

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

CASE NO. _____
PROBATE DIVISION
DIVISION: JUDGE COLIN

TED S. BERNSTEIN, as Successor Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008; DONALD TESCHER and
ROBERT SPALLINA, as co-Successor Trustees
of the Simon L. Bernstein Amended and
Restated Trust Agreement dated July 25, 2012,

Plaintiffs,

vs.

ELIOT BERNSTEIN; and
CANDICE BERNSTEIN,

Defendants.

_____ /

**COMPLAINT FOR APPOINTMENT OF GUARDIAN
OR TRUSTEE FOR GRANDCHILDREN OF SETTLOR**

Plaintiffs, Ted S. Bernstein, as Successor Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008 ("Shirley Trust"), and Donald Tescher and Robert Spallina, as co-Successor Trustees of the Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012 ("Simon Trust") sue Defendants, Eliot Bernstein, Individually ("Eliot"), and Candice Bernstein, Individually ("Candice"), and state:

INTRODUCTION

1. This is an action seeking the appointment of a guardian or trustee to administer certain trusts created for the benefit of Eliot's and Candice's three minor children, each of whom is

a grandchild of ~~the~~ Simon and Shirley Bernstein and a beneficiary of the Simon Trust. The trust language designates Eliot as the trustee of the newly created trusts, but Eliot has demonstrated that he is incapable of exercising any fiduciary duty and that he will use the children's inheritance for his own personal wants. The problems dealing with Eliot are magnified because his parents' testamentary documents disinherit him. Indeed, in the Simon Trust and in the Last Will of Simon L. Bernstein, Simon left no part of his residuary estate or Trust to Eliot.

2. Now, despite the fact that neither Eliot nor Candice is a beneficiary of either of the Trusts, and despite the fact that neither Eliot or Candice has any employment or earnings, they have made outrageous demands against the Trusts for cash payments, including demanding that the trusts reimburse them: (i) \$9,000 per month (\$108,000 annually) for items which are necessary for their survival and not luxuries; (ii) \$80,000-plus per year for private school; (iii) thousands per month for household expenses, interest, taxes, insurance, electricity, phone, etc.;¹ (iv) \$38,000 for legal fees; and much more. For example, Eliot and Candice have demanded that the Trust pay ~~\$7,600~~ ^{\$8,000} for a "necessary" lacrosse trip to Israel over the recent winter break, so that their sons could play lacrosse.

3. Conservatively, Eliot and Candice are demanding to be paid nearly \$250,000 per year to live a grandiose Boca Raton lifestyle, which is impossible given the fact that Eliot received no inheritance and has not maintained a real job for as long as anyone can remember.

¹ Simon "bought" Eliot's family a house in Boca Raton, but did not give Eliot any ownership or other rights with respect to this home. The house is owned by Bernstein Family Realty, LLC, which is beneficially owned by trusts benefitting Eliot's children, but there are two mortgages – one held by Simon's estate – which exceed the market value of the house. While he was alive, apparently Simon individually or through trusts arranged for payment of all housing expenses for Eliot. There was nothing left after Simon's death for Eliot or to pay the expenses of the house.

4. Since Simon's death, Eliot and Candice already have wasted the assets of three *intervivos* trusts created by Simon, for the benefit of his three grandchildren who are Eliot's sons. No doubt some of that money has benefitted the real beneficiaries, but neither Eliot nor Candice appear capable of making rational financial decisions – moving to a smaller home; putting children in public schools; eating at home instead of eating in or taking out from restaurants; or otherwise living within their personal means. In addition, Eliot throws out challenges in one form or another to everything done in regard to the estate planning, will and trust, with no regard for the expense or the damage he is doing to the other beneficiaries.²

5. In one sense, Eliot has nothing so he acts as if he has nothing to lose, but in the process he is harming the interests of his own children and jeopardizing the value of their sizeable, but not enormous, inheritances. Plaintiffs believe that if Eliot is left at the helm of these newly created trusts, Eliot would deplete them entirely within two or three years. Simon did not wish to leave anything to Eliot or Candice – not even their personal residence – and purposely did not name Candice as a replacement trustee. Thus, it is imperative that a neutral, experienced, third-party be appointed by the Court as a guardian or trustee to look after the best interests of Eliot's children.

6. Making matters worse, Eliot and Candice have accompanied their outrageous demands with the threat that if the demands are not met, Eliot would engage in a campaign to attack,

² By way of example, there is a separate insurance trusts which is the named beneficiary of a \$1.6 million life insurance policy. Eliot should receive 1/5 of that money, but he has refused it and challenged the distributions. This is causing delay in the release of the funds – they have been interplead in Illinois federal court. This is causing everyone except Eliot, who is *pro se*, to spend money on professionals. Eliot is taking these actions despite the fact that Simon explained his estate plan to all five of his children, including Eliot, and advised that the five children each would receive 1/5 of the insurance proceeds, and the remainder of his estate/trust would be left equally to his ten grandchildren.

extort, threaten and tarnish the reputations of the Trustees and professionals administering these Trusts and the related Estates of Shirley Bernstein and Simon Bernstein. In an email dated January 3, 2014, Eliot demanded that the requested amounts be paid immediately "or further actions will continue to be taken both civilly and criminally against you for your part in what is alleged already in civil and criminal complaints as EXTORTION and more."

7. As demonstrated below, Eliot has made good on many of these threats by publishing false statements on the internet and by "suing" or "naming as respondents" every professional, including every counsel who appears for the current fiduciaries. He has accused everyone of committing fraudulent and criminal acts, and has suggested that his father was murdered. Eliot's actions are intentionally designed to intimidate and cause financial harm to his victims. His conduct includes, among other things, re-publishing various court documents with lurid commentary and misleading headlines such as:

- Kimberly Moran Florida Notary Public, Tescher and Spallina Law Firm (Robert Spallina and Donald Tescher), Ted Bernstein of Life Insurance Concepts and the Bernstein Family Foundation are involved in Estate Fraud, Insurance Schemes, Fraud on the Courts, Forgery, Possible Murder and other illegal and unethical behavior. The Judge in the Case is Judge Martin H. Colin. <http://tedbernsteininsurance.blogspot.com>
- In March of 2012 Donald Tescher was awarded by the "MITZVAH SOCIETY" for allegedly being a "CARING ESTATE PLANNING PROFESSIONALS". Yet it is clear from the court documents above, that Donald Tescher and TESCHER & SPALLINA, P.A will do as they please after you die, regardless of what your TRUE wishes are and regardless of how much you pay him, or to what lengths, efforts and legal means you go to prepare your ESTATE to be handled per your wishes. www.attorneycorruption.com
- Ted Bernstein, Life Insurance Concepts involved in Fraud on the Court, Forgery, Yet wants you to TRUST him with your Insurance

Needs??? www.facebook.com/pages/Life-Insurance-Concepts-Ted-Bernstein-Boca-Raton-1399218733656570?ref=stream

8. Indeed, Eliot wrote to the undersigned counsel on January 3, 2014, threatening to sue

or advising that a suit has been filed:

In light of these issues I would not sweat the small name formality stuff as this is the wild west of the Internet and people even abbreviate the strangest of things. However, I will spell out clearly that I would like a reply to my repeated request to know if you have notified your liability carrier(s) of your involvement in the case as Respondent and your conflicting and alleged inappropriate representations of others thus far and possible involvement in criminal activity and a mass of torts. I have requested several times that you please provide me with your carrier information and contact and you refuse.

9. This story sounds comical, and might be if it were not true. It is not clear whether Eliot is clinically ill or simply enjoys playing a game of sabotage against persons who do not do what he demands, but this is not the first time he has behaved this way. Among the prior targets of Eliot over the years are: Proskauer Rose LLP, and, all of its Partners and attorneys (who allegedly stole a 13 trillion dollar invention and tried to murder Eliot); Foley & Lardner LLP and all of its Partners and attorneys; the State of Florida, The Florida Bar and all seven Florida Supreme Court Judges; and countless others. Essentially, anyone whose path crosses Eliot's, including the current fiduciaries, will be sued by him. At some point, this nonsense must end and that time has arrived.

10. There is a real and immediate need on part of Plaintiffs for intervention by this Court, guidance and instructions, an order appointing someone other than Eliot to oversee his children's inheritances, and injunctive relief to protect the current fiduciaries and the court-appointed guardian/trustee.

11. Accordingly, for the reasons set forth below, Plaintiffs request that the Court:

(i) replace Eliot as "Designated Trustee" of certain Trusts created under the Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012 for the Benefit of Daniel Bernstein, Jacob Bernstein and Joshua Bernstein (the "Grandchildren Trusts"); (ii) determine that Eliot lacks standing to pursue any claims or raise any issues in the Probate estates or this Trust matter; (iii) enjoin Eliot from publishing false statements or using the internet as a means of harassing and intimidating this Court's fiduciaries; and (iv) enter such other orders as are necessary to protect the best interests of the beneficiaries of the Trusts.

FACTUAL BACKGROUND

12. For many years before their deaths, Simon and Shirley Bernstein (the "Parents") provided substantial financial support to just Eliot and his family, consisting ⁵ of his wife Candice and three minor boys, Daniel, Jacob and Joshua ("Eliot's Family"). While the Parents were alive, they provided to Eliot's family more than \$100,000 per year in support, including through the creation of certain trusts. Although this largesse was altruistic, it also was used as a means to control Eliot.³

13. Over the course of many years, Eliot's family spent and spent and spent money, and expected the Parents to cover the bills. That the Parents did cover many bills helps explain, in part, why their estates and trusts were not larger. Indeed, the principal cause of difficulty in this case is

³ On August 15, 2007, Eliot and Candice entered into a written agreement with the Parents as part of the Parents' supposed estate planning. Under the terms of that agreement, the Parents would pay \$100,000 per year, spread out monthly, as an advance against Eliot's inheritance. The payments would cover all health insurance premiums for Eliot's Family and the balance could be used for living expenses. Per the terms of this agreement, the payments would reduce, dollar-for-dollar, "the amount you will ultimately inherit." As a condition of receiving the \$100,000, Eliot had to agree to harass or threaten to sue or initiate litigation with any member of the family. He also had to allow the Parents to see their grandchildren at least four times per year. Eliot and his wife Candice signed the agreement.

that Eliot believes that his parents left an estate values^d between \$40 million and \$100 million, and made elaborate and special plans just for his family. In reality, the total left behind by both Parents was much closer to \$4⁵ million, and Eliot was completely disinherited in the testamentary documents. The only elaborate estate plan provides for Eliot to receive a portion of a \$1.6 million life insurance policy (of which Eliot may receive \$300,000 if he *loses* the Illinois interpleader lawsuit or nothing if he *wins* that lawsuit). There is nothing else for Eliot. And, Eliot's children are beneficiaries of the pour-over estate and a trust, but only to the extent of one-tenth each (the monies are split equally between 10 grandchildren). Thus, Eliot's Family is maxed out at \$1 million or so, on a best case basis.

14. The Successor Trustee could make an interim distribution to Eliot's three children, into trusts, but Eliot is the Designated Trustee. First, Eliot is refusing to accept any distribution, which is somehow "tainted" and "corrupt." Moreover, even if he would set up the trust account and allow his children to receive their interim distribution, Eliot is not competent or capable of administering the money for the best interests of his children. Indeed, since both Parents died – Shirley in 2010 and Simon in 2012 – Eliot's family has continued their spendthrift ways, quickly burning through \$250,000 in three children's trusts. Having depleted entirely^{the liquid assets of} those trusts administered by Oppenheimer, who want to resign due to the fact that there is nothing left to administer, Eliot now expects that it is the burden of the Successor Trustee to fulfil their every need or desire, regardless of the cost, and presumably for the rest of their lives, which is not a trustee's duty.

15. When Ted Bernstein, as Trustee, refuses a request, he is personally attacked and he is extorted to pay monies, primarily by a relentless assault on his character and on his counsel. The

attacks are not only against Ted but his insurance business, and consist of vicious and false materials being disseminated onto the internet. Transcripts of these proceedings and pleadings filed in this Court are being published and editorialized with sensationalism by an internet blogger of ill-repute working with Eliot. One headline, on December 10, 2013, reads: "Ted Bernstein, Life Insurance Concepts involved in Fraud on the Court, Yet wants you to TRUST him with your Insurance Needs????"

16. These false accusations of theft are serious and have the potential to harm Simon's trusted son, Ted, in the pursuit of his insurance business. Ted and his father were both involved in the insurance industry, and for the period from 2003 to his death, worked together in at least several business. The fruits of Ted's and Simon's business efforts helped sustain Eliot's Family, but now that there is no cash flowing to Eliot, he is back to his old ways of harassing, threatening to sue and initiating litigation with members of the family.

17. Eliot is interfering with the Trustee's job as a fiduciary, and is demanding ever more money to try to keep an unsustainable lifestyle going. Although it sounds like an exaggeration – and would be if it did not come directly from Candice – Eliot's Family needs free housing plus more than \$250,000 per year just to get by:

Attached are the home and family expenses many past due now for three months for my family. As you are all well aware, these expenses have been paid through Bernstein Family Realty LLC (BFR) by Rachel Walker and then Oppenheimer since my father died and were paid for 6 years prior by my father and mother while they were alive. These expenses for our family's living expenses were to be paid for through my family's inheritance monies when my father and mother died, as set up in elaborate estate plans they did together exclusively for my family, due to our special circumstances. There was to be no interruption in these life sustaining payments for my family after they died. Now that Oppenheimer has somehow, almost

three months ago, transferred our family bills and expenses to Ted and Robert to handle, without our consent and then resigned as Manager of BFR and anointed Ted as successor, a company owned by my children that has been paying the expenses for almost 8 years, acting on the advice of Spallina, the bills suddenly and without warning are now not being paid. These bills include payment of reimbursements to Candice for food and other daily living expenses for the boys, monies we have advanced from our limited monies and have always been reimbursed for to pay for the next month's groceries, etc. This failure by the alleged fiduciaries of the estates put us desperately and dangerously low on food for the kids and other essential medical and other needs. Since Ted and Robert have taken control of my family's bills and their payments, utilities have been shut off already for the first time ever, without any notice they were intending on discontinuing them to either the provider or my family, causing extreme hardships on our family.

18. Candice appears to be just as delusional as Eliot, given that ^{her} ~~he~~ list of "essentials" includes approximately \$9,000 per month on credit cards just for the basics, as Candice confirmed in an email dated November 21, 2013:

We don't spend frivolously and don't think our requests to maintain basic needs are unreasonable, considering there is substantial funds available for these purposes due our family from the estates. Until things can be sorted in the courts . . . we hope you maintain as a fiduciary a level of continuity in regards to our family's best interest and their overall needs for their health, education, maintenance, and support, as were the wishes of Mom and Dad in their estate plans.

19. Eliot's Family lives in a home owned by ~~the~~ Bernstein Family Realty, LLC, and ~~are~~ ^{to} pay nothing toward the two mortgages totaling \$475,000, or the taxes, insurance, utilities, etc., all of which is supposed to ^{be} ~~covered~~ by their Parents. There unpaid 2013 property taxes are \$5,569.25. Eliot cannot pay his Comcast bill (\$504.59); his Verizon phone bill (\$925.68); or the FPL electric bill. For humanitarian reasons, for the past few months Ted Bernstein, as Trustee, has paid these essential bills to keep the lights on. There are monies available which ultimately will be

^{to} distributed Eliot's three children^s ^{trusts} but the Trustee cannot do more without guidance from this Court.

20. In addition to the housing expenses, and approximately \$108,000 spent on credit cards per year, just for the bare essentials, all three of Eliot's children attend St. Andrews School, an elite and expensive private school in Boca Raton. Neither Eliot nor Candice – neither of whom is currently employed – can possibly afford this school. From that school's website, it reports that for this school year the tuition is \$24,275 for the one child in middle school and \$26,280 each for the two in the upper school, for a total cost of at least \$80,000, not including extra-curriculars, sports, private lacrosse lessons, etc.

21. To date, Eliot and his wife have burned through untold sums given to them by the Parents and, since the Parents' deaths, more than \$250,000 from the children's prior trusts, the one administered by Oppenheimer. Now, they are demanding that the Successor Trustee continue to pay for their children to attend school: "Any delay to payment on your behalf will only cause un-necessary late fees, interest charges and possible litigation as we are half way through the school year. Delaying payments for their education is not 'saving' money it is merely costing more money in fees. Being that Josh is close to graduating there is no benefit or savings in refusing payment to them, other than if your intention is to cause immediate harm to three minor children."

22. If Eliot and Candice can afford to keep their children in a school such as St. Andrews, that is their decision. But obviously they cannot if they cannot pay for basic food and shelter, or tuition. In the Trustee's view, and recognizing that it is not his decision, Eliot should seek financial assistance from the school or consider moving the children to Palm Beach County Public Schools.

23. Eliot and Candice also demanded another \$8,000 to send their boys on a lacrosse trip to Israel for two of ~~your~~ sons to play in a few games over the Christmas break. The Trustee, a

^{their}

respected businessman and member of the community, was advised that if he did not give in to these demands there would be repercussions:

If you fail to respond within 24 hours, we will begin to notify all interested parties (i.e. schools, utility companies, the Jewish Federation and others who are injured as a result) of the reasons and causes why they are not being paid, including noticing them all of the fraud and forgery in the estate of my mother and who is responsible, including but not limited to, Tescher, Spallina, Moran, Lindsay Baxley and Ted, in hopes they may understand the situation and work with us due to these extreme circumstances that have been created by your unclean hands as fiduciaries and until we can resolve all the matters both civilly and criminally.

24. Against this backdrop, the Trustees seeks guidance and direction from the Court as to how to respond to these requests as a fiduciary; requests that the Court appoint a trustee or guardian who can oversee and administer the monies available for distribution to Eliot's children; and requests that the Court direct all parties and beneficiaries to litigate the issues in this case in the courtroom, not through extortion and a smear campaign when Eliot does not get his way. The Trustees are fiduciaries of this Court, as are the counsel for the Trustees, and this Court is the appropriate forum to address issues when someone threatens that fiduciary.

GENERAL ALLEGATIONS

25. This is an action for equitable relief pursuant to Florida Statutes Chapters 86 and 736, including but not limited to Florida Statute 86.041 and Florida Statute 736.0201.

26. This Court has subject matter jurisdiction over this action pursuant to Palm Beach County Administrative Order No. 6.102 and Florida Statute 736.0203.

27. Venue is proper in Palm Beach County, Florida pursuant to Florida Statute 736.0204, as all of the named Defendants reside in Palm Beach County, Florida.

28. Plaintiff, Ted S. Bernstein is a son of Shirley Bernstein; Ted S. Bernstein is sui juris and is a resident of Palm Beach County, Florida.

29. Ted S. Bernstein is the currently serving Successor Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008. Ted S. Bernstein became the Successor Trustee of the Shirley Bernstein Trust as a result of the death of his father, Simon L. Bernstein, on September 13, 2012.

30. Simon L. Bernstein began serving as Successor Trustee of the Shirley Bernstein Trust as a result of Shirley Bernstein's death on December 8, 2010. Simon L. Bernstein continuously served as Successor Trustee until his death. A true copy of the Shirley Bernstein Trust Agreement dated May 20, 2008 is attached hereto as Exhibit "A" and incorporated herein by reference.

31. The Last Will and Testament of Simon L. Bernstein dated July 25, 2012 has been admitted to probate in Palm Beach County, Florida under Case No. 502012CP004391XXXXSB. A copy of said Will is attached hereto as Exhibit "B" and incorporated herein by reference.

32. Pursuant to Article II. of the Last Will and Testament of Simon L. Bernstein dated July 25, 2012, Simon L. Bernstein exercised the special power of appointment granted to him under Article II, E.1 of the Shirley Bernstein Trust.

33. As a result of Simon L. Bernstein's exercise of the special power of appointment, the remaining assets under the Shirley Bernstein Trust are to be added to the assets of the Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012. A copy of said Trust Agreement is attached hereto as Exhibit "C" and incorporated herein by reference.

34. Pursuant to Article II. B. of Simon Bernstein Trust, the remaining Trust assets (inclusive of the assets appointed from the Shirley Bernstein Trust) pass to Trusts for the benefit of Simon Bernstein's ten grandchildren.

35. Pursuant to Article IV, C.2.b., of the Simon Bernstein Trust the parent of each grandchild that is a child of Simon L. Bernstein shall serve as Trustee of such grandchild's Trust.

36. Defendant, Eliot Bernstein, is a son of Simon L. Bernstein. Eliot Bernstein is a resident of Palm Beach County, Florida. Eliot is the natural father of Daniel Bernstein, Jacob Bernstein and Joshua Bernstein who are all grandchildren of Simon L. Bernstein. Daniel Bernstein was born on November 26, 2003. Jacob Bernstein was born on January 1, 1999. Joshua Bernstein was born on August 27, 1997. Thus, Eliot is the putative designee under the Simon Trust to serve as Trustee for Daniel, Jacob and Joshua.

37. Eliot is not currently serving in the United States military.

38. Defendant, Candice Bernstein, is a resident of Palm Beach County, Florida.

39. Candice is the spouse of Eliot and natural mother of Daniel, Jacob and Joshua.

40. Candice is not currently serving in the United States military.

41. Pursuant to Article IV, C.2b., of the Simon Bernstein Trust, Eliot is the designated or nominated Trustee of the separate Trusts for the benefit of Daniel Bernstein, Jack Bernstein and Joshua Bernstein. However, there are serious concerns as to Eliot's ability to serve in that role, including the fact that he and Candice already have burned through enormous sums and, in part, because many years ago Eliot was diagnosed as having a paranoid personality with a constant thought of revenge against those he feels are against him. The persons who are now most against him are the Plaintiffs and their counsel.

42. Eliot's refusal to accept that he was disinherited entirely, and that these estates and trusts contain a very limited pool ^{of} money for the benefit of his children, and his erratic/threatening behavior cause Plaintiffs to question his capacity to serve as trustee for his children's trusts.

43. All conditions precedent to bringing this action have been met, satisfied or waived.

44. Plaintiffs have retained Mark R. Manceri, P.A. to represent ^{them} ~~him~~ in these proceedings and ^{have} ~~has~~ agreed to pay a reasonable fee for its services.

COUNT I

DECLARATORY RELIEF

45. Plaintiffs restate paragraphs 1 through 44 above are hereby restated as if specifically set forth herein.

46. Plaintiffs, in particular the Successor Trustee of the Shirley Trust, holds assets which, as a result of Simon Bernstein's exercise of the special power appointment, are to be distributed by him in newly created Trusts for the benefit of Daniel Bernstein, Jacob Bernstein and Joshua Bernstein. The estimated value of each Trust at the time of their initial funding is ^{250,000} ~~\$250,000.00~~.

47. Eliot has demonstrated that he is not qualified or capable of acting as Trustee of the Trust solely in ^{best} ~~the~~ interests of his children.

48. Eliot does not have any meaningful or gainful employment nor has he had such employment over at least the last ten years. Indeed, Eliot has not produced any meaningful earned income over the last ten years.

49. Upon information and belief, Candice Bernstein is currently unemployed nor has she produced any material earned income over the last 3 years.

50. Eliot announced in open Court on September 13, 2013 that he has a conflict of interest with Daniel, Jacob and Joshua in that he believes the Trust funds left for the benefit of his children should have been devised to him. Copies of pages 63, 64 and 65 of the Hearing transcript are attached hereto as Composite Exhibit "D" and incorporated herein by reference.

51. Eliot has demonstrated a pattern of demanding the Trust funds established for the benefit of Daniel, Jacob and Joshua be applied to cover his and Candice's obligations and expenses. As an example, Daniel, Jacob and Joshua are beneficiaries of separate Trusts for their benefit, each titled the Simon Bernstein Irrevocable Trust Agreement dated September 7, 2006. A copy of said Trust Agreement ^{is} attached hereto as Exhibit "E" and incorporated herein by reference.

52. Attached hereto as Composite "F" are recent disbursement schedules for each of the foregoing Trusts.

53. As can be seen, the total "Household Expenses" disbursed cumulatively from the Trusts is approximately \$150,000.00.

33. These "Household Expenses" include virtually every personal expense incurred by Eliot and Candice. Upon information and belief, this would include but not be limited to groceries, automobile related expenses, travel, entertainment, dining and expenses to maintain and operate the home they live in.

54. Additionally, Daniel, Jacob and Joshua are enrolled at the St. Andrew's School at a combined tuition of approximately \$80,000 per year. Eliot and Candice have paid no portion of said tuition payments.

55. Eliot and Candice have also demanded exorbitant, improper distributions from the Trusts, including \$8,000 to ^{pay} ~~play~~ for a trip to Israel by Joshua and Jacob to play a few games of lacrosse. A further demand was made for an additional \$1,100.00 to pay on a local lacrosse "travel" team.

56. Eliot has also exhibited a pattern of irrational behavior. Eliot Bernstein's irrational behavior is demonstrated by threats, criminal prosecution and liable and slanderous statements in

an attempt to extort what would otherwise be improper Trust distributions for his personal benefit, as opposed to the benefit of Daniel, Jacob and Joshua.

57. Eliot's behavior has reached to such a deplorable level that he continuously accuses the persons appointed by his parents, Simon and Shirley Bernstein, to serve in fiduciary roles under their respective estate plans of fraud and criminal behavior, in order to disparage them personally and professionally in their local communities. The information is also disseminated over the internet without many regard the negative impact such information may have.

58. Nonetheless, in deference to Simon and Shirley Bernstein, those involved have steadfastly continued to exercise the fiduciary duties and responsibilities owed to Daniel, Jacob and Joshua with the goal of insulating and protecting them from the reckless and irresponsible behavior of their father, Eliot.

59. Based on all of the above, there is a real and immediate concern that Eliot is not qualified and ^{is} incapable of properly exercising his fiduciary duties solely for the benefit of Daniel, Jacob and Joshua.

60. Rather, there is a real danger based on what has taken place that Eliot will use the Trust funds under his control for his personal benefit to the financial detriment of Daniel, Jacob and Joshua. Plaintiffs, and in particular Ted Bernstein, as Trustee, is very concerned that his nephews will not exclusively benefit from the Trust funds established by Shirley Bernstein.

61. This is particularly so, in light of the fact that Eliot has not and does not have any real, substantive employment nor any real income, while embarking to a work-free life style of a person with significant means.

62. Eliot should not exercise control over the Trusts for the exclusive benefit of Daniel, Jacob and Joshua, and if allowed to do so it is likely that those funds would be improperly depleted and exhausted for his own personal gain in a relatively short time.

63. This Court needs to appoint an independent trustee or guardian ad litem to hold, manage and represent the beneficial interests of Daniel, Jacob and Joshua or take such other action the Court deems just, proper and appropriate to financially protect Daniel, Jacob and Joshua.

64. This Court also should protect the fiduciaries who are trying to fulfill the intent of the testamentary and trust documents from improper and unnecessary interference by Eliot, who is not even a beneficiary of the estates or the trusts.

WHEREFORE, for the reasons set forth below, Plaintiffs request that the Court: (i) replace Eliot as "Designated Trustee" of certain Trusts created under the Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012 for the Benefit of Daniel Bernstein, Jacob Bernstein and Joshua Bernstein (the "Grandchildren Trusts"); (ii) determine that Eliot lacks standing to pursue any claims or raise any issues in the Probate estates or this Trust matter; (iii) enjoin Eliot from publishing false statements or using the internet as a means of harassing and intimidating this Court's fiduciaries; and (iv) enter such other orders as are necessary to protect the best interests of the beneficiaries of the Trusts.

Dated this ____ day of January, 2014.

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