

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.

STEVEN JACOB, et al.

Defendants.

**MOTION TO COMPEL DEFENDANT
MICHAEL BIENES TO PRODUCE DOCUMENTS
IN RESPONSE TO PLAINTIFFS' FIFTH REQUEST FOR PRODUCTION**

Plaintiffs have been forced, yet again, to file a motion to compel seeking an Order from the Court compelling the production of documents from Defendants Michael Bienes ("Bienes") in connection with their Fifth Request for Production. In support thereof Plaintiffs state:

1. On or about October 5, 2015, Plaintiffs served a Fifth Request for Production of Documents to Defendant Michael Bienes. A true and correct copy of Plaintiffs' Fifth Request for Production is attached hereto as **Exhibit "A"**.

2. On or about November 16, 2015, Bienes served Responses to Plaintiffs' Fifth Request for Production. A true and correct copy of Bienes's Responses to Plaintiffs' Fifth Requests for Production is attached hereto as **Exhibit "B"**.

3. Bienes asserted a variety of objections which should be overruled for the reasons set forth below.

4. Bienes objected to Requests for Production Numbers 1, 2, 3, 6 and 13 because they were overly broad or unduly burdensome. However, Bienes did not provide any evidence in support of its position and therefore those objections are without merit. *Topp Telecom, Inc. v. Atkins*, 763 So. 2d 1197, 1199 (Fla. 4th DCA 2000) (noting that objections to discovery based on it being overly burdensome must be supported by some evidence).

5. Likewise, Bienes objected to Requests for Production Numbers 1, 2, 3 because they sought information which was somehow protected by the attorney-client and/or common interest privilege. However Bienes refused to provide a privilege log in connection with the assertion of privilege. Exhibit B at 2 (“Bienes further objects to logging any communications relating to, subject to, or exchanged under or pursuant to the oral joint defense agreement during the course of or in anticipation of litigation.”). Moreover, Bienes has refused to provide any legal or factual basis for his refusal to produce a privilege log.

6. Further, information which would have been protected by the alleged common interest privilege was first sought in 2014. Yet Bienes first asserted the existence of a common interest privilege a year later. Therefore Bienes waived his right to assert such privileges. *Century Business Credit Corp. v. Fitness Innovations & Tech., Inc.*, 906 So.2d 1156 (Fla. 4th DCA 2005).

7. Moreover, Bienes claims that there is a common interest agreement between he and Co-defendant Frank Avellino. Exhibit B at 2 (“Bienes objects to this request on the grounds that it seeks documents and communications the disclosure of which is protected pursuant to a joint defense agreement and/or a common interest privilege.”). However, Bienes refused to produce any documents which evidence or relate to the existence of a common interest privilege

between Avellino and he.¹ Bienes bears the burden of proof in showing the existence of such a privilege. Thus, documents relating the existence of a common interest privilege must either be produced or disclosed in a privilege log. *S. Bell Tel & Tel. Co. v. Deason*, 632 So.2d 1377, 1383 (Fla. 1994). Because Bienes has failed to meet his burden of proof in connection with the assertion of privilege, his objection must be overruled.

8. Bienes also objected to Request for Production Number 3 based on his claim that documents pertaining to his retention or preservation of evidence in connection with litigation is not reasonably calculated to lead to the production of admissible evidence. Bienes's objection is meritless as there are substantial and serious allegations pertaining to Bienes's spoliation of evidence. In fact, Plaintiffs are seeking to strike Bienes's pleadings as a result of Bienes's spoliation of such evidence.

9. Further, the attorney-client privilege is limited in situations such as this one, because Bienes's advice from counsel pertaining to a need to preserve documents is discoverable so that Plaintiffs can prosecute their spoliation motion. *Lender Processing Services, Inc. v. Arch Ins. Co.*, 2015 WL 1809318, at *6 (Fla. 1st DCA Apr. 22, 2015) ("waiver of the privilege occurs when a party 'raises a claim that will *necessarily* require proof by way of a privileged communication.'") (citation omitted) (emphasis in original). Bienes claims that he did not have a duty to preserve documents and has otherwise preserved all relevant evidence. Accordingly, documents that would otherwise be privileged that relate to what steps Bienes took to preserve evidence in connection with this litigation or other pending litigation are relevant and discoverable. Likewise, documents or evidence which relate to a lack of action by Bienes is discoverable.

¹ Specifically, Request for Production Number 2 seeks "[a]ny documents which evidence a common interest privilege between You and Avellino." Exhibit B at 2.

10. In *Metro. Opera Ass'n, Inc. v. Local 100, Hotel Employees & Rest. Employees Intern. Union*, 212 F.R.D. 178, 222 (S.D.N.Y. 2003), for example, the court issued the harsh sanction of striking pleadings because:

counsel (1) never gave adequate instructions to their clients about the clients' overall discovery obligations, what constitutes a "document" or about what was specifically called for by the Met's document requests; (2) knew the Union to have no document retention or filing systems and yet never implemented a systematic procedure for document production or for retention of documents, including electronic documents; (3) delegated document production to a layperson who (at least until July 2001) did not even understand himself (and was not instructed by counsel) that a document included a draft or other non-identical copy, a computer file and an e-mail; (4) never went back to the layperson designated to assure that he had "establish[ed] a coherent and effective system to faithfully and effectively respond to discovery requests," *National Ass'n of Radiation Survivors*, 115 F.R.D. at 556; and (5) in the face of the Met's persistent questioning and showings that the production was faulty and incomplete, ridiculed the inquiries, failed to take any action to remedy the situation or supplement the demonstrably false responses, failed to ask important witnesses for documents until the night before their depositions and, instead, made repeated, baseless representations that all documents had been produced.

Id.

11. In *Metropolitan Opera*, where the conduct of counsel is strikingly similar to that of Bienes's counsel, the Court looked to communications which would otherwise be privileged to determine whether a spoliation sanction should be issued, because such conduct demonstrates whether an attorney has discharged his duties and whether a party has taken reasonable efforts to preserve evidence. As in *Metropolitan Opera*, the e-mails and other communications between Bienes and his attorneys regarding the preservation of evidence is discoverable, because it relates to whether Bienes had a duty to preserve evidence and in fact preserved such evidence. *Lender Processing Services, Inc.*, 2015 WL 1809318, at *6 (Fla. 1st DCA Apr. 22, 2015); *see also Lee v. Progressive Express Ins. Co.*, 909 So.2d 475, 477 (Fla. 4th DCA 2005) ("[I]f proof of the claim would require evidence of the privileged matter, the privileged matter is discoverable.").

12. Notwithstanding the fact that Bienes's preservation of evidence and communications with his attorneys pertaining to his efforts to preserve evidence is discoverable, Bienes has refused to provide any documents or communications pertaining to his preservation of evidence.

13. In addition to the foregoing, Plaintiffs have sought, through Request for Production Numbers 4, 5, 6, and 13, information pertaining to Bienes's tax returns and other financial records, because Bienes has denied receiving any transfers and instead claimed that they were charitable contributions. *See* Transcript of Deposition Michael Bienes at 102-115² ("Q: Why were these payments made by S&P, P&S, Michael Sullivan or one of his entities?" *Id.* at 104: 9; A: It was to support Dianne and my charitable interests." *Id.* at 104:20-21).

14. Notwithstanding the foregoing, the transfers received by Bienes were directed to an entity that was owned and controlled by Bienes called 56 Arlington House, LLC. Bienes testified that 56 Arlington House, LLC's purpose was to "pay rent on [his] flat" in London, yet maintained that they were still charitable contributions. *Id.* at 103:15-16. When asked how transfers to 56 Arlington House, LLC constituted a charitable contribution, Bienes stated that the transfers at issue were intended to support his "charitable interests." *Id.* at 106:17-18.

15. Bienes claims that the transfers he received were charitable contributions and not commissions, and that the transfers at issue were intended to advance his charitable interests, even though they were not directly received by charities. Therefore Bienes's financial information is clearly relevant as to whether he received a commission and is therefore discoverable. *Friedman v. Heart Institute of Port St. Lucie, Inc.*, 863 So. 2d 189, 194 (Fla. 2003) ("A party's finances, if relevant to disputed issues of the underlying action, are not excepted

² A true and correct copy of excerpts of the Deposition Transcript of Michael Bienes is attached hereto as **Exhibit C.**

from discovery. . . and courts will compel production of personal financial documents and information if shown to be relevant by the requesting party.”). Therefore, Bienes’s objections to Request for Production Numbers 4, 5, 6 and 13 must be overruled.

16. Additionally, Bienes objected to request for production Number 13, which requested all documents related to any charitable contribution made by him because it was “vague and ambiguous, overbroad, unduly burdensome and calls for Defendant to produce documents more readily available to Plaintiffs or already in the possession of Plaintiffs.” Exhibit B at 4. However, Bienes has failed to explain why producing documents in response to Request for Production Number 13 is overly broad or unduly burdensome. There is no question that Plaintiffs do not have access to information pertaining to Bienes’s alleged charitable activities. Since information pertaining to Bienes charitable contributions is clearly relevant, Bienes cannot refuse to provide such documents to Plaintiffs. Accordingly Bienes’s objections to requests 4, 5, 6 and 13 must be overruled.

17. Bienes has also objected to Request for Production Numbers 7, 8, 11, 14 and 15 by stating that: “Documents responsive to this request and in Bienes’s possession, custody or control, **if any**, have been produced to Plaintiffs.” Bienes’s response to Request for Production Numbers 7, 8, 11, 14 and 15 is facially deficient because it does not specify whether Bienes has produced documents in response to those Requests for Production. Accordingly, Plaintiffs request that Bienes be ordered to supplement those Requests for Production to specify whether documents are being produced in response to each request.

18. Each time Plaintiffs have issued a discovery request to Defendant Bienes, they have been forced to file a motion compelling the production of documents. Because these

objections, just like the previous ones are asserted without merit, Plaintiffs respectfully request an award of attorney's fees and costs.

WHEREFORE Plaintiffs respectfully request the Court enter an Order: (i) Compelling Michael Bienes to respond to Plaintiffs' Fifth Request for Production; (ii) Overruling Michael Bienes' objections to Plaintiffs' Fifth Request for Production; (iii) Awarding Plaintiffs attorney's fees and costs in connection with the filing of the instant motion; (iv) Finding that Michael Bienes has waived applicable privileges; (v) Ordering Michael Bienes to produce documents in response to Plaintiffs' Fifth Request For Production by a date certain; or (vi) Ordering such further relief the Court deems just and proper.

Dated: January 28, 2016

BERGER SINGERMANN LLP
Attorneys for Plaintiffs
350 East Las Olas Blvd, Suite 1000
Fort Lauderdale, FL 33301
Telephone: (954) 525-9900
Direct: (954) 712-5138
Facsimile: (954) 523-2872

By: s/ LEONARD K. SAMUELS
Leonard K. Samuels
Florida Bar No. 501610
lsamuels@bergersingerman.com
Steven D. Weber
Florida Bar No. 47543
sweber@bergersingerman.com
Zachary P. Hyman
Florida Bar No. 98581
zhyman@bergersingerman.com

and

MESSANA, P.A.
Attorneys for Plaintiffs
401 East Las Olas Boulevard, Suite 1400
Ft. Lauderdale, FL 33301
Telephone: (954) 712-7400
Facsimile: (954) 712-7401

By: /s/ Thomas M. Messana

Thomas M. Messana, Esq.
Florida Bar No. 991422
tmessana@messana-law.com
Brett D. Lieberman, Esq.
Florida Bar No. 69583
blieberman@messana-law.com
Thomas G. Zeichman, Esq.
Florida Bar No. 99239
tzeichman@messana-law.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 28, 2016, a copy of the foregoing was filed with the Clerk of the Court via the E-filing Portal, and served via Electronic Mail by the E-filing Portal upon:

Peter G. Herman, Esq.
Tripp Scott
110 SE 6th Street
15th Floor
Fort Lauderdale, FL 33301
Tel.: 954-525-7500
Fax.: 954-761-8475
pgh@trippscott.com
Attorneys for Steven Jacob; Steven F. Jacob
CPA & Associates, Inc.

Thomas M. Messana, Esq.
Messana, P.A.
401 East Las Olas Boulevard, Suite 1400
Fort Lauderdale, FL 33301
Tel.: 954-712-7400
Fax: 954-712-7401
tmessana@messana-law.com
Attorneys for Plaintiff

Gary A. Woodfield, Esq.
Haile, Shaw & Pfaffenberger, P.A.
660 U.S. Highway One, Third Floor
North Palm Beach, FL 33408
Tel.: 561-627-8100
Fax.: 561-622-7603
gwoodfield@haileshaw.com
bpetroni@haileshaw.com
eservices@haileshaw.com
*Attorneys for **Frank Avellino***

Mark F. Raymond, Esq.
mraymond@broadandcassel.com
Jonathan Etra, Esq.
jetra@broadandcassel.com
Christopher Cavallo, Esq.
ccavallo@broadandcassel.com
Broad and Cassel
One Biscayne Boulevard, 21st Floor
2 S. Biscayne Boulevard
Miami, FL 33131
Tel.: 305-373-9400
Fax.: 305-373-9443
*Attorneys for **Michael Bienes***

By: s/Leonard K. Samuels
Leonard K. Samuels

Exhibit “A”

**IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA**

**Case No: 12-034123(07)
Complex Litigation Unit**

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, ET AL.,

Defendants.

**PLAINTIFFS' FIFTH REQUEST FOR PRODUCTION
OF DOCUMENTS TO DEFENDANT MICHAEL BIENES**

Pursuant to Rule 1.350 of the Florida Rules of Civil Procedure, Plaintiffs, P&S Associates, General Partnership ("P&S"), S&P Associates, General Partnership ("S&P") and Philip Von Kahle as Conservator on behalf of P&S and S&P ("Conservator") (collectively and individually referred to as, the "Partnerships" or "Plaintiffs"), by and through their undersigned attorneys, request that Defendant Michael Bienes ("Defendant"), produce the following described documents and tangible things in accordance with Rule 1.350 and the definitions and instructions stated below, at the offices of Berger Singerman, 350 East Las Olas Blvd, Suite 1000, Fort Lauderdale, FL 33131, within 30 days of service of this Request.

DEFINITIONS AND INSTRUCTIONS

The following definitions shall apply to this Request:

A. "You", "Your", or "Defendant" as used herein means Defendant Michael Bienes, and includes any and all agents, employees, servants, officers, directors, attorneys and any other person or entity acting or purporting to act on his behalf, or any other entity or person under the direct control of Michael Bienes.

B. "P&S" as used herein means Plaintiff P&S Associates, General Partnership, and includes any and all agents, employees, servants, officers, directors, attorneys and any other person or entity acting or purporting to act on its behalf.

C. "S&P" as used herein means Plaintiff S&P Associates, General Partnership, and includes any and all agents, employees, servants, officers, directors, attorneys and any other person or entity acting or purporting to act on its behalf.

D. "Avellino" as used herein means Frank Avellino, a named Defendant in this action, and includes any and all agents, employees, servants, officers, directors, attorneys and any other person or entity acting or purporting to act on his behalf.

E. "Sullivan" as used herein means Michael D. Sullivan, and includes any and all agents, employees, servants, officers, directors, attorneys and any other person or entity acting or purporting to act on his behalf.

F. "Michael D. Sullivan & Associates, Inc." as used herein means Michael D. Sullivan & Associates, Inc., and includes any and all agents, employees, servants, officers, directors, attorneys and any other person or entity acting or purporting to act on its behalf.

G. "Sullivan & Powell, Inc." as used herein means Sullivan & Powell, Inc., and includes any and all agents, employees, servants, officers, directors, attorneys and any other person or entity acting or purporting to act on its behalf.

H. Solutions in Tax, Inc. as used herein means Solutions in Tax, Inc., and includes any and all agents, employees, servants, officers, directors, attorneys and any other person or entity acting or purporting to act on its behalf.

I. "Powell" as used herein means Gregory O. Powell.

J. "BLMIS" as used herein means Bernard L. Madoff Investment Securities, LLC

K. "Person" as used herein means any natural person or any entity, including without limitation any individual, firm, corporation, company, joint venture, trust, tenancy, association, partnership, business, agency, department, bureau, board, commission, or any other form of public, private or legal entity. Any reference herein to any public or private company, partnership, association, or other entity include such entity's subsidiaries and affiliates, as well as the present and former directors, officers, employees, attorneys, agents and anyone acting on behalf of, at the direction of, or under the control of the entity, its subsidiaries or its affiliates.

“Documents” shall mean the original or copies of any tangible written, typed, printed or other form of recorded or graphic matter of every kind or description, however produced or reproduced, whether mechanically or electronically recorded, draft, final original, reproduction, signed or unsigned, regardless of whether approved, signed, sent, received, redrafted, or executed, and whether handwritten, typed, printed, photostated, duplicated, carbon or otherwise copied or produced in any other manner whatsoever. Without limiting the generality of the foregoing, “documents” shall include correspondence, letters, telegrams, telexes, mailgrams, memoranda, including inter-office and intra-office memoranda, memoranda for files, memoranda of telephone or other conversations, including meetings, invoices, reports, receipts and statements of account, ledgers, notes or notations, notes or memorandum attached to or to be read with any document, booklets, books, drawings, graphs, charts, photographs, phone records, electronic tapes, discs or other recordings, computer programs, printouts, data cards, studies, analysis and other data compilations from which information can be obtained. Copies of documents, which are not identical duplications of the originals or which contain additions to or deletions from the originals or copies of the originals if the originals are not available, shall be considered to be separate documents.

“Documents” shall also include all electronic data storage documents including but not limited to e-mails and any related attachments, electronic files or other data compilations which relate to the categories of documents as requested below. Your search for these electronically stored documents shall include all of your computer hard drives, floppy discs, compact discs, backup and archival tapes, removable media such as zip drives, password protected and encrypted files, databases, electronic calendars, personal digital assistants, proprietary software and inactive or unused computer disc storage areas.

L. Documents, as defined herein, includes electronically stored information, which shall be produced in its native format including its metadata, in the manner set forth on **Schedule “A”**.

M. “Communications” shall mean any oral or written statement, dialogue, colloquy, discussion or conversation and, also, means any transfer of thoughts or ideas between persons by means of documents and includes any transfer of data from one location to another by electronic or similar means.

N. “Related to” shall mean, directly or indirectly, refer to, reflect, mention, describe, pertain to, arise out of or in connection with or in any way legally, logically, or factually be connected with the matter discussed.

O. As used herein, the conjunctions “and” and “or” shall be interpreted in each instance as meaning “and/or” so as to encompass the broader of the two possible constructions, and shall not be interpreted disjunctively so as to exclude any information or documents otherwise within the scope of any request.

P. Any pronouns used herein shall include and be read and applied as to encompass the alternative forms of the pronoun, whether masculine, feminine, neuter, singular or plural, and shall not be interpreted so as to exclude any information or documents otherwise within the scope of any request.

Q. Unless otherwise specified herein, the time frame for each request is from and including January 1, 1960 to the present.

R. If you contend that you are entitled to withhold any responsive document(s) on the basis of privilege or other grounds, for each and every such document specify:

- i. The type or nature of the document;
- ii. The general subject matter of the document;
- iii. The date of the document;
- iv. The author, addressee, and any other recipient(s) of the document; and
- v. The basis on which you contend you are entitled to withhold the document.

S. If you assert that any document sought by any request is protected against disclosure as the attorney's work product doctrine or by the attorney-client privilege, you shall provide the following information with respect to such document:

- i. the name and capacity of the person or persons who prepared the documents;
- ii. the name and capacity of all addresses or recipients of the original or copies thereof;
- iii. the date, if any, borne by the document;
- iv. a brief description of its subject matter and physical size;
- v. the source of the factual information from which such document was prepared; and
- vi. the nature of the privilege claimed.

T. You must produce all documents within your case, custody or control that are responsive to any of these requests. A document is within your care, custody or control if you have the right or ability to secure the document or a copy thereof from any other person having physical possession thereof.

U. If you at any time had possession, custody or control of a document called for under this request and if such document has been lost, destroyed, purged, or is not presently in your possession, custody or control, you shall describe the document, the date of its loss, destruction, purge, or separation from possession, custody or control and the circumstances surrounding its loss, destruction, purge, or separation from possession, custody or control.

V. All documents produced pursuant hereto are to be produced as they are kept in the usual course of business and shall be organized and labeled (without permanently marking the item produced) so as to correspond with the categories of each numbered request hereof.

W. When appropriate, the singular form of a word should be interpreted in the plural as may be necessary to bring within the scope hereof any documents which might otherwise be construed to be outside the scope hereof.

DOCUMENTS REQUESTED

1. All documents and communications exchanged between You and Avellino including but not limited to e-mails sent to You or Your attorney by any attorney representing Avellino.

2. Any documents which evidence a common interest privilege agreement between You and Avellino.

3. All documents pertaining to Your retention or preservation of evidence in connection with litigation being pursued against You.

4. All tax returns that You filed, or that were filed on Your behalf with the Internal Revenue Service, between January 1, 1999 and the present.

5. All documents pertaining to all open or closed checking, savings, bank credit cards, NOW, Time or other deposit or checking account in Your name or under Your signatory authority, including but not limited to applications for credit, credit reports, monthly statements, financial statements, signature cards, corporate board authorization minutes, bank statements, cancelled checks, deposit checks, wire transfer forms, credit and debit memorandums, IRS Form 1099, IRS Form 1089, correspondence, or back-up withholding documents.

6. All Forms 4789 and Form 4790 filed with the Department of Treasury, Internal Revenue Service or the United States Customs Service by You between January 1, 2000 and the present, concerning currency transaction conducted by You or on Your behalf.

7. All documents and communications exchanged between You and Sullivan; Michael D. Sullivan & Associates, Inc.; Sullivan & Powell, Inc.; and/or Solutions in Tax, Inc.

8. All documents and communications exchanged between You and Scott Holloway, Ralph C. Fox, Steve Jacob, Jack Kleinmann, Richard Wills, Edward Michaelson, Gary Chapman, Sam Rosen, Edith Rosen, Marketing Services, Inc., Vincent Barone, Abraham Newman, James E. Yonge, Wayne Horwitz, Direct Response Group, Inc., Susan Moss Booking and Tax Service, and Vincent Kelly.

9. All documents and communications exchanged between You and Helen Chaitman and/or any person or entity associated with the law firm of Becker Poliakoff, P.A. between December 8, 2008 and the present.

10. All documents and communications exchanged between You and Margaret Esteban and/or Fernando Esteban.

11. All documents and communications exchanged between You and any general partner of S&P and/or P&S.

12. All documents and communications relating to Your direct and/or indirect investment with BLMIS, including but not limited to any documents and communications between You and Ahearn & Jasco, P.A.

13. All documents relating to any charitable contributions made by You or for Your benefit.

14. All documents related to Sullivan; Michael D. Sullivan & Associates, Inc.; Sullivan & Powell, Inc.; and/or Solutions in Tax, Inc transferring money to Avellino and/or 27 Cliff, LLC.

15. All documents related to Sullivan; Michael D. Sullivan & Associates, Inc.; Sullivan & Powell, Inc.; and/or Solutions in Tax, Inc transferring money to You and/or 56 Arlington House, LLC

SCHEDULE "A"**Production of Electronically Stored Information (ESI)
FORM OF PRODUCTION**

Plaintiffs, P & S Associates, General Partnership ("P&S"), S & P Associates, General Partnership ("S&P"), (collectively referred to as, the "Partnerships"), and Philip Von Kahle as Conservator on behalf of the Partnerships (the "Conservator", and collectively with the Partnerships, the "Plaintiffs/Judgment Creditors"), requests that all ESI (electronically stored information) be produced as follows:

ESI will be produced (printed and loaded) in 300DPI resolution or greater, Group IV Monochrome Tagged Image File Format (.TIF) files in single-page format, with **ALL** native files provided and word searchable OCR/extracted text (Optical Character Recognized – i.e. searchable text) in UTF-8 format. Color photographs should be produced as color JPEG images. Email natives will be delivered in MSG or EML format. Load files will be provided in Opticon (.OPT) format and an IPRO LFP (.lfp) format. Metadata will be provided in a DAT file with standard Concordance delimiters. The text files containing the OCR/Extracted Text shall be produced in multi-page format with the name corresponding to its associated document. **All small and oversized images should be resized to fit on 8.5x11 canvas.**

The files should be delivered with the following folder structure:

IMAGES – contains the TIF and JPG files, up to 10,000 items.
DATA – contains the OPT and LFP files and the metadata text file (DAT)
NATIVES – contains all the original native files named as the BEGDOC
TEXT – contains the document-level OCR/Extracted text files named as the BEGDOC

<u>Eclipse Metadata Field</u>	<u>Field Description</u>
BegDoc	BegDoc
EndDoc	EndDoc
BegAttach	BegAttach

EndAttach	EndAttach
Application	Application/Application Name
AttachmentIDs	Bates numbers of attachment(s)
Attachments	Names of attachment files
AttachRange	Attachment Range
Authors	Document author
BCC	BCC (Name + email)
CC	CC (Name + email)
Companies	Company name
Custodian	Custodian (Last, First)
DateCreated	Date created (MM/DD/YYYY)
DateReceived	Date email received (MM/DD/YYYY)
DateSaved	Date last saved (MM/DD/YYYY)
DateSent	Date email sent (MM/DD/YYYY)
Doctitle	Title
FileType	Document Type Description
FileExtension	File extension
Doclink	Link to native files produced
ExtractedText	Link to text files produced
Filename	Original filename
FileSize	File size in bytes
Folder	Relative Path (Inbox, Sent, etc.)
From	Sender (Name + email)
Hash_Code	MD5 hash
Header	Email header
InternetMSGID	IntMsgID
MessageID	MsgID
NumAttachments	Attachment count
NumPages	Page count
ParentID	Parent bates number
Password_Protect	Y/N field
Read	Y/N
SHA1	SHA1 hash
Sources	CD, DVD, hard drive; brief desc. of data
StoreID	Name of PST/NSF file (if relevant)
Subject	Email/Document subject
TimeReceived	Time email received (12-hour HH:MM)
TimeSent	Time email sent (12-hour HH:MM)
To	To (Name + email)

For .xls (Excel), .ppt (PowerPoint), and .doc (Word) files the following additional metadata fields should be included:

Excel_Comments	Comments
Excel_HiddenColumns	Hidden Columns
Excel_HiddenRows	Hidden Rows
Excel_HiddenWorksheets	Hidden Worksheets
Num_Lines	Number of lines
Num_Paragraphs	Number of paragraphs
Num_slides	Number of slides
Num_Notes	Number of notes
Num_HiddenSlides	Number of hidden slides
Num_Multimedia	Number of multimedia clips
Security	Security

Dated: October 5, 2015

BERGER SINGERMANN LLP
Attorneys for Plaintiffs
350 East Las Olas Blvd, Suite 1000
Fort Lauderdale, FL 33301
Telephone: (954) 525-9900
Direct: (954) 712-5138
Facsimile: (954) 523-2872

By: s/ LEONARD K. SAMUELS
Leonard K. Samuels
Florida Bar No. 501610
lsamuels@bergersingerman.com
Steven D. Weber
Florida Bar No. 47543
sweber@bergersingerman.com
Zachary P. Hyman
Florida Bar No. 98581
zhyman@bergersingerman.com

and

MESSANA, P.A.
Attorneys for Plaintiffs
401 East Las Olas Boulevard, Suite 1400
Ft. Lauderdale, FL 33301
Telephone: (954) 712-7400
Facsimile: (954) 712-7401

By: /s/ Thomas M. Messana

Thomas M. Messana, Esq.

Florida Bar No. 991422

tmessana@messana-law.com

Brett D. Lieberman, Esq.

Florida Bar No. 69583

blieberman@messana-law.com

Thomas G. Zeichman, Esq.

Florida Bar No. 99239

tzeichman@messana-law.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this October 5, 2015, a true and correct copy of the foregoing document was served by Electronic Mail upon the following parties:

Peter G. Herman, Esq.
Tripp Scott
110 SE 6th Street
15th Floor
Fort Lauderdale, FL 33301
Tel.: 954-525-7500
Fax.: 954-761-8475
pgh@trippscott.com
Attorneys for Steven Jacob; Steven F. Jacob
CPA & Associates, Inc.

Gary A. Woodfield, Esq.
Haile, Shaw & Pfaffenberger, P.A.
660 U.S. Highway One, Third Floor
North Palm Beach, FL 33408
Tel.: 561-627-8100
Fax.: 561-622-7603
gwoodfield@haileshaw.com
bpetroni@haileshaw.com
eservices@haileshaw.com
Attorneys for Frank Avellino

Thomas M. Messana, Esq.
Messana, P.A.
401 East Las Olas Boulevard, Suite 1400
Fort Lauderdale, FL 33301
Tel.: 954-712-7400
Fax: 954-712-7401
tmessana@messana-law.com
Attorneys for Plaintiff

Mark F. Raymond, Esq.
rraymond@broadandcassel.com
Jonathan Etra, Esq.
jetra@broadandcassel.com
Christopher Cavallo, Esq.
ccavallo@broadandcassel.com
Broad and Cassel
One Biscayne Boulevard, 21st Floor
2 S. Biscayne Boulevard
Miami, FL 33131
Tel.: 305-373-9400
Fax.: 305-373-9443
Attorneys for Michael Bienes

By: s/Leonard K. Samuels
Leonard K. Samuels

EXHIBIT “B”

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

COMPLEX LITIGATION UNIT

CASE NO: CACE 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, et al.,

Defendants.

**MICHAEL BIENES' RESPONSES AND OBJECTIONS TO
PLAINTIFFS' FIFTH REQUEST FOR PRODUCTION OF DOCUMENTS**

Defendant, MICHAEL BIENES ("Bienes"), pursuant to Rule 1.350, Florida Rules of Civil Procedure, serves these Responses and Objections to Plaintiffs' Fifth Request for Production of Documents (the "Fifth Request"), as follows:

DOCUMENTS REQUESTED AND SPECIFIC RESPONSES

1. All documents and communications exchanged between You and Avellino including but not limited to e-mails sent to You or Your attorney by any attorney representing Avellino.

Response: Bienes objects to this request on the grounds that it seeks documents and communications the disclosure of which is protected pursuant to a joint defense

BROAD and CASSEL

One Biscayne Tower, 21st Floor 2 South Biscayne Blvd. Miami, Florida 33131-1811 305.373.9400

agreement and/or a common interest privilege, the attorney-client privilege, and the attorney work-product doctrine. Bienes further objects to logging any communications relating to, subject to, or exchanged under or pursuant to the oral joint defense agreement during the course of or in anticipation of litigation.

2. Any documents which evidence a common interest privilege agreement between You and Avellino.

Response: Bienes objects to this request on the grounds that it seeks documents and communications the disclosure of which is protected pursuant to a joint defense agreement and/or a common interest privilege, the attorney-client privilege, and the attorney work-product doctrine. Bienes further objects to logging any communications relating to, subject to, or exchanged under or pursuant to the oral joint defense agreement during the course of or in anticipation of litigation. Subject to and without waiving the foregoing objections, Bienes states that there are no non-privileged documents in his possession, custody, or control that are responsive to this request as the joint defense agreement is oral.

3. All documents pertaining to Your retention or preservation of evidence in connection with litigation being pursued against You.

Response: Bienes objects to this request on the grounds that it is vague and ambiguous, overbroad, unduly burdensome, calls for the production of documents and communications the disclosure of which is protected by the attorney-client privilege, oral joint defense agreement, common interest privilege, and/or the attorney work-product doctrine. Bienes further objects to this request on the grounds that it seeks documents or communications which are irrelevant and not likely to lead to the discovery of admissible evidence in this action, and asks Bienes to adopt a position taken by Plaintiffs in this action, which he denies. Subject to and without waiving the foregoing, Bienes states that there are no non-privileged documents or communications responsive to this request within his possession, custody, or control.

4. All tax returns that You filed, or that were filed on Your behalf with the Internal Revenue Service, between January 1, 1999 and the present.

Response: Bienes objects to this request on the grounds that it seeks documents, materials or information concerning his private financial information, which is protected from disclosure by Florida's Constitution and other applicable law. Bienes further objects to this request on the grounds that it is overbroad, unduly burdensome, and calls for the production of documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

5. All documents pertaining to all open or closed checking, savings, bank credit cards, NOW, Time or other deposit or checking account in Your name or under Your signatory authority, including but not limited to applications for credit, credit reports, monthly statements, financial statements, signature cards, corporate board authorization minutes, bank statements, cancelled checks, deposit checks, wire transfer forms, credit and debit memorandums, IRS Form 1099, IRS Form 1089, correspondence, or back-up withholding documents.

Response: Bienes objects to this request on the grounds that it seeks documents, materials or information concerning his private financial information, which is protected from disclosure by Florida's Constitution and other applicable law. Bienes further objects to this request on the grounds that it is overbroad, unduly burdensome, and calls for the production of documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

6. All Forms 4789 and Form 4790 filed with the Department of Treasury, Internal Revenue Service or the United States Customs Service by You between January 1, 2000 and the present, concerning currency transaction conducted by You or on Your behalf.

Response: Bienes objects to this request on the grounds that it seeks documents, materials or information concerning his private financial information, which is protected from disclosure by Florida's Constitution and other applicable law. Bienes further objects to this request on the grounds that it is overbroad, unduly burdensome, and calls for the production of documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

7. All documents and communications exchanged between You and Sullivan; Michael D. Sullivan & Associates, Inc.; Sullivan & Powell, Inc.; and/or Solutions in Tax, Inc.

Response: Documents responsive to this request and in Bienes's possession, custody or control, **if any**, have been produced to Plaintiffs.

8. All documents and communications exchanged between You and Scott Holloway, Ralph C. Fox, Steve Jacob, Jack Kleinmann, Richard Wills, Edward Michaelson, Gary Chapman, Sam Rosen, Edith Rosen, Marketing Services, Inc., Vincent Barone, Abraham

Newman, James E. Yonge, Wayne Horwitz, Direct Response Group, Inc., Susan Moss Booking and Tax Service, and Vincent Kelly.

Response: Documents responsive to this request and in Bienes's possession, custody or control, **if any**, have been produced to Plaintiffs.

9. All documents and communications exchanged between You and Helen Chaitman and/or any person or entity associated with the law firm of Becker Poliakoff, P.A. between December 8, 2008 and the present.

Response: None.

10. All documents and communications exchanged between You and Margaret Esteban and/or Fernando Esteban.

Response: None.

11. All documents and communications exchanged between You and any general partner of S&P and/or P&S.

Response: Bienes objects to this request on the grounds that it is vague and ambiguous in that the "general partners" of S&P and/or P&S are not specifically defined and have not been specifically identified by Plaintiffs. Subject to and without waiving this objection, Bienes states that documents responsive to this request and in Bienes's possession, custody or control, **if any**, have been produced to Plaintiffs.

12. All documents and communications relating to Your direct and/or indirect investment with BLMIS, including but not limited to any documents and communications between You and Ahearn & Jasco, P.A.

Response: Documents responsive to this request and in Bienes's possession, custody or control, **if any**, have been produced to Plaintiffs.

13. All documents relating to any charitable contributions made by You or for Your benefit.

Response: Bienes objects to this request on the grounds that it is vague and ambiguous, overbroad, unduly burdensome, and calls for Bienes to produce documents which are more readily available to Plaintiffs or already in the possession of Plaintiffs.

14. All documents related to Sullivan; Michael D. Sullivan & Associates, Inc.; Sullivan & Powell, Inc.; and/or Solutions in Tax, Inc transferring money to Avellino and/or 27 Cliff, LLC.

Response: Documents responsive to this request and in Bienes's possession, custody or control, **if any**, have been produced to Plaintiffs.

15. All documents related to Sullivan; Michael D. Sullivan & Associates, Inc.; Sullivan & Powell, Inc.; and/or Solutions in Tax, Inc. transferring money to You and/or 56 Arlington House, LLC.

Response: Documents responsive to this request and in Bienes's possession, custody or control, **if any**, have been produced to Plaintiffs.

Dated this 16th day of November, 2015.

Respectfully submitted,

/s/ Jonathan Etra

Mark F. Raymond, P.A.

Fla. Bar No.: 373397

mraymond@broadandcassel.com

ssmith@broadandcassel.com

Jonathan Etra, P.A.

Fla. Bar No.: 686905

jetra@broadandcassel.com

ybordes@broadandcassel.com

Shane P. Martin, Esq.

Fla. Bar No.: 056306

smartin@broadandcassel.com

yportanova@broadandcassel.com

BROAD AND CASSEL

One Biscayne Tower, 21st Floor

2 South Biscayne Boulevard
Miami, Florida 33131
Tel.: 305-373-9400
Fax: 305-373-9443
Attorneys for Defendant, Michael Bienes

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 16, 2015, the foregoing document was served via E-mail to: Thomas E. Messina, Esq., Thomas Zeichman, Messina, P.A., 401 East Las Olas Boulevard, Suite 1400, Ft. Lauderdale, FL 33301 (tmessana@messana-law.com, tmessana@bellsouth.net, mwslawfirm@gmail.com, tzeichman@messana-law.com); Leonard K. Samuels, Esq., Etan Mar, Esq., Steven D. Weber, Esq., Berger Singerman LLP, 350 East Las Olas Boulevard, Suite 1000, Ft. Lauderdale, FL 33301 (lsamuels@bergersingerman.com, vleon@bergersingerman.com, emark@bergersingerman.com, lyun@bergersingerman.com, drt@bergersingerman.com, sweber@bergersingerman.com, mvega@bergersingerman.com, zhyman@bergersingerman.com, clamb@bergersingerman.com); Peter G. Herman, Esq., Tripp Scott, 110 S.E. 6th Street, 15th Floor, Ft. Lauderdale, FL 33301 (pgh@trippscott.com, rep@trippscott.com, ele@trippscott.com); Paul V. DeBianchi, Esq., Paul V. DeBianchi, P.A., 111 S.E. 12th Street, Ft. Lauderdale, FL 33316 (Debianchi236@bellsouth.net); Gary A. Woodfield, Esq., Susan B. Yoffee, Esq., Haile, Shaw & Pfaffenberger, P.A., 660 U.S. Highway One, Third Floor, North Palm Beach, FL 33408 (gwoodfield@haileshaw.com, bpetroni@haileshaw.com, eservices@haileshaw.com, syoffee@haileshaw.com, cmarino@haileshaw.com); Matthew Triggs, Esq., Andrew Thomson, Esq. Proskauer Rose LLP, 2255 Glades Road, Suite 421 Atrium, Boca Raton, FL 33431 (mtriggs@proskauer.com, athomson@proskauer.com, florida.litigation@proskauer.com); Robert J. Hunt, Esq., Debra D. Klingsberg, Esq., Hunt & Gross, P.A., 185 Spanish River Boulevard, Suite 220, Boca Raton, FL 33431 (bobhunt@huntgross.com, eservice@huntgross.com, Sharon@huntgross.com) and Harry Winderman (harry4334@hotmail.com).

/s/ Jonathan Etra

Jonathan Etra

EXHIBIT “C”

1 Garden, Inc.?

2 A From my knowledge, it was an American-based
3 support group for the Royal Opera House in London.

4 Q And you were involved in that organization?

5 A No.

6 Q Okay. Was it an organization in which you --
7 which you made charitable contributions?

8 A I'm sorry. I don't remember.

9 Q Okay. Do you know if it's an organization
10 which Michael Sullivan was involved or made charitable
11 contributions?

12 A I would have no knowledge of that.

13 Q Okay. Let's go now to Arlington House, LLC.
14 On March 4th, 2004, there's a payment of \$51,836.62 to
15 56 Arlington House, LLC. Open paren, Michael Bienes,
16 close paren. What is Arling -- 56 Arlington House?

17 A Well, it's -- it's an LLC. It's a
18 corporation.

19 Q Do you care to tell me what it is? I didn't
20 ask what form it was.

21 MR. ETRA: Objection. Argumentative.

22 THE WITNESS: 56 Arlington House was our
23 address in London. It was a flat that we had.

24 BY MR. SAMUELS:

25 Q And were you a member of this LLC, 56

1 Arlington House?

2 A I would assume I am.

3 Q Okay. And were there any other members of 56
4 Arlington House?

5 A I would think my wife.

6 Q Okay. And 56 Arlington House is not a
7 charitable entity, right? It's an owner of real estate?

8 A Two parts. It is not a charitable entity. It
9 owns no real estate.

10 Q Okay. It lets -- what did you say, again?

11 A It is not a charity. It owns no real estate.

12 Q Right. But what did you say it did, again? I
13 thought you said it's an address in London.

14 A Yes.

15 Q Okay. What is its purpose?

16 A To pay the rent on that flat.

17 Q Okay. And did you -- have you and your wife
18 spent time at that flat?

19 A Yes.

20 Q Now, would you agree that these payments on
21 behalf of Avellino & Bienes -- and we'll just focus on
22 the ones to Bienes: To FPOM Inc., to 56 Arlington
23 House, LLC; and to American Friends of Covent Garden,
24 Inc., were made by S&P or P&S or Michael Sullivan or one
25 of his entities?

1 MR. ETRA: Objection.

2 MR. SAMUELS: -- at your -- as a referral fee
3 for you referring investors into Michael Sullivan
4 or one of his entities?

5 MR. ETRA: Objection. I thought you were
6 done.

7 THE WITNESS: No.

8 BY MR. SAMUELS:

9 Q Why were these payments made by S&P, P&S,
10 Michael Sullivan or one of his entities?

11 MR. ETRA: Objection.

12 THE WITNESS: I don't know his mind,
13 Mr. Sullivan. I don't know his mind.

14 BY MR. SAMUELS:

15 Q So your answer is you do not know why these
16 payments were made?

17 A I could guess.

18 Q And your guess is what?

19 A Well, you showed me a letter that accompanied
20 a check. It was to support Dianne and my charitable
21 interests.

22 Q Okay. And why would Michael Sullivan be
23 supporting Dianne and your charitable interests?

24 A That letter gives you a hint.

25 Q Well, I'm asking you.

1 A Well, again, I don't know his mind as to the
2 why.

3 Q Okay.

4 A Ask him.

5 Q Well, surely, you were aware of payments going
6 to Arlington House, LLC; and surely, you were aware of
7 payments going to FPOM, Inc., a charity which you
8 created and ran, correct?

9 MR. ETRA: Objection.

10 THE WITNESS: I am aware that from these
11 documents that these payments --

12 BY MR. SAMUELS:

13 Q Forget about the documents for a second, sir.
14 Okay? You created and opened FPOM, Inc., right?

15 MR. ETRA: Objection.

16 THE WITNESS: We didn't own it.

17 BY MR. SAMUELS:

18 Q I'm sorry. You created and ran FPOM, Inc.,
19 right?

20 A Yes. Yes.

21 Q And there's a check received for \$15,000 from
22 Michael Sullivan or S&P or P&S or one of his entities,
23 correct?

24 MR. ETRA: Objection.

25 MR. SAMUELS: Yes?

1 THE WITNESS: I don't remember getting it.

2 BY MR. SAMUELS:

3 Q You don't remember getting any money from
4 Michael Sullivan or one of his entities for FPOM?

5 A I can't recollect.

6 Q So your testimony is, A, you don't remember
7 getting it and, B, you don't know why he would have made
8 the payment?

9 MR. ETRA: Objection as to form.

10 MR. SAMUELS: Is that right?

11 THE WITNESS: No, it's not.

12 BY MR. SAMUELS:

13 Q Well, tell me why were you getting payment?
14 Why was FPOM getting payment?

15 A It's a charity.

16 Q Why was it receiving a payment from Michael
17 Sullivan or one of his entities?

18 A To support our charitable interests.

19 Q And did you thank him for that?

20 A Personally?

21 Q Personally.

22 A No.

23 Q Okay. So you got a \$15,000 check and you
24 didn't thank him? In fact, you don't even remember
25 getting it?

1 MR. ETRA: Objection.

2 MR. SAMUELS: Is that right?

3 THE WITNESS: I don't remember specifically
4 opening an envelope and seeing a check, no.

5 BY MR. SAMUELS:

6 Q Do you remember getting a charitable
7 contribution from Michael Sullivan or any of his
8 entities to FPOM?

9 A I just answered. No.

10 Q Okay. Same question as to American Friends of
11 Covent Gardens. Do you recall receiving a check for
12 \$42,500 from Michael Sullivan or one of his entities?

13 A American Friends of Covent Garden?

14 Q Yeah.

15 A He would have sent it there, wouldn't he?

16 Q Okay. Were you aware -- were you aware of
17 that?

18 A I don't know at this time.

19 Q Did you instruct him or request that he send
20 it?

21 A I may have.

22 Q Okay. And why would you be requesting Michael
23 Sullivan to send a check to American Friends of Covent
24 Gardens?

25 A He wanted to support our charitable interests,

1 and the Royal Opera House in London was one of our
2 charitable interests.

3 Q Now, were you friends or business associates
4 with Michael Sullivan in 2003?

5 A Friends, no. Business associates, no.

6 Q So what is it about your relationship with
7 Michael Sullivan that would cause him to want to support
8 one of your charities that you support, to the tune of
9 \$42,500?

10 A Again, I don't know his mind.

11 Q So you don't recall having -- you said you may
12 have requested that he did it, right?

13 A Where to send it.

14 Q Okay. And so what is it about your
15 relationship with S&P or P&S or Michael Sullivan that
16 would cause him to want to support one of your
17 charities?

18 A I had no relationship with S&P and P&S.

19 Q Or Michael Sullivan?

20 A Or Michael Sullivan. People give.

21 Q So let's now talk about the money that he gave
22 that was not to a charitable organization. And it says
23 that it's on your behalf. And that's the Arlington
24 House. You mentioned Arlington House is not a charity.
25 It received payments of \$81,616 and \$62,804. That's

1 over \$140,000, right?

2 MR. ETRA: Objection.

3 THE WITNESS: Whatever you say.

4 BY MR. SAMUELS:

5 Q No. It's not what I say, sir. I'm asking you
6 a question.

7 A Eighty-one -- six -- it's saying 81 --

8 MR. SAMUELS: And 62 is over \$140,000,
9 correct?

10 THE WITNESS: And 62?

11 MR. SAMUELS: Yes. And if you look on your
12 check of January 16th, 2008 --

13 THE WITNESS: Oh, 2008. Okay. January 16th,
14 yeah. 62,804.49.

15 MR. SAMUELS: Okay.

16 THE WITNESS: Yeah.

17 BY MR. SAMUELS:

18 Q So over \$140,000, correct?

19 A That's what it says.

20 Q Okay. Sir, now we're not talking about a
21 charity, because you just testified that 56 Arlington
22 House was not a charity. So what is it that caused
23 Michael Sullivan or one of his entities to send the
24 Arlington House over \$140,000?

25 MR. ETRA: Objection.

1 MR. SAMUELS: 56 Arlington House.

2 THE WITNESS: I don't know.

3 BY MR. SAMUELS:

4 Q So he's making payments of \$140,000 to an
5 entity that's established for the purpose of paying rent
6 on your flat, and you don't know why he's doing it? Is
7 that what your testimony is?

8 A To support my charitable interests.

9 Q Arlington House is not -- you just testified,
10 under oath, 56 Arlington House is not a charity,
11 correct?

12 A Correct.

13 Q So how is it that Michael Sullivan is
14 supporting your charitable interests, by paying money to
15 an LLC that is established to pay rent on a flat owned
16 by you and your wife?

17 A Perhaps tax purposes, on his behalf.

18 Q Okay. So you're formerly a CPA, you worked
19 for the IRS and tax is your specialty. Can you explain
20 to me what tax benefit Michael Sullivan would have by
21 paying over a hundred -- or his entities would have by
22 paying over \$140,000 to 56 Arlington House, LLC, which
23 is not charitable, and is set up to pay the rent on a
24 flat for you and your wife?

25 A I don't know how he treated it on his books.

1 You said the term "consulting and fees." He may have
2 classified it as that on his books to get a
3 charitable -- to get a tax deduction. A tax deduction
4 that he might not otherwise be able to utilize if he
5 gave it directly to one of my charities. I'm only
6 giving you a hypothesis, without having the numbers and
7 the facts.

8 Q If Michael Sullivan were to call it a
9 commission or a referral fee, is that in fact what that
10 is?

11 A It is not.

12 Q Okay. It is not a commission or referral fee?
13 Is it a management fee?

14 A It is not.

15 Q Okay. So Michael Sullivan paid an LLC set up
16 to pay rent for you in a flat in London so that he can
17 get a tax benefit?

18 MR. ETRA: Objection.

19 BY MR. SAMUELS:

20 Q Is that what you're saying, sir? Is that what
21 you're telling the jury?

22 A He's calling it a "commission;" he would get a
23 tax deduction, wouldn't he? He's calling it a
24 "consulting fee"; he would get a tax deduction, wouldn't
25 he? He's calling it whatever he's calling it; he would

1 get a tax deduction, unless the IRS --

2 Q How did he know to make the payment to 56
3 Arlington House?

4 A Somehow, I must have forwarded that
5 information to him, but I don't know at this point how.

6 Q And you would have forwarded the information
7 to him to enable him to pay -- to make a payment to 56
8 Arlington House, LLC?

9 A Just the name.

10 Q To enable him to make a payment to 56
11 Arlington House, LLC?

12 A Yes.

13 Q Okay. And why would you have wanted him to
14 make a payment to 56 Arlington House, LLC, which is an
15 LLC set up to pay rent on your flat?

16 A Flip the script. I didn't want him to. He
17 wanted to.

18 Q And you were comfortable with him doing that?

19 A No.

20 Q So why did you send him the information?

21 A Because I wanted the money for my charitable
22 interests.

23 Q So did 56 Arlington House, LLC make charitable
24 contributions with that money?

25 A No.

1 Q Okay. What did 56 Arlington House, LLC
2 classify the payment as?

3 A I believe, vaguely, miscellaneous income.

4 Q Did Mr. Sullivan ever tell you that he
5 intend -- he and one of his entities was going to be
6 making the payment at 56 Arlington House, LLC, so he
7 could support your charitable work?

8 A That was the understanding.

9 Q Okay. And so why didn't he just send it to
10 the charity?

11 A Exactly.

12 Q Why didn't he?

13 A For reasons known to him, he didn't want to.

14 Q Do you have your returns for Arlington House,
15 LLC?

16 A Oh, no. No.

17 Q So if Mr. Sullivan were to testify that these
18 payments were made on your request, to pay you
19 commissions for referring business to S&P and P&S, are
20 you saying that he would be lying under oath?

21 MR. ETRA: Objection.

22 THE WITNESS: He would be misinformed and
23 mistaken.

24 BY MR. SAMUELS:

25 Q Did 56 Arlington House have other income?

1 A To my knowledge, no.

2 Q Okay. I'm going to go through some of these
3 documents with you. Let's go now to the third page.
4 And if you look at the bottom, okay, it's going to say
5 A-V-E, in this document, number three, okay?

6 A Okay.

7 Q And this says 56 Arling -- and the one, two,
8 three --

9 A I see it.

10 Q -- the fourth entry?

11 A Uh-huh.

12 Q It says 56 -- well, let's go to the fifth one:
13 27 Cliff, LLC; Republic Bank; commission, Frank
14 Avellino. Do you see that?

15 A Yes, sir.

16 Q Do you remember Mr. Avellino testifying, in
17 fact, that it was a commission that he received?

18 MR. WOODFIELD: Objection.

19 THE WITNESS: I remember him saying something
20 like that.

21 BY MR. SAMUELS:

22 Q Okay. And so now, you have 56 Arlington
23 House, LLC; commission, Michael Bienes. Do you agree
24 that this was a commission payment for you?

25 A I do not.

1 Q So you don't agree with Michael Sullivan, you
2 don't agree with Frank Avellino. You have a different
3 way of looking at this than they do?

4 MR. WOODFIELD: Objection.

5 MR. SAMUELS: Is that right?

6 THE WITNESS: I look at it as it is.

7 BY MR. SAMUELS:

8 Q Okay. And as it is, I'm looking at it. It
9 says "commission." So you're looking at it as it is in
10 what manner?

11 MR. ETRA: Objection.

12 THE WITNESS: I have no control over what he
13 puts on his books and records, or what he calls any
14 particular expenditure.

15 BY MR. SAMUELS:

16 Q So let me ask something: How did he -- how
17 did Michael Sullivan send you money to 56 Arlington to
18 support your charitable endeavors, if 56 Arlington is
19 set up to pay rent on your flat?

20 A Bear with me. Money is spongeable. If he had
21 not, we would have had to fund 56 Arlington out of our
22 own personal funds from somewhere else so that there
23 would be money there to pay the rent. By him putting it
24 there, that money somewhere else was literally freed up.
25 And I would make sure that that freed-up money would be