

IN THE CIRCUIT COURT OF THE  
17<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR  
BROWARD COUNTY, FLORIDA

CASE NO. 12-034123 (07)  
COMPLEX LITIGATION UNIT

MARGARET J. SMITH as Managing General  
Partner of P&S ASSOCIATES, GENERAL  
PARTNERSHIP, a Florida limited partnership,  
and S&P ASSOCIATES, GENERAL  
PARTNERSHIP, a Florida limited partnership;  
P&S ASSOCIATES, GENERAL  
PARTNERSHIP, a Florida limited partnership;  
and S&P ASSOCIATES, GENERAL  
PARTNERSHIP, a Florida limited partnership,

Plaintiffs,

v.

MICHAEL D. SULLIVAN, an individual,  
STEVEN JACOB, an individual, MICHAEL D.  
SULLIVAN & ASSOCIATES, INC., a Florida  
corporation, STEVEN F. JACOB, CPA &  
ASSOCIATES, INC., a Florida corporation,  
FRANK AVELLINO, an individual, MICHAEL  
BIENES, an individual, KELCO  
FOUNDATION, INC., a FLORIDA Non Profit  
Corporation, and VINCENT T. KELLY, an  
individual,

Defendants.

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**RESPONSE AND OBJECTIONS BY THE FESTUS & HELEN STACY FOUNDATION  
TO SUBPOENA DUCES TECUM WITHOUT DEPOSITION SERVED ON NON-PARTY  
BY DEFENDANT, FRANK AVELLINO**

THE FESTUS & HELEN STACY FOUNDATION (the “Stacy Foundation” or  
“Respondent”), by and through counsel, and pursuant to Rule 1.351 and 1.410(e), Florida Rules  
of Civil Procedure, hereby files this Response and Objections By The Festus & Helen Stacy  
Foundation To Subpoena Duces Tecum Without Deposition Served on Non-Party By Defendant,  
Frank Avellino (the “Response”) in corresponding numbers to the Subpoena Duces Tecum  
Without Deposition served December 31, 2013 (the “Subpoena”) by the Defendant, Frank

Avellino (the “Defendant”) directed to the Records Custodian for the Stacy Foundation, a non-party to the Insider Suit, and in support of the Response states, as follows:

**GENERAL OBJECTIONS**

A. The Stacy Foundation objects to the requests set forth in the Subpoena to the extent they seek information protected by the attorney-client privilege, attorney work product doctrine or any other applicable privilege.

B. The Stacy Foundation objects to the requests set forth in the Subpoena to the extent they call for information protected by any applicable statutes, regulations or rules, including but not limited to the right of privacy, and Florida Rules of Civil Procedure governing such discovery.

C. The Stacy Foundation objects to the requests set forth in the Subpoena to the extent that they are compound requests for information, by design or otherwise and improperly burden the Respondent.

**SPECIFIC OBJECTIONS AND RESPONSES TO REQUESTS - EXHIBIT “A”**

**Any and all records evidencing, relating and/or referring to: (1) any due diligence conducted by The Festus & Helen Stacy Foundation (the “Foundation”) or by Pat Kelly on behalf of the Foundation of the S & P Associates, General Partnership, P & S Associates, General Partnership and S & P Associates, General Partnership (hereinafter collectively “the Partnerships”) from 1992 to the present time; and (2) any referral fees, commissions, management fees, gifts, charitable contributions and/or kickbacks the Foundation received from Michael Sullivan and/or the Partnerships for the Foundation, or any of its principals, directors, including, but not limited to Doug Stepelton and Sean Stepelton, bringing any persons or entities (including themselves) to the Partnerships as investors from 1992 to the present time.**

**Response to Request No. 1:** Objection. The Defendant’s request for “Any and all records evidencing, relating and/or referring to: “(1) any due diligence conducted by The Festus & Helen Stacy Foundation (the “Foundation”) or by Pat Kelly on behalf of the Foundation of the S & P Associates, General Partnership, P & S Associates, General Partnership and S & P Associates, General Partnership (hereinafter collectively “the Partnerships”) from 1992 to the present time” is overly broad, vague, unduly burdensome and harassing. Moreover, the time period specified in Request No. 1 dates back over twenty-one (21) years, which is well beyond and circumvents the applicable statute of limitations relating to the underlying claims at issue in the above-referenced action (the “Insider Suit”) and, further, does not relate to the factual matters

concerning the Stacy Foundation as framed by the pleadings. However, without waiving the foregoing objection, the Stacy Foundation states that to extent such documents exist that are or may be responsive to Request No. 1, such documents are not within the possession, custody and control of the Stacy Foundation.

**Response to Request No. 2:** Objection. The Defendant's request for "Any and all records evidencing, relating and/or referring to: "(2) any referral fees, commissions, management fees, gifts, charitable contributions and/or kickbacks the Foundation received from Michael Sullivan and/or the Partnerships for the Foundation, or any of its principals, directors, including, but not limited to Doug Stepelton and Sean Stepelton, bringing any persons or entities (including themselves) to the Partnerships as investors from 1992 to the present time" is overly broad, vague, unduly burdensome and harassing. Moreover, the time period specified in Request No. 2 dates back over twenty-one (21) years, which is well beyond and circumvents the applicable statute of limitations relating to the underlying claims at issue in the Insider Suit and, further, does not relate to any factual matters concerning the Stacy Foundation. However, without waiving the foregoing objection, the Stacy Foundation states that no such documents exist responsive to Request No. 2.

**Dated this 10<sup>th</sup> day of January, 2014.**

**GENOVESE JOBLOVE & BATTISTA, P.A.**  
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**CERTIFICATE OF SERVICE**

We hereby certify that a true copy of the foregoing Notice has been served by electronic mail to all parties listed on the attached Master Service List on this 10<sup>th</sup> day of January, 2014.

By: /s/ Barry P. Gruher, Esq.  
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## **MASTER SERVICE LIST**

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