

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

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

Probate Division  
Case No.: 502014CP003698XXXXNBIH

Plaintiff,

v.

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

Defendants.

ORDER APPOINTING DIANA LEWIS AS GUARDIAN AD LITEM FOR  
ELIOT BERNSTEIN's CHILDREN, JO.B.; JA. B.; and D.B.

THIS CAUSE came before the Court at an evidentiary hearing held on February 25, 2016,  
on Successor Trustee's Motion for Appointment of a Guardian Ad Litem to Represent the Interests  
of Eliot Bernstein's Children etc. (the "Motion"). Having considered the Motion and the arguments  
of the parties, taken judicial notice of the matters requested in the Motion, and being otherwise duly  
advised in the premises, the Court entered an Order in this matter, and a companion order in Case  
No. 502014CP002815XXXXNB, granting motions to appoint a guardian ad litem for Eliot's

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children, Jo.B., Ja.B. and D.B., and setting forth a protocol for selecting a guardian ad litem. Having received the parties' notices contemplated under the companion order, the Court hereby appoints a guardian ad litem as follows:

1. Diana Lewis is hereby appointed as the guardian ad litem for Jo.B., Ja.B. and D.B. in this case, with sole and exclusive authority to represent their interests in this case. The guardian ad litem shall be entitled to petition the Court for reasonable compensation for his/her services, to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by the Jo.B., Ja.B. and D.B. from the Shirley Bernstein Trust u/a/d May 20, 2008, as amended, the Simon Bernstein Trust, and/or the Estates of Simon or Shirley Bernstein.

2. The guardian ad litem shall file an acceptance of appointment with this Court, with a copy to the parties listed at the end of this Order, within 5 business of the date of this Order; otherwise, the parties shall notify the Court by letter that the appointment has not been accepted, in which case the Court will either appoint an alternate guardian ad litem without further hearing or hold an additional hearing to select an alternate guardian ad litem.

3. The guardian ad litem shall have sufficient time after his/her acceptance of this appointment to within which to prepare necessary court filings and prepare for mediation as ordered by the Court at a hearing held on March 7, in the related case of Estate of Simon Bernstein.

4. Trustee and the guardian ad litem shall confer in good faith regarding a resolution of this matter and/or a time frame within which to try any unresolved issues.

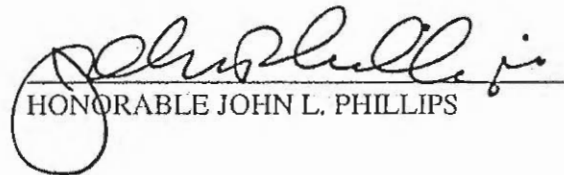
5. Pursuant to the Order dated March 1, 2016, the Guardian Ad Litem will have full power and autonomy to represent the interests of the children of Eliot Bernstein, subject to the jurisdiction and review of this Court. The Guardian Ad Litem will be entitled to petition the Court

for an award of attorneys' fees to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by Ja.B., Jo.B, and/or D.B.

6. To protect the integrity and independence of the guardian, Eliot Bernstein and all persons acting in concert with him: (a) shall not contact, email or otherwise communicate with the Guardian Ad Litem except at the request of the Guardian Ad Litem; and (b) shall not in any way threaten or harass the guardian. This Court alone shall supervise the guardian. Any violation of this order may subject the violator to severe sanctions for contempt of court. The Court will use the full measure of its coercive powers to ensure compliance with this Order.

7. The guardian ad litem shall notify this Court and Trustee of any actions taken by Eliot and/or Candice Bernstein which interfere with the guardian ad litem's duties hereunder.

DONE and ORDERED in Chambers, North County Courthouse on 4-4, 2016.

  
HONORABLE JOHN L. PHILLIPS

cc: Attached service list

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

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STATE OF FLORIDA • PALM BEACH COUNTY

I hereby certify that the  
foregoing is a true copy  
of the record in my office.

THIS 18 DAY OF May 2016

SHARON R. BOCK  
CLERK & COMPTROLLER

By *Victoria Ranger*  
DEPUTY CLERK



EXHIBIT 3

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

PROBATE DIVISION

CASE NO.: 502014CP002815XXXXNB (IH)

OPPENHEIMER TRUST COMPANY  
OF DELAWARE, in its capacity as  
Resigned Trustee of the Simon Bernstein  
Irrevocable Trusts created for the benefit  
of Joshua, Jake and Daniel Bernstein,

Petitioner,

vs.

ELIOT AND CANDICE BERNSTEIN,  
in their capacity as parents and natural  
guardians of JOSHUA, JAKE AND  
DANIEL BERNSTEIN, minors,

Respondents.

**ORDER APPOINTING GUARDIAN AD LITEM FOR MINORS,**  
**JOSHUA, JAKE AND DANIEL BERNSTEIN**

THIS CAUSE came before the Court at an evidentiary hearing held on February 25, 2016 upon the *Omnibus Motion (I) To Appoint A Guardian Ad Litem For The Minor Beneficiaries Of The "Grandchildren Trusts;" (II) To Hold Eliot And Candice Bernstein In Contempt Of Court For Their Continued Violation Of A Court Order And Repeated Statements Assaulting The Dignity Of The Court; And (III) To Establish A Schedule And Protocol For Accounting And Turnover Proceedings* (the "Motion") filed by Petitioner, Oppenheimer Trust Company Of Delaware ("Oppenheimer"), in its capacity as the resigned trustee of three Irrevocable Trusts settled by Simon Bernstein on September 7, 2006 for the benefit of his grandchildren, minors, Joshua, Jake and Daniel Bernstein (the "Grandchildren Trusts"). Having considered the Motion

and the arguments of the parties, taken judicial notice of the matters requested in the Motion, and being otherwise duly advised in the premises, the Court rules as follows:

1. The sole beneficiaries of the Grandchildren Trusts, and the only real parties in interest in this litigation (other than Oppenheimer), are Joshua, Jake and Daniel Bernstein (the “Minor Beneficiaries”). Neither Eliot nor Candice Bernstein (the “Bernsteins”) were sued in their individual capacities by Oppenheimer, nor have they moved for, or been granted, permission to intervene in their individual capacities. They have been afforded standing in these proceedings, to date, solely as the parents and natural guardians of the Minor Beneficiaries.

2. The Bernsteins have been shown to have multiple conflicts of interest with the Minor Beneficiaries. For example, in their pleadings, they repeatedly allege that the trusts created for the Minor Beneficiaries’ benefit are fraudulent and that they, and not their children, are the true beneficiaries. *Counter-Complaint*, ¶¶ 44-50, 52-60, 65, 109-110, 186 and 253; *Objection to Oppenheimer Accountings*, pp. 1 and 20. In addition, the Bernsteins insist that their overarching goal in this litigation “is to bring about a change in the legal system in efforts to root out systemic corruption at the highest levels by a rogue group of criminals disguised as attorneys at law, judges, politicians and more.” *Counter-Complaint*, ¶ 212. No reasonable inference can be drawn that the Minor Beneficiaries have a similar interest or agenda, or that pursuing such an agenda at the risk of dissipating their own inheritance is in their best interest.

3. Eliot Bernstein also has a history of vexatious litigation and public disrespect for and disobedience to the judicial system and its officers, as detailed in Oppenheimer’s Motion. Eliot Bernstein was adjudicated a vexatious litigant by the United States District Court for the Southern District of New York and enjoined from filing further specified claims in any court without its prior permission. Yet, Eliot Bernstein asserted those enjoined claims in his Counter-

Complaint in apparent violation of the injunction. The Bernsteins are in continued violation of a May 4, 2015 Order entered by Judge Martin Colin, which required compliance over nine months ago, and in recent filings with Florida appellate courts, the Bernsteins insist that all orders entered in this case “are void as a matter of law, and are of no legal force and effect.” *Petition for All Writs* (dated January 29, 2016), ¶ 101. Further, the Bernsteins have repeatedly alleged that multiple judges have committed fraud in their official capacities in these proceedings and that all Florida judges have conflicts of interest which prohibit them from presiding over these proceedings. *Id.*, ¶ 106-107. All of the above, and certainly in combination, render the Bernsteins inappropriate and inadequate representatives for the Minor Beneficiaries in this litigation.

4. For the above reasons, the guardian *ad litem* appointed in Case No.: 502014CP003698XXXXNB shall be deemed appointed simultaneously as the guardian *ad litem* for the Minor Beneficiaries in this case, with sole and exclusive authority to represent the Minor Beneficiaries’ interests in this case. The guardian *ad litem* shall be entitled to petition for reasonable compensation for his/her services, to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by the Minor Beneficiaries from the Shirley Bernstein Trust u/a/d May 20, 2008, as amended, the Simon Bernstein Trust, and/or the Estates of Simon or Shirley Bernstein.

5. The Answer and Counter-Complaint filed by Eliot and Candice Bernstein (which they purport to file (i) “Individually, PRO SE;” (ii) “as the Natural Guardians of [the Minor Beneficiaries];” (iii) “as Guardians of the members of Bernstein Family Realty, LLC;” and (iii) “as beneficiaries of [sixteen (16) Trusts, two (2) Estates, and multiple] Corporate Entities set up by Simon and Shirley Bernstein”), and the “Objection to Final Accounting; Petition for Formal, Detailed Audited and Forensic Accounting and Document Production” (the “Objection”) filed by

Oppenheimer v. Bernstein  
Case No. 502014CP002815XXXXSB (IH)

Eliot and Candice Bernstein, "individually and on behalf of [their] minor children, who are alleged qualified beneficiaries of Settlor's Estate and Trusts," are hereby stricken.

6. The guardian *ad litem* shall have 45 days from his/her appointment within which to file a response to Oppenheimer's Petition and objections, if any, to Oppenheimer's accountings.

7. Oppenheimer and the guardian *ad litem* shall confer in good faith regarding a resolution of this matter and/or a timeframe within which to try any unresolved issues.

8. Neither Eliot nor Candice Bernstein shall take any action which interferes with the guardian *ad litem*'s duties.

9. ~~The pending Motion for Contempt as to~~  
Eliot and Candice Bernstein ~~are also held to be in contempt of court for their~~  
~~willful violation of Judge Martin Colin's May 4, 2015 Order. The Court withholds coercive~~  
~~sanctions based upon the appointment of a guardian *ad litem* and striking of the Bernsteins'~~  
~~pleadings, which renders the Bernsteins' compliance moot.~~

DONE AND ORDERED in Chambers, Palm Beach County, Florida on

3-1-, 2016.

Hon. John L. Phillips, Circuit Judge

Copies furnished to:

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Eliot and Candice Bernstein  
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Boca Raton, FL 33434

EXHIBIT 4

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

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

Probate Division  
Case No.: 502014CP003698XXXXNBIH

Plaintiff,

v.

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

Defendants.

**NOTICE OF FILING AND OF SERVING NOTICE OF ACCEPTANCE**

Plaintiff, Ted S. Bernstein (the "Trustee"), as Successor Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, hereby gives notice of filing the attached, *Notice of Acceptance of Appointment as Guardian Ad Litem for Jo.B., Ja.B., and D.B.* as requested by appointed Guardian Ad Litem, Diana Lewis.

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by: ☐ Facsimile and U.S. Mail; ☐ U.S. Mail; ☒ Email Electronic Transmission; ☐ FedEx; ☐ Hand Delivery this 7<sup>th</sup> day of April, 2016.

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*Attorneys for Ted S. Bernstein*

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



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

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

TED BERNSTEIN, as Trustee  
Of the Shirley Bernstein Trust Agreement  
Dated May 20, 2008, as amended.

Plaintiff,

v.

Probate Division  
Case No.:2014CP003698 (IH)

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

Defendants.

**NOTICE OF ACCEPTANCE OF APPOINTMENT AS GUARDIAN AD LITEM FOR  
Jo.B., Ja.B. AND D.B. IN THE ABOVE STYLED CASE**

COMES NOW Diana Lewis and notifies the court of her  
**acceptance** of appointment as Guardian *ad litem* for Eliot  
Bernstein's minor children, Jo.B., Ja.B. and D.B. pursuant to  
this court's order dated April 4, 2016, and the terms and  
conditions set forth therein.

Page Two

Case no.: 2014CP003698 (IH)

**CERTIFICATE OF SERVICE**

I CERTIFY that a true and correct copy of the foregoing has been furnished to the parties by E-mail Electronic Transmission on the attached Service List for Case No.: 2014CP003698 (IH) this 7<sup>th</sup> day of April, 2016.

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By: /s/ Diana Lewis  
Diana Lewis (Fla. Bar No. 351350)  
(Mediator No.:32461 R)

Page Three  
2014CP003698

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

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Eric Bernstein, Michael Bernstein

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her children, and as natural guardian for M.F.  
and C.F., Minors; and Max Friedstein  
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**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA**

OPPENHEIMER TRUST COMPANY OF  
DELAWARE, in its Capacity As Resigned  
Trustee of the Simon Bernstein Irrevocable Trusts  
Created for the Benefit of of Jo. B., Ja. B., and D.B.,  
Minors

Probate Division  
Case No.: 502014CP002815XXXXSB(IY)

Petitioner,

v.

ELIOT AND CANDICE BERNSTEIN, in their  
Capacity as Parents and Natural Guardians of Jo. B.,  
Ja. B., and D.B., Minors  
Respondents.

\_\_\_\_\_ /

**NOTICE OF FILING AND OF SERVING NOTICE OF ACCEPTANCE**

Ted S. Bernstein (the "Trustee"), as Successor Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, hereby gives notice of filing the attached, *Notice of Acceptance of Appointment as Guardian Ad Litem for Jo.B., Ja.B., and D.B.* as requested by appointed Guardian Ad Litem, Diana Lewis.

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by: ☐ Facsimile and U.S. Mail; ☐ U.S. Mail; ☒ Email Electronic Transmission; ☐ FedEx; ☐ Hand Delivery this 7<sup>th</sup> day of April, 2016.

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

**SERVICE LIST**

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Candice Bernstein,  
as Parents and Natural Guardians of  
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*Counsel for Petitioner*

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

OPPENHEIMER TRUST COMPANY OF DELAWARE,  
in its capacity as Resigned Trustee of  
the Simon Bernstein Irrevocable Trusts  
created for the benefit of Joshua, Jake  
and Daniel Bernstein,

Petitioner,

vs.

Probate Division  
Case No.: 2014CP002815 (IH)

ELIOT AND CANDICE BERNSTEIN,  
in their capacity as parents and  
natural guardians of JOSHUA, JAKE  
AND DANIEL BERNSTEIN, minors,

Respondents.

---

**NOTICE OF ACCEPTANCE OF APPOINTMENT AS GUARDIAN AD LITEM FOR  
JOSHUA, JAKE AND DANIEL BERNSTEIN IN THE ABOVE STYLED CASE**

COMES NOW Diana Lewis and notifies the court of her  
**acceptance** of appointment as Guardian *ad litem* for JOSHUA, JAKE  
and DANIEL BERNSTEIN (the "Minor Beneficiaries") pursuant to  
this court's order dated April 4, 2016.

**CERTIFICATE OF SERVICE**

I CERTIFY that a true and correct copy of the foregoing has  
been furnished to the parties by E-mail Electronic Transmission  
on the attached Service List for Case No.: 2014CP002815 (IH)  
this 7<sup>th</sup> day of April, 2016.

ADR & MEDIATIONS SERVICES, LLC  
Diana Lewis  
2765 Tecumseh Drive  
West Palm Beach, FL 33409  
(561) 758-3017 Telephone  
Email: [dzlewis@aol.com](mailto:dzlewis@aol.com)  
By: /s/ Diana Lewis  
(Fla. Bar No. 351350)



Page Two

**SERVICE LIST Case No.: 2014CP002815**

Steven A. Lessne  
Gunster, Yoakley & Stuart, P.A.  
4855 Technology Way, Suite 630  
Boca Raton, FL 33431

Eliot and Candice Bernstein  
2753 N.W. 34<sup>th</sup> Street  
Boca Raton, FL 33434

***From the Desk of :***

***Jacob Bernstein***

2753 NW 34th Street, Boca Raton, FL 33434

July 11, 2017

ADR & MEDIATIONS SERVICES, LLC

Diana Lewis

2765 Tecumseh Drive

West Palm Beach, FL 33409

(561) 758-3017 Telephone

dzlewis@aol.com

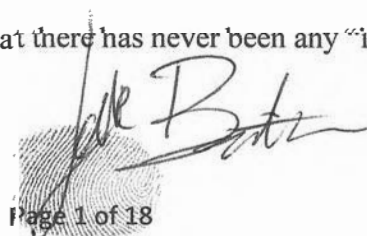
(Fla. Bar No. 351350)

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JACOB BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

Attention Diana Lewis, Esq.,

My name is Jacob Noah Archie Bernstein and it has come to my attention that you are an attorney and former Judge in Palm Beach County and Officer of the Court, allegedly continuing to act as Guardian Ad Litem for me since April 07, 2016 allegedly as a “minor child” of Eliot Ivan Bernstein and Candice Michelle Bernstein.

While I understand that there is likely major legal problems with the proceedings leading up to your Appointment and Acceptance as Guardian ad Litem on my behalf, I turned 18 on January 01, 2017 and have not been a “Minor” for over 6 months and yet you have failed to Discharge the Guardianship and knowingly continue to purport to act on my behalf as a minor and make Court appearances for me and tender “Consents” on my behalf which were never provided to you and you have done this at all times knowing that there has never been any “incapacity” or



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**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JACOB BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

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“competency” Hearing since I turned 18 and thus no basis in law or fact to continue to act on my behalf after my 18th Birthday.

I now make this voluntary request for you to Cease and Desist all actions allegedly as my Guardian Ad Litem, turn over all records, discovery and information obtained in the course of your actions as my alleged Guardian and correct any and all frauds in all Courts or elsewhere impacted by this illegal Guardianship, including but not limited to, the Estate and Trust cases of my deceased grandparents, Simon and Shirley Bernstein.

Since I have been over the age of 18 years since January 01, 2017, you, Ted Bernstein, Alan Rose, Brian O’Connell and Steven Lessne have at all times had actual knowledge of these facts and the requirement to Discharge the Guardianship or conduct a proper Hearing with Due Process Notice and thus have continued to illegally use this Guardianship as a predatory weapon against myself and my family to interfere in proper rights of Inheritance and to cover up frauds in these cases.

Further, all of you actually know and have known that no “competency hearing” was ever held against me in over 6 months since turning the age of majority of 18, nor have I ever been provided ANY Due Process Notice or been served to appear in any proceeding or have an Opportunity to be heard at any of the relevant proceedings to date.

What is even more egregious about your conduct as a former Judge and done as an “Officer of the Court” is that you not only have continued in your actions as alleged Guardian in this illegal Guardianship despite being specifically advised that I was now over the age of 18 years but have also even gone as far as to give alleged “Consents” on my behalf to various actions by Ted

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JACOB BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

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Bernstein and Alan Rose and entered into "Settlements" on my behalf again giving "Consent" all without my knowledge, without my Consent and without any Notice of Opportunity to be heard provided to myself. In fact, as you actually know, you and I have never even spoken to one another.

Like my older brother Joshua who was 18 even before the Guardian Ad Litem was created and accepted by you, I have come to learn that under Federal law under Title 18 USC Sec.242 it is a Federal Criminal Offense for Civil Rights Violations for 2 or more persons to conspire to Violate my US Constitutional rights, which have been violated by your actions in this case together in common with Attorney Alan Rose, Fiduciary Ted Bernstein and with the compliance and acquiescence of attorney Brian O'Connell as current Personal Representative of my grandfather Simon's Estate.

Please take notice that I have copied the US Dept of Justice Civil Rights Division head Tom Wheeler and offices of the FBI and US Attorney on this request.

I have further learned the following from the US Dept. of Justice Website:

"Section 242 of Title 18 makes it a crime for a person acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States.

For the purpose of Section 242, acts under "color of law" **include acts not only done by federal, state, or local officials within the their lawful authority, but also acts done beyond the bounds of that official's lawful authority, if the acts are done while the official is purporting to or pretending to act in the performance of his/her official duties. Persons acting under color of law within the meaning of this statute include police officers, prisons guards and**

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JACOB BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

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other law enforcement officials, as well as judges, care providers in public health facilities, and others who are acting as public officials. It is not necessary that the crime be motivated by animus toward the race, color, religion, sex, handicap, familial status or national origin of the victim.

The offense is punishable by a range of imprisonment up to a life term, or the death penalty, depending upon the circumstances of the crime, and the resulting injury, if any.” See,

<https://www.justice.gov/crt/deprivation-rights-under-color-law>.

I have never spoken with you, met with you, granted you any authority over me and in any way enabled or allowed your acting in any capacity and in any matter on my behalf as an adult. This is a Cease and Desist demand to stop all further illegal acts on my behalf.

I am unaware of any Guardian Ad Litem Orders entered in the Simon and Shirley Probate Cases ( Case # 502012CP004391XXXXSB – Simon Bernstein Estate and Case # 502011CP000653XXXXSB – Shirley Bernstein Estate) giving you any guardianship powers over me to make any representations or take any actions on my behalf in those cases.

Ja.B. AND D.B. IN THE ABOVE STYLED CASE” **[emphasis added]**

The Shirley Bernstein Trust Order Appointing Guardianship is similarly limited to legal authority of the guardianship in that case only and only for MINOR CHILDREN.

The 2016 Florida Statutes - Title XLIII - DOMESTIC  
RELATIONS - Chapter 744 - GUARDIANSHIP  
744.521 Termination of guardianship.—**When a ward becomes sui juris** or is restored to capacity, when the guardian has been unable to locate the ward through diligent search, or, for a guardian

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JACOB BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

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of the property, when the property subject to the guardianship has been exhausted, the guardian shall file a final report and receive his or her discharge. A guardian of the person is discharged without further proceeding upon filing a certified copy of the ward's death certificate. The court may require proof of the removal of incapacity.

History.—s. 1, ch. 74-106; ss. 21, 26, ch. 75-222; s. 4, ch. 86-120; s. 89, ch. 89-96; s. 63, ch. 90-271; s. 1110, ch. 97-102.

Note.—Created from former s. 746.12.

"Minor Ward Reaches 18 Unless the minor is incapacitated, at the age of 18 he or she is no longer a minor and is deemed to be legally old enough to manage his or her own finances or property. The guardianship is terminated and the assets are distributed to the minor."

[https://umshare.miami.edu/web/wda/ethics/guardianship\\_rev1-07.pdf](https://umshare.miami.edu/web/wda/ethics/guardianship_rev1-07.pdf)

Therefore, due to your lack of legal authority over me despite any Court Orders gained through simulated legal process, I immediately request that you;

1. **CEASE AND DESIST** from any further representations of myself, Jacob Noah Archie Bernstein, in any proceedings, settlements or other matters involving me.
2. **NOTIFY** the Florida Courts and Correct all actions taken on my behalf since turning the age of majority on January 01, 2017, have been improper and illegal and cease and desist this KNOWINGLY, GROSS, WILLFUL, WANTON and RECKLESS criminal violation of your fiduciary duties as a Guardian Ad Litem .
3. **WITHDRAW** any and all Consent you have given in any matters relating to Jacob Bernstein.
4. **FILE** immediately within or without the final report the fact that I, Jacob Bernstein, turned the age of majority on Jan. 01, 2017 and that no legal adult guardianship proceedings were held giving you legal authority from such date to the present,

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JACOB BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

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discharge the Guardianship and turn over all records and properties regarding the guardianships as required.

5. **MAKE NO** further appearances in Court on my behalf or state in any pleadings consent on my behalf or take any any action whatsoever on my behalf claiming that you are a acting as Guardian Ad Litem for me.
6. **NOTIFY ALAN ROSE AND STEVEN LESSNE** to similarly take all actions to remove and strike all pleadings, orders, settlements, etc. in any court cases made on my behalf as a minor and correct any and all Court Orders and actions impacted by these defects and cease and desist any further acts on my behalf.
7. **NOTIFY ALL COURTS** affected by your actions since I turned the age of majority of 18 on Jan. 01, 2017.
8. **NOTIFY ALL COURTS** that you have made improper representations in pleadings and hearings in the Simon and Shirley Bernstein Estate and Trust cases and the Oppenheimer cases where you have never been granted a legal guardianship over me. The Courts to be notified and cases related to your actions that have been affected by the misconduct shall include but not be limited to,
  - a. The Florida Probate Court – HONORABLE Judge Rosemarie Scher, cases:
    - i. Case # 502012CP004391XXXXSB – Simon Bernstein Estate
    - ii. Case # 502015CP001162XXXXNB – Simon Bernstein Trust to Remove Ted Bernstein
      1. OLD CASE # Was Civil but Colin transferred to Probate ? 502014CA014637XXXXMB
    - iii. Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
    - iv. Case # 502014CP003698XXXXNB – Shirley Trust Construction
    - v. Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children

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- vi. Case # 502015CP002717XXXX Colin Closed and transferred to Coates Eliot Bernstein v. Simon Estate Case for Claims
  - vii. Case # 502014CA014637XXXXMB BERNSTEIN, ELIOT I VS BERNSTEIN, THEODORE S
  - viii. Case # 50-2010-CP-003128-XXXX-SB – Joshua Bernstein alleged 2010 Trust Case Colin
  - ix. Case # 50-2010-CP-003125-XXXX-SB – – Jacob Jake Bernstein alleged 2010 Trust Case Colin
  - x. Case # 50-2010-CP-003123-XXXX-SB– Daniel Danny Bernstein alleged 2010 Trust Case Colin
- b. The Florida 15th Judicial Civil Circuit Court and HONORABLE JUDGE Cymonie Rowe, case:
- i. Case # 502012CA013933XXXXMB William E. Stansbury v. Ted S. Bernstein et al. -
- c. The Florida 4<sup>th</sup> District Court of Appeals – Note – Do not submit any information to Chief Judge Corey Ciklin who is conflicted in these matters already as being a former law partner of Personal Representative of the Estate of Simon Bernstein, Brian O’Connell’s law firm, Ciklin Lubitz Martens & O’Connell, where Judge Ciklin already has Sua Sponte removed himself from proceedings he was involved with in these matters and removed his name from several prior issued Orders at that court.
- i. Case 15-3849 ELIOT BERNSTEIN ESTATE OF SIMON BERNSTEIN
  - ii. Case 16-1449 ELIOT IVAN BERNSTEIN OPPENHEIMER TRUST CO. OF DELAWARE, ET AL.
  - iii. Case 16-1476 ELIOT IVAN BERNSTEIN OPPENHEIMER TRUST CO. OF DELAWARE, ET AL.
  - iv. Case 16-2249 ELIOT IVAN BERNSTEIN OPPENHEIMER TRUST CO. OF DELAWARE, ET AL.
  - v. Case 16-0222 ELIOT IVAN BERNSTEIN TED BERNSTEIN, AS TRUSTEE, ET AL.
  - vi. Case 16-1478 ELIOT IVAN BERNSTEIN TED BERNSTEIN, AS TRUSTEE, ETC., ET AL.



**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JACOB BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

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- vii. Case 16-3314 ELIOT IVAN BERNSTEIN TED BERNSTEIN, AS TRUSTEE, ETC., ET AL.
- viii. Case 16-0064 ELIOT IVAN BERNSTEIN TED BERNSTEIN, AS TRUSTEE. ET AL.
- ix. Case 16-3162 ELIOT IVAN BERNSTEIN WILLIAM E. STANSBURY, et al.
- x. Case 16-4120 ELIOT IVAN BERNSTEIN WILLIAM E. STANSBURY, et al.

d. The Florida Supreme Court – Note – Do not submit any information to Chief Judge Jorge Labarga as he is conflicted with the Eliot Bernstein family in these matters.

i. SC16-29

e. The United States District Court Northern District of Illinois Case 1:13-cv-03643 Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 v. Heritage Union Life Insurance Company – HONORABLE Judge John Robert Blakey and Chief Judge Ruben Castillo.

i. Case # 13-cv-03643 - Federal Lawsuit in the US District Court of Eastern Illinois

f. United States Court of Appeals for the Seventh Circuit - Chief Judge Diane P. Wood in relation to the Lower Court Case 1:13-cv-03643 Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 v. Heritage Union Life Insurance Company.

i. Case No. 17-1461 APPEAL UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

9. **TURN OVER** all of your professional and individual insurance policies and bonding information to me as claims against you individually and professionally and your firm,

  
Page 8 of 18  
July 11, 2017

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JACOB BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

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will be forthcoming for the massive damages caused to me from your breaches of fiduciary duties and other misconduct. Your firm appears as follows and I believe it was set up specifically for liability purposes for these matters with my family, immediately prior to your acceptance of Guardian Ad Litem for me:

ADR & MEDIATIONS SERVICES, LLC  
Diana Lewis  
2765 Tecumseh Drive  
West Palm Beach, FL 33409  
(561) 758-3017 Telephone  
Email: [dzlewis@aol.com](mailto:dzlewis@aol.com)  
By: /s/ Diana Lewis  
(Fla. Bar No. 351350)

10. **TURN OVER** all records, documents, emails, faxes, information of any kind regarding me obtained by and during these illegal actions to my attention at my permanent address of, 2753 NW 34<sup>th</sup> Street, Boca Raton, FL 33434.

I have been notified that on repeated occasions over the past year my father and mother Eliot and Candice Bernstein have notified you directly of my Sui Juris status and you have refused to take any actions to end the improper Guardian Ad Litem and continue to make representations, agreements and settlements on my behalf and hopefully this notice will cause you to **IMMEDIATELY CEASE AND DESIST THIS ILLEGAL CONDUCT.**

I have also been made aware that my father and mother, Eliot and Candice Bernstein have notified state and federal authorities of your misconduct on my behalf, including but not limited to acts such as,

1. Dissolving various Trusts in my name set up by my grandparents,

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JACOB BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

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2. Dissolving Bernstein Family Realty, LLC, set up by my grandparents of which I am a 33% owner,
3. Making appearances in various court and legal proceedings illegally on my behalf,
4. Consenting to various legal agreements illegally on my behalf,
5. Consenting to various settlements illegally on my behalf.

I have learned that in Case # 502014CP003698XXXXNB – Shirley Bernstein Trust in the Fifteenth Judicial Probate Court you are acting under an alleged Trust created in my name that I was sued as a defendant under with my father, Eliot Bernstein, as Trustee and where I have never received formal notice of any such trust, nor do I believe my parents or any other party, including the courts have received, although I am a beneficiary allegedly under this trust. The Trust I am sued under is titled,

ELIOT BERNSTEIN, individually, as  
Trustee f/b/o D.B., Ja. B. and Jo. B. under  
the **Simon L. Bernstein Trust Dtd**  
**9/13/12, and on behalf of his minor**  
**children D.B., Ja. B. and Jo. B.**  
**[Emphasis added]**

Please provide a copy of the “**Simon L. Bernstein Trust Dtd 9/13/12**” and any subtrusts held thereunder in my name supposedly created on 9/13/12 the date of my grandfather’s death. If you are in possession of any such trust or subtrust OR ANY OTHER TRUST in my name, please instantly turn over all records regarding this legal entity I have been sued under and that you are acting illegally as a Guardian Ad Litem over my person in such legal action under such trust.

I have done preliminary research into your name online since learning of this predatory Guardian Ad Litem placed knowingly upon me as an adult and have learned that you are a FORMER

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JACOB BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

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Judge and no longer a Florida Registered Judge who has lost her judgeship to Jennifer Ticktin since on or about 2014<sup>1 2 3</sup> where I learned from the attached articles, "But Ticktin, a 35-year-old partner at Ticktin Law Group and a Boca Raton resident, says she targeted Lewis for a reason. She cited a 2013 Palm Beach County Bar poll in which Lewis ranked last among 34 circuit court judges in categories including knowledge and application of the law, impartiality and judicial demeanor. "I think that right now we have an issue with the incumbent judge," Ticktin said. "Last time she was given a second chance, and I don't think that she did well with that second chance. I think it's time for change." In noting your bar association number above I believe that as both a former judge and current registered attorney at law I need not educate you on your obligations to notify all tribunals, criminal and civil and all parties with any liabilities resulting from your and others you worked in conspire with actions, as required by both State and Federal - Civil, Criminal and Ethical Rules and Statutes.

That these Knowingly, Gross, Willful, Wanton and Reckless Acts, which appear as Financial Exploitation of an Adult through an ILLEGAL GUARDIAN AD LITEM FOR A MINOR and further appear part of a larger conspiracy against the rights of my father, my mother and my brothers are simultaneously being forwarded to state and federal criminal authorities to

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<sup>1</sup> "Ugly PBC judicial campaign pits Diana Lewis and Jessica Ticktin" By Jane Musgrave - Palm Beach Post Staff Writer

Updated: 12:41 p.m. Friday, August 08, 2014 | Posted: 7:00 a.m. Friday, August 08, 2014

<http://www.mypalmbeachpost.com/news/local-govt-politics/ugly-pbc-judicial-campaign-pits-diana-lewis-and-jessica-ticktin/NczV3oHgQuXksyXpl11Jdl>

<sup>2</sup> "Race for Palm Beach County Circuit Judge Group 14 seat is personal" July 19, 2014 | By Brittany Shammass, Sun Sentinel

[http://articles.sun-sentinel.com/2014-07-19/news/fl-election-palm-circuit-judges-14-20140719\\_1\\_lewis-incumbent-judge-ticktin-law-group](http://articles.sun-sentinel.com/2014-07-19/news/fl-election-palm-circuit-judges-14-20140719_1_lewis-incumbent-judge-ticktin-law-group)

<sup>3</sup> "Palm Beach Judge Diana Lewis Loses Judicial Seat to Challenger Raising Issues with Demeanor" Florida You Judge Wednesday, August 27th, 2014 at 5:26 pm by admin by Haydee Oropesa

<http://www.floridayoujudge.com/palm-beach-judge-diana-lewis-loses-judicial-seat-to-challenger-raising-issues-with-demeanor/>

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD  
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investigate and prosecute any prior and future criminal acts, so please **govern yourself**  
**accordingly** in any future actions you may take in any matters relating to my family and myself.

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD  
LITEM OF JACOB BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

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I authorize this Statement and Cease and Desist Request to be filed in any and all state and federal proceedings as relevant and necessary.

Sincerely,

X:   
Jacob Noah Archie Bernstein  
2753 NW 34th Street  
Boca Raton, FL 33434

Dated: 7-11-17

Witness:

X:   
Name: Joshua Bernstein  
2753 NW 34th Street  
Boca Raton, FL 33434

Dated: 7/11/17

EXHIBIT 1

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

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

Probate Division  
Case No.: 502014CP003698XXXXNB

Plaintiff,

v.

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

Defendants.

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


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

ORDERS AND ADJUDGES:



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

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

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

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

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

5. Second, Fla. Stat. 731.303(4) provides: "If the court determines that representation of the interest would otherwise be inadequate, the court may, at any time, appoint a guardian ad litem to represent the interests of ... a minor ..." <sup>1</sup> Based upon the evidence presented and the Court's observations at the trial in December 2015 and at the evidentiary hearing on February 25, 2016, and

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

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

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

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

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

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

participate in such discussions. To the extent the parties, including Eliot Bernstein, are unable to

agree on a guardian ad litem, <sup>each of the parties shall submit a list of three</sup> upon notice from the Trustee's counsel the Court shall randomly

<sup>names of potential Guardian Ad Litem's, each of whom has agreed to</sup> appoint a guardian ad litem for Ja.B., Jo.B. and D.B. or schedule a further hearing to appoint a

<sup>accept the appointment if selected. These lists shall be filed</sup> suitable Guardian Ad Litem. <sup>with the Clerk with courtesy copy to the undersigned, no later than 10 days from this date.</sup>

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

10. To protect the integrity and independence of the guardian, Eliot Bernstein and all persons acting in concert with him: (a) shall <sup>not</sup> ~~make no effort to~~ contact, email or otherwise communicate with the Guardian Ad Litem except at the request of the Guardian Ad Litem; (b) shall ~~make no statement of any kind about the guardian, nor post information about the guardian on the internet in any fashion; and (c) shall not in any way threaten or harass the guardian. This Court alone shall supervise the guardian, and all information concerning this guardianship shall be treated as private and confidential.~~ Any violation of this order may subject the violator to severe sanctions for contempt of court. The Court will use the full measure of its coercive powers to ensure compliance with this Order.

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

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

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

  
HONORABLE JOHN L. PHILLIPS

cc: Attached service list

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

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
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(561) 886-7628 - Cell  
(561) 245-8644 - Facsimile  
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Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

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

Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a minor  
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JOHN L. PHILLIPS

Case: 1:13-cv-03643 Document #: 297-28 Filed: 11/09/17 Page 21 of 44 PageID #:15791

CIRCUIT JUDGE  
NORTH COUNTY COURTHOUSE

3188 PGA BOULEVARD

PALM BEACH GARDENS, FL 33410



Eliot Bernstein and Candice Bernstein  
2753 NW 34<sup>th</sup> Street  
Boca Raton, FL 33434





EXHIBIT 2



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

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

Probate Division  
Case No.: 502014CP003698XXXXNBIH

Plaintiff,

v.

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

Defendants.

ORDER APPOINTING DIANA LEWIS AS GUARDIAN AD LITEM FOR  
ELIOT BERNSTEIN's CHILDREN, JO.B.; JA. B.; and D.B.

THIS CAUSE came before the Court at an evidentiary hearing held on February 25, 2016,  
on Successor Trustee's Motion for Appointment of a Guardian Ad Litem to Represent the Interests  
of Eliot Bernstein's Children etc. (the "Motion"). Having considered the Motion and the arguments  
of the parties, taken judicial notice of the matters requested in the Motion, and being otherwise duly  
advised in the premises, the Court entered an Order in this matter, and a companion order in Case  
No. 502014CP002815XXXXNB, granting motions to appoint a guardian ad litem for Eliot's

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children, Jo.B., Ja.B. and D.B., and setting forth a protocol for selecting a guardian ad litem. Having received the parties' notices contemplated under the companion order, the Court hereby appoints a guardian ad litem as follows:

1. Diana Lewis is hereby appointed as the guardian ad litem for Jo.B., Ja.B. and D.B. in this case, with sole and exclusive authority to represent their interests in this case. The guardian ad litem shall be entitled to petition the Court for reasonable compensation for his/her services, to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by the Jo.B., Ja.B. and D.B. from the Shirley Bernstein Trust u/a/d May 20, 2008, as amended, the Simon Bernstein Trust, and/or the Estates of Simon or Shirley Bernstein.

2. The guardian ad litem shall file an acceptance of appointment with this Court, with a copy to the parties listed at the end of this Order, within 5 business of the date of this Order; otherwise, the parties shall notify the Court by letter that the appointment has not been accepted, in which case the Court will either appoint an alternate guardian ad litem without further hearing or hold an additional hearing to select an alternate guardian ad litem.

3. The guardian ad litem shall have sufficient time after his/her acceptance of this appointment to within which to prepare necessary court filings and prepare for mediation as ordered by the Court at a hearing held on March 7, in the related case of Estate of Simon Bernstein.

4. Trustee and the guardian ad litem shall confer in good faith regarding a resolution of this matter and/or a time frame within which to try any unresolved issues.

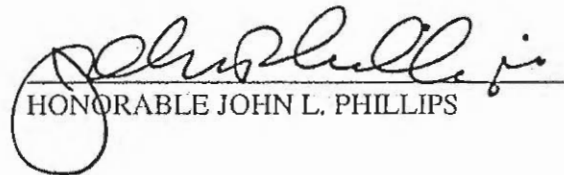
5. Pursuant to the Order dated March 1, 2016, the Guardian Ad Litem will have full power and autonomy to represent the interests of the children of Eliot Bernstein, subject to the jurisdiction and review of this Court. The Guardian Ad Litem will be entitled to petition the Court

for an award of attorneys' fees to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by Ja.B., Jo.B, and/or D.B.

6. To protect the integrity and independence of the guardian, Eliot Bernstein and all persons acting in concert with him: (a) shall not contact, email or otherwise communicate with the Guardian Ad Litem except at the request of the Guardian Ad Litem; and (b) shall not in any way threaten or harass the guardian. This Court alone shall supervise the guardian. Any violation of this order may subject the violator to severe sanctions for contempt of court. The Court will use the full measure of its coercive powers to ensure compliance with this Order.

7. The guardian ad litem shall notify this Court and Trustee of any actions taken by Eliot and/or Candice Bernstein which interfere with the guardian ad litem's duties hereunder.

DONE and ORDERED in Chambers, North County Courthouse on 4.4., 2016.

  
HONORABLE JOHN L. PHILLIPS

cc: Attached service list

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

Eliot Bernstein and Candice Bernstein,  
as Parents of  
D.B., Ja. B. and Jo. B, Minors  
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Eric Bernstein, Michael Bernstein.

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her children, and as natural guardian for M.F.  
and C.F., Minors; and Max Friedstein  
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[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

STATE OF FLORIDA • PALM BEACH COUNTY  
I hereby certify that the  
foregoing is a true copy  
of the record in my office.  
THIS 18 DAY OF May, 2016  
SHARON R. BOCK  
CLERK & COMPTROLLER  
By Victoria Ranger  
DEPUTY CLERK

EXHIBIT 3

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

PROBATE DIVISION

CASE NO.: 502014CP002815XXXXNB (IH)

OPPENHEIMER TRUST COMPANY  
OF DELAWARE, in its capacity as  
Resigned Trustee of the Simon Bernstein  
Irrevocable Trusts created for the benefit  
of Joshua, Jake and Daniel Bernstein,

Petitioner,

vs.

ELIOT AND CANDICE BERNSTEIN,  
in their capacity as parents and natural  
guardians of JOSHUA, JAKE AND  
DANIEL BERNSTEIN, minors,

Respondents.

**ORDER APPOINTING GUARDIAN AD LITEM FOR MINORS,  
JOSHUA, JAKE AND DANIEL BERNSTEIN**

THIS CAUSE came before the Court at an evidentiary hearing held on February 25, 2016 upon the *Omnibus Motion (I) To Appoint A Guardian Ad Litem For The Minor Beneficiaries Of The "Grandchildren Trusts;" (II) To Hold Eliot And Candice Bernstein In Contempt Of Court For Their Continued Violation Of A Court Order And Repeated Statements Assaulting The Dignity Of The Court; And (III) To Establish A Schedule And Protocol For Accounting And Turnover Proceedings* (the "Motion") filed by Petitioner, Oppenheimer Trust Company Of Delaware ("Oppenheimer"), in its capacity as the resigned trustee of three Irrevocable Trusts settled by Simon Bernstein on September 7, 2006 for the benefit of his grandchildren, minors, Joshua, Jake and Daniel Bernstein (the "Grandchildren Trusts"). Having considered the Motion

and the arguments of the parties, taken judicial notice of the matters requested in the Motion, and being otherwise duly advised in the premises, the Court rules as follows:

1. The sole beneficiaries of the Grandchildren Trusts, and the only real parties in interest in this litigation (other than Oppenheimer), are Joshua, Jake and Daniel Bernstein (the “Minor Beneficiaries”). Neither Eliot nor Candice Bernstein (the “Bernsteins”) were sued in their individual capacities by Oppenheimer, nor have they moved for, or been granted, permission to intervene in their individual capacities. They have been afforded standing in these proceedings, to date, solely as the parents and natural guardians of the Minor Beneficiaries.

2. The Bernsteins have been shown to have multiple conflicts of interest with the Minor Beneficiaries. For example, in their pleadings, they repeatedly allege that the trusts created for the Minor Beneficiaries’ benefit are fraudulent and that they, and not their children, are the true beneficiaries. *Counter-Complaint*, ¶¶ 44-50, 52-60, 65, 109-110, 186 and 253; *Objection to Oppenheimer Accountings*, pp. 1 and 20. In addition, the Bernsteins insist that their overarching goal in this litigation “is to bring about a change in the legal system in efforts to root out systemic corruption at the highest levels by a rogue group of criminals disguised as attorneys at law, judges, politicians and more.” *Counter-Complaint*, ¶ 212. No reasonable inference can be drawn that the Minor Beneficiaries have a similar interest or agenda, or that pursuing such an agenda at the risk of dissipating their own inheritance is in their best interest.

3. Eliot Bernstein also has a history of vexatious litigation and public disrespect for and disobedience to the judicial system and its officers, as detailed in Oppenheimer’s Motion. Eliot Bernstein was adjudicated a vexatious litigant by the United States District Court for the Southern District of New York and enjoined from filing further specified claims in any court without its prior permission. Yet, Eliot Bernstein asserted those enjoined claims in his Counter-

Complaint in apparent violation of the injunction. The Bernsteins are in continued violation of a May 4, 2015 Order entered by Judge Martin Colin, which required compliance over nine months ago, and in recent filings with Florida appellate courts, the Bernsteins insist that all orders entered in this case “are void as a matter of law, and are of no legal force and effect.” *Petition for All Writs (dated January 29, 2016)*, ¶ 101. Further, the Bernsteins have repeatedly alleged that multiple judges have committed fraud in their official capacities in these proceedings and that all Florida judges have conflicts of interest which prohibit them from presiding over these proceedings. *Id.*, ¶ 106-107. All of the above, and certainly in combination, render the Bernsteins inappropriate and inadequate representatives for the Minor Beneficiaries in this litigation.

4. For the above reasons, the guardian *ad litem* appointed in Case No.: 502014CP003698XXXXNB shall be deemed appointed simultaneously as the guardian *ad litem* for the Minor Beneficiaries in this case, with sole and exclusive authority to represent the Minor Beneficiaries’ interests in this case. The guardian *ad litem* shall be entitled to petition for reasonable compensation for his/her services, to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by the Minor Beneficiaries from the Shirley Bernstein Trust u/a/d May 20, 2008, as amended, the Simon Bernstein Trust, and/or the Estates of Simon or Shirley Bernstein.

5. The Answer and Counter-Complaint filed by Eliot and Candice Bernstein (which they purport to file (i) “Individually, PRO SE;” (ii) “as the Natural Guardians of [the Minor Beneficiaries];” (iii) “as Guardians of the members of Bernstein Family Realty, LLC;” and (iii) “as beneficiaries of [sixteen (16) Trusts, two (2) Estates, and multiple] Corporate Entities set up by Simon and Shirley Bernstein”), and the “Objection to Final Accounting; Petition for Formal, Detailed Audited and Forensic Accounting and Document Production” (the “Objection”) filed by



Oppenheimer v. Bernstein  
Case No. 502014CP002815XXXXSB (IH)

Eliot and Candice Bernstein, "individually and on behalf of [their] minor children, who are alleged qualified beneficiaries of Settlor's Estate and Trusts," are hereby stricken.

6. The guardian *ad litem* shall have 45 days from his/her appointment within which to file a response to Oppenheimer's Petition and objections, if any, to Oppenheimer's accountings.

7. Oppenheimer and the guardian *ad litem* shall confer in good faith regarding a resolution of this matter and/or a timeframe within which to try any unresolved issues.

8. Neither Eliot nor Candice Bernstein shall take any action which interferes with the guardian *ad litem*'s duties.

9. <sup>The pending Motion for Contempt as to</sup> Eliot and Candice Bernstein ~~are also held to be in contempt of court for their~~  
<sup>is moot.</sup> willful violation of Judge Martin Colin's May 4, 2015 Order. <sup>^</sup> ~~The Court withholds coercive~~  
~~sanctions based upon the appointment of a guardian *ad litem* and striking of the Bernsteins'~~  
~~pleadings, which renders the Bernsteins' compliance moot.~~

DONE AND ORDERED in Chambers, Palm Beach County, Florida on

3-1-, 2016.

  
Hon. John L. Phillips, Circuit Judge

Copies furnished to:

Steven A. Lessne, Esq.  
Gunster, Yoakley & Stewart, P.A.  
4855 Technology Way, Suite 630  
Boca Raton, FL 33431

Eliot and Candice Bernstein  
2753 N.W. 34<sup>th</sup> Street  
Boca Raton, FL 33434

EXHIBIT 4

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

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

Probate Division  
Case No.: 502014CP003698XXXXNBIH

Plaintiff,

v.

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

Defendants.

**NOTICE OF FILING AND OF SERVING NOTICE OF ACCEPTANCE**

Plaintiff, Ted S. Bernstein (the "Trustee"), as Successor Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, hereby gives notice of filing the attached, *Notice of Acceptance of Appointment as Guardian Ad Litem for Jo.B., Ja.B., and D.B.* as requested by appointed Guardian Ad Litem, Diana Lewis.

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by: ☐ Facsimile and U.S. Mail; ☐ U.S. Mail; ☒ Email Electronic Transmission; ☐ FedEx; ☐ Hand Delivery this 7<sup>th</sup> day of April, 2016.

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*Attorneys for Ted S. Bernstein*

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

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

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

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

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

TED BERNSTEIN, as Trustee  
Of the Shirley Bernstein Trust Agreement  
Dated May 20, 2008, as amended.

Plaintiff,

v.

Probate Division  
Case No.:2014CP003698 (IH)

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

Defendants.

---

**NOTICE OF ACCEPTANCE OF APPOINTMENT AS GUARDIAN AD LITEM FOR  
Jo.B., Ja.B. AND D.B. IN THE ABOVE STYLED CASE**

COMES NOW Diana Lewis and notifies the court of her  
**acceptance** of appointment as Guardian *ad litem* for Eliot  
Bernstein's minor children, Jo.B., Ja.B. and D.B. pursuant to  
this court's order dated April 4, 2016, and the terms and  
conditions set forth therein.

Page Two

Case no.: 2014CP003698 (IH)

**CERTIFICATE OF SERVICE**

I CERTIFY that a true and correct copy of the foregoing has been furnished to the parties by E-mail Electronic Transmission on the attached Service List for Case No.: 2014CP003698 (IH) this 7<sup>th</sup> day of April, 2016.

ADR & MEDIATIONS SERVICES, LLC  
Diana Lewis  
2765 Tecumseh Drive  
West Palm Beach, FL 33409  
(561) 758-3017 Telephone  
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By: /s/ Diana Lewis  
Diana Lewis (Fla. Bar No. 351350)  
(Mediator No.:32461 R)

Page Three  
2014CP003698

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

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as Parents of  
D.B., Ja. B. and Jo. B, Minors  
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Eric Bernstein, Michael Bernstein

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and C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

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

OPPENHEIMER TRUST COMPANY OF  
DELAWARE, in its Capacity As Resigned  
Trustee of the Simon Bernstein Irrevocable Trusts  
Created for the Benefit of of Jo. B., Ja. B., and D.B.,  
Minors

Probate Division  
Case No.: 502014CP002815XXXXSB(IY)

Petitioner,

v.

ELIOT AND CANDICE BERNSTEIN, in their  
Capacity as Parents and Natural Guardians of Jo. B.,  
Ja. B., and D.B., Minors  
Respondents.

\_\_\_\_\_ /

**NOTICE OF FILING AND OF SERVING NOTICE OF ACCEPTANCE**

Ted S. Bernstein (the "Trustee"), as Successor Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, hereby gives notice of filing the attached, *Notice of Acceptance of Appointment as Guardian Ad Litem for Jo.B., Ja.B., and D.B.* as requested by appointed Guardian Ad Litem, Diana Lewis.

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by: ☐ Facsimile and U.S. Mail; ☐ U.S. Mail; ☒ Email Electronic Transmission; ☐ FedEx; ☐ Hand Delivery this 7<sup>th</sup> day of April, 2016.

MRACHEK, FITZGERALD, ROSE, KONOPKA,  
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By: /s/ Alan B. Rose  
Alan B. Rose (Fla. Bar No. 961825)

**SERVICE LIST**

Eliot Bernstein  
Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
2753 NW 34th Street  
Boca Raton, FL 33434  
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Konopka Thomas & Weiss, P.A.  
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*Counsel for Petitioner*

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

OPPENHEIMER TRUST COMPANY OF DELAWARE,  
in its capacity as Resigned Trustee of  
the Simon Bernstein Irrevocable Trusts  
created for the benefit of Joshua, Jake  
and Daniel Bernstein,

Petitioner,

vs.

Probate Division  
Case No.:2014CP002815 (IH)

ELIOT AND CANDICE BERNSTEIN,  
in their capacity as parents and  
natural guardians of JOSHUA, JAKE  
AND DANIEL BERNSTEIN, minors,

Respondents.

---

**NOTICE OF ACCEPTANCE OF APPOINTMENT AS GUARDIAN AD LITEM FOR  
JOSHUA, JAKE AND DANIEL BERNSTEIN IN THE ABOVE STYLED CASE**

COMES NOW Diana Lewis and notifies the court of her  
**acceptance** of appointment as Guardian *ad litem* for JOSHUA, JAKE  
and DANIEL BERNSTEIN (the "Minor Beneficiaries") pursuant to  
this court's order dated April 4, 2016.

**CERTIFICATE OF SERVICE**

I CERTIFY that a true and correct copy of the foregoing has  
been furnished to the parties by E-mail Electronic Transmission  
on the attached Service List for Case No.: 2014CP002815 (IH)  
this 7<sup>th</sup> day of April, 2016.

ADR & MEDIATIONS SERVICES, LLC  
Diana Lewis  
2765 Tecumseh Drive  
West Palm Beach, FL 33409  
(561) 758-3017 Telephone  
Email: [dzlewis@aol.com](mailto:dzlewis@aol.com)  
By: /s/ Diana Lewis  
(Fla. Bar No. 351350)

Page Two

**SERVICE LIST Case No.: 2014CP002815**

Steven A. Lessne  
Gunster, Yoakley & Stuart, P.A.  
4855 Technology Way, Suite 630  
Boca Raton, FL 33431

Eliot and Candice Bernstein  
2753 N.W. 34<sup>th</sup> Street  
Boca Raton, FL 33434

**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL 33401**

August 23, 2017

**CASE NO.: 4D17-1932**

L.T. No.: 502014CP003698XXXXNB

ELIOT IVAN BERNSTEIN

v. TED BERNSTEIN, AS TRUSTEE, ET AL.

---

Appellant / Petitioner(s)

Appellee / Respondent(s)

**BY ORDER OF THE COURT:**

ORDERED that on July 19, 2017, this court ordered appellant to show cause why sanctions should not be imposed. Having considered appellant's August 8 and August 18, 2017 partial responses and motions for extension of time to respond, we deny the request for extension of time in the August 18, 2017 motion (we granted a short extension requested in the August 8, 2017 motion) and determine that sanctions are appropriate. For the reasons set forth in the July 19, 2017 order to show cause, we now impose sanctions pursuant to *Johnson v. Bank of New York Mellon Trust Co.*, 136 So. 3d 507, 508 (Fla. 2014); *Lomax v. Taylor*, 149 So. 3d 1135, 1137 (Fla. 2014); *Riethmiller v. Riethmiller*, 133 So. 3d 926 (Fla. 2013). The Clerk of this Court is directed to no longer accept any paper filed by Eliot Ivan Bernstein unless the document has been reviewed and signed by a member in good standing of the Florida Bar who certifies that a good faith basis exists for each claim presented.

**Served:**

cc: Lorin Louis Mrachek  
Gary R. Shendell  
John P. Morrissey  
Alan Benjamin Rose  
Joielle A. Foglietta  
Ralph S. Janvey  
Albert Gortz  
Eliot Ivan Bernstein  
Theodore Stuart Bernstein  
James Dimon  
Neil Wolfson  
Cbiz Mhm, Llc  
Brian Moynihan  
Clerk Palm Beach

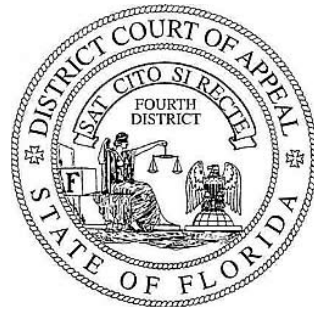
Brian M. O'Connell  
Steven A. Lessne  
Kenneth S. Pollock  
Peter Marshall Feaman  
Dennis McNamara  
Joseph M. Leccese  
Byrd "biff" F. Marshall, Jr.  
Lisa Friedstein  
Pamela Beth Simon  
William McCabe  
Stp Enterprises, Inc.  
Heritage Union Life Ins.  
Life Insurance Concepts

Mark R. Manceri  
Charles D. Rubin  
John Pankauski  
Donald R. Tescher  
Kimberly Moran  
Hunt Worth  
Robert Spallina  
Jill Iantoni  
Dennis G. Bedley  
Gerald Lewin  
Lindsay Baxley  
David Lanciotti  
T&s Registered Agents, Llc

ka

*Lonnn Weissblum*

**LONN WEISSBLUM, Clerk**  
**Fourth District Court of Appeal**



**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL 33401**

November 01, 2017

**CASE NO.: 4D17-1608**

L.T. No.: 2012CP004391

ELIOT IVAN BERNSTEIN

v. ESTATE OF SIMON L. BERNSTEIN

---

Appellant / Petitioner(s)

Appellee / Respondent(s)

**BY ORDER OF THE COURT:**

ORDERED that appellee's October 9, 2017 motion to dismiss is granted, and the above-styled case is dismissed for lack of prosecution.

GERBER, C.J., LEVINE and FORST, JJ., concur.

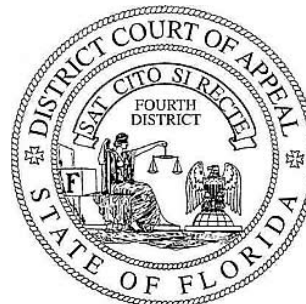
Served:

cc: Lorin Louis Mrachek	Brian M. O'Connell	Mark R. Manceri
Gary R. Shendell	Steven A. Lessne	John P. Morrissey
Kenneth S. Pollock	John Pankauski	Alan Benjamin Rose
Peter Marshall Feaman	Donald R. Tescher	Joielle A. Foglietta
Kimberly Moran	Albert Gortz	Robert Louis Spallina
Steven A. Lessne	Charles D. Rubin	Eliot Ivan Bernstein
Lisa Friedstein	Jill Iantoni	Theodore Stuart Bernstein
Theodore Stuart Bernstein	Pamela Beth Simon	Dennis McNamara
Dennis G. Bedley	James Dimon	William McCabe
Kimberly Moran	Gerald Lewin	Neil Wolfson
STP Enterprises, Inc.	Ralph S. Janvey	Lindsay Baxley
Cbiz Mhm, LLC	T&S Registered Agents	Joseph M. Leccese
Heritage Union Life Ins.	David Lanciotti	Brian Moynihan
Hunt Worth	Byrd "biff" F. Marshall, Jr.	J. I. , A Minor
C. F. , A Minor	M. F. , A Minor	Tescher & Spallina, P. A.
Pankauski Law Firm PLLC	Adr & Mediations Services	Clerk Palm Beach

kh



**LONN WEISSBLUM, Clerk**  
Fourth District Court of Appeal





IN THE FIFTEENTH JUDICIAL CIRCUIT COURT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
CASE NO. 50 2012-CP-4391 XXXXNB

IN RE: THE ESTATE OF:  
SIMON BERNSTEIN,

Deceased.

\_\_\_\_\_/

- - -

MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT  
HAD BEFORE THE HONORABLE ROSEMARIE SCHER

- - -

DATE: OCTOBER 19, 2017

TIME: 1:59 - 3:04 P.M.

APPEARING ON BEHALF OF CLAIMANT WILLIAM STANSBURY:

Peter Feaman, Esq.  
PETER M. FEAMAN, P.A.  
3695 Boynton Beach Boulevard, Suite 9  
Boynton Beach, Florida, 33436

APPEARING ON BEHALF OF TRUSTEE TED BERNSTEIN:

Alan B. Rose, Esq.  
PAGE, MRACHEK, FITZGERALD & ROSE, P.A.  
505 South Flagler Drive, Suite 600  
West Palm Beach, Florida 33401

APPEARING ON BEHALF OF PERSONAL REPRESENTATIVE OF  
THE ESTATE:

Brian M. O'Connell, Esq.  
Ashley Crispin Ackal, Esq.  
CIKLIN, LUBITZ & O'CONNELL  
515 North Flagler Drive, 20th Floor  
West Palm Beach, Florida 33401

ELLIOT BERNSTEIN, Pro Se

- - -

BE IT REMEMBERED, that the following testimony  
and proceedings were had in the above-entitled cause  
before the Honorable Rosemarie Scher, in Room 4, in  
the Palm Beach County Courthouse, City of Palm Beach  
Gardens, State of Florida, on Thursday, the 19th day  
of October, 2017, to wit:

- - -

I N D E X

WITNESSES:

BRIAN O'CONNELL                      DIRECT CROSS

By Ms. Crispin	9	
By Mr. Feaman		18
By Mr. Bernstein		24
By Mr. Rose		35

BRIAN O'CONNELL

By Mr. Bernstein	41	
------------------	----	--

JAMES STAMOS

By Ms. Crispin	52	
By Mr. Feaman		55
By Mr. Bernstein		59
By Mr. Rose		62

THE COURT: We have a court call appearance. Let's see. We have Mr. Stamos on court call but we'll call him when we're ready for him to testify.

Appearances for the record, please.

MS. CRISPIN: Your Honor, Ashley Crispin on behalf of Brian O'Connell, the Personal Representative of the Estate of Simon Bernstein.

THE COURT: Thank you.

MR. ROSE: Alan Rose, Your Honor, on behalf of Ted Bernstein as Trustee. The only thing I would -- there might have been another beneficiary that was going to be participating in court call. I'm not sure. They called this morning to see if they could. It was too late so they were checking with court call.

THE COURT: I didn't get a notification but I can call. We'll have to disconnect if it's -- well, generally speaking, we don't have the witnesses listed until we receive a court call but we can call and see if the beneficiary is there. I didn't get a notification though. we have someone else appearing. I'm not sure who that is.

MR. FEAMAN: Peter Feaman on behalf of William Stansbury, Claimant.

THE COURT: Thank you very much.

Mr. Elliot?

MR. BERNSTEIN: Elliot Bernstein, pro se. Your Honor, can I have my wife sit next to me? I have cough syncope and I faint and fall. She's been next to me 24 hours a day for three months. It's a medical condition that I've got.

THE COURT: Yes. That's fine.

MR. BERNSTEIN: It isn't fine.

THE COURT: No. I didn't mean to insinuate your condition was fine at all.

All right. Are we ready to proceed? This is Mr. O'Connell's motion.

MS. CRISPIN: Yes, Your Honor, we're ready to proceed.

MR. BERNSTEIN: Could I ask about your jurisdiction to hear this prior to the hearing or during the hearing?

THE COURT: No. I have jurisdiction. I will announce I have jurisdiction to hear this. So we'll continue. Thank you.

MS. CRISPIN: Your Honor, I'll call Mr.

O'Connell to the stand.

MR. FEAMAN: If it please the Court, I'd just like to put a statement on the record if I could before we actually begin the testimony.

THE COURT: Yes. Mr. O'Connell -- do you mind if he sits there?

MR. FEAMAN: No, not at all.

On behalf of Mr. Stansbury, Your Honor, we just -- even though you have already denied our motion, our amended motion to specially sequence this hearing behind another one, we just want to reiterate our position that this hearing should not go forward at this time until the propriety of Mr. Ted Bernstein's position as successor trustee be determined by the Court one way or the other. I'm mindful that Your Honor has already denied that request but I wanted to put it on the record so there wouldn't be any construction of waiver or anything like that.

THE COURT: Fair enough.

MR. BERNSTEIN: Your Honor, could I put something on the record? We were told that my two adult children were going to be notified of this hearing as necessary parties by Mr. Rose.

They haven't even been notified they're beneficiaries ever, but in court he said he was going to notify them and have them here and they're not here and they're necessary parties to a settlement that's happening that they don't even know about. They haven't been involved, haven't been summoned, nothing served.

THE COURT: If they're adult children, you can't represent them.

MR. BERNSTEIN: I'm not representing them.

THE COURT: No, but you are --

MR. BERNSTEIN: I'm saying they're necessary parties on the hearing.

THE COURT: Mr. Elliot, if you want to say that, that's fine, but you cannot speak on their behalf if they are an adult.

MR. BERNSTEIN: I'm not going to. I'm going to speak about them in the hearing, I think, but they're not here. And, by the way, there's one more point. There's one more point. They have counsel and they've been trying to enter this case now almost for over a year or so, but Mr. Rose is refusing their counsel to give them any of the dispositive

documents or trusts regarding that.

THE COURT: All right. That is so noted. Obviously it's a public court file. They can get the -- I don't have a notice of appearance but --

MR. BERNSTEIN: But she's asking for the full records.

THE COURT: That would be a different hearing. Okay. Are we ready to proceed?

MR. ROSE: Just for the record, I dispute what he just said. The only thing I would just say, just so you know where we stand, my client's position is he's in favor of the settlement. I think Mr. Feaman --

THE COURT: Thank you. I mean thank you for your position.

MR. ROSE: Mr. Feaman, I think his client advised us both on several occasions is taking no position with regard to settlement. The only person objecting is Elliot Bernstein.

THE COURT: Okay. Thank you.

All right. You may proceed.

THEREUPON,

BRIAN M. O'CONNELL, ESQ.,  
called as a witness in his behalf, having been first



duly sworn by the Court, in answer to questions propounded, was examined and testified as follows:

MS. CRISPIN: Your Honor, we're here, just so the court reporter has it, we're here on Mr. O'Connell's verified motion for approval of settlement agreement entered in the Illinois federal action. I have another copy for Mr. Bernstein if you need it.

Do you need it?

MR. BERNSTEIN: What is it?

MS. CRISPIN: Another copy of the motion set for today.

Your Honor, I'd also like to approach the witness. I've marked it as Exhibit 1 although it's already in the court file.

THE COURT: Sure. And I have a copy. Thank you.

#### DIRECT EXAMINATION

BY MS. CRISPIN:

Q Mr. O'Connell, please state your name and your position in this matter.

A Brian O'Connell, and I'm the personal representative of the Estate of Simon Bernstein.

Q And for how long have you been serving?

A At this point since 2014, June of 2014, so

a little over three years, almost three and a half years.

Q And you're currently aware of a pending litigation entitled Simon Bernstein Irrevocable Insurance Trust, et al, vs. Heritage Union Life Insurance Company, correct?

A I'm familiar with that litigation, yes.

Q Okay. For how long have you been familiar with the litigation?

A Pretty much since my appointment.

Q So since June or so of 2014?

A Yes.

Q And has the estate entered an appearance in that litigation?

A It has.

Q And you have counsel in your role as personal representative?

A I do.

Q And who is that?

A James Stamos.

Q And has that always been the counsel that's represented the estate and thus you?

A To my knowledge, yes.

Q And can you just give me generally what the nature of that litigation is?

A That was a dispute over who was the beneficiary of an insurance policy, whether it would be a trust, a free-standing trust that was alleged to be the beneficiary by some of the Bernstein family members, or the default being the estate, probate estate being the beneficiary.

Q Okay. And in the litigation, if you can explain, really there was competing positions by the insurance trust and by the estate?

A Oh, absolutely.

Q And tell me what the position of the insurance trust is to the best of your knowledge as a litigant.

A Well, the trust through the trustee was claiming a hundred percent of the policy proceeds. The estate through myself was claiming we were entitled, the estate was entitled to a hundred percent of the policy proceeds.

Q And to the best of your knowledge, who is the trustee of the irrevocable insurance trust as part of that litigation?

A Ted Bernstein.

Q And other than you, has there ever been a prior fiduciary that appeared in that proceeding on behalf of the estate?

A Ben Brown who was a curator was allowed to intervene in that litigation for some period of time. I don't think it was very long.

Q Now, did there come a time when you had made the decision to explore settlement in the case?

A Correct.

Q And when was that?

A It actually started probably six, eight months ago, the beginnings of discussions, to see if some resolutions could be made. Prior to that, there might have been some isolated talk but nothing real concrete.

Q And can you take a look at what I've marked as Exhibit 1?

A Yes.

Q And is this your motion for approval of the settlement agreement?

A It is.

Q And have you signed it and read the facts that are alleged in the motion?

A I have.

Q And do you believe that they're true to the best of your knowledge?

A I do.

Q Okay. One of the attachments to the

motion is the actual proposed settlement agreement?

A Correct.

Q And you signed that agreement, correct?

A I did.

Q And is it contingent on this Court's approval?

A It is.

Q And as part of your motion, have you asked the Court to go ahead and approve you entering into the settlement agreement?

A I am seeking the Court's approval, yes.

Q Why?

A That's a contingency under the agreement.

Q And why do you believe that the settlement agreement should be approved by this Court?

A Because it's in the best interest of the estate given the nature, extent of the litigation, the cost of litigation, the uncertainties of litigation, that the matter be settled on this basis.

Q Okay. I'm asking you not to draw on attorney-client privilege or work product here because the agreement has not yet been approved, but can you explain at least for the Court monetarily, if you are were looking at this agreement, how it

works out in part an analysis about why this settlement agreement is in the best interest of the estate and its beneficiaries?

A Sure. The way the litigation is posited right now, it's an all-or-nothing situation, as in either the estate gets all of the policy proceeds, about a million, seven hundred thousand dollars, or none of the proceeds. There's no middle ground. There's no way you approach 50 percent or something of that nature.

So when you consider that scenario and you also have to look at the fact that there's cost of litigation, meaning out-of-pocket costs, attorney's fees that would have to be expended, and based on more recent rulings, the fact that Mr. Stansbury no longer has to fund the litigation, that combination of factors along with a summary judgment having been denied, we moved for summary judgment in our favor and that was denied, put the matter into the trial mode, it would have been frankly tried the end of this summer.

So that put it to me in a settlement posture, see what the best that could be done in the way of a settlement, especially considering the fact that we might have had to switch this to a

contingency fee situation which would have, if we were victorious, eaten into the proceeds; of course, if we were successful, we would have had a benefit of not expending any further fees. But it's sort of drawing on that combination of factors. And not that it's an exact midpoint. The settlement was about \$700,000, is the dollar amount, but when you look at it from that standpoint with an all-or-nothing scenario, that was sort of the driver in my thinking at least as to why the settlement was appropriate at this particular time.

Q Okay. Let's talk particularly about if we were operating under an hourly fee arrangement just so we can talk monetarily about how the settlement really works monetarily. So if we were using an hourly fee situation, have you done the, at least rough math to try to determine sort of what this settlement really is worth to the estate?

A Roughly.

Q Okay. And can you share that with the Court?

A Well, you have right now a \$708,000 recovery, in the way of a settlement.

Q Okay. And have you computed sort of what that mathematically is?

A I think it's about 40 percent of the, I think, top value of the claim. If we recovered every dollar, that would represent a 40 percent portion of a hundred percent victory.

Q And other than the \$708,000 that will actually be garnered by the estate, are there any other monetary benefits by virtue of the settlement?

A Payment of some fees.

Q Savings of fees or...?

A Payment of fees being, I guess, eliminated.

Q Okay.

A Which could have been about \$75,000. My counsel had estimated that would be the cost from say the spring going forward through trial.

Q And then you also talked about a contingency situation. Have you evaluated it, had you changed the nature of the representation to a contingency fee agreement, what was the fee that would have been assessed by Mr. Stamos if you went to trial?

A For going to trial, we would have charged 40 percent of what was recovered. So it would bring you down to a net, again, if you won a hundred percent, about a million, one hundred thousand with



the balance going to him towards fees.

Q And that would be a best-day scenario?

A Best day.

Q Now, in an hourly situation, if you didn't settle the case and in fact the estate lost, have you looked at what the ramifications to the estate would be monetarily?

A Yes. There would be two things. You'd be out of pocket, again let's use Mr. Stamos' estimate that there is \$75,000 that would be required by him. Then I would have some fees and costs. Obviously I have to attend the trial. Things of that nature to be involved would have been an extra expense on top of that, could have easily been ten, twelve thousand dollars there.

Q And with respect to your fees, that would have been incurred by the estate whether you won or lost under an hourly or contingency fee arrangement, correct?

A Correct.

MS. CRISPIN: Your Honor, I ask that we be able to admit into evidence the verified motion for approval of settlement agreement as Exhibit 1.

THE COURT: Thank you. So admitted. You

may proceed.

MR. FEAMAN: By the way, Your Honor, by not objecting to the admission, I just want to make it clear to the Court that agreement contemplates a payment to my client, Mr. Stansbury, of a certain amount of money. Mr. Stansbury does not agree that that amount of money is all he would be entitled to.

MR. BERNSTEIN: And I object to the settlement being entered because the parties that are named in there aren't all here.

THE COURT: So noted. So admitted.

MS. CRISPIN: I have nothing further for Mr. O'Connell on direct.

THE COURT: Mr. Rose?

MR. ROSE: No questions.

THE COURT: Mr. Feaman?

MR. FEAMAN: Just a few, Your Honor.

MR. ROSE: Can I reserve, Your Honor?

THE COURT: You may.

#### CROSS EXAMINATION

BY MR. FEAMAN:

Q Mr. O'Connell, you stated that settlement discussions started about six to eight months ago, is that correct?

A In earnest. Again, prior to that, there had been some general, call them discussions, but things got more serious let's say.

Q Six or eight months ago from today or from when the settlement agreement was signed?

A Probably from when the settlement agreement was entered into.

Q All right. And, in fact, there was a formal mediation by telephone in May of 2017, this year, correct?

A Correct. That was sort of the drive to get it across the finish line.

Q But it didn't settle at the mediation, correct?

A No.

Q But at that point, things began to really ramp up in terms of serious settlement discussions, is that correct?

A That's true.

Q So that in June of 2017, then is it fair to say that you were very close to settling; in fact, since you signed this on July 5th, you probably had an agreement prepared in June for circulation, I would imagine, is that correct?

MR. ROSE: Objection, relevance.

MS. CRISPIN: Objection, relevance.

THE COURT: Sustained.

MR. FEAMAN: The relevance is I'm laying a predicate for when we come back for fees, Your Honor.

THE COURT: It's not relevant for today though.

BY MR. FEAMAN:

Q With regard to those settlement negotiations, Mr. Stansbury in the May, June time frame, he was not involved in the negotiations, correct?

A Not to my knowledge.

Q And, in fact, to your knowledge, I was not involved, correct?

A I don't believe you were, sir.

Q And to your knowledge, nobody from my office was involved, correct?

A I don't recall anyone from your office being involved.

Q Okay. And you mentioned Ben Brown was the first one that intervened, he was allowed by the Court. Do you recall that that was actually at the behest of Mr. Stansbury's motion, is that correct?

MR. ROSE: Objection, relevance to the

issues today.

THE COURT: Sustained. We're just approving the settlement.

THE WITNESS: Mr. Feaman, I just want -- with regard to some of the questions about your firm's involvement, you and I had discussions as the case was evolving about there might be a settlement and some generalities like that. So I wanted to give a hundred percent. To distinguish, you weren't physically say on the phone or attending an in-person mediation but I know you were --

BY MR. FEAMAN:

Q But we were never involved in discussing numbers, were we?

A Not specific numbers, I don't recall that. Just more we were trying to settle it, here's what was transpiring with the case, and I know Mr. Stansbury had some conversation with Mr. Stamos.

Q Okay. Now, the settlement negotiations, when they were in earnest in May and June, was Mr. Rose involved in those?

A I think he was to some extent and I have to answer it that way because the telephone mediation was a mediation literally where the

mediator would call one side and then call the other side. It wasn't -- just to sketch it for the Court, it wasn't like an en masse mediation with everyone present at the same time. So I have to be a little cautious as to exactly who was involved in that.

Q That's fine. And who was Mr. Rose representing?

A I'm not sure.

MR. ROSE: Objection as to relevance.

THE COURT: Mr. Feaman, do you not want me to approve? Because I thought you weren't taking a position. I'm losing why we're talking about this now.

MR. FEAMAN: Well, we previously raised the issue of conflict, Your Honor.

THE COURT: Yes, and I denied the order and we're here today and you said you're not taking a position on approval of the settlement.

MR. FEAMAN: Not on the merits of the --

THE COURT: Yes, so that will discontinue the questions.

MR. FEAMAN: I don't think we're in a position to comment on the merits one way or the other not having been involved in the

litigation directly other than causing it to happen.

THE COURT: Exactly. So for purposes of today, I ask that you stay on point.

MR. FEAMAN: Okay. Thank you.

BY MR. FEAMAN:

Q Do you have an opinion as to the probability of success by the estate if the case were to go to trial?

MS. CRISPIN: To the extent it calls for attorney-client privilege or work product, I'd object and instruct you not to answer.

THE WITNESS: I would have to draw on some privileged information, Your Honor, from counsel here.

MS. CRISPIN: He asked for analysis.

THE WITNESS: I can try to answer it on my own.

MS. CRISPIN: I wouldn't have a problem with that.

THE COURT: Answer what you can without drawing on any privilege.

THE WITNESS: Sure.

A I think it was a good case as in the probabilities were more in favor of the estate, but

nothing being a hundred percent in light, again, of what I mentioned before. Of course, when we had summary judgment denied, obviously that makes it more of a horse race than it would be if summary judgment were granted, case over. But just to kind of sketch that out for you, it was certainly a meritorious case that was worth pursuing, ergo I did.

MR. FEAMAN: Thank you.

THE COURT: Mr. Elliot?

MR. BERNSTEIN: Your Honor, can I stay here? Just so I don't fall up there.

THE COURT: Absolutely.

MR. BERNSTEIN: Thank you.

CROSS EXAMINATION

BY MR. BERNSTEIN:

Q Mr. O'Connell, your pleading today states that you entered the settlement with Ted Bernstein as trustee of a 1995 trust. Are you in possession of that trust?

MR. ROSE: Objection, relevance.

THE COURT: Overruled. Go ahead.

A Not an original, to be specific.

BY MR. BERNSTEIN:

Q Excuse me?



A I don't have an original of that trust.

Q Do you have an executed copy?

A I don't.

Q So you've never seen the trust. How do you know Ted Bernstein is the trustee of that trust then?

A Because that was the claim that they were making.

Q Okay. And are you aware that Judge Blakey in the Illinois case which is hearing this matter properly in the Federal Court has determined that that trust hasn't been proven and it's one of the reasons summary judgment was denied?

A I don't have the summary judgment in front of me. When you're saying proven, I'm a little uncertain about --

MR. BERNSTEIN: I'd like to enter that summary judgment as evidence, please.

MS. CRISPIN: I haven't seen it.

MR. BERNSTEIN: Anybody else need it?

There is two of them. Can somebody give Brian the copy I gave, maybe his attorney for Brian as a witness?

THE COURT: No. His attorney right now is reviewing it. Do you have an extra copy for

Mr. O'Connell?

MR. BERNSTEIN: If I don't give one to the judge.

THE COURT: You're supposed to bring one for everybody.

MR. BERNSTEIN: I didn't know how many people were here.

THE BAILIFF: These are the extra copies.

MR. BERNSTEIN: So here's one for the judge and I need one.

THE COURT: Mr. Elliot, be mindful of your time. I'm keeping track of how long everybody has spoken. So you have about four more minutes.

MR. BERNSTEIN: What?

THE COURT: Yes, you have about four more minutes with this witness. Go ahead, ask your question.

MR. BERNSTEIN: Okay. He needs one of these too. That's the second summary judgment. Do you need it?

THE COURT: I don't know what it is.

MR. BERNSTEIN: It's a summary judgment in the Illinois court.

THE COURT: Thank you.

BY MR. BERNSTEIN:

Q Have you seen this document?

A In the past, yes.

Q And are you aware that in the second summary judgment -- in the first summary judgment, I'm a party to the action and in the second one, I'm dismissed from the complaint based on the fact that I'm not a beneficiary with standing in my father's estate?

MR. ROSE: Objection, relevance to today.

MR. BERNSTEIN: It's all going to be relevant to today's settlement.

BY MR. BERNSTEIN:

Q Judge Blakey in this, if you go to the first order --

THE COURT: He's disputing the settlement so he gets to talk about --

BY MR. BERNSTEIN:

Q The date is on the top, 3-15-16.

A I see it, yes.

Q Do you see on Page 4, the last two paragraphs, can you read that?

A Does that start, while the above sources?

Q Right.

A While the above sources do provide some

evidence that the trust was created --

Q Which trust, the 1995 trust?

A The '95 trust.

Q Okay. Just to be clear.

A That evidence is far from dispositive of the issue. In fact, the intervenor has presented argument and evidence casting material doubt on whether, one, the trust was actually created and, two, the terms of the trust are as explained by the plaintiffs.

Want me to keep going?

Q Well, let me ask you a real quick question. Are you the intervenor?

A No.

Q You're not?

A The estate is, not me.

Q So you're representing the estate?

A Yes, me as personal representative, not me individually. That's what I thought you were asking.

Q So, in fact, the estate has made the argument that this trust does not exist?

A Correct.

Q And there are no terms that are applicable, so how can you be saying that you know

that Ted is the trustee?

A I'm saying Ted claims to be the trustee.

Q No. In your pleading, you said you entered into the settlement with Ted Bernstein as trustee, a factual assertion, that he was trustee of a trust, but yet now you're stating there there is no trust and you're not sure of the terms and one of those terms would be Ted Bernstein, is that correct?

MR. ROSE: Objection --

THE COURT: Hold on. You know the rules if I hear an objection. Mr. Rose?

MR. ROSE: Objection, argumentative.

MS. CRISPIN: Join.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q Okay. Did you argue that the trust was actually created?

A Did the estate argue that it was created?

Q Yes.

A In the summary judgment or in the case?

Q These are -- this is from the intervenor stating that the trust wasn't actually created.

A That was the legal position we took, ergo there was a dispute.

Q And you took the assertion that the terms

of the trust are just as what was explained by the plaintiffs, not the trust because you don't know the terms because we don't have a valid copy, correct?

A The position that the estate took is what's set forth in Judge Blakey's order, correct.

Q Okay. And then read Judge Blakey's next statement.

THE COURT: I'm just reminding you that you have about three more minutes.

MR. BERNSTEIN: Well, I need some more time, Your Honor. This is going to take a long time.

THE COURT: Well, it's going to take till 2:30 as this was set for an hour and giving equal time. So you can keep on moving and ask a question.

MR. BERNSTEIN: Where does it say it was set for an hour? I thought it was until five.

THE COURT: I believe I was asked by Mr. Rose on the phone the other day and I said you have an hour reserved.

MR. BERNSTEIN: You never told us that.

THE COURT: Well, I'm telling you now.

MR. BERNSTEIN: This is going to take me hours.

THE COURT: Well, sorry about that. Ask the next question.

MR. BERNSTEIN: This is a serious settlement.

THE COURT: Would you rather take the time arguing with the Court or --

MR. BERNSTEIN: Well, can we get it extended?

THE COURT: No. Ask your next question.

MR. BERNSTEIN: Okay. I'll ask my next question.

BY MR. BERNSTEIN:

Q Can you read the next sentence?

A However -- there?

Q No. The results and timing of the plaintiff's search for the trust.

A The results and timing of the plaintiff's search for the trust raises doubts about their version of events. The plaintiffs claim that David Simon found a hard copy and electronic version of the trust in his office. David Simon has offered testimony here that he aided Simon Bernstein in creating the trust and that he kept both versions of the unexecuted trust.

Keep going?

Q No, that's good. And the missing trust was one of Judge Blakey's reasons for denying summary judgment, those are still issues of fact, if there is a trust, if Ted's the trustee, correct?

A The order speaks for itself.

Q Correct. So it's not been determined Ted Bernstein is a trustee of any trust because nobody has a copy, correct?

A In connection with this proceeding, the summary judgment?

Q In connection with this proceeding. Ted Bernstein hasn't been determined to be the trustee of the '95 trust that you are entering into settlement with because nobody has the trust, correct?

A Well, Ted Bernstein claims to be the trustee of the 1995 trust --

Q Before you entered into settlement --

THE COURT: Let him finish.

A -- and this settlement resolves the litigation over -- the entire litigation, who gets the proceeds, how much of the proceeds, how they're split between the defendant and the plaintiff.

Q So you haven't verified that Ted Bernstein is the trustee that you're entering into the



settlement?

A There's no way to verify whether Ted Bernstein is the trustee of the trust. We reached a settlement because of the doubt as to whether the trust existed or not, who was the trustee, so that journey is over. That's why you settle cases.

Q I'm sorry, you entered in this pleading that you settled with Ted Bernstein who is trustee, a factual assertion, of a 1995 trust. Are you stating that again today here?

A It's not my factual assertion. I think that's the problem we're having, Mr. Elliot.

Q Well, the heading in your pleading, you start out with, This settlement was entered into between Brian O'Connell, PR of the estate, and Ted Bernstein, trustee of a 1995 trust.

A That's true, because that's the capacity that he was seeking relief from the District Court under.

Q Okay. And I've got some other questions real quick. Am I beneficiary of my father's estate with standing?

MR. ROSE: Objection, calls for a legal conclusion.

MR. BERNSTEIN: He's the PR of the estate.

MR. ROSE: It's already been --

THE COURT: Overruled. You can answer the question.

A Are you a beneficiary of the tangible personal property of the estate? Yes.

BY MR. BERNSTEIN:

Q Okay. So I'm a beneficiary of the estate with standing?

THE COURT: Of tangible personal property.

BY MR. BERNSTEIN:

Q Whatever property, I'm a beneficiary, correct?

A You're a beneficiary of the tangible personal property.

THE COURT: Last question.

MR. BERNSTEIN: I need to finish --

THE COURT: No. Last question, Mr. Elliot.

MR. BERNSTEIN: This is just --

THE COURT: I'm sorry. What was that?

MR. BERNSTEIN: I'm rushing through.

THE COURT: Okay. Last question.

BY MR. BERNSTEIN:

Q Mr. O'Connell, are you aware that Judge Blakey dismissed me on summary judgment claiming

that I was not a beneficiary of my father's estate with standing?

A I recall your being dismissed but I'd have to review the --

Q Go ahead. It's right there.

MR. BERNSTEIN: It's the bigger thicker judgment, Your Honor, for your edification.

MR. ROSE: I object to relevance.

THE COURT: Sustained. Okay. Redirect?

MR. BERNSTEIN: Your Honor, what just happened? I'm a little slow.

THE COURT: I sustained the objection. Okay. Mr. Rose?

#### CROSS EXAMINATION

BY MR. ROSE:

Q Mr. O'Connell, is it fair to say that Judge Blakey also denied the estate's motion for summary judgment?

A He did.

Q The first motion for summary judgment was filed by the Illinois plaintiff, this insurance trust, correct?

A Correct.

Q And that was denied?

A Correct.

Q And on the strength of that, the estate moved for summary judgment, correct?

A And that was denied.

Q And part of the evidence that was submitted contrary to your claim was an affidavit of Mr. Spallina?

A Correct.

Q And it's Mr. Spallina's testimony, if it was believed, that Simon Bernstein discussed the terms of the 1995 insurance trust and Simon Bernstein intended that trust to give all the money, correct?

A That was his testimony per his affidavit.

Q And if you take the litigation all the way to the end, there's a chance that you would lose and end up with nothing?

A There's always that chance; hence we settled.

Q If Mr. Spallina's affidavit is believed by the judge, that would be strong evidence against your position?

A It would be and that would be one of the key points, is that believable or not.

Q And if you hire Mr. Stamos at a 40 percent contingency, my math on a million seven says that

the fee is going to be about \$680,000?

A Correct.

Q A million dollars minus 680, \$700,000 fee and some costs, I assume, your best case is a million?

A Under a contingency arrangement, that's the math I did too.

Q Because someone has to pay for you, Mr. O'Connell's time to fly to Chicago, sit through a trial, however long it takes, to interact with Mr. Stamos?

A Correct.

Q And you still have to pay back Mr. Stansbury for whatever he's incurred?

A Yes.

Q And in your view, the settlement is in the best interest taking everything into account including all the questions you were asked by all the parties?

A Yes.

MR. ROSE: Nothing further.

MR. BERNSTEIN: Can I ask more after that?

THE COURT: No. It goes back to Ms. Crispin.

MR. BERNSTEIN: Do I get another shot at

that?

THE COURT: No.

MS. CRISPIN: I have nothing further for this witness.

THE COURT: Okay. You may step down. Everybody has a copy of the proposed settlement, correct, the motion?

Mr. Elliot, did you want these two orders in evidence? You didn't actually --

MR. BERNSTEIN: I do.

THE COURT: I will mark them as a composite exhibit for you.

MR. BERNSTEIN: Thank you. So that would be 1?

THE COURT: Elliot's Composite Exhibit 1.

MR. BERNSTEIN: Okay. Thank you.

THE COURT: You're welcome.

All right. Next witness?

MS. CRISPIN: Mr. Stamos, please.

THE COURT: All right. Let me call.

Mr. Stamos? Hello?

MR. SIMON: This is Adam Simon.

THE COURT: All right.

MR. ROSE: I believe he's one of the counsel in --

THE COURT: I don't know.

MS. CRISPIN: That's not Mr. Stamos.

THE COURT: I know. Is Mr. Stamos available? He's not on court call. Is anyone calling Mr. Simon?

MR. SIMON: Mr. Simon is on the phone.

THE COURT: I know. I'm not sure why.

MR. ROSE: I think he's counsel of record in the Illinois case for the trust.

MR. SIMON: I'm just listening.

MR. BERNSTEIN: And I might want to ask him questions since he's there.

MS. CRISPIN: Judge, can I use my phone to call?

THE COURT: Yes.

Go ahead. Ask some questions, Mr. Bernstein.

Do you have a notary public there? Did you arrange to have a notary public for him if you wish to call him as a witness?

MR. BERNSTEIN: I'm not his lawyer.

THE COURT: I know, but if you wish to call a witness by telephone, you need to arrange that they have a notary public so they can be sworn in.

MR. BERNSTEIN: He's the counsel.

THE COURT: I know, but he still needs a notary public because he's not in front of me to swear him in.

MR. BERNSTEIN: So, no. I didn't know that he was going to be here.

THE COURT: All right. Next witness, Ms. Crispin? Oh, you're on the phone. Sorry.

MS. CRISPIN: Your Honor, I don't have anyone after Mr. Stamos.

THE COURT: Any witnesses, Mr. Rose?

MR. ROSE: No.

THE COURT: Any witnesses, Mr. Feaman?

MR. FEAMAN: No, Your Honor.

THE COURT: Call your first witness, Mr. Elliot.

MR. BERNSTEIN: I'm waiting for Mr. Stamos.

THE COURT: No. We're waiting and for court efficiency, call your first witness.

MR. BERNSTEIN: Brian O'Connell.

THE COURT: You can call him for about eight minutes.

MR. O'CONNELL: He's calling in now, Your Honor.



THE COURT: All right. He'll call in to court call. In the meantime, go ahead and get back on the stand. I told him he has about eight minutes and we'll have Mr. Stamos -- if you're on the phone with Mr. Stamos, you can tell him to be ready by ten to three.

MS. CRISPIN: Okay.

(Mr. O'Connell resumed the stand.)

THE COURT: You're still under oath.  
Go ahead. It's all you.

DIRECT EXAMINATION

BY MR. BERNSTEIN:

Q Are you aware of a 2000 insurance trust that was executed that the policy in question has been assigned to in the year 2000?

MS. CRISPIN: Asked and answered.

THE COURT: Sustained. You already asked him that.

MR. BERNSTEIN: No, a 2000 insurance policy.

THE COURT: Oh, overruled. Thank you.

BY MR. BERNSTEIN:

Q That supersedes a 1995 trust?

A You'd have to show me a document.

Q Okay. Here.

MR. STAMOS: Hello?

THE COURT: Mr. Stamos?

MR. STAMOS: Yes, ma'am.

THE COURT: Okay. This is the judge. I'm going to ask you to just hang on while we complete the testimony of another witness.

MR. STAMOS: Okay. How long will that be, how long do you think?

THE COURT: About eight minutes.

MR. STAMOS: All right. I will step away from my desk for five minutes and I'll pick up then, okay?

THE COURT: Sounds good.

MR. STAMOS: Thank you.

BY MR. BERNSTEIN:

Q Mr. O'Connell, have you seen that trust before?

A Sitting here today, I don't recall it but it's possible in the volume of documents in this case that I could have, but I couldn't tell you definitively.

Q Do you notice that it's Bates stamped by Tescher & Spallina, the former attorneys who committed forgery and fraud in this matter that you replaced and those documents were transferred to you

by Ben Brown and you actually argued -- can you answer that question?

A I see Bates stamps at the bottom.

Q So these would be part of your record, correct?

A I'm not sure. I'd have to look on my record to be sure.

Q And you're aware that the state has argued in Illinois Federal Court that this 2000 trust supercedes the '95 trust, thereby rendering it moot, the '95 trust you're entering into settlement with, is that correct?

A I'd have to see some more documents. If you're talking about -- has there been something in writing submitted taking that position?

Q Yeah. Your summary judgment arguments rely on this 2000 trust superseding -- in that 2000 trust, can you read from Page 1, the trust, the first paragraph and the Number 1?

MR. ROSE: Objection. The document is not in evidence, hearsay.

THE COURT: Sustained.

MR. BERNSTEIN: Can I submit it as evidence?

THE COURT: Objections?

MR. ROSE: Authenticity.

THE COURT: Sustained.

MR. BERNSTEIN: It's Bates stamped.

THE COURT: It doesn't matter. Sustained.

MR. BERNSTEIN: It's been submitted into  
the record.

THE COURT: Sustained.

MR. BERNSTEIN: We can't enter this?

THE COURT: No. I sustained the  
objection. It's an evidentiary objection.

MR. BERNSTEIN: Okay. Am I allowed to ask  
him questions about this document?

THE COURT: If you ask a question and  
there's an objection, I'll entertain it. I  
can't tell you how to proceed.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q Can you read the first paragraph and  
Number 1 of that document?

MR. ROSE: Objection, hearsay. The  
document is not in evidence.

THE COURT: Sustained.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q You argued in Illinois in the federal

action on behalf of the estate that this 2000 document superseded the 1995 trust?

MS. CRISPIN: Asked and answered. He said he needed further documentation to see it in writing.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q In a recent similar case to this with allegations of fraud in the Bivens case, are you aware of the Oliver Bivens case?

MR. ROSE: Objection, relevance, materiality.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q Have you been charged with breach of fiduciary duties and negligence recently and found guilty by a jury of your peers in a federal court?

MR. ROSE: Objection, relevance.

MS. CRISPIN: Argumentative.

THE COURT: I have to overrule those objections because it would go to bias.

MS. CRISPIN: Your Honor, he used the word charged. That was my problem for the argumentative.

THE COURT: Okay. With regard to the word

charged, sustained.

BY MR. BERNSTEIN:

Q Is there a verdict that claims you breached fiduciary duties and negligence in the handling of an estate?

A There was a verdict but the matter has been settled and the case has been dismissed with prejudice pursuant to a confidential settlement.

Q Who was your attorney in that settlement?

A Wicker, Smith.

Q Was it Alan Rose?

A Alan Rose came in after the verdict to represent the law firm while Ms. Crispin and I were represented by the Wicker, Smith firm as we had been from the inception of the case.

Q So the verdict stood?

A No.

MR. STAMOS: Hello ?

THE COURT: Hang out for me, Mr. Stamos.

BY MR. BERNSTEIN:

Q So there was a jury verdict that you had breached and committed negligence with Ashley Crispin, correct?

MR. ROSE: Objection, relevance and repetitive.

THE COURT: Sustained.

MR. BERNSTEIN: By the way, Your Honor, something strange here has occurred. Mr. Rose is O'Connell's counsel.

THE COURT: Excuse me. Do you have a question for this witness? You have one question left.

BY MR. BERNSTEIN:

Q If there is a 2000 trust, would it not be a necessary party to any settlement if it deals with the same insurance policy?

A I'm not aware that that trust exists, the 2000 trust exists.

Q If it exists? Since I can't enter it into evidence.

A I'd have to review the documents to make sure.

Q But after you reviewed them, if you found that it existed, would it be a necessary part to any settlement?

MR. ROSE: Objection, calls for a legal conclusion and the facts are that trust and no trustee has intervened or sought to do anything in the Illinois case so it's an irrelevant question.

MR. BERNSTEIN: Your Honor, that's really relevant because the reason this trust is suppressed is because my sister, Pam Scott -- I'd like to enter another piece of evidence where they discussed suppressing this and hiding it from the court.

THE COURT: Sustained. Last question.

BY MR. BERNSTEIN:

Q When you found out that I was a beneficiary of my father's estate and Judge Blakey removed me on summary judgment claiming that I was not a beneficiary based on res judicata from this court, when you found out again and admitted in court at the first hearing that I attended with Judge Scher here in the courtroom that I was a beneficiary, did you notify the federal court that I was a beneficiary with standing in my dad's estate?

MR. ROSE: Objection, relevance, argumentative, and I think these issues are the ones that were decided by the federal judge in Illinois.

MS. CRISPIN: Objection, compound.

THE COURT: I'll let him answer the question. He either did or he didn't.

A I guess to answer your question, I'd have



to go back and review your intervention and review the order and --

BY MR. BERNSTEIN:

Q The order is there.

A It would take some time to do it to say whether that would be --

Q Well, let me ask you a question.

THE COURT: No, that was it.

MR. BERNSTEIN: It's the same question.

THE COURT: Then it's been asked and answered.

MR. BERNSTEIN: Well, let me help him answer what he said, Your Honor. Would that be okay?

THE COURT: That would be okay.

BY MR. BERNSTEIN:

Q The question is, after a review, if you found that I was a beneficiary with standing in the estate and the Illinois court was under the impression that I was not and had dismissed me, would I need to be reinstated as a party in that action who would be a party to this settlement?

A That would be between you and the Illinois federal court using that hypothetical.

THE COURT: Okay. That about does it for

that. Follow up, Ms. Crispin?

MS. CRISPIN: None.

THE COURT: You may step down,  
Mr. O'Connell.

We're ready to proceed. Do you have a  
notary public there with you, Mr. Stamos?

MR. STAMOS: Yes. It will just take one  
second, Your Honor.

THE COURT: Thank you.

MR. STAMOS: She's present. Okay. Shall  
we begin?

THE COURT: May I speak with the notary,  
please?

MR. STAMOS: Yes.

MS. VASQUEZ: I'm here.

THE COURT: Hello. This is Judge  
Rosemarie Scher. What is your name, ma'am?

MS. VASQUEZ: My name Denise Vasquez.

THE COURT: Are you a notary public in the  
State of Illinois?

MS. VASQUEZ: Yes, I am.

THE COURT: When does your commission  
expire?

MS. VASQUEZ: October 31st, 2021.

THE COURT: In Illinois, do you have a

number? Do you have a commission number?

MS. VASQUEZ: No.

THE COURT: In Florida we do. That's the only reason I'm asking.

All right. Do you know the gentleman in front of you?

MS. VASQUEZ: Yes, I do.

THE COURT: Do you know him personally or has he produced identification?

MS. VASQUEZ: Personally.

THE COURT: All right. Who is the gentleman in front of you?

MS. VASQUEZ: James Stamos.

THE COURT: All right. Would you please ask him to raise his right hand?

MS. VASQUEZ: Raise your right hand.

THE COURT: And swear or affirm to tell the truth?

MS. VASQUEZ: Do you swear or affirm to tell the truth?

MR. STAMOS: Yes, I do.

THE COURT: Excellent. Ms. Vasquez, thank you so much for serving the Court.

Mr. Stamos, you are on. Ms. Crispin will begin her questioning.

MR. STAMOS: Thank you.

DIRECT EXAMINATION

BY MS. CRISPIN:

Q Mr. Stamos, can you hear me?

A I can.

Q This is Ashley Crispin. We've met before.  
I represent Brian O'Connell. We share a client.

A Yes.

Q And I'm going to be asking you some  
questions. Your full name, please?

A James J. Stamos. Middle name is John.

Q And you currently represent who in the  
pending litigation Simon Bernstein Irrevocable  
Insurance Trust, et al, vs. Heritage Union Life  
Insurance Company, et al?

A I represent the estate.

Q And currently the fiduciary position is  
held by Mr. O'Connell as personal representative,  
correct?

A That's my understanding.

Q And how long have you been representing  
the estate in this litigation?

A Since 2015, if I'm correct. I think it  
was the summer of 2015.

Q And your primary area of practice?

A I'm a litigator. I do principally professional liability defense as well as commercial litigation.

Q And you're aware of the settlement agreement that was reached between the parties in this matter, correct?

A Yes, I am.

Q And you reviewed the settlement agreement before it was executed by Mr. O'Connell, correct?

A Yes. I think I might have suggested some changes.

Q But you reviewed the final version before Mr. O'Connell executed it, correct?

A Yes, I did.

Q And it's contingent on this Court, meaning the Probate Court in Palm Beach County's approval, correct?

A That's my understanding.

Q Now, without drawing on your attorney-client communications with Mr. O'Connell, are you able to give the Court an analysis of the settlement?

A I think I can without breaching confidentiality.

Q Okay. Can you do that, please?

A Let me ask you something. Tell me exactly what you'd like me to talk about. I'm not sure whether you want me to talk about whether it's reasonable or its terms.

Q Exactly, if it's reasonable. The Court has the terms in front of it so now we're just talking about whether or not it was a reasonable settlement.

A Yes. I think it is reasonable. I base that on, and I don't think this is an attorney-client or work product assessment, I base it on a number of factors. The first being that I believe that it's a case that we would be able to win, that we should be able to win, but I thought that there were a number of issues that could make that challenging. One was that the Court had not granted summary judgment for us when I thought the Court should have which made me think that perhaps his view of the facts would be slightly different than our view of the facts.

I also thought that our winning the case was really going to come down to a credibility question and while I thought we had a much better credibility argument, nonetheless the judge was going to have to look at the witnesses and make

decisions about whether he was going to believe the witnesses for the plaintiff in terms of why they thought the trust was -- frankly why they thought the trust existed and was entitled to money. And I thought the fact that there were basically the same people on both sides, I mean I realize they're different, they're the parents and they're the kids, might make it less certain that the judge would be as precise as he might otherwise be in deciding exactly who should win.

I thought that in light of the fact that if we lost, the estate would have no money from the trust and I thought the estate probably would want to have some money, that a compromise of this nature was reasonable.

MS. CRISPIN: Nothing further.

THE COURT: Questions?

MR. ROSE: I'll reserve. For now I don't have any questions.

THE COURT: Mr. Feaman?

CROSS EXAMINATION

BY MR. FEAMAN:

Q Mr. Stamos, this is Peter Feaman. Do you recall that I represent Bill Stansbury?

A I do. I recall that well.

Q Do you recall that it was our office that first brought you into the case?

MR. ROSE: Objection, relevance.

THE COURT: Sustained.

BY MR. FEAMAN:

Q Mr. Stamos, you determined early on in your representation of the estate that the estate had a very meritorious claim, didn't you?

A Yes, I did.

Q And there was a telephonic mediation in May. Did you attend?

A I did.

Q And who attended at that mediation?

MR. ROSE: Objection for the same reasons. You limited his questioning since he has no position.

THE COURT: Sustained.

BY MR. FEAMAN:

Q And did that get the ball rolling in earnest towards settlement?

MR. ROSE: Same objection.

MS. CRISPIN: And to the extent it calls for confidential mediation.

THE COURT: Sustained.



BY MR. FEAMAN:

Q Did the most serious settlement discussions take place in June of this year?

MR. ROSE: Same objection.

THE COURT: Sustained. I don't see the relevance to this hearing.

BY MR. FEAMAN:

Q Do you recall whether I was involved at all in those settlement discussions?

MR. ROSE: Same objection.

THE COURT: What is the relevance for this hearing, Mr. Feaman?

MR. FEAMAN: For this hearing?

THE COURT: For this hearing.

MR. FEAMAN: As to whether -- while we're taking no position, I want to set the record that we were not involved.

THE COURT: Okay. You've already done that. Thank you. Any other questions?

BY MR. FEAMAN:

Q Was Ted Bernstein involved in the settlement discussions as the plaintiff in the Chicago litigation or as the trustee for the trust as the only monetary beneficiary of this estate?

MR. ROSE: Same objection. It sounds like

it's a question leading toward a position.

THE COURT: Could you ask the question again, Mr. Feaman?

BY MR. FEAMAN:

Q Was Ted Bernstein involved in settlement negotiations as a plaintiff in the Chicago litigation that you're counsel involved in or as trustee for the trust that's the only monetary beneficiary of this estate?

THE COURT: I am sustaining the objection because, again, you've taken no position in approving the settlement and I know this goes to another issue you have that's not in front of the Court today.

MR. BERNSTEIN: Can I ask that same question?

THE COURT: No, you can't. It's not in front of the Court today.

BY MR. FEAMAN:

Q My last question, Mr. Stamos, is do you have an opinion as to what the probability of success by the estate would have been if you had gone to trial?

A Well, my judgment was that we were likely to win the case. I felt that we were likely to win

the case with the caveat that I described earlier.

MR. FEAMAN: Thank you. No further questions.

THE COURT: Mr. Elliot?

CROSS EXAMINATION

BY MR. BERNSTEIN:

Q Hi, Mr. Stamos. Has Judge Blakey adjudicated this settlement yet?

A Not -- candidly, I don't recall the exact procedural posture at this moment. I know it's been brought before him, I know he's aware that this hearing has to take place. As to what he has ruled on it, I don't recall where it stands with him.

Q Okay. Was I, Elliot Bernstein, at any settlement negotiations you're aware of?

A I don't know the answer to that.

Q Okay. Is it claimed that I'm a beneficiary of the insurance policy?

A I'm sorry, state that again. I couldn't hear you.

Q Is it claimed by the plaintiffs that I'm a beneficiary of the insurance policy?

A That wasn't how I understood the claim. I understood that they were attempting to prove that a particular trust was the beneficiary of the

insurance policy.

Q Okay. Have you ever seen that particular trust, an executed copy of the 1995 trust that's at the heart of this?

A No.

Q Okay. So then would you be able to determine in this settlement that Ted Bernstein is the trustee of the '95 trust?

A I don't know the answer to that question.

Q Did you depose Ted Bernstein on these very questions in the Illinois litigation?

A Yeah. The position, as I understand it, was that the trust -- there was no evidence that the trust was ever executed and there was no clarity because there were a couple of drafts that were being presented as being exemplars of what the trust was supposed to accomplish. But my recollection is there's an inconsistency as to who the trustee would be. I never saw any document that assigned anyone as the trustee because I never saw an executed document.

Q So then it couldn't be certain that Ted Bernstein is the trustee of the trust that nobody knows exists?

MR. ROSE: Objection, relevancy, not

before the Court today.

A Our position was that there was no trust.

BY MR. BERNSTEIN:

Q Okay. And you understand that this settlement is being entered into between the estate and Ted Bernstein as trustee in fact of the 1995 trust?

A My understanding is that is a function of the fact that we are compromising and one of the compromises is to make that recognition, so it's a compromise of a factual issue.

THE COURT: All right. We need to wrap this up. One last question.

BY MR. BERNSTEIN:

Q Mr. Stamos, are you aware of the 2000 insurance trust that this policy was assigned to?

A I recall there being a trust that was entitled a 2000 trust. I have to tell you I'm a little hazy as I'm sitting here as to what exactly the function it had in the case. I know that it was never promoted by anyone as a trust that was entitled to the funds from the policy.

THE COURT: Last question. That was it.

MR. ROSE: May I have my one question?

THE COURT: Yes.

CROSS EXAMINATION

BY MR. ROSE:

Q Mr. Stamos, are you aware that the documents that existed in the office of the insurance company that issued this policy continuously reflected the sole contingent beneficiary being this 1995 life insurance trust?

A I'm sorry, who's asking the question just so I know?

Q Alan Rose.

A Mr. Rose, if you're asking what was in the records of the issuing company, candidly I don't recall. I remember there was some changes, a beneficiary change form as to who it was ultimately. I just don't remember. I'm just blanking as to what actually was contained in the file.

MR. ROSE: Nothing further, Your Honor.

THE COURT: All right. Did you all give me the original -- I don't think so -- of the verified motion for approval of settlement? I'm just making sure I don't have an original here. It's double sided pages so I don't think so.

MS. CRISPIN: I don't believe so, Your Honor.

THE COURT: I don't believe so either.  
I'm just making sure. All right. Any other  
witnesses, Ms. Crispin?

MR. STAMOS: Am I excused, Your Honor?

THE COURT: Yes, you are excused. Thank  
you very much, Mr. Stamos. I'm disconnecting  
you.

MR. BERNSTEIN: Can I call him as a  
witness?

THE COURT: No. The hearing is ending.

MR. BERNSTEIN: I didn't get a chance --  
it's ending now?

THE COURT: It is.

MR. BERNSTEIN: Okey dokey.

THE COURT: Do you have a proposed order?

MS. CRISPIN: Your Honor, I have a blank  
order here. I can fill it out here or I can  
hand Your Honor the blank one.

THE COURT: Okay. Thank you. I'll take  
the blank one. Thank you very much.

MS. CRISPIN: Your Honor, I'm just going  
to hand one copy because I know Your Honor will  
furnish it via email.

THE COURT: Absolutely. All right,  
everyone. I have as our next hearing

November 15th. I'm just saying just for the record.

MR. FEAMAN: My office gave me an order setting a hearing for November 9th at 1:30.

THE COURT: Which hearing is that? Isn't that the hearing I denied already?

MR. FEAMAN: No. It's on Mr. Stansbury's request for court intervention under Florida Statute 736.0706 filed back on February 15th of 2017, and in communications of my paralegal with your assistant, apparently it gave rise to her preparing an order setting that hearing for November 9th. She created it and gave it to me to confirm that there's a hearing on that date.

THE COURT: No, and you know what?

MR. FEAMAN: I didn't have any conversation with your office.

THE COURT: I understand that and actually it's not a complete shock to me. That's why I asked that. I need to look at that. My assistant is out for six weeks. So if you will hand me that, I need to look at that because in my world, I didn't think that was an issue.

MR. ROSE: Just for the record, Your Honor, this is the motion where he's asking



you --

THE COURT: I thought I denied it. I thought I entered an order denying it.

MR. ROSE: If you haven't, we ask you to.

THE COURT: Let me look at it and, Mr. Feaman, I'm sure at some point my assistant did a request for this, but like I said, she just had surgery. So let me take this, let me take the other blank order. I have a phone conference. Thank you very much.

MR. BERNSTEIN: Your Honor, I just want the record to reflect that I wasn't given a fair opportunity to be heard. I made no opening statement, was not allowed to call witnesses and there were no pretrial hearing procedures ordered by the Court or even followed by the Court.

THE COURT: So noted. Thank you so much. Feel better.

MR. ROSE: Thank you, Your Honor.

(The hearing was concluded.)

STATE OF FLORIDA

COUNTY OF PALM BEACH

I, DEBORAH MEEK, Registered Professional Reporter, Florida Registered Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that such transcription, Pages 1 through 65, is a true and accurate record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, nor am I financially interested, directly or indirectly, in the action.

This certification does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the reporter.

Dated this 27th day of October, 2017.



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DEBORAH MEEK, RPR, CRR, FPR

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

CASE NO.: 50-2014-CP-003698-XXXX-NB  
PROBATE DIVISION: IH

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

Plaintiff / Petitioner,

and

ALEXANDRA BERNSTEIN; et. al,  
Defendants / Respondent.

**ORDER TO SHOW CAUSE WHY ELIOT BERNSTEIN SHOULD NOT BE HELD IN  
CONTEMPT OF COURT AND ORDER SETTING HEARING**

**THIS CAUSE** came before the Court on Ted S. Bernstein, as Successor Trustee of the Shirley Bernstein Trust Motion to Hold Eliot Bernstein in Contempt of Court or Issue Order to Show Cause Against Eliot Bernstein, and for Sanctions (“Motion”) for Eliot’s Bernstein’s violation of Order on Successor Trustee’s Motion to Appoint a Guardian ad Litem; for a Gag Order to Protect the Guardian and Others; and to Strike Eliot Bernstein’s Filings dated March 1, 2016 (the “Order” D.E. 161).

The Court, having reviewed the Motion, the court file, and having been otherwise fully advised in the premises, finds as follows:

1. On March 1, 2017, this Court entered an Order on Successor Trustee’s Motion to Appoint a Guardian ad Litem; for a Gag Order to Protect the Guardian and Others; and to Strike Eliot Bernstein’s Filings dated March 1, 2016 (the “Order” D.E. 161).

2. The Court's Order stated as follows:

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

7. To the extent not already covered by this Court's Order dated February 1, 2016, Eliot Bernstein is barred from any further participation in this action, whether individually or as purported parent and natural guardian. Any and all pending motions, claims, or other filings by Eliot Bernstein, on behalf of his children, <sup>one</sup> ~~is~~ hereby stricken from the record, without prejudice to the rights of the Guardian Ad Litem to take whatever actions are deemed appropriate.

3. Plaintiff / Petitioner's Motion proffers emails sent directly to Diana Lewis, the guardian ad litem, in direct violation of the Order. The Court concludes the Petitioner's / Plaintiff's Motion for Contempt for refusal to obey this Court's Order is well taken. It is therefore

**ORDERED AND ADJUDGED**, as follows:

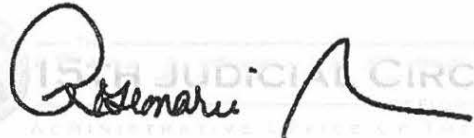
1. ELIOT BERNSTEIN is ordered to personally appear before this Court on Thursday, March 22, 2018 at 1:30 p.m., in Courtroom 4 of the North County Courthouse, 3188 PGA Blvd., Palm Beach Gardens, Florida 33410, and show cause why she should not be held in contempt of this Court for willful refusal to obey its Order, attached hereto. One hour shall be reserved.

2. **FAILURE OF ELIOT BERNSTEIN TO PERSONALLY APPEAR MAY RESULT IN A FINDING OF CONTEMPT OF COURT, AN AWARD OF ATTORNEY'S FEES AND COSTS AGAINST ELIOT BERNSTEIN, THE ISSUANCE OF AN ORDER STRIKING ANY AND ALL FUTURE PARTICIPATION IN THIS CASE AND/OR ANY OTHER SANCTIONS THE COURT DEEMS FIT.**

3. Petitioner/Plaintiff's counsel, at his own cost, shall cause a copy of this Order to Show Cause and Order Setting Hearing to be personally served VIA SHERIFF OR PRIVATE PROCESS SERVER upon ELIOT BERNSTEIN and file proof of personal service upon receipt. The Court will reserve to award these fees against ELIOT BERNSTEIN.

4. This Court reserves jurisdiction to award such fees and costs as may be proper to Petitioner/Plaintiff.

**DONE AND ORDERED** in Chambers at Palm Beach Gardens, Palm Beach County, Florida, this 15th day of September, 2017.

  
ROSEMARIE SCHER  
Circuit Judge

*Copies furnished to:*

*SEE ATTACHED SERVICE LIST*

This notice is provided pursuant to Administrative Order No. 2.207-1/15

**“If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Tammy Anton, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway West Palm Beach, Florida 33401; telephone number (561) 355-4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.”**

**“Si usted es una persona minusválida que necesita algún acomodamiento para poder participar en este procedimiento, usted tiene derecho, sin tener gastos propios, a que se le provea cierta ayuda. Tenga la amabilidad de ponerse en contacto con Tammy Anton, 205 N. Dixie Highway, West Palm Beach, Florida 33401; teléfono número (561) 355-4380, por lo menos 7 días antes de la cita fijada para su comparecencia en los tribunales, o inmediatamente después de recibir esta notificación si el tiempo antes de la comparecencia que se ha programado es menos de 7 días; si usted tiene discapacidad del oído o de la voz, llame al 711.”**

**“Si ou se yon moun ki enfim ki bezwen akomodasyon pou w ka patisipe nan pwosedi sa, ou kalifye san ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kèk èd. Tanpri kontakte Tammy Anton, kòdonatè pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan 205 North Dixie Highway, West Palm Beach, Florida 33401; telefòn li se (561) 355-4380 nan 7 jou anvan dat ou gen randevou pou parèt nan tribinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si lè ou gen pou w parèt nan tribinal la mwens ke 7 jou; si ou gen pwoblèm pou w tande oubyen pale, rele 711.”**

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

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

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

Probate Division  
Case No.: 502014CP003698XXXXNB

Plaintiff,

v.

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

Defendants.

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

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


ORDERS AND ADJUDGES:

FILED  
2016 MAR -2 PM 1:08  
SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
NORTH COUNTY BRANCH

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

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

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

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

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

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

5. Second, Fla. Stat. 731.303(4) provides: "If the court determines that representation of the interest would otherwise be inadequate, the court may, at any time, appoint a guardian ad litem to represent the interests of ... a minor ..." <sup>1</sup> Based upon the evidence presented and the Court's observations at the trial in December 2015 and at the evidentiary hearing on February 25, 2016, and

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

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

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

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

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

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

participate in such discussions. To the extent the parties, including Eliot Bernstein, are unable to

agree on a guardian ad litem, upon notice from the Trustee's counsel the Court shall randomly

~~names of potential Guardian Ad Litem's, each of whom has agreed to~~

~~appoint a guardian ad litem for Ja.B., Jo.B. and D.B. or schedule a further hearing to appoint a~~

~~suitable Guardian Ad Litem.~~

~~accept the appointment if selected. Those lists shall be filed~~

~~with the Clerk with courtesy copy to the~~

~~undersigned, no later than 10 days from this date.\*~~

9. The Guardian Ad Litem will have full power and autonomy to represent the interests

of the children of Eliot Bernstein, subject to the jurisdiction and review of this Court. The Guardian

Ad Litem will be entitled to petition the Court for an award of attorneys' fees to be paid out of the

gross proceeds of any recovery, distributions or inheritance to be received by Ja.B., Jo.B. and/or D.B.

10. To protect the integrity and independence of the guardian, Eliot Bernstein and all

persons acting in concert with him: (a) shall <sup>not</sup> ~~make no effort to~~ contact, email or otherwise

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

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

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

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

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

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

with this Order.

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

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

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

  
HONORABLE JOHN L. PHILLIPS

cc: Attached service list

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

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and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

**v.**

**ROBERT L. SPALLINA, et al.,**

**Defendants.**

**CONSENT OF DEFENDANT ROBERT L. SPALLINA**

1. Defendant Robert L. Spallina ("Defendant") waives service of a summons and the complaint in this action, enters a general appearance, and admits the Court's jurisdiction over Defendant and over the subject matter of this action.

2. Defendant has agreed to plead guilty to criminal conduct relating to certain matters alleged in the complaint in this action and acknowledges that his conduct violated the federal securities laws. Specifically, Defendant has agreed to plead guilty to a one count information which charges him with committing securities fraud involving insider trading in the securities of Pharmasset, Inc. in a matter to be filed in the United States District Court for the District of New Jersey (the "Criminal Action").

3. Defendant hereby consents to the entry of the Final Judgment in the form attached hereto (the "Final Judgment") and incorporated by reference herein, which, among other things:

- (a) permanently restrains and enjoins Defendant from violation of Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 ("Exchange Act")

[15 U.S.C. §§ 78j(b) and 78n(e)] and Rules 10b-5 and 14e-3 thereunder  
[17 C.F.R. §§ 240.10b-5 and 240.14e-3];

(b) orders Defendant to pay disgorgement in the amount of \$39,156, plus  
prejudgment interest thereon in the amount of \$1,794; provided, however,  
that \$39,156 shall be deemed satisfied in light of Defendant's consent to  
the entry of a forfeiture money judgment in the amount of \$39,156 in  
connection with the Criminal Action; and

(c) orders Defendant to pay a civil penalty in the amount of \$39,156 under  
Section 21A of the Exchange Act [15 U.S.C. § 78u-1].

4. Defendant agrees that he shall not seek or accept, directly or indirectly,  
reimbursement or indemnification from any source, including but not limited to payment made  
pursuant to any insurance policy, with regard to any civil penalty amounts that Defendant pays  
pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof  
are added to a distribution fund or otherwise used for the benefit of investors. Defendant further  
agrees that he shall not claim, assert, or apply for a tax deduction or tax credit with regard to any  
federal, state, or local tax for any penalty amounts that Defendant pays pursuant to the Final  
Judgment, regardless of whether such penalty amounts or any part thereof are added to a  
distribution fund or otherwise used for the benefit of investors.

5. Defendant waives the entry of findings of fact and conclusions of law pursuant to  
Rule 52 of the Federal Rules of Civil Procedure.

6. Defendant waives the right, if any, to a jury trial and to appeal from the entry of  
the Final Judgment.



7. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

8. Defendant agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

9. Defendant will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

10. Defendant waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

11. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and

other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

12. Defendant understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." As part of Defendant's agreement to comply with the terms of Section 202.5(e), Defendant acknowledges that he has agreed to plead guilty for related conduct as described in paragraph 2 above, and: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations; (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint; and (iv) stipulates for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, that the allegations in the complaint are true, and further, that any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under the Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this

proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19). If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

13. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

14. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Defendant (i) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints Defendant's undersigned attorney as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local

rules, provided that the party requesting the testimony reimburses Defendant's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over Defendant in any United States District Court for purposes of enforcing any such subpoena.

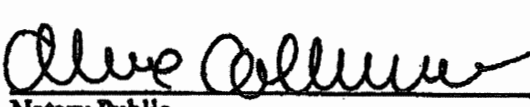
15. Defendant agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

16. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.


Dated: 9/16/15

  
Robert L. Spallina

On Sept 16, 2015, Robert Spallina, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

  
Notary Public  
Commission expires:

Approved as to form:

  
Lawrence S. Lustberg, Esquire  
Gibbons P.C.  
One Gateway Center  
Newark, NJ 07102-5310  
Counsel for Robert L. Spallina



**Alexa Colivechio**  
COMMISSION # FP188462  
EXPIRES: December 28, 2018  
WWW.AARONOTARY.COM

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ROBERT L. SPALLINA, et al.,

Defendants.

**FINAL JUDGMENT AS TO DEFENDANT ROBERT L. SPALLINA**

The Securities and Exchange Commission having filed a Complaint and Defendant Robert L. Spallina having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment; waived findings of fact and conclusions of law; waived any right to appeal from this Final Judgment; and Defendant having admitted the facts set forth in the Consent of Robert L. Spallina and acknowledged that his conduct violated the federal securities laws:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or

instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder, in connection with any tender offer or request or invitation for tenders, from engaging in any fraudulent, deceptive, or manipulative act or practice, by:

- (a) purchasing or selling or causing to be purchased or sold the securities sought or to be sought in such tender offer, securities convertible into or exchangeable for any such securities or any option or right to obtain or dispose of any of the foregoing securities while in possession of material information relating to such tender offer that Defendant knows or has reason to know is nonpublic and knows or has reason to know has been

acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee or other person acting on behalf of the offering person or such issuer, unless within a reasonable time prior to any such purchase or sale such information and its source are publicly disclosed by press release or otherwise; or

(b) communicating material, nonpublic information relating to a tender offer, which Defendant knows or has reason to know is nonpublic and knows or has reason to know has been acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee, advisor, or other person acting on behalf of the offering person or such issuer, to any person under circumstances in which it is reasonably foreseeable that such communication is likely to result in the purchase or sale of securities in the manner described in subparagraph (a) above, except that this paragraph shall not apply to a communication made in good faith

- (i) to the officers, directors, partners or employees of the offering person, to its advisors or to other persons, involved in the planning, financing, preparation or execution of such tender offer;
- (ii) to the issuer whose securities are sought or to be sought by such tender offer, to its officers, directors, partners, employees or advisors or to other persons involved in the

- planning, financing, preparation or execution of the  
activities of the issuer with respect to such tender offer; or  
(iii) to any person pursuant to a requirement of any statute or  
rule or regulation promulgated thereunder.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$39,156, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$1,794; provided, however, that \$39,156 shall be deemed satisfied in light of Defendant's consent to the entry of a forfeiture money judgment in the amount of \$39,156 in connection with the resolution of a parallel criminal action instituted in this Court; and a civil penalty in the amount of \$39,156 pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]. Defendant shall satisfy this obligation by paying \$40,950 to the Securities and Exchange Commission within 14 days after entry of this Final Judgment.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center  
Accounts Receivable Branch  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169



and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Robert L. Spallina as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Final Judgment. Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

#### IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

#### V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the Complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this

Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

VII.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated:

Sept 29, 2015

  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ROBERT L. SPALLINA, et al.,

Defendants.

**FINAL JUDGMENT AS TO DEFENDANT ROBERT L. SPALLINA**

The Securities and Exchange Commission having filed a Complaint and Defendant Robert L. Spallina having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment; waived findings of fact and conclusions of law; waived any right to appeal from this Final Judgment; and Defendant having admitted the facts set forth in the Consent of Robert L. Spallina and acknowledged that his conduct violated the federal securities laws:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or

instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder, in connection with any tender offer or request or invitation for tenders, from engaging in any fraudulent, deceptive, or manipulative act or practice, by:

- (a) purchasing or selling or causing to be purchased or sold the securities sought or to be sought in such tender offer, securities convertible into or exchangeable for any such securities or any option or right to obtain or dispose of any of the foregoing securities while in possession of material information relating to such tender offer that Defendant knows or has reason to know is nonpublic and knows or has reason to know has been

acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee or other person acting on behalf of the offering person or such issuer, unless within a reasonable time prior to any such purchase or sale such information and its source are publicly disclosed by press release or otherwise; or

- (b) communicating material, nonpublic information relating to a tender offer, which Defendant knows or has reason to know is nonpublic and knows or has reason to know has been acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee, advisor, or other person acting on behalf of the offering person or such issuer, to any person under circumstances in which it is reasonably foreseeable that such communication is likely to result in the purchase or sale of securities in the manner described in subparagraph (a) above, except that this paragraph shall not apply to a communication made in good faith

- (i) to the officers, directors, partners or employees of the offering person, to its advisors or to other persons, involved in the planning, financing, preparation or execution of such tender offer;
  - (ii) to the issuer whose securities are sought or to be sought by such tender offer, to its officers, directors, partners, employees or advisors or to other persons involved in the

- planning, financing, preparation or execution of the  
activities of the issuer with respect to such tender offer; or  
(iii) to any person pursuant to a requirement of any statute or  
rule or regulation promulgated thereunder.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$39,156, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$1,794; provided, however, that \$39,156 shall be deemed satisfied in light of Defendant's consent to the entry of a forfeiture money judgment in the amount of \$39,156 in connection with the resolution of a parallel criminal action instituted in this Court; and a civil penalty in the amount of \$39,156 pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]. Defendant shall satisfy this obligation by paying \$40,950 to the Securities and Exchange Commission within 14 days after entry of this Final Judgment.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center  
Accounts Receivable Branch  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Robert L. Spallina as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Final Judgment. Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

#### IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

#### V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the Complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this

Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

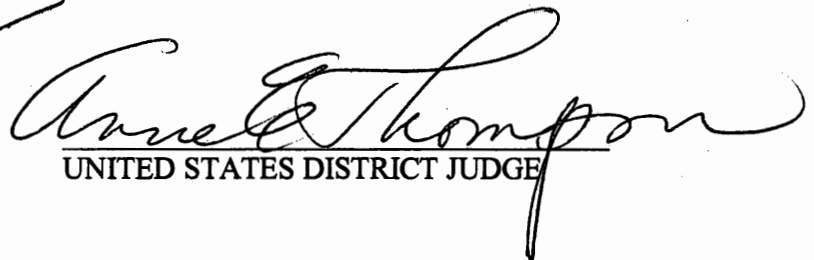
VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

VII.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: Sept 29 2015

  
UNITED STATES DISTRICT JUDGE



UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

DONALD R. TESCHER et al.,

Defendants.

C.A. No. \_\_\_\_-

**CONSENT OF DEFENDANT DONALD R. TESCHER**

1. Defendant Donald R. Tescher ("Defendant") waives service of a summons and the complaint in this action, enters a general appearance, and admits the Court's jurisdiction over Defendant and over the subject matter of this action.

2. Without admitting or denying the allegations of the complaint (except as provided herein in paragraph 12 and except as to personal and subject matter jurisdiction, which Defendant admits), Defendant hereby consents to the entry of the final Judgment in the form attached hereto (the "Final Judgment") and incorporated by reference herein, which, among other things:

- (a) permanently restrains and enjoins Defendant from violation of Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b) and 78n(e)] and Rules 10b-5 and 14e-3 thereunder [17 C.F.R. §§ 240.10b-5 and 240.14e-3];
- (b) orders Defendant to pay disgorgement in the amount of \$9,937, plus prejudgment interest thereon in the amount of \$690; and

(c) orders Defendant to pay a civil penalty in the amount of \$9,937 under Section 21A of the Exchange Act [15 U.S.C. § 78u-1].

3. Defendant agrees that he shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Defendant further agrees that he shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

4. Defendant acknowledges that the Court is not imposing a civil penalty in excess of \$9,937 based on Defendant's cooperation in a Commission investigation and/or related enforcement action. Defendant consents that if at any time following the entry of the Final Judgment the Commission obtains information indicating that Defendant knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the Commission may, at its sole discretion and without prior notice to the Defendant, petition the Court for an order requiring Defendant to pay an additional civil penalty. In connection with the Commission's motion for civil penalties, and at any hearing held on such a motion: (a) Defendant will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Defendant may not challenge the validity of the Judgment, this Consent, or any related Undertakings; (c) the allegations of the Complaint, solely for the purposes of such motion, shall be accepted as and deemed true by the Court; and (d) the

Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. Under these circumstances, the parties may take discovery, including discovery from appropriate non-parties.

5. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

6. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

7. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

8. Defendant agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

9. Defendant will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

10. Defendant waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

11. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

12. Defendant understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings," and "a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies the allegations." As part of Defendant's agreement to comply with the terms of Section 202.5(e), Defendant: (i) will not take any action or make or permit to be made any public statement

denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations, without also stating that Defendant does not deny the allegations; (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint; and (iv) stipulates solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, that the allegations in the complaint are true, and further, that any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under the Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19). If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

13. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes,

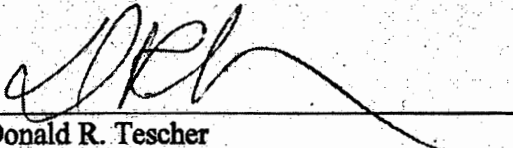
Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good-faith settlement.

14. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Defendant (i) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints Defendant's undersigned attorney as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Defendant's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over Defendant in any United States District Court for purposes of enforcing any such subpoena.

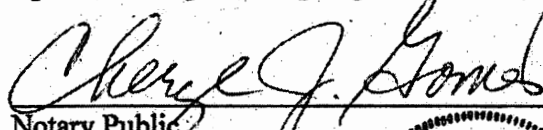
15. Defendant agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

16. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: 6/5/14


  
Donald R. Tescher

On June 5, 2014, Donald R. Tescher, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

  
Cheryl J. Gomes  
Notary Public  
Commission expires:



Approved as to form:

  
Norman A. Moscovitz, Esq.  
Moscovitz & Moscovitz, P.A.  
Sabadell Financial Center  
1111 Brickell Ave., Suite 2050  
Miami, FL 33131

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

DONALD R. TESCHER et al.,

Defendants.

C.A. No. \_\_\_\_-

**FINAL JUDGMENT AS TO DEFENDANT DONALD R. TESCHER**

The Securities and Exchange Commission having filed a Complaint and Defendant Donald R. Tescher ("Defendant") having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction and except as otherwise provided herein in paragraph VI); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or



instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder, in connection with any tender offer or request or invitation for tenders, from engaging in any fraudulent, deceptive, or manipulative act or practice, by:

- (a) purchasing or selling or causing to be purchased or sold the securities sought or to be sought in such tender offer, securities convertible into or exchangeable for any such securities or any option or right to obtain or dispose of any of the foregoing securities while in possession of material information relating to such tender offer that Defendant knows or has reason to know is nonpublic and knows or has reason to know has been

acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee or other person acting on behalf of the offering person or such issuer, unless within a reasonable time prior to any such purchase or sale such information and its source are publicly disclosed by press release or otherwise; or

- (b) communicating material, nonpublic information relating to a tender offer, which Defendant knows or has reason to know is nonpublic and knows or has reason to know has been acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee, advisor, or other person acting on behalf of the offering person or such issuer, to any person under circumstances in which it is reasonably foreseeable that such communication is likely to result in the purchase or sale of securities in the manner described in subparagraph (a) above, except that this paragraph shall not apply to a communication made in good faith

- (i) to the officers, directors, partners or employees of the offering person, to its advisors or to other persons, involved in the planning, financing, preparation or execution of such tender offer;
- (ii) to the issuer whose securities are sought or to be sought by such tender offer, to its officers, directors, partners, employees or advisors or to other persons involved in the

- planning, financing, preparation or execution of the activities of the issuer with respect to such tender offer; or
- (iii) to any person pursuant to a requirement of any statute or rule or regulation promulgated thereunder.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$9,937, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$690, and a civil penalty in the amount of \$9,937 pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]. Defendant shall satisfy this obligation by paying \$20,564 to the Securities and Exchange Commission within 14 days after entry of this Final Judgment.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center  
Accounts Receivable Branch  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Donald R. Tescher as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Final Judgment. Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

#### IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that based on Defendant's cooperation in a Commission investigation and/or related enforcement action, the Court is not ordering Defendant to pay a civil penalty in excess of \$9,937. If at any time following the entry of the Final Judgment the Commission obtains information indicating that Defendant knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the Commission may, at its sole discretion and without prior notice to the Defendant, petition the Court for an order requiring Defendant to pay an additional civil penalty. In connection with any such petition and at any hearing held on such a motion: (a) Defendant will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Defendant may not challenge the validity of the Judgment, this Consent, or any related Undertakings; (c) the allegations of the Complaint, solely for the purposes of such motion, shall be accepted as and deemed true by the Court; and (d) the

Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. Under these circumstances, the parties may take discovery, including discovery from appropriate non-parties.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the Complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

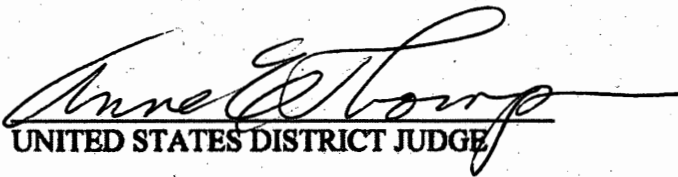
VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

VIII.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: Oct 1, 2015

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

DONALD R. TESCHER et al.,

Defendants.

C.A. No. \_\_\_\_-\_\_\_\_

**FINAL JUDGMENT AS TO DEFENDANT DONALD R. TESCHER**

The Securities and Exchange Commission having filed a Complaint and Defendant Donald R. Tescher ("Defendant") having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction and except as otherwise provided herein in paragraph VI); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or

instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder, in connection with any tender offer or request or invitation for tenders, from engaging in any fraudulent, deceptive, or manipulative act or practice, by:

- (a) purchasing or selling or causing to be purchased or sold the securities sought or to be sought in such tender offer, securities convertible into or exchangeable for any such securities or any option or right to obtain or dispose of any of the foregoing securities while in possession of material information relating to such tender offer that Defendant knows or has reason to know is nonpublic and knows or has reason to know has been



acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee or other person acting on behalf of the offering person or such issuer, unless within a reasonable time prior to any such purchase or sale such information and its source are publicly disclosed by press release or otherwise; or

- (b) communicating material, nonpublic information relating to a tender offer, which Defendant knows or has reason to know is nonpublic and knows or has reason to know has been acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee, advisor, or other person acting on behalf of the offering person or such issuer, to any person under circumstances in which it is reasonably foreseeable that such communication is likely to result in the purchase or sale of securities in the manner described in subparagraph (a) above, except that this paragraph shall not apply to a communication made in good faith

- (i) to the officers, directors, partners or employees of the offering person, to its advisors or to other persons, involved in the planning, financing, preparation or execution of such tender offer;
- (ii) to the issuer whose securities are sought or to be sought by such tender offer, to its officers, directors, partners, employees or advisors or to other persons involved in the

- planning, financing, preparation or execution of the activities of the issuer with respect to such tender offer; or
- (iii) to any person pursuant to a requirement of any statute or rule or regulation promulgated thereunder.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$9,937, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$690, and a civil penalty in the amount of \$9,937 pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]. Defendant shall satisfy this obligation by paying \$20,564 to the Securities and Exchange Commission within 14 days after entry of this Final Judgment.

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and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Donald R. Tescher as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.