IN THE CIRCUIT COURT OF THE l5TH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 50-2018-CA-002317

WALTER E. SAHM and
PATRICIA SAHM,

Plaintiffs,

v.

BERNSTEIN FAMILY REALTY, LLC and
ALL UNKNOWN TENANTS.

Defendants

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**SUGGESTION OF DEATH ON THE RECORD OF PLAINTIFF WALTER SAHM AS INDISPENSABLE PARTY FILED BY DEFENDANT ELIOT I. BERNSTEIN UNDER Fla. R. Civ. P. 1.260 AND SUPPLEMENTAL 1.530 MOTION TO VACATE FINAL JUDGMENT AND DISMISS ACTION WITH PREJUDICE OR ALTERNATIVELY ABATEMENT OF THE ACTION**

COMES NOW, Defendant Eliot I. Bernstein, who respectfully shows this Court as follows:

1. I am the Defendant Eliot I. Bernstein and make this filing of a Suggestion of Death of Plaintiff Walter Sahm on the record that by Internet research shows occurred in January of 2021 but in filing this Suggestion I in no way waive or give up fundamental defenses already entered and made in this action on

the face of the record that this Court lacks proper jurisdiction over myself due to improper Service of process and failure of Plaintiffs to allege proper jurisdictional facts in any complaint filed in the action that establishes proper capacity as a named Defendant party and that alleged Service of an earlier Complaint did not occur and any subsequent service of process violated Florida Judicial Administration Rules and Florida decisional law and due process standards of both the State and US Constitution.

2. Because the 4th DCA, 3rd DCA and other Courts of Florida reject the filing of "Unknown Tenants" and "John Doe" style complaints as establishing jurisdiction over a named individual such as myself, Eliot I. Bernstein, who was always known by my identity to both Plaintiffs Walter and Patricia Sahm as shown by the Handwritten Letters of Plaintiffs dating back to 2013 years before any Foreclosure action was commenced and now entered into this Record as an Exhibit, any such 1st or 2nd Amended Complaint alleged to have been Served on me as an "Unknown Tenant" was improper denying this Court jurisdiction.
3. By Florida Judicial Rule any such service of a 3rd Amended Complaint filed the day before the expiration of the 5 year Statute of limitations was further improper and void and could not be accomplished by "E-Service" against me denying this Court jurisdiction over myself in this action.

4. Because jurisdiction was never acquired over myself nor against my 2 sons Joshua and Jacob Bernstein who are indispensable parties as Owners and Members of BFR, LLC by their Trusts and the BFR, LLC Operating Agreement since these 2 sons were falsely named in the Third Amended Complaint as "minors" when known to be over the age of 18 well before the commencement of the action improperly being deemed to be "Served" through E filing against me as their Natural Guardian when over the age of 18 and because the Statute of Limitations expired on June 19, 2019 being 5 years after the date of Maturity of the Amended Note on June 19, 2014 and because no proper Service occurred and no motion to extend service made showing good faith by Counsel Sweetapple for Plaintiffs nor any proper Complaint filed before the expiration of the Statute of Limitation, ***this action must be Dismissed with Prejudice.***
5. As shown below, no valid Complaint has been filed in the action to date and **the Statute of Limitations expired on July 10, 2018 over 2.5 years ago** with no proper Service or jurisdiction over myself or BFR, LLC an indispensable party and no proper jurisdiction or complaint against my 3 sons the only Members of BFR, LLC and Owners of BFR, LLC as indispensable parties and in the case of my 2 oldest sons Joshua and Jacob the naming of them as "minors" is similar to the same scheme of fraud

advanced by Ted Bernstein and Alan Rose in the related Estate and Trust cases where the illegally imposed a GAL on my son Joshua Bernstein who was age of majority at the time and no competency hearing performed to establish a GAL and yet Alan Rose was served a Cease and Desist from my son Joshua Bernstein which is also in the record and dates back to 2017 in July over a year before Counsel Sweetapple filed this action yet the Court's Judgment is predicated on "unknown off the record colluding" by Sweetapple and Rose during a Summary Judgment, yet neither Counsel has come forward and corrected the wrongs and instead counsel Rose has recently perpetrated the fraud over in the Shirley Bernstein case further denying funds to my sons while not correcting the illegal GAL and not turning over documents and where Ted Bernstein and the parties Tescher Spallina and Rose are the actors who have prevented a proper payment to the Plaintiff.

6. Due to this prejudice and unclean hands and delay by misconduct of counsel Sweetapple this action must now be dismissed with prejudice as he not only failed to correct Service on BFR, LLC an indispensable party but proceeded to falsely file a Clerk's Default using the replaced 2nd Amended Complaint but proceeds to falsely submit a "Final Judgment" claiming Consent where no consent was provided which Judgment and Summary Judgment

proceedings are a nullity due to his failure to file a Suggestion of Death of Walter Sahm for the 10 months leading up to Summary Judgment and still has not filed one even though it was his own client and had to know the facts to suggest the Death on the record.

7. Still, Ted Bernstein and counsel Rose have yet to account for the "missing millions" from the Trusts and Estates of my parents while not filing many of the Trust documents he sued under to this day and where just one account at Wilmington Trust for the Simon Bernstein Irrevocable Trust was valued at nearly $2.9 million by Wilmington just 12 days before his passing while carrying on a scheme to deny due process to myself and family. See Attached Wilmington Trust Exhibit from Tescher-Spallina Bates production to former Simon Bernstein Curator Ben Brown.
8. The Trial Court was again alerted to Defenses and objections and facts sufficient to trigger the duty to investigate jurisdiction on March 5, 2020 as follows:

**Page 4 of March 5, 2020 Hearing Transcript:**

MR. BERNSTEIN: **Your Honor, I didn't file an**
**answer on - I've never been served. My wife has never**
**been served. Bernstein Family Realty who he's got his**
**mortgage with is a now dissolved entity by a judge.**

**Page 5 of March 5, 2020 Hearing Transcript**

***MR. SWEETAPPLE:· They were served by E-service***

11· ·and the date of service is June 18th and I'm only

12· ·Your Honor at this time seeking as to the unknown

13· ·tenants and let me give you the exact names of the

14· ·Bernstein's since there's so many Bernstein's-

**Page 8 of March 5, 2020 Hearing Transcript**

MR. BERNSTEIN:· She's never been served either.

16· ·**That service wouldn't – the one he sent you isn't**

**17· ·served upon me. It's served upon some unknown person**

**18· ·that doesn't match the description of anyone at our**

**19· ·home.**

**Page 9 of March 5, 2020 Hearing Transcript**

MR. BERNSTEIN:· And so, I've never been served.

18· ·My wife has never been served otherwise I would have

19· ·filed an answer and a counterpoint. My children who

20· ·are sued, are sued as minor children Mr. Sahm's very

21· ·aware that my children are not minor only one is. So,

22· ·they haven't been served. They own the house. They

23· ·bought the house with their money from their trusts.

Page 13 of March 5, 2020 Hearing Transcript:

MR. BERNSTEIN:· **Well, I've never been served to**

**·4· ·file an answer in response. People have been emailing**

**·5· ·me things but that's not service. I'm used to**

**·6· ·service, a dude shows up at the door, hands me the**

**·7· ·package I take it, I get 20 days or whatever the**

**·8· ·number is, I file my answer in response**. So, I've

·9· ·been waiting for that. **He has no documents serving me**

**10· ·anything other than that one which appears bogus**

**11· ·because they gave it to some unknown party down the**

**12· ·street. Now, so we never got that.**

**Page 16 of  March 5, 2020 Hearing Transcript:**

THE COURT:· Okay. Alright. Docket entry 17

·5· ·October 9, 2018.

·6· · · · *MR. SABOL:· Yes, Judge specifically says Eliot*

*·7· ·Bernstein. Describes him physically 5'11". Weight*

*·8· ·140. Black hair. No glasses.*

·9· · · · **MR. BERNSTEIN:· Your Honor that is not me.**

**10· ·Whoever served that I don't weigh that. I'm 240**

**11· ·pounds. Dude. And I don't have black hair I have**

**12· ·brown hair.**

**TRIAL COURT'S DUTY TO INVESTIGATE ITS OWN JURISDICTION**
**4TH DCA CITING FLORIDA SUPREME COURT 1931**

9. "However, it is also recognized that when an issue of jurisdiction over the party arises, **the trial court should investigate and determine whether such jurisdiction has been lawfully acquired**. Speight v. Horne, 101 Fla. 101, 133 So. 574 (1931). Because of the manner in which it was raised in this case, the jurisdictional issue should be determined at trial." See Palm Beach Towers, Inc. v. Korn, 400 So. 2d 110 (Fla. Dist. Ct. App. 1981).
10. **Where, however, it appears that a proper suggestion of want of jurisdiction over the parties has been made to the Court below and such objection has been overruled and that thereafter notwithstanding such objection the Court below proceeds to retain and exercise jurisdiction on the basis of a record which affirmatively shows on its face that no jurisdiction to proceed exists, prohibition is an appropriate remedy to restrain further proceedings in a case where the Court has never acquired jurisdiction over the parties.** (See Ex Parte State (Ala.), 43 So. 490) and the remedy by writ of error may not be a plain, speedy and adequate remedy for the petitioners. People v. District Court of Lake County,

46 L.R.A. 850. See SUPREME COURT OF FLORIDA Speight v. Horne, 101 Fla. 101 (Fla. 1931)

11. Personal jurisdiction is necessary for a court to have the authority to determine the rights of the parties. See Ruth v. Dep't of Legal Affairs, 684 So.2d 181 (Fla. 1996). **When an appropriate objection to personal jurisdiction is made, it is the trial court's duty to investigate jurisdictional questions and to determine from the record whether the court ever obtained jurisdiction over the parties. See Taylor v. Siebert, 615 So.2d 800 (Fla. 1st DCA 1993).** See Gilliam v. Smart, 809 So. 2d 905, 909 (Fla. Dist. Ct. App. 2002).

**“JOHN DOE” AND “UNKNOWN TENANT” COMPLAINTS INSUFFICIENT**

12. Gilliam which has been cited by the 4th DCA shows the type of complaints filed by Counsel Sweetapple do not create jurisdiction over individuals.

13. ***“In Florida, the filing of a "John Doe" complaint, without more, does not commence an action against a real party.*** See Grantham, 683 So.2d at 538. The facts and reasoning in Grantham are instructive for resolving the instant issues on appeal.” See Gilliam v. Smart, 809 So. 2d 905, 909 (Fla. Dist. Ct. App. 2002).

14. Gilliam goes on, "***The appellate panel found the naming of John Doe and the omission of the actual name to be more than a mere "error" or "defect in the defendant's proper legal name"*** that would be subject to Florida's liberal policy for amending pleadings. ***In fact, the plaintiff's mistake in identifying the defendant corporation was deemed "so substantial that an amendment in the description of the defendant" was tantamount to "an entire change of parties." Id. at 541."***

15. Gilliam further says, Consistent with the Grantham court, **we conclude that Smart's failure, under these circumstances, to name the real party defendant constitutes more than a mere error in the name given. This omission was complete and "substantial," such that any "amendment in the description of the defendant" constituted "an entire change of parties.**" Grantham, 683 So.2d at 541. "In such cases, the amended complaint does not relate back to the earlier pleading, and amounts to the commencement of a separate action." Id. ***In other words, the "John Doe" pleadings amounted to "a substantially incorrect identification of the defendant" that did not commence an action against the real party Gilliam and did not toll the running of the statute of limitations.*** Id. at 542; Click v. Pardoll, 359 So.2d 537 (Fla. 3d DCA 1978) (belated amendment of "Dr. John Doe" complaint alleging medical malpractice, by substituting name of

actual doctor, constituted new action filed as to doctor, so that amended complaint did not "relate back" to date original complaint was filed, and dismissal of complaint as to actual named doctor was proper. Gilliam, 809 So. 2d 905, 909 (Fla. Dist. Ct. App. 2002).

16. The 3rd DCA reversed the Trial Court and quashed Service against an Individual by a Summons for an Unknown Person in Unknown Pers. in Possession of the Subject Prop. v. MTGLQ Investors, LP, 217 So. 3d 1193 (Fla. Dist. Ct. App )., 

17. In this case with the Sahms and Counsel Sweetapple, the prejudice to myself and other defendants is severe and there was no basis to not have named myself, wife Candice or sons Joshua, Jacob and Daniel Bernstein. The prejudice and misconduct justifies Dismissal with prejudice when the entire Record is reviewed and the Exhibits showing the Plaintiff Sahms knew that and even informally complained that Ted Bernstein and his counsel and Tescher and Spallina were delaying payments to the Sahms and not even communicating or responding initially but now are “colluding” when using false and fraudulent Complaints and Service falsely claiming my sons Joshua and Jacob were minors when known not to be minors and when their identities were known before the action commenced.

18. Because any Service of the First or Second Amended Complaint was improper as my identity was not "unknown" and because the "Alleged" Service Return filed way against someone not even close to my description and thus Jurisdiction never acquired, E Service of the Third Amended Complaint which named me as a party and in a new and improper capacity was also improper and did not confer jurisdiction.

**E - SERVICE OF THIRD AMENDED COMPLAINT ALSO DID NOT CONFER JURISDICTION - Fla. R. Jud. Admin. 2.516**

19. Fla. R. Jud. Admin. 2.516 is clear. Rule 2.516 - SERVICE OF PLEADINGS AND DOCUMENTS - **(a) Service; When Required - . . . . . .**No service need be made on parties against whom a default has been entered, ***except that pleadings asserting new or additional claims against them must be served in the manner provided for service of summons.***

20. The Third Amended Complaint which was filed the day before the expiration of the Statute of Limitations was only provided by E-Service, yet this Complaint named new parties including naming myself as a party and also in different capacities and thus was a "new" claim and formal Summons had to be Served.

21. Not only was Service of the 2nd Amended Complaint invalid as it improperly did not Name my identity and plead facts on my identity even

though known to the Plaintiffs and also because an entirely wrong and different person not my description was Served, even if if were valid by Naming my Identity and pleading a New Capacity in the 3rd Amended Complaint, the E Service was no longer valid against me and certainly not valid to Serve my Adult sons who were adults before the action commenced trying to Default and claim Service on them through me while Plaintiffs were falsely claiming them to be minors,

**STATUTE OF LIMITATIONS EXPIRED BEFORE ANY PROPER COMPLAINT FILED AND SERVED BY PLAINTIFFS THUS THE ACTION MUST BE DISMISSED WITH PREJUDICE**

22. Instead of a record that shows good faith and motions in good faith by Counsel Sweetapple to correct the complaints and service, the Statute of limitations is expired and the action must be dismissed with prejudice as the Record is replete with false filings and misconduct.

23. Even the Summary Judgment Hearing Counsel Sweetapple tried to "convert" during the Hearing to a Default Final Judgment yet had Noticed the hearing as Summary Judgment but even Default Judgment was improper against myself as defenses of improper service and jurisdiction were advanced on the Record by oral motion pro se and by written objections and answers pro se.

**SUGGESTION OF DEATH OF PLAINTIFF WALTER SAHM**

24. The Suggestion of Death on the Record of Plaintiff Walter Sahm is made under Fla. R. Civ. P. 1.260 based upon Internet articles dated in January 2021 although no formal Obituary is found by Internet search.

25. It is presumed that both the Plaintiff Patricia Sahm who was married to Plaintiff Walter Sahm and Counsel Robert Sweetapple have knowledge of the death of Plaintiff Walter Sahm which according to some Internet articles occurred on January 5, 2021. See, https://www.indystar.com/story/sports/high-school/2021/01/13/indiana-basketball-hall-famer-walt-sahm-dies-78/4144880001/ and https://und.com/irish-legend-walt-sahm-passes-away/.

26. Counsel Robert Sweetapple for Plaintiffs has never provided any Notice of Death to the Defendants nor filed any Suggestion of Death or Motion for Substitution of Parties under Fla. R. Civ. P. 1.260.

27. It is unknown when Plaintiff Counsel Sweetapple became aware of the passing of Plaintiff Walter Sahm but presumably this happened well before a Notice of Hearing for Summary Final Judgment was filed some 6 months later after Death in August of 2021 since Counsel Sweetapple would have had to obtain Sworn Admissible evidence and Statements from Walter Sahm as an indispensable party Plaintiff to support the Summary Judgment.

28. This would mean that Counsel Sweetapple was aware of the passing of Plaintiff Walter Sahm, his own client at least 4 months prior to submitting a "Final Judgment" on December 21, 2021 which was falsely characterized as being based "On Consent" of the Defendant parties but was never served on my wife Defendant Candice Bernstein nor Counsel Ferderigos for my sons Joshua, Jacob and Daniel Bernstein.
29. Plaintiff Walter Sahm is an indispensable party not only for being a Plaintiff but also for being a signing party to the involved Deed transfer, HUD Statements at Closing, being a direct party to the Note and Mortgage and Amended Note and Mortgage transactions with Simon Bernstein and BFR, LLC and further by Handwritten Letters from himself and Pat Sham in June of 2013 to one Ted Bernstein and then to myself and wife Candice in Sept. of 2013 which were Entered into the Record before Judge Martin Colin in October of 2013 by myself and now entered into this Record as Exhibits.
30. Plaintiff Walter Sahm is further indispensable by his knowledge of Ted Bernstein and the facts surrounding who was "Managing" BFR, LLC after the passing of my Father Simon Bernstein also involving Robert Spallina and Donald Tescher and in particular by his Statement made by handwritten letter to Ted Bernstein in June of 2013 referencing a dedicated revenue stream of my parents to payoff the Note and Mortgage and acknowledging

the interest of myself and Defendant wife Candice Bernstein in the home by handwritten letter of Sept. of 2013 referencing the $90,000.00 of monies from my 3 sons Trust accounts used for improvements made to the home by my mother Shirley Bernstein before she passed and ***also by his written email with Pat Sahm in 2018 to myself acknowledging that at least my oldest son Joshua Bernstein was of the Age of Majority at that time nearly a year before Counsel Sweetapple filed a Third Amended Complaint in 2019 the day before the expiration of the 5 year Statute of Limitation on the Amended Note which falsely named my sons Joshua and Jacob Bernstein as "minors".***

31. Walt Sahm is further indispensable as to the knowledge of the identities of my sons Joshua, Jacob and Daniel Bernstein as the sole and only Member of BFR, LLC through their Trusts dating back to the time of the transaction in 2008 and also due to his knowledge of my extensive efforts to seek proper justice and accountancy in the Courts so the Plaintiff Sahms could be satisfied.

32. The 4th DCA in 2020 said, .**"If an indispens[a]ble party to an action dies, 'the action abates until the deceased party's estate, or other appropriate legal representative, has been substituted pursuant to [R]ule 1.260(a)(1).**' " Schaeffler , 38 So. 3d at 799 (quoting Cope v. Waugh , 627

So. 2d 136, 136 (Fla. 1st DCA 1993) ). **Moreover, the "[f]ailure to substitute the proper representative or guardian nullifies subsequent proceedings."** Id. at 800 ; see also Ballard v. Wood , 863 So. 2d 1246, 1249 (Fla. 5th DCA 2004) (finding that a failure to substitute pursuant to Rule 1.260(a)(1) nullified the subsequent proceedings). See, 4th DCA De La Riva v. Chavez 303 So. 3d 955, 958 (Fla. Dist. Ct. App. 2020).

33. "[I]t is well-settled that ‘an "[e]state" is not an entity that can be a party to litigation. It is the personal representative of the estate, in a representative capacity, that is the proper party.’ " Spradley v. Spradley , 213 So. 3d 1042, 1045 (Fla. 2d DCA 2017) (quoting Ganske v. Spence , 129 S.W.3d 701, 704 n.1 (Tex. App. 2004) ). "[O]nly when the proper party is in existence may it then be properly served and substituted ...." Stern v. Horwitz , 249 So. 3d 688, 691 (Fla. 2d DCA 2018) (citations omitted) (emphasis added).

34. The 4th DCA also said in 2020, “Here, Plaintiff initially complied with the procedures of Rule 1.260(a)(1) by contacting opposing counsel and requesting information regarding the opening of the decedent's estate. See Vera v. Adeland, 881 So. 2d 707, 710 (Fla. 3d DCA 2004). **Error occurred, however, when Plaintiff elected to actively continue the litigation, pursuant to his complaint filed against the fictitious "John Doe," commenced when no estate had been opened and no personal**

**representative appointed.** See In re Marriage of Kirby , 280 So. 3d 98, 100 (Fla. 4th DCA 2019) ; Adeland, 881 So. 2d at 710 ("If no estate has been opened, then another appropriate representative, such as a guardian ad litem, will need to be substituted."); see also Mattick v. Lisch , —— So.3d ——, 43 Fla. L. Weekly D2467 (Fla. 2d DCA Nov. 2, 2018). **Proper procedure required the abatement of the proceedings until such time as a personal representative of the estate could be (and actually had been) substituted as party** defendant and served with the complaint. See In re Marriage of Kirby , 280 So. 3d at 100." See See, De La Riva v. Chavez 303 So. 3d 955, 958 (Fla. Dist. Ct. App. 2020).

35. In 2019, the 4th DCA said, "The trial court correctly vacated the order granting attorney's fees to the former husband. **Obviously, upon the former wife's death, she ceased to be present before the court. Additionally, absent a valid order substituting the estate, the estate was not before the court on June 19, 2017, either. It is error to enter judgment against a non-present party.** Floyd v. Wallace , 339 So. 2d 653, 654 (Fla. 1976) (**finding cause of action abated upon death of indispensable party and court erred in "adjudicating the rights of the parties without having all of them actually or constructively before it" before properly**

**substituting party in deceased respondent's case**)." See, In re Marriage of Kirby 280 So. 3d 98 (Fla. Dist. Ct. App. 2019).

36. **Plaintiff Counsel Robert Sweetapple's right to represent Walter Sahm terminated upon his death alleged in January 5 of 2021 who was "no longer before the Court" and thus the Notice of Final Summary Judgment, Summary Judgment hearing and submission of Final Judgment in the name of Walter Sahm is void and a nullity and must now be vacated.** See, Wallace v. Keldie 249 So. 3d 747, 751 (Fla. Dist. Ct. App. 2018) "("[***D]eceased persons cannot be parties to a judicial ... proceeding."), nor could her attorney represent her interests,*** see Rogers v. Concrete Sciences., Inc. , 394 So.2d 212, 213 (Fla. 1st DCA 1981) (***"The death of a client terminates the relationship between the attorney and client and the attorney's authority to act by virtue thereof is extinguished.***").

37. What appears to be more than just a "coincidence" is that Counsel Sweetapple was improperly using a "Deceased person", his own client Walt Sahm in this proceeding while he "colludes" "off record" with Ted Bernstein's counsel Alan Rose where Ted Bernstein himself was implicated in the fraudulent use of my Deceased Father Simon Bernstein to "close" the Estate of my mother Shirley Bernstein. See, Peter Feamn Letter Complaint

to FBI White Collar Crimes, Miami Field Office already submitted as Exhibit in the Record.

38. Thus, at least Counsel Sweetapple ( if not the Plaintiffs themselves) has "colluded" with Alan Rose for Ted Bernstein "off the record" as reflected in the Nov. 22, 2021 "Summary Judgment" Hearing Noticed and heard as a Nullity for failure to move to Substitute upon Death of Walt Sahm where Ted Bernstein and Alan Rose are two of the parties to withhold Accounting and other Financial records and business records of BFR, LLC and the related entities and Trusts and assets that should have paid off the Plaintiffs back in 2012-2013. See, 1. Previously referenced Wilmington Statements; and 2. Attorney Paul Turner motion for Joshua Bernstein showing Joshua under an Illegal Gal with Diana Lewis setup by Alan Rose while Joshua also denied ANY records of BFR, LLC and the related entities.

39. All the Defendants Candice, Josh, Jake, Daniel Bernstein and myself have been prejudiced by these schemes where Counterclaims would now exist in the case IF I had been properly Served with a proper jurisdictional complaint. Such Counterclaims would now go against the Estate of Walter Sahm upon proper Suggestion of Death and Substitution.

**OTHER GROUNDS TO VACATE FINAL JUDGMENT AND DISMISS ACTION**

40. Because of the Unclean Hands, misconduct and prejudice to myself and other Defendant and it now being over 2 years beyond the expiration of the Statute of Limitations, the action should be Dismissed with Prejudice in its entirety.

41. Alternatively, the action should be Abated due to the Suggestion of Death and further Abated due to the misuse by Plaintiffs of the status of BFR, LLC.

42. The 4th DCA has further held that a Motion for 1.530 is a proper vehicle to Vacate any Judgment taken by Default. See 4th DCA Cano v. Guardianship of Cano, 321 So. 3d 237 (Fla. Dist. Ct. App. 2021), ." Florida's appellate courts "have uniformly interpreted rule 1.500 (c) as providing that the entry of default is improper when a party has filed a responsive pleading or otherwise defended before the entry of default." Pro-Art Dental Lab, Inc. v. V-Strategic Grp., LLC , 986 So. 2d 1244, 1259 (Fla . 2008). As we recently explained, "[u]nder the plain language of Florida Rule of Civil Procedure 1.500 (c), an answer filed prior to entry of default precludes the entry of default final judgment." Azure-Moore Invs. LLC v. Hoyen , 300 So. 3d 1268, 1269 (Fla . 4th DCA 2020) ; see also TLC Trust v. Sender , 757 So. 2d 570, 571 (Fla . 4th DCA 2000).

43. Both I and my wife made pro se oral motions on the record and raised defenses and filed pro se Answers, objections and Lis pendens before default. Thus, the default judgment should further be vacated.

44. Where a default has been improperly entered, the resulting final judgment must be set aside regardless of whether the defendant has established excusable neglect or a meritorious defense. Yellow Jacket Marina, Inc. v. Paletti , 670 So. 2d 170, 171 (Fla . 1st DCA 1996) ; Gavin v. Gavin , 456 So. 2d 535, 538 (Fla . 1st DCA 1984) ; Cohen v. Barnett Bank of S. Fla ., N.A. , 433 So. 2d 1354, 1355 n.3 (Fla . 3d DCA 1983) ; Chester, Blackburn & Roder, Inc. v. Marchese , 383 So. 2d 734, 735 n.3 (Fla . 3d DCA 1980). ", SEE 4th DCA Cano v. Guardianship of Cano, 321 So. 3d 237 (Fla. Dist. Ct. App. 2021),.

45. SEE entered Exhibit Document No. 80 filed by Counsel Sweetapple showing improper “Clerk’s Default” taken on BFR, LLC using improper Service on a 2nd Amended Complaint from 2018 to falsely take a “Default” against indispensable BFR, LLC on the Third Amended Complaint of 2019 which replaced the 2nd complaint.

46. The law is well-established that “where an undisposed motion is pending in a cause, a default judgment may not be entered, unless the determination of the motion either way would not affect the plaintiff's right to proceed with

the action." Vacation Escape, Inc. v. Mich. Nat'l Bank, 735 So.2d 528, 529 (Fla. 4th DCA 1999) (quoting Punta Gorda Ready Mixed Concrete, Inc. v. Green Manor Constr. Co., 166 So.2d 889, 890 (Fla.1964)); see also Goodman v. Joffe, 57 So.3d 1001, 1001 (Fla. 4th DCA 2011) (reversing a default final judgment because "the trial court should have ruled on [the appellant's] pending motion to vacate the default entered against her before entering a default final judgment"); Lakeview Auto Sales v. Lott, 753 So.2d 723, 724 (Fla. 2d DCA 2000) (reversing a default final judgment because the trial court failed to rule on pending motions to set aside the default). **SEE Document 83 Motion to Vacate Default of Josh and Jake Bernstein being over the age of 19 and falsely sued as minors.**

47. The motion to Vacate was clearly pending and not Disposed of before Summary Judgment or Final Judgment and because the defenses and claims of BFR, LLC and my sons as owners are indispensable and interrelated this is further grounds for Vacating the Final Judgment immediately.

48. Additionally, "[a]bsent strict compliance with the statutes governing service of process, the court lacks personal jurisdiction over the defendant." Anthony, 906 So. 2d at 1207 (quoting Sierra Holding v. Inn Keepers Supply, 464 So.2d 652 (Fla. 4th DCA 1985)). SEE COUNSEL SWEETAPPLE

MARCH 5, 2020 HEARING ACKNOWLEDGING NEED TO RE-SERVE BFR, LLC then instead taking False Clerk's Default.

49. It is clear that Plaintiffs have not strictly complied with Service and Jurisdiction requirements and in fact have been grossly deficient and knowingly fraudulent. See, Walt Sahm and Patricia Sahm signed Letters and Emails. Exhibits.

50. **[T]he plaintiff failed to amend its complaint to allege the requisite allegations to support substitute service.");** Moss v. Estate of Hudson by and through Hudson, 252 So.3d 785, 788 (Fla. 5th DCA 2018) ("**When the complaint is devoid of the jurisdictional allegations required for substituted service, the defendant cannot be properly served under the substituted service statute.") (**citations omitted); Taverna Opa Trademark Corp. v. Ismail, 2009 WL 1220513, at *1 (S.D. Fla. April 30, 2009) (**"Because the complaint lacks the necessary jurisdictional allegations, substitute service was not proper. Unfortunately, this deficiency cannot be cured by the subsequently filed affidavit, demonstrating the plaintiff's efforts to locate the defendant."**). See, Onyx Enters. Int'l Corp. v. Sloan Int'l Holdings Corp., No. 20-60871-CIV-ALTMAN/Hunt (S.D. Fla. July 28, 2020) Southern District Fla.

51. Plaintiffs failed to Amend the Complaint properly on any "substitute" Service whether used against Joshua or Jacob Bernstein or BFR, LLC thus leading to vacating the Final Judgment which must now happen and the action dismissed with prejudice for expiration of the Statute of Limitations.

**FURTHER ABATEMENT DUE TO STATUS OF BFR, LLC AND IMPROPER USE OF THIS "STATE CORPORATE STATUS" IF THE ACTION IS NOT DISMISSED WITH PREJUDICE**

52. Internet and research sources show the law is well established when it comes to the "status" of a business defendant such as a corporation or LLC.

53. See, 2020 3rd DCA followed by the 4th DCA in Hock v. Triad Guar. Ins. Corp. 292 So. 3d 37, 41 (Fla. Dist. Ct. App. 2020): "As an administratively dissolved corporation, it no longer may carry on any business **"except that necessary to wind up and liquidate its business and affairs under s. 607.1405." § 607.1421(3). A**s previously mentioned, under section 607.1405 **a dissolved corporation may collect its assets and do "every other act necessary to wind up and liquidate its business and affairs."** § 607.1405(1)(a), (e). Moreover, that statute expressly provides that dissolution does not "[p]revent commencement of a proceeding by or against the corporation in its corporate name." § 607.1405(2)(e).

54. "**The trial court should have granted Starkey's request for a brief continuance on the morning of trial to allow Starkey the opportunity to**

**reinstate itself so that Starkey would have been able to fully participate in the trial rather than suffer a judgment from an uncontested trial**. See id.; see also Chakra 5, Inc. v. City of Miami Beach, 254 So.3d 1056, 1062-63 (Fla. 3d DCA 2018) (***"[W]hen the issue of an entity's status with the Florida Secretary of State is raised, the appropriate course by a trial court is to abate the action for a brief period of time to permit compliance with the statute;*** **only after a failure to comply within a reasonable time may sanctions such as dismissal be considered.**").

55. This case Chakra 5, Inc. v. City of Miami Beach 254 So. 3d 1056, 1062 (Fla. Dist. Ct. App. 2018) shows, Citing Allied Roofing Indus., Inc. v. Venegas, 862 So.2d 6, 9 (Fla. 3d DCA 2003) (quoting Cosmopolitan Distribs., Inc. v. Lehnert, 470 So.2d 738, 739-40 (Fla. 3d DCA 1985) ); see also Bldg. B1, LLC v. Component Repair Servs., Inc., 224 So.3d 785, 788 (Fla. 3d DCA 2017). **Venegas is clear that when the issue of an entity's status with the Florida Secretary of State is raised, the appropriate course by a trial court is to abate the action for a brief period of time to permit compliance with the statute; only after a failure to comply within a reasonable time may sanctions such as dismissal be considered.** Venegas, 862 So.2d at 9.

56. Instead, the Record in this Sahm action shows BFR, LLC "status" being misused, improper Service, improper Defaults while similar bad process and lack of due process used against my sons, the Owners of BFR, LLC who have been denied ANY documents or Records on BFR, LLC from Ted Bernstein and Alan Rose YET "somehow" the Trial Court allowed "off the record" collusion between Counsel Sweetapple with Alan Rose for Ted Bernstein instead of holding a hearing and where the Court record and complaint is totally lacking on any information on the history of BFR yet the Sahm 2013 letters show Ted Bernstein, Teacher and Spallina implicated in the mismanagement of BFR. LLC.

**WHEREFORE** it is respectfully prayed for an Order Vacating the final judgment and dismissing the action with prejudice or alternatively Abating the action until a proper motion is filed by Plaintiffs for Substitution based upon a Suggestion of Death and Abatement until the proper status of Bernstein Family Realty, LLC is determined and for such other relief as is just and proper.

**/s/Eliot Ivan Bernstein**

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**CERT IFICAT E OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by E-mail Electronic Transmission; Court ECF; this 4th day of April, 2022.

**/s/Eliot Ivan Bernstein**

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