

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA
CASE NO. 12-034123 (07)

P & S ASSOCIATES GENERAL
PARTNERSHIP, etc. et al.,
Plaintiffs,
vs.

MICHAEL D. SULLIVAN, et al.
Defendants.

**DEFENDANTS FRANK AVELLINO AND MICHAEL BIENES' REPLY IN SUPPORT
OF THEIR JOINT MOTION TO CONTINUE THE TRIAL, FOR PROTECTIVE
ORDER AND FOR A CASE MANAGEMENT CONFERENCE**

Defendants, Frank Avellino ("Avellino"), and Michael Bienes ("Bienes") (collectively, "Defendants") file this reply to Plaintiffs' Response (the "Response") and Opposition to Defendants' Joint Motion to Continue the Trial, for a Protective Order and for a Case Management Conference (the "Motion") and state as follows:

1. The Motion seeks to continue the trial for six months, together with the pretrial deadlines which were established on July 15, 2014, when Plaintiffs were travelling under their Third Amended Complaint, which has since been twice substantively amended. The action is not at issue, no depositions of the parties have taken place and the deadline to complete fact discovery is February 2, 2015.

2. In their Response, Plaintiffs argue that Defendants have known about the "kickback" allegations for "more than two years" (Response, ¶ 1), that their recently filed Fifth Amended Complaint has not substantively changed the previously asserted claims (Response, ¶ 5), and that Defendants have already obtained discovery with regard to the "kickbacks". (Response, ¶ 6).

3. Plaintiffs are simply wrong. First of all, Avellino and Bienes were not served in this action until August 2013 and October 2013, respectively, so they have not known about these claims “for more than two years”.

4. Contrary to Plaintiffs’ contention (and in violation of Judge Streitfeld’s Order Granting in Part, and Denying in Part, Defendants Frank Avellino and Michael Bienes’ Joint Motion to Dismiss Fourth Amended Complaint, dated December 18, 2014), Plaintiffs’ Fifth Amended Complaint goes well beyond the Court’s limited grant of leave to amend Count I “only as to the alleged ‘kickbacks’”, making substantive changes not only to Count I, but also to Counts IV, V and VII, as well as asserting new and different factual allegations. This is clearly evident in a copy of the Fifth Amended Complaint redlined to identify the changes from the Fourth Amended Complaint, attached hereto as Exhibit “A”.

5. Plaintiffs’ clear violation of the Court’s December 18, 2014, order forms, in part, a basis for Defendants motion to dismiss the Fifth Amended Complaint, which, by agreement of the parties, will be filed by February 9, 2015. Defendants believe that their motion to dismiss the Fifth Amended Complaint is meritorious and will result in the dismissal of additional claims with prejudice. Regardless of the outcome of such motion, Defendants should be entitled to pursue their discovery including with regard to the newly asserted allegations of the Fifth Amended Complaint.

6. While Defendants have pursued discovery in this action, such discovery was directed at the allegations and claims contained in the version of the complaint outstanding at the time the discovery was propounded. However, Plaintiffs’ complaints have had dramatic changes in their factual allegations and basis for recovery requiring discovery addressing such changes in the pleadings. For example, Plaintiffs’ Second Amended Complaint (“SAC”), filed on January

31, 2014, asserted, for the first time, allegations that Avellino and Bienes acted as investment advisors to the Partnerships advising the Partnerships to invest all of their funds in Bernard L. Madoff Investment Securities (“BLMIS”) although they should have been, and were not, registered investment advisors. (SAC, ¶¶ 93-96).

7. On June 27, 2014, Plaintiffs filed their Third Amended Complaint (“TAC”), which asserted yet more new claims against Avellino and Bienes for Fraudulent Misrepresentation, Fraudulent Inducement, and Negligent Misrepresentation, each of which was premised upon the allegation that: “Upon information and belief, in 1992, Defendants Avellino and Bienes advised the Partnerships, through Sullivan, to invest their funds with BLMIS.” (TAC, ¶¶ 126, 132 and 138). Another new element added in the TAC was that the Defendants should have advised the Plaintiffs that BLMIS operated a Ponzi scheme (TAC, ¶30).

8. In their Fourth Amended Complaint (“FAC”) Plaintiffs included for the first time an allegation that the damages sought in this case were the result of a “continuous pattern of fraudulent conduct.” (FAC, ¶ 1). Also for the first time the FAC included a laundry list of items through which Plaintiffs alleged the Defendants should have known about the Ponzi scheme even though nobody else in the world did (FAC, ¶ 17).

9. The parties have prudently and properly put off conducting depositions until the allegations and claims of the complaint are finalized. That has yet to happen.

10. This motion is not made for the purpose of delay and Plaintiffs’ contention otherwise is belied by the six complaints they have filed asserting new and, at times, contradictory allegations and claims. Any delay is solely attributable to Plaintiffs’ multiple complaints and ever changing allegations. Defendants are entitled to sufficient time to prepare

their defense. Defendants will be seriously prejudiced if Plaintiffs are allowed to proceed before the case is even at issue. The short extension requested is reasonable and prejudices no one.

WHEREFORE, Defendants request that this Court enter an order continuing the trial of this action, entering a protective order as to the Defendants' depositions, conduct a Case Management Conference and such other and further relief as the Court deems just and appropriate.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document is being served on those on the attached service list by electronic service via the Florida Court E-Filing Portal in compliance with Fla. Admin. Order No. 13-49 this 28th day of January, 2015.

By: /s/ Gary A. Woodfield
Gary A. Woodfield, Esq.
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IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT, IN
AND FOR BROWARD COUNTY, FLORIDA

CASE NO. 12-034123 (07)

P&S ASSOCIATES, GENERAL PARTNERSHIP,
a Florida limited partnership; and S&P
ASSOCIATES, GENERAL PARTNERSHIP, a
Florida limited partnership, PHILIP VON KAHLE
as Conservator of P&S ASSOCIATES, GENERAL
PARTNERSHIP, a Florida limited partnership, and
S&P ASSOCIATES, GENERAL PARTNERSHIP,
a Florida limited partnership,

Plaintiffs,

v.

~~STEVEN JACOB, MICHAEL D. SULLNAN, an~~
~~individual, STEVEN F. JACOB, CPA an individual,~~
~~MICHAEL D. SULLIVAN & ASSOCIATES,~~
~~INC., a Florida~~
~~corporation, STEVEN F. JACOB, CPA &~~
~~ASSOCIATES, INC., a Florida corporation,~~
FRANK AVELLINO, an individual, and
MICHAEL BIENES, an individual,

Defendants.

FIFTH

FOURTH AMENDED COMPLAINT

Plaintiffs P&S&P ASSOCIATES, GENERAL PARTNERSHIP ("—
P&S "); S&P

ASSOCIATES, GENERAL PARTNERSHIP ("—"P&S&P"), and S&P ASSOCIATES,
GENERAL PARTNERSHIP

("S&P"), and Philip Von Kahle as CONSERVATOR of S&P and P&S (the "Conservator"),

by and through their undersigned attorneys, sue Defendants, MICHAEL D. SULLIVAN, an
individual, STEVEN JACOB, an individual, MICHAEL D. SULLNAN & ASSOCIATES,



INC., a Florida corporation, STEVEN F. JACOB, CPA & ASSOCIATES, INC., a
Florida

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corporation, FRANK AVELLINO, an individual, and MICHAEL BIENES, an individual, and allege as
follows:

I. This is an action for breach of fiduciary duty, negligence, unjust enrichment,
money had and received, and civil conspiracy, exceeding \$15,000.00, exclusive of interest, costs,
and attorney's fees.

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~~1. This is an action seeking damages as a result of a continuous pattern of fraudulent conduct, aiding and abetting fraudulent conduct, and various breaches by the Defendants related to the mismanagement and investment of tens of millions of dollars of assets of two Florida based general partnerships: P&S and S&P (collectively, the "Partnerships"). These Partnerships' assets were invested into a Ponzi scheme run by Bernard L. Madoff Investment Securities, LLC ("BLMIS").~~

PARTIES AND VENUE

~~2.1. P&S and S&P (collectively, the "Partnerships") are General Partnerships, organized under the laws of the State of~~

Florida

~~3.2. Plaintiff Philip Von Kahle ("Von Kahle") is currently the Conservator of the Partnerships pursuant to the Order Appointing Conservator dated January 17, 2013. As Conservator, Von Kahle is authorized to take any actions necessary to ensure the preservation, maintenance and protection of the Partnerships and their remaining assets.~~

~~4.3. Defendant, Michael D. Sullivan ("Sullivan"), was a Managing General Partner of the Partnerships and is an individual who resides in Broward County, Florida. Sullivan was Managing General Partner of the Partnerships with Gregory Powell ("Powell"), but Powell died in 2003. After Powell's death, Sullivan acted as the sole Managing General Partner.~~

~~5.4. Defendant, Michael D. Sullivan & Associates, Inc., is a Florida corporation, with its principal place of business in Broward County, Florida.~~

~~6. Defendant Frank J. Avellino ("Avellino") is an individual who resides in PalriJ. Palm Beach County, Florida.~~

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7.5. Defendant Michael Bienes ("Bienes") is an individual who resides in Broward County, Florida.

8.6. Defendant Steven Jacob ("Jacob") is an individual who resides in Broward County, Florida.

9.7. Defendant Steven F. Jacob, CPA & Associates, Inc. ("Steven F. Jacob, CPA") is a Florida ~~cmpratione~~ corporation, with its principal place of business in Broward County, Florida. Steven F. Jacob, CPA is an accounting firm that was charged with conducting certain accounting and bookkeeping functions for the Partnerships as well as entities related to the Partnerships.

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~~10.8.~~ Venue is proper before this Court pursuant to Florida Statute § 47.011 because that is where the causes of action accrued, where the Partnerships reside, and this action arises from events which occurred or were due to occur in Broward County, Florida.

AVELLINO'S AND BIENES' CONNECTION TO MADOFF

~~11.9.~~ In the 1960's, Bernard L. Madoff ("Madoff ") began operating a brokerage ~~finnfirm~~ called BLMIS. Madoff operated this brokerage firm from the offices of his father -in -law, Saul Alpern' s; accounting firm Alpern and Heller, where Avellino worked as an accountant. Alpern encouraged people to invest in Madoff~~Madoff~~ s brokerage firm.

~~12.10.~~ Alpern and Avellino operated a feeder fund that pooled money from their customers for investment with BLMIS. That feeder fund was called Alpern & Avellino.

~~13.11.~~ In the early 1970's, Bienes became a ~~paitner~~partner of Alpern & Avellino, and when Alpern retired in 1974, the firm was renamed to Avellino & Bienes ("A&B").

~~14.12.~~ Avellino and Bienes operated A&B as partners and through A&B they raised hundreds of millions of dollars, which was, in turn, invested exclusively with~~with~~ BLMIS.

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15. ~~Avellino and Bienes profited by making hundreds of millions of dollars from an artificially high rate of return on their personal investments with BLMIS as well as by monies paid to them through convincing others to invest in BLMIS. Avellino and Bienes were able to profit in that way as a result of their uniquely close relationship with Madoff. The efforts of Avellino and Bienes ensured a continuing stream of capital for the burgeoning Ponzi scheme.~~

16. ~~At all times material hereto, Avellino and Bienes knew or should have known that BLMIS was generating false profits and that Madoff was operating BLMIS as a Ponzi scheme.~~

17. ~~Specifically, the fact that Avellino and Bienes knew or should have known that BLMIS was a Ponzi scheme is supported by the following:~~

(a) ~~Avellino and Bienes were intimately familiar with Madoff's and BLMIS's operations, as set forth in paragraphs 11 through 15 above;~~

(b) ~~Avellino and Bienes were close confidants of Madoff;~~

(c) ~~A&B invested its money exclusively with Madoff;~~

(d) ~~For over 30 years, Avellino and Bienes never experienced a loss related to investments with Madoff and BLMIS;~~

(e) ~~Avellino and Bienes made hundreds of millions of dollars directly and indirectly through BLMIS;~~

(f) ~~Madoff and BLMIS structured their business dealings to avoid filing disclosures of their holdings with the SEC;~~

(g) ~~BLMIS's accounting firm, Friebling & Horowitz, never actually conducted an independent audit of BLMIS;~~

(h) — ~~Avellino and Bienes knew that BLMIS used a two person accounting firm and that it was unusual and unsuitable to have such a small accounting firm compared to the size of investments that BLMIS held;~~

(i) — ~~BLMIS itself was unusually small in comparison to the amount of funds it managed;~~

(j) ~~Madoff mislead the SEC by providing false documents during an investigation into Avellino, Bienes, and A&B so that the frauds of Madoff, Avellino, and Bienes would not be discovered. Avellino and Bienes knew or should have known that the documents provided to the SEC were false because Annette Bongiorno, a then BLMIS employee, and others revised three years' worth of A&B's records to make it appear as though it had less risky investments and was solidly protected by its holdings of U.S. Treasury bills, and Madoff provided records for A&B to the SEC that A&B itself could not produce;~~

(k) ~~Once the phantom records referenced in para 17 (j) above were created, A&B, whose investments were exclusively with BLMIS, maintained corollary phantom books and records similar in nature to those of BLMIS;~~

(l) ~~But for the phantom records and despite purporting to operate a half a billion dollar investment pool, A&B chose to maintain very little, if any, records while operating A&B to avoid scrutiny of such records;~~

(m) — ~~Avellino and Bienes did not register with the SEC;~~

(n) — ~~Like BLMIS, Madoff directed Avellino and Bienes to not register with the SEC;~~

(o) — ~~Avellino and Bienes knowingly misrepresented to investors that BLMIS's investments were backed by treasury bills; and~~

(p) ~~On information and belief, when Avellino had large gains on other investments, he would tell Frank DiPascali, a BLMIS employee, and DiPascali would fabricate a loss associated with Avellino's investments with BLMIS to reduce Avellino's tax bill.~~

(q) ~~Avellino and Bienes invoked their Fifth Amendment Privilege when responding to questions about their involvement with Madoff.~~

18.13. In 1992, the SEC commenced an inquiry into A&B, Avellino, and Bienes, concerning their investment activities. The SEC alleged, *inter alia*, that A&B, Avellino, and ~~Bienes~~Bienes sold unregistered securities to the public. As part of the SEC's investigation of A&B, the SEC sought access to the books and records of BLMIS. ~~A&B's documents were not kept in accordance with the industry standard and were fraudulent. They did not accurately reflect transactions because they were based on BLMIS's records. Additionally, A&B chose to keep very little, if any records, to avoid any scrutiny or investigation of same.~~ Around the time that the SEC sought access to the books and records of BLMIS, Avellino and Bienes settled.

2. On June 4, 1993, Avellino and Bienes consented to the Terms of a Final~~Final~~ Judgment of Permanent Injunction and Other Equitable Relief, which was filed on September 7, 1993 (the "Final Judgment"). The Final Judgment ordered that Avellino and Bienes be permanently enjoined from selling any securities without a registration statement, making offers to sell or buy

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~~19.14.~~ securities without a ~~registratiou~~registration statement, and acting as an investment company in violation of the Investment Company Act of 1940.

~~20.15.~~ Pursuant to the Final Judgment, Avellino and Bienes were required to return all funds invested in A&B to its investors. Sullivan previously invested in A&B, through S&P Investment Group, Inc. Like all other investors in A&B, S&P Investment Group Inc.'s funds were invested in BLMIS. ~~Those funds were supposed to be paid by BLMIS to the SEC for distribution to the investors (as supposedly it was BLMIS that held A&B's investors' funds).~~ However, the funds paid to the SEC did not come from BLMIS. Instead, the money

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~~came from Jeffrey Picower, a Madoff insider and Bienes' former brother-in-law, who paid a substantial portion of those funds because BLMIS held insufficient funds to pay for the A&B redemptions.~~

~~21. Sullivan had previously invested in A&B, through S&P Investment Group, Inc. Like all other investors in A&B, S&P Investment Group Inc.'s funds were invested in BLMIS.~~

~~22.16. After A&B was shut down, Avellino and Bienes continued to work to benefit each other through their dealings with the Partnerships and other entities.~~

AVELLINO AND BIENES USED THE PARTNERSHIPS PARTNERSHIPS AS FRONT MEN

~~23.17. Shortly after A&B was shut down by federal authorities, Sullivan met with Avellino and Bienes because he wanted to continue investing with BLMIS. Sullivan knew all of A&B's clients' money was returned, that he invested money with A&B and that his money was returned, and that there was no further investigation into Madoff by the SEC. Accordingly, Sullivan asked Avellino and Bienes if they could get accounts for him at BLMIS because of the consistently high rate of return he enjoyed while investing with A&B.~~

~~24.18. However, Avellino and Bienes could not invest or open accounts directly with Madoff because Madoff prohibited them from investing directly in BLMIS to avoid SEC scrutiny, and to further conceal the fraud. As a result, Avellino and Bienes facilitated the creation of a network of "front men" feeder fund partnerships and charitable foundations throughout the United States to invest in BLMIS. These were vehicles through which Avellino and Bienes, both of whom were precluded from undertaking certain investment activities by the SEC, made hundreds of millions of dollars through the BLMIS Ponzi scheme. The Partnerships were two such funds and unwitting victims of Avellino and Bienes.~~

~~25. In fact, Avellino and Bienes were able to exert such control over the Partnerships that Irving Picard, the SIPA Bankruptcy Trustee of BLMIS, alleged that Sullivan acted as a front man for Avellino and Bienes so that they could continue to profit from the Partnerships. In the lawsuit filed by Picard,¹ the Trustee alleges that despite the prohibition imposed by the SEC, Avellino and Bienes found people such as Sullivan who were willing to acts as "front men to operate partnerships so that they could continue to raise and pool money from others to invest with BLMIS but avoid the scrutiny of the regulators." The lawsuit specifically references S&P and P&S as examples of investment vehicles in which such a "front" was used. The Picard Complaint further alleges that Avellino shared a portion of the amounts received with another individual. That individual was later discovered to be Bishop Richard Wills, Avellino's and Sullivan's Bishop.~~

3. In 1992, Sullivan and Powell formed P&S and S&P (the Partnerships) to serve as investment vehicles. A true and correct copy of the partnership agreement of S&P Associates,

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~~26,19.~~ General Partnership is attached hereto as Exhibit A. A true and correct copy of the partnership agreement of P&S Associates, General Partnership is attached hereto as Exhibit B.¹²

~~27.~~—The stated purpose of each Partnership was to pool funds for investment m
in
various investment vehicles. However, each of the Partnerships exclusively invested with BLMIS, based on Avellino's and Bienes' advice. The Partnerships could not establish accounts with BLMIS on their own, as Sullivan did not have a prior direct relationship with BLMIS.

¹The Irving Picard's lawsuit against Avellino and Bienes was referenced in the Partnerships' original complaint in this matter. The Picard complaint identifies and relies upon many of the same facts as the instant complaint.

²Each Partnership Agreement is identical all material respects to the other with the exception of the name of the applicable partnership entity.

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~~28-20.~~ It is well known that it was not possible to simply set up a fund or partnership to invest in BLMIS ~~without~~~~without~~ a referral or strong reference from someone with a prior relationship with Madoff. Bienes publicly disclosed in an interview with PBS Frontline that it must have been Avellino who facilitated Sullivan's ability to invest. Because Avellino introduced Sullivan to BLMIS, Madoff permitted~~S&P and P&S would never have invested in BLMIS and suffered the substantial losses that are the subject of this lawsuit, without the assistance of Avellino and Bienes in setting up an account with BLMIS. Only because Avellino and Bienes referred Sullivan to BLMIS, Madoff permitted him to invest in BLMIS.~~

~~29-21.~~ S&P and P&S then began to invest partners' funds into BLMIS. On information and belief, Madoff allowed Sullivan to establish two accounts with BLMIS at Avellino's~~Avellino's~~ and Bienes' request, one for S&P to permit~~Avellino and Bienes to continue to profit from the other for P&S~~ BLMIS Ponzi scheme through the Partnerships.


~~30-22.~~ Although prohibited from directly investing in BLMIS, Avellino and Bienes ensured that they could continue to profit through BLMIS by assisting in the movement of A&B customers and accounts to S&P and P&S, and maintaining a degree of involvement and control over the Partnerships.

~~31.~~ ~~Based on the larger than life personas created by Avellino and Bienes, as set forth in more detail below, the trust that Sullivan placed in them, and Avellino's and Bienes' omissions regarding BLMIS, the Partnerships invested \$64,159,537.95 with BLMIS from their inception through 2008 (S&P invested \$41,405,266.53 and P&S invested \$22,754,271.42). Those investments were made in each year as follows, and each investment was made in reliance on and as the result of Avellino's and Bienes' statements and omissions described herein:~~

	S&P Investments with BLMIS	P&S Investments with BLMIS
1993	\$1,158,627.83	\$1,391,480.00
1994	\$755,628.14	\$257,214.77

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1995	\$506,417.94	\$295,589.53
1996	\$889,399.39	\$381,000.00
1997	\$2,143,511.70	\$144,560.97
1998	\$2,607,702.77	\$330,698.23
1999	\$3,248,367.65	\$60,000.00
2000	\$8,397,503.54	\$312,000.00
2001	\$2,576,736.74	\$829,150.02
2002	\$9,776,271.43	\$6,283,075.25
2003	\$2,128,765.14	\$3,567,323.46
2004	\$2,326,334.26	\$3,000,179.19
2005	\$1,650,000.00	\$3,272,000.00
2006	\$750,000.00	\$480,000.00
2007	\$1,510,000.00	\$1,150,000.00
2008	\$980,000.00	\$1,000,000.00

THE PARTNERSHIPS PLACED THEIR CONFIDENCE AND TRUST IN
AVELLINO AND BIENES, AND AVELLINO AND BIENES EXERCISED CONTROL
OVER THE PARTNERSHIPS

~~32.23. Avellino and Bienes actively and purposefully cultivated and created a public persona of fine, upstanding individuals, who are knowledgeable about financial investments. Avellino and Bienes relied on the aura of legitimacy and trustworthiness they possessed due to their charitable donations and community involvement to establish their hold over Sullivan and the Partnerships. Among other things, Avellino was a prominent member of the Christ Church United Methodist church of Fort Lauderdale, and Avellino donated nearly \$1.5 million to it as a "charitable~~

¹Each Partnership Agreement is identical all material respects to the other with the exception of the name of the applicable partnership entity.

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the Christ Church United Methodist church of Fort Lauderdale, and Avellino donated nearly \$1.5 million to it as a "charitable contribution" which in fact were not charitable contributions. Sullivan was a member of that same church, Sullivan met Avellino at that church, and Avellino used his relationship with the Christ Church United Methodist to create a relationship of legitimacy and deep, ~~personal~~ trust with Sullivan and the Partnerships.

33.24. ~~For decades,~~ Avellino and Sullivan worshiped together, and Avellino in fact participated ~~in bi-monthly~~ bible study groups with Sullivan as a further effort to establish credibility with Sullivan.

34.25. Shortly after being shut down by the SEC, Bienes found religion and became active in the Archdiocese of Miami where he received the Star of St. Gregory. Over the years, Bienes donated substantial amounts of money to Catholic charities and organizations, and the Bienes Center for the Arts of St. Thomas Aquinas High School and the Michael and Diane Bienes Comprehensive Cancer Center of the Holy Cross Hospital is named after Bienes.

35.26. Bienes maintained his stellar reputation by, among other things, donating over \$35 million dollars to various charities, such as the Broward Center for the Performing Arts.

36.27. Avellino and Bienes cleverly engaged in church activities, and made significant contributions to Christ Church United Methodist and the Saint John the Baptist Catholic Church, to enable them to prey upon unsuspecting potential investors and ultimately, investors in S&P and P&S. Many investors in the Partnerships were in fact members of Christ Church United Methodist or Saint John the Baptist Catholic Church, and were brought into S&P and/or P&S by Avellino and Bienes.

37.28. Avellino and Bienes also knew that they could use Sullivan as a front man to run a feeder fund in accordance with their wishes and under their control because Sullivan had no prior experience managing an investment business and lacked the requisite background to do so.

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38. Further, as a result of their position in the community, and the trust that Sullivan placed in them due to the facts set forth above, Avellino and Bienes maintained knew that they could omit material information regarding BLMIS. Specifically, at the time that Sullivan sought to invest with BLMIS and all the way up through the collapse of Madoff, Avellino and Bienes knew or should have known that BLMIS was a Ponzi scheme based on one more of the facts set forth in Paragraph 17. However, Avellino and Bienes omitted telling Sullivan that Madoff operated BLMIS as a Ponzi scheme.

39. None of Partnerships' investments in BLMIS would have been made had either Avellino or Bienes disclosed what they knew about BLMIS.

AVELLINO AND BIENES CONCEALED
THE BLMIS PONZI SCHEME FROM THE PARTNERSHIPS AND THE
PARTNERSHIPS' PARTNERS

40. From the inception of the Partnerships until 2008, Avellino and Bienes concealed that Madoff operated BLMIS as a Ponzi scheme from the Partnerships and their partners so that the Partnerships would continue to invest funds with BLMIS.

41.29. Avellino and Bienes made these material omissions while maintaining a relationship of trust with Sullivan and the Partnerships based on the close relationship they had with the Partnerships and the trust that the Partnerships Sullivan posed on them and they accepted. Avellino and Bienes leased office space on the same floor as the Partnerships' office. To ensure that Sullivan managed the Partnerships in accordance with their desires, Avellino and Bienes walked down the hallway and regularly visited Sullivan at the Partnerships' offices to discuss the status of certain accounts with the Partnerships Partnerships. On one notable occasion, Bienes visited the Partnerships' offices and yelled at Sullivan because one of Bienes' family members received a distribution check from the Partnerships a day later than he or she was entitled expected.

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~~42.30.~~ Furthermore, through 2008, Avellino provided S&P and P&S advice on how to ~~structurestrucure~~ themselves, manage requests of partners, and ~~communicatecommnunicate~~ with BLMIS. The Partnerships, Sullivan, and other ~~paitners~~partners of the Partnerships (including but not limited to Scott Holloway, Marvin Seperson, Margaret Lipworth, and Sam Rosen) relied on Avellino and ~~Bicnes~~Bienes to understand and explain the operations of BLMIS and the trades that BLMIS allegedly made on behalf of the Partnerships, including but not limited to Scott Holloway, Marvin Seperson, Margaret Lipworth, and Sam Rosen.

~~43.31.~~ Avellino guided Sullivan through the myriad of challenges that Sullivan faced as Managing General Partner of the Partnerships. To that end, Avellino discussed the Partnerships' affairs with Sullivan, the ~~Paitnerships~~Partnerships provided Avellino with ~~quaiterly~~ quarterly reports regarding the rates of ~~returnretnm~~ for P&S, and S&P, and their partners, and Avellino met with the Partnerships' accountants. Further, Avellino and Bienes served as intermediaries between partners and the ~~Paitnerships~~Partnerships. Avellino, on his own behalf and on behalf of Bienes, continued to engage in these activities through 2012.

44. ~~From 2002 and on, the Partnerships tracked their investments~~ Despite their close relationship to the Partnerships and continuous meetings with the Partnerships regarding their investments and accounts, through 2008, Avellino and Bienes never discouraged Sullivan, the general partners, or the Partnerships from investing with BLMIS, or disclosed facts that would have demonstrated that Madoff operated BLMIS as a Ponzi scheme, or that BLMIS was a Ponzi scheme.

45. ~~32. From 2002 and on, Sullivan tracked the investments of the Partnerships and the capital they held based exclusively on Avellino's advice, and by using the software that Thomas Avellino, Avellino's son, provided. Avellino had Thomas Avellino install software for the Partnerships~~ S&P and P&S so that Avellino could ensure that ~~the Partnerships~~ S&P and P&S were using the same software as other investment vehicles through which both Avellino and Bienes made millions of dollars.

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46.33. Moreover, in 2008, and despite knowing that BLMIS was a Ponzi scheme, Avellino gave the PartnershipsSullivan advice about converting the PartnershipsP&S and S&P into an LLC, while guiding Sullivan through the process of maintaining the Partnerships' accounts with BLMIS. Avellino provided Sullivan with contact information for Jodi Crupi at BLMIS that Sullivan could discuss changing the structure of the Partnerships. Avelli noAvellino instructed Sullivan to provide Avellino with a report of what Sullivan audand Crupi discussed. Eventually, S&P and P&S remained as paitnershipspartnerships. Sullivan's lack of control over the Partnerships, and reliance on Avellino,his own business is perhaps best demonstrated by the fact that, absent Avellino instructing him, Sullivan did not even know who to call at BLMIS to address issues with S&P and P&S.

47. ~~In July, 2004, Paragon Ventures, Ltd., a partner in P&S, sought to pledge BLMIS' securities as collateral for a loan and asked Sullivan for information pertaining to those securities. Sullivan asked Avellino if Paragon Ventures, Ltd. could pledge such securities, and Avellino told Sullivan to tell that partner that it could not use BLMIS' securities as collateral, while providing reassurances that BLMIS associated investments were backed in treasury bills. However, Avellino and Bienes knew or should have known that they were not. Avellino also told Sullivan that if the Paragon Ventures, Ltd. wanted access to BLMIS securities, it could take its money elsewhere.~~

48. ~~In November 2007, Paragon Ventures, Ltd. also asked Avellino if there was any appreciable danger of investing with BLMIS and Avellino told him that he couldn't think of any circumstance other than if Madoff went insane.~~

49. ~~In late 2008, Matthew Carone, Brett Stepelton, and other partners of P&S and/or S&P considered withdrawing their investments in P&S and/or S&P, and would have called a vote of all the general partners of the Partnerships to withdraw all of the funds from BLMIS.~~

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However, ~~Avellino and Bienes prevented these partners from withdrawing the funds by telling them that their funds would be safe and claiming that it was all backed by treasury bills. But for Avellino and Bienes' conduct in 2008, the Partnerships would have withdrawn some, if not all, of their investment with BLMIS prior to its collapse.~~

50. ~~Avellino's and Bienes' conduct through 2008, set forth in paragraphs 41 through 49 above, was intended to conceal the Madoff fraud, by preventing partners from making redemptions from BLMIS. Sullivan also failed to make redemptions from BLMIS, as required by the Partnership Agreements, but instead paid the general partners of the Partnerships from the capital contributions of other general partners. Sullivan's conduct was based, in part, on Avellino's and Bienes' advice concerning the security of investment in BLMIS and management of the Partnerships.~~

51. ~~Because Avellino and Bienes concealed that Madoff operated BLMIS as a Ponzi scheme from the Partnerships and their partners, S&P lost \$10,131,036.00 that was invested with BLMIS and P&S lost \$2,406,624.65 that was invested with BLMIS.~~

THE KICKBACKS RECEIVED BY DEFENDANTS

52.34. ~~In return~~In return for Avellino and Bienes giving the Partnerships access to BLMIS, and ~~in addition to~~ providing a steady stream of new investors for BLMIS, Avellino and Bienes received commissions for those investors that they ~~referred~~refelTed to the Partnerships. Bienes exerted control over the Partnerships and concealed his commissions by causing Sullivan to fraudulently designate his commission payment as charitable contributions.

53.35. The majority of initial partners in S&P and/or P&S were former investors with A&B. Many of those partners were advised by Avellino and Bienes that they could continue to invest with BLMIS through the Partnerships, but that the return would be less than it was when they invested with A&B.

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~~Avellino and Bienes falsely told partners in P&S and/or S&P that the lower rate of return was caused by the management structure of P&S and/or S&P, when they knew that the lesser rate of return was actually the result of a decision by Madoff.~~

54.36. In addition to former investors with A&B, Avellino ~~and~~ Bienes sought out new investors for recruits to invest in the Partnerships, ~~without any reasonable basis to believe in the suitability of BLMIS as an investment.~~ Avellino and Bienes continued to seek investors up until the collapse of BLMIS.

55.37. Those investors referred to the Partnerships by Avellino and Bienes trusted ~~Avellino's~~ Avellino and Bienes' assurances that neither was involved in wrong doing. However, ~~but~~ Avellino ~~aid~~ and Bienes in fact were no longer allowed to directly participate in investment activity and ~~because they~~ chose to avoid regulatory scrutiny by not registering with the SEC. ~~However, unbeknownst to the Partnerships, neither Avellino nor Bienes could register with the SEC because Madoff forbid them from doing so.~~

56.38. To further obtain investors for the Partnerships, Avellino and Bienes sought out and obtained the assistance of religious leaders, and respected members of the community.

57.39. Among others, Bienes sought out and obtained the assistance of Father Vincent T. Kelly. At Bienes' behest, Father Kelly advised his parishioners and other members of the Catholic Church to invest in P&S and/or S&P. Through Father Kelly's stature and relationships in the community, he referred numerous partners to the Partnerships. In return for those referrals, an entity formed by Father Kelly, the Kelco Foundation, received approximately \$750,000. Similarly, Avellino used Bishop Wills to assist in the recruitment of partners. Wills referred numerous partners to the Partnerships, and in return Avellino caused the Partnerships to pay for Wills' mortgage through Michael D. Sullivan and Associates, Solutions in Tax.

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Additionally, Avellino acted as an intermediary for certain partners checks, and in at least one instance sent over \$500,000 in checks to the Partnerships for a partner.

58.40. Thanks to their reputation as prominent members leaders of the community, and enlistment of religious figures and other individnals individuals to refer investors to the Partnerships, Avellino and Bienes were able to obtain numerous investors for prevented partners of S&P and/or P&S in exchange for commissions from questioning the true nature of their success, so that Avellino and Bienes could misrepresent and omit the true nature of BLMIS without raising any questions.

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~~59.41.~~ Avellino and Bienes were not the only ones who received money as a result of causing individuals and/or entities to invest ~~in~~ the Partnerships by agreement with Sullivan. Defendant Jacob reached a similar ~~agreement~~ arrangement with Sullivan. Defendant Jacob sought out and brought general partners into one or both of the Partnerships as investors in exchange for payments. Many of those investors were fellow parishioners of church or affiliated religious organizations. Additionally, certain accounts on which Jacob received a-referral fees were held by trusts ~~ouen~~ which Jacob was the trustee. Like the solicitations by Avellino and Bienes, the solicitations by Jacob were made without any reasonable belief as to the advisability of investing in the Partnerships and without disclosing in writing that he received monies exchange for obtaining investors for the Partnerships.

~~60.42.~~ As a function of obtaining investors for the Partnerships, Jacob was active in the management of the Partnerships themselves because he received intake information from individuals who sought to invest in the Partnerships; received checks from prospective investors; distributed the Partnership Agreements to prospective investors; and/or ensured that Sullivan, through the Partnerships or entities that he exclusively controlled, made distributions to Avellino, Bienes, himself, and others that were in violation of the Partnership Agreements.

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4. _____ Avellino, Bienes, Jacob, and other individuals, collectively received over \$9 million dollars in kickbacks disguised as commissions, management fees, gifts, and/or "charitable contributions" ~~contributions~~ ~~(the "Kickbacks")~~ in return for soliciting investors for one or both of the Partnerships (the "Kickbacks"), which were contrary to Sullivan's obligations and responsibilities under the Partnership Agreements. The Kickbacks were made to Avellino, Bienes, Jacob, and others through Sullivan causing the Partnerships to transfer funds to them or as a result of Sullivan

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~~61.43.~~ causing the Partnerships to make ~~payments~~payments to Sullivan & Powell /Solutions in Tax and/or Michael D. Sullivan & Associates, which in turn effectuated further disbursements:

(a) Through entities controlled by Avellino, Avellino received approximately \$307,790.84 in Kickbacks ~~(the "Avellino Kickbacks")~~ from the Partnerships through an entity, Michael D. Sullivan & Assoc., controlled by Sullivan (the "Avellino Kickbacks"). Additionally, Avellino directed transfers of ~~approximately~~approximately \$50,000 of funds not included in the Avellino Kickbacks calculation to Reverend Wills, a pastor at Christ Church United Methodist.

(b) Through entities controlled by Bienes, Bienes received approximately \$357,790.84 in Kickbacks ~~(the "Bienes Kickbacks")~~ from the Partnerships through an entity, Michael D. Sullivan & Assoc., controlled by Sullivan (the "Bienes Kickbacks").

(c) Jacob received approximately \$853,338.72 ~~in~~ Kickbacks ~~(the "Jacob Kickbacks")~~ from the Partnerships through entities Michael D. Sullivan & Assoc. and Guardian Angel Trust~~Trst~~, LLC (the "Jacob Kickbacks").

~~62.~~—As part of his defalcations, Sullivan ~~transfere~~transferred millions of dollars of Partnership funds for his own benefit through~~to~~ entities controlled by him. ~~Defendant~~ Sullivan & Powell/Solutions in Tax received approximately \$2,644,996.29 from S&P and approximately \$686,626.97 from P&S in Kickbacks (the "Sullivan Kickbacks"). Likewise, ~~Defendant~~ Michael D. Sullivan & Associates received

approximately \$3,734,106.41 from S&P and approximately \$1,747,025.92 from P&S in Kickbacks (the "Sullivan & Associates Kickbacks"). Additionally, Sullivan maintained other investment funds, including SPJ Investments, Ltd., and JS&P Associates, General Partnership. Steve JacobJaeobs, with the knowledge and assistance of Sullivan, managed Guardian Angel Trust, LLC, SPJ Investments, Ltd., and JS&P Associates, General Partnership. For some unknown reason, these entities held millions of dollars of Partnership assets and filed separate tax returns.

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~~63.44.~~ Sullivan and the other individuals that received the Kickbacks knew or should have known that the Kickbacks and distributions to themselves and others were improper because they were made without any correlation to the Partnership Agreements. However, they did nothing to prevent the distributions from being made, and worked with Sullivan to obtain additional Kickbacks based on their solicitation of new investors in one or both of the Partnerships.

~~64.45.~~ If the individuals who received the Kickbacks~~Kickback Defendants~~³ disclosed their receipt of the Kickbacks to the individuals who invested in the Partnerships, such a disclosure would have mitigated against, or prevented the damages incurred by the Partnerships~~the Partnerships~~.

~~65.46.~~ Avellino continued to be active in the management of the Partnerships~~Partnerships~~ and assisted in the concealment the Kickbacks received until 2012. Avellino received copies of legal documents exchanged between the~~the~~ Partnerships and their counsel, and directed Sullivan's activities in seeking recovery from Picard. However, Avellino's~~Avellino's~~ conduct was intended to shield him and Bienes from the ramifications of their various breaches of fiduciary duties. In concealing his conduct, Avellino acted for himself~~himself~~ and for Bienes.

³For purposes of brevity, Defendants Avellino, Bienes, and Jacob have collectively been referred to as the "Kickback Defendants."

~~66-47.~~ Sullivan attempted to prevent general ~~partuers~~partners of the ~~Pmtnerships~~Partnerships from accessing the Partnerships' books and records to further conceal Avellino and ~~Bicnes'~~Bienes' involvement in the Partnerships and their receipt of kickbacks. In fact, in 2012, Sullivan wrote the partners of the Partnerships a letter-denying that Avellino or Bienes had any involvement with the Partnerships or received any fees from them.

COUNT I (BREACH OF FIDUCIARY DUTY)
(AGAINST DEFENDANTS AVELLINO AND
BIBNESBIENES)

~~67-48.~~ Plaintiffs incorporate by reference the allegations in paragraphs 1 through 51~~1 through 66~~, as if fully set forth herein.

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~~68.49.~~ Defendants Avellino and Bienes owed fiduciary duties to the Partnerships as a result of Avellino's and Bienes' control over the Partnerships because the Partnerships placed ~~reposed~~ their trust ~~and confidence~~ in Avellino and Bienes and Avellino and Bienes accepted that trust and reposed confidence in the Partnerships through their relationship.

~~69.50.~~ The control that ~~Avellino~~Avellino and Bienes had over S&P, P&S, and Sullivan is beyond dispute. Attached hereto as Exhibit CE⁴ is a letter from Sullivan to Bette Anne Powell ("Ms. Powell"), the wife of Powell who died in 2003. In the letter, Sullivan tells Ms. Powell that the gift of his business – S&P and P&S – "Came from a close friend in my church, Frank Avellino." Further, Sullivan states that he is constantly reminded by Avellino that he received the gift.

~~70.51.~~ The "Bette Anne" letter calls Avellino "our contact," as well as "the main source." The gift given by Avellino can, according to Sullivan, "be taken back at any time." Perhaps Avellino's control over the business is best illustrated by Sullivan's statement that the business would be worth nothing if Avellino dies.

⁴~~The letter attached as Exhibit C, is a true and correct copy of the letter written by Sullivan. Its date has been changed to the date when it was discovered by Von Kahle.~~

71.52. Bienes, as a close confidant of Madoff, also ~~exelied~~exerted control of Sullivan, S&P, and P&S. Bienes routinely met with Sullivan and took actions to ensure that timely distributions were made to partners. Bienes further ~~exelied~~exerted control by causing Sullivan to fraudulently designate the kickbacks to Bienes~~his commission payment~~ as charitable contributions.

72. ~~From inception of the Partnerships through the demise of BLMIS in December 2008, both Avellino and Bienes failed to disclose to S&P and P&S the fact that BLMIS was a Ponzi scheme while they continued to receive commissions from S&P and P&S, and profited from their operation.~~

73.53. ~~Avellino and Bienes breached their fiduciary duties to the Patinershps whenwhen they failed to disclose to Sullivan, S&P, and P&S that BLMIS was a Ponzi scheme despite the many opportunities that they had to do so, including meetings with Sullivan on a yearly or twice yearly basis regarding the Partnerships' accounts, meetings regarding the Partnerships' investments, each time Avellino and Bienes referred an investor to S&P and/or P&S and received an unlawful kickback in exchange for such referrals, each time they responded to an inquiry from a partner regarding the Partnerships' investments, and each time they advised partners not to withdraw from the Partnerships.~~

74. ~~Avellino continued to breach his fiduciary duties to the Partnerships through 2012, as he continued to consult with and provide Sullivan with advice concerning the management of the Partnerships, for his benefit and for the benefit of Bienes.~~

75.54. ~~Avellino's and Bienes' breach of their fiduciary duties caused the PatinershpsPartnerships to incur dainagesdamages in the amount of the kickbacks that Defendant Avellino and Defendant Bienes received frommoney lost by the Partnerships—as a result of the Partnerships' investments in BLMIS.~~

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WHEREFORE, Plaintiffs demand entry of judgment jointly and severally against Defendants Avellino and Bienes for damages, ~~court~~including special damages in the amount of ~~money lost by the Partnerships,~~ court costs, interest, and ~~snchsueh~~ other and additional relief as the Court deems just and proper.

~~COUNT II~~COUNT II (FRAUDULENT-
MISREPRESENTATION) (AGAINST AVELLINO AND
BIENES)

76. ~~Plaintiffs adopt and reallege the allegations in paragraphs 1 through 66 and 69 through 70 above, as if set forth herein.~~

77. ~~From the Partnerships' inception through 2008, Defendants Avellino and Bienes failed to disclose to the Partnerships that BLMIS was a Ponzi scheme, which was a material fact.~~

78. ~~Avellino and Bienes knew or should have known that BLMIS was a Ponzi scheme, and they failed to disclose this material fact to the Partnerships, despite having numerous opportunities to do so, including at meetings with Sullivan on a yearly or twice yearly basis regarding the Partnerships' accounts, meetings regarding the Partnerships' investments, each time Avellino and Bienes refetTed an investor to S&P or P&S, each time Avellino and Bienes received a kickback in exchange for such refetTals, each time they responded to an inquiry from a partner regarding the Partnerships, and each time they advised partners not to withdraw from the Partnerships.~~

79. ~~Up through 2008, Avellino and Bienes intentionally omitted telling the Partnerships that BLMIS was a Ponzi scheme in order to induce Sullivan's and the Partnerships' to continue to invest the Partnerships' funds with BLMIS, to ensure that the Partnerships would not withdraw funds from BLMIS, all of which benefitted Avellino and Bienes directly.~~

80. ~~From the inception of the Partnerships through 2008, the Partnerships justifiably relied on Defendant Avellino's and Bienes' material omissions that BLMIS was a Ponzi scheme and failure to disclose that BLMIS was a Ponzi scheme.~~

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81. ~~Because of Defendants Avellino and Bienes' intentional failure to disclose that BLMIS was a Ponzi scheme, the Partnerships suffered damages in that the Partnerships invested their funds in BLMIS, and S&P lost \$10,131,036.00 that was invested with BLMIS and P&S lost \$2,406,624.65 that was invested with BLMIS as a result of BLMIS being a Ponzi scheme.~~

~~WHEREFORE, Plaintiffs demand judgment against Defendants Avellino and Bienes jointly and severally, for damages, including special damages in the amount of money lost by the Partnerships as a result of their investment with BLMIS, as well as interest and costs and for such other and further relief the Court deems just and proper.~~

~~COUNT III (FRAUDULENT INDUCEMENT)
(AGAINST AVELLINO AND BIENES)~~

82. ~~Plaintiffs adopt and reallege the allegations in paragraphs 1 through 66 and 69 through 70 above, as if set forth herein.~~

83. ~~From the Partnerships' inception through 2008, Defendants Avellino and Bienes failed to disclose to the Partnerships that BLMIS was a Ponzi scheme, which was a material fact.~~

84. ~~Avellino and Bienes knew or should have known that BLMIS was a Ponzi scheme, and they failed to disclose this material fact to the Partnerships, despite having numerous opportunities to do so, including at meetings with Sullivan on a yearly or twice yearly basis regarding the Partnerships' accounts, meetings regarding the Partnerships' investments, each time Avellino and Bienes referred an investor to S&P or P&S, each time Avellino and Bienes received a kickback in exchange for such referrals, each time they responded to an inquiry from a partner regarding the Partnerships, and each time they advised partners not to withdraw from the Partnerships.~~

85. ~~Up through 2008, Avellino and Bienes intentionally omitted telling the Partnerships that BLMIS was a Ponzi scheme in order to induce Sullivan's and the Partnerships'~~
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to continue to invest the Partnerships' funds with BLMIS, to ensure that the Partnerships would not withdraw funds from BLMIS, all of which benefitted Avellino and Bienes directly.

86. From the inception of the Partnerships through 2008, the Partnerships justifiably relied on Defendant Avellino's and Bienes' material omissions that BLMIS was a Ponzi scheme and failure to disclose that BLMIS was a Ponzi scheme.

87. Because of Defendants Avellino and Bienes' intentional failure to disclose that BLMIS was a Ponzi scheme, the Partnerships suffered damages in that the Partnerships invested their funds in BLMIS, and S&P lost \$10,131,036.00 that was invested with BLMIS and P&S lost \$2,406,624.65 that was invested with BLMIS as a result of BLMIS being a Ponzi scheme.

WHEREFORE, Plaintiffs demand judgment against Defendants Avellino and Bienes jointly and severally, for damages, including special damages in the amount of money lost by the Partnerships as a result of their investment with BLMIS, as well as interest and costs and for such other and further relief the Court deems just and proper.

COUNT IV (NEGLIGENT MISREPRESENTATION)
(AGAINST AVELLINO AND BIENES)

88. Plaintiffs adopt and reallege the allegations in paragraphs 1 through 66 and 69 through 70 above, as if set forth herein.

89. From the Partnerships' inception through 2008, Defendants Avellino and Bienes failed to disclose to the Partnerships that BLMIS was a Ponzi scheme, which was a material fact.

90. Avellino and Bienes knew or should have known that BLMIS was a Ponzi scheme, and they failed to disclose this material fact to the Partnerships, despite having numerous opportunities to do so, including at meetings with Sullivan on a yearly or twice yearly basis regarding the Partnerships' accounts, meetings regarding the Partnerships' investments, each time Avellino and Bienes referred an investor to S&P or P&S, each time Avellino and

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~~Bienes received a kickback in exchange for such referrals, each time they responded to an inquiry from a partner regarding the Partnerships, and each time they advised partners not to withdraw from the Partnerships.~~

91. ~~Up through 2008, Avellino and Bienes intentionally omitted telling the Partnerships that BLMIS was a Ponzi scheme in order to induce Sullivan's and the Partnerships' to continue to invest the Partnerships' funds with BLMIS, to ensure that the Partnerships would not withdraw funds from BLMIS, all of which benefitted Avellino and Bienes directly.~~

92. ~~From the inception of the Partnerships through 2008, the Partnerships justifiably relied on Defendant Avellino's and Bienes' material omissions that BLMIS was a Ponzi scheme and failure to disclose that BLMIS was a Ponzi scheme.~~

93. ~~Because of Defendants Avellino and Bienes' intentional failure to disclose that BLMIS was a Ponzi scheme, the Partnerships suffered damages in that the Partnerships invested their funds in BLMIS, and S&P lost \$10,131,036.00 that was invested with BLMIS and P&S lost \$2,406,624.65 that was invested with BLMIS as a result of BLMIS being a Ponzi scheme.~~

~~WHEREFORE, Plaintiffs demand judgment against Defendants Avellino and Bienes jointly and severally, for damages, including special damages in the amount of money lost by the Partnerships as a result of their investment with BLMIS, as well as interest and costs and for such other and further relief the Court deems just and proper.~~

~~COUNT V (BREACH OF FIDUCIARY DUTY)
AGAINST SULLIVAN~~

94. ~~Plaintiffs incorporate by reference the allegations in paragraphs 1 through 66, as if fully set forth herein.~~

95. ~~Sullivan, as Managing General Partner, owed a fiduciary duty of loyalty and care to the Partnerships.~~

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96. ~~Sullivan breached his fiduciary duties of loyalty and care to the Partnerships through his actions, including but not limited to:~~

- ~~(a) — Misappropriating assets of the Partnerships;~~
- ~~(b) — Failing to maintain appropriate books and records;~~
- ~~(c) — Failing to invest Partnership assets as required;~~
- ~~(d) — Failing to provide an accounting of the Partnerships;~~
- ~~(e) — Improperly disbursing Partnership assets;~~
- ~~(f) — Allowing the Kickback Defendants to participate in the management of the Partnerships;~~
- ~~(g) — Failing to provide the Partners with access to the books and records of the Partnerships; and~~
- ~~(h) — Paying the Kickbacks to the Kickback Defendants;~~
- ~~(i) — Paying himself in violation of the Partnership Agreements.~~

97. ~~As a result of these breaches, Plaintiffs have suffered damages.~~

~~WHEREFORE, Plaintiffs demand entry of judgment against Sullivan for damages, including special damages in the amount of money lost by the Partnerships, court costs, interest, and such other and additional relief as the Court deems just and proper.~~

COUNT VI (NEGLIGENCE)
(AGAINST STEVEN F. JACOB, CPA AND JACOB)

98.55. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 5166 as if fully set forth herein.

99.56. As established by the principles of the AICPA Code of Professional Conduct and other standards promulgated by the profession, a certified public accountant has basic obligations of inquiry regardless of the professional services performed.

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100-57. Upon ~~information~~ information and belief, Steven F. Jacob, CPA and Jacob acted as an accountant and bookkeeper for the Partnerships. Upon information and belief, as an accountant, Steven F. Jacob, CPA used information from the Partnerships even though it knew or should have known that the information was incorrect, incomplete or inconsistent. Upon information and belief, Steven F. Jacob provided services which included preparing and distributing the Partnerships ~~quarterly~~ quarterly statements. Additionally, ~~npon~~ upon information and belief, as an accountant, Steven F. Jacob, CPA failed to identify a number of red flags which, if identified, would have prevented the loss of millions of dollars including but not limited to:

- (a) The payment of Kickbacks to the Kickback Defendants;
- (b) The payment of excessive commissions and referral fees;
- (c) (c) "Charitable" ~~Chaitable~~ contributions" in the hundreds of thousands of dollars in violation of the Partnership Agreements;
- (d) (d) Payments to third parties for no apparent purpose; and

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(e) (e) _____ Miscalculation and misstatements on tax returns and K-1s-
provided to general partners.

101.58. _____ In connection with its representation of the Partnerships, under common
law and professional standards for accountants, Steven F. Jacob, CPA owed the
Partnerships a duty of care to provide professionally sound, correct and ethical
services regarding the accounting matters that Steven F. Jacob, CPA was engaged to provide or
otherwise did provide.

102.59. _____ Steven F. Jacob, CPA breached and neglected its duty to the Partnerships
by ignoring the various breaches alleged above in connection with its provision of accounting
services.

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~~103.60.~~ Steven F. Jacob, CPA also failed to independently or properly reconcile the Partnerships' books and records. Additionally, upon information and belief, Jacob destroyed certain books and records of the Partnerships and affiliated entities.

~~104.61.~~ Had Jacob and Steven F. Jacob, CPA performed their responsibilities to the Partnerships properly, or at a minimum reported the Kickbacks disbursed, Sullivan's improper conduct would have come to light.

~~105.62.~~ Accordingly, Steven F. Jacob, CPA's the services of fell below the applicable standard of care.

~~106.63.~~ Because the improprieties previously discussed were concealed by Steven F. Jacob, ~~CPA's~~ CPA's failure to comply with the applicable standards governing the practice of accounting, Steven F. Jacob, CPA, caused the Partnerships to incur damages.

~~107.64.~~ As a result of Steven F. ~~Jacob~~ Jacobs, CPA and Jacob's breaches the Partnerships suffered damages.

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WHEREFORE, Plaintiffs demand entry of judgment against Steven F. Jacob, CPA and Jacob individually for damages, including special damages in the amount of money lost by the Partnerships, court costs, interest, and such other and additional relief as the Court deems just and proper.

**COUNT ~~III~~ (UNJUST ~~VII~~ (UNJUST
ENRICHMENT) (AGAINST THE
KICKBACK DEFENDANTS²**

~~108-65.~~ Plaintiffs adopt and reallege the allegations in paragraphs **1** through **5166** as if fully set forth herein.

~~109-66.~~ Investing in the Partnerships constituted acquiri ng ~~aequiri ng~~ a business enterprise or a business opportunity.

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~~110-67.~~ A person who acts as a broker for purchasers of a business enterprise or opportunity must have the necessary license to receive a commission or other form of compensation.

~~111-68.~~ Fla. Statute §475.41 provides:

Contracts of unlicensed person for commissions invalid.- No contract for a commission or compensation for any act or service enumerated in s. 475.01(3) is valid unless the broker or sales associate has complied with this chapter in regard to issuance and renewal of the license at the time the act or service was performed.

~~112-69.~~ Fla. Statute §475.41 imposes a duty that individuals not act as a broker without possessing the necessary license.

~~113-70.~~ The Kickback Defendants knowingly and voluntarily received kickbacks from the Partnerships ~~Kickbacks~~.

² The "Kickback Defendants" are Defendant Avellino; Defendant Bienes; Defendant Steven F. Jacob, CPA & Associates, Inc.; and Defendant Jacob.

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~~114.71.~~ _____ None of the Kickback Defendants were entitled to receive the Kickbacks that they received from the Partnerships.

~~115.72.~~ _____ By receiving ~~those~~the Kickbacks, and advising individuals and/or entities to invest in the Partnerships without the necessary license, the Kickback Defendants received Partnership funds under~~under~~ circumstances such that it would be inequitable for the Kickback Defendants to retain the benefit of the Kickbacks they each respectively received without paying the value of the respective Kickbacks to Plaintiffs.

~~116.~~ ~~All of the Kickback Defendants knowingly and voluntarily retained the Kickbacks respectively conferred upon them.~~

~~117.73.~~ _____ The Partnerships were in fact injured as a result of the Kickback Defendants' above-mentioned conduct.

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WHEREFORE, Plaintiffs demand entry of judgment against the Kickback Defendants for damages, court costs, interest, and such other and additional relief as the Court deems just and ~~and~~ proper.

COUNT ~~IV~~ ~~VIII~~
(~~AVOIDANCE~~ AVOIDANCE OF FRAUDULENT
TRANSFERS PURSUANT TO SECTION 726.10S(1)(A) OF
THE FLORIDA STATUTES) (AGAINST THE KICKBACK
DEFENDANTS)

~~118.~~ 74. Plaintiffs reallege the allegations set forth in paragraphs 1 through ~~51~~ 66 and incorporate those allegations by reference as if set forth in full herein.

~~119.~~ The Avelli no ~~A significant portion of the amounts that the Kickback Defendants received came from the capital contributions of other partners in S&P and/or P&S, and not any profits of the Partnerships.~~

~~120.~~ The partners of the Partnerships were creditors of the Partnerships at the time when the transfers occurred.

~~121.~~ 75. ~~The Avellino Kickbacks, the Bienes Kickbacks, and the Jacob Kickbacks, the Sullivan Kickbacks, and the Sullivan & Associates Kickbacks (collectively, the "Fraudulent Transfers") constituted the transfer of an interest of the Partnerships in property.~~

5. The partners of the Partnerships were creditors of the Partnerships at the time when the Fraudulent Transfers occurred.

~~122.~~ 76. By this action, the Plaintiffs are bringing claims that are owned by the Partnerships, and on behalf of the Partnerships, against the Kickback Defendants.

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~~123.77.~~ The Fraudulent Transfers were made with the actual intent to hinder, delay or defraud a creditor of the Partnerships.

~~124.~~ The Partnerships had no profits and the Fraudulent Transfers were composed of funds that originated from the capital contributions of general ~~pattners~~partners of one or both of the Partnerships.

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125.78. The Fraudulent Transfers were made to the Kickback Defendants without S&P and/or P&S receiving a reasonably equivalent value in exchange for the Fraudulent Transfers.

126.79. The Fraudulent Transfers were made in furtherance of Sullivan's breach of fiduciary duties and in furtherance of providing improper funds to the Kickback Defendants. Sullivan breached his fiduciary duties of loyalty and care to the Partnerships through his actions, including but not limited to:

- (a) Misappropriating assets of the Partnerships;
- (b) Failing to maintain appropriate books and records;
- (c) Failing to invest Partnership assets as required;
- (d) Failing to provide an accounting of the Partnerships;
- (e) Improperly disbursing Partnership assets;
- (f) Allowing the Kickback Defendants to participate in the management of the Partnerships;
- (g) Failing to provide the Partners with access to the books and records of the Partnerships; and
- (h) Paying the Kickbacks to the Kickback Defendants; and
- (i) Paying himself in violation of the Partnership Agreements.

~~127~~.80. The Avellino Transfers and the Bienes Transfers were transferred or paid to Avellino and/or Bienes, as subsequent transferees, and those monies were diverted and misappropriated by Sullivan in furtherance of his scheme.

~~128~~.81. All of the money transferred to Avellino and Bienes, as subsequent transferees, as a result of the Avellino Transfers and Bienes Transfers, was improperly diverted assets of one or more of the Partnerships.

~~129~~.82. The Fraudulent Transfers were made from the funds of the Partnerships that were taken as part of Avellino's and Bienes' scheme to receive unlawful kickbacks.

~~130~~.83. The Partnerships were creditors of Sullivan at the time he made the Fraudulent Transfers and creditors of Sullivan & Powell/Solutions in Tax as a result of its receipt of improperly transferred funds, and have standing to avoid the Fraudulent Transfers.

~~131~~.84. The Partnerships were creditors of Sullivan at the time he made the Fraudulent Transfers and creditors of Michael D. Sullivan & Assoc. as a result of its receipt of improperly transferred funds, and have standing to avoid the Fraudulent Transfers.

~~132~~.85. Sullivan & Powell/Solutions in Tax transferred the Fraudulent Transfers~~Kickbacks~~ to the Kickback Defendants with the actual intent to hinder delay and defraud its creditors, which included the Partnerships.

~~133~~.86. Michael D. Sullivan & Assoc. transferred the Fraudulent Transfers~~Kickbacks~~ to the Kickback Defendants with the actual intent to hinder delay and defraud its creditors, which included the Partnerships.

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~~134.87.~~_____The Fraudulent transfers to the Kickback Defendants may be avoided under Section 726.105(11)(a) of the Florida Statutes.

WHEREFORE, Plaintiffs respectfully request the Court enter a Judgment:

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(a) Declaring the Fraudulent Transfers ~~transfers~~ to the Kickback Defendants to have been fraudulent transfers pursuant to Section 726.105(1)(a) of the Florida Statutes;

(b) Avoiding the Fraudulent Transfers ~~transfers~~ to the Kickback Defendants as fraudulent transfers in violation of Section 726.105~~105~~(1)(a) of the Florida Statutes;

(c) Requiring the Kickback Defendants to pay to Plaintiffs the Fraudulent

(c) Transfer~~transfers to the Kickback Defendants~~; and

(d) (d) Granting such other and ~~finther~~further relief as may be just and proper.

**COUNT VIX (UNJUST ENRICHMENT)
(AGAINST THE KICKBACK
DEFENDANTS)**

~~135-88.~~ Plaintiffs incorporate by reference the allegations in paragraphs 1 through ~~5166~~, as if fully set ~~finth~~forth herein.

~~136-89.~~ The Partnerships conferred a benefit on the Kickback Defendants by virtue of the Avellino Kickbacks, the Bienes Kickbacks, and the Jacob Kickbacks~~the Jacob Kickbacks, the Sullivan Kickbacks, and the Sullivan & Associates Kickbacks~~ (collectively, the "Kickbacks") ~~that the Kickback Defendants received.~~

~~137-90.~~ All of the Kickback Defendants knowingly and voluntarily retained the Kickbacks that they respectively received.

~~138.~~ The Kickback Defendants received their respective kickbacks~~Kickbacks~~ under circumstances such that it would be inequitable for the Kickback Defendants to retain the benefit of the Kickbacks they each respectively received without paying the value of the respective kickbacks

~~Kickbacks~~ to Plaintiffs because they advised individuals and/or entities to invest in the 5968313-4

CASE NO. 12-034123 (07)

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Partnerships ~~without~~with the necessary license, the Kickback Defendants received Partnership funds that they were not entitled to receive, the Kickback Defendants received the Kickbacks in violation of the Partnership Agreements, and the Kickback Defendants' receipt of the Kickbacks facilitated Sullivan's breach of fiduciary duty and Sullivan's misappropriation of the Partnerships' assets.

Partnerships' assets.

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~~139.91.~~____ Accordingly, it ~~would~~would be inequitable and unjust for the Kickback Defendants to retain the kickbacks that they~~funds~~ received.

WHEREFORE, Plaintiffs demand entry of judgment against the Kickback Defendants for damages, court costs, interest, and such other and additional relief as the Court deems just and proper.

COUNT ~~VII~~ (MONEY HAD AND
RECEIVED) (AGAINST THE KICKBACK
DEFENDANTS)

~~140.92.~~____ Plaintiffs incorporate by reference the allegations in paragraphs 1 through 51~~1 through 66~~, as if fully set forth herein.

~~141.93.~~____ As discussed in further detail above, the Partnerships ~~conferred~~Partnerships ~~confered~~ a benefit on the Kickback Defendants by virtue of the Kickbacks that they received.

~~142.94.~~____ Further, none of the Kickback Defendants were entitled to receive the kickbacks that they received~~forementioned payments~~, because they received them in violation of Florida's securities laws and in violation of the Partnership Agreements.

~~143.95.~~____ Additionally, because the Kickbacks that the Kickback Defendants~~they~~ received belonged to the Partnerships, and originated from the capital contributions of the Partnerships' general partners~~partners~~, the Kickback Defendants were not entitled to the receipt of payment.

~~144.96.~~____ Accordi ngly~~Accordingly~~, it would be inequitable and unjust for the Kickback Defendants to retain the funds received.

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145.97. Thus the Kickback Defendants have been unjustly enriched at the expense of the Partnerships.

146.98. In equity and good conscience, Plaintiffs are entitled to the return of those amounts by which the Kickback Defendants were unjustly enriched, through disgorgement or ~~another appropriate remedy.~~

another appropriate remedy.

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WHEREFORE, Plaintiffs demand entry of judgment against the Kickback Defendants in ~~the~~ the amount that ~~they~~ they were ~~unjustly~~ unjustly enriched, including pre- and post-judgment interest and costs, and to grant any other relief the Court deems appropriate.

COUNT ~~VII~~XI (CIVIL
CONSPIRACY) (AGAINST THE
KICKBACK DEFENDANTS)

~~147.~~99. _____ Plaintiffs adopt and reallege the allegations in paragraphs 1 through ~~105~~142 above, as if set forth herein.

~~148.~~100. _____ This is an action for conspiracy.

~~149.~~_____ Defendant Avellino; Defendant Bienes; Defendant Jacob; Defendant Steven F. Jacob, CPA & Associates, Inc.; Sullivan; ~~Defendants have engaged in a pattern of tortious action including but not limited to breaches of fiduciary duties and~~ Michael D. Sullivan & Associates, Inc. (fraudulent misrepresentations. They acted improperly with the "Conspirators") ~~intent to advance their own interests to the detriment of Partnerships.~~

~~150.~~101. _____ ~~The Defendants conspired and entered into an agreement to to do an unlawful act, the distribution and receipt of the Kickback~~ of the Kickbacks and advising that investors invest in the Partnerships without a reasonable basis for such advice.

~~151.~~102. _____ Payment, and the Conspirators' receipt, of the ~~of~~ Kickbacks is prohibited under Florida law.

110. The Conspirators

~~152.~~103. _____ Defendants knew or should have known of the need to inform the ~~the~~ general partners or the Partnerships of ~~the Kickback~~ the Kickbacks, misappropriation of the Partnerships' assets or Avellino and Bienes' control, and they did not do so.

111. The Conspirators performed overt acts, including receiving the Kickbacks and advising that investors invest in the Partnerships without a reasonable basis for such advice, in pursuance of the conspiracy.

~~153.~~104. _____ 112. The Conspirators ~~Defendants committed these tortious-tortious acts in~~ conceit-in concert ~~with one another and~~

113. ~~5968313-4~~ 34

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~~154. Defendants knew that their conduct constituted a breach of duty and yet they gave substantial assistance and encouragement to each other.~~

~~155. Defendants gave substantial assistance to one another in accomplishing a tortious result and their own conduct, separately considered constituted a breach of duty to the Partnerships.~~

As a direct and proximate result of the Conspirators' acts done under the
~~156.105. conspiracy, Defendant's conduct,~~ Plaintiffs suffered injury from the
Kickbacks. 5968313-4 ²²

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injury.

WHEREFORE, Plaintiffs demand judgment against Defendants Avellino, Bienes, and Jacob, jointly and severally, for damages in the total amount of the Kickbacks, as well as interest and costs and for such other and further relief the Court deems just and proper.

PLAINTIFFS DEMAND A JURY ON ALL ISSUES SO TRIABLE.

January 9, 2015~~October 5, 2014~~

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CASE NO. 12-034013 (07)

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CASE NO. 12-034123 (07)

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of January, 2015, a true and correct copy of the foregoing document was served via Electronic Mail upon the following parties:

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