRAIG, PROFESSIONALLY AS  
ALLEGED TRUSTEE FOR JOSHUA,  
JACOB AND DANIEL BERNSTEIN,  
MINORS;  
JANET CRAIG, PROFESSIONALLY AS

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<sup>2</sup> "Subsidiary" herein means, with respect to any given Person, any corporation, partnership, limited liability company, trust, or other legal entity of which that Person or one of that Persons' Subsidiaries, in either case acting alone or with one or more of that Person's other Subsidiaries, owns, or has the power to vote or exercise a controlling influence with respect to, more than half of the capital stock or other ownership interest giving holders the right to do one or both of the following: (1) elect the board of directors or other governing body of that legal entity and (2) receive the net assets of that legal entity available for distribution to holders of all stock or other ownership interests upon liquidation or dissolution of that legal entity.

ALLEGED MANAGER OF BERNSTEIN  
FAMILY REALTY LLC;  
HUNT WORTH, INDIVIDUALLY;  
HUNT WORTH, PROFESSIONALLY;  
THEODORE STUART BERNSTEIN;  
THEODORE STUART BERNSTEIN  
AS ALLEGED MANAGER OF  
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THEODORE STUART BERNSTEIN AS  
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LLC;  
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DONALD R. TESCHER, ESQ., PERSONALLY;  
DONALD R. TESCHER, ESQ., PROFESSIONALLY;  
TESCHER & SPALLINA, P.A., (AND ALL  
PARTNERS, ASSOCIATES AND OF COUNSEL);  
MARK MANCERI, ESQ., PERSONALLY;  
MARK MANCERI, ESQ., PROFESSIONALLY;  
MARK R. MANCERI, P.A. (AND ALL PARTNERS,  
ASSOCIATES AND OF COUNSEL);  
PAGE, MRACHEK, FITZGERALD & ROSE, P.A.  
(AND ALL PARTNERS, ASSOCIATES  
AND OF COUNSEL);  
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THE 2012 SIMON BERNSTEIN WILL AND ESTATE;  
THE 2008 SIMON BERNSTEIN TRUST AGREEMENT;  
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TRUST AGREEMENT;  
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THE 2008 SHIRLEY BERNSTEIN TRUST AGREEMENT;  
THEODORE BERNSTEIN AS THE PERSONAL REPRESENTATIVE  
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THEODORE BERNSTEIN AS THE ALLEGED TRUSTEE OF THE  
SHIRLEY BERNSTEIN TRUST;  
ROBERT L. SPALLINA, ESQ. AS THE FORMER  
CO-PERSONAL REPRESENTATIVE, CO-TRUSTEE AND  
COUNSEL TO THE FORMER CO-PERSONAL  
REPRESENTATIVES ROBERT SPALLINA AND  
DONALD TESCHER OF THE SIMON BERNSTEIN  
2012 WILL AND ESTATE AND THE ALLEGED 2012  
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REPRESENTATIVE, CO-TRUSTEE AND COUNSEL TO THE  
FORMER CO-PERSONAL REPRESENTATIVES ROBERT  
SPALLINA AND DONALD TESCHER OF THE SIMON  
BERNSTEIN ALLEGED 2012 WILL AND ESTATE AND  
ALLEGED 2012 SIMON BERNSTEIN AMENDED AND  
RESTATED TRUST;  
THEODORE BERNSTEIN AS THE ALLEGED SUCCESSOR  
TRUSTEE OF THE ALLEGED 2012 SIMON BERNSTEIN WILL  
AND ESTATE AND SIMON BERNSTEIN AMENDED  
AND RESTATED TRUST;  
JOHN AND JANE DOE'S (1-5000),

Defendants,

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### **COUNTER COMPLAINT**

Comes now, Plaintiffs, Eliot Ivan Bernstein (“Eliot”) and Candice Michelle Bernstein (“Candice”) (together, “Plaintiffs”), Individually, PRO SE and as the Natural Guardians of three irrevocable trusts created by Simon Bernstein for the benefit of his grandchildren of Candice & Eliot, Joshua, Jake and Daniel Bernstein and as Guardians for the members of Bernstein Family Realty LLC and sues the following parties and so states on information and belief:

### **Parties, Jurisdiction and Venue**

1. This is an action pursuant to Fla. Stat. § 736.0201 and other applicable statutes for money damages in excess of \$15,000.00 and for equitable and other relief.
2. Plaintiffs, Eliot and Candice Bernstein, are the parents and natural guardians of minors, Joshua, Jake and Daniel Bernstein, and reside with them in Palm Beach County, Florida. Joshua, Jake and Daniel Bernstein are the sole beneficiaries under three irrevocable trusts (the "Trusts") created by their late grandfather, Simon Bernstein, on September 7, 2006.
3. Defendant, Oppenheimer Trust Company of Delaware ("Oppenheimer"), is a Delaware corporation with its principal place of business in Wilmington, Delaware.
4. Defendant, Oppenheimer Trust Company of New Jersey ("Oppenheimer NJ"), is a New Jersey corporation with its principal place of business in New Jersey.
5. Defendant, **LEGACY BANK** is domiciled in Florida.
6. Defendant, **STANFORD BANK** is in receivership in Texas.
7. Defendant, **JP MORGAN**.
8. Defendant, **BERNSTEIN FAMILY REALTY LLC** is domiciled in Florida.
9. Defendant, **LIC HOLDINGS, INC.** is domiciled in Florida.
10. Defendant, **LIC HOLDINGS, LLC** is domiciled in Florida.
11. Defendant, **JANET CRAIG**, is a resident of \_\_\_\_\_.
12. Defendant, **JANET CRAIG, PROFESSIONALLY AS ALLEGED TRUSTEE FOR TRUSTS FOR JOSHUA, JACOB AND DANIEL BERNSTEIN, MINORS**, is a resident of \_\_\_\_\_.
13. Defendant, **JANET CRAIG, PROFESSIONALLY AS ALLEGED MANAGER OF BERNSTEIN FAMILY REALTY LLC**, is a resident of \_\_\_\_\_.
14. Defendant, **HUNT WORTH, INDIVIDUALLY**, is a resident of \_\_\_\_\_.
15. Defendant, **HUNT WORTH, PROFESSIONALLY**, is a resident of \_\_\_\_\_.

16. Defendant, THEODORE STUART BERNSTEIN, INDIVIDUALLY, is a resident of Florida.
17. Defendant, THEODORE STUART BERNSTEIN AS ALLEGED MANAGER OF BERNSTEIN FAMILY REALTY LLC, is a resident of Florida.
18. Defendant, ROBERT SPALLINA, ESQ., INDIVIDUALLY, is a resident of Florida.
19. Defendant, ROBERT SPALLINA, ESQ., PROFESSIONALLY, is a resident of Florida.
20. Defendant, DONALD R. TESCHER, ESQ., PERSONALLY, is a resident of Florida.
21. Defendant, DONALD R. TESCHER, ESQ., is a resident of Florida.
22. Defendant, TESCHER & SPALLINA, P.A., (AND ALL PARTNERS, ASSOCIATES AND OF COUNSEL) is domiciled in Florida.
23. Defendant, MARK MANCERI, ESQ., PERSONALLY, is a resident of Florida.
24. Defendant, MARK MANCERI, ESQ., PROFESSIONALLY, is a resident of Florida.
25. Defendant, MARK R. MANCERI, P.A. (AND ALL PARTNERS, ASSOCIATES AND OF COUNSEL) is domiciled in Florida.
26. Defendant, PAGE, MRACHEK, FITZGERALD & ROSE, P.A. (AND ALL PARTNERS, ASSOCIATES AND OF COUNSEL) is domiciled in Florida.
27. Defendant, ALAN B. ROSE, ESQ. – PERSONALLY, is a resident of Florida.
28. Defendant, ALAN B. ROSE, ESQ. – PROFESSIONALLY, is a resident of Florida.
29. Defendant, PANKAUSKI LAW FIRM PLLC, (AND ALL PARTNERS, ASSOCIATES AND OF COUNSEL), is domiciled in Florida.
30. Defendant, JOHN J. PANKAUSKI, ESQ. – PERSONALLY, is a resident of Florida.
31. Defendant, JOHN J. PANKAUSKI, ESQ. – PROFESSIONALLY, is a resident of Florida.
32. Defendant, KIMBERLY FRANCIS MORAN – PERSONALLY, is a resident of Florida.
33. Defendant, KIMBERLY FRANCIS MORAN – PROFESSIONALLY, is a resident of Florida.

34. Defendant, LINDSAY BAXLEY AKA LINDSAY GILES – PERSONALLY, is a resident of Florida.
35. Defendant, LINDSAY BAXLEY AKA LINDSAY GILES – PROFESSIONALLY, is a resident of Florida.
36. Defendant, GERALD R. LEWIN, CPA – PERSONALLY, is a resident of Florida.
37. Defendant, GERALD R. LEWIN, CPA – PROFESSIONALLY, is a resident of Florida.
38. Defendant, CBIZ, INC. (NYSE: CBZ), (AND ALL PARTNERS, ASSOCIATES AND AFFILIATES), are domiciled at 6050 Oak Tree Boulevard South, Suite 500, Cleveland, Ohio 44131.
39. Defendant, THE 2008 SIMON BERNSTEIN WILL.
40. Defendant, THE 2012 SIMON BERNSTEIN WILL AND ESTATE.
41. Defendant, THE 2008 SIMON BERNSTEIN TRUST AGREEMENT.
42. Defendant, THE 2012 SIMON BERNSTEIN AMENDED AND RESTATED TRUST AGREEMENT.
43. Defendant, THE 2008 SHIRLEY BERNSTEIN WILL AND ESTATE.
44. Defendant, THE 2008 SHIRLEY BERNSTEIN TRUST AGREEMENT.
45. Defendant, THEODORE BERNSTEIN AS THE PERSONAL REPRESENTATIVE OF THE SHIRLEY BERNSTEIN WILL AND ESTATE.
46. Defendant, THEODORE BERNSTEIN AS THE ALLEGED TRUSTEE OF THE SHIRLEY BERNSTEIN TRUST.
47. Defendant, ROBERT L. SPALLINA, ESQ. AS THE FORMER CO-PERSONAL REPRESENTATIVE, CO-TRUSTEE AND COUNSEL TO THE FORMER CO-PERSONAL REPRESENTATIVES ROBERT SPALLINA AND DONALD TESCHER OF THE SIMON

BERNSTEIN 2012 WILL AND ESTATE AND THE ALLEGED 2012 SIMON BERNSTEIN AMENDED AND RESTATED TRUST.

48. Defendant, DONALD R. TESCHER, ESQ. AS THE FORMER CO-PERSONAL REPRESENTATIVE, CO-TRUSTEE AND COUNSEL TO THE FORMER CO-PERSONAL REPRESENTATIVES ROBERT SPALLINA AND DONALD TESCHER OF THE SIMON BERNSTEIN ALLEGED 2012 WILL AND ESTATE AND ALLEGED 2012 SIMON BERNSTEIN AMENDED AND RESTATED TRUST.
49. Defendant, THEODORE BERNSTEIN AS THE ALLEGED SUCCESSOR TRUSTEE OF THE ALLEGED 2012 SIMON BERNSTEIN WILL AND ESTATE AND SIMON BERNSTEIN AMENDED AND RESTATED TRUST.
50. Defendants, JOHN AND JANE DOE'S (1-5000).
51. Jurisdiction and venue are proper in Palm Beach County, Florida because the beneficiaries of the Trusts reside here.

#### **BACKGROUND**

52. That to save the Court a lengthy filing by Eliot attempting to recap the many crimes and civil torts, including proven, admitted and alleged crimes by the fiduciaries and officers of this Court, Frauds on the Court, Frauds on the Beneficiaries, Interested Parties, Creditors and others that directly relate to this instant legal action and subsequent counterclaim, Eliot hereby incorporates by reference all ongoing cases before this Court, including but not limited to all, pleadings, rulings, evidence, etc. in the Simon and Shirley Bernstein Estates and Trusts created by Simon and Shirley that are currently before Hon. Judge Colin, as the matters are directly related to the other matters before this Court.

53. That Simon and Shirley set up trust accounts and Bernstein Family Realty, LLC while living for the benefit of Eliot, Candice and their children, for the children's school and to cover home and living expenses.
54. That the children's trust accounts were used to purchase a home for Eliot and his family and the home was owned by BFR. The children owned BFR.
55. That these accounts were funded since 2006 and BFR was paying household bills and expenses until Simon died and for approximately one year after his death.
56. That several months after Simon died, BFR continued to pay bills and expenses.
57. That several months after Simon died, his assistant Rachel Walker ("Walker") was fired by Theodore and she informed Eliot and Candice that they would be taking over BFR and the payment of the bills and brought to their home, on the direction of Robert Spallina the bank accounts and credit cards.
58. That Eliot noticed that the account appeared to be held by Simon Bernstein and was uncomfortable with Candice using the Legacy account at all and so with Walker they called Legacy Bank and found out that not only was Walker not a signor on the account (Simon was the only signor) but that Legacy Bank, who knew Simon well, was not informed that Simon had been dead for several months and was shocked to learn that his accounts were still being used and accessed POST MORTEM.
59. That Legacy Bank, immediately upon finding that Simon was dead, froze the bank accounts and stated they could only speak with the PR of the Estate of Simon.
60. That Eliot and Rachel notified Spallina that he was required to call Legacy Bank immediately as the BFR accounts and others had been frozen and the account was accessed unauthorized for months.

61. That subsequently it was also found through the production documents transferred to the Curator Ben Brown by Spallina and Tescher that other bank and credit card accounts were also used by others for months after Simon died.
62. That Spallina contacted Legacy Bank and then notified Eliot and Candice that he was transferring the frozen funds and BFR accounts to Janet Craig who he stated was the new acting Manager of BFR and Trustee of the children's trusts.
63. That Eliot and Candice later learned that this transfer of title of Manager of BFR was in violation of BFR's terms PAGES \_\_\_\_ see BFR documents @ [www.iviewit.tv](http://www.iviewit.tv)
64. That Spallina then directed Craig to open a new Oppenheimer BFR account with Craig and Worth as the agents now handling the BFR affairs and the children's school trusts.
65. That Eliot and Candice requested repeatedly of Spallina, Tescher, Craig and Worth to provide historical account statements for Legacy Bank so that they could determine how much was in the account prior to Simon's death and they were refused, repeatedly.
66. Legacy Bank was contacted by Eliot several times regarding their claims that they were starting investigations into the use of Simon's accounts Post Mortem and despite repeated requests by Eliot has failed to provide any status or information regarding if they have started these investigations.
67. Oppenheimer nominated itself as the Manager and began paying BFR bills and expenses ~~costs~~ for children including school, education and welfare from the BFR new account at Oppenheimer
68. That Oppenheimer several months later notified Eliot that the BFR account was running low.
69. That Eliot contacted Spallina who stated that until he could allocate monies from the Estates and Trusts of Simon and Shirley to the beneficiaries that the children's lower, middle and high school

trust funds (there were separate accounts for college) to pay the BFR expenses and that he would replace and replenish the funds once he could make distributions.

70. That Craig then began using the school funds to fund the BFR and other expenses.
71. As the trusts were diminished to de minimis value by paying the BFR company bills and other expenses for the children, Craig contacted Spallina to replace and replenish the trust accounts and BFR account and Spallina and Tescher claimed they were now unwilling to refund and replenish.
72. That at this time Tescher, Spallina, Moran, Theodore, Manceri and others were all under INVESTIGATION with Palm Beach County Sheriff Office (“PBSO”) detectives and Florida’s Governor Rick Scott’s Notary Public Division for allegations of Fraud, Fraudulent Notarizations, Forgery and other crimes, instigated by Eliot and Candice in relation to the Estates and Trusts of Simon and Shirley.
73. That subsequently it was found that FORGERY, FRAUD, FRAUDULENT NOTARIZATIONS, IDENTITY THEFT and more were used to change beneficiaries of the Estates and Trusts of Simon and Shirley and where there are still ongoing state and federal, civil and criminal, legal actions taking place regarding these crimes.
74. Eliot notified Craig that Spallina, Tescher, Manceri, Theodore et al. were all under ongoing investigation and urged her to take appropriate legal steps as ALLEGED Manger of BFR and Trustee of possible FRAUD and that FRAUD may have taken place in the BFR accounts and company and that the children’s school trusts may have been used illegally and more.
75. Eliot notifies Craig that documents sent to him by both her and Spallina and Tescher for both BFR and the children’s trusts are incomplete and missing signatures and not properly initialed and may be improperly notarized, which documents she is operating under.

76. Eliot notifies Craig that shares of LIC HOLDINGS, LLC. are not valued which are held by the Trusts and that she must as Trustee demand under FL Section \_\_\_\_\_ a full and formal accounting from LIC to determine the value prior to attempting to resign as Trustee of Trusts and Manager of BFR, while not knowing the value of these stocks.

77. That on \_\_\_\_\_ Craig notifies Eliot she is resigning as Trustee and Manager and assigning these titles to Eliot.

78. That on \_\_\_\_\_ Craig notifies Eliot she has spoken with Spallina and he spoke with Theodore and he accepted the role of Manager of BFR and that she transferred ALL of the personal and confidential information regarding the BFR and children's trust accounts to Theodore, including transferring highly confidential and private information to Theodore at Spallina and Tescher's direction. Craig transferred the Title and information to Theodore despite knowing at the time that Theodore was aware that Eliot and Candice were pursuing Theodore and Spallina with State and Federal Authorities for a number of alleged and now proven crimes and civil torts.

79. Theodore assumes such title and systematically begins disabling BFR by failing to pay bills for the home it owns, school expenses and expenses for the minor children and provides no notice of his new title as Manager of BFR.

80. After months of bills not getting paid and avoidance of emails regarding such, Theodore, who had started acting as BFR Manager suddenly states he is not the Manager and never accepted the role when a one Walter Sahm contacted Oppenheimer and Theodore about who was the Manager of BFR, since he has a mortgage on the home owned by BFR.

81. That months after Theodore and Craig refused to respond to numerous correspondence regarding BFR and the Trusts and the fact that bills BFR is responsible for were not getting paid and

leaving BFR and Eliot's family at risk, Craig does an about face and states Theodore never accepted the position and that she is still Manager, despite her prior claims that Theodore had accepted, which led her to turn over highly confidential information and all the bills to him.

82. That Theodore had acted to pay some bills of BFR at first, while Spallina, Theodore, Tescher, Manceri and others tried to force Eliot to take illegal distributions from the Estates and Trusts before they would give him any inheritance funds to either he or his family, if efforts to gain an implied consent to the criminal activity taking place in the Estates and Trusts. Then, after learning that Eliot was filing criminal charges of Extortion with this Court and others, Theodore suddenly claims he is not the Manager of BFR and was just paying some bills of BFR from Estate and Trust funds and acts as if he knows nothing about BFR and his acceptance of the Manager position.
83. That Craig then states she is still Manager of BFR when pressed for an answer by Walter Sahm who was threatening to foreclose and sue if someone did not give him answers about his Mortgage, this after months that Sahm was misled with others as to who was responsible for BFR and his Mortgage and Interests due.
84. Craig refuses to get accountings for Trusts assets regarding the company Theodore is running Simon's business entities including, LIC Holdings, LLC, Bernstein Family Investments, Arbitrage International Marketing etc... and companie~~s~~y the Estates and Trusts of Simon own and Eliot's Family ~~three children~~ also own shares in and without this information attempts to claim that the children's school trusts had no value left and she was going to attempt to close the accounts and transfer the remainder of any monies and other interests to now Eliot.
85. Eliot refused and told Craig and Worth and their counsel at the time, that as acting Fiduciaries they should immediately report the alleged and proven criminal acts of Theodore, Spallina,

Tescher, Manceri, Rose et al. to the proper authorities and freeze everything to preserve the evidence and that Eliot was unwilling to replace them until all these matters and their involvement in them was resolved.

86. Craig, despite being requested repeatedly to report Fraud going on instead opts to try and remove herself and Oppenheimer out of house of cards that was beginning to crumble.
87. Craig then hires lawyers from Gray Robinson who call Eliot and Candice to tell them first that they are representing the Trusts of the three boys and BFR in litigation in the Creditor claim of William Stansbury in the Estate and Trusts of Simon and Shirley, **Stansbury v. et al** Case # .
88. That Eliot discloses to a one, Steven Lessne, Esq. the problems regarding Craig and Worth's involvement in the alleged Extortion and other criminal acts taking place and that Gray Robinson should sue Oppenheimer, Worth and Craig for breaches of fiduciary duties, conspiracy, extortion and more and immediately report them all to the proper authorities.
89. That Lessne, after listening to this, then informs Eliot and Candice that he is not really representing the Trusts and BFR but rather the Trustee of the Trusts, Craig and that he is not really representing BFR but rather Craig as Manager of BFR and Eliot informs of his conflicts and that he is upset that he misrepresented his role and acted inappropriately in taking information regarding the matters under his false claims of who he was representing.
90. That on a cumulative scale, in relation to the ongoing Probate and Trust actions related, there are claims that the Wills and Trusts assets are 40-100 million dollars between the many entities and trusts established by Simon and Shirley, with approximately one third going to either Eliot or his children or a combination of both.
91. That due to a complete failure to follow Probate Rules and **Florida** Statutes **of Estate and and** Trust Rules and Statutes, there has been virtually no documents tendered since the beginning of

Tescher, Spallina and Theodore's reign as fiduciary and counsel to any of the beneficiaries, interested parties or creditors and has significantly damaged Defendants Plaintiffs.

92. That Trust documents have gone missing, yet filed claims for insurance proceeds as evidenced in the ongoing Federal Civil Lawsuit in Illinois, filed by an alleged Trustee of Trust that does not legally exist in any form and for breach of contract, a life insurance policy that similarly has been lost and apparently does not exist as no one has produced a copy, missing IRA beneficiaries and alleged IRA account changes Post Mortem, missing accountings for virtually every entity and trust created by Simon and Shirley, NOT A SINGLE SIGNED TAX RETURN FOR SIMON OR SHIRLEY, LEGALLY DEFICIENT ACCOUNTING OF SIMON'S ESTATE UPON RESIGNATIONS AND REMOVAL OF TESCHER AND SPALLINA, NO OTHER ACCOUNTINGS OF ANY OTHER ENTITY UNDER THE WILLS AND TRUSTS, FORGERY POST MORTEM IN SEVERAL INSTANCES, FRAUDULENT NOTARIZATIONS, IMPROPER NOTARIZATIONS and more.

93. That through these crimes, Dominion and Control of the Estates and Trusts of Simon and Shirley were overtaken by Theodore and his close personal friends and business associates, all Attorneys at Law misusing and abusing law to achieve a takeover illegally of the Estates and Trusts and convert the assets in a variety of subsequent frauds both state and federal.

#### **COUNT 1 - CIVIL CONSPIRACY**

94. This is an action for Civil Conspiracy under Florida Statutes.

95. Plaintiffs hereby reiterate and incorporate herein by reference, as if fully restated herein, preceding paragraphs 1 through       , inclusive.

96. That Simon and Shirley left vast wealth to their beneficiaries under their elaborate estate plans through combinations of trusts, business entities and other vehicles that are all inter-related.

97. That all of these trusts, business entities and other vehicles have been seized illegally through a combination of frauds and then financial and accounting information suppressed and denied from the true and proper beneficiaries in violation of, probate statutes, trust statutes, state and federal laws, attorney conduct codes and fiduciary duties.

98. That all parties sued hereunder have acted alone or in combination with others to violate the trusts, business entities and other vehicles to fraudulently remove assets from the corpuses of the trusts, business entities and other vehicles, in various artifices to defraud the true and proper beneficiaries,

99. That the Oppenheimer Trusts and BFR are only a fraction of the trusts and entities that criminal activity is alleged but is directly related to the overall conspiracy to rob and loot the estates, once dominion and control was seized through the elaborate series of document forgeries and fraud. Much of these frauds has already been brought before the Court in the Petitions and Motions filed by Eliot in the Estate cases before this Court, which ties all of these parties together as part of the larger conspiracy.

96-100. That Craig was introduced to Eliot via the former Executors/Personal Representatives/Co-Trustees/Counsel of the Estate of Simon, Tescher and Spallina, who have resigned and been removed in the midst of arrests of their Notary Public/Legal Assistant for Fraudulent Notarizations, admitted Forgery (including forging documents POST MORTEM for Simon and five other forgeries of other interested parties), admitted POST MORTEM ALTERING of Trust documents by Robert Spallina to PBSO and more in the Estates of Simon and Shirley.

97-101. That Spallina without any legal authority (he had authority as PR but failed to inform or provide operating agreement docs until yates jan 2013 informed Eliot that he had transferred the BFR Manager position after Simon died to Craig, in violation of the BFR Operating Agreement

and that she was the Successor Trustee to Stanford Bank as Trustee of the children's school trust funds, where the transfer allegedly occurred when the infamous Sir Robert Allen Stanford was arrested for the second biggest Ponzi scheme in the United States and the banks he owned and operated were seized by US federal authorities and the monies had to be transferred.

98-102. That on information and belief, several of the account executives on the relating to the BERNSTEIN family accounts including the children's trusts went from Stanford then went to Oppenheimer then to JP Morgan and finally some went to Oppenheimer.

99-103. That on information and belief, Simon Bernstein immediately prior to his sudden and unexpected death, where it has been alleged by Theodore Bernstein and others that he may have been murdered, was contacting JP Morgan and Oppenheimer regarding missing funds in the transfer of his accounts and his family's accounts from Stanford to Oppenheimer then to JP Morgan and then Oppenheimer, including but not limited to, trust funds of Eliot's three children and Eliot's.

100-104. That Craig worked directly with Spallina and Tescher to transfer funds that had been previously frozen by Legacy Bank in BFR accounts when Eliot informed them that Simon's Legacy accounts were being used ILLEGALLY, POST MORTEM. DON'T think these funds transferred they went into si bernsteins estate account \$346

101-105. That Craig then opened up a new BFR account at Oppenheimer and deposited the Legacy BFR account funds with the aid of Spallina and Tescher. Not true

102-106. That Eliot repeatedly requested Craig and Spallina to obtain the Legacy Bank Account statements and other information relating to that account so that he could determine the amount of funds that were in the account when Simon died and determine who and what withdrawals and other activities had taken place illegally.

103.107. That Eliot was informed that Legacy would be conducting an internal investigation into the fraudulent use of Simon's accounts after his death and Eliot has recently again tried to contact Legacy to find out information about the accounts and investigations and was told that the Personal Representatives would have to contact them but around that time, the Personal Representative Tescher and Spallina were under investigation and being removed as PR/Executors/Co-Trustees/Counsel to the Estates and Trusts of Simon and Shirley for their involvement in a series of proven, admitted and alleged Frauds.

104.108. That Spallina and Craig informed Eliot that monies were running low in the Legacy BFR accounts and that until distributions of the Estates and Trusts could be worked out they determined that the Trusts of the three boys, set up for school education while Simon and Shirley were alive were to be used to pay the BFR expenses and children's expenses that had been being paid for seven years prior to their deaths.

105.109. That Spallina stated the monies would be used and the trusts replenished and replaced as necessary and authorized Craig to use the school trusts for these purposes. Such as property insurance, maintenance, improvements, property taxes etc...

106.110. That when the Trusts were depleted, Craig informed Spallina and asked for the replenishments and Spallina refused claiming now that he was not obligated and or willing to pay them back. in efforts to retaliate against Eliot, Candice and minor children.

107.111. That at this time Spallina, Tescher, Theodore and others learned that they were being investigated by the Florida Governor Rick Scott's Notary Public Division and the West Palm Beach County Sheriff Office for a series of fraudulent acts regarding the Estates and Trusts of Simon and Shirley Bernstein.

108.112. That on information and belief Craig, Tescher and Spallina retained Mark Manceri, Esq. to represent BFR in the Stansbury Lawsuit.

109.113. That Manceri ~~has~~ resigned from the Estates and Trust of Simon and Shirley Bernstein in the midst of arrests for Fraud, Forgery and more of the former Executors/Personal Representatives/Co-Trustees/Counsel, Tescher and Spallina.

110.114. That Gerald Lewin, CPA, who was responsible for tax returns for BFR now claims that no tax returns were done for over 6 years.

111.115. Ties to Estate Case, FRAUD, FORGERY, etc.

112.116. This case is related to ALL of the following ongoing actions worldwide

- i. Estates of Simon and Shirley Bernstein
- ii. Oppenheimer Lawsuit
- iii. Illinois Federal Court Case #
- iv. New York Federal Court Case #
- v. Cox/Bernstein Nevada
- vi. Cox/Bernstein Oregon (Bernstein not a Defendant but was tried to be added as a Defendant.
- vii. Randazza Florida Case #
- viii. WIPO

WHEREFORE, Plaintiff prays for judgment against Defendants for Civil Conspiracy, jointly and severally, personally and professionally, for remedies as may be awarded Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

## **COUNT 2 - CIVIL EXTORTION**

113.117. This is an action for Civil Extortion under Florida Statutes.

114.118. Plaintiffs hereby reiterate and incorporate herein by reference, as if fully restated herein, preceding paragraphs 1 through 118, inclusive.

115.119. That Defendants worked together in combinations and separately to illegally seize dominion and control of BFR and the children's trust funds.

116.120. That Defendants worked together in combinations and separately to then begin a pattern and practice of extortions to destroy BFR and the children's trusts, in efforts to have Eliot accept improper distributions to his children by committing fraud and when Eliot refused and instead began investigations with civil and criminal authorities, Defendants worked together to interfere and deprive Eliot and his family of inheritances due them and deplete trust funds in his three minor children's trusts.

117.121. That Eliot and his children had been set up financially through these entities by both Simon and Shirley while living and intended to continue after their deaths through their ELABORATE estate plans specifically for Eliot and his family's PROTECTION, designed to provide monthly income and school funds for his family into the future for many years, in combination with Eliot's vast holdings under Shirley's Estate & Trusts, where ELIOT is a one third beneficiary with two of his sisters, as both Theodore and his sister Pamela had been wholly disinherited and considered predeceased for Shirley's Estate and Trusts when she died and the Trusts that held millions of dollars in assets then became irrevocable.

118.122. As defined in the Wills and Trusts of Simon and Shirley through elaborate planning tools, including combinations of Trusts for BOTH Eliot and his family, LLC's, LLLP's, Holdings and more, such as BFR, AND OTHERS (NAMES), where Eliot and or his children were to be direct beneficiaries and in control of such business entities.

119.123. That both Simon and Shirley completed mirrored Wills and Trusts in 2008 that wholly left their Estates and Trusts and all properties to Family Trusts for each Eliot, Lisa and Jill.

120.124. That Shirley died with her 2008 Will and Trusts as the Dispositive documents with Simon as Trustee.

121.125. That in 2012 Shirley's Estate was reopened by Hon. Judge Martin Colin due to Fraud committed by Tescher, Spallina, TSPA, Theodore, Manceri and Moran.

122.126. That in 2012 it is ALLEGED that Simon annulled amended and restated his 2008 Will and replaced it with a 2012 Will and Amended his 2008 Trusts and replaced it with a 2012 Amended and Restated Trust.

123.127. That in 2013 it is proven in this Court in the Estate and Trust cases that POST MORTEM, Simon closed the Estate of Shirley, while dead for four months acting as Personal Representative, yes dead and done with Fraudulently Notarized, Fraudulent and Forged documents that led to an arrest-

124.128. That in 2013 it was learned from the Governor Rick Scott's Office Notary Public Division that the notarizations on the ALLEGED 2012 Will and Amended and Restated Trust were improper and where Simon cannot now said to have been present on the date the document is alleged signed, due to such improper notarization and for other defects. The documents have been challenged before this Court in the Will and Trusts of Simon.

125.129. That Eliot has assisted the PBSO financial crimes division with information regarding interfered with the criminal acts that are taking place committed all by Officers of this Court and Fiduciaries of this Court and due to this fact, they have conspired to deny Eliot and his family, including three minor children of their inheritances, have stolen monies from Eliot and his children's pre-funded trusts and companies and then knowing that they were harming Eliot and

his family, they proceeded to repeatedly attempt to force Eliot to either partake in illegal activities or starve and possibly be foreclosed evicted from their home and more.

126.130. That these efforts completely defeat the wishes of Simon and Shirley Bernstein in what they had created elaborate estate planning mechanisms in place set up especially for Eliot and his family.

WHEREFORE, Plaintiff prays for judgment against Defendants for Civil Extortion, jointly and severally, personally and professionally, for remedies as may be awarded Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

### **COUNT 3 - THEFT**

127.131. This is an action for Theft under Chapter [REDACTED], Florida Statutes.

128.132. Plaintiffs hereby reiterate and incorporate herein by reference, as if fully restated herein, preceding paragraphs 1 through [REDACTED], inclusive.

129.133. That theft of property has occurred with the misuse of bank accounts and trusts and through a series of frauds that left assets missing and unaccounted for at this time and with no financial records or tax records provided by the fiduciaries of BFR or any of the trustees of the numerous trusts sued hereunder.

WHEREFORE, Plaintiff prays for judgment against Defendants for Theft, jointly and severally, personally and professionally, for remedies as may be awarded Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

### **COUNT 4 - CONVERSION**

130.134. This is an action for Conversion.

131.135. Plaintiffs hereby reiterate and incorporate herein by reference, as if fully restated herein, preceding paragraphs 1 through [redacted], inclusive.

132.136. That Spallina, Tescher, Theodore, Craig, Worth, Manceri, Rose, Pankauski and others have interfered with Eliot and his children's inheritances by falsifying documents to convert assets to improper parties and seize Dominion and Control of various trusts and estates assets with intent and destroy, suppress and deny Eliot and his family of their inheritances.

WHEREFORE, Plaintiff prays for judgment against Defendants for Conversion, jointly and severally, personally and professionally, for remedies as may be awarded Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

**COUNT 5 – INTENTIONAL INTERFERENCE WITH AN INHERITANCE/EXPECTANCY**

133.137. This is an action for Torturous Interference with an Inheritance.

134.138. Plaintiffs hereby reiterate and incorporate herein by reference, as if fully restated herein, preceding paragraphs 1 through [redacted], inclusive.

135.139. That Spallina, Tescher, Theodore, Craig, Worth, Manceri, Rose, Pankauski and others have interfered with Eliot and his children's inheritances by falsifying documents to convert assets to improper parties and seize Dominion and Control of various trusts and estates assets with intent and destroy, suppress and deny Eliot and his family of their inheritances.

136.140. That Eliot and his family have been denied access to Estate and Trust documents and accountings for now four years in Shirley's Estates and Trusts and two years in Simon's Estates and Trusts in efforts to deny them their inheritances and convert the properties to improper parties.

WHEREFORE, Plaintiff prays for judgment against Defendants for Intentional Interference with an Inheritance/Expectancy, jointly and severally, personally and professionally and for remedies as may be awarded Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

### **COUNT 6 - FRAUD**

137.141. This is an action for Fraud under Florida Statutes.

138.142. Plaintiffs hereby reiterate and incorporate herein by reference, as if fully restated herein, preceding paragraphs 1 through       , inclusive.

139.143. That a complex set of frauds have taken place in the Estates and Trusts of Simon and Shirley and already proven are improper notarizations of Wills and Trusts of Simon, proven fraudulently notarized Waivers in Shirley's Estate, proven Fraud on this Court through use of a deceased person, Simon, to act as Personal Representative to close an Estate through documents filed by the law offices of Tescher and Spallina with scienter.

736.0406 Effect of fraud, duress, mistake, or undue influence.

140.144. That similar fraudulent activity is taking place with the children's Trusts in this action, where documents are not complete and there are missing signatures and legally invalid documents.

WHEREFORE, Plaintiff prays for judgment against Defendants for Frauds, jointly and severally, personally and professionally, for remedies as may be awarded Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

### **COUNT 7 - BREACH OF FIDUCIARY DUTIES**

141.145. This is an action for Breach of Fiduciary Duties under Florida Statutes.

142.146. Plaintiffs hereby reiterate and incorporate herein by reference, as if fully restated herein, preceding paragraphs 1 through [redacted], inclusive.

143.147. That the fiduciaries of the Estates and Trusts of Simon and Shirley are alleged to have gained their fiduciary positions through a series of fraudulent documents and thus EVERY action they have taken is a breach of fiduciary duties.

144.148. That despite being aware of their involvement in criminal acts, the fact that they are under ongoing investigations, the fact that the dispositive documents have been challenged and found fraught with fraud and more, the fiduciary Theodore continues to act and abuse his alleged powers to harm and deceive beneficiaries despite these conflicts of interest and adverse interests that factually preclude his involvement further as fiduciary in efforts to liquidate assets in fire sale self-dealing transactions, Theodore even taking distributions against the advice of counsel.

WHEREFORE, Plaintiff prays for judgment against all Defendants in any Fiduciary role for any of the trusts sued hereunder for Breach of Fiduciary Duties under 736.1001 Remedies for breach of trust and other applicable statutes both jointly and severally, personally and professionally, and for remedies as may be awarded Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

#### **COUNT 8 - ABUSE OF PROCESS**

145.149. This is an action for Abuse of Process under Florida Statutes.

146.150. Plaintiffs hereby reiterate and incorporate herein by reference, as if fully restated herein, preceding paragraphs 1 through [redacted], inclusive.

147.151. That all of the Frauds have been implemented using the Court process to achieve Dominion and Control of the Estates and Trusts through a series of fraudulent dispositive documents crafted to commit fraud both on the Court and the Beneficiaries, Interested Parties and Creditors.

152. That several instances of Fraud on this Court by Officers and Fiduciaries of this Court are already proven and this represents irrefutable evidence of Abuse of Process, similar to the abuse of process in this action, whereby the Courts are being used to attempt to diffuse and cover up the crimes that have taken place in the children's school trusts and BFR.

148.153. That these are efforts to abuse process with expensive and abusive legal harassment in efforts to futher harm beneficiaries for causing expensive delays in estate administration and lack of attorneys fees and costs? Something like that.

149.154. That Gray Robinson and Steven Lessne have abused process by contacting Eliot and Candice under false premises to gain insight into highly confidential and sensitive information regarding their legal strategies against Oppenheimer, initially claiming to represent BFR and Eliot's children's pre funded school trusts when really representing Oppenheimer's Craig as Trustee and Manager of BFR.

150.155. That Gray Robinson knowing of Fraud allegations against Craig, Worth and others involved in these matters, then tried to escape from their fiduciary obligations to report the crimes alleged through legal process and filed this action with a separate Judge at this Court and without notifying the Court or the authorities of the illegally activities alleged against their clients or of the Court cases before Hon. Judge Martin Colin, while knowing of the related Estate and Trusts actions already in play and related to these matters in efforts to be released from their fiduciary obligations and more.

WHEREFORE, Plaintiff prays for judgment against Defendants, jointly and severally, personally and professionally, for Abuse of Process and for remedies as may be awarded Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just

and appropriate, together with such other and further relief as the Court may deem just and appropriate.

### **COUNT 9 - LEGAL MALPRACTICE**

151. This is an action for Legal Malpractice under Florida Statutes.

152. Plaintiffs hereby reiterate and incorporate herein by reference, as if fully restated herein, preceding paragraphs 1 through       , inclusive.

153. That Gray Robinson and Steven Lessne have committed legal malpractice by contacting Eliot and Candice under false premises to gain insight into highly confidential and sensitive information regarding their legal strategies against Oppenheimer, initially claiming to represent BFR and Eliot's children's pre funded school trusts when really representing Oppenheimer's Craig as Trustee and Manager of BFR.

154. That Attorneys at Law, Spallina, Tescher, Manceri, Rose, Pankauski, Worth and others have worked together to commit frauds, frauds on the courts and more in direct efforts to commit a series of criminal wrongdoings and civil torts against parties to the Estates and Trusts and other related entities, which have enriched them greatly through legal fees and more.

WHEREFORE, Plaintiff prays for judgment against Defendants for Legal Malpractice, jointly and severally, professionally and personally and for remedies as may be awarded Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

### **COUNT 10 – EQUITABLE LIEN**

155. Plaintiffs hereby reiterate and incorporate herein by reference, as if fully restated herein, preceding paragraphs 1 through       , inclusive.

156.161. This is an action to impose an Equitable Lien on the Estates and Trusts Assets in both the Simon and Shirley Estates that were seized illegally from December 08, 2010 when Shirley deceased and then further from September 13, 2012 when Simon deceased through a series of fraudulent activities that transferred Dominion and Control of the assets to improper parties and have since led to numerous other fraudulent activities under ongoing State and Federal investigations both civil and criminal.

157.162. That this is an action for an equitable lien on the children's Trusts due to the fraudulent activity taking place in these accounts.

158.163. That the Defendants have become enriched unjustly due to these criminal acts and civil torts.

159.164. All conditions precedent to this action have been performed or occurred and continue.

WHEREFORE, Plaintiff prays for judgment for an Equitable lien and for remedies as may be awarded Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

#### **COUNT 11 - ACCOUNTING**

160.165. Plaintiffs hereby reiterate and incorporate herein by reference, as if fully restated herein, preceding paragraphs 1 through       , inclusive.

161.166. This is an action against Craig, Worth, Spallina, Tescher and others who have failed to provide accountings for the Estates or Trusts to the Beneficiaries and Interested Parties as statutorily required for full formal accountings of all Trusts, Estates and Entities involved in the Estate plans of Simon and Shirley.

162.167. That Theodore has failed to provide accounting in any of his alleged roles as a fiduciary in the Estates and Trusts of Shirley and Simon as required by law.

163.<sup>168.</sup> That Spallina and Tescher and all other trustees failed to provide accountings in their former roles as fiduciaries of the Estate and Trusts of Simon as required by law.

164.<sup>169.</sup> That Theodore after allegedly becoming Successor Trustee to the Trusts of Simon has failed to provide an accounting or any other evidence that he was elected legally as the Successor Trustee.

165.<sup>170.</sup> All Trustees in ALL of the trusts created by Simon and Shirley Bernstein and so sued hereunder have failed under;

736.0813 Duty to inform and account.—The trustee shall keep the qualified beneficiaries of the trust reasonably informed of the trust and its administration.

(1) The trustee's duty to inform and account includes, but is not limited to, the following:

- (a) Within 60 days after acceptance of the trust, the trustee shall give notice to the qualified beneficiaries of the acceptance of the trust, the full name and address of the trustee, and that the fiduciary lawyer-client privilege in s. 90.5021 applies with respect to the trustee and any attorney employed by the trustee.
- (b) Within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, the trustee shall give notice to the qualified beneficiaries of the trust's existence, the identity of the settlor or settlors, the right to request a copy of the trust instrument, the right to accountings under this section, and that the fiduciary lawyer-client privilege in s. 90.5021 applies with respect to the trustee and any attorney employed by the trustee.
- (c) Upon reasonable request, the trustee shall provide a qualified beneficiary with a complete copy of the trust instrument.
- (d) A trustee of an irrevocable trust shall provide a trust accounting, as set forth in s. 736.08135, from the date of the last accounting or, if none, from the date on which the trustee became accountable, to each qualified beneficiary at least annually and on termination of the trust or on change of the trustee.
- (e) Upon reasonable request, the trustee shall provide a qualified beneficiary with relevant information about the assets and liabilities of the trust and the particulars relating to administration.

WHEREFORE, Plaintiff demands judgment for accountings for ALL Estate and Trusts of both Shirley and Simon sued hereunder that have been denied in violation of statutes and for remedies as may be awarded Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

**COUNT 12 – REMOVE COUNTER DEFENDANTS IMMEDIATELY FROM ALL  
FIDUCIARY AND LEGAL POSITIONS IN THE ESTATES AND TRUSTS AND OTHER  
ENTITIES OF SIMON AND SHIRLEY BERNSTEIN**

166-171. Plaintiffs hereby reiterate and incorporate herein by reference, as if fully restated herein, preceding paragraphs 1 through \_\_, inclusive.

167.172. This is an action to remove the current ALLEGED Trustee of the Estate and trusts of Shirley, Theodore, the Trustee of Simon's trusts, again Theodore, the Trustee of the children's school Trusts, Craig and Worth and the Manager of BFR, Craig.

736.0706 Removal of trustee

168.173. This is an action to remove the current ALLEGED Counsel to the Trustee of the Estate and trusts of Shirley, Rose and Pankauski, the Counsel to the Trustee of Simon's trusts, again Rose and Pankauski, the Counsel for the Trustee of the children's school Trusts, Gray Robinson, and the Counsel for the Manager of BFR, Gray Robinson.

169.174. That on July 11<sup>th</sup> 2014 Theodore's Motion to be Appointed Personal Representative of the Estate of Simon to replace the Curator, Benjamin Brown, Esq. that was installed after Tescher and Spallina were removed in all capacities from the Estates and Trusts of Simon and Shirley Bernstein amidst the criminal acts and civil torts proven, admitted and alleged and Theodore withdrew his request and allowed an independent Third Party Personal Representative to be elected, Brian O'Connell to become the new Personal Representative.

170.175. That Theodore is not now qualified to be Personal Representative or Trustee or Manager of any of Simon and Shirley's Wills and Trusts and entities created by them, as he has a plethora of Conflicts of Interests, he has absolute Adverse Interests in both Simon and Shirley's Estates and Trusts, he is under ongoing criminal investigations and civil actions that further make him conflicted and unable to legally serve and he must instantly be removed by this Court to preserve

and protect the assets of Simon and Shirley from further Fraud and more that Theodore is the central alleged perpetrator of, who has benefited the most from the criminal acts already and where Theodore has been considered in all Wills and Trusts of Simon and Shirley as PREDECEASED and wholly disinherited and has no real interest in these matters or cause to be a Fiduciary in light of the ongoing mess caused under his tutelage and aided and abetted by Attorneys at Law that are his friends and business associates who all came in to these matters through Theodore. Theodore must be removed as he and his sister Pamela desperation to be included are the root of all these problems caused thus far.

171.176. All conditions precedent to this action have been performed or have occurred.

WHEREFORE, Plaintiff prays for judgment against Defendants through removal of counter defendants that have acted with others who committed criminal acts and civil torts in these matters already proven and alleged in ANY/ALL Legal or Fiduciary Capacities and Report them to the proper authorities as required by Judicial Canon's and Law and for remedies as may be awarded Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

Filed on **Monday, June 30, 2014**

Eliot Bernstein, Pro Se, Individually and as legal guardian on behalf of his three minor children.

X \_\_\_\_\_

Candice Bernstein, Pro Se, as legal guardian on behalf of her three minor children.

ANSWER AND COUNTER COMPLAINT

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X\_\_\_\_\_

### CERTIFICATE OF SERVICE

I, ELIOT IVAN BERNSTEIN, HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to all parties on the following Service List, Monday, **June 30, 2014.**

Eliot Bernstein, Pro Se, Individually and as legal guardian on behalf of his three minor children

X\_\_\_\_\_

### SERVICE LIST

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ANSWER AND COUNTER COMPLAINT

**Monday, June 30, 2014**

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