

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.

**DEFENDANT FRANK AVELLINO'S RESPONSE TO PLAINTIFFS' MOTION TO
PRODUCE DOCUMENTS IN RESPONSE TO FIFTH REQUEST FOR PRODUCTION**

Defendant, Frank Avellino, ("Avellino") files this response to Plaintiffs' Motion to Produce Documents in Response to Plaintiffs' Fifth Request to Produce (the "Motion"). Plaintiffs' audacity in their never ending discovery demands is limitless and evidences their desperateness. Plaintiffs' fifth request for production of documents from Avellino is excessive, overreaching and redundant. Accordingly, the Motion should be denied in its entirety.

Introduction

A brief recital of the background of this action and Plaintiffs' never ending discovery demands is necessary to put their most recent document demand in context.

Avellino, together with a number of others, received payments of a portion of the management fees earned by Michael Sullivan, the general partner of the plaintiff partnerships (the "Partnerships"). Characterizing such payments as "kickbacks", Plaintiffs brought claims against some but not all those who received such payments and have resolved such claims with

all but Avellino, Michael Bienes and Steve Jacobs. Avellino does not deny receipt of such payments and has produced a document evidencing such receipt.

Evolving through six reiterations of their complaint, Plaintiffs seek to recover from Avellino not only the \$357,790.84 in payments Plaintiffs contend were made to him by Sullivan, but the entire \$9,282,834.40 of payments made to all of the recipients, including all of the management fees earned by Sullivan. Plaintiffs premise such relief on allegations that Avellino was involved in the operation and management of the Partnerships, implying that all the while he had knowledge that Madoff was a Ponzi scheme. Despite extensive discovery, Plaintiffs' overreaching claims remain unsupported.¹

With this background, Plaintiffs served their fifth document request on Avellino, some of which has been previously requested and responded to.

Document Requests

1. **Request 1.** The overreaching nature of this request is obvious on its face. It seeks all documents for the time period January 1, 1960 to the present exchanged between Avellino and Bienes who for decades were partners in an accounting firm and, thereafter, in A&B, an entity that invested with Madoff that ceased operations in 1992. With regard to documents relating to the accounting practice and A&B, the simple answer is there are none. Avellino testified at his deposition that all such documents were shredded in 2004 when he moved from Fort Lauderdale to Palm Beach. Avellino testified that he didn't need them and did not have the room for them. This was well before the exposure of Madoff's Ponzi scheme in

¹ Aside from five requests for documents, multiple sets of interrogatories and several unsuccessful attempts to seize Avellino's computer, Plaintiffs served a subpoena on Madoff's trustee, Irving Picard, seeking all documents regarding Avellino which resulted in the production of approximately 450,000 pages of documents. Plaintiffs have also conducted the deposition of Bernard Madoff, who denied that Avellino had any knowledge of his scheme, the deposition of Eric Lipkin, a ten year Madoff employee who had no knowledge of the scheme and Michael Sullivan, who emphatically denied Avellino's involvement in the operation or management of the Partnerships.

2008 and prior to any threat of litigation against Avellino so there can be no issue of spoliation of evidence.

With regard to communication between Avellino and Bienes since 2004, Avellino has produced non-privileged, responsive documents. Yet this request further seeks all communications involving their attorneys which are clearly protected by attorney client and joint defense/common interest privileges. A joint defense agreement has been in place since at least the filing of Picard's complaint against Avellino and Bienes in December, 2010. Communications between the attorneys during this more than five year period could be in the thousands. Generation of a privilege log for this category of documents would be onerous and unnecessary. *DLJ Mortgage Capital, Inc. v. Fox*, 112 So.3d 644, 645 (Fla. 4th DCA 2013) ("... the failure to file a log should not be applied to categorical assertions of privilege."); *Nevin v. Palm Beach County School Board*, 958 So.2d 1003, 1008 (Fla. 1st DCA 2007) ("Waiver for failure to file a privilege log should not apply where assertion of the privilege is not document-specific but category specific and the category itself is plainly protected.").

2. **Request 2.** Plaintiffs' Request 2 seeks documents which "evidence" the common interest privilege between the parties. As stated in Avellino's response, an oral joint defense/common interest agreement exists between the parties. Consequently, there is no one document "evidencing" such agreement.

Avellino's objection to this request as vague and overly burdensome is well taken. One could argue that all or most of the communications between the attorneys "evidences" the existence of the agreement by the very nature of the communications. However, production of such communication is privileged and not subject to production.

3. **Request 3.** This request seeks all documents “pertaining to” Avellino’s preservation of evidence with regard to litigation brought against him. Avellino’s objection to Request 3 is well taken; “pertaining to” is hopelessly vague and unintelligible. However, Avellino has responded to this request that he is not aware of the existence of responsive documents.

Plaintiffs provide a lengthy dissertation regarding a privilege claim to such request which Avellino has not asserted and Plaintiffs’ cites to New York federal cases which do not control. Plaintiffs falsely state that Avellino “has refused to provide any documents”; Avellino’s response stated that he is not aware of responsive documents. Whatever relief Plaintiffs are seeking with regard to this request should be denied.

4. **Requests 4, 5, 6 and 13.** These requests seek Avellino’s tax returns filed since 1999 (Request 4); all documents including statements regarding Avellino’s checking and savings accounts, credit cards and IRS Forms 1099 (income from self-employment earnings, interest and dividends) and Form 1089 (apparently referring to Form 1098 which reports mortgage interest, points or mortgage insurance paid) (Request 5); all IRS Form 4789 (currency transaction report) and Form 4790 (report of international transportation of currency or monetary instruments) (Request 6); and all charitable contributions made by or for Avellino’s benefit for the past fifty-five years (Request 13).

Avellino has objected to this blunderbuss invasion of his personal finances on the grounds that they seek constitutionally protected personal financial information of his and his wife and that such information is irrelevant to the issues in this action and not likely to lead to admissible evidence. Article I, Section 23, Florida Constitution; *see Berkeley v. Eisen*, 699

So.2d 789, 790 (Fla. 4th DCA 1997); *Spry v. Prof'l Emp'r Plans*, 985 So.2d 1187, 1188 (Fla. 1st DCA 2008).

Plaintiffs support their claim to this clearly privileged and irrelevant discovery on several false and baseless arguments. Initially Plaintiffs claim such discovery is relevant “because Avellino has disputed receiving commissions or kickbacks, and Bienes has claimed that he received a charitable contribution.” Motion, ¶ 19. Plaintiffs’ statement is not true. Avellino has admitted to the receipt of payments from Sullivan and produced a document reflecting such payments. (Transcript of deposition of Frank Avellino, pp. 41, 88, 94-97; 27 Cliff, LLC Account Quick Report previously produced are attached collectively as Exhibit “B”). Moreover, Bienes’ claim that funds he received were a charitable contribution provides Plaintiffs no support to rifle through Avellino’s finances. Avellino has made no such claim.

Next Plaintiffs make the dysfunctional argument that because Avellino disagrees with Plaintiffs’ characterization of the fees paid to him by Sullivan as “kickbacks”, receipt of funds from other investments is relevant because “it tends to prove that Avellino was not entitled to the kickbacks that he received.” Motion, ¶ 20. Really? Initially, no one other than Plaintiffs characterize Sullivan’s payments of a portion of his management fees to others as “kickbacks”. Regardless of their characterization, Avellino admits their receipt. Whether he may have received fees elsewhere has no relevance in this action and certainly does not enable Plaintiffs unfettered access to Avellino’s personal financial information. Avellino’s finances are not relevant to any disputed issue in this action.

Plaintiffs’ next strained basis justifying access to Avellino’s personal finances is that since he and Bienes received equal payments from Sullivan and Bienes apparently claims such payments were provided for charitable purposes, Avellino’s classification of the payments on his

tax returns is discoverable. Motion, ¶ 21. Aside from the complete disconnect of Plaintiffs' argument, Avellino has testified that he reported the payments made to him by Sullivan as income. (Ex. A, p. 94). Production of documents to ascertain what has been admitted to is unnecessary.

Plaintiffs last basis for the production of Avellino's tax returns is "that they would disclose the returns on his Madoff investments" which would be "relevant to Avellino's motivation for obtaining the unlawful payments at issue in this action." Motion, ¶ 22. Whether or how Avellino's tax returns which may reflect income from other unrelated investments could constitute evidence of the motivation for the receipt of payments at issue here (which were not unlawful) is mystifying and unexplained. Further, "motive" is not an element of the claims asserted by Plaintiffs, thus, evidence of motivation is completely irrelevant. Plaintiffs have provided no basis for their desired fishing expedition through Avellino's finances.

5. **Request 8.** This request, which essentially duplicates requests of Plaintiffs' first document request (a copy of which is attached hereto as Exhibit "C"), seeks communications between Avellino and seventeen individuals and entities. This is easily resolved. Avellino stated in his response that he has no responsive documents other than communication with Richard Wills which has been produced.

6. **Request 11.** This request seeks all communications between Avellino and the general partners of the Partnerships. Assuming Michael Sullivan and Gregg Powell, the managing partners were the general partners of the Partnerships, Avellino produced communications he had with Sullivan and has stated that he is not aware of any communications with Powell.

Plaintiffs have now produced a list of 103 individuals and entities that apparently were all general partners in the Partnerships and seek to compel Avellino to search for all communications with each of these 103 individuals and entities from January 1, 1960 to the present. At some point, Plaintiffs' demands get ridiculous and this seems to be the point. Requiring Avellino to search for communications with 103 individuals and entities over a fifty-five year period is overly burdensome on its face. As general partners of the Partnerships, Plaintiffs have ready access to such communication of their clients.

Moreover, Plaintiffs have already sought and obtained responses from the general partners to this very request. For example, attached hereto as Exhibit D is defendant, Susan Molchan's Responses and Objections to Plaintiffs' First Set of Interrogatories filed on January 28, 2014 in another action brought by Plaintiffs in this court entitled *P&S Associates, et al. v. Janet A. Hooker Charitable Trust, et al.*, Case No. 12-034121 (07). Interrogatory No. 4 seeks all communications between Ms. Molchan and a number of individuals and entities including Frank Avellino, to which Ms. Molchan responded that she was not personally acquainted with Frank Avellino and identifies no such communications. Ms. Molchan is one of the 103 individuals or entities on Plaintiffs' list. Motion, Exhibit D. Avellino is not a party in this other action and, therefore, is not privy to the discovery conducted by Plaintiffs in that action but it appears that Plaintiffs served similar discovery requests on most if not all of the individuals on the list. Seeking to have Avellino undertake this significant, redundant undertaking is unnecessary and inappropriate. This is another glaring example of Plaintiffs' bad faith in their conduct of this litigation. Avellino should not be required to comply with the whim of Plaintiffs' demands.

7. **Request 12.** By this request, Plaintiffs seek all documents and communications relating to Avellino's investments with Madoff (for the period January 1, 1960 to the present) as well as all documents and communications between Avellino and Ahearn & Jasco, P.A.

Plaintiffs claim the relevance of the Madoff documents is that "they relate to whether Avellino relates to whether Avellino (sic) received the transfers at issue in good faith and Avellino's motivation in receiving the commissions at issue in the Complaint." Motion, ¶ 28.

Again, the motivation or "good faith" in the receipt of the payments at issue are not elements of Plaintiffs' claims.² Further, the overwhelming burden in searching for such documents is obvious; Plaintiffs have received approximately 450,000 pages of documents from Madoff's trustee in response to its request for such documents. There is no relevance to such documents and Avellino should not be required to search for documents already in Plaintiffs' possession.

With regard to documents and communications between Avellino and Ahearn & Jasco, P.A., this accounting firm did Avellino and his wife's personal tax returns. Documents and communications with the firm are clearly privileged and Plaintiffs' attempt to backdoor into the production of Avellino's tax returns by this request is improper. While Avellino apparently attended a meeting in 1994 with an Ahearn and Jasco accountant, which firm was the accountants for the Partnerships, he has no documents relating to such meeting or other communication with the accounting firm regarding the Partnerships.

8. **Request 14.** This request seeks all documents relating to the transfer of funds by Sullivan or related entities to Avellino and 27 Cliff, LLC. Avellino's responded that this request has been previously asked and responded to. See Avellino's Second Amended Response

² In earlier reiterations of their complaints, Plaintiffs alleged that Avellino had actual knowledge of Madoff's Ponzi scheme, but such allegations were dropped in the Fifth Amended Complaint and, thus, is not an issue in this action.

to Plaintiffs' Fourth Request for Production of Documents is attached hereto as Exhibit "E". A review of these prior requests and responses mirror this request. Avellino has previously produced documents responsive to this request. He should not be required to do so again.

Conclusion

Enough is enough. Plaintiffs' repetitive and improper discovery demands must cease. Plaintiffs' motion should be denied and fees awarded Avellino.

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By: /s/ Gary A. Woodfield
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th 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.

/s/ Gary A. Woodfield
Gary A. Woodfield, Esq.
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IN THE CIRCUIT COURT FOR THE
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P&S ASSOCIATES, GENERAL
PARTNERSHIP, a Florida limited liability
company, *et al.*,
Plaintiffs,

CASE NO: 12-034123 CACE (07)
JUDGE: JACK TUTER

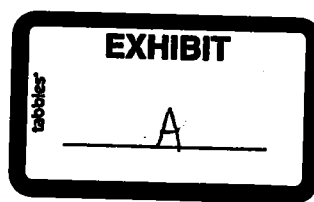
vs.

MICHAEL D. SULLIVAN, *et al.*,
Defendants.

**ORDER ON PLAINTIFFS' RENEWED EXPEDITED MOTION TO COMPEL
DEFENDANTS FRANK AVELLINO AND MICHAEL BIENES TO PRODUCE
COMPUTERS FOR INSPECTION AND TO PRODUCE DOCUMENTS**

THIS CAUSE came before the court on Plaintiffs' Renewed Expedited Motion to Compel Defendants Frank Avellino and Michael Bienes to Produce Computers for Inspection and to Produce Documents. The court, having considered the motion and response, having heard argument of counsel, having reviewed the applicable law, and being otherwise duly advised in the premises, finds and decides as follows:

The record in the instant action reveals that on October 5, 2015, Plaintiffs filed their initial motion to compel defendants, Frank Avellino ("Avellino") and Michael Bienes ("Bienes") (collectively "Defendants"), to produce their personal computers for a forensic examination. The initial motion was filed as a result of deposition testimony that the Defendants routinely delete e-mail communications from their respective e-mail accounts. A hearing on Plaintiffs' initial motion to compel was held on October 26, 2015. Thereafter, on November 16, 2015, this Court entered an order granting in part, and deferring in part Plaintiffs' motion ("November 16, 2015 Order"). Specifically, Defendants were required to: (1) preserve their computers and all e-mails during the pendency of this action; (2) search all folders of their respective e-mail accounts; (3) produce to Plaintiffs a timeline stating the period of time for which e-mails exists in those folders; (4) produce



a privilege log, as necessary; and (5) produce any non-privileged e-mails responsive to Plaintiffs' requests for production. The court deferred ruling on Plaintiffs' request that Defendants surrender their physical personal computers for a forensic examination.

It appears that Defendants complied with this Court's November 16, 2015 Order, and produced documents to Plaintiffs that were located on their respective computers following a search by counsel. On November 20, 2015, Plaintiffs filed the instant renewed motion to compel Defendants Avellino and Bienes to produce their physical personal computers for a forensic examination. Defendants Avellino and Bienes thereafter provided Plaintiffs with amended reports identifying e-mail folders and documents that were not identified in the original reports. Plaintiffs claim that the reports provided by Defendants to Plaintiffs are insufficient, and therefore, a forensic examination of the Defendants' personal computers is necessary. On December 8, 2015, Defendant Avellino and Bienes filed separate responses to the instant renewed motion. Also on December 8, 2015, Defendant Avellino filed an errata sheet, correcting his September 9, 2015 deposition testimony. Specifically, Defendant Avellino asserts that his testimony that he routinely deletes *all* emails was based on a misunderstanding. Rather, Defendant Avellino claims that he routinely deletes *only* spam and vendor emails. On December 8, 2015, Defendants filed separate responses to Plaintiffs' renewed motion. A hearing on Plaintiffs' renewed motion to compel was held before the court on December 11, 2015.

Under Florida law, "[p]arties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action" Fla. R. Civ. P. 1.280 (b) (1). Although Florida's rules governing discovery are "broad enough to encompass requests to examine a computer hard drive," such request should be authorized "only in limited and strictly controlled circumstances." *Menke v. Broward Cnty. School Bd.*, 916 So. 2d 8, 11 (Fla. 4th DCA 2005) (citation omitted). This is so because "unlimited access to anything on the computer would

constitute irreparable harm,” and possibly “expose confidential, privileged information to the opposing party.” *Id.* (citation omitted). As such, inspections of electronic devices may be appropriate if: “(1) there [is] evidence of destruction of evidence or thwarting of discovery; (2) the device likely contain[s] the requested information; and (3) no less intrusive means exist[] to obtain the requested information.” *Antico v. Sindt Trucking, Inc.*, 148 So. 3d 163, 166 (Fla. 1st DCA 2014) (emphasis added) (citations omitted).

In the instant action, in light of the searches performed by counsel for Defendants, the record indicates that the personal computers likely contain the requested information. However, the court determines that Plaintiffs have failed to make an adequate showing to support a forensic examination of Defendants’ personal computers. For instance, Plaintiffs have failed to provide evidence that Defendants destroyed evidence or otherwise thwarted discovery, especially in light of Defendant Avellino’s errata sheet filed on December 8, 2015. Additionally, the court determines that Plaintiffs have failed to demonstrate the ineffectiveness of the lesser intrusive methods employed by this Court’s November 16, 2015 Order. Therefore, Plaintiffs’ renewed motion to compel is denied.

Accordingly, it is hereby:

ORDERED that Plaintiffs’ Renewed Expedited Motion to Compel Defendants Frank Avellino and Michael Bienes to Produce Computers for Inspection and to Produce Documents is DENIED WITHOUT PREJUDICE.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this 8th day of January, 2016.



JACK TUTLER
CIRCUIT COURT JUDGE

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Page 41

Page 43

1 Q. And did it pay personal expenses of your
2 wife as well?
3 A. Not that I know of.
4 Q. Okay. And do you know -- is 27 Cliff, LLC
5 still active?
6 A. No.
7 Q. Do you know when it became inactive?
8 A. No.
9 Q. Did 27 Cliff, LLC ever receive any money
10 from Michael Sullivan or any of his entities?
11 A. Yes.
12 Q. And why did 27 Cliff, LLC receive money
13 from Michael Sullivan or any of his entities?
14 A. I don't recall why he sent it there.
15 Q. Was it money owed to you?
16 A. I don't recall. Maybe.
17 Q. Okay. And under what circumstances would
18 Mr. Sullivan have owed you money?
19 A. That we have to ask him.
20 Q. Are you familiar with the Avellino Family
21 Trust?
22 A. Yes.
23 Q. And did the Avellino Family Trust invest
24 money in Madoff?
25 A. No.

Page 42

Page 44

1 Q. What is the Avellino Family Trust?
2 A. Again, it was estate planning.
3 Q. Did Mr. Brogan assist you with that?
4 A. Yes.
5 Q. Have you heard of the Avellino & Bienes
6 Pension Plan & Trust?
7 A. Yes.
8 Q. And what is that?
9 A. It's a pension plan that we had, you know.
10 Q. And did that -- did that pension plan
11 invest money with Madoff?
12 A. I don't recall.
13 Q. Frank J. Avellino Revocable Trust Number 1
14 as Amended and Restated January 26, 1990 as Amended,
15 are you familiar with that?
16 A. Yes.
17 Q. And did that trust invest money with
18 Madoff?
19 A. No.
20 Q. Frank J. Avellino Grantor Retained Annuity
21 Trust Under Agreement dated June 24, 1992, are you
22 familiar with that?
23 A. Yes.
24 Q. And did that entity invest money with
25 Madoff?

1 A. No.
2 Q. Frank Avellino Grantor Retained Annuity
3 Trust Agreement Number 2, did that trust invest
4 money with Madoff?
5 A. No.
6 Q. So going back now to the Avellino Family
7 Trust, the Avellino & Bienes Pension Plan & Trust,
8 the Frank J. Avellino Revocable Trust Number 1, the
9 Frank J. Avellino Grantor Retained Annuity Trust,
10 the Frank J. Avellino Grantor Retained Annuity Trust
11 Agreement Number 2, those are the ones I've
12 mentioned to you so far, did those entities receive
13 any money or transfers from Madoff?
14 A. Not that I recall.
15 Q. Frank J. Avellino Revocable Trust Number 1
16 Under Declaration Trust Number 1 dated June 30,
17 1988, what is that?
18 A. This was all part of estate planning,
19 so -- also by Mr. Brogan.
20 Q. Okay. And did that entity either invest
21 money in Madoff or receive any money or transfers
22 from Madoff?
23 A. Not that I recall.
24 Q. Do you recall -- in the Avellino Family
25 Trust Foundation, did that receive any money or

1 invest any money in Madoff?
2 A. Not that I recall.
3 Q. So just to clarify the record: Receive
4 any money from or invest money in Madoff, the answer
5 is you don't recall.
6 A. I don't recall.
7 Q. So it may have, you just don't know.
8 A. I don't know.
9 Q. And we spoke about Thomas as being your
10 son. Do you have other children?
11 A. Yes.
12 Q. And what are their names?
13 A. Joseph.
14 Q. Joseph Avellino?
15 A. Yes.
16 Q. Okay.
17 A. And Lorraine.
18 Q. Lorraine?
19 A. L-o-r-r-a-i-n-e.
20 Q. Okay.
21 A. McEvoy.
22 Q. Okay. Any other children?
23 A. Not mine, no.
24 Q. Okay. And is -- where is Thomas located?
25 A. He lives in New -- New Jersey.

EXHIBIT

tabbles

B

Page 85

Page 87

1 A. When the lease expired I think we -- I
2 can't remember the date we got out. I rarely went
3 there, so...

4 Q. What did you say, you --

5 A. Probably, I think -- I think we had moved
6 out of Fort Lauderdale a long time, so I can't
7 recall.

8 Q. When you say "we had moved out of Fort
9 Lauderdale a long time" --

10 A. Nancy and I did.

11 Q. Okay. So just so I got the years straight
12 again, approximately when do you believe you leased
13 the office space at 6550?

14 A. 1991.

15 Q. Okay. And you would have moved out of
16 Lauderdale when?

17 A. 2004.

18 Q. 2004. So --

19 A. Well, we sold the house in 2000. It might
20 have been before that.

21 Q. Okay.

22 A. I think we vacated the house, oh, way
23 before that.

24 Q. And so from 1991 through, approximately,
25 let's say, 2003, whenever it was you would have

1 A. It was an office. I -- I didn't recall
2 going there more than once a week.

3 Q. So when you're operating as Avellino &
4 Bienes in -- up until the time you stopped operating
5 as Avellino & Bienes, how many times a week would
6 you go to the office space --

7 A. Before --

8 Q. -- at 6550?

9 A. Say it again.

10 Q. While you were operating as Avellino &
11 Bienes, until the time that Avellino and Bienes quit
12 doing business, how often would you go to the office
13 space at 6550?

14 A. I can't recall, maybe once a month.

15 Q. Okay. And now you said you would go once
16 a week.

17 A. Well, when it was supposed to be starting,
18 it was once a week. But then after that, it was
19 maybe once a month. I'm just guessing. I don't
20 like to guess.

21 Q. All right. So after Avellino & Bienes
22 ceased operating, what did you next do for work?

23 A. Nothing.

24 Q. That is the last job that you had was
25 Avellino & Bienes?

Page 86

Page 88

1 moved out of Fort Lauderdale --

2 A. Yes.

3 Q. -- was that your primary work address?

4 A. It might have ended before. I don't
5 remember.

6 Q. But once you moved into 6550 North Federal
7 Highway, did that become your primary work address?

8 A. Yes, that was it.

9 Q. Okay. And when you got there you were
10 operating as Avellino & Bienes?

11 A. Yes.

12 Q. Okay. And did there ever come a point in
13 time when Avellino & Bienes ceased operating?

14 A. Oh, yes.

15 Q. And when was that?

16 A. I can't recall.

17 Q. Would it have been after the SEC order?
18 Shortly after the SEC order?

19 A. I don't recall.

20 Q. Did Avellino -- so Avellino & Bienes would
21 have stopped operating before 2003 and 2004.

22 A. Definitely.

23 Q. Okay. And so when that was your primary
24 office space up until 2003/2004 time frame, what
25 business were you operating out of there?

1 A. Yes.

2 Q. Okay. How did you earn income after --
3 strike that.

4 After Avellino & Bienes ceased operating,
5 did you have money directly or indirectly invested
6 with Madoff?

7 A. Yes.

8 Q. And so you continued to get returns up
9 until 2008?

10 A. Yes.

11 Q. Okay. What other sources of income did
12 you have?

13 A. None.

14 Q. That was it, all through Madoff?

15 A. All through Madoff.

16 Q. Okay. And you received some money from
17 S&P and P&S, and we'll get to that later. So you
18 had income there too, right?

19 A. Yes.

20 Q. And that came from people investing in
21 Madoff, right, directly --

22 A. From S&P?

23 Q. Yeah.

24 A. Yes.

25 Q. And P&S. Okay.

Page 93

Page 95

1 let me know because we've been going for a
 2 little while, so...
 3 THE WITNESS: Sure.
 4 BY MR. SAMUELS:
 5 Q. Aside from the Bible study groups with
 6 Mr. Sullivan over the years that met on every
 7 Monday, did you also worship with Mr. Sullivan at
 8 church?
 9 A. He was in attendance when service was
 10 being performed.
 11 Q. Did you routinely attend church on
 12 Sundays?
 13 A. Yes.
 14 Q. Did Mr. Sullivan routinely attend church
 15 on Sundays?
 16 A. Not that I know of.
 17 MR. SAMUELS: I think now would be a good
 18 time for a break.
 19 MR. WOODFIELD: Okay.
 20 MR. SAMUELS: So why don't we do that.
 21 THE VIDEOGRAPHER: Ending Disk Number 1.
 22 We're off the record at 11:57 a.m.
 23 (A brief break was taken.).
 24 THE VIDEOGRAPHER: We are now back on the
 25 record. This is the beginning of Disk 2. The

Page 94

1 time is 12:10 p.m.
 2 BY MR. SAMUELS:
 3 Q. Ready?
 4 A. Yes.
 5 Q. Okay. We spoke earlier of receiving
 6 payments at Cliff 27 into S. Sullivan. What was
 7 your understanding in terms of why Cliff 27 was
 8 receiving money from S&P or P&S or Michael Sullivan
 9 or one of his entities?
 10 A. I -- the only indication I have is it
 11 started in 2004, and I think it was charitable --
 12 charitable for charities. So I -- that's the only
 13 thing I could remember. I never asked for it.
 14 Q. He sent money to Cliff 27 for charities?
 15 A. He sent to money for 27 Cliff --
 16 Q. 27 Cliff.
 17 A. -- for -- not for charities, but he
 18 decided to send it there. In the past it was going
 19 to charities, to different entities.
 20 Q. And what is the "it"?
 21 A. Monies that he was sending to Christ
 22 Church, to other entities that were charitable that
 23 he decided to do. Because the more I looked at it,
 24 when I saw this, I said, why did it start in 2004
 25 instead of so-called the beginning. That's all I

1 remember.
 2 MR. WOODFIELD: Just answer his question.
 3 THE WITNESS: Well, I --
 4 MR. WOODFIELD: If you can.
 5 THE WITNESS: Well, that's...
 6 BY MR. SAMUELS:
 7 Q. Okay. So -- so you mentioned charities.
 8 Were you directing Michael Sullivan to make
 9 contributions to charities on your behalf?
 10 A. He did it on his own on my behalf.
 11 Q. On your behalf, without consulting with
 12 you?
 13 A. Evidently, because I found things later on
 14 that were sent to different charities, especially
 15 Christ Church entities.
 16 Q. And was that money that you were entitled
 17 to receive?
 18 A. I don't know.
 19 Q. Well, did you have an arrangement with
 20 Mr. Sullivan where you were going to be receiving
 21 money for any -- anything that you did in connection
 22 with S&P or P&S?
 23 A. The only arrangement I had was his
 24 arrangement, not mine.
 25 Q. And his arrangement was what?

Page 96

1 A. He was gonna -- he and Greg decided to
 2 give me and Mr. Bienes money. It's his --
 3 Q. For what?
 4 A. -- doing --
 5 For accounts that were with him,
 6 evidently.
 7 Q. For accounts that you brought to S&P and
 8 P&S?
 9 A. Whether I brought, whether it had my name
 10 on it, that's another question. If I brought it,
 11 it's another story. But I didn't know if I brought
 12 it. But the questions [sic] were earmarked in
 13 Bienes's name and my name.
 14 Q. Accounts that were earmarked for your name
 15 and Bienes's name and you received money.
 16 A. Yes.
 17 Q. And that -- some of that money made its
 18 way to 27 Cliff?
 19 A. All of it did.
 20 Q. All of it did. Okay.
 21 And when that money arrived at 27 Cliff,
 22 did you ever ask Mr. Sullivan why he was sending
 23 money to 27 Cliff?
 24 A. No.
 25 Q. 27 Cliff just accepted the money?

Page 97

Page 99

1 A. It's a gift. Why not take it?

2 Q. It's a gift.

3 A. Well, I would assume so. If somebody
4 gives you money, you take it.

5 Q. Was it declared as a gift on the tax
6 return?

7 A. No. It was a fee.

8 Q. Declared as income.

9 A. As fee.

10 Q. A fee for what?

11 A. For accounts that Madoff -- that was
12 directed from Madoff to S&P and earmarked for Frank
13 and Michael.

14 Q. And what were the criteria which would
15 have an account earmarked for Frank and Michael?

16 A. I don't know, each one was different.

17 Q. What were -- why were some -- do you know
18 why any of the accounts were earmarked to you?

19 A. He associated them with -- with me.

20 Q. And why did he associate them with you?

21 A. That's for him to answer. I don't -- I
22 don't know.

23 Q. Did you have an understanding with
24 Mr. Sullivan or Mr. Powell that accounts that you
25 were able to bring to S&P or P&S to invest with

1 Q. Did you have an arrangement with either

2 Mr. Sullivan or Mr. Powell that they would pay you a
3 fee in connection with accounts that you would bring
4 to P&S or S&P?

5 A. I have no idea, no.

6 Q. No.

7 A. No.

8 Q. Did you bring accounts to S&P or P&S?

9 A. I didn't bring any accounts to S&P or P&S.

10 Q. None?

11 A. None.

12 Q. Did you recommend any former investors of
13 Avellino & Bienes to invest with S&P or P&S?

14 A. I may have.

15 Q. And did any of those investors you
16 recommended invest in P&S or S&P, actually invest in
17 S&P or P&S?

18 A. Yes, they did.

19 Q. And who do you recall being amongst those
20 people?

21 A. Well, if you give me the list, I'll go
22 over the list.

23 Q. Okay. And were you then paid by S&P or
24 P&S a fee for bringing those people in that you
25 recommended?

Page 98

Page 100

1 Madoff that you would get paid a percent on?

2 A. I had no arrangements with them.

3 Q. No arrangements.

4 A. Nope.

5 Q. You just got paid money.

6 A. Yes.

7 Q. And it wasn't a gift.

8 A. No.

9 Q. It was a fee.

10 A. It was a fee.

11 Q. And when you received the money you
12 understood it to be a fee.

13 A. It was a fee.

14 Q. My question is: When you received the
15 money, did you understand it to be a fee?

16 A. I had to earmark it on a tax return, so I
17 called it a fee.

18 Q. You called it a fee.

19 A. Right.

20 Q. Okay. And when you were calling -- when
21 you were telling the government it was a fee, it was
22 a fee for what?

23 A. I don't know. Just a fee.

24 Q. Just a fee.

25 A. Report it to the IRS, and they're happy.

1 A. At that point, yes, by them. By Greg and
2 by Michael.

3 Q. And how was that fee calculated, do you
4 know?

5 A. Well, he had sent statements that said
6 50 percent of fees, half to Mr. Bienes, half to me;
7 which means 50 percent of 100 percent.

8 Q. And so you would get statements?

9 A. He would send a -- a summary, if you will.

10 Q. Okay. And did you ever tell him something
11 to the effect of why are you paying me?

12 A. Did I ever ask him?

13 Q. Yes.

14 A. No.

15 Q. Okay. So you got a summary and you were
16 paid a fee, based upon people who you referred into
17 the partnership.

18 A. People I may have spoken to. Did I refer
19 them to them? I'm not so sure I referred them in.

20 Q. Spoken to about their ability to invest in
21 S&P and P&S, and that their money would then be
22 invested in Madoff.

23 A. Each one was different, so I can't give a
24 broad answer on that.

25 Q. You mentioned that you delete e-mails

27 CLIFF, LLC
Account QuickReport
All Transactions

Type	Date	Name	Memo	Split	Amount
FEES					
Sullivan & Powell					
Deposit	3/10/2004	Michael D. Sullivan & Associates, Inc.	Sullivan	NORTHERN TRUST BANK	51,989.62
Deposit	3/1/2005	Michael D. Sullivan & Associates, Inc.	Deposit	NORTHERN TRUST BANK	50,205.57
Deposit	3/9/2006	Michael D. Sullivan & Associates, Inc.	2005	NORTHERN TRUST BANK	37,498.81
Deposit	3/6/2007	Michael D. Sullivan & Associates, Inc.	2006	NORTHERN TRUST BANK	89,816.87
Deposit	1/30/2008	Michael D. Sullivan & Associates, Inc.	2007	NORTHERN TRUST BANK	50,804.49
Total Sullivan & Powell					280,159.16
Total FEES					280,159.16
TOTAL					280,159.16



**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,

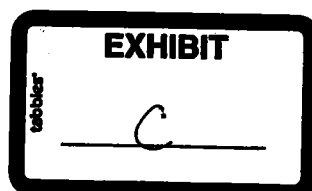
v.

MICHAEL D. SULLIVAN, an individual,
STEVEN JACOB, an individual, MICHAEL D.
SULLIVAN & ASSOCIATES, INC., a Florida
corporation, STEVEN F. JACOB, CPA &
ASSOCIATES, INC., a Florida corporation,
FRANK AVELLINO, an individual, MICHAEL
BIENES, an individual, KELCO FOUNDATION,
INC., a Florida Non Profit Corporation, VINCENT
T. KELLY, an individual, VINCENT BARONE, an
individual, EDITH and SAM ROSEN, individuals,
PREMIER MARKETING SERVICES, INC., a
Florida Corporation, and SCOTT HOLLOWAY, an
individual,

Defendants.

**PLAINTIFFS' FIRST REQUEST FOR PRODUCTION
OF DOCUMENTS TO DEFENDANT FRANK AVELLINO**

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 Frank Avellino ("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 Frank Avellino, 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 Frank Avellino.

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. "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.

E. "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.

F. "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.

G. "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.

H. 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.

I. 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.

J. Unless otherwise specified herein, the time frame for each request is from and including January 1, 1992 to the present.

K. 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.

L. 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.

M. 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.

N. 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.

O. 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.

P. 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 exchanged between Defendant and S&P; P&S; Michael D. Sullivan; Steven Jacob; Michael D. Sullivan & Associates, Inc., a Florida Corporation; Steven F. Jacob, CPA & Associates, Inc.; Gregg Powell; Kelco Foundation, Inc. a Florida Non Profit Corporation; Vincent T. Kelly; Vincent Barone; Edith Rosen; Sam Rosen; Premier Marketing Services, Inc., a Florida Corporation; Grosvenor Partners, Ltd.; Avellino Family Foundation, Inc.; Mayfair Ventures; Kenn Jordan Foundation; Elaine Ziffer; James & Valerie Bruce Judd;

Roberta and Vania Alves; Janet A. Hooker Charitable Trust; Gilbert Kahn and Donald Kahan; Carone Family Trust; Carone Gallery, Inc. Pension Trust; Carone Marital Trust #1 UTD 1/26/00; Carone Marital Trust #2 UTD 1/26/00; Matthew D. Carone Revocable Trust; James A. Jordan Living Trust; Fernando Esteban; Margaret E.K. Esteban; James A. Jordon; Marvin Seperson; and/or Scott Holloway; and any partner of P&S and/or S&P.

2. All documents exchanged between Avellino & Bienes and S&P; P&S; Michael D. Sullivan; Steven Jacob; Michael D. Sullivan & Associates, Inc., a Florida Corporation; Steven F. Jacob, CPA & Associates, Inc.; Gregg Powell; Kelco Foundation, Inc. a Florida Non Profit Corporation; Vincent T. Kelly; Vincent Barone; Edith Rosen; Sam Rosen; Premier Marketing Services, Inc., a Florida Corporation; Grosvenor Partners, Ltd.; Avellino Family Foundation, Inc.; Mayfair Ventures; Kenn Jordan Foundation; Elaine Ziffer; Michael Bienes; Richard Wills; and/or Scott Holloway; and any partner of P&S and/or S&P.

3. All documents related to communications between Defendant and S&P; P&S; Michael D. Sullivan; Steven Jacob; Michael D. Sullivan & Associates, Inc., a Florida Corporation; Steven F. Jacob, CPA & Associates, Inc.; Frank Avellino; Gregg Powell; Kelco Foundation, Inc. a Florida Non Profit Corporation; Vincent T. Kelly; Vincent Barone; Edith Rosen; Sam Rosen; Premier Marketing Services, Inc., a Florida Corporation, Michael Bienes; Scott Holloway; Richard Wills and any partner of P&S and/or S&P.

4. All documents related to any payments, transfers of funds, and/or compensation that You received from Avellino & Bienes; S&P; P&S; Michael D. Sullivan; Steven Jacob; Michael D. Sullivan & Associates, Inc., a Florida Corporation; Steven F. Jacob, CPA & Associates, Inc.; Frank Avellino; Gregg Powell; Sullivan & Powell; Kelco Foundation, Inc. a Florida Non Profit Corporation; Vincent T. Kelly; Vincent Barone; Edith Rosen; Sam Rosen;

Premier Marketing Services, Inc., a Florida Corporation, Scott Holloway; and/or any partner of P&S and/or S&P.

5. All documents that refer to or reflect the transactions and/or events alleged in the Amended Complaint in this action.

6. All documents that reflect Your receipt of any of the Kickbacks alleged in the Amended Complaint in this action.

7. Unless such documents have been produced in response to a previous request, all documents concerning the factual basis for any affirmative defense that You will assert in this action.

8. All documents related to Avellino & Bienes' involvement with S&P and/or P&S, and/or the involvement of any partners in P&S and/or S&P with Avellino & Bienes.

9. Any and all correspondence between You and any of current and/or former partner of P&S and/or S&P; including but not limited to any correspondence between You and any of the named Defendants in this action.

10. All communications made regarding investment advice and/or financial performance of S&P and P&S to partners of the P&S and/or S&P and/or potential investors in P&S and/or S&P.

11. Any and all documents relating to your investment or decision to invest in P&S and/or S&P.

12. Any and all documents and communications concerning the suitability of investment in P&S and/or S&P regardless of whether those persons or entities who received such communications or documents actually invested in S&P and/or P&S.

13. Any and all documents relating to communications between You and/or Avellino & Bienes and any entity whose name includes the term "Holy Ghost."

14. Any documents which evidence or relate to any transfers made to any entity in which you hold an interest, and any subsequent transfers thereafter that relate to P&S and/or S&P.

15. Any and all documents and correspondence concerning You and the Securities and Exchange Commission, the Florida Office of Financial Regulation, and any other Governmental Regulatory Agency, including but not limited to any internal memorandum concerning compliance with regulations promulgated by such entities.

16. All documents evidencing or referencing that You and/or Avellino & Bienes were active in the management of the Partnerships.

17. All documents evidence or relating to any transfers made to Reverend Richard Wills and/or the Christ Church United Methodist in Ft. Lauderdale by You or on Your Behalf, or by Avellino & Bienes, or on Avellino & Bienes' behalf.

18. All correspondence between You and Reverend Richard Wills.

19. All documents that relate to any contact with, or communications between You and/or Avellino & Bienes and any partners of P&S and/or S&P.

Respectfully submitted,

BERGER SINGERMANN LLP
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via Electronic Mail and U.S. Mail this 29th day of January, 2014, upon the following:

**Smith v. Sullivan
Case No. 12-034123 (04)**

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By: s/Leonard K. Samuels

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

Case No: 12-034121(07)
Complex Litigation Unit

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

Plaintiffs,

vs.

JANET A. HOOKER CHARITABLE TRUST,
et al.,

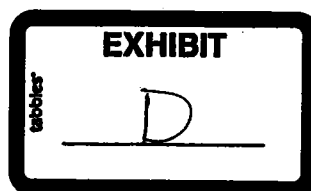
Defendants.

**DEFENDANT SUSAN MOLCHAN'S RESPONSES AND OBJECTIONS TO
PLAINTIFF'S FIRST SET OF INTERROGATORIES**

Pursuant to Florida Rule of Civil Procedure 1.340, Defendant SUSAN E.
MOLCHAN hereby responds and/or objects to Plaintiff's First Set of Interrogatories.

GENERAL RESPONSES AND OBJECTIONS

1. Defendant submits these responses without conceding the relevancy or materiality of the subject matter of any interrogatory.
2. Defendant objects to those interrogatories that seek information neither relevant to this action, nor reasonably calculated to lead to the discovery of admissible evidence.
3. Defendant objects to those interrogatories that seek information exempt from discovery by virtue of its inclusion in any of the following categories:
 - a. Information that embodies or discloses confidential communication between Defendant and its counsel;



- b. Information that represents the work product of attorneys for Defendant in this or related actions or which otherwise reflects the mental impressions, conclusions, opinions or legal theories of those attorneys or their agents; and
 - c. Information that has been compiled in anticipation of litigation or for trial by or on behalf of Defendant or its counsel.
- 4. Defendant objects to those interrogatories that are duplicative or cumulative or as to which information may be obtained from another source that is more convenient, less burdensome and less expensive.
 - 5. Defendant objects to those interrogatories that are unnecessarily burdensome and oppressive.
 - 6. Defendant objects to all interrogatories insofar as they call for information about any other non-discoverable matters.
 - 7. Defendant reserves the right to supplement its responses as discovery proceeds.

RESPONSES TO SPECIFIC INTERROGATORIES

Interrogatory No. 1: Identify all persons with knowledge of any of the facts alleged in the Amended Complaint and/or in any pleadings (including without limitation any motions) You filed with the Court, including the specific matters of which each such person has knowledge.

Response:

My joint account holder, Tom Whiteman, and I have knowledge about our joint account at P&S Associates, General Partnership ("P&S"). Michael Sullivan should have knowledge about that, P&S generally and its dealings with Bernard L. Madoff Investment Securities, LLC ("BLMIS") specifically. The attorneys of record for P&S should have knowledge of the legal proceedings between BLMIS trustee Irving Picard and P&S.

Interrogatory No. 2: State all facts and/or circumstances under which You received any payments, distributions, and/or transfers of funds from P&S.

Response:

We elected to reinvest profits at P&S, so we did not receive regular distributions. Instead, we only received payments and/or distributions when we specifically requested

them. The amounts and timing of such payments and/or distributions are reflected in the documents we will produce in response to the Plaintiff's requests.

Interrogatory No. 3: State all facts and/or circumstances under which You made any payments, distributions, and/or transfers of funds to P&S.

Response:

We had been note holders with Avellino & Bienes, who referred us to Sullivan & Powell (after Avellino & Bienes refunded our note investment) if we wished to continue to invest indirectly in the "hedge fund" that we now understand to have been BLMIS. We contacted Sullivan & Powell and opened an account with them in P&S, into which we made capital contributions from time to time. The amount and timing of such capital contributions are reflected in the documents we will produce in response to the Plaintiff's requests.

Interrogatory No. 4: Identify all communications between Defendant and P&S; Michael D. Sullivan; Steven Jacob; Michael D. Sullivan & Associates, Inc., a Florida Corporation; Steven F. Jacob, CPA & Associates, Inc.; Frank Avellino; Michael Bienes; Kelco Foundation, Inc. a Florida Non Profit Corporation; and/or Vincent T. Kelly. For each communication identified, state all facts and/or circumstances surrounding that communication.

Response:

We periodically received written Activity/Status reports from Sullivan & Powell, on behalf of P&S, regarding our account and we sent written requests to them when we wished to make withdrawals and when we wished to close our account. There may have been a few phone calls to them to check on the status of withdrawals, but I do not recall specifics. Not acquainted with Steven Jacob or his firm. Not personally acquainted with Michael Sullivan, Frank Avellino or Michael Bienes. Never heard of Kelco Foundation. I am acquainted with Vincent Kelly and had a general awareness that he had participated in the Avellino & Bienes note program and in one of the Sullivan & Powell partnerships, but I did not get investment advice from him about them and he did not solicit me to invest in them.

Interrogatory No. 5: State all facts and/or circumstances that led to any investment by You in P&S.

Response:

See Response to Interrogatory No. 3

Interrogatory No. 6: State all facts and/or circumstances that indicate that Plaintiffs failed to file the Complaint within the time required under the applicable statutes of limitations for each cause of action asserted in the Amended Complaint.

Response:

We completed closing our account with and withdrawing from P&S in 1999 and were no longer partners in P&S after that time, but the Complaint was not filed until late 2012.

Interrogatory No. 7: Were you aware of any payment, distribution, and/or transfer of funds received by any partner of P&S prior to the filing of the Complaint in this action? For each payment, distribution, and/or transfer of funds to a partner of P&S that You were aware of prior to the filing of the Complaint in this action, identify the name of the partner who received that payment, distribution, and/or transfer of funds, when You became aware of that payment, distribution, and/or transfer of funds, and the circumstances under which You became aware of it.

Response:

I only know about the payments and/or distributions we received from P&S. Otherwise, see Response to Interrogatory No. 2.

Interrogatory No. 8: Prior to the filing of the Complaint in this action, identify all partners of P&S that were aware of any payment, distribution, and/or transfer of funds that You received from P&S. For each partner of P&S identified, state when You believe that partner of P&S became aware of the payment, distribution, and/or transfer of funds that You received from P&S and the circumstances under which that partner of P&S became aware of it.

Response:

Other than my joint account holder Tom Whiteman, the only other partner at P&S that would have had contemporaneous knowledge of the payments and/or distributions we received from P&S would have been the managing general partners, Sullivan & Powell. There may have been other partners who gained access to that information, but I do not have knowledge regarding that. Otherwise, see Response to Interrogatory No. 2.

Interrogatory No. 9: Identify all persons who supplied information used in answering these interrogatories. For each person identified, state the interrogatory for which the person furnished the answer or supplied the information incorporated in the answer, and the source of the person's answer or information.

Response:

My joint account holder Tom Whiteman assisted me in answering these Interrogatories in as much as he has generally the same knowledge about our account that I possess.

Interrogatory No. 10: Identify by name, address, phone number and e-mail address any person expected to testify at trial in this action, for any purpose.

Response:

Other than my joint account holder, Tom Whiteman, and I, it has not been determined what witnesses we will call at trial.

Interrogatory No. 11: Please set out the facts and subject matter on which each person identified in response to Interrogatory No. 10 above is expected to testify.

Response:

See Responses to Interrogatories Nos. 2, 3, 4 and 6.

Interrogatory No. 12: Identify any investment or accounting advice that You received in

relation to any investment by You in P&S.

Response:

Except as indicated in Response to Interrogatory No. 3, we did not receive any such advice.

Interrogatory No. 13: Please state the nature of the investments made by the Partnerships, when you first became aware of the nature of the investments made by the Partnerships, and the facts and circumstances under which you first became aware of the nature of the investments made by the Partnerships.

Response:

My understanding was that P&S invested in the same "hedge fund" utilized by Avellino & Bienes, which was described in general fashion in literature provided by them, (to be produced in response to the Plaintiff's request).

Interrogatory No. 14: Why did you refuse to comply with the Demand Letter You received in November of 2012 and the Demand Letter that You received in October 2013?

Response:

Advice of counsel.

Interrogatory No. 15: Please state all of the facts and/or circumstances concerning your decision to not comply with the Demand Letter You that You received in November of 2012 from Margaret Smith and the Demand Letter that You received in October 2013.

Response:

See Response to Interrogatory No. 14.

Interrogatory No. 16: Please state all the terms of your investment in P&S.

Response:

As far as I know the "terms" of the investment were as set forth in the Partnership Agreement we were provided, a copy of which will be produced in response to the Plaintiff's request.



Susan E. Molchan

STATE OF MARYLAND)
COUNTY OF Maryland) ss:

BEFORE ME, the undersigned authority, personally appeared Susan E. Molchan who, being first duly sworn, deposes and states that the answers to the foregoing Interrogatories are true and correct.

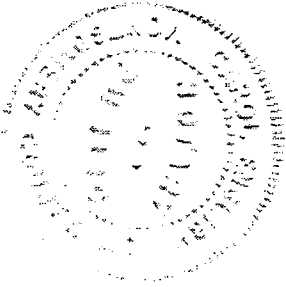
SWORN TO AND SUBSCRIBED before me, this 28th day of January, 2014,
by Susan McChen who is ✓ personally known to me or has
produced MD-DRIVER'S License as identification.

My Commission Expires:

NOTARY PUBLIC STATE OF MARYLAND
MONTGOMERY COUNTY
My Commission Expires August 20, 2016

Carol English

Notary Public, State of Commission No.



CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that on the 28th day of January 2014

a true and correct copy of the foregoing was SENT VIA E-MAIL to:

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/s/
Michael R. Casey, Florida Bar No. 217727

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.

**DEFENDANT, FRANK AVELLINO'S SECOND AMENDED RESPONSE TO
PLAINTIFFS' FOURTH REQUEST FOR PRODUCTION OF DOCUMENTS**

Defendant, Frank Avellino, files this second amended response to Plaintiffs' Fourth Request for Production of Documents dated January 23, 2015 (the "Request") as follows:

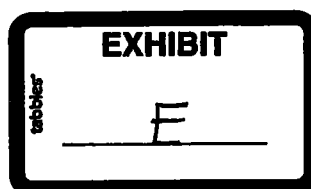
GENERAL OBJECTIONS

Defendant objects to the characterization of the Request as continuing in nature which goes beyond the obligations set forth in Rule 1.280(e), Florida Rules of Civil Procedure.

Defendant objects to the production of documents at the offices of plaintiff's counsel. Documents will be produced or made available for inspection at a mutually convenient location in Palm Beach County, Florida or as otherwise agreed to between the parties.

Defendant objects to the definition of "You" or "Your" or "Defendant" to the extent that it seeks privileged communications with their attorneys and accountants.

Defendant objects to this request to the extent it requires the production of documents in a manner otherwise as permitted by the Florida Rules of Civil Procedure.



DEFENDANTS' RESPONSE TO REQUEST FOR PRODUCTION

1. All documents concerning any transfers and/or payments of funds from Sullivan & Powell/Solutions In Tax to You.

RESPONSE: Defendant has no responsive documents.

2. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan & Assoc. to You.

RESPONSE: Defendant has no responsive documents.

3. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan to You.

RESPONSE: Defendant has no responsive documents.

4. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan & Assoc. to 27 Cliff, LLC.

RESPONSE: See documents attached (Bates stamp# AVELLINO_P&S000692).

5. All documents concerning any transfers and/or payments of funds from Sullivan & Powell/ Solutions In Tax to 27 Cliff, LLC.

RESPONSE: Defendant has no responsive documents.

6. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan to 27 Cliff, LLC.

RESPONSE: Defendant has no responsive documents.

7. All documents sent from Sullivan & Powell / Solutions In Tax, Michael D. Sullivan, and/or Michael D. Sullivan & Assoc. to You.

RESPONSE: See documents attached (Bates stamp# AVELLINO_P&S000693 – AVELLINO_P&S000709).

8. All documents sent from Sullivan & Powell / Solutions In Tax, Michael D. Sullivan, and/or Michael D. Sullivan & Assoc. to 27 Cliff, LLC.

RESPONSE: Defendant has no responsive documents.

9. To the extent not already produced in response to a request, all documents concerning 27 Cliff, LLC.

RESPONSE: Objection. This request seeks personal financial information protected from disclosure by Florida's Constitution, which information is irrelevant to this dispute. Subject to and without waiving such objection, see documents responsive to Request No 4.

10. All documents concerning the "referral fees" that You identified in Your Response to Interrogatory No. 12 of Plaintiffs' First Set of Interrogatories to Defendant Frank Avellino.

RESPONSE: See document produced in response to Request No. 4 and documents previously produced in this matter.

11. All documents concerning the "referral fees" that You identified in Your Response to Interrogatory No. 24 of Plaintiffs' First Set of Interrogatories to Defendant Frank Avellino.

RESPONSE: See response to Request No. 10.

12. All documents and communications exchanged between You and any person identified in response to Interrogatory No. 1 of Frank Avellino's First Set of Interrogatories that relate to S&P and/or P&S.

RESPONSE: Defendant has no responsive documents.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of April, 2015, 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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By: /s/ Gary A. Woodfield

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