

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.: 2014CP003698

Plaintiff,

v.

ALEXANDRA BERNSTEIN; et al.

Defendants.

**RESPONSE AND STATEMENT OF NO OBJECTION BY PLAINTIFF, TRUSTEE,
TO EMERGENCY PETITION OF TRUSTEE GINGER STANGER**

Plaintiff, Ted. S. Bernstein as Trustee ("Plaintiff"), submits this Response to the *Emergency Petition of Trustee Ginger Stanger to Withdraw and Transfer Certain Funds in Court Registry to the Beneficiaries Joshua, Jacob and Daniel Bernstein* (DE 447) filed by Ginger Stanger (the "Emergency Motion").

1. The pending Emergency Motion asks the Court, as the *de facto* trustee of the inheritance of three grandchildren, to authorize withdrawals from the Court Registry. The Court assumed this role through the *Order on Plaintiff, Ted S. Bernstein's Motion to Modify Order dated May 22, 2017; to Direct Payment for Benefit of Eliot's Children to Court Registry; and to Determine Compensation for Guardian Ad Litem and Discharge Guardian*, entered December 6, 2017 (DE 295; **Ex. A**) signed by Judge Scher (the "Registry Order").

2. The Registry Order attaches the relevant excerpt from the Simon L. Bernstein Amended and Restated Trust Agreement dated July 12, 2012 ("Simon's Trust"), which provides the Court guidance based upon the wishes of the settlor/decedent (Simon) in his final documents.

Although Plaintiff was appointed as Trustee of Simon's Trust (the main trust), and in that capacity was the party responsible for the initial distribution into the court registry, Plaintiff has no direct involvement in the further administration of the sub-trusts or the registry funds at issue. Plaintiff's sole involvement over the past seven or eight years has been to advise the Court as to his understanding of Simon's testamentary wishes and to seek the implementation of those wishes. As noted herein, this Court alone is the decision-maker.

3. Plaintiff is the oldest son of the decedent/settlor, and served admirably as trustee for an extended period of time, during which there was extensive litigation. Plaintiff served despite being subjected to the absolute disdain of his brother, Eliot Bernstein. Eliot's three sons, Joshua, Jacob and Daniel ("Eliot's Sons"), appear to have unfortunately, but perhaps not surprisingly, inherited their father's disdain for Plaintiff. Indeed, rather than enjoy their modest inheritance (approximately \$150,000 each), their father embarked on a year's long campaign of litigation and appeals that accomplished nothing. And now, while asking the Court to authorize withdrawals, Eliot's sons continue in their father's insulting and demeaning tone.

4. This case has a long and tortured history, much of which is irrelevant. But this Court, to rule on the pending Emergency Motion, and any future motions seeking release of the funds, must have at least a brief synopsis of the key events and issues that lead everyone here. This Response is aimed to do just that.

5. The "Beneficiaries" of the funds in the Court Registry are Joshua, Jacob, and Daniel Bernstein, three of the ten grandchildren of Shirley and Simon Bernstein, who died in 2010 and 2012 respectfully. The funds in question are their inheritance from their grandparents trusts (Simon had

a power of appointment over the assets in Shirley's Trust, so it all was to roll into ten sub-trusts, one for each grandchild).

6. For context, although Simon and Shirley lived large and spent lavishly, in the end this was a modest estate/trust to be split ten ways – only a few million dollars. There was one major impediment to efficiently administering this estate and distributing monies to the grandchildren – Eliot Bernstein.

7. Eliot believed in 2012 (and probably still does to this day) that his father was leaving him 1/3 of an estate worth more than \$100 million, or even billions. Eliot was cutout in the end, in the final version of Simon's Trust executed a few months before his death, but Eliot's Sons were to receive 30% (10% each). Regardless Eliot challenged the final documents, and also began a search for the missing millions and millions of dollars. Eliot is not shy about telling his life story (<http://iviewit.tv/inventor/index.htm>), or filing papers in court proceedings.

8. Eliot's status as a beneficiary under Simon's 2008 documents gave him standing in Simon's Estate. There were extensive proceedings that began before Judge Colin to address Eliot's concerns, and Simon had a well-heeled creditor who raised claims concerning a business venture. Thus, at the start, Eliot was not all alone in his desire to control this estate and its assets. There were fights over who could serve as fiduciary, and Judge Colin appointed a curator (the late attorney Benjamin Brown) and then an independent Personal Representative, Brian O'Connell. There were challenges to the authenticity and validity of essentially every document. The case was litigated as if there were tens of millions at stake, rather than a few million.¹ This Court has witnessed some of

¹ Without belaboring the past, this case was actively litigated after Simon's death in September 2012, and resulted in circus-like proceedings before the Hon. Judges Colin, Phillips, Scher, Keever-Agrama, Johnson, before the most recent judicial rotation. After years of challenges

that hostility, by just reading the vitriol in the Emergency Motion and the banter at the last hearing when Plaintiff's counsel was addressing the Court.

9. This actual case (number 2014CP003698) began as a simple declaratory judgment action to determine which of Simon's and Shirley's testamentary documents were valid. That issue was subject to a full trial on the merits, a one day bench trial before Judge Phillips. Plaintiff prevailed, and the final testamentary documents signed in July 2012 were upheld. That was late 2015. As a result of that ruling, Eliot thereafter lacked standing, which Judge Phillips confirmed in an order barring Eliot from further participation. (*See* Order dated February 1, 2016 – **Ex. B**) ("Eliot Bernstein is barred from any further participation in his individual capacity").²

10. Thereafter, Judge Phillips appointed as a Guardian as Litem the late Hon. Diana Lewis, a retired circuit court judge (the "GAL"), at Plaintiff's request. Judge Phillips noted his prior order barring Eliot from participating, and went further: "In fact, his [Eliot's] actions were adverse and destructive to his children's interests." (Order dated March 1, 2016, DE 161, **Ex C.**)

11. Nonsense aside, there was serious legal work that needed to be done, and that was done, in these matters. Plaintiff, as Trustee of the Shirley Trust and the Simon Trust, and Mr. O'Connell as Simon's PR, were involved in a number of matters: claims against Simon's professionals; litigation with the creditor; and a lawsuit relating to a life insurance policy. Also, one

to the testamentary documents and fiduciaries, Judge Phillips tried the case and affirmed/upheld the documents; rejected Eliot's claims; and appointed a Guardian ad Litem. There were a dozen appeals.

² After a dozen unsuccessful appeals, which were totally meritless, Eliot Bernstein was eventually barred by the Fourth DCA from making any further pro se appellate filings, in an Order dated August 23, 2017. (**Ex. D**) That Order was violated at least once, resulting in the dismissal of a pro se appeal filed by Eliot Bernstein in what is referred to as the foreclosure case. (**Ex. E**) If nothing else, this Court needs to know Eliot Bernstein is not be allowed to speak or participate in any hearing in this case, and cannot file any *pro se* appeals to the Fourth DCA.

of Simon's assets was a second mortgage on a home Simon purchased for Eliot's family, which was the final asset being administered (and which turned out to have no value).

12. Judge Lewis served (quite admirably) as GAL for the benefit of and as the court-appointed representative of Eliot's Sons, over Eliot's objections and appeals. In November 2016, after extensive mediation involving every interested person (including the GAL), the parties executed a 17-page Mediation Settlement Agreement to resolve everything between everyone. Eliot, who lacked standing and was not acting for his children, did not participate.

13. That settlement involved waivers and releases and, upon receipt of the required court approval, would have ended all litigation. Instead, it just resulted in another circus of lengthy trial court proceedings seeking approval (which was eventually granted) and more appeals.

14. The GAL participated and approved the settlement as being in the best interests of her only concern – Eliot's Sons. As a result of the settlement, there was a need to distribute funds to sub-trusts for each of Eliot's Sons. Although the Court approved the settlement, no one could find a trustee willing to serve due to Eliot. Judge Lewis (the GAL) eventually grew tired of this mess, and refused to continue service for Eliot's sons as their Trustee. (**Ex. C, p. 2**) Judge Phillips had prohibited Eliot from serving as trustee, finding his actions "adverse and destructive" to his children (**Ex. C, p. 3**) Judge Scher rejected a trustee proposed by Eliot Bernstein. (**Ex. C., p. 7**) Ultimately, Judge Scher agreed with Plaintiff's request to deposit the funds in the court registry, to be supervised by the Court. (**Id., pp. 3-4**)

15. In other words, after exhausting other ways to distribute these funds out of the main trust, the inheritance of Eliot's Sons were deposited into the Court Registry as a last resort. The other seven grandchildren received their inheritances in separate trusts overseen by their parent; but

not Eliot's Sons. That is why Plaintiff stated earlier this Court is the *de facto* trustee. Eliot's Sons are still here because they have no trustee to oversee their inheritance, which should have been their father.

16. The funds are to be used for the Needs and Welfare as defined in the Trust. (**Ex. F**). Simon's Trust directed that the funds could only be voluntarily withdrawn, and were protected against an involuntary exercise of withdrawal. The terms of Simon's Trust, as embodied in the Registry Order, are provided as guidance to the then-assigned judge (i.e. Your Honor) in ruling on whether or not to authorize the release of funds upon:

- b. if no successor trustee has yet been appointed and any of Eliot's Children requests a distribution consistent with the terms of Simon's Trust, such child could seek such distribution by filing a motion with the Court. **Upon the filing of any such motion, this Court will consider such request in light of the terms of Simon's Trust, and will direct the Clerk to release such funds as this Court deems appropriate under the circumstances;** and
- c. upon each child reaching the age of 35, each such child is entitled to seek the immediate release of all remaining funds held by the Clerk of the Court, upon motion and order.

17. From time to time over the past nearly decade, there have been a number of prior attempts or requests to withdraw funds, or appoint a different person as trustee. Some of the requests have been granted; some have been partly granted; and some denied altogether (See **Comp. Ex. G and H**) All of those orders are final and non-appealable, and frankly, are in the past.

18. Plaintiff acknowledges it has, at times, expressed its concerns about the selection of certain people as trustee, with concern as to anyone under the control or influence of Eliot Bernstein.

Plaintiff also has raised concerns with large payments to attorneys.³ Plaintiff did not object or consented to several of the disbursements, as the Court will see in **Comp. Ex. G**.

19. That said, the funds are not the property of Plaintiff. Plaintiff has no power to authorize releases, but has provided statements of "no opposition" or "no objections" on many occasions when the requests appeared to be for the best interests of the grandchildren consistent with the terms of the Court Registry Order and the Simon's Trust. Plaintiff has objected at times, and merely raised concerns for the Court's consideration, as to requests for the release of the entirety of the trust funds, releases for the payment of attorneys' fees, or other matters in which it was not clear that the use of the funds was for the health, education, welfare, and support of the children. **Composite Exhibit G** are all prior orders that approved distributions from the Court Registry (Order of July 29, 2019-DE 360 [Partial]; Order of September 17, 2020-DE 376; Order of November 16, 2020-DE 386; Order of February 23, 2021-DE 396; Order of August 30, 2022-DE 417).

20. On occasion, the Court has determined, in exercising its independent judgment and discretion, to deny the requests for release of funds. Those orders which appear in the court file are attached for the Court's convenience as **Composite Exhibit H** (Order of July 29, 2019-DE 360 [Partial]; Orders of August 24, 2020-DE 372, 373, 374; Order of April 5, 2022-DE 409).

21. Against that backdrop, this Court alone will decide the Emergency Motion, and all future requests for disbursement, in its discretion, pursuant to the terms of Judge Scher's Registry

³ Plaintiff raised concerns about large payments to a non-Florida lawyer (Lalit K. Jain <http://lkjesq.com/LKJESQ.pdf>) who Eliot's Sons proffered to hold all of the registry funds, and at least one Florida lawyer (Inger Garcia). Ms. Garcia recently was sanctioned for fraud on the court by Judge Parnofiello, as shown in the Notice of Filing by Charles Revard, Guardian, in a recent foreclosure judgment. This ruling by Judge Parnofiello was submitted by the secured creditor through its counsel, the Sweetapple law firm, in a May 28, 2025 Notice of Filing. Ms. Garcia may also have been involved in some fashion in a misguided bankruptcy that resulted in the substantial sanction judgment against Eliot's Sons as discussed below.

Order. **(Ex. A)** As to this specific request for a \$25,000 withdrawal each, the Plaintiff's position is the same as it always has been – it is up to the Court's discretion alone. The Court must decide if this request is for the Welfare and Needs of Eliot's Sons, and if so, whether to allow it.

22. From his review of the limited information provided in the Emergency Motion, Plaintiff sees no reason to object based upon the face of the requests. In particular, these specific requests do not seek the release of all of the money; do not seek to pay purported lawyers for Eliot's Sons; and do not appear to seek money for the benefit of Eliot or anyone other than one of Eliot's Sons. Plaintiff does not know the exact remaining balance, but does note there is a finite sum of money available, and that it will not last these boys long, especially if spent imprudently. But Plaintiff does not raise an objection to the amount or purpose of this request.

23. There is one other matter the Court must consider, which is raised in the Emergency Motion and in the filings of a creditor of Eliot's Sons. There is a judgment debt against Eliot's Sons, jointly and severally, arising from a sanction for a bad faith bankruptcy. That judgment arose from a questionable bankruptcy designed to delay a foreclosure sale, and resulted in Joshua, Jacob and Daniel Bernstein being on the wrong end of a substantial judgment (in the range of \$40,000-\$50,000 or more, jointly and severally). That judgment, imposed by a federal bankruptcy judge, is in favor of the holder of a mortgage.

24. Plaintiff recognizes the Court may be faced with a Hobson's choice – whether to treat the registry funds as spendthrift, meaning these three young men will have a non-appealable and perhaps non-dischargeable debt hanging over them like a sword of Damocles; or allowing payment on the judgment, which would reduce their registry funds, but leave them judgment-free.⁴ That is

⁴ Plaintiff is concerned it would be a challenge for Eliot's Sons to function – obtain credit, buy a home or take out a mortgage – with a judgment against them. Simon certainly would not have

solely the Court's decision, based upon the law, the trust document, and the Court's prior rulings. Plaintiff takes no position.

25. Much of the "Emergency Motion" and much of the discussion at the prior hearing focused on that mortgage foreclosure case, which was only recently completed. Joshua Bernstein made baseless assertions that Plaintiff, as Trustee administering a second mortgage on the same property, somehow acted improperly. Nothing could be farther from the truth. Very early on, in **June 2014**, Plaintiff moved in the underlying trust and estate matter for permission to purchase the first mortgage, to protect the property for the benefit of Simon's grandchildren. The motion read as follows:

9. Regardless of the ultimate disposition of the Mortgage and the Note it secures, in order to preserve and/or maximize the value of this asset, **it is the Trustee's business judgment that the Estate needs to protect its interest by purchasing or otherwise satisfying the first Mortgage** and being authorized to pay the outstanding taxes. The alternative would require Mr. Sahm, the holder of the first mortgage, to retain counsel and litigate against BFR and the current occupant of the property, Eliot Bernstein and his family. **We would anticipate such litigation to be very costly** to the Mortgage holder, and any attorneys' fees, plus interest, late fees, default interest, costs and expenses would only add to the debt and further **diminish whatever equity value remains in the Second Mortgage**.

(See **Ex. I**, Motion for Instructions, pps. 2-3, June 4, 2014-DE 146, Estate of Simon Bernstein, Case No. 2012-CP-004391)

26. Eliot Bernstein objected to the petition, and Judge Colin did not grant it. Eleven years later, we now stand before the Court, and the \$110,000 first mortgage tripled with interest, and seemingly wiped out the second mortgage and any equity in the home. The foreclosing lender is represented by the Sweetapple firm, and that lender holds the +/- \$50,000 fee judgment against the Sons which resulted from one of the unsuccessful bankruptcies designed to delay the foreclosure

wanted that. But it is a sizeable portion of their inheritance, and solely up to the Court.

sale. In the end, as predicted, the first mortgage debt grew so large it wiped out the second mortgage. But any suggestion that the Plaintiff or his counsel did anything wrong in connection with this mortgage foreclosure case is absurd.

27. Finally, Plaintiff notes it is not necessary nor efficient for Plaintiff to contest and refute every false factual assertion, derogatory comment, or criticism of Plaintiff or his counsel made in the Emergency Motion in this filing. Suffice it to say, Plaintiff and his counsel vigorously deny the assertions against them, and will continue to act as they deem appropriate in accordance with the directives of the testamentary documents upon which they were nominated to serve.

Conclusion

The purpose of this filing is to make certain that the then-assigned Judge in this matter is as aware of the facts as the prior judges who made similar determinations, and to make certain any decision is made with knowledge of the Registry Order and Simon's Trust.

Having provided that information, Plaintiff has full trust and faith that this Honorable Court will make a determination as to the request for a release of funds, using its own wisdom, judgment, and discretion, based upon all the facts and circumstances, and will make all such determinations now and in the future independent of any opinion of the Plaintiff.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via the E-Filing Portal to parties listed on the Service List on the portal via email this 16th day of June, 2025.

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

**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 ON PLAINTIFF, TED S. BERNSTEIN'S MOTION TO MODIFY
ORDER DATED MAY 22, 2017; TO DIRECT PAYMENT FOR BENEFIT
OF ELIOT'S CHILDREN TO COURT REGISTRY; AND TO DETERMINE
COMPENSATION FOR GUARDIAN AD LITEM AND DISCHARGE GUARDIAN**

THIS CAUSE came before the Court on November 15, 2017 on Ted Bernstein's *Motion to Modify Order Dated May 22, 2017 etc.* ("the Motion"). The Court, having reviewed the Motion and the record, and having been otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:

Exhibit A

A

1. The Motion is GRANTED, such that the settlement previously approved by Order dated May 22, 2017, is modified as set forth in this Order.

2. One of the issues now before the Court is the selection of a trustee to serve in place of Eliot Bernstein in connection with the three Eliot Children Trusts created under the Simon L. Bernstein Amended and Restated Trust Agreement dated 7-25-12 ("Simon's Trust"), for the ultimate benefit of D.B, Ja. B and Jo. B ("Eliot's Children").

3. In connection with the same issue being decided by this Court in the Simon Bernstein Estate Matter, Case No. 2012CA004391XXXXNBIH ("Simon's Estate"), the Court heard evidence and argument, and separately made rulings on these same issues raised in this Motion. Based on the rulings made in Simon's Estate matter, the Court hereby makes the same rulings in this case for the same reasons, as follows below.

4. Based upon the evidence addressed in the Simon Trust order, and because this Court already has determined (i) Eliot Bernstein's actions were adverse and destructive to his children's interest (in connection with appointment the Guardian Ad Litem), and (ii) it will be difficult or impossible to find a replacement Trustee, the Court reluctantly directs all funds from the Shirley Bernstein Trust to be paid for the benefit of Eliot's Children shall be deposited into the Registry of the Court, under the terms and conditions set forth in this Order.

5. The Court-awarded fees and costs to the GAL were determined in the Simon Estate Order and apply equally here. Such compensation will be paid before the distribution of any funds into the Registry. The Court directs the Trustee to pay such fees directly to the GAL.

6. Any and all funds which would otherwise be paid into the Eliot Children's Trust, as defined in the Settlement Agreement or any other agreement (including any settlement proceeds from

*A copy of that ORDER is attached hereto as Exhibit A.

the Illinois insurance litigation), will be deposited or paid into the Registry of the Court, separately for the benefit of each of Eliot's Children, and such funds will be released under the following conditions:

a. if the Court at any time appoints a successor trustee for any or all of the Eliot Children's Trust, all funds held in the Registry of the Court will be released to such trustee, to hold in an appropriate trust account solely for the benefit of Eliot's Children, consistent with the terms of Simon's Trust (the relevant parts of which are attached as Exhibit **B**).

b. if no successor trustee has yet been appointed and any of Eliot's Children requests a distribution consistent with the terms of Simon's Trust, such child could seek such distribution by filing a motion with the Court. Upon the filing of any such motion, this Court will consider such request in light of the terms of Simon's Trust, and will direct the Clerk to release such funds as this Court deems appropriate under the circumstances; and

c. upon each child reaching the age of 35, each such child is entitled to seek the immediate release of all remaining funds held by the Clerk of the Court, upon motion and order.

7. By entry of this order which resolves the need for a new trustee, and upon the entry of orders approving all of the pending settlement agreements involving the GAL, the GAL shall be discharged and her reasonable hourly rate and compensation shall be split equally between the three Eliot Children's Trust.

8. Notwithstanding the discharge of the GAL, the Court's prior *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, 2016¹ (the "Order" [DE 161]) will remain in full force and effect.

9. For the reasons set forth in the Simon Estate Order, based upon the GAL's background, her time and expense records and her testimony, the Court determined the reasonable compensation of the GAL. The amount awarded in the Simon Estate Order covered all matters, including this one, and if needed, the Court would have entered the same award in this case. The amount awarded shall be paid by the Trustee from the funds available for the distributions to Eliot's Children, split 1/3 each.

DONE AND ORDERED in Chambers, North County Courthouse on 12/4, 2017.


HONORABLE ROSEMARIE SCHER

cc: All parties on the attached service list

¹The Order provides at paragraph 10:

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; (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.

SERVICE LIST Case No.: 502014CP003698XXXXNBIJ

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

IN RE:

CASE NO. 502012CP004391XXXXNBIH

ESTATE OF SIMON L. BERNSTEIN,

ORDER ON (i) TRUSTEE'S MOTION TO APPROVE COMPROMISE AND SETTLEMENT (ii) APPOINT A TRUSTEE FOR THE TRUSTS CREATED FOR D.B., J.A.B., AND JO.B, AND (iii) DETERMINE COMPENSATION FOR GUARDIAN AD LITEM [D.E. #498]; (iv) MOTION TO DIRECT PAYMENTS FOR BENEFIT OF ELIOT'S CHILDREN TO COURT REGISTRY IN LIEU OF APPOINTING TRUSTEE; AND (v) TO DETERMINE COMPENSATION FOR GUARDIAN AD LITEM AND DISCHARGE GUARDIAN [D.E. 724]

THIS CAUSE came before the Court on Wednesday, November 15, 2017 on Trustee's *Motion to Approve Compromise and Settlement, Appoint a Trustee for the Trusts Created for D.B., J.A.B., and Determine Compensation for Guardian Ad Litem* (D.E. 498) and Trustee's *Motion to Direct Payments for Benefit of Eliot's Children to Court Registry in Lieu of Appointing a Trustee and to Determine Compensation for Guardian Ad Litem and Discharge Guardian* (D.E. 724) (collectively the "Motions"). The Court, having reviewed the Motions and the record, heard argument of counsel and the parties, having received evidence, and being otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:

1. The Motions are granted in part as set forth in this Order.
2. After mediation, a written Mediation Settlement Agreement ("Settlement") was executed by and between: (i) Ted S. Bernstein, as Trustee of the Simon L. Bernstein Trust (the "Simon Trust"), which is the sole residuary beneficiary of this Estate; and (ii) the trustees or court-appointed representatives of ten trusts created for the benefit of Simon's ten grandchildren

under the terms of Simon's Trust, being all of beneficiaries and potential beneficiaries of the Simon Trust.¹

3. The Settlement is approved and made effective immediately, subject to the terms of the Settlement. The Court will retain jurisdiction to enforce and fully implement the Settlement.

4. One of the issues now before the Court is the selection of a trustee to serve in place of Eliot Bernstein in connection with the three Eliot Children Trusts created under the Simon L. Bernstein Amended and Restated Trust Agreement dated 7-25-12 ("Simon's Trust"), for the ultimate benefit of D.B, Ja. B and Jo. B ("Eliot's Children").

5. The Court heard evidence from the Guardian Ad Litem, Diana Lewis. Lewis is an experienced member of The Florida Bar, who testified to having more than 20 years of experience in private practice plus approximately 12 years experience as a circuit court judge in Palm Beach County, including time serving as a judge in this Court's Probate Division.

6. Lewis testified that she would not agree to serve as trustee for the three Eliot's Children's Trust. Further, based on her experience as a lawyer and a judge and the unique circumstances of this case, Lewis testified she believes no corporate trustee would accept an appointment as trustee for the Eliot Children's Trust. Lewis explained her belief that no corporate trustee would likely take an appointment in this matter due to the small asset size of the trusts, the limited fees to be earned, and the unique nature of the parties to this case. A brief

¹ Trusts created for the benefit of Jo. B., Ja. B. and D.B., (the Eliot Children's Trusts) by Diana Lewis as Guardian ad Litem and pending appointment of a Trustee; Trust created for the benefit of J.I. by Jill Iantoni as Trustee; Trusts created for the benefit of Alexandra Bernstein, Eric Bernstein and Michael Bernstein by Ted Bernstein as Trustee; Trust created for the benefit of Molly Simon by Pam Simon as Trustee; and Trust created for the benefit of Max Friedstein and C.F. by Lisa Friedstein as Trustee.

review of the docket establishes a level of contentiousness and litigiousness that is unprecedented. Lewis testified that the Shirley Bernstein Trustee had communicated with Eliot Ivan Bernstein and with Eliot's Children, and received no suggestions for the new trustee. Lewis is not aware of any attorney or other person willing to serve as trustee.

7. Because this Court already has determined that Eliot Bernstein's actions were adverse and destructive to his children's interest (in connection with appointment the Guardian Ad Litem), and given the difficulty or impossibility of finding a trustee, the Court reluctantly directs all funds for the benefit of Eliot's Children to be deposited into the Registry of the Court, under the terms and conditions set forth in this Order.

8. The Court-awarded fees to the GAL as set forth below, will be paid before the distribution of any funds into the Registry. The Court directs the Trustee to pay such fees directly to the GAL.

9. Any and all funds which would otherwise be paid into the Eliot Children's Trust, as defined in the Settlement Agreement or any other agreement (including any settlement proceeds from the Illinois insurance litigation), will be deposited or paid into the Registry of the Court, separately for the benefit of each of Eliot's Children, and such funds will be released under the following conditions:

a. if the Court at any time appoints a successor trustee for any or all of the Eliot Children's Trust, all funds held in the Registry of the Court will be released to such trustee, to hold in an appropriate trust account solely for the benefit of Eliot's Children, consistent with the terms of Simon's Trust (the relevant parts of which are attached as Exhibit A).

b. if no successor trustee has yet been appointed and any of Eliot's Children requests a distribution consistent with the terms of Simon's Trust, such child could seek such distribution by filing a motion with the Court. Upon the filing of any such motion, this Court will consider such request in light of the terms of Simon's Trust, and will direct the Clerk to release such funds as this Court deems appropriate under the circumstances; and

c. upon each child reaching the age of 35, each such child is entitled to seek the immediate release of all remaining funds held by the Clerk of the Court, upon motion and order.

10. By entry of this order which resolves the need for a new trustee, and upon the entry of orders approving all of the pending settlement agreements involving the GAL, the GAL shall be discharged. The GAL's reasonable compensation shall be split equally between the three Eliot Children's Trust.

11. Notwithstanding the discharge of the GAL, the Court's prior *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, 2016² (the "Order" [DE 161]) will remain in full force and effect.

² The Order provides at paragraph 10:

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; (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.

12. As to the issue of determining the reasonable compensation of the GAL, the Court heard further testimony from the GAL and received into evidence time and expense records of the GAL. The time and expense reports from March 4, 2016 showed a total of 122 hours and 16 minutes as of October 27, 2017, not including time preparing for and attending the November 15th hearing and any further proceedings in this case. The GAL also incurred travel expenses of \$179.16 in mileage costs.

13. In addition to authenticating and verifying the accuracy of her time and expense records, the GAL explained that her standard hourly rate for work as an attorney after leaving the bench was \$350 per hour. The Court finds such rate would be reasonable for a lawyer and former circuit judge with the experience held by the GAL as noted above. Notwithstanding her standard hourly rate, the GAL testified that she had agreed to this appointment at a lower rate to be determined by this Court in the best interests of Eliot's Children. The GAL explained her willingness to take a reduced rate given the time and expense that had predated her involvement, the relatively small amount of assets, and the circumstances of this case. The GAL further explained that she had already reduced some of her time entries as a courtesy by not including every single item of work or the full amount of time when she performed services as GAL on behalf of the best interests of Eliot's Children. This Court took the time to review each entry. The GAL's billing was reasonable. It is clear the GAL was specific to the amount of time spent, a few entries were actually billed for only one minute.

14. In this particular case, it is clear that the Guardian's extensive background and knowledge as a lawyer benefitted the interests of the children. In determining a reasonable rate, the Court weighed this against the Guardian's desire to conserve the assets of the children. The

Court notes a professional guardian on the 15th Judicial “wheel” is charged at \$95 an hour. The professional guardians are not required to be lawyers. Lawyers who serve as Guardians Ad Litem in family cases range from pro bono to \$350.00 an hour.³ Based upon the GAL's background, her time and expense records and her testimony that she had agreed to a discounted rate and wished to conserve the assets for the children, the Courts finds as to the reasonable compensation of the GAL:

a. The reasonable hourly rate for the work performed by the GAL in this matter is:

\$_250.00_;

b. The total number of hours reasonably expended by the GAL is:

\$__122.27 hours (122 hours and 16 minutes) through
October 27, 2017;

c. Therefore, the total reasonable fee for the work performed by the GAL in this matter (rate x number of hours) is:

\$__30,567.50_;

d. The total costs reasonably expended by the GAL are

\$__179.16_____;

e. Therefore, the total for reasonable fees and costs awarded to the GAL is

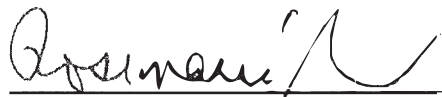
\$__30,746.66_____;

which shall be paid by the Trustee from the funds available for the distributions to Eliot's Children, split 1/3 each.

³ This range is from lists distributed to family judges on Guardian Ad Litem and their rates.

15. The Court has considered the *ore tenus* request by Eliot Bernstein to appoint Candice Schwager as replacement trustee for the Eliot Children's Trust. The Court reviewed a letter presented by Eliot Bernstein, which was purportedly written by Candice Schwager, and found the letter to contain odd prose and an irregular presentation. Schwager is not an attorney licensed to practice law in the State of Florida. Subject to the provisions of paragraph 9(a), the Court denies the *ore tenus* request to appoint Candice Schwager without prejudice.

DONE AND ORDERED in Chambers, North County Courthouse on 12/6/2017,
2017.

A handwritten signature in black ink, appearing to read "Rosemarie Scher", written over a horizontal line.

HONORABLE ROSEMARIE SCHER

cc: All parties on the attached service list

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Jo.B., Ja.B., and D.B.

Jill Iantoni

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Individually and as trustee for her children, and as
natural guardian for J.I. a minor

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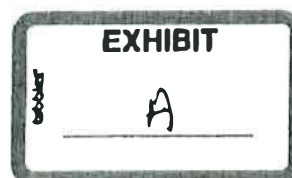
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SIMON L. BERNSTEIN

AMENDED AND RESTATED TRUST AGREEMENT

Prepared by:

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4855 Technology Way, Suite 720, Boca Raton, Florida 33431
(561) 997-7008
www.tescherspallina.com



LAW OFFICES
TESCHER & SPALLINA, P.A.

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

ARTICLE II. AFTER MY DEATH

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

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

C. **Trusts for Beneficiaries.** The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the net income and principal of such beneficiary's trust as is proper for the Welfare of such individuals. Any income not so paid shall be added to principal each year. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any grandchild of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of any of my lineal descendants (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:



raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, for all purposes of this Trust and the dispositions made hereunder, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me as I have adequately provided for them during my lifetime.

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

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

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

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



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

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

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

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

- a. the legal termination of the marriage to my descendant (whether before or after my death), or
- b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

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

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

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

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



SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

Prepared by:

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L A W O F F I C E S
TESCHER & SPALLINA, P.A.

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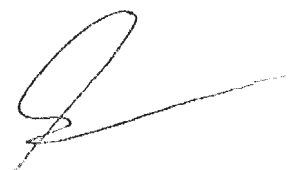
raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, for all purposes of this Trust and the dispositions made hereunder, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILLI ANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me as I have adequately provided for them during my lifetime.

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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.: 502014CP003698XXXXNBIJ

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 DETERMINING ELIOT BERNSTEIN LACKS STANDING INDIVIDUALLY
AND STRIKING ELIOT'S FILINGS, AND DEFERRING RULING ON THE
APPOINTMENT OF A GUARDIAN AD LITEM AND OTHER RELIEF SOUGHT**

THIS CAUSE came before the Court for hearing on January 14, 2016 on Successor Trustee's *Motion for Appointment of a Guardian Ad Litem to Represent the Interests of Eliot Bernstein's Children; For A Gag Order to Protect Guardian and Others; and to Strike Eliot's Filings* (the "Motion"). The Court, having considered the record, heard argument of counsel and being otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:

Exhibit B

"B" 2/1/2016
b6 154

1. The Motion is GRANTED in part as set forth in this Order and DEFERRED in remaining part pending an evidentiary hearing as requested by Eliot Bernstein and his wife.

2. By Final Judgment dated December 16, 2015, this Court has determined that Simon Bernstein's Will dated July 25, 2012 is valid and enforceable according to its terms. The Final Judgment is valid, binding and in full force and effect.

3. Based upon the Court's determination of the validity of Simon's Will, Simon Bernstein exercised a power of appointment he held over assets in the Shirley Bernstein Trust, in favor of his "then living grandchildren." Eliot Bernstein is not a grandchild of Simon or Shirley Bernstein. Based upon the exercise of the power of appointment, Eliot Bernstein is not a beneficiary of the Shirley Bernstein Trust. As a result, Eliot Bernstein lacks individual standing to participate in this proceeding, as he is not a beneficiary of either the Shirley Bernstein Trust or the Shirley Bernstein Estate.

4. Accordingly, Eliot Bernstein is barred from any further participation in his individual capacity in this action, and is removed individually as a party. Any and all pending motions, claims, or other filings by Eliot Bernstein, individually, in this case are hereby stricken from the record, and no further individual filings will be permitted except for a Notice of Appeal of the Final Judgment, should he desire to file one.

5. Having determined that Eliot Bernstein lacks individual standing, the Court next will consider whether a Guardian ad Litem should be appointed to represent the interests of the children of Eliot and Candice Bernstein, each of whom has been determined to be a beneficiary of the Shirley Bernstein Trust, and whether to enter a confidentiality order as requested by the

Trustee in the Motion. These matters will be addressed at an evidentiary hearing to be set by separate order of this Court.

DONE and ORDERED in Chambers, North County Courthouse in Palm Beach Gardens,
Florida, on this 1 day of January, 2016.

P. L.


HONORABLE JOHN L. PHILLIPS
Circuit Court Judge

Copies to: Attached Service List

SERVICE LIST Case No.: 502014CP003698XXXXNBIJ

Eliot Bernstein, individually
and Eliot and Candice Bernstein,
as Parents and Natural Guardians of
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Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: Eliot I. Bernstein (iviewit@iviewit.tv)

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West Palm Beach, FL 33401
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(561) 833-0867 - Facsimile
Email: John P. Morrissey
(john@jmorrisseylaw.com)
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

Jill Iantoni, individually and as trustee for her
children, and as natural guardian for J.I. a
minor
jilliantoni@gmail.com

Alan Rose, Esq.
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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:

RECEIVED MAR 04 2016

C Exhibit C

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^{ed} 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 ^{when} ~~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 ..." ¹ 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

fact, his actions are adverse + destructive to the children's interest
apparent Eliot Bernstein is not an adequate representative of the best interests of his children. [^]

6. Eliot Bernstein states that his agenda includes ridding the court system of corruption among judges, lawyers and fiduciaries, regardless of the cost ^{to} 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,

¹ 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, ^{are} 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

each of the parties shall submit a list of three 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

accept the appointment if selected. These 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 ^{not} ~~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.

proposed
* Parties shall furnish an ~~Order~~ ^{agreement} 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,
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Jill Iantoni, individually and as trustee for her
children, and as natural guardian for J.I. a minor
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slobdell@ciklinlubitz.com

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

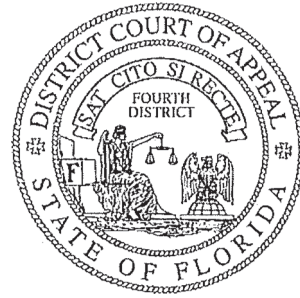
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Exhibit D



Lonnn Weissblum

LONN WEISSBLUM, Clerk
Fourth District Court of Appeal



IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

August 02, 2022

CASE NO.: 4D22-0264

L.T. No.: 502018CA002317

ELIOT I. BERNSTEIN

v. WALTER E. SAHM and PATRICIA SAHM, et
al.

Appellant / Petitioner(s)

Appellee / Respondent(s)

BY ORDER OF THE COURT:

According to this court's August 23, 2017 order in case number 4D17-1932, "[t]he 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." Therefore, it is ORDERED that this case is dismissed as appellant is prohibited from pro se filings in this court.

GROSS, CIKLIN and KUNTZ, JJ., concur.

Served:

cc: Robert A. Sweetapple
Hon. John S. Kastrenakes

Eliot Ivan Bernstein *P*

Clerk Palm Beach

dl

Lonnn Weissblum

LONN WEISSBLUM, Clerk
Fourth District Court of Appeal

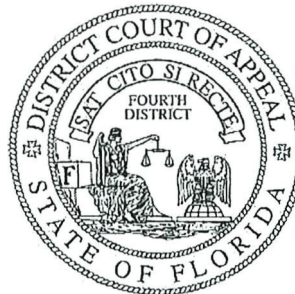


Exhibit E

Exhibit **E**

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

Prepared by:

Tescher & Spallina, P.A.
4855 Technology Way, Suite 720, Boca Raton, Florida 33431
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LAW OFFICES
TESCHER & SPALLINA, P.A.
ESTABLISHED 1987

Exhibit F

F

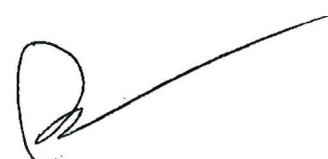
raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, for all purposes of this Trust and the dispositions made hereunder, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me as I have adequately provided for them during my lifetime.

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

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

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

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



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

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

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

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

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

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

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

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

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

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



**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.: 2014CP003698

Plaintiff,

v.

ALEXANDRA BERNSTEIN; et al.

Defendants.

**AGREED ORDER TO DISBURSE CERTAIN FUNDS
FROM THE REGISTRY OF THE COURT**

THIS CAUSE came before the Court upon the Motions by Joshua Bernstein, Jacob Bernstein and Daniel Bernstein ("Bernstein Children"), for Disbursement of Funds held for their benefit in Court Registry, and based upon the consent of the Plaintiff to this Agreed Order.

Whereas, after the motions were filed for disbursement of all of the funds in the court registry by each of the Bernstein Children, the Court held a hearing and entered an order denying the requested withdrawal of all of the funds, but also set the matter for mediation. Thereafter, the Plaintiff and the Bernstein Children, along with their respective counsel, attended mediation which commenced on August 31, 2020, and which was adjourned by and is scheduled to continue on September 4, 2020.

Whereas, the Bernstein Children and the Plaintiff, having agreed to adjourn and continue the mediation, and to avoid any disruption to the Bernstein Children's educational needs, also have agreed to the immediate partial disbursement of \$5,000 to each of the Bernstein Children, to defray primarily their expenses for tuition and other school charges, leaving open the issue of whether to disburse additional funds.

Now, therefore, it is ORDERED and ADJUDGED:

1. The Clerk is directed forthwith:

(a) to disburse out of the funds deposited in the court registry for Joshua Bernstein in the above

Composite Exhibit G

styled case the sum of \$5,000;

(b) to disburse out of the funds deposited in the court registry for Jacob Bernstein the sum of \$5,000;

(c) to disburse out of the funds deposited in the court registry for Daniel Bernstein the sum of \$5,000.

2. This disbursement is without prejudice to the Bernstein Children seeking additional withdrawals from the Court Registry upon motion and hearing.

DONE and ORDERED in Chambers at Palm Beach County, Florida.

50-2014-CP-003698-XXXX-NB 09/17/2020
Dina Keever-Agrama Judge

50-2014-CP-003698-XXXX-NB 09/17/2020
Dina Keever-Agrama
Judge

cc: All parties on the attached service list

SERVICE LIST Case No.: 502014CP003698XXXXNBIH

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Bernstein, Michael Bernstein

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natural guardian for M.F. and
C.F., Minors; and Max Friedstein
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Jill Iantoni, individually and as
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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.: 2014CP003698

Plaintiff,

v.

ALEXANDRA BERNSTEIN; et al.

Defendants.

**AGREED ORDER TO DISBURSE CERTAIN FUNDS
FROM THE REGISTRY OF THE COURT**

THIS CAUSE came before the Court upon the Motions by Joshua Bernstein, Jacob Bernstein and Daniel Bernstein ("Bernstein Children"), for Disbursement of Funds held for their benefit in Court Registry, and based upon the consent of the Plaintiff to this Agreed Order, the Court ORDERS and ADJUDGES:

1. Each of the Bernstein Children filed a motion for disbursement of all of the funds held in the court registry for the benefit of the Bernstein Children. The Court held a hearing and entered an order denying the requested withdrawal of all of the funds, but also set the matter for mediation. Thereafter, the Plaintiff and the Bernstein Children, along with their respective counsel, attended mediation which commenced on August 31, 2020, and continued in mid-October.

2. In addition, the Bernstein Children have filed a motion to appoint a relative as the trustee for their individual trusts, to replace their father Eliot Bernstein, which will be specially set for hearing early next year.

3. To avoid any disruption to the Bernstein Children's educational needs, the Court previously ordered disbursement of \$5,000 each, and the Bernstein Children, with the consent of the

11/10/20 DE 386

Trustee, have agreed to the immediate partial disbursement of \$10,000 to each of the Bernstein Children, to defray primarily their expenses for tuition and other school charges, leaving open the issue of whether to disburse additional funds.

Now, therefore, it is ORDERED and ADJUDGED:

1. The Clerk is directed forthwith:

(a) to disburse out of the funds deposited in the court registry for Joshua Bernstein in the above styled case the sum of \$10,000;

(b) to disburse out of the funds deposited in the court registry for Jacob Bernstein the sum of \$10,000;

(c) to disburse out of the funds deposited in the court registry for Daniel Bernstein the sum of \$10,000.

2. This disbursement is without prejudice to the Bernstein Children seeking additional withdrawals from the Court Registry upon motion and hearing.

DONE and ORDERED in Chambers at Palm Beach County, Florida this 16 day of November, 2020.



HONORABLE DINA KEEVER-AGRAMA
Circuit Court Judge

cc: All parties on the attached service list

SERVICE LIST Case No.: 502014CP003698XXXXNBIH

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Counsel for Molly Simon, Alexandra Bernstein,
Eric Bernstein, Michael Bernstein

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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.: 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.

**AMENDED ORDER APPOINTING GINGER STANGER AS INTERIM TRUSTEE OF
TRUSTS CREATED FOR THE BENEFIT OF JOSHUA, JACOB AND DANIEL
BERNSTEIN AND PARTIALLY RELEASING FUNDS IN COURT REGISTRY**

THIS CAUSE came before the Court on February 12, 2021, on the *Motion to Confirm Appointment of Ginger Stanger as Trustee* ("the Motion"). The Court, having reviewed the Motion and the record, and having been otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:

1. Pursuant to this Court's Order dated December 6, 2017, in the Shirley Bernstein Trust case, Case No. 502014CP003698XXXXNBIH, and based upon a similar motion filed in the Estate of Simon L. Bernstein, Case No. 502012CP004391XXXXNBIH, the Court directed that all funds from the Shirley Bernstein Trust that would otherwise be paid into sub-trusts for the benefit of Joshua, Jacob and Daniel Bernstein ("Eliot Bernstein's Children"),¹ are to be deposited into the Registry of the Court, under terms and conditions specified in that order, pending appointment of a new trustee for each sub-trust.

2. The prior Order further provides that "if the Court at any time appoints a successor trustee for any or all of the Eliot Children's Trust, all funds held in the Registry of the Court will be released to such trustee, to hold in an appropriate trust account solely for the benefit of Eliot's Children, consistent with the terms of Simon's Trust."

3. The beneficiaries of the sub-trusts, namely Joshua, Jacob and Daniel Bernstein, have selected as Successor Trustee, Ginger Stanger, and have moved the Court to approve such appointment. Ms. Stanger has filed with the Court an Affidavit, but did not appear to testify at the hearing.

4. At the hearing, the Court noted the proposed trustee is the maternal grandmother of Eliot's children, and the mother of Eliot's wife Candice, and expressed certain concerns as to Eliot's ability to exert influence or control over Ms. Stanger, which makes the Court hesitant to approve the permanent appointment of Ms. Stanger at this time. However, with the consent of

¹ "Any and all funds which would otherwise be paid into the Eliot Children's Trust, as defined in the Settlement Agreement or any other agreement (including any settlement proceeds from the Illinois insurance litigation), will be deposited or paid into the Registry of the Court, separately for the benefit of each of Eliot's Children...."

counsel for Eliot's Children's and for the Plaintiff, Ted S. Bernstein, Trustee, the Court will agree to an interim appointment on a temporary, one-year basis.

5. Accordingly, the Motion is GRANTED IN PART and DENIED IN PART. The Court approves that appointment of Ginger Stanger on an interim, annual basis.

6. The Court further grants a withdrawal from the court registry of an initial \$25,000 per beneficiary with a check issued to each child (Joshua, Jacob and Daniel Bernstein) to be held in accounts set up for each child and administered in trust by Ginger Stanger, and orders Ms. Stanger to submit an accounting and reapply for appointment at the end of the year. The checks can be sent to Ginger Stanger at:

Ginger Stanger
263 Pinon Way
Red Bluff, CA 96080

7. During the one year period, Ginger Stanger may petition the Court for additional funds, if, as, and when any such need arises, consistent with the terms of the December 7, 2017 Order and subsequent orders of this Court permitting distributions from the Court Registry.

8. To the extent Ms. Stanger is unable or unwilling to continue serving as trustee, Eliot's Children shall notify the Court and may petition the Court for further relief. Contrary to the suggestion in her Affidavit, Ms. Stanger may not designate or appoint successor trustee during the annual interim periods.

DONE AND ORDERED in Chambers, North County Courthouse on February 23, 2021.

502014CP003698XXXXNB 02/23/2021
Dina Keever-Agrama Circuit Judge

502014CP003698XXXXNB 02/23/2021
Dina Keever-Agrama
Circuit Judge

cc: All parties on the attached service list

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

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

SHIRLEY BERNSTEIN.

ORDER ON
EMERGENCY MOTION OF BENEFICIARIES JOSHUA BERNSTEIN, JACOB
BERNSTEIN, DANIEL BERNSTEIN WITH CONSENT OF TRUSTEE GINGER
STANGER TO TRANSFER ALL FUNDS IN COURT REGISTRY TO PAY OFF
MORTGAGE ON FAMILY HOME

THIS CAUSE CAME to be heard on August 26, 2022 at 2:30 p.m. on Zoom, on Beneficiaries, Joshua, Jacob and Daniel Bernstein, along with the consent of the trustee's, Emergency Motion of Beneficiaries Joshua Bernstein, Jacob Bernstein, Daniel Bernstein with Consent of Trustee Ginger Stanger to Transfer All Funds In Court Registry To Pay Off Mortgage On Family Home, and the court having reviewed the file, heard argument of counsel Inger Garcia, Esq. and Alan Rose, Esq, and finds the following:

1. Petitioners, Joshua, Jacob and Daniel Bernstein, Motion is
GRANTED IN PART AND RESET IN PART.

IT IS ORDERED AND ADJUDGED:


2. Funds in regard to this case are currently placed with the Clerk of the Court Registry.
3. The Clerk of the Court Registry shall immediately and forthwith issue four checks totaling \$20,000.00:
 - a. Joshua Bernstein, \$5,000.00
 - b. Jacob Bernstein, \$5,000.00

8/30/2022
DE 417

- c. Daniel Bernstein, \$5,000.00
- d. Law Office of Inger M. Garcia, \$5,000.00

- 4. The checks should be issued immediately and without delay for pick up at the courthouse in person. If the individuals cannot pick up the check, then Candice Bernstein, the three boy's mother shall have full authority and is designated to pick up the checks for the three Bernstein boys and has the authority to also pick up the check for Inger Garcia, Esq. and her law firm.
- 5. The balance of the motion is being reset for a ½ day evidentiary hearing on October 4, 2022, at 1:30 p.m.

DONE AND ORDERED in Chambers, West Palm Beach, Florida.

50-2014-CP-003698-XXXX-NB 08/30/2022

Laura Johnson Circuit Judge

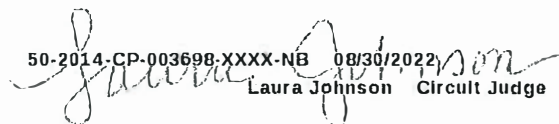
50-2014-CP-003698-XXXX-NB 08/30/2022
Laura Johnson
Circuit Judge

Hon. Laura Johnson
CIRCUIT COURT JUDGE

Electronically Signed

Electronically Served:

e-filing portal list

50-2014-CP-003698-XXXX-NB 08/30/2022

Laura Johnson Circuit Judge

50-2014-CP-003698-XXXX-NB 08/30/2022
Laura Johnson
Circuit Judge

Copies furnished to:

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DANIEL BERNSTEIN IRREVOCABLE TRUST 07- JUL-10 049738 AND ITS	No Address Available	No E-mail Address Available
DANIEL BERNSTEIN IRREVOCABLE TRUST DTD 09/07/06 AND ITS CUR	No Address Available	No E-mail Address Available
DONALD R TESCHER, ESQ., PROFESSIONALLY	No Address Available	No E-mail Address Available
ELIOT BERNSTEIN FAMILY TRUST DTD 05/20/08 AND ITS CURRENT AN	No Address Available	No E-mail Address Available
ESTATE & WILL OF SHIRLEY BERNSTEIN (2008) AND ITS CURRENT AN	No Address Available	No E-mail Address Available
ESTATE AND WILL OF SIMON BERNSTEIN (2012) AND ITS CURRENT AN	No Address Available	No E-mail Address Available
GUTTER CHAVES JOSEPH RUBIN FORMAN FLEISHER MILLER PA F/K/A	No Address Available	No E-mail Address Available
JAKE BERNSTEIN IRREVOCABLE TRUST 07- JUL-10 0497381 AND ITS	No Address Available	No E-mail Address Available
JAKE BERNSTEIN IRREVOCABLE TRUST DTD 09/07/06 AND	No Address Available	No E-mail Address Available
JOHN AND JANE DOE'S (1- 5000)	No Address Available	No E-mail Address Available
JOHN J. PANKAUSKI, ESQ., PERSONALLY	No Address Available	No E-mail Address Available
JOHN J. PANKAUSKI, ESQ., PROFESSIONALLY	No Address Available	No E-mail Address Available
JOSHUA Z BERNSTEIN IRREVOCABLE TRUST DTD 09/07/06 AND ITS C	No Address Available	No E-mail Address Available

KIMBERLY FRANCIS MORAN, PERSONALLY	No Address Available	No E-mail Address Available
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PANKAUSKI LAW FIRM PLLC AND ITS CURRENT AND FORMER DIVISION	No Address Available	No E-mail Address Available
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SHIRLEY BERNSTEIN 2000 INSURANCE TRUST (DTD 08/15/00) AND IT	No Address Available	No E-mail Address Available
SHIRLEY BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008) AND ITS	No Address Available	No E-mail Address Available
SHIRLEY BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06 AND ITS CURRE	No Address Available	No E-mail Address Available
SHIRLEY BERNSTEIN TRUST AGREEMENT (2008) AND ITS CURRENT AND	No Address Available	No E-mail Address Available

SIMON BERNSTEIN 2000 INSURANCE TRUST (DTD 08/15/00) AND ITS	No Address Available	No E-mail Address Available
SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DTD 06/21/1995 (No Address Available	No E-mail Address Available
SIMON BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06 AND ITS CURRENT	No Address Available	No E-mail Address Available
SIMON L BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008) AND ITS	No Address Available	No E-mail Address Available
SIMON L BERNSTEIN TRUST AGREEMENT (2008) AND ITS CURRENT AND	No Address Available	No E-mail Address Available
SIMON L. BERNSTEIN AMENDED AND RESTATED TRUST AGREEMENT (201	No Address Available	No E-mail Address Available
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THEODORE BERNSTEIN AS PR OF THE SHIRLEY ESTATE	No Address Available	No E-mail Address Available
THEODORE STUART BERNSTEIN, INDIVIDUALLY	No Address Available	No E-mail Address Available
THEODORE STUART BERNSTEIN AS TRUSTEE OF THE SHIRLEY TRUST	No Address Available	No E-mail Address Available
TRIST F/B/O DANIEL BERNSTEIN UNDER THE SIMON L BERNSTEIN TRU	No Address Available	No E-mail Address Available
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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.: 2014CP003698

Plaintiff,

v.

ALEXANDRA BERNSTEIN; et al.

Defendants.

**ORDER GRANTING IN PART AND DENYING IN PART JOSHUA BERNSTEIN'S
(i) MOTION FOR DISBURSEMENT FROM THE COURT REGISTRY TO
THE BENEFICIARY [DE 348] AND (ii) PETITION FOR DISBURSEMENT
FROM THE COURT REGISTRY TO THE BENEFICIARY [DE 349]**

THIS CAUSE came before the Court for evidentiary hearing on July 24, 2019, upon (i) *Beneficiary's Motion for Disbursement from the Court Registry to the Beneficiary* filed on December 11, 2018 [DE 348]; and (ii) *Beneficiary's Petition for Disbursement from the Court Registry to the Beneficiary* filed January 29, 2019 [DE 349] (the "Petitions"). The Court, having reviewed the Petitions and relevant parts of the record, having received sworn testimony from Joshua Bernstein, having entertained argument of counsel and pro se parties, and being otherwise fully advised in the premises, does hereby **ORDER AND ADJUDGE**:

1. The Motions are granted in part and denied in part, as set forth below.

Background

2. The Court has previously entered an Order dated December 6, 2017 [DE 295] directing certain proceeds be deposited into the court registry. For the parties' and the Court

Composite Exhibit H

Comp H

7/29/19
DE 360

convenience and ease of reference, the relevant parts of Simon's Trust are appended as Exhibit

"A" and the relevant parts of the Order are set forth below:

4. Based upon the evidence addressed in the Simon Trust order, and because this Court already has determined (i) Eliot Bernstein's actions were adverse and destructive to his children's interest (in connection with appointment the Guardian Ad Litem), and (ii) it will be difficult or impossible to find a replacement Trustee, the Court reluctantly directs all funds from the Shirley Bernstein Trust to be paid for the benefit of Eliot's Children shall be deposited into the Registry of the Court, under the terms and conditions set forth in this Order.

* * * *

6. Any and all funds which would otherwise be paid into the Eliot Children's Trust, as defined in the Settlement Agreement or any other agreement (including any settlement proceeds from the Illinois insurance litigation), will be deposited or paid into the Registry of the Court, separately for the benefit of each of Eliot's Children, and such funds will be released under the following conditions:

a. if the Court at any time appoints a successor trustee for any or all of the Eliot Children's Trust, all funds held in the Registry of the Court will be released to such trustee, to hold in an appropriate trust account solely for the benefit of Eliot's Children, consistent with the terms of Simon's Trust (the relevant parts of which are attached as Exhibit A).

b. if no successor trustee has yet been appointed and any of Eliot's Children requests a distribution consistent with the terms of Simon's Trust, such child could seek such distribution by filing a motion with the Court. Upon the filing of any such motion, this Court will consider such request in light of the terms of Simon's Trust, and will direct the Clerk to release such funds as this Court deems appropriate under the circumstances; and

c. upon each child reaching the age of 35, each such child is entitled to seek the immediate release of all remaining funds held by the Clerk of the Court, upon motion and order.

3. Under the terms of the December 6, 2017 Order [DE 295], the Trustee has made three deposits into the court registry as shown on the Court's docket:

\$ 60,000.00 on August 1, 2018 [DE 325];

\$ 69,751.12 on August 1, 2018 [DE 326]; and

\$ 17,000.00 on October 31, 2018 [DE 342],

\$146,751.12 total, less applicable court registry fees.

Request to Disburse Funds to Lalit K. Jain

4. Joshua has now requested that entire balance in the court registry be delivered by U.S. Mail to Lalit K. Jain, Esq. as Attorney FBO Joshua Bernstein. See DE 348, ¶6; DE 349, ¶6. The Court denies that part of each Motion.

5. Based upon various documents authored by Mr. Jain, which are on file in this or the related Palm Beach County probate case as part of filings by Joshua and Eliot Bernstein, Mr. Jain does not appear to be suitable as a trustee or custodian of Joshua's portion of these trust funds. Mr. Jain is not a member of the Florida Bar, and is not subject to the jurisdiction or supervision of this Court. Moreover, Joshua testified under oath at the hearing that Mr. Jain assists Joshua and also his father Eliot Bernstein in preparation of various court filings, including filings made by Joshua and Eliot on July 23, 2019 [see, e.g., D.E. 357] which contain inappropriate content. Joshua's testimony confirmed his review and support of such filings. The testimony of Joshua, if true, also demonstrates that Mr. Jain is preparing court filings for an otherwise *pro se* litigant in Florida, and perhaps engaging in the unlicensed practice of law.

6. Given the appearance of Mr. Jain from his writings, and the fact he was selected by and is actively assisting Eliot, the Court agrees with the Trustee that a prudent and careful

person would have substantial doubt as to the suitability of Mr. Jain to hold Joshua's trust funds. For those reasons, the Court declines to release 100% of Joshua's trust funds to Mr. Jain. This ruling is without prejudice to Joshua proposing a suitable trustee.

Request of Joshua for a partial distribution

7. Joshua also has requested a partial release of funds for certain educational and transportation needs. During his testimony, Joshua was unable to provide the Court with an estimate of how much he currently requires to meet his "Needs" (health, education, maintenance and support) and "Welfare" under the Trust. The Trustee has advised the Court that he supports a reasonable withdrawal of funds if (i) such funds are used for the benefit of Joshua; (ii) their use is consistent with Simon's wishes and the instructions as set forth in Simon Bernstein's Trust; and (iii) the funds are not depleted too rapidly given Joshua's lack of money management experience at his current age 21.

8. Moreover, to avoid an undue burden on the Court, the Trustee has advised the Court through the submission of its proposed order that it has no objection to an initial distribution to Joshua, with instructions to Joshua (i) to employ a reasonable effort to use the funds only in accordance with the Trust requirements; and (ii) to not to deliver the funds to his father, Eliot, or Mr. Jain. The Trustee believes, and the Court agrees, such a procedure will balance the need to expedite the release of funds for Joshua's benefit, while avoiding the need for the Court to engage in a lengthy and intensive review of Joshua's financial requirements at this time. The Trustee has further suggested Joshua be instructed to keep some record of how the funds are spent, and to provide such record (and appropriate backup documents) if and when he makes a second or subsequent request for a withdrawal, which will provide the Court with more

and better information from which to make a decision on such later requests. The Court agrees with the Trustee's suggested approach.

8. As to the amount of the initial distribution, the Trustee has suggested in its proposed Order that the Court authorize the release of something in the range of \$10,000 (approximately 7% of Joshua's funds in the court registry) to \$22,000 (approximately 15% of Joshua's funds), in the sound discretion of the Court. The Court finds an amount in such range to be a reasonable initial distribution.

9. **ACCORDINGLY**, the Court hereby **ORDERS** the Clerk of the Court to deliver from the registry funds held for the benefit of Joshua Bernstein the sum of \$15,000.00. Joshua is **ORDERED** to use such funds consistent with the attached terms of the Trust and to maintain appropriate records of such expenditures. In making any future withdrawal requests, Joshua shall include a summary that demonstrates how he spent the prior distributed funds, and the Court may take into account how such funds have been actually used by Joshua, as well as other factors (including how quickly all of the trust funds set aside for Josh would be fully expended).

10. Except as expressly granted above, the Motions are **DENIED**. These rulings are without prejudice to Joshua proposing a suitable replacement trustee consistent with ¶6(a) of the December 6, 2017 Order quoted above.

DONE AND ORDERED in Chambers, Palm Beach County, Florida, on July 29, 2019.



HONORABLE DINA KEEVER-AGRAMA
Circuit Court Judge

cc: All parties on the attached service list

SERVICE LIST Case No.: 502014CP003698XXXXNBIH

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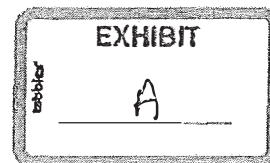
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SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

Prepared by:

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LAW OFFICES
TESCHER & SPALLINA, P.A.

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

ARTICLE II. AFTER MY DEATH

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

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

C. Trusts for Beneficiaries. The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the net income and principal of such beneficiary's trust as is proper for the Welfare of such individuals. Any income not so paid shall be added to principal each year. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any grandchild of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of any of my lineal descendants (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:




raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, for all purposes of this Trust and the dispositions made hereunder, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me as I have adequately provided for them during my lifetime.

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

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

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

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



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

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

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

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

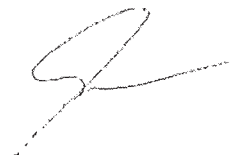
- a. the legal termination of the marriage to my descendant (whether before or after my death), or
- b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

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

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

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

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



**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.: 2014CP003698

Plaintiff,

v.

ALEXANDRA BERNSTEIN; et al.

Defendants.

**ORDER DENYING BENEFICIARY, JACOB BERNSTEIN'S
MOTION TO DISBURSE FUNDS HELD IN COURT REGISTRY [DE 368]**

THIS CAUSE came before the Court for hearing on August 5, 2020, upon *Beneficiary, Jacob Bernstein's Motion to Disburse Funds held in Court Registry* filed July 13, 2020 [DE 368] (the "Motion"). The Court, having reviewed the Motion and having heard argument of counsel and being otherwise fully advised in the premises, does hereby ORDER AND ADJUDGE:

1. The Motion is DENIED.
2. The Court directs the parties to engage in mediation, which shall be conducted remotely via Zoom or similar means, within thirty (30) days from the date of this Order.

DONE AND ORDERED in Chambers, North County Courthouse, Palm Beach County, Florida.

50-2014-CP-003698-XXXX-NB 08/24/2020
Dina Keever-Agrama Judge
ADMINISTRATIVE OFFICE OF THE COURT

50-2014-CP-003698-XXXX-NB 08/24/2020
Dina Keever-Agrama
Judge

cc: All parties on the attached service list

8/24/2020
DE 372

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.: 2014CP003698

Plaintiff,

v.

ALEXANDRA BERNSTEIN; et al.

Defendants.

**ORDER DENYING BENEFICIARY, JOSHUA BERNSTEIN'S
MOTION TO DISBURSE FUNDS HELD IN COURT REGISTRY [DE 366]**

THIS CAUSE came before the Court for hearing on August 5, 2020, upon *Beneficiary, Joshua Bernstein's Motion to Disburse Funds held in Court Registry* filed July 13, 2020 [DE 366] (the "Motion"). The Court, having reviewed the Motion and having heard argument of counsel and being otherwise fully advised in the premises, does hereby ORDER AND ADJUDGE:

1. The Motion is DENIED.
2. The Court directs the parties to engage in mediation, which shall be conducted remotely via Zoom or similar means, within thirty (30) days from the date of this Order.

DONE AND ORDERED in Chambers, North County Courthouse, Palm Beach County, Florida.



50-2014-CP-003698-XXXX-NB 08/24/2020
Dina Keever-Agrama
Judge

cc: All parties on the attached service list

8/24/2020
DE 373

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.: 2014CP003698

Plaintiff,

v.

ALEXANDRA BERNSTEIN; et al.

Defendants.

**ORDER DENYING BENEFICIARY, DANIEL BERNSTEIN'S
MOTION TO DISBURSE FUNDS HELD IN COURT REGISTRY [DE 367]**

THIS CAUSE came before the Court for hearing on August 5, 2020, upon *Beneficiary, Daniel Bernstein's Motion to Disburse Funds held in Court Registry* filed July 13, 2020 [DE 367] (the "Motion"). The Court, having reviewed the Motion and having heard argument of counsel and being otherwise fully advised in the premises, does hereby ORDER AND ADJUDGE:

The Motion is DENIED.

The Court directs the parties to engage in mediation, which shall be conducted remotely via Zoom or similar means, within thirty (30) days from the date of this Order.

DONE AND ORDERED in Chambers, North County Courthouse, Palm Beach County, Florida.

50-2014-CP-003698-XXXX-NB 08/24/2020
Dina Keever-Agrama Judge
ADMINISTRATIVE OFFICE OF THE COURT

50-2014-CP-003698-XXXX-NB 08/24/2020
Dina Keever-Agrama
Judge

cc: All parties on the attached service list

8/24/2020
DS 374

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.: 2014CP003698

Plaintiff,

v.

ALEXANDRA BERNSTEIN; et al.

Defendants.

**ORDER DENYING AMENDED URGENT PETITION OF JOSHUA BERNSTEIN,
JACOB BERNSTEIN, DANIEL BERNSTEIN ON CONSENT OF TRUSTEE GINGER
STANGER TO WITHDRAW AND TRANSFER ALL FUNDS IN COURT REGISTRY
TO CURRENT TRUSTEE GINGER STANGER**

THIS CAUSE came before the Court for hearing on March 29, 2022, upon *Amended Urgent Petition of Joshua Bernstein, Jacob Bernstein, Daniel Bernstein on Consent of Trust Ginger Stanger to Withdraw and Transfer All Funds in Court Registry to Current Trustee Ginger Stanger* filed March 24, 2022 (the "Motion").

The Court, having reviewed the Motion and the records, having heard argument of counsel, and being otherwise fully advised in the premises, does hereby ORDER AND ADJUDGE:

1. The Motion is DENIED.
2. This denial is without prejudice to a Ginger Stanger, as the court-appointed interim successor trustee, to file a proper motion for additional disbursement of funds, accompanied by an appropriately detailed, line-by-line accounting.
3. The Court notes that, during the hearing, Eliot Bernstein interrupted the proceedings and attempted to participate by presenting oral argument, notwithstanding this Court's prior orders prohibiting his involvement. Specifically, for the benefit of the new counsel and the

4/5/2022
DE 409

remaining parties, the Court reiterates and affirms its prior Order dated February 1, 2016, *Order Determining Eliot Bernstein Lacks Standing Individually and Striking Eliot's Filings, and Deferring Ruling on the Appointment of a Guardian Ad Litem and Other Relief Sought*, which provided:

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.

DONE AND ORDERED in Palm Beach County, Florida.

502014CP003698XXXXNB 04/05/2022
Dina Keever-Agrama Circuit Judge

502014CP003698XXXXNB 04/05/2022
Dina Keever-Agrama
Circuit Judge

cc: All parties on the attached service list

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.

CASE NO. 502012CP004391XXXXSB
CP - Probate

IN RE:

ESTATE OF SIMON L. BERNSTEIN,

_____ /

MOTION FOR INSTRUCTIONS

Ted S. Bernstein, as Successor Trustee of the Simon L. Bernstein Trust (the "Trustee"), files this Motion for Instructions to the Curator as to one of the significant assets of the Estate, a note and second mortgage held on certain real property, and states:

1. Ted S. Bernstein is the Successor Trustee of the Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012 (the "Trustee"). The Trustee is the sole beneficiary of the estate, which pours-over into the Trust for the benefit of Simon's grandchildren.

2. At the time of his death, Simon held a Note and a Second Mortgage (collectively the Second Mortgage, "Exhibit "A") on real property located at 2753 N.W. 34th Street, Boca Raton, FL 33434 (the "Property").

3. The Property was purchased in June 2008 by Simon for \$360,000 and fully renovated by him. Title to the Property is held by an entity known as Bernstein Family Realty, LLC ("BFR"). The Property was renovated to make it suitable as the home for Eliot Bernstein and his family, who have resided in the Property ever since and to this day, apparently rent-free since Simon's death.

4. There is a purchase money first mortgage (the "Mortgage", attached as Exhibit "B") on the Property in the amount of \$110,000, held by Walter E. Sahn. That Mortgage was amended

(Amendment, attached as Exhibit "C") in February 2012, to lower the interest rate to 3.5% and to extend the maturity until June 19, 2014. There currently is a total debt owed of approximately \$110,000.00 plus interest through June 19, 2014 of \$3,850.00.

5. Simon L. Bernstein holds the Second Mortgage on the Property, in the principal amount of \$365,000, plus accrued interest.

6. There also remain unpaid property taxes for 2013, in the amount of \$5,569.25, plus interest, for a total of \$6,114.68, according to the Property Appraisers and Tax Collectors websites (Exhibit "D"). It appears that the taxes for 2012 and prior years has been paid.

7. According to Zillow, the estimated value of the property is \$398,850. A listing on Zillow, attached, describes the property as follows: "Property backs up to Saint Andrews School. Completely gutted and remodeled in Florida pastel colors 2009, marble and bamboo floors, courtesy Shirley Bernstein designs. Tiled backyard with swimming pool. Titled drive. This home backs up to one of the nation's leading private schools, Saint Andrews School." (Exhibit "E")

8. Although it appears that the Estate's Second Mortgage is not fully secured, it appears to be highly likely that there is some value and equity in the Second Mortgage held by the Estate. Having conferred with the Curator, the Curator was agreeable to transfer the Mortgage into the Trust to enable the Trustee to administer this asset. It is the Trustee's belief and business judgment that to maximize the value of this asset for the beneficiaries of the Estate and/or for any creditors of the Estate, the best course of action for the Estate is to purchase the first Mortgage and pay the outstanding property taxes, and to then take whatever actions are deemed appropriate by the Trustee to maximize the value of this asset.

9. Regardless of the ultimate disposition of the Mortgage and the Note it secures, in order to maximize its value, it is the Trustee's business judgment that the Estate needs to protect its interest by purchasing the first Mortgage and paying the outstanding taxes. The alternative would require Mr. Sahm, the holder of the first mortgage, to retain counsel and litigate against BFR and the current occupant of the property, Eliot Bernstein and his family. We would anticipate such litigation to be very costly to the Mortgage holder, and any attorneys' fees, plus interest, late fees, default interest, costs and expenses would only add to the debt and further diminish whatever equity value remains in the Second Mortgage.

WHEREFORE, the Trustee seeks instructions consistent with this motion authorizing and directing the Curator to transfer the Note and Second Mortgage to the Trust, and authorizing the Trustee to take appropriate actions as described above.

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; ☒ E-mail Electronic Transmission; ☐ FedEx; ☐ Hand Delivery this 4th day of June, 2014.

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

-- and --

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