

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

CASE NO.: 12-034123 (07)

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

Plaintiffs,

v.

MICHAEL D. SULLIVAN, et al.,

Defendants.

**DEFENDANTS FRANK AVELLINO AND MICHAEL BIENES' MOTION TO COMPEL
PLAINTIFFS TO PROVIDE WITNESS AND EXHIBIT LISTS**

Defendants, Frank Avellino and Michael Bienes, by and through their undersigned counsel, file this Motion to Compel Plaintiffs to Provide Witness and Exhibit Lists for the hearing on their Motion to Strike Pleading, and in the Alternative Motion for Adverse Inference (“Motion to Strike”), and as grounds therefore state as follows:

1. On October 5, 2015, Plaintiffs filed their Motion to Strike in which they seek to strike the pleadings of Defendants, Frank Avellino and Michael Bienes, based upon allegations of failure to produce discovery and the intentional destruction of evidence.

2. The Motion to Strike is premised upon allegations that Defendants have not produced their communications with Michael Sullivan or communications between themselves, together with allegations of the intentional destruction of evidence.

3. Since the filing of the Motion to Strike Defendants have produced their communication with Michael Sullivan and non-privileged communication between themselves. Further, this Court has held several hearings in connection with Plaintiffs’ related Motion to

Compel Defendants to Produce their Computers (“Motion to Compel”), resulting in the Court’s January 8, 2016 Order denying Plaintiffs’ Motion to Compel.

4. Plaintiffs initially scheduled a hearing on their Motion to Strike for January 12, 2016, but cancelled such hearing because they had not obtained a ruling on their Motion to Compel.

5. Plaintiffs recently rescheduled a hearing on their Motion to Strike for March 14, 2016. In light of the Court’s ruling on the Motion to Compel which was premised upon the same allegations as the Motion to Strike, Defendants are not aware of what witnesses or exhibits Plaintiffs intend to introduce at such hearing which was not previously addressed by the Court resolving Plaintiffs’ Motion to Compel.

6. While Defendants question the legal and factual basis for the Motion to Strike, the relief sought by such motion is significant. Defendants should not be prejudiced by being subjected to a hearing by ambush.

7. The undersigned has requested Plaintiffs’ counsel to provide a list of the witnesses and exhibits they intend to introduce at the hearing on their Motion to Strike, but to date Plaintiffs’ counsel has failed to do so to date.

WHEREFORE Defendants respectfully request this Court to enter an order compelling Plaintiffs’ counsel to provide a list of the witnesses and exhibits they intend to introduce at the hearing on their Motion to Strike.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of February, 2016, 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.

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