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

CASE NO. 12-034123 (07)

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

Plaintiffs,

vs.

MICHAEL D. SULLIVAN, et al.

Defendants.
_____/

DEFENDANTS' REPLY TO PLAINTIFFS' RESPONSE TO DEFENDANTS' JOINT MOTION FOR JUDGMENT ON THE PLEADINGS AND FOR SUMMARY JUDGMENT AS TO FRAUDULENT TRANSFER

Defendants, Frank Avellino and Michael Bienes (collectively, the "Defendants"), by and through their undersigned counsel, file this Reply to Plaintiffs' Response to Defendants' Joint Motion for Judgment on the Pleadings and for Summary Judgment ("MSJ") as to Fraudulent Transfer (Count IV).

Judgment on the Pleadings

In their response, although Plaintiffs argue that a judgment on the pleadings should not be entered because they have standing to pursue the fraudulent transfer claims, Plaintiffs have not even addressed the argument that they failed to properly plead a fraudulent transfer cause of action, and thus, a judgment on the pleadings should be entered.[1]

[1] Plaintiffs also argue that this and other issues have been decided by the Court in prior orders. However, an order which merely grants or denies a motion does not resolve the issue conclusively and a trial judge has the right and authority to change the ruling at any time before a final judgment is entered. *Garcia v. M & T Mortgage Corporation*, 980 So.2d 538 (Fla. 4th DCA 2008). In addition, "[t]here is no prohibition on the presentation of successive motions for summary judgment." *Florida Dept. of Transp. v. Juliano*, 801 So. 2d 101, 109 (Fla. 2001).

In order to state a claim for fraudulent transfer Plaintiffs must plead and prove: (1) there was a creditor to be defrauded; (2) a debtor intending fraud; and (3) a conveyance of the debtor's property which could have been applicable to the payment of the debt due. *Nationsbank, N.A. v. Coastal Utilities Inc.*, 814 So.2d 1227, 1229 (Fla. 4th DCA 2002).

In Count IV of the 5AC, Plaintiffs alleged that the creditors who were defrauded are the partners of the Partnerships, that the partners were defrauded by the Fraudulent Transfers at a time the Partnerships had no profits (i.e. the Partnerships are the debtors), and that the assets transferred were composed of funds that originated from the capital contributions of the partners (paragraphs 80, 82 and 83). (Although Plaintiffs define "Fraudulent Transfers" as the monies paid to Avellino, Bienes and Jacob (paragraph 79), the Fraudulent Transfers could only mean the management fees paid to Michael Sullivan, because Plaintiffs allege in paragraph 86 that Avellino and Bienes are subsequent transferees, and that the monies they received were as subsequent transferees (paragraph 87)). Clearly since the individual partners are not parties to the action, and Plaintiffs cannot bring claims on behalf of the individual partners, as they are direct claims[2], Defendants are entitled to a judgment as a matter of law.

Plaintiffs fare no better with the remaining paragraphs in Count IV, in which they allege the Partnerships are the creditors of Sullivan, Michael D. Sullivan & Assoc., and Sullivan & Powell/Solutions in Tax, who made the Fraudulent Transfers to Avellino and Bienes, with an actual intent to hinder, delay and defraud the Partnerships (paragraphs 88, 89, 90, 91, 92).[3] Plaintiffs argue that these allegations as pled demonstrate as a matter of law that both the Partnerships and Conservator have standing to pursue the fraudulent transfer claims and cite to *Sallah v. Worldwide Clearing LLC*, 860 F.Supp.2d 1329 (S.D. Fla. 2011) and *Freeman v. Dean*

[2] *See Strazzulla v. Riverside Banking Company,* 175 So.3d 879 (Fla. 4th DCA 2015).
[3] Although Florida Rules of Civil Procedure allow alternative relief and theories to be pled, there is no authority for alternative facts and theories to be pled in the same count as Plaintiffs have done here.

Witter Reynolds, Inc., 865 So.2d 543 (Fla. 2d DCA 2003). However, neither of these cases is applicable to Plaintiffs.

In *Sallah,* a receiver was appointed for a corporation, which corporation had been used by the principals as an illegal Ponzi scheme. The receiver brought a fraudulent transfer action against the investors who had allegedly received payments in excess of their individual investments. The defendants challenged the receiver's standing to bring the action. The court stated that the receiver can bring actions previously owned by the party in receivership for the benefit of the creditors, but cannot pursue claims directly owned by the creditors. However, the court explained that a receiver of a corporation which has been used for an illegal Ponzi scheme can bring a fraudulent transfer claim because:

> After a corporation, which was used by its principals to defraud investors, has been 'cleansed' through receivership the corporation has viable claims 'against the principals or the recipients of fraudulent transfers of corporate funds to recover assets rightfully belonging to the corporation and taken prior to the receivership. In other words, after a corporation has been placed into receivership, it becomes a creditor with respect to assets which were fraudulently transferred away. In this scenario, the principals, who were operating the illegal scheme, are the debtors of the corporation for their fraudulent activities.

Sallah, 860 F.Supp.2d at 1334-1335.

In addition, according to the court, when a corporation has been used as a Ponzi scheme and then put in receivership, the receiver can accurately be referred to as a creditor of assets which were fraudulently transferred by principals engaged in wrongdoing, and the principals would be the debtors with respect to the assets allegedly fraudulently transferred away as part of the Ponzi scheme. *Sallah,* 860 F. Supp. 2d at 1335. Finally, when a receiver is brought in to cleanse a corporation used in a Ponzi scheme, the doctrine of *in pari delitco* does not apply to the receiver, and the receiver may bring claims directly against the principals or the recipients of the

fraudulent transfers of corporate funds. *See also Wiand v. Morgan,* 919 F.Supp.2d 1342, 1366 (M.D. Fla. 2013) (when a Ponzi scheme's perpetrator diverts money that investors intended to invest with a receivership entity, the entity is harmed, even if the entity is controlled by the scheme's perpetrator and used exclusively to perpetrate the scheme).

Freeman also involved a receiver appointed for a corporation which had been used by its principals as a Ponzi scheme. However, in that case, the receiver brought an action against third parties, seeking to make them liable for the economic losses the corporation suffered as a result of the Ponzi scheme, based on business connections the third parties had with the corporation or its principals that should make those third parties liable. The court recognized that the receiver could have a claim against the principals or the recipients of the fraudulent transfers of the corporate funds, but held that the receiver could not bring common law claims against third parties to recover damages in the name of the corporation for the fraud perpetrated by the corporation's insiders. According to the court, a corporation which is being used as a Ponzi scheme cannot say it was damaged by the Ponzi scheme; those damages are suffered by the individual customers.

However, in this case the Partnerships were not Ponzi schemes run by Sullivan or Powell, the principals of the Partnerships. There are no allegations that Sullivan or Powell used the Partnerships as a Ponzi scheme, and thus, the cleansing analysis set forth in *Sallah* and *Freeman* is not applicable. The Conservator does not become the creditor, nor do the principals become the debtors of the corporation for their fraudulent activities. Instead, the Conservator stands in

the shoes of the Partnerships, which cannot bring a claim for fraudulent transfer against Sullivan or Avellino and Bienes.[4]

In addition, there were no assets of the Partnerships fraudulently transferred by Sullivan. In the instant case, the Partnerships paid management fees to Sullivan. Sullivan, in turn, paid third parties, such as Avellino and Bienes, referral fees. The Partnerships have alleged that Sullivan should not have been paid some or all of these management fees based on a breach of fiduciary duty claim. However, unlike the facts in *Sallah* and *Freeman,* it cannot be presumed that the monies paid to Sullivan, and then, to the third parties, were fraudulently transferred assets of the Partnerships.[5] If Sullivan did not breach his fiduciary duty and was entitled to these management fees, the assets are not the Partnerships, and there can be no fraudulent transfer claim as a matter of law.[6]

Based on the foregoing, Plaintiffs have failed to plead a viable fraudulent transfer cause of action and Defendants are entitled to a judgment as a matter of law on this cause of action.

Motion for Summary Judgment

While Plaintiffs' Response paraphrases record evidence which they contend creates issues of fact, the evidence itself does not constitute such issues of fact. As set forth below, the

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[4] The Partnerships are barred by the doctrine of *in pari delitco* from bringing a fraudulent transfer claim against the Defendants, because they participated in the alleged improper activities and cannot recover damages resulting from the wrongdoing. *In re Phoenix Diversified Inv. Corp.,* 439 B.R. 231, 242 (Bankr. S.D. Fla. 2010) (applying Florida law) (citing *O'Halloran v. PricewaterhouseCoopers LLP*, 969 So.2d 1039, 1045 (Fla. 2d DCA 2007).

[5] If, as Plaintiffs pled, the assets transferred belonged to the Partnerships, judgment must be entered as a matter of law because "FUFTA was expressly promulgated to permit a creditor to recapture *assets* of the *debtor* . . ." – not of the creditor. *In re Burton Wiand Receivership Cases Pending in the Tampa Div. of Middle Dist. of Fla.*, 8:05-CV-1856T27MSS, 2008 WL 818509, at *7 (M.D. Fla. Jan. 28, 2008), *report and recommendation adopted in part, rejected in part sub nom. In re Burton Wiand Receivership Cases Pending in the Tampa Div. of the Middle Dist. of Fla.*, 8:05-CV-1856T27MSS, 2008 WL 818504 (M.D. Fla. Mar. 26, 2008).

[6] Additionally, the initial alleged fraudulent transfer in this scenario would be from the Partnerships to Sullivan, and it is undisputed that the Partnerships' books and records reflected the management fees paid to Sullivan, and that the Partnership Agreements contemplated such payments, so the statute of limitations for fraudulent transfers to Sullivan expired long ago.

"evidence" is either inadmissible hearsay or conclusions, or does not actually constitute evidence of the fact which it is supposed to establish.[7]

I. Statute of Limitations

The determinative issue governing whether or not the Plaintiffs timely brought this action is when they knew or should have known of the transfers to Avellino and Bienes which they contend are fraudulent. This issue largely turns on what documents were contained within the records of the Partnerships. In attempting to create an issue of fact, Plaintiffs have totally ignored their own sworn evidence of what documents contained information relating to the payment of management fees to Avellino and Bienes:

> **The books and records of P & S [and S & P] indicate that Bienes received a Kickback (as defined in the operative complaint in this action) in relation to those general partners' investments with P & S.**

Exhibit 1, pgs. 3, 8. [8]

> **Every year the *partnerships' management fee Ledger* contained information concerning fees which were accrued or paid to Avellino or Bienes.**

Exhibit 2, interrogatory 8. (emphasis added).

> **Documents[supporting the allegation that Bienes received kickbacks] include bank statements and *printouts from a software program which the partnerships utilized.***

Exhibit 3, pg. 10. (emphasis added).

> **documents in this grouping [supporting the allegation that the defendants had received millions of dollars in kickbacks] include the *Partnerships' spreadsheets and checks.***

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[7] Defendants request the Court to refer to the Record itself and to disregard or strike arguments which are not supported by admissible evidence, which pervade the entire Response and are too numerous to identify specifically.

[8] Each party has filed more than one statement of material facts and has filed supporting documents at several different times. Rather than refer to the documents by the various statements of facts and dates of filing, Defendants have consolidated the portions of each document referenced herein, have designated them sequentially as exhibits, and are filing them for ease of reference. All documents so referenced have otherwise been designated in a Statement of Material Facts and already filed.

Exhibit 3, ¶5, pgs. 8 (emphasis added).

> **... we identified that funds were being earmarked or paid to Avellino and Bienes from the *P & S Quarterly Management Fee* Calculations...**

Composite Exhibit 4, pg. 5, fn 7. Mukamal's reports of November 11, 2013 and March 31, 2016, furthermore, both identify 18 documents relied upon, at least 13 of which are financial documents of the Partnerships. Exhibit 4.

Plaintiffs' Response does not address this evidence at all. Instead, in an attempt to distract this Court from the fact that, on multiple occasions, they have submitted sworn proof that the Partnerships' records contained evidence of the payments to Avellino and Bienes, they refer to affidavits which don't offer actual evidence to the contrary (and which, if they did, would have to be stricken)[9]. None of the affidavits address the documents mentioned above or deny that the specific information within their interrogatory answers was, in fact, within the Partnerships records. Rather, their "evidence" consists of the following:

- The affidavit of Von Kahle, which consists almost entirely of inadmissible hearsay and unsubstantiated conclusions made without personal knowledge, states only that he didn't receive "complete" records or know the "exact" amount of damages. Exhibit 5, ¶¶ 3, 4, 5, 6. This testimony is totally irrelevant because complete knowledge of the exact amount of damages is not necessary to begin the running of the statute of limitations. *Hynd v. Ireland*, 582 So. 2d 772, 773 (Fla. 4th DCA 1991); *Breitz v. Lykes-Pasco Packing Co.*, 561 So. 2d 1204 (Fla. 2d DCA 1990).

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[9] It is axiomatic that a "party who opposes summary judgment will not be permitted to alter the position of his or her previous pleadings, admissions, affidavits, depositions or testimony in order to defeat a summary judgment". *Inman vs. Club on Sailboat Key, Inc.*, 342 So.2d 1069, 1070 (Fla. 3rd DCA 1977). *See, also, Elison v. Goodman*, 395 So. 2d 1201, 1202 (Fla. 3d DCA 1981, which affirmed a summary judgment "notwithstanding the filing of an affidavit in opposition to the summary judgment in which Mr. Elison directly contradicted his deposition testimony concerning the date of discovery, so as to bring it within the limitations period."

- Margaret Smith's Declaration verified only that the transfers were not reflected in the Partnerships' "banking records," which would not be expected to contain the names of recipients of funds. Furthermore, Plaintiffs' entire case is premised upon the fact that payments went from the Partnerships to Sullivan or Michael D. Sullivan & Associates ("MDS"; collectively "Sullivan") then to Avellino and Bienes, so the banking records of the Partnerships would not reveal payments directly to them, or to any other individual by name. Exhibit 6, ¶3.

- Smith's statements that the payments "could only be verified" through Sullivan's records is similarly meaningless because it does not say that references to payments were not contained within the Partnerships' records – just that they could not be "verified" through those records. This is perfectly consistent with the admitted fact that the payments were not made directly by the Partnerships to Avellino and Bienes, but were made directly by Sullivan to Avellino and Bienes. Exhibit 6, ¶3.

- Mukamal's affidavit – also improperly based upon hearsay - indicated only that the records "did not reveal" that Avellino and Bienes "had received" payments "from the Partnerships," but that testimony is also insignificant as Avellino and Bienes were never paid directly "from the Partnerships." Exhibit 7, ¶6. Although the Partnerships' records do reflect that payments were made to Avellino and Bienes, the records do not reflect that those payments were paid directly "from the Partnerships."

Therefore, there is no question of fact as to whether the Partnerships' records contained information about the payments which were made to Avellino and Bienes. Plaintiffs' prior sworn evidence proves it. Their subsequent attempts, through the affidavits, do not directly contradict this evidence and, if the affidavits did directly contradict their previous sworn testimony, the affidavits would have to be stricken. It is ironic that the Plaintiffs are now

disavowing the truth of their own sworn evidence, and are relying upon Sullivan's deposition testimony to prove the falsity of their own testimony. Sullivan's equivocating testimony, however, does not negate Plaintiffs' definitive admissions; while Sullivan testified during his deposition that evidence of the payments would not be within the Partnerships' records, he also testified that he wasn't sure whether the records would have been among those of the Partnerships or of MDS, or whether the records of MDS were made available. Exhibit 8, pgs. 29-30. Plaintiffs were positive that the evidence was within the Partnerships' records; Sullivan was uncertain whether it was there or not; his uncertainty does not create a question of fact which could overcome Plaintiffs' certainty.

Since the evidence was undeniably within the Partnerships' records, the only other issue is whether the Partnerships are charged with the knowledge of the contents of their own records. As a matter of law, they are so charged. *See, e.g.*, *Brooks Tropicals, Inc. v. Acosta*, 959 So. 2d 288 (Fla. 3d DCA 2007), which held that, "the question of whether this plaintiff should have discovered the basis for a cause of action for fraud was one of law to be determined by the court:

> It is too well-settled to require the citation of authorities that one who has either actual or constructive information and notice sufficient to put him on inquiry is bound, for his own protection, to make that inquiry which such information or notice appears to direct should be made, and, if he disregards that information or notice which is sufficient to put him on inquiry and fails to inquire and to learn that which he might reasonably be expected to learn upon making such inquiry, then he must suffer the consequence of his neglect.

Id. at 296.

Though unnecessary, testimony corroborating the Plaintiffs' admissions, and further evidencing the availability of the documents and, hence, the constructive knowledge of the Partnerships, include the Affidavit of Jacob, in which he swore that:

- He regularly reviewed the books of the Partnerships which, at all times were in the offices of the Partnerships and available for review and inspection by him and all other partners of the Partnerships, and which were actually observed by Jacob. Exhibit 9 ¶¶4, 8;

- The books of the Partnerships reflected in several places the payments Sullivan made of a portion of his management fees to others, including the payments to Avellino and Bienes. These records were maintained both electronically on the Partnerships' computers and in hard copy. Exhibit 9 ¶¶6, 8;

Sullivan similarly confirmed Plaintiffs' admissions by indicating that Jacob's affidavit was accurate and that records of the Partnerships were available to all partners at all times. Exhibit 10, ¶2; Exhibit 11.

Plaintiffs' argument that the knowledge of individual partners cannot be imputed to the Partnerships not only ignores the definitive statute imputing such knowledge, 620.8102 (6), *Fla. Stat.*,[10] but defies logic. The Partnerships can only have knowledge through their individual partners; there is simply no other way for a general partnership to acquire information.

Not only did each partner – and, hence, the Partnerships - have access to the Partnerships' books, some of the partners even actually reviewed them prior to December of 2008. Exhibit 11, pgs. 47-50. More specifically:

- In the fall of 2008, two representatives of one of the partners physically went to the Partnerships' offices and reviewed the records; one for the second time, and one of the representatives was told about Sullivan sharing his fees with others. Exhibit 9 ¶11; Exhibit 10 ¶2;

[10] "A partner's knowledge, notice or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership," except in the cases of fraud by that partner, which exception does not apply to all of the non-defendant partners who had access to the books and actually received documents evidencing the payments to Avellino and Bienes.

- A number of partners beyond those named as defendants were paid referral fees. Exhibit 9 ¶¶5, 7, exhibits to same. Knowledge of each such partner is statutorily imputed to the Partnerships;

- Several partners executed a letter in which they admitted that the documents which had been provided indicated that Sullivan had paid fees to Avellino and Bienes. Exhibit 9 ¶13;

- In addition, in November of 2011 - more than a year before this suit was filed - at the insistence of a partner, the Partnerships' records were delivered to the partner's accountant. Exhibit 9 ¶13.

Individual partners, therefore, not only had constructive knowledge, but they had actual knowledge of the contents of the records. As a matter of law, the Partnerships are charged with such knowledge. §620.8102(6) *Fla. Stat.*; *Brooks Tropicals v. Acosta*, 959 So. 2d 288. None of Plaintiffs' affidavits deny, or even address, the sworn testimony by Jacob that the specific documents attached to his Affidavit which clearly identify the payments made to Avellino and Bienes were contained in the Partnerships' Books and Records.

In an effort to escape the inescapable conclusion that the Partnerships had knowledge of their own records, Plaintiffs argue that the documents which the Partnerships did have were concealed. However, once again, rather than address Sullivan's testimony of the five to ten times when partners actually reviewed the records, Exhibit 11, pg. 47, Plaintiffs rely on testimony which does not negate this fact. The deposition testimony of Stapleton, a representative of another partner, is the only evidence Plaintiffs proffer of such concealment before the Madoff scandal was publicized in December 2008, but he only said that he did not know if others had even "asked" to look at the Partnerships' books and records before 2008.

Exhibit 12, pg. 40. This testimony does nothing to contradict Sullivan's unrebutted testimony that five or ten partners looked at the books before that time; it confirms only that the particular deponent did not know if other partners had asked to review the Partnerships' records. It does not indicate that he knew even one partner who had requested access – much less been denied access - before December 2008.[11]

The other evidence of concealment offered by the Plaintiffs involves the alleged difficulty which the Conservator and Margaret Smith had in obtaining documents from Sullivan after December of 2008. Disregarding the inaccuracies of this argument, and the fact that Sullivan's wrongs cannot be used to extend the statute against Avellino & Bienes, this argument has no relevance to whether or not, through the years prior to the publication of the Madoff scandal, the partners had access to the books. The ability of Sullivan's successors, after allegations of breaches of fiduciary duty have been leveled against Sullivan, to obtain documents from him is a totally separate issue from the access granted previously to all partners during the normal operation of the Partnerships. For the same reason, neither the Conservator's appointment in 2013 – after this suit was filed - nor the letter written in August of 2012, can be used to extend the statute of limitations. By the time that letter was written, and the Conservator appointed, it had been years since the partners had had both constructive and actual knowledge of the transfers, and the year in which they "knew or should have known" of the transfers had long-since past.[12] *See, e.g., Smith v. Barnett Nat. Bank of Jacksonville*, 156 So. 478, 480 (Fla. 1934) (where the statute of limitations began to run, the subsequent appointment of a receiver

[11] Nor does Stapleton's testimony that he "eventually" asked Sullivan what he had done with the management fees negate Sullivan's testimony that others reviewed the records before December 2008, or offer any evidence of Sullivan's refusal to allow access to the records before the post-December 2008 accusations began to fly. Exhibit 12, pg.74, 75.

[12] Furthermore, within two weeks of the August letter, Plaintiffs had already filed at least one law suit alleging that fees had been paid to Sullivan and his co-conspirators, and that Avellino had control over Sullivan and had found Sullivan and other "front men" as a way to raise money for Madoff, so the letter did not prevent them from taking any action. Exhibit 13 ¶¶ 19, 20, 22, 23, 25, 26, 27, 28 and 30.

does not stop the running of statute of limitations). Plaintiffs are not only trying to extend the statute of limitations, but to revive it after it has already expired. Once they were charged with knowledge by access to, and actual inspection of, the records prior to December 2008, they had to file suit within a year of acquiring that knowledge; subsequent events cannot erase that knowledge and start the statute over again. Were Plaintiffs' argument to be adopted, the passage of the statute of limitations could never be conclusively determined because the subsequent appointment of a conservator would revive it if it had totally elapsed, or start the period anew even if all but a short period of the statute had elapsed.

Plaintiffs also had to file suit while they still had a claim against Sullivan, as the definitions of claim, creditor, debt and debtor on which the fraudulent transfer statute is based are all contingent on whether the plaintiff has a "right to payment" from the party who transferred its assets. §726.102(4-7), *Fla. Stat.* The viable causes of action which Plaintiffs had directly against Sullivan also expired before this suit was filed in December 2012.[13] Therefore, Plaintiffs had no claim against Sullivan as of the time this case was filed, so cannot maintain an action for fraudulent transfer.

Plaintiffs' cases are not controlling, or even persuasive, as they specifically rely on a provision of the Bankruptcy code with no application in this state court proceeding. *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Grusky*, 763 So. 2d 1206, 1209 (Fla. 3d DCA 2000), and *Roberson v. Johnson*, 950 So. 2d 317, 321 (Ala. Civ. App. 2006) both explained that, "[t]he language of § 524(e) of the 1978 Bankruptcy Code reveals a congressional intent to broaden the rights of creditors, by preserving their actions against third parties and their property, and to

[13] Those causes of action remaining against Sullivan as of the Fourth Amended Complaint (the last one before his settlement with Plaintiffs), as otherwise found by this Court, expired at most four years after each payment was made, and could not be extended by the continuing tort, equitable tolling or other doctrines.

restrict the effect of a discharge solely to a release of the personal liability of the debtor." There is no comparable provision within Florida's fraudulent transfer statutes.

Plaintiffs' reliance on *In re Burton Wiand Receivership Cases Pending,* 2008 WL 818509, is similarly misplaced as that case – unlike our own – involved a receiver of an entity which itself was operated as a Ponzi scheme. Plaintiffs' case may be applicable in a case brought by Madoff's bankruptcy Trustee, but not in a state court case brought by the Partnerships' Conservator, as neither they – nor even Sullivan – actually operated a Ponzi scheme. Furthermore, *Wiand* explicitly acknowledged that the "Florida Uniform Fraudulent Transfers Act is not a catchall statute to permit an entity which has transferred its assets to others or had them stolen to recover those assets from whomever may be in possession of them as a substitute for a direct cause of action against that person or entity." It is obvious that this fraudulent transfer action has been brought as a substitute for a direct cause of action against Avellino and Bienes, and is not allowed. By the time they brought this action, Plaintiffs' claims against Avellino, Bienes, and Sullivan were too late. They cannot remedy this fact by suing Avellino and Bienes for fraudulent transfers made to defeat a claim against Sullivan when they couldn't sue Sullivan for that claim. There is no claim for fraudulent transfer to defeat a non-existent claim. A transfer which occurs before a claim accrues may be fraudulent because there is still the possibility of a claim. After the statute has expired, there is no possibility of a claim.

Plaintiffs' assertions that they received some documents in May of 2012, some in August and some in 2013 are also fatally defective. They emphasize when they acquired "significant" or "complete" records from which "exact" damages could be calculated, but those dates are irrelevant; a cause of action accrues before "complete" knowledge is acquired. *Hynd*, 582 So.

2d at 773; *Breitz* 561 So. 2d 1204. Never did Plaintiffs contradict Defendants' evidence - or their own admissions – that the Partnerships' records contained the requisite information.

Equally unavailing is Plaintiffs' argument that they are not considered to have sufficient knowledge to begin the running of the statute until they knew that the transfers were fraudulent. This is simply not the law in Florida. Discovery of the transfer itself is the start of the period of limitations, even if the plaintiffs did not know at that time that the transfer was fraudulent. *Nat'l Auto Serv. Centers, Inc. v. F/R* 550, LLC, 192 So. 3d 498 (Fla. 2d DCA 2016), *reh'g denied* (May 25, 2016) ("Because the statute unambiguously defines the operative event as the discovery of the disposition of the asset, the statute cannot mean that the one-year period runs from the claimant's discovery of facts showing that the disposition of the asset may have been fraudulent as to creditors." *Id.* at 505.). Instead of relying on this case, Plaintiffs rely on the out of state case of *Freitag v. McGhie*, 133 Wash. 2d 816, 821, 947 P.2d 1186, 1188 (1997), *as amended* (Dec. 18, 1997), the analysis of which the Second District of Florida explicitly considered and rejected. Plaintiffs also rely upon *In re Fair Fin. Co. v. Textron*, 834 F.3d 651 (6th Cir. 2016), which surmised that an Ohio court would not begin the running of the statute of limitations until the discovery of fraud, but which specifically recognized that Florida law is to the contrary. *Id.* at 673. Florida, has, in fact, rejected the analysis used by the Sixth Circuit. *Nat'l Auto, supra.*

It should go without saying that Florida law is that which must be followed by this Court. *See, e.g., In re Tabor*, 75 Collier Bankr. Cas. 2d 1521 (Bankr. S.D. Fla. 2016) (holding that "[t]he relevant date is the date the Transfer itself was or could reasonably have been discovered. It does not matter whether any creditor would have realized the transfer was fraudulent" because the *National Auto* decision, as the only intermediate appellate court opinion is - without a Florida

Supreme Court decision - "binding authority.") *See, also, State of Florida v Hayes*, 333 So.2d 51 (Fla. 4th DCA 1976).

Therefore, Plaintiffs' assertions that the fraudulent transfer count is premised on their allegations that the referral fees were made from capital contributions, and that they did not know of the capital contributions until later, is totally irrelevant. Knowledge that the transfers were fraudulent was not necessary to begin the running of the statute. That argument, furthermore, is not the only basis for Plaintiffs' assertion that the transfers were fraudulent, and is merely a red herring which serves no purpose other than to try (unsuccessfully) to extend the statute.

Finally, the argument about the use of the capital accounts cannot salvage the Plaintiffs claim because any claim based upon the capital accounts would belong to the individual partners whose accounts were wrongfully used, and not to the Plaintiffs.

The Plaintiffs' assertion that the date of discovery should not be before the appointment of the conservator is similarly unpersuasive as it ignores the fact that both Partnerships themselves are plaintiffs, and the fact that the case they cite, *In re Burton Wiand*, 2008 WL 818509, denied a motion to dismiss in reliance on a North Carolina case relating to the adverse domination theory, which would violate Florida Statute §95.051 if applied in Florida. *In re Southeast. Banking v Brandt*, 855 F. Supp. 353, 357-358 (S.D. Fla. 1994).[14] *Wiand,* furthermore, involved a receiver who had been appointed to take over a Ponzi scheme and a claim against the operator of that Ponzi scheme. Neither the Partnerships nor Sullivan ran a Ponzi scheme.

Plaintiffs contest the admissibility of much of the affidavit testimony of Steven Jacob. As illustrated above, that testimony is not needed to prove that the Partnerships' records contain

[14] *See, also, Brandt v. Lazard Freres & Co., LLC*, 96-2653-CIV-DAVIS, 1997 WL 469325, at *5 (S.D. Fla. 1997) regarding Florida's rejection of the adverse domination theory.

the information about payments to Avellino and Bienes.[15] Their argument that Kelly was not acting as agent for the partner on whose behalf he inspected the documents is similarly irrelevant – Kelly's knowledge, too, is unnecessary to prove the fact that partners inspected the books, Sullivan's testimony in that regard was not disputed, one of the partner's CPA's reviewed the records both with Kelly and years earlier, and the records were later delivered to another CPA of a partner.[16]

Plaintiffs rely on an order entered in the case of *P & S Associates v Janet A Hooker Charitable Trust*, Case No. 12-034121 (07). However, without proof in that case of evidence of the subject payments being contained within the Partnerships' records, as there is in this case, this order has no precedential value in reference to the fraudulent transfer count. Furthermore, as pointed out by Plaintiffs, the *Hooker* court indicated that "the time to bring this cause of action is extended to one year after the *partnerships*, as creditors/victims of the fraud, had the ability to determine the facts...." Response at 10 (emphasis added). Contrary to Plaintiff's position in this case, the court did not indicate that the statute of limitations was extended to one year after the "Conservator" learned the facts.

II. Unsatisfied Claim Against Sullivan

The existence of the second judgment against Sullivan does not negate the facts that Plaintiffs had no claim against him as of the time they filed suit, or that the judgment against him is only for $50,000.00. Pursuant to the only statute that gives them a remedy, Plaintiffs may

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[15] As set forth more fully in the Response to Plaintiffs' Motion to Strike the Affidavit of Jacob, its contents are admissible and it should not be stricken for containing hearsay as he is not affirming, for example, the truth of the matter contained in those records; the purpose of his testimony is to show that payments to Avellino and Bienes were mentioned – not that that the payments were actually made.

[16] Regardless of whether Kelly told his partners what he learned while speaking with Sullivan and while looking through Sullivan's records, the partnerships are charged with his knowledge, *Brooks v. Acosta* 295 (Fla. 3d DCA 2007); he was acting for the partnership when reviewing the records as that is the only reason he was granted permission to do so – the fact that he asked a question which could have provided information helpful to him does not negate the fact that he was reviewing the records for his partners.

recover "to the extent necessary to satisfy the creditor's claim," and are specifically limited to the *lesser* of the amount required to satisfy their claim against Sullivan or the amount transferred. §§ 728.108(1) (a), 726.109(2), *Fla. Stat.*

Florida case law is as unequivocal as the statute on this point:

> The cause of action in this case was based solely on Florida [as opposed to bankruptcy] law. Under section 726.109(2), the creditor may recover 'judgment for the value of the asset transferred, as adjusted under [section 726.109] subsection 3, or the amount necessary to satisfy the creditor's claim, whichever is less.' The court's instruction to the jury tracked this language. The jury found that over $600,000 had been fraudulently conveyed; but the evidence established that, at the time of trial, the amount of Bredlau's judgment was $183,716.27. Therefore, the statute required the entry of judgment in the amount of the claim.

Myers v. Brook, 708 So. 2d 607, 611 (Fla. 2d DCA 1998). The cases cited by Plaintiffs did not involve a statute such as §726.109 which explicitly limits the amount of recovery to the "lesser" of the amount transferred or the amount of the claim. Again, their reliance on bankruptcy cases is misplaced. *In re Tronox Inc.*, 464 B.R.606 (Bankr. S.D.N.Y. 2012), for example, involved 11 U.S.C. § 550(a), which provides that the trustee or debtor-in-possession "may recover for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property." The *Tronox* Court correctly noted that there is no support "in the plain words of the statute" for the argument that the amount which can be recovered against the transferees is capped at the total claims of the creditors. Having enough to make the creditors whole is not the same as making the debtor's estate whole as a greater sum may have been transferred than is owed to creditors. In fact, the *Tronox* Court specifically distinguished its ruling under bankruptcy law from the law of Oklahoma, on which the transferee wanted to rely, when it said, "[l]ike many other state fraudulent transfer laws, the Oklahoma statute provides that the creditor in a fraudulent transfer action may not recover more than 'the amount necessary to satisfy the

creditor's claim." This limitation reflects the different purposes of a fraudulent transfer proceeding brought under state law by a creditor on behalf of that creditor only, and an action pursued by a bankruptcy estate representative on behalf of the 'estate.'" *Id.* at 615–616.

In re Acequia, Inc., 34 F.3d 800, 807 (9th Cir. 1994), also cited by Plaintiffs, was similarly restricted to the issue of whether a transferee could be liable for more than the amount owing to unsecured creditors, which is not the same as the total amount due from the debtor to the bankrupt entity. Again, the case upon which Plaintiffs rely distinguished itself from other situations and thereby proved the inapplicability of Plaintiffs' position:

> The two cases cited by Clinton are inapposite. In *Allard v. DeLorean,* 884 F.2d 464 (9th Cir.1989), we dismissed as moot the appeal of a bankruptcy trustee who had *settled* fraudulent conveyance litigation against the debtor: "[The trustee] is no longer a creditor in this action because ... [he] executed and filed a full satisfaction of judgment.... [He therefore] is not entitled to the remedy of setting aside [the debtor]'s conveyance ... as fraudulent ...

Id. at 808.

The very cases on which Plaintiffs rely therefore support Defendants' position. *McCalla v. E.C. Kenyon Const. Co., Inc.*, 183 So. 3d 1192 (Fla. 1st DCA 2016), also acknowledged that recovery against a transferee is limited to the lesser of the amount transferred or the amount of the claim against the debtor, and merely referenced an issue that was not on appeal – that sums received from the insurance company of the judgment debtor/general contractor should be offset against the amount recovered against the principals/transferees of the contractor. This case did not involve a settlement with the judgment debtor/contractor, as does the instant case.

Discharge in bankruptcy, governed by specific rules which allow claims against transferees to survive, cannot be equated with stipulated judgments for sums certain or absolute releases. When considering the specific statutory limitation of §726.109 with general rules

regarding joint and several liability, the specific statute must be followed. *See, e.g., Barnett Banks Inc. v. Department of Revenue,* 738 So.2d 502 (1st DCA 1999) ("it is a basic tenet of statutory construction that 'a specific statute covering a particular subject area always controls over a statute covering the same and other subjects in more general terms.'" *Id.* at 505); *State of Florida v. J. M.,* 824 So. 2d 105 (2002). Plaintiffs cannot, by agreed order with someone other than Avellino and Bienes, change the statutory limitation and allow a greater recovery against them than is permitted by statute.

When the specific fraudulent transfer statute is followed, the result is a foregone conclusion. The fraudulent transfer procedure is merely a conduit to collect a debt; it does not create a separate cause of action which is enforceable in the absence of an underlying debt. "A valid, presently enforceable debt against the original transferor is an essential element of an action against the transferee to set aside a fraudulent transfer [citations to at least five states omitted]. This rule has a long history. [citations omitted]. The rationale for the rule is explained in *Jorden v. Ball,* 258 N.E.2d at 737:

> The uniform fraudulent conveyance act confers jurisdiction to set aside conveyances made with actual intent "to hinder, delay, or defraud either present or future creditors, . . .The act is remedial. It provides a method by which the frustration of claims by a conveyance may be avoided, but it does not create new claims. To benefit from the rights it creates, a person must qualify as a "creditor," defined in the act as "a person having any claim, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent." As we stated in *Blumenthal v. Blumenthal,* 303 Mass. 275, 278, 21 N.E.2d 244, 246, 'The remedy is incidental to the claim. If the claim is not established, then the whole proceedings fail, and the bill must be dismissed.' *Even if the claimant was a "creditor" when the fraudulent transfer occurred, the claimant loses her status as a creditor if her claim against the transferor becomes barred by the statute of limitations, a non-claim statute, or other method.*

Jahner v. Jacob, 515 N.W.2d 183, 185 (N.D. 1994) (emphasis added).

III. Fraudulent Intent

Plaintiffs are correct that issues of fraud require the Court to carefully analyze the allegations before granting summary judgment. There are, however, still many instances in which the lack of fraud can be, and has been, determined as a matter of law. *See, e.g., Davis v. Monahan*, 832 So. 2d 708, 712 (Fla. 2002); Hynd, 582 So. 2d 772; *Pac. Harbor Capital, Inc. v. Barnett Bank, N.A.*, 252 F.3d 1246, 1249 (11th Cir. 2001), *as amended* (July 3, 2001; *Young v. Ball,* 835 So. 2d 385 (Fla. 2d DCA 2003). This is one of those instances.

Plaintiffs are misapplying the badges of fraud. The badges on which they rely would be applicable if the individual partners were the plaintiffs and creditors of the Partnerships, and the Partnerships had made allegedly fraudulent transfers to Sullivan. However, the individuals are not plaintiffs/creditors and the Partnerships could not bring action on their behalf. Nor can the Conservator/Plaintiff be considered the creditor of the Partnerships/Plaintiff; as set forth above, the cases involving a receiver of a Ponzi scheme are inapplicable, and the statute of limitations based on transfers to Sullivan long since elapsed. For purposes of this action, therefore, the Partnerships are the creditors of Sullivan, who allegedly made the fraudulent transfers to the defendants. The badges of fraud, therefore, must be analyzed with Sullivan as the debtor who made the fraudulent transactions:

- The transfers were to an Insider: "Insider" has a specific definition and includes, in reference to a debtor who is a person, a relative of a general partner, a general partner in a partnership in which the debtor is a general partner, or a corporation of which the debtor is a director, officer, or person in control. §726.102 (8)(a), *Fla. Stat.* Avellino and Bienes fit into none of these categories and are not, therefore, "insiders" of Sullivan. Nor are they insiders of MDS as they are not directors, officers, general partners in a partnership in which the debtor is a

general partner, or relatives of any such people §726.102 (8)(b)). Although Plaintiffs have alleged that they "controlled" Sullivan, they have proffered no evidence of controlling the corporation, and the evidence they have proffered falls woefully short of establishing control of either Sullivan or his entities, even if they had pled it. Sullivan's sworn statements that they had no involvement with, or control of, MDS, is uncontroverted by any admissible evidence. Exhibit 10 ¶ 9;

- The transfers were concealed: as set forth above, the Partnerships repeatedly admitted that evidence of the payments to Avellino and Bienes were contained within their own records;

- Insolvency of the Debtor: Plaintiffs have proffered evidence as to the insolvency of the Partnerships, but not of Sullivan; the solvency of the Partnerships is irrelevant; Sullivan's affidavit of solvency is uncontested. Exhibit 10, ¶8.

- The debtor retained possession or control of the property after the transfer: There is no proof, or even allegation, that Sullivan maintained such control after he made the payments to Avellino & Bienes;

- Before the transfers were made, the debtor had been sued or threatened with suit: The transfers began in 2000 – years before any problems with Madoff were mentioned; there is no evidence to refute Sullivan's testimony that, when he made the transfers, he had not been threatened with suit.[17] Exhibit 10 ¶ 7;

- The transfer was of substantially all the debtor's assets: Other than Sullivan's Affidavit to the contrary, there is no evidence of Sullivan's assets as of the time of each transfer. Exhibit 10, ¶8;

---

[17] There is an improper conclusion by Plaintiffs' expert that one payment was made after December 2008; that does not negate the fact that every other transfer was made prior to even the hint of a claim.

- The debtor absconded: Sullivan has done nothing to conceal his whereabouts;
- The debtor removed or concealed assets: There is no evidence or allegation of same;
- The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred: Again, Plaintiffs' only proffered evidence "supporting" this badge is Mukamal's opinion that Sullivan wasn't entitled to management fees at all (or in the amount received). Pl's SOF §27. This evidence not only does not relate to whether Sullivan – the debtor – received consideration, but it is an impermissible "opinion" of an expert;
- The transfer occurred shortly before or shortly after a substantial debt was incurred: The transfers occurred over a period of time approaching a decade; there is no proof of such a debt to contradict Sullivan's testimony that there was no such debt. Exhibit 10 ¶8;
- The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor: Totally inapplicable.

§ 726.105, *Fla. Stat.*

Therefore, nine of the eleven statutory badges of fraud have not even arguably been shown to apply. The only ones which even could apply are Avellino and Bienes 'control' of MDS and the concealment of the payments to them. As set forth above, those indicia do not exist and have not been shone to exist by competent evidence; nor are the miscellaneous other alleged badges sufficient to create an issue of fact. The issue, for example, is Sullivan's intent to defraud – not the intent of Avellino or Bienes, and his advising Sullivan to seek counsel reflects a lack of control over him. Without these badges of fraud, judgment should be entered against Defendant. *See, e.g., Johnson v. Dowell*, 592 So. 2d 1194 (Fla. 2d DCA 1992) (reversed a

judgment in a fraudulent transfer case with instructions to enter judgment for the defendant because "a single badge of fraud may only create a suspicious circumstance and may not constitute the requisite fraud to set aside a conveyance, even though several of them when considered together may afford a basis to infer fraud." *Id.* at 1197.). In this case, despite Plaintiffs' best efforts, "the badges of fraud" do not exist.

IV. Conduct of Sullivan

Throughout the Response, Plaintiffs rely on conduct of Sullivan in an attempt to extend the statute of limitations against Avellino and Bienes. This is not permitted. *See, e.g., Univ. of Miami v. Bogorff,* 583 So. 2d 1000, 1004 -1005 (Fla. 1991). This Court should disregard all references to Sullivan which are used to extend the limitations period against the remaining defendants.

CONCLUSION

Plaintiffs' attempts to create confusion should not be condoned. The illusory, "paper issues" are not sufficient to require a trial:

- **The documents of the Partnerships contained evidence of the payments to Avellino & Bienes as proven by:**
  - * Plaintiffs' multiple sworn interrogatory answers,
  - * Plaintiffs' expert witness' reports,
  - * Jacob's affidavit,
  - * Sullivan's affidavit, which did not definitely refute unequivocal prior testimony,
  - * Letter of some partners to other partners, which indicated that the records reflected that Sullivan had paid fees to Avellino and Bienes.

Plaintiffs' purposefully vague affidavits never actually say that evidence of the payments is not identified within the books of the Partnerships, and deliberately ignore the specific documents and information supporting the motion for summary judgment;

- **The partners had access to the Partnerships' records at all times prior to December 2008, and therefore had at least constructive knowledge of their contents as proven by**

  * Sullivan's uncontradicted testimony; the fact that Stepelton did not know the names of anyone who had asked to see the records does not refute this fact.

  * Jacob's uncontradicted testimony.

- **Several partners were given physical access to review the records:**

  * Patrick Kelly and Susan Davis inspected the records in the fall of 2008 on behalf of a foundation which was one of the partners;

  * Susan Davis had inspected the Partnerships' records even before that;

  * At a partner's insistence, the Partnerships' records were delivered to the partner's accountant in November of 2011;

  * Partners of the Partnerships reviewed their records between five and ten times before December 2008.

There is, therefore, no material question of fact as to whether payments to Avellino and Bienes were reflected within the Partnerships' records. The partners, and by statutory dictate, the Partnerships, were on both constructive and actual notice of same. As a matter of law, therefore, they knew or should have known of the payments to Avellino and Bienes as they were made throughout the years but, for purposes of this motion, by at least December 2008. If relying upon the statutory exception giving them one year from when they knew or should have

known about the transfers, Plaintiffs would have had to have filed suit by December 2009. A letter written in 2012 and a conservator being appointed in 2013 did not revive the statute for them.[18]

- **Plaintiffs cannot maintain this action to collect a claim when the claim didn't exist at the time the suit was filed, or to recover more than its current $50,000.00 judgment against Sullivan.** As established by statute, Plaintiffs recovery from Avellino and Bienes is limited to the amount of their claim against Sullivan; their claim against Sullivan is their "right to payment." Their right to payment is, at most, the $50,000.00 judgment.

- **Even construing all "evidence" relating to indicia of fraud in the light most favorable to Plaintiffs, their "evidence" consists of nothing but conjecture and improperly drawn inferences which cannot overcome Sullivan's testimony and does not satisfy Plaintiffs' burden of proving actual intent.**

Plaintiffs ignore controlling Florida law and rely instead upon bankruptcy and out-of-state cases which specifically distinguish themselves from Florida state law.

> It is well settled that the law favors the defense of statute of limitations. The United States Supreme Court has stated to that effect: The defense of the statute of limitations is not a technical defense but substantial and meritorious.... Statutes of limitation are vital to the welfare of society and are favored in the law.

Brandt v. Lazard Freres & Co., 1997 WL 469325, at *2 (citations omitted).

Based on the foregoing, judgment on the pleadings or summary judgment should be entered in favor of Defendants dismissing Plaintiffs' Count IV of Fifth Amended Complaint with prejudice. Alternatively, in order to narrow the issues to be tried, partial judgment on the pleadings or summary judgment should be entered dismissing any portion of the claims as the

[18] This Court has already ruled that the statute of limitations based upon the four years from the transfers had elapsed, so the only issue remaining is whether this suit was filed more than a year from when the Plaintiffs knew or should have known about the transfers.

Court deems appropriate. Defendants further request, in the alternative, partial summary judgment restricting the amount of damages to $50,000.00. To the extent necessary, Defendants also request this Court to strike, or at least disregard, Plaintiffs' affidavits and arguments which contradict earlier testimony, which constitute inadmissible evidence such as hearsay and unsubstantiated conclusions, and which are not supported by the record to which Plaintiffs cite.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document is being served on those on the attached service list by electronic service via the Florida Court E-Filing Portal in compliance with Fla. Admin. Order No. 13-49 this 1st day of March, 2017.

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

Case No. Case No. 12-034123 (07)
Complex Litigation Unit

PHILIP J. VON KAHLE, as Conservator
of P&S Associates, General Partnership
and S&P Associates, General Partnership,

Plaintiffs,

v.

MICHAEL D. SULLIVAN, et al.,

Defendants.

_____/

PLAINTIFF, CONSERVATOR PHILIP J. VON KAHLE'S, REVISED RESPONSES TO DEFENDANT MICHAEL BIENES' FIRST SET OF INTERROGATORIES TO PLAINTIFF

Plaintiff, Philip J. Von Kahle as Conservator of P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P", together with P&S, the "Partnerships") ("Conservator" or "Plaintiff'') by and through undersigned counsel, hereby submits his revised responses to Defendant, Michael Bienes' ("Bienes" or "Defendant") First Set of Interrogatories Numbers 3, 4, 6, 9, 10, 14, and 15 to Plaintiff, Philip J. Von Kahle, as Conservator of P&S General Partnership and S&P General Partnership.

OBJECTIONS

All responses of the Plaintiff to Bienes' Interrogatories are made subject to and without waiving these objections common to all interrogatories.

1. The Plaintiff objects to each and every interrogatory to the extent they call for the proprietary, confidential, and/or financial information of the Partnerships and/or a non-party.

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communications. Plaintiffs also object to this interrogatory because the undefined term "investor/general partner" is vague and unclear. Further, discovery has only recently begun and the Conservator is still investigating certain claims. To the extent that the term "investor/general partner" refers to general partners in the Partnerships, the Plaintiff responds:

It is believed that the following general partners of P&S were solicited by Bienes to invest in P&S because the books and records of P&S indicate that Bienes received a Kickback (as defined in the operative complaint in this action) in relation to those general partners' investments with P&S. Those general partners' investments were made by the below general partners becoming general partners with P&S, and the amounts and dates of those general partner's investments in P&S are as follows:

- **Andrea Acker – Invested $100,000**

Acker, Andrea J.	Balance Forward	New Investment	Distributions	Ending Balance
2008	$ -	$100,000.00		$ 100,000.00
Acker Total	**$ -**	**$100,000.00**		**$ 100,000.00**

- **Carone Family Trust – Invested $335,000**

Carone Family Trust	Balance Forward	New Investment	Distributions	Ending Balance
2004	$ -	$335,000.00		$ 335,000.00
2005	$335,000.00	$ -	$ (90,000.00)	$ 245,000.00
2006	$245,000.00	$ -		$ 245,000.00
2007	$245,000.00	$ -		$ 245,000.00
2008	$245,000.00	$ -		$ 245,000.00
Carone Family Trust Total		**$335,000.00**	**$ (90,000.00)**	**$ 245,000.00**

- **Carone Gallery Inc., Pension Trust – Invested $474,986**

Carone Gallery, Inc. Pension Trust	Balance Forward	New Investment	Distributions	Ending Balance
2000	$ -	$198,000.00		$ 198,000.00

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Kelco Foundation - Terminated	Balance Forward	New Investment	Distributions	Ending Balance
2007	$ (742.32)	$ -		$ (742.32)
2008	$ (742.32)	$ -		$ (742.32)
Kelco Foundation - Terminated Total		**$ 23,850.68**	**$ (24,593.00)**	**$ (742.32)**

It is believed that the following general partners of S&P were solicited by Bienes to invest in S&P because the books and records of S&P indicate that Bienes received a Kickback (as defined in the operative complaint in this action) in relation to those general partners' investments with S&P. Those general partners' investments were made by the below general partners becoming general partners with S&P, and the amounts and dates of those general partner's investments in S&P are as follows:

- **Roberta P. Alves & Vania P. Duarte – Invested $49,000.**

Alves, Roberta P. & Vania P. Duarte	Balance	Contributions	Disbursements
1993		$40,000.00	
1994	$ 40,000.00		$ (5,000.00)
1995	$ 35,000.00		$ (3,000.00)
1996	$ 32,000.00		$ (3,000.00)
1997	$ 29,000.00		$ (2,500.00)
1998	$ 26,500.00		$ (2,000.00)
1999	$ 24,500.00	$9,000.00	$ (6,500.00)
2000	$ 27,000.00		$ (10,000.00)
2001	$ 17,000.00		$ (5,000.00)
2002	$ 12,000.00		$ (12,000.00)
2003	$ -		$ (5,000.00)
2004	$ (5,000.00)		
2005	$ (5,000.00)		
2006	$ (5,000.00)		
2007	$ (5,000.00)		
2008	$ (5,000.00)		$ (10,000.00)
Alves Total		**$49,000.00**	**$ (64,000.00)**

VERIFICATION

I have read the foregoing answers to the above Interrogatories and do swear under oath and penalty of perjury that they are true and correct.

S&P ASSOCIATES, GENERAL PARTNERSHIP
P&S ASSOCIATES, GENERAL PARTNERSHIP

By: _____
Philip J. Von Kahle, as Conservator

STATE OF FLORIDA)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 27th day of June, 2014, by Philip J. Von Kahle, as Conservator of S&P General Associates, General Partnership, and P&S Associates, General Partnership, who is ✓ personally known to me or has produced _____ as identification and who did/did not take an oath.

_____
Notary Public

(Print or Type Name): Giselle Crombie

My Commission Expires: 4/6/15

GISELLE CROMBIE
NOTARY PUBLIC
STATE OF FLORIDA
Comm# EE081838
Expires 4/6/2015

(seal)

IN THE CIRCUIT COURT FOR THE
SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY,
FLORIDA

PHILIP J. VON KAHLE, as Conservator of P&S Associates, General Partnership and S&P Associates, General Partnership

Plaintiffs,

vs.

MICHAEL D. SULLIVAN, et al.,

Defendants.
_____/

Case No. 12-034123 (07)
Complex Litigation Unit

PLAINTIFFS RESPONSES TO FRANK AVELLINO'S THIRD SET OF INTERROGATORIES TO PLAINTIFFS

Plaintiff, Philip J. Von Kahle as Conservator ("Conservator") of P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P", together with P&S, the "Partnerships", with the Conservator, the "Plaintiffs"), by and through his undersigned counsel, hereby submits Plaintiffs' Response to Avellino's Third Set of Interrogatories.

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By: /s/ Thomas M. Messana
Thomas M. Messana
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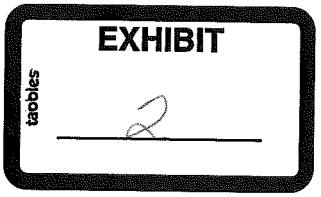

A&B's counsel during the SEC investigation, referred to A&B's records as "phantom books". The SEC report also indicates that Bienes claimed that A&B repaid a loan to Chemical Bank to avoid explaining the investment strategy to Chemical Bank. A&B also objected to the SEC's interrogatories and refused to provide Madoff's name as the underlying broker in response to the discovery requests. Further, the records concerning the SEC investigation of Avellino and Bienes indicates that once the SEC started to investigate the facts and circumstances of BLMIS, Bienes and Avellino cooperated.

Additionally, Avellino and Bienes were aware that their investments with Madoff did not have a loss for thirty years and that BLMIS was utilizing an inappropriately small accounting firm for such large brokerage operation. Avellino and Bienes were aware that Madoff refused to utilize a larger firm in favor of having a single accountant service the BLMIS account.

Michael D. Sullivan – Sullivan was the managing general partner of the Partnerships. It is believed that Sullivan has knowledge related to the Partnerships formation, investment with BLMIS, and how access was obtained to invest with BLMIS.

Michael Bienes – Bienes has been associated with Avellino in numerous entities which invested with BLMIS for several decades. It is believed that Bienes has knowledge related to the process for investing with BLMIS, the limited ability to invest with BLMIS, and the Partnerships' decision to invest with BLMIS.

8. With respect to Your allegations in Paragraph 31 of the Third Amended Complaint "Avellino, Bienes and Sullivan reached an agreement whereby Avellino and Bienes would receive monies in connection with individuals and/or entities who Avellino and/or Bienes caused to invest in . . . the Partnerships," please state with specificity all facts supporting Your allegations with regard to Avellino. In Your answer, please identify all documents that support Your allegations and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support Your allegations. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

ANSWER:

See response to Interrogatory No. 1. and Interrogatory Number 6.

Every year the Partnerships' management fee ledger contained information concerning fees which were accrued or paid to Avellino or Bienes. Moreover, Avellino admitted to receiving "referral fees" in response to Plaintiffs' First Set of Interrogatories. The management fees or commissions that accrued to the benefit of Avellino and Bienes constituted half of the management fees that Sullivan was to receive based on the accounts which Avellino and Bienes referred.

VERIFICATION

I have read the foregoing answers to the above Interrogatories and do swear under oath and penalty of perjury that they are true and correct.

S&P ASSOCIATES, GENERAL PARTNERSHIP
P&S ASSOCIATES, GENERAL PARTNERSHIP

By: _____
Philip J. Von Kahle, as Conservator

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 15th day of September, 2014, by Philip J. Von Kahle, as Conservator of S&P General Associates, General Partnership, and P&S Associates, General Partnership, who is ✓ personally known to me or has produced ___ as identification and who did/did not take an oath.

_____
Notary Public
(Print or Type Name): Giselle Crombie
My Commission
Expires: 4/6/15

GISELLE CROMBIE
NOTARY PUBLIC
STATE OF FLORIDA
Comm# EE081838
Expires 4/6/2015

(seal)

IN THE CIRCUIT COURT FOR THE
SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY,
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PHILIP J. VON KAHLE, as Conservator of P&S Associates, General Partnership and S&P Associates, General Partnership

Plaintiffs,

vs.

MICHAEL D. SULLIVAN, et al.,

Defendants.
_____/

Case No. 12-034123 (07)
Complex Litigation Unit

PLAINTIFF, CONSERVATOR PHILIP J. VON KAHLE'S, SUPPLEMENTAL RESPONSE TO DEFENDANT MICHAEL BIENES' FIRST SET OF INTERROGATORIES TO PLAINTIFF

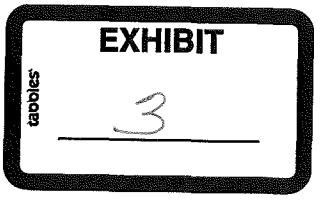
Plaintiff, Philip J. Von Kahle as Conservator of P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P", together with P&S, the "Partnerships") ("Conservator") by and through undersigned counsel, hereby submits his supplemental responses to Defendant, Michael Bienes ("Bienes" or "Defendant") his First Set of Interrogatories to Plaintiff, Philip J. Von Kahle, as Conservator of P&S General Partnership and S&P General Partnership ("Plaintiff").

OBJECTIONS

All responses of the Plaintiff to Bienes' Interrogatories are made subject to and without waiving these objections common to all interrogatories.

1. The Plaintiff objects to each and every interrogatory to the extent they call for the proprietary, confidential, and/or financial information of the Partnerships and/or a non-party.

2. The Plaintiff objects to the extent the Interrogatories impose a duty to supplement not required by the Florida Rules of Civil Procedure.



5. Please state with specificity all facts supporting Your allegations in Paragraph 24 of the Amended Complaint, as they relate to Bienes, that Bienes and the other named Defendants received "over $8 million dollars in kickbacks from Sullivan disguised as commissions, management fees, gifts, and/or 'charitable contributions' in return for soliciting investors for one or both of the Partnerships ...." In Your answer, please identify all documents that support Your allegations and the name(s) of any person(s) with knowledge of the facts that support Your allegations. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

ANSWER:

The Plaintiff objects to the extent that the information sought is in Bienes' possession or could be more easily obtained through other parties or sources. Plaintiff objects to this interrogatory to the extent that it seeks information that is privileged by statute or common law, including attorney work product and privileged communications between attorney and client, or settlement communications. The Plaintiff responds:

See response to Interrogatory Number 2. Additionally, documents are being provided in response to Bienes' request for production. Plaintiffs' agreement to produce documents which may be responsive to this request for production does not constitute an admission that such documents are relevant to the instant proceedings or that they may be used in evidence. Notwithstanding the foregoing objections, Plaintiffs have agreed to produce the following documents which may be responsive to this request for production. Specifically, Plaintiffs are willing to produce documents whose bates numbers include, but are not limited to:

- **Journals - MB00002RTP - MB00005RTP; MB00012RTP - MB00019RTP.**
- **Management Fee Records – MB00008RTP - MB00010RTP; MB00025RTP - MB00089RTP.**
- **Checks to Bienes - MB00006RTP**

Additional bates numbers which reflect fees paid to others include, but are not limited to:

- **MB00337RTP - MB02007RTP. Documents in this grouping include the Partnerships spreadsheets and checks.**

It is believed that individuals who possess knowledge responsive to this interrogatory are:

- **Michael D. Sullivan who is believed to have knowledge related to why transfers were characterized in a particular manner.**
- **Frank Avellino who was Michael Bienes' former partner and was involved in the foregoing schemes.**
- **Vincent T. Kelly, who received management fees which were improperly designated as "Charitable Contributions"**

6. Please state with specificity all facts supporting Your allegation in Paragraph 27 of the Amended Complaint, as it relates to Bienes, that Bienes and the other Defendants "ensured that Sullivan, through entities he exclusively controlled, made distributions to the Kickback Defendants that were in violation of the Partnership Agreements." In Your answer, please identify all documents that support Your allegation and the name(s) and contact information (address, telephone number,. etc.) of any person(s) with knowledge of the facts that support Your allegation. With respect to each such person You identify, please describe the

subject matter of such person's knowledge.

ANSWER:

The Plaintiff objects to the extent that the information sought is in Bienes' possession or could be more easily obtained through other parties or sources. Plaintiff objects to this interrogatory to the extent that it seeks information that is privileged by statute or common law, including attorney work product and privileged communications between attorney and client, or settlement communications. The Plaintiff responds:

See response to Interrogatory Number 2. Additionally, the documents reflect that certain transfers were made from Michael D. Sullivan & Assoc. Further, documents are being provided in response to Bienes' request for production.
Plaintiffs' agreement to produce documents which may be responsive to this request for production does not constitute an admission that such documents are relevant to the instant proceedings or that they may be used in evidence. Notwithstanding the foregoing objections, Plaintiffs have agreed to produce the following documents which may be responsive to this request for production. Specifically, Plaintiffs are willing to produce documents whose bates numbers include, but are not limited to:

- **Journals - MB00002RTP - MB00005RTP; MB00012RTP - MB00019RTP.**
- **Management Fee Records – MB00008RTP - MB00010RTP; MB00025RTP - MB00089RTP.**
- **Checks to Bienes - MB00006RTP**
- **Bank Statements - MB00096RTP - MB00223RTP.**

Plaintiffs have also produced documents which include, but are not limited to:

- **MB00337RTP - MB02007RTP. Documents in this grouping include the Partnerships spreadsheets and checks.**

It is believed that individuals who possess knowledge responsive to this interrogatory are:

Michael D. Sullivan who is believed to have knowledge related to which entities were used to transfer funds to the Commissions Defendants as defined in the Second Amended Complaint.

Plaintiffs object to this interrogatory because it exceeds the amount allowed by the Florida Rules of Civil Procedure. However, Plaintiffs have responded to this interrogatory as a result of Defendant's attempts to obstruct their efforts to obtain discovery, without waiving the right to later object to and strike their response to this interrogatory.

7. Please state with specificity all facts supporting Your allegation in Paragraph 28(b) of the Amended Complaint that "Bienes received $357,790.84 in Kickbacks." In Your answer, please identify all documents that support Your allegation and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support Your allegation. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

ANSWER:

Objection. The Plaintiff objects to the extent that the information sought is in Bienes' possession or could be more easily obtained through other parties or sources. Management Fees is an undefined term, so the Plaintiff will respond utilizing the meaning of the term as used in the Second Amended Complaint filed in the above-styled action. Further, Plaintiff objects as discovery has only recently begun and the Conservator is still investigating certain claims, and the majority of documents and other information which are necessary to answer this interrogatory are in the possession of third parties and/or Bienes and have not yet been produced to the Plaintiff. Plaintiff objects to this interrogatory to the extent that it seeks information that is privileged by statute or common law, including attorney work product and privileged communications between attorney and client, or settlement communications. The Plaintiff responds:

Bienes or an entity controlled by him received a 50% share of the following distributions by year:

Date Accrued	Amount	Method of Payment
2000	$1,395.36 (P&S); $1,990.98 (S&P)	Check
2001	$39,12.11 (P&S); $41,47.57 (S&P)	Check
2002	$54,650.25 (P&S); $48,614.39 (S&P)	Check
2003	$58,428.61(P&S); $42,411.17 (S&P)	Check
2004 (calculation)	$59,257.3(P&S); $52,954.53 (S&P)	
2005(calculation)	$57,812.85 (P&S); $41,164.36 (S&P)	
2006	$107,398.94 (P&S); $55,834.78 (S&P)	Check
2007	$73,351.06 (P&S); $52,257.42 (S&P)	Check

Additionally, documents are being produced which are responsive to this request. These documents include bank statements and printouts from a software program which the Partnerships utilized. Bates numbers for responsive documents include,

Plaintiffs' agreement to produce documents which may be responsive to this request for production does not constitute an admission that such documents are relevant to the instant proceedings or that they may be used in evidence. Notwithstanding the foregoing objections, Plaintiffs have agreed to produce the following documents which may be responsive to this request for production. Specifically, Plaintiffs are willing to produce documents whose bates numbers include, but are not limited to:

- **Journals - MB00002RTP - MB00005RTP; MB00012RTP - MB00019RTP.**
- **Management Fee Records – MB00008RTP - MB00010RTP; MB00025RTP - MB00089RTP.**
- **Checks to Bienes - MB00006RTP**

VERIFICATION

I have read the foregoing answers to the above Interrogatories and do swear under oath and penalty of perjury that they are true and correct.

S&P ASSOCIATES, GENERAL PARTNERSHIP
P&S ASSOCIATES, GENERAL PARTNERSHIP

By: _____
Philip J. Von Kahle, as Conservator

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 2nd day of April 2014, by Philip J. Von Kahle, as Conservator of S&P General Associates, General Partnership, and P&S Associates, General Partnership, who is ✓ personally known to me or has produced_____as identification and who did/did not take an oath.

_____
Notary Public
(Print or Type Name):
My Commission Expires:

(seal)

NADIRA JOSEPH
Notary Public - State of Florida
My Comm. Expires Dec 11, 2017
Commission # FF 075791
Bonded Through National Notary Assn.

CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL DISTRICT,
IN AND FOR BROWARD COUNTY, FLORIDA

Re:

P&S ASSOCIATES, GENERAL PARTNERSHIP
AND S&P ASSOCIATES, GENERAL PARTNERSHIP CASE NO.: 12-028324(07)

_____/

EXPERT REPORT OF
BARRY MUKAMAL, CPA/PFS/ABV/CFE/CFF

November 11, 2013

Our observations are as follows:

- We were able to recreate the calculation of the management fees based on 20% of the gains/losses recorded[5] by the managing general partners on the P&S Annual Partner Statements, with the following exceptions: for 2003 Partner (Cong of the Holy Spirit Western Province Inc.) did not have management fees reported in the amount of $103 and for 2008 partner Moss was charged 10% management fees instead of 20%.
- The total amount actually paid for management fees during the period from 1993 through 2008 ("Review Period") in the amount of $3,178,451.97 listed on the P&S Management Fees Paid List is $34,252.61 greater than the amount that should have been paid under the calculation by P&S managing general partners on the P&S Quarterly Management Fee Calculations and on the P&S Annual Partner Statements in the amount of $3,144,199.36 (see Exhibit 2).[6]
- P&S paid a portion of the 20% management fee directly to Kelco Foundation (total paid from 1993 -2008 is $744,799), which fees were reported by P&S on its tax returns as charitable donations. The balance of the management fees were paid to Powell and Sullivan until Powell's death in August, 2003, and to Michael D. Sullivan & Associates from September 2003 forward.
- Each of the P&S Quarterly Management Fee Calculations (as prepared by the managing general partner(s)) indicate amounts earmarked for/or to be paid to "A&B". Moecker has informed us that based on their review of the P&S books and records and other records related to Powell and/or Sullivan's other entities, A&B refers to Frank J. Avellino ("Avellino") and Michael S. Bienes ("Bienes"), parties prohibited by the SEC to participate in the sale of securities.[7]
- Although Article 2.02 of the P&S Partnership Agreement stated that the general purpose of the partnership was to invest, in cash or on margin, in all types of marketplace securities, during the Review Period and especially beginning in 2003, P&S did not remit all capital contributions received from its Partners for new investments. Instead P&S retained significant monies, as tabulated below.

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[5] Although certain gains were recorded by the Partnership, as previously discussed, as a consequence of exclusively investing in a Ponzi scheme, the Partnership recorded profits stemming solely from investments in Madoff.

[6] For purposes of comparing the management fees paid to the management fees calculated, we used the management fees calculated by the managing general partners on the P&S Annual Partner Statements.

[7] Although we identified that funds were being earmarked or paid to Avellino and Bienes from the P&S Quarterly Management Fee Calculations, investigation of amounts paid to Avellino and Bienes was beyond the scope of our engagement.

EXHIBIT 1

S&P Associates, General Partnership
P&S Associates, General Partnership

Documents Relied Upon

1. S&P Amended and Restated Partnership Agreement, dated December 21, 1994
2. P&S Associates GP Amended and Restated Partnership Agreement, dated December 21, 1994
3. Conservator's Motion for Summary Judgment To: (i) Approve Determination Of Claims, (ii) Approve Plan of Distribution, And (iii) Establish Objection Procedure
4. Complaint filed by Margaret J. Smith, et al v. Michael D. Sullivan et al, on December 10, 2012
5. Spreadsheets prepared by Moecker based on analysis of S&P and P&S records:
    a. List of S&P and P&S checks for the payment of management fees
    b. List of checks from S&P and P&S to Bernard Madoff Investment Securities, LLC ("BMIS")
    c. List of deposits to S&P and P&S from BMIS
6. Spreadsheets prepared by Moecker that summarize information reported by S&P and P&S on partner annual statements as follows:
    a. Annual summary by general partner of each general partners capital account beginning balance, new investments, management fees, expenses, gain (loss) and ending capital balance.
    b. Cash-In Cash-Out annual total by partner and resulting net cash investment
7. S&P Tax Returns for the years ending 1993 through 2008
8. P&S Tax Returns for the years ending 1993 through 2008
9. S&P general ledgers, bank registers, financial statements and trial balances for certain periods during 1997 through 2008.
10. P&S general ledgers, bank registers, financial statements and trial balances for certain periods during 1997 through 2008.
11. S&P monthly accounting files for the period of 1993 through 2008
12. P&S monthly accounting files for the period of 1993 through 2008
13. S&P reports from BMIS titled "Portfolio Management Report" for each year end 12/31 from 1993 through 2008
14. P&S reports from BMIS titled "Portfolio Management Report" for each year end 12/31 from 1993 through 2008
15. S&P quarterly management fee calculations prepared by managing general partner
16. P&S quarterly management fee calculations prepared by managing general partner
17. S&P Annual Partners Statements for 2008
18. Conversations with Moecker associates

AFFIDAVIT OF PHILIP VON KAHLE

STATE OF FLORIDA)
:SS
COUNTY OF BROWARD)

BEFORE ME, the undersigned authority, personally appeared Philip von Kahle, who deposes and states:

1. I, Philip von Kahle, am above the legal age of majority and otherwise competent to make this affidavit. I make this affidavit of my own personal knowledge, except where otherwise indicated.

2. On January 17, 2013, I was appointed as Conservator (the "Conservator") of P&S, General Partnership ("P&S") and S&P General Partnership ("S&P") (collectively, the "Partnerships").

3. I was appointed as successor to Margaret Smith, who did not have a complete copy of the books and records of the Partnerships. Instead Michael D. Sullivan ("Sullivan") possessed all of the Partnerships' books and records and refused to turn them over.

4. As a result of Sullivan's conduct, I did not have complete access to the books and records of the Partnerships when I was appointed by the Court, and did not receive all of the books and records of the Partnerships from Sullivan until 2013. I did not receive a significant portion of the Partnerships' books and records until after May 16, 2013.

5. I did not receive a complete production of documents until after August 19, 2013, when the Court entered an *Order Compelling Michael Sullivan to Authorize the Conservator Access to Financial and Insurance Information*. A true and correct copy of that Order is attached hereto as Exhibit A.

EXHIBIT
tabbies
5

6. It took several months, after receipt of the Partnerships' books and records, from Sullivan, in 2013 to determine the exact amount that was paid to Avellino and Bienes.

7. Moreover, the documents which revealed the transfers to Avellino and Bienes were not accessible to the partners of the Partnerships. Instead they were concealed within the records of Michael D. Sullivan and Associates.

8. The documents attached to the Responses to the Motions for Summary Judgment are business records which were kept and maintained in the ordinary course of business.

FURTHER AFFIANT SAYETH NAUGHT.

PHILIP VON KAHLE

STATE OF FLORIDA)
:SS
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 25th day of July, 2016 by Philip Von Kahle who is personally known to me or has produced as identification _____ and did/did not take an oath.

Name: Nadira Joseph
(Notary Public)
(Affix Seal Below)

NADIRA JOSEPH
Notary Public - State of Florida
My Comm. Expires Dec 11, 2017
Commission # FF 075791
Bonded Through National Notary Assn.

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.
_____/

DECLARATION OF MARGARET J. SMITH

1. I, Margaret J. Smith, am above the legal age of majority and otherwise competent to make this affidavit. I make this affidavit of my own personal knowledge, except where otherwise indicated.

2. I am a Certified Public Accountant and a principal with the advisory firm of GlassRatner Advisory and Capital Group, LLC ("GlassRatner"). Non-managing partners of P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P," collectively the "Partnerships") retained GlassRatner to investigate certain matters concerning the operation and management of the Partnerships. On August 17, 2012, the partners of S&P and P&S held a meeting at which the Partnerships' former Managing General Partner, Michael D. Sullivan ("Sullivan"), was replaced, and I was elected Managing General Partner in his stead.

3. The transfers made to Avellino and Bienes were not reflected in the banking records for the Partnerships, and those transfers could only be verified through the banking

EXHIBIT
tabbies
6

records of Michael D. Sullivan related companies, including but not limited Michael D. Sullivan & Associates, Inc. which were received in May 2012.

4. Sullivan challenged my election as Managing General Partner until January, 2013, when the Conservator was appointed. Among other actions, the Partnerships' former counsel, Helen Chaitman, Esq., who was previously retained by Sullivan to represent the Partnerships, withheld Partnership funds from me, after I was Managing General Partner.

5. Within four years after the public disclosure of the Madoff Ponzi scheme, I directed Berger Singerman, LLP to initiate the above captioned lawsuit on December 10, 2012, despite the fact that Helen Chaitman was still withholding Partnership funds from me in violation of a Court Order.

Under penalties of perjury, I declare that I have read the foregoing and that the facts stated in it are true.

MARGARET J. SMITH

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.
_____/

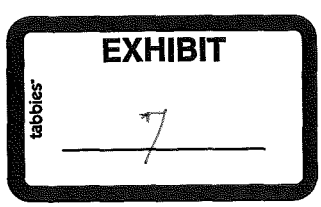
AFFIDAVIT OF BARRY MUKAMAL

STATE OF FLORIDA)
.SS
COUNTY OF BROWARD)

BEFORE ME, the undersigned authority, personally appeared Barry Mukamal, who deposes and states:

1. I, Barry Mukamal, am above the legal age of majority and otherwise competent to make this affidavit. I make this affidavit of my own personal knowledge, except where otherwise indicated.

2. On November 1, 2013, I was retained by legal counsel for Phillip J. Von Kahle, as Conservator (the "Conservator") of P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P") (S&P and P&S are collectively the "Partnerships") to provide an opinion as to whether P&S and S&P were managed in accordance with the provisions of their respective partnership agreements, and to determine whether amounts with respect to new investments and distributions utilized by the Conservator in the calculation of distributions using the



Net Investment Method were generally reliable. A copy of the expert report I drafted in conjunction with that engagement is attached hereto as **Exhibit A.**

3. As identified in Exhibit A, cash deficiencies in the Partnerships due to the improper payment of partnership distributions and management fees were funded by certain capital contributions received by the Partnerships. I did not see any Partnership records which indicate, or would have notified partners in the Partnerships, that their distributions were funded by capital contributions of other partners.

4. My engagement with Phillip J. Von Kahle was expanded in 2014 to include an analysis as to whether Sullivan received management fees in compliance with the Partnership Agreements of the Partnerships. A copy of the expert report I drafted is attached hereto as **Exhibit B.**

5. As set forth in Exhibit B, the Partnerships improperly transferred money invested by Partners as capital contributions to Sullivan/Powell as management fees.

6. A review of the books and records of the Partnerships did not reveal that Avellino and Bienes received any distributions, commissions or payments from the Partnerships. I am informed that Sullivan thereafter improperly transferred funds he received from the Partnerships to Avellino and Bienes from Michael D. Sullivan & Associates own accounts.

7. Moreover, a review of the records of the Partnerships also reveals that an improper transfer of Partnership funds occurred on December 15, 2008. That transfer consisted of a $20,000 payment from P&S to Michael D. Sullivan and Associates, Inc., and was improper because, among other reasons, Madoff was arrested on December 11, 2008 and the Partnerships did not have any capital as a result of the discovery of the BLMIS fraud.

FURTHER AFFIANT SAYETH NAUGHT.

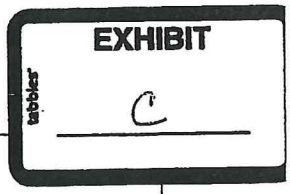
BARRY MUKAMAL

STATE OF FLORIDA)
.SS
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 29th day of July, 2016 by Barry Mukamal who is personally known to me or has produced as identification _____ and did/did not take an oath.

Name: _____
(Notary Public)
(Affix Seal Below)

JULIET ZAMORA
MY COMMISSION # FF244165
EXPIRES: June 24, 2019



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

CASE NO.: 12-34123(07)

P&S ASSOCIATES, GENERAL PARTNERSHIP, a Florida limited partnership, et al.,

Plaintiffs,

vs.

STEVEN JACOB, et al.,

Defendants.
_____/

DEPOSITION OF

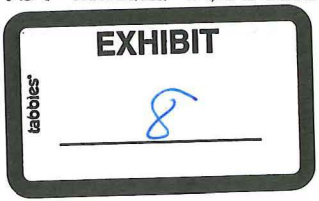
MICHAEL SULLIVAN

VOLUME 1 of 1
Pages 1 through 166

Tuesday, March 8th, 2016
9:30 a.m. - 2:28 p.m.

BERGER SINGERMAN, LLP
350 East Las Olas Boulevard
Fort Lauderdale, Florida

Stenographically Reported By:
Ashley C. Nehme, FPR
Florida Professional Reporter



A. Pardon me?

Q. Mr. Sullivan, can you identify what I just marked as Exhibit 3?

A. Yeah, it's a document that looks -- I can identify it. It's a P&S Management Fee Calculation. That's what the top of it says.

Q. And these P&S Management Fee Calculations, were these - were these documents belonging to Michael D. Sullivan & Associates or Michael Sullivan?

A. I do not know.

Q. Okay. So you don't know whether these were gathered from Michael D. Sullivan or your personal computers?

A. It looks like something I would have produced, but whether this particular document is among those I do not know. I don't have my records to tell you.

Q. In terms of the management fee calculation that were made.

A. Yes.

Q. Were those calculations done on the books and records of Michael D. Sullivan & Associates or Sullivan & Powell or Solution & Tax on the one hand, or were they in the books and records of P&S or S&P

on the other hand?

A. I'm not sure.

Q. Okay. Now, let's just -- I just want to go over a couple of these sheets with you, if I can.

A. Sure.

Q. This is for 2002.

A. Uh-huh.

Q. So at the bottom here it says Kelco clients and year-to-date management fees. Do you see that?

A. Can you point to that.

Q. I'm sorry, in the lower column.

A. Oh, yes. Yes, yes, yes.

Q. It has year-to-date management fees for Kelco and that totals $90,473.25, correct?

A. That's what it says.

Q. And that would be one half of your management fee would be, therefore, payable to Kelco for the clients that Kelco brought into the partnership; is that true?

A. That's what it appears, yes.

Q. Okay. So there's a total of 90,473.25 of which 45,236.62 would go to Kelco, correct?

A. Correct.

Q. And then in the upper right-hand corner.

A. Just point if you could.
Q. Sure. Right there.
A. Yes.
Q. It looks like the payments were actually made pursuant to these four checks showing 45,236.63 paid and no balance due to them, correct?
A. That's what it shows.
Q. And here in the next column it shows gross fees year to date per Sullivan & Powell in 2002 of 193,946.75, correct?
A. That's what it says on this paper.
Q. And who did these calculations?
A. All depends on the year.
Q. In 2002 who would have been doing them?
A. I can't remember when my partner passed away.
Q. But prior to Mr. Powell's death, did Mr. Powell handle this part of the business?
A. Yes.
Q. After he passed away who handled it?
A. Susan Moss.
Q. Under your supervision?
A. Absolutely.
Q. So now we have under the Sullivan & Powell calculation.

Q. So M.D. Sullivan now would get 20 percent instead of the 10 percent, right?

A. Correct.

Q. And when you said you made decisions in terms of what to do with the money, did you make any decisions concerning paying Bette Anne Powell or any of their partner's kids?

A. Correct.

Q. And what was that decision?

A. I don't remember. I think I gave her around 5,000 a month and paid other bills, like health insurance and other things.

Q. And the records of Michael D. Sullivan & Associates, I mean, I asked about the computers, right?

A. Uh-huh.

Q. And of course, you wouldn't let the partners in. But the actual records of Michael D Sullivan & Associates, those were not made available to partners either, right?

A. I have no idea who had seen it. All the books and records were together, if someone wanted to come in and inspect the books, all my records were there.

Q. For Michael D, Sullivan & Associates?

A. The book was right next it if they wanted to see it.

Q. My question is that if someone wanted to come in and see the books of Michael D. Sullivan & Associates, they could have come in and see those, okay? I'm not talking about S&P and P&S, I'm talking about the Michael D. Sullivan & Associates.

A. My book was right next to all the books.

Q. Okay. You're not aware of anyone actually looking at the Michael D. Sullivan & Associates records, are you?

A. I wouldn't have any idea.

Q. And there was one point in time when certain books and records got copied and sent over to an accountant, correct? Are you familiar at a point in time when one or more of the partners obtained certain copies of the S&P or P&S records?

A. I don't know what you're referring to. Could you --

Q. Yeah, okay. Was there ever a point in time where the Festus Foundation and perhaps others obtained certain copies of the books and records of S&P and P&S?

A. Well, they wanted the records brought over with a third party to look at.

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.
_____/

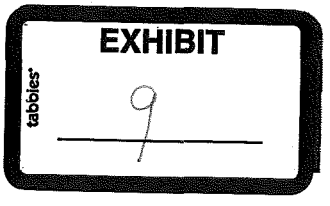
AFFIDAVIT OF STEVEN JACOB

STATE OF FLORIDA }
ss:
COUNTY OF BROWARD }

Steven Jacob, being duly sworn deposes and says:

1. I am a defendant in this action together with Steven F. Jacob CPA & Associates, Inc., a Florida corporation. I submit this affidavit in support of defendants, Frank Avellino ("Avellino") and Michael Bienes' ("Bienes") Motion for Summary Judgment as to Count IV of the Fifth Amended Complaint. The allegations set forth herein are based upon my personal knowledge.

2. I am advised that an issue in connection with the summary judgment motion is when partners of the plaintiff partnerships, P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P") (collectively, the "Partnerships"), knew or could reasonably have discovered that payments which were originated from the Partnerships were made to Avellino and Bienes.



3. I have sublet an office space in the same space as the Partnerships since 2004. In connection with my accounting practice I have acted as a trustee and financial advisor for various clients. In or about 1997, I became aware through Michael Sullivan, the then managing partner of the Partnerships, of the Partnerships' investment with Bernard L. Madoff Investment Securities, LLC ("BLMIS"). After conducting an investigation of this investment opportunity, I provided clients of mine the opportunity to invest in the Partnerships.

4. In connection with my clients' investments in the Partnerships, for the time period 1998 through 2008, I regularly reviewed the books and records of the Partnerships which, at all times were in the offices of the Partnerships and available for review and inspection by me and all partners of the Partnerships.

5. The partnership agreements for the Partnerships provided that the managing partners were entitled to 20% of the profits from the Partnerships' investments, which were referred to as the "Management fees". At some point in time, Michael Sullivan and Gregg Powell, who was a managing partner with Michael Sullivan until his death in 2003, began to pay a portion of their 20% profits to certain partners and others. Approximately ten individuals, including me, received such payments. Frank Avellino and Michael Bienes also received such payments.

6. The majority of the Management fees owed to Michael Sullivan were paid by the Partnerships to him through payments to Michael D. Sullivan & Associates ("MDS"), an entity formed by Michael Sullivan and from which Michael Sullivan made the payments to the others with whom he shared a portion of his Management fees. The books and records of the Partnerships reflected the payments Michael Sullivan made of a portion of his Management fees

to others through MDS, including the payments to Avellino and Bienes. These records were maintained both electronically on the Partnerships' computers and also in hard copy.

7. The payment of a portion of the Management fees to others were reflected in several places in the Partnerships' books and records. Every investor received regular statements on their account which included a line item of "Management Fee Expense." An example of such a statement is the S&P statement to Ersica P. Gianna, dated April 19, 1999, a copy of which is attached hereto as Exhibit "A". Additionally, each partner who received a payment of a portion of the Management fees received a statement reflecting the calculation of such fees that accompanied the payment. An example of such a statement is the statement for Abraham Newman, which is attached hereto as Exhibit "B". Account statements were also maintained for each investor which reflected the Management fees paid. An example of such statements is P&S account statement for investors/partners, Edith and Sam Rosen, attached hereto as Exhibit "C".

8. Other records of the Partnerships also included the payment of the Management fees of those who received such fees. For example, a record of Management fees paid to Avellino and Bienes is attached hereto as Exhibit "D". This record, which specifically identifies the payment of Management fees to Avellino and Bienes, was included in records maintained by the Partnerships, available for inspection by any partner and observed by me from my review of the Partnerships' books and records.

9. The records reflecting the calculation of the Management fees paid to others were also contained in the books and records of the Partnerships. An example of such records is the 2005 Management Fees Calculation attached hereto as Exhibit "E".

10. After the death of Gregg Powell, Susan Moss was a part time bookkeeper who assisted in maintaining the books and records of the Partnerships. Ms. Moss was assisted by the Partnerships' outside accountant, Michael Kuzy. On occasions I would answer questions and provide assistance to Ms. Moss when she requested.

11. Aside from the Partnerships' records that reflected the Management fee payments to Avellino and Bienes being available at all times for inspection by the partners, I am aware that partners of the Partnerships actually inspected the Partnerships' records. In the Fall of 2008, Patrick Kelly, acting on behalf of the Festus & Helen Stacy Foundation, Inc. (the "Foundation"), which was an investor and a partner in the Partnerships, together with Susan Davis, the CPA for the Foundation, visited the Partnerships' offices and reviewed the books and records. Ms. Davis had previously reviewed the Partnerships' books and records years earlier. I did not actually observe what records they chose to review but all of the Partnerships' records, including those that reflected Management fee payments to Avellino and Bienes, were among the Partnerships' records available for their inspection. After such inspection, Mr. Kelly and Michael Sullivan had a discussion about the payment of Management fees, at which I was present. Michael Sullivan told Mr. Kelly of his sharing of Management fees with others, including Avellino and Bienes, and Mr. Kelly expressed an interest in having other clients of his invest in the Partnerships, as well as in whether he could be a recipient of such fees.

12. In December 2008, the BLMIS Ponzi scheme was made public. At that time, Michael Sullivan had been out of the office for knee replacement surgery and unable to address the multiple issues that arose as a result of such debacle. I agreed to assist in responding to the numerous calls from the partners and thereafter, assist in compiling the records to support the

Partnerships' claims filed with Mr. Picard, the BLMIS trustee. I also assisted in compiling information for the partners to enable them to file individual claims. I also helped in compiling records of the Partnerships in response to a document request from the SEC.

13. In November, 2011, the Foundation insisted and directed that the records of the Partnerships be provided to Ali Ansari, an accountant the Foundation retained to conduct a forensic audit of the Partnerships. Included in the records provided Mr. Ansari were the records described above which reflected the payment of Management fees to others, including Avellino and Bienes. I am not aware whether an audit was ever conducted. Had a review of the records been conducted, the payment of Management fees to Avellino, Bienes and others would have been readily ascertained. I was advised that in May, 2012, the records that were previously provided to Mr. Ansari were turned over to the Berger Singerman law firm. Nevertheless, the accountant on behalf of the Foundation was in actual possession of the Partnership records, including those which reflected the payment of Management fees to Avellino and Bienes, as far back as November, 2011. This is confirmed by the undated letter sent to the partners by Brett Stepelton, a principal of the Foundation, and others in the summer of 2012, a copy of which is attached hereto as Exhibit "F". While the letter complains of not receiving the electronic records, it states that the documents that were provided (which were the documents provided to Mr. Ansari in November, 2011) "... indicate that Mr. Sullivan paid management fees to Frank Avellino and Michael Bienes...".

14. After Michael Sullivan was removed as managing partner of the Partnerships, there were several claims made, including those from the Conservator who was appointed to

liquidate the Partnerships, that records of the Partnerships were not disclosed or provided. I am not aware of what records were claimed not to have been provided but I do know that the records that were provided contained the records described above which reflected the Management fee payments to Avellino and Bienes.

Steven Jacob

STATE OF FLORIDA
COUNTY OF BROWARD

Sworn to and subscribed before me this 5 day of December, 2016, by Steven Jacob, who is:

___ personally known to me or who has
___ produced Drivers License as identification.

MICHAEL D. SULLIVAN
Notary Public - State of Florida
My Comm. Expires Jan 9, 2018
Commission # FF 062110
Bonded Through National Notary Assn.

Notary Public

Michael D Sullivan
Printed Notary Name

My Commission Expires:

Jan. 9, 2018

April 19, 1999

S & P Associates, General Partnership
c/o Sullivan & Powell
Port Royale Financial Center
6550 North Federal Highway
Suite 210
Ft. Lauderdale, FL 33308
(954) 492-0088 fax (954) 938-0069

Ersica P. Gianna
3101 NE 47 Court, #102
Ft. Lauderdale, FL 33308-5348

SSN/FEI
262-72-7791

NOTE: This report is provided to assist you in evaluating the performance of your account and should NOT be used for Income Tax purposes.

Activity/ Status Report
1/1/99 to 3/31/99

Balance Forward 12/31/98	210,681.28
Deposits	0.00
Withdrawals	-6,233.86
*Miscellaneous Expenses	0.00
Management Fee Expense	-2,425.32
Adjustments	0.00
Realized Gain/Loss for Current Year	11,956.67
Realized Ending Balance	213,978.77
Unrealized Gain/Loss on Open Securities	169.92
TOTAL REALIZED/UNREALIZED BALANCE	$214,148.69

NET ANNUALIZED RETURN 18.68%

*Miscellaneous Expenses include legal and accounting fees, taxes, and bank service charges.

All data subject to verification. Please review data for discrepancies. Please note that the ending balance may not represent your actual capital account balance. Rather, it represents your balance, subject to the terms of your agreement, assuming a liquidation of the portfolio.

EXHIBIT
tabbies
A

9512 S&P Assoc/ Mgt. fees to Abraham Newman (after 3/23/95)

	A	B	C	D	E	F	G	H	I
1	Account	Name	YTD Mgt. fee	1/1/95	3/23/95	12/31/95	Amt due	paid YTD	Balance due
2	B53-N	Braun	188.10				73.12	41.82	31.30
3	C29-N	Chase	665.98				258.89	175.41	83.48
4	G24-N	Gordon	947.38				368.26	243.81	124.47
5	J30-N	Jacobs	554.86				215.69	132.61	83.08
6	R27-N	Rothbaum	393.56				152.99	102.04	50.95
7	S28-N	Santamarie	331.09				128.71	87.21	41.50
8	S55-N	Siegel	221.55				86.12	45.95	40.17
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19					TOTALS		1,283.81	828.85	454.96
20									(enclosed)
21	You will receive a 1099-MISC for $828.85 for fees paid to you in 1995.								
22									SJT
23									2/6/96
24									#36197
25									

EXHIBIT
tabbies
B

SP-Rosen5520130000001

SUMMARY OF ACCOUNT

P&S Associates General Partnership

Account: Edith and Sam Rosen

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance	Management Fees	Miscellaneous Fees
Rosen						
1993		$ 30,000.00	$ (3,466.58)	$ 26,533.42	$ 946.61	$ -
1994	$ 26,533.42	$ -	$ (3,643.33)	$ 22,890.09	$ 968.74	$ 189.23
1995	$ 22,890.09	$ -	$ (3,708.27)	$ 19,181.82	$ 1,020.13	$ 62.00
1996	$ 19,181.82	$ -		$ 19,181.82	$ 1,137.41	$ 95.29
1997	$ 19,181.82	$ -		$ 19,181.82	$ 1,497.07	$ 25.44
1998	$ 19,181.82	$ -		$ 19,181.82	$ 1,029.51	$ 19.72
1999	$ 19,181.82	$ -		$ 19,181.82	$ 2,014.09	$ 82.53
2000	$ 19,181.82	$ -		$ 19,181.82	$ 1,586.88	$ 46.44
2001	$ 19,181.82	$ -		$ 19,181.82	$ 1,775.72	$ 135.40
2002	$ 19,181.82	$ 33,000.00		$ 52,181.82	$ 1,865.09	$ 33.84
2003	$ 52,181.82	$ 80,000.00	$ (150,000.00)	$ (27,818.18)	$ 1,129.43	$ 88.61
2004	$ (27,818.18)	$ 385,000.00	$ (55,000.00)	$ 302,181.82	$ 5,563.47	$ 145.93
2005	$ 302,181.82	$ -		$ 302,181.82	$ 7,627.52	$ 122.95
2006	$ 302,181.82	$ -		$ 302,181.82	$ 10,260.74	$ 103.95
2007	$ 302,181.82	$ 30,000.00		$ 332,181.82	$ 10,754.35	$ 117.12
2008	$ 332,181.82	$ -	$ (150,000.00)	$ 182,181.82	$ 8,885.95	$ 1,500.01
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Ending Balance= $ 120,843.39

tabbies

EXHIBIT

CONFIDENTIAL

08-13-15_PLAINTIFFS_0017557

0603 S1 Associates, G/P - Mgt. fees to A7/18/2013

Acct #	Name	YTD Mgt. fee	@50%	from 2000	from 2001	from 2002	Paid	Accrued Amt.
A01	Alves	490.66	245.33					245.33
J147	Judd	1,005.87	502.94					502.94
								0.00
SPJ 037	Jordan	20,908.75	10,454.38					10,454.38
SPJE038	Esteban, F	135.26	67.63					67.63
SPJE039	Esteban, M	3,773.95	1,886.98					1,886.98
			0.00					0.00
								0.00
TOTALS		26,314.49	13,157.25	0	0	0.00		13,157.25
Beines 50% of $		6,578.63			Avellino	6,578.63		
					less Wills	-3,000.00		
						3,578.63		

P&S & S&P_OUTSIDE COMMISSION_000536

EXHIBIT
tabbies
D

CONFIDENTIAL

Ave06279RTP

08-13-15_PLAINTIFFS_0011793

P&S_BANK REG_GL_000453

2005 P&S Mgt. Fees Calculation (corrected) 4/20/05

	A	B	C	D	E	F
1	1st. Quarter					
2	Realized P/L		341,904.10		Due Kelco YTD	12,026.68
3	Unrealized P/L		8,708.75			
4	sub-total		350,612.85		pd Kelco YTD:	
5					#2217	12,026.68
6	x.20 2005 earnings		70,122.57			
7						
8	Accrued fees from 2004					
9	check #:	check date:	amount:			
10	*2191	1/31/05	20,341.48			
11	2196	2/23/05	57,576.60		Balance due Kelco	0.00
12	gement fees 2005					
13	check #:	check date:	amount:			
14	*2191	1/31/05	9,656.52		Michael D. Sullivan	
15	2198	3/21/05	15,000.00		Total Fees Due YTD	70,122.57
16	2218	4/5/05	35,000.00		Less Kelco portion	-12,026.68
17					Fees Due MDS	58,095.89
18					Less Fees pd YTD	-59,658.52
19					Fees Due MDS	-1,562.63
20					Accrued fees due A&B	12,771.64
21					Accrued fees due MDS	-14,334.27
22						
23						
24						
25						
26						
27	TOTAL		59,656.52			
28						
29						
30						
31						
32	Kelco Clients	YTD Mgt. Fee				
33	Bogaert #1	231.61				
34	Bogaert #2	657.97			Based on .0412 @ 80%	
35	Bogaert #8	135.61			Fees projected thru 1st Qtr	70,122.57
36	Bulger	913.25			Less fees paid YTD	84,456.85
37	Centro de Capacitacao	77.74			Balance of Projected fees due	-14,334.27
38	Costa	1,582.08			NET OF ALL FEES comp.	
39	Crawley	0.00				
40	Frank	424.92				
41	HG Compassion	3,785.39				-14,334.27
42	HG Congress	25.28				
43	HG Int'l #1	767.62				
44	HG Int'l #2	5,662.89	Accrued to A&B from 2000, 2001 & 2002			0.00
45	HG Ireland	1,857.57			Due from Current Year	12,771.64
46	HG Ireland/Kenema	252.10			TOTAL	12,771.64
47	HG Mombasa	616.48			paid A&B	0.00
48	HG Pastoral Juvenil	377.64				
49	HG SW Brazil	3,213.01				12,771.64
50	Kelly	178.00			Accrued A&B YTD	0.00
51	Kelly Trust	534.13				
52	Melchan	1,371.67				
53	Nickens	406.10				
54	Parabeguia-Santa Luzia	47.22				
55						
56	* Split ck. for 2004 & 2005 Fees.					

EXHIBIT
tabbies
E

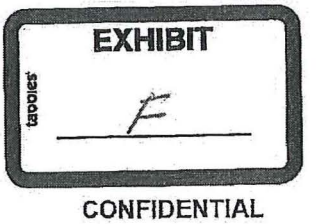
Dear Partner:

Many of you are in receipt of an August 3, 2012 letter from Michael D. Sullivan, the current Managing General Partner of S&P Associates and P&S Associates (together, the "Partnerships"). In that letter, Mr. Sullivan argues that changing the Managing General Partner at this time is not productive and would be a waste of the Partnerships' resources.

It is not surprising that Mr. Sullivan has taken this position. For the better part of the past two years, a group of investors who collectively lost millions of dollars of their investments in the Partnerships have sought more information from Mr. Sullivan concerning his management of the Partnerships. Each Partner has the right to ask for this basic information pursuant to the terms of the Partnership Agreements. Among other things, we have sought complete copies of the general ledgers and banking records as well as all electronic accounting records for the Partnerships. To date, and despite repeated requests, electronic accounting records pertaining to the Partnerships have not been received. Instead, Mr. Sullivan provided these Partners with a collection of disorganized boxes of files which allegedly constituted the entirety of the Partnerships' books and records.

Putting aside the troubling fact that Mr. Sullivan apparently cannot access the electronic records maintained for the Partnerships, a review of the boxes of Partnership files have revealed the following significant concerns. It is important to note that these findings are based on a preliminary review of the documents, which findings may or may not ultimately prove correct following a comprehensive analysis of the books and records:

- The documents indicate that Mr. Sullivan paid management fees to Frank Avellino and Michael Bienes, two individuals who have been prohibited by the Securities and Exchange Commission from participating in the sale of securities. The documents indicate that Mr. Avellino was given a significant, and inappropriate, level of control over the Partnerships. Indeed, in a lawsuit filed by the Trustee for the Liquidation of Bernard L. Madoff Investment Securities, LLC ("BLMIS"), the Trustee alleges that despite the prohibition imposed by the SEC, Mr. Avellino and Mr. Bienes found people such as Mr. Sullivan who were willing to act as "front men to operate partnerships so that they could continue to raise and pool money from others to invest with BLMIS but avoid the scrutiny of the regulators." The lawsuit specifically references S&P and P&S as examples of investment vehicles in which such a "front" was used.
- Based upon a preliminary review of the books and records, Mr. Sullivan paid himself and entities that he controlled over $8 million in "management fees."
- Review of the tax returns filed for P&S reveal that since inception charitable contributions in excess of $750,000 were disbursed to a single entity.
- Mr. Sullivan maintained other investment funds, including SPJ Investments, Ltd., JS&P Associates, General Partnership, and Guardian Angel Trust, LLC. For some unknown reason, these entities held millions of dollars of Partnership assets and filed separate tax returns but the books and records for each of these entities are virtually non-existent.
- Based on a review of the documents, millions of dollars were never even invested in BLMIS, contrary to Mr. Sullivan's obligations and responsibilities under the Partnership Agreements.



- Other individuals were paid "commissions" for the referral of additional partners. These commissions appear to have been paid from Partnership assets.
- Significant documents from 1999 through 2002 and 2004 are missing.

In short, many millions of dollars of Partnership assets are simply unaccounted for. It is important to note that this is neither an exhaustive list of the potential issues with the Partnerships, nor have the Partners been given the benefit of full access to the various Partnerships' books and records, despite repeated requests. Further investigation is certainly required.

To assist in this investigation, many partners have suggested the appointment of Margaret Smith as Managing General Partner. Ms. Smith is a Certified Public Accountant, she is accredited in business valuation, a Certified Valuation Analyst, a Certified Fraud Examiner, a Certified Insolvency and Restructuring Advisor and Certified in Distressed Business Valuation. In the event Ms. Smith, together with the Partnerships' attorneys, determine that there was indeed no malfeasance by Mr. Sullivan or others associated with the Partnerships, then no further action will be taken. If, however, the concerns above are borne out, then the Managing General Partner will have a responsibility to ensure that appropriate action is taken in order to maximize the assets of the Partnerships. This may include seeking the return of funds improperly disbursed, which funds would then be distributed to the Partners, or it may involve the filing of a lawsuit to recover these assets on behalf of the Partnerships. Very simply, many of your fellow Partners do not believe that Mr. Sullivan is best situated to perform this investigation and to determine the best course of remedial action. To that end, many of the Partners believe that his removal is appropriate.

To the extent you have already provided a signed proxy, thank you. If you wish to send in your proxy at this time, of course you may do so. Please send a copy to:

Leonard Samuels
c/o Berger Singerman, LLP
350 East Las Olas Boulevard
Suite 1000
Fort Lauderdale, FL 33301

Regards,

Roger Bond

Matt Carone

Janet Jordan

Brett Stepelton

Elaine Ziffer
&

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.
_____/

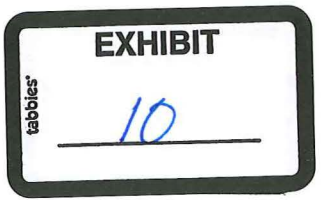
AFFIDAVIT OF MICHAEL SULLIVAN

STATE OF FLORIDA }
ss:
COUNTY OF BROWARD }

Michael Sullivan, being duly sworn deposes and says:

1. I was a defendant in this action. I was the founder and managing partner of the plaintiff partnerships, P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P") (collectively, the "Partnerships"). I submit this affidavit in support of defendants, Frank Avellino ("Avellino") and Michael Bienes' ("Bienes") Motion for Summary Judgment as to Count IV of the Fifth Amended Complaint. The allegations set forth herein are based upon my personal knowledge.

2. I have reviewed the affidavit of Steven Jacob, sworn to December 5, 2016, submitted in support of the motion, together with the documents attached; it is true and accurate. As set forth in Steven Jacob's affidavit, the documents reflecting management fees paid to me through Michael D. Sullivan & Associates, as well as the payments of a portion of those



management fees paid to others, including Frank Avellino and Michael Bienes, were clearly reflected in the books and records maintained by the Partnerships. The Partnership books and records were available to all partners of the Partnerships at all times, and partners, including the Festus & Helen Stacy Foundation (the "Foundation"), actually reviewed and inspected the Partnership books and records prior to the exposure of Madoff's Ponzi scheme in 2008.

3. I am aware that when my deposition was conducted in this case on December 17, 2015, I did not testify that the payments made to Avellino, Bienes and others were in the records of the Partnerships. At that time I was not shown any of the records of the payments of the Management fees. I have since reviewed the documents attached to Steven Jacob's affidavit and confirm that they are records maintained by the Partnerships that reflect the payment of Management fees to others, including Avellino and Bienes. I was unclear about this at my deposition because I knew that the majority of the Management fees paid to others were made from my company, Michael D. Sullivan & Associates, with some previously paid by Sullivan & Powell/Solutions in Tax (collectively, "MDS"), after the Management fees were paid to me by the Partnerships. However, the Partnerships' records also reflect the payments to others as confirmed by the documents attached to Steven Jacob's affidavit.

4. On June 25, 2014, I entered into a Confidential Settlement Agreement (the "Agreement") with Plaintiffs, a redacted copy of which is attached hereto as Exhibit "A". By the Agreement, I agreed to the entry of a $50,000 judgment against me. The Agreement further provided that upon the Conservator filing a satisfaction of the judgment the release provisions of the Agreement became effective. On March 13, 2015, Plaintiffs recorded the satisfaction of the judgment entered against me, and thus, the release provisions in paragraph 6 of the Agreement

became effective. A copy of the satisfaction is attached hereto as Exhibit "B". Accordingly, Plaintiffs, including the Conservator and the Partnerships, "... fully, finally and forever released, relinquished, settled and discharged ... all claims, demands, causes of action ... damages ... [or] liability of any nature whatsoever..." which they had against me and MDS. Ex. B, ¶6.

5. I understand that Count IV of the Fifth Amended Complaint purports to assert a claim for Avoidance of Fraudulent Transfer pursuant to § 726.105(1)(a), Florida Statutes, and seeks to recover from Avellino, Bienes and Steven Jacob a portion of my Management fees that I paid to them and alleges that I made such payments to them "... with actual intent to hinder, delay or defraud a creditor of the Partnership." Amended Complaint, ¶ 82. That is completely false; I had no such intent.

6. First, pursuant to the partnership agreements of the Partnerships, I was entitled to 20% of the profits of the Partnerships as a Management fee. The calculation of the 20% of the profits was accurately determined and reviewed and approved by the Partnerships' outside accountant, Mike Kuzy. Upon payment of the Management fees to me that I earned and to which I was entitled I was free to do as I wished with such funds. To whom I subsequently provided a portion of my Management fees is of no right or interest of Plaintiffs.

7. At no time when I was sharing a portion of my Management fees with others did I have any intent to "hinder, delay or defraud a creditor of the Partnerships" when making such payments. I am not aware that the Partnerships, MDS or I had any creditor that could be defrauded by the payment of Management fees to me. While it is true that the Partnerships invested with Madoff which was revealed to be a Ponzi scheme, Plaintiffs agree that I had no knowledge that Madoff was operating a Ponzi scheme. Ex. B, ¶9. Further, if Plaintiffs contend

that I or MDS were the debtors that were purportedly defrauding a creditor, at the time I paid a portion of my Management fees to others, I do not know who such a creditor could be. I had not been sued nor been threatened to be sued, and I had no knowledge then, nor do I now, that there was any "creditor of the Partnerships" or of me or MDS that I was purportedly defrauding at the time I made such payments.

8. At no time did I disburse all of my Management fees. I retained the majority of the Management fees and was able to pay my debts as they became due and owing. At the time I was sharing a portion of my Management fees with others, my assets and those of MDS exceeded the sum of our debts, and neither I nor MDS incurred a substantial debt shortly before or after I shared a portion of my Management fees with others.

9. The payments to Avellino and Bienes of a portion of my Management fees were made by me through MDS. Avellino and Bienes had no involvement whatsoever with MDS. They were not general partners of MDS; they are not relatives of any partner of MDS; they did not control MDS.

10. As set forth in Steve Jacob's affidavit and as I am confirming here, partners of the Partnerships had the opportunity to know of the payment of my Management fees as well as the sharing of a portion of my Management fees with others, including Avellino and Bienes, because such payments were reflected in the Partnerships books and records that were at all times available to the partners. Additionally, prior to the revelation of Madoff's Ponzi scheme in December 2008, I had discussions with partners, including Sean and Doug Stepelton of the Foundation, about the sharing of Management fees, including, specifically, sharing with Avellino and Bienes. Again,

The Foundation was a partner of the Partnerships who had actual knowledge of the payment of Management fees to Avellino and Bienes prior to December, 2008.

Michael Sullivan

STATE OF FLORIDA

COUNTY OF BROWARD

Sworn to and subscribed before me this 5th day of December, 2016, by Michael Sullivan, who is:

✓ personally known to me or who has
___ produced _____ as identification.

Notary Public

Beth Piana

Printed Notary Name

My Commission Expires:

BETH PIANA
MY COMMISSION # EE 849045
EXPIRES: December 9, 2016
Bonded Thru Notary Public Underwriters

CONFIDENTIAL SETTLEMENT AGREEMENT

This Confidential Settlement Agreement and Release (the "Agreement") is made and entered into by and between MICHAEL D. SULLIVAN ("Sullivan") and MICHAEL D. SULLIVAN & ASSOCIATES, INC ("MDS"), on one hand (collectively "Defendants"), and PHILIP VON KAHLE, AS CONSERVATOR OF P&S ASSOCIATES, GENERAL PARTNERSHIP AND S&P ASSOCIATES, GENERAL PARTNERSHIP ("Conservator"), P&S ASSOCIATES, GENERAL PARTNERSHIP ("P&S"), and S&P ASSOCIATES, GENERAL PARTNERSHIP ("S&P"), on the other (collectively "Plaintiffs"). Plaintiffs and Defendants are together referred to as the "Parties."

RECITALS

A. On or about December 10, 2012, a civil action was commenced against Sullivan and MDS, among others, relating to payments made by P&S and S&P, in that certain case styled *P&S Associates, General Partnership and S&P Associates, General Partnership, Plaintiffs v. Michael D. Sullivan, et al.*, Case No. 12-034123 (07) (the "Action").

B. The Parties have agreed to fully and finally resolve all disputes between them, including the claims set forth in the Action, without an admission of liability on the part of Defendants.

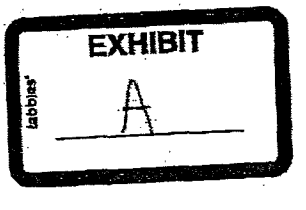
NOW, THEREFORE, for good and valuable consideration as well as the mutual covenants and agreements described herein, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. Recitals. The foregoing recitations are true and correct and are incorporated herein by reference.

2. Prior Disclosures. Prior to entering into this Agreement, the Conservator received and reviewed certain financial statements and disclosures provided by Sullivan. The Conservator's review of those financial statements and disclosures and Sullivan's representation that such financial statements and disclosures are true and accurate was a material factor in the Conservator's decision to enter into this Agreement, and the Conservator justifiably relied on the financial statements and disclosures provided by Sullivan prior to entering into this Agreement.

3. Judgment. Sullivan agrees to entry of a consent judgment against him in the amount of [redacted] (the "Judgment") within 45 days from execution of this Agreement. The Plaintiffs agree to forebear from collection activities related to the Judgment through and until April 1, 2015 (the "Forbearance Period"). The Plaintiffs will not record the Judgment during the Forbearance Period.

4. Satisfaction of Judgment. On March 1, 2015, Sullivan will provide a financial affidavit setting forth his complete financial condition as of that date (the "Affidavit"). The Conservator will review the Affidavit. Within 30 days from the receipt of the Affidavit, the Conservator will advise Sullivan if he will seek to collect on the Judgment after the expiration of



the Forbearance Period. If, after reviewing the Affidavit, the Conservator determines in his good faith, reasonable, business judgment that Sullivan does not have the financial ability to pay the Judgment, the Conservator will enter a satisfaction of Judgment (the "Satisfaction").

5. Court Approval. The Parties agree to seek Court approval of the terms of this Agreement. This Agreement is subject to approval by the Court. In the event that this Agreement is not approved by the Court, the Parties shall be returned to the *status quo ante* prior to their entry into this Agreement, and this Agreement shall be deemed null and void.

6. Release. The "Plaintiff Releasors" under this Agreement shall mean the Conservator, P&S, and S&P. The "Defendant Releasees" under this Agreement shall mean Sullivan and MDS, including its past and present officers and directors. Upon the entry of the Satisfaction, without further action by anyone, for good and valuable consideration, including that set forth above, the receipt of which is hereby acknowledged, Plaintiff Releasors, on behalf of themselves, shall be deemed to have, and by operation of law shall have, fully, finally and forever released, relinquished, settled and discharged as to each and every one of the Defendant Releasees all claims, demands, causes of action (whether direct, indirect or otherwise in nature), damages whenever and however incurred, liability of any nature whatsoever (including costs, expenses, penalties and attorneys' fees) whether asserted or otherwise, known or unknown, suspected or unsuspected, accrued or unaccrued, derivative or direct, whether in law, equity or otherwise from the beginning of the world to the date the Agreement is executed. Notwithstanding the foregoing, this Release shall not release Defendants' obligations under this Agreement. Upon the entry of the Satisfaction, without further action by anyone, for good and valuable consideration, including that set forth above, the receipt of which is hereby acknowledged, Defendants, on behalf of themselves, shall be deemed to have, and by operation of law shall have, fully, finally and forever released, relinquished, settled and discharged as to each and every one of the Plaintiff Releasors all claims, demands, causes of action (whether direct, indirect or otherwise in nature), damages whenever and however incurred, liability of any nature whatsoever (including costs, expenses, penalties and attorneys' fees) whether asserted or otherwise, known or unknown, suspected or unsuspected, accrued or unaccrued, derivative or direct, whether in law, equity or otherwise from the beginning of the world to the date the Agreement is executed. Notwithstanding the foregoing, this Release shall not release Plaintiffs' obligations under this Agreement

7. Meeting. Within 3 business days of the execution of this Agreement, and as requested by Plaintiffs thereafter, Defendants agree to meet with Plaintiffs. At these meetings, Defendants agree, as they are able, to cooperate with and assist Plaintiffs in Plaintiffs' evaluation, advancement, and prosecution of claims and causes of action that Plaintiffs have or may have against the non-settling defendants in the Action or which the Conservator may pursue in the future on behalf of P&S and S&P. Such assistance and cooperation shall include, without limitation, (i) meeting with Plaintiffs to answer Plaintiffs' questions, if answers are known, and (ii) providing Plaintiffs with any and all documents relevant to Plaintiffs' questions. During the Parties' meeting on June 25, 2014, the Parties will identify dates no later than 30 days from the date of that meeting whereby Defendants shall provide answers to questions that are transcribed under oath.

8. Confidentiality. The Parties agree that, while they may disclose the fact that they have settled, they will keep the terms and conditions of this Agreement and all related negotiations strictly confidential; provided however, that the Parties shall be able to make disclosures regarding this Agreement to the extent that any such disclosures are required (i) to obtain *in camera* Court approval of this Agreement; (ii) by a binding court order or other compulsory process, providing that the disclosing Party uses reasonable efforts to notify the other Party of a formal request made by any person or entity for such an order or other compulsory process as soon as practical after the request has been made, and the disclosing Party makes all reasonable efforts to object to the disclosure and to quash any efforts to have the Agreement disclosed, (iii) in the normal course of business of one or more of the Parties to their respective insurers, auditors, accountants, tax representatives, attorneys, financial advisors, financial institutions or lending institutions; (iv) by any Party to enforce any term or condition of this Agreement; or (v) as otherwise required by law.

9. Non-Disparagement. Plaintiffs agree that they do not believe that Sullivan was aware that BLMIS was operating a ponzi scheme prior to Madoff's arrest on December 11, 2008. Plaintiffs agree not to represent that Sullivan knew that BLMIS was a ponzi scheme prior to Madoff's arrest on December 11, 2008.

10. No Admission. The Parties agree and acknowledge that nothing contained herein shall be deemed an admission or concession of liability or wrongdoing or any other form of admission with respect to any matter, thing or dispute whatsoever.

11. Miscellaneous. Each individual executing this Agreement below represents and warrants that he or she is fully authorized to (i) execute and deliver this Agreement to the other party on behalf of the party for which he or she is signing and (ii) legally bind the party for which he or she is signing. Each party to this Agreement has consulted with legal counsel regarding the scope and meaning of the terms and conditions set forth herein. This Agreement shall be deemed to have been jointly drafted by the Parties and no ambiguity or claimed ambiguity shall be resolved against any other party on the basis that such party drafted the language claimed to be ambiguous. This Agreement may be signed in two or more duplicate originals, which, taken together, shall constitute but one agreement and any fully executed original of which shall be deemed to be an original. The Parties agree that neither has assigned, pledged, sold or transferred or otherwise conveyed any right, claim, or interest that they have or may have in any matters released herein.

12. Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Florida.

13. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any other agreement or understanding of the Parties with respect to the matters contained herein. This Agreement may not be changed, altered or modified except in writing signed by the party against whom enforcement of such change would be sought.

14. Further Assurances. The Parties shall execute such further documents and do any and all such further things as may be necessary to implement and carry out the intent of this Agreement.

[signature page follows]

P&S ASSOCIATES, GENERAL PARTNERSHIP

By: _____

Name: Philip VonKahle

Its: Conservator

Dated: June 25, 2014

S&P ASSOCIATES, GENERAL PARTNERSHIP

By: _____

Name: Philip VonKahle

Its: Conservator

Dated: June 25, 2014

_____

PHILIP VON KAHLE, as Conservator of P&S ASSOCIATES, GENERAL PARTNERSHIP and S&P ASSOCIATES, GENERAL PARTNERSHIP

DATED: June 25 2014

_____

MICHAEL D. SULLIVAN

DATED: 6/25/14

MICHAEL D. SULLIVAN & ASSOC., INC.,

By: _____

Name: Michael D. Sullivan

Its: Principle

Dated: 6/26/14

IN THE CIRCUIT COURT FOR THE
SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY,
FLORIDA

PHILIP J. VON KAHLE, as Conservator of
P&S Associates, General Partnership and
S&P Associates, General Partnership

Plaintiffs,

vs.

MICHAEL D. SULLIVAN, et al.,

Defendants.
_____/

Case No. 12-034123 (07)
Complex Litigation Unit

SATISFACTION OF FINAL JUDGMENT
BY CONSENT AGAINST MICHAEL D. SULLIVAN

This document is signed by Philip J. von Kahle (the "Conservator"), as Conservator for P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P") (together, the "Partnerships" and with the Conservator, the "Plaintiffs") on March 10, 2015.

Plaintiffs acknowledge satisfaction of the judgment signed by the Judge on December 19, 2014 and recorded in Broward County, Official Records Book 51352 beginning at Page 691.

_____
Philip J. Von Kahle, solely in his capacity as
as Conservator for P&S Associates, General
Partnership ("P&S") and S&P Associates,
General Partnership ("S&P)
Date: March 11, 2015

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing signature was acknowledged before me this 11 day of March, 2015, by Philip J. von Kahle (the "Conservator"), as Conservator for P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership who produced his driver's license or _____ as identification.

_____
Notary Public

NADIRA JOSEPH
Notary Public - State of Florida
My Comm. Expires Dec 11, 2017
Commission # FF 075791
Bonded Through National Notary Assn

EXHIBIT
B

IN THE SEVENTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR BROWARD COUNTY, FLORIDA

COMPLEX LITIGATION UNIT

CASE NO: 12-034123(07)

P&S ASSOCIATES, GENERAL PARTNERSHIP, a Florida limited partnership; and S&P ASSOCIATES, GENERAL PARTNERSHIP, a Florida limited partnership; PHILIP VON KAHLE as Conservator of P&S ASSOCIATES, GENERAL PARTNERSHIP, a Florida limited partnership; and S&P ASSOCIATES, GENERAL PARTNERSHP, 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, KELKO FOUNDATION, INC., a Florida non profit corporation, and VINCENT T. KELLY, an individual,

Defendants.
_____/

Deposition of MICHAEL D. SULLIVAN
(Volume I)

Tuesday, December 1, 2015
One Financial Plaza, Suite 2700
Fort Lauderdale, Florida 33394
10:16 a.m. - 1:25 p.m.

CERTIFIED COPY

Reported by:
Lisa Mudrick, RPR, FPR
Notary Public, State of Florida

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Q. Entitled Books and Records on page four. Do you see that?
A. Yes.
Q. Now, was this amended and restated partnership agreement provided to all the partners who joined the partnership?
A. I believe it was.
Q. Okay. And pursuant to paragraph 7.03 did all the partners have the ability to inspect and audit the books and records of the partnership?
MR. SAMUELS: Object to the form of the question.
BY MR. WOODFIELD:
Q. You can answer.
A. Any time they wanted to.
Q. And ultimately, let's say, pick a year, 2007, do you recall approximately how many investors or partners you had in the partnership?
A. Couple hundred. I can't tell you the number.
Q. Now, at any time did any of those partners request to inspect the books and records?
A. Yes.
Q. On how many occasions?
A. Anywhere between five and ten.

Q. Okay. Do you recall some of the specific partners who requested to inspect the books and records?

MR. SAMUELS: Objection, timeframe.

11:04:06 BY MR. WOODFIELD:

Q. You can answer.

A. Yes, I do.

Q. And can you identify any of the ones that you recall that requested to inspect the books and

11:04:16 records of the partnerships?

MR. SAMUELS: Same objection.

THE WITNESS: I cannot, do not remember the names. But there was a group of people in Boca Raton. If I see a list I could probably

11:04:28 tell you a couple of them, in particular, the Festus Stacy, Helen and Festus Stacy, they sent their advisor, Patrick Kelly, in with a CPA. He came and inspected the books and records. I remember him going to our CPA, Ahearn and

11:04:49 Jasco, having conversations with them. And he may have come in one or two times to inspect the books and records.

BY MR. WOODFIELD:

Q. He being who, this individual?

11:04:56 A. Patrick.

MR. SAMUELS: Same objection as to timeframe.

THE WITNESS: Patrick Kelly, who was the financial advisor for the Festus Stacy Foundation.

BY MR. WOODFIELD:

Q. Do you recall when that inspection took place?

A. I believe it was somewhere in July or June, but I don't remember the year. It may have been eight, seven, somewhere around there.

Q. Did it take place in one day or was it multiple days?

A. I believe he made two or three appointments to come in our office. I know I was not in on one of those dates. And I remember him going to the CPA, Mike Kuzy. I don't remember when that was.

Q. Were all of the books and records of P&S and S&P made available for that inspection?

A. All of them.

Q. Okay. And where were the books and records of the partnerships maintained?

A. 6550 North Federal Highway, Suite 210.

Q. And what documents did your accountant

have?

A. He probably would have just had his computer records. He wouldn't have had any physical documents unless it was year end. So if this was in the middle of the year, he would have just had tax returns and things like that on his computer. But he'd have no other records.

Q. Now, you have indicated you thought of the approximate months of this inspection but not the year. Would this have taken place before the public exposure of Madoff --

A. Oh, yeah.

Q. -- being a Ponzi scheme?

A. Yes.

Q. So that would have been sometime before December 2008?

A. Patrick Kelly was looking to make a huge investment into this investment we had, so I think he kind of came with a dual purpose in mind.

Q. Was there any report generated to your knowledge as a result of that audit or investigation or inspection, I am sorry?

A. No, not that I am aware of.

Q. Did you have any subsequent conversations with anyone on behalf of that foundation concerning

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, a Florida limited
Partnership, et al,

Plaintiffs,

vs.

MICHAEL D. SULLIVAN, et al.,

Defendants.
_____/

DEPOSITION OF BRETT STACY STEPELTON
CORPORATE REPRESENTATIVE OF
FESTUS & HELEN STACY FOUNDATION, INC.

TAKEN ON BEHALF OF THE DEFENDANT AVELLINO

DATE TAKEN: Wednesday, March 2, 2016

TIME: 9:32 a.m. - 11:14 a.m.

PLACE: Genovese, Joblove & Battista
200 E Broward Boulevard
Suite 1110
Fort Lauderdale, Florida 33301

Reported by:
April Goldberg, FPR
Notary Public, State of Florida

M Inc.

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investors in S&P made -- requested to review the books and records of the Foundation prior to December 2008?

A. Excuse me?

Q. Okay. Any other -- okay, the Foundation, we've discussed the Foundation --

A. Yeah.

Q. -- didn't request to look at the books and records. What about your knowledge of whether or not any other investors in S&P, Scott Holloway, for example, you mentioned him, are you aware of whether or not any other investors requested to look at the books and records?

A. No.

Q. You're not aware?

A. No.

Q. Prior to December of 2008?

A. Correct.

Q. Do you know who Father Kelly is?

A. Yes.

Q. And who is he?

A. Catholic priest.

Q. And do you know him personally or --

A. No.

Q. You just know of him?

A. Of him, yeah.

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

CASE NO. 12-034123 (07)

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

Plaintiffs,

vs.

MICHAEL D. SULLIVAN, et al.

Defendants.
_____/

DEFENDANTS FRANK AVELLINO AND MICHAEL BIENES' REQUEST TO TAKE JUDICIAL NOTICE

Defendants, Frank Avellino and Michael Bienes (collectively the "Defendants"), by and through their undersigned counsel, pursuant to Sections 90.202 (6), (11) and (12) and 203, *Florida Statutes*, request this Court to take judicial notice of the following in support of their motion for summary judgment:

1. On December 11, 2008, the Madoff Ponzi scheme became public.

The grounds upon which this request is based is that the date of such public disclosure is not subject to dispute and/or is capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned. See, U.S. Securities and Exchange Commission, Office of Investigations, *Investigation of Failure of the SEC to Uncover Bernard Madoff's Ponzi Scheme, Report No. 509* at 1 (Aug. 31, 2009), https://www.sec.gov/news/studies/2009/oig-509.pdf ; and *In re Bernard L. Madoff Inv. Sec., LLC,* 424 B.R. 122 (Bankr. S.D.N.Y. 2010), *aff'd.*, 654 F.3d 229 (2d. Cir. 2011), *reh'g and reh'g en banc denied* (2d Cir. 2011), *cert. denied, Sterling Equities Associates v. Picard,* 132 S.Ct. 2712 (2012).

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2. Verified Complaint filed in *Matthew Carone, et al v. Michael D. Sullivan,* Circuit Court, Broward County, Florida, Case No. 12-24051-07, a copy of which is attached.

WHEREFORE, Defendants request that this Court take judicial notice of the public disclosure of the Madoff Ponzi scheme on December 11, 2008 and the complaint attached.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th 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
Gary A. Woodfield, Esq.
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Attorneys for Defendants Steven F. Jacob and Steven F. Jacob CPA & Associates, Inc.

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

12-24051

CASE NO.
COMPLEX LITIGATION UNIT

07

MATTHEW CARONE, as Trustee for the Carone Marital Trust #2 UTD 1/26/00, Carone Gallery, Inc. Pension Trust, Carone Family Trust, Carone Marital Trust #1 UTD 1/26/00 and Matthew D. Carone Revocable Trust, JAMES JORDAN, as Trustee for the James A. Jordan Living Trust, ELAINE ZIFFER, an individual, and FESTUS AND HELEN STACY FOUNDATION, INC., a Florida corporation,

Plaintiffs,

v.

MICHAEL D. SULLIVAN, individually,

Defendant.
_____/

VERIFIED COMPLAINT

Plaintiff MATTHEW CARONE, as Trustee for the Carone Marital Trust #2 UTD 1/26/00, Carone Gallery, Inc. Pension Trust, Carone Family Trust, Carone Marital Trust #1 UTD 1/26/00 and Matthew D. Carone Revocable Trust, JAMES JORDAN, as Trustee for the James A. Jordan Living Trust, ELAINE ZIFFER, an individual, and FESTUS AND HELEN STACY FOUNDATION, INC., a Florida corporation, (collectively "Plaintiffs") by and through their undersigned attorneys, bring this action for the benefit of P&S Associates, General Partnership ("P&S"), S&P Associates, General Partnership ("S&P") and SPJ Investments, Ltd. ("SPJ"), and sue Defendant, MICHAEL D. SULLIVAN, an individual, and allege as follows:

1. Defendant Michael D. Sullivan ("Sullivan") diverted millions of dollars from the S&P and P&S (the "Partnerships").

2. Now that the Plaintiffs and other partners in each Partnership have overwhelmingly voted to remove Sullivan and are beginning to grasp the breadth of his misconduct, Sullivan seeks to prevent the Partnerships from vindicating their rights by maintaining a choke-hold on the information, assets, books and records of the Partnerships.

3. This action seeks injunctive relief, or alternatively, the appointment of a receiver.

4. The Plaintiffs herein are seeking to enjoin Michael D. Sullivan ("Sullivan") from (i) representing himself as an agent of the Partnerships or acting as Managing General Partner; (ii) withholding access to the Partnerships' books and records; (iii) accessing the Partnerships' assets or interfering with the newly elected Managing General Partner, Margaret J. Smith's access to those assets; (iv) misappropriating assets of the Partnerships for his own benefit; and (v) refusing to acknowledge his removal as Managing General Partner.

PARTIES AND VENUE

5. P&S and S&P are general partnerships. As general partnerships, each partner has a right to manage the affairs of the Partnerships, including the right to sue in Court, either on their own behalf or on behalf of the Partnerships.

6. Plaintiff Matthew Carone brings this action in his capacity as Trustee for the Carone Marital Trust #2 UTD 1/26/00, Carone Gallery, Inc. Pension Trust, Carone Family Trust, Carone Marital Trust #1 UTD 1/26/00 and Matthew D. Carone Revocable Trust (collectively, the "Carone Entities"), each of which is organized and existing under the laws of Florida. The Carone Entities are general partners of P&S.

7. Plaintiff James Jordan brings this action in his capacity as Trustee for the James A. Jordan Living Trust, that is organized and existing under the laws of Florida, and individually. Mr. Jordan is *sui juris* and a resident of Broward County, Florida. The James A. Jordan Living Trust is a general partner of P&S.

8. Plaintiff Elaine Ziffer is *sui juris* and a resident of Broward County, Florida. Ms. Ziffer is a general partner of P&S.

9. Plaintiff Festus and Helen Stacy Foundation, Inc. is a Florida corporation, organized and existing under the laws of Florida. Festus and Helen Stacy Foundation, Inc. is a general partner of S&P.

10. Each of the aforementioned Plaintiffs is a partner and investor in at least one of the two Partnerships for whose benefit this action is being brought, and collectively will be referred to herein as the "Plaintiffs."

11. Defendant Michael D. Sullivan is the former Managing General Partner of the Partnerships. The Partnerships voted to remove Sullivan as Managing General Partner on August 17, 2012. Margaret J. Smith, a Certified Public Accountant with the advisory firm of GlassRatner Advisory and Capital Group, LLC, was elected to replace him. The Partnership Agreements were lawfully amended to reflect this change.

12. Michael D. Sullivan is an individual residing in Broward County and is otherwise *sui juris*.

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

GENERAL ALLEGATIONS

14. Pursuant to the Amended and Restated Partnership Agreements, P&S and S&P were formed for the purpose of engaging in the business of investing. From December 1992 through December 2008, the Partnerships operated for this singular purpose.

15. Like many Ponzi schemes and investment frauds, the roots of the Partnerships were grounded in trust carefully cultivated by Sullivan for years, stemming from his participation in the Church – specifically, Christ Church United Methodist in Fort Lauderdale. The investors trusted Sullivan, and most of them were fellow parishioners of the Church. Sullivan abused this trust to facilitate this scheme.

16. The Partnerships' funds were supposed to be solely invested with Bernard L. Madoff Investment Securities, LLC ("BLMIS"), and were overseen by the Managing General Partners of the Partnerships, Michael D. Sullivan and Greg Powell[1] who had responsibility for the day-to-day operations of the Partnerships as well as maintenance of the Partnerships' property. Moreover, Mr. Sullivan's business associate, Mr. Steve Jacob, has had an unusual influence on the S&P partnership. His apparent involvement with JS&P Associates, General Partnership and Guardian Angel Trust, LLC are of great concern and despite numerous efforts to obtain the records for each they have been denied.

17. Between December 1992 and December 2008, each of the Plaintiffs invested significant funds into the Partnerships, which investments were expected to yield stable, consistent returns.

18. On December 11, 2008, Bernard L. Madoff ("Madoff") was arrested by federal agents and BLMIS was exposed as a $65 billion Ponzi scheme. At the time of Madoff's arrest,

[1] Greg Powell is deceased.

the assets of the Partnerships which were almost entirely invested in BLMIS were determined to be virtually worthless.

19. Pleadings filed by Irving H. Picard, trustee for the liquidation of BLMIS (the "Madoff Trustee"), revealed a discrepancy between the funds invested in Partnerships and the funds invested by Sullivan in BLMIS.

20. For the better part of two years, the Plaintiffs have been attempting to identify the reason for this discrepancy and the diversion of funds. No fully transparent response has been obtained; rather, only partial, evasive and shifting answers have been provided.

21. As described in more detail below, such attempts to recover funds for the benefit of the Partnerships can only be taken if Sullivan is immediately enjoined from continuing to obstruct the Partnerships' access to its own books, records, assets and property, from continuing to hold himself out as a Managing General Partner of the Partnerships, and from continuing to direct the affairs of the Partnerships.

THE INVESTIGATION OF THE PARTNERSHIPS' BOOKS AND RECORDS

22. After months of exhaustive efforts by the Plaintiffs, Sullivan finally produced portions of the books and records of the Partnerships.

23. Records including, but not limited to, financial statements and general ledgers, banking information (including bank statements, cancelled checks, deposit tickets and wire transfer advices) and correspondence with BLMIS and investors were not produced for the following critical date ranges:

- July through December 1999
- July through December 2000
- January through December 2002

- January through June 2004[2]

24. No usable electronic records were produced, despite multiple requests.

25. A review of the records produced to date reflects that approximately $8 million of investor funds was disbursed by Sullivan to related entities as "management fees." One such related entity is Michael D. Sullivan & Associates, Inc.

26. Sullivan also used Partnership assets to pay additional "management fees" and "commissions" to co-conspirators.

27. Analysis of the investor register maintained for S&P reveals that through the efforts of Sullivan and his co-conspirators, S&P received approximately $64 million in investor funds during the period December 1992 through December 2008 while the records of BLMIS show that only $41.7 million of this amount was invested in BLMIS.[3]

28. Analysis of the banking records of P&S reveals that through the efforts of Sullivan and his co-conspirators, approximately $26.9 million investor funds was received by P&S during the period December 1992 through December 2008 while the records of BLMIS show that only $22.8 million of this amount was invested in BLMIS.

29. Upon each investment in the Partnerships, Sullivan represented the following to investors through written correspondence, "At your direction, these funds [the full amount of the funds invested] are being forwarded to the investment broker." BLMIS was the sole investment broker for both Partnerships.

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[2] A general ledger for the period January through December 2004 was produced and analyzed.

[3] A final determination of the aggregate funds invested in S&P is pending receipt and analysis of banking records for the following date ranges:

- July through December 1999
- July through December 2000
- January through December 2002
- January through June 2004

30. A review of the Partnerships' books and records provided to date have led to the following additional conclusions:

(a) Sullivan earmarked hundreds of thousands of dollars in "accrued fees" to Frank Avellino and Michael Bienes, two individuals who are prohibited by the Securities and Exchange Commission from participating in the sale of securities.

(b) Mr. Avellino was given a significant, and inappropriate, level of control over the Partnerships. Indeed, in a lawsuit filed by the Trustee for the Liquidation of BLMIS, the Trustee alleges that despite the prohibition imposed by the SEC, Mr. Avellino and Mr. Bienes found people such as Sullivan who were willing to act as "front men to operate partnerships so that they could continue to raise and pool money from others to invest with BLMIS but avoid the scrutiny of the regulators." The lawsuit specifically references S&P and P&S as examples of investment vehicles in which such a "front" was used.

(c) Unauthorized charitable contributions in excess of $745,000 were disbursed from P&S to Kelco Foundation, Inc.

(d) Other individuals were paid "commissions" for the referral of additional investors.

31. On December 11, 2008, P&S under Sullivan's direction withdrew $800,000 from account #IZA873 maintained at BLMIS in the name of P&S. The entire amount was deposited into account #XXX0387 maintained at BB&T in the name of P&S (the "P&S BB&T Account").

32. As of December 31, 2008, the P&S BB&T Account had a balance of $942,304. Based on information and belief, the funds in the aforementioned account once frozen by the Madoff Trustee have been released. The Plaintiffs, along with all investors in the Partnerships have been denied an accounting of the account balance since December 2009.

33. As of December 31, 3008, account #XXX0379 maintained at BB&T in the name of S&P had a balance of $102,401 (the "S&P BB&T Account").

34. Based on information and belief, the funds in the S&P BB&T Account once frozen by the Madoff Trustee have been released. The Plaintiffs, along with all investors in the Partnerships have been denied an accounting of the account balance since December 2009.

35. Pursuant to Section 5.01 of the Amended And Restated Partnership Agreements:

> The capital gains, capital losses, dividends, interest, margin interest expense, and all other profits and losses attributable to the Partnership shall be allocated among the Partners in the ratio each Partner's capital account bears to the aggregate total capital contribution of all the partners on an actual daily basis commencing on the date of each partner's admission into the Partnership as follows: twenty percent (20%) to the Managing General Partners and eighty percent (80%) to the partners."

The profits and losses were not allocated to all partners in this way. A true and correct copy of the partnership agreement of S&P Associates, General Partnership is attached hereto as **Exhibit A**. A true and correct copy of the partnership agreement of P&S Associates, General Partnership is attached hereto as **Exhibit B**. Each Partnership Agreement is identical to the other with the exception of the name of the applicable partnership entity.[4]

THE REMOVAL OF MICHAEL D. SULLIVAN

36. As a result of the review of the books and records of the Partnerships, a significant percentage of the partners, including Plaintiffs, determined that Sullivan's removal was necessary.

37. In accordance with the terms of the Amended and Restated Partnership Agreements, this group of investors called a special meeting to vote on his removal. A copy of the notices of Special Meeting is attached as Composite **Exhibit C**.

[4] The Plaintiffs have not been provided a copy of the SPJ Investments, Ltd. partnership agreement.

38. In order to call a Special Meeting, 51% of the partners in interest, not number, must vote in favor of calling the Special Meeting. Such percentage was obtained, and a Special Meeting for each of P&S and S&P was called.

39. A number of representatives appeared on behalf of Sullivan, although Sullivan himself did not appear, despite the fact that he was given approximately 30 days' notice of the meeting date, and never requested that it be moved to accommodate his schedule.

40. The Special Meeting occurred on August 17, 2012. At that meeting, more than 51% of the voting interest of the Partnerships voted to remove Sullivan as Managing General Partners of the Partnerships. A copy of the spreadsheet detailing the voting results of the Special Meeting is attached hereto as **Exhibit D**.

41. Sullivan has refused to step down. Following the Special Meeting of each of the Partnerships, notice was delivered to counsel for the Partnerships. In that letter, Sullivan was advised that he was replaced as Managing General Partner, and that Ms. Smith's designee would arrive at the Partnership's offices to take possession of the Partnership's files, computers, records, bank account(s) and assets. Sullivan was further advised not to cause or allow anyone else to remove any files, records, balances of bank accounts or assets of the Partnership prior to Ms. Smith or her designee taking possession or control of same. A copy of that notice is attached as **Exhibit E**.

42. Sullivan is the only Managing General Partner of the Partnerships and he has taken the position that he has not been lawfully removed and therefore is not required to turn over the Partnerships' assets, books and records.

43. The Partnerships are expected to receive millions of dollars in settlements in connection with their allowed claims in the Estate of BLMIS. Specifically, the Madoff Trustee

has allowed the claim of S&P in the amount of $10,131,036, and this initial distribution of $466,230 has been deposited in the Becker & Poliakoff, LLP trust account. Similarly, the Madoff Trustee has allowed the claim of P&S in the amount of $2,406,625. With respect to P&S, approximately $610,000 is currently residing in the Becker & Poliakoff LLP trust account.

44. As a result of the foregoing, Plaintiffs' have an imminent fear of the continued dissipation of the Partnerships' assets as long as Sullivan is holding himself out as Managing General Partner and is in control of the additional funds received from BLMIS.

COUNT I

Breach of Fiduciary Duty - Injunction to Prohibit Michael D. Sullivan from Interfering With the Managing General Partner of S&P

45. Plaintiffs reincorporate and reallege paragraphs 1 through 44 as fully set forth herein.

46. S&P voted for the removal of Sullivan. Such removal was undertaken in compliance with the terms of the Partnership Agreements.

47. As a Managing General Partner, Sullivan owed a fiduciary duty to S&P.

48. Sullivan's obstruction to S&P's assets, books and records constitutes a breach of that duty under Fla. Stat. 620.8402, 620.8403 and 620.8404 and common law.

49. An injunction, temporary and permanent, is required to enjoin Sullivan from continuing to block access to the S&P's books and records; enjoin Sullivan from continued access to the S&P's bank accounts, and enjoin Sullivan from hoarding all other tangible and intangible property of S&P.

50. S&P has no adequate remedy at law.

51. The damage and injury caused to S&P is of such a nature that it cannot be adequately compensated by monetary damages.

52. Plaintiffs have no adequate, plain or speedy remedy at law to enjoin Sullivan from (i) continuing to represent himself as an agent of S&P, and act as Managing General Partner; (ii) continuing to unlawfully access S&P's books and records; (iii) continuing to unlawfully access S&P's assets; (iv) continuing to misappropriate assets of S&P for his own benefit; and (v) refusing to acknowledge his removal as Managing General Partner, and absent his removal, S&P will continue to suffer irreparable damage and injury.

WHEREFORE, Plaintiffs, on behalf of S&P, respectfully request that this Court temporarily enjoin Mr. Sullivan, and thereafter make such injunction permanent, from taking the actions set out in paragraph 52, above, and such other and further relief as this Court deems just and proper.

COUNT II

Breach of Fiduciary Duty - Injunction to Prohibit Michael D. Sullivan from Interfering With the Managing General Partner of P&S

53. Plaintiffs reincorporate and reallege paragraphs 1 through 44 as fully set forth herein.

54. P&S voted for the removal of Sullivan. Such removal was undertaken in compliance with the terms of the Partnership Agreements.

55. As a Managing General Partner, Sullivan owed a fiduciary duty to P&S.

56. Sullivan's obstruction to P&S's assets, books and records constitutes a breach of that duty under Fla. Stat. 620.8402, 620.8403 and 620.8404 and common law.

57. An injunction, temporary and permanent, is required to enjoin Sullivan from continuing to block access to the P&S's books and records; enjoin Sullivan from continued access to the P&S's bank accounts, and enjoin Sullivan from hoarding all other tangible and intangible property of P&S.

58. P&S has no adequate remedy at law.

59. The damage and injury caused to P&S is of such a nature that it cannot be adequately compensated by monetary damages.

60. Plaintiffs have no adequate, plain or speedy remedy at law to enjoin Sullivan from (i) continuing to represent himself as an agent of P&S, and act as Managing General Partner; (ii) continuing to unlawfully access P&S's books and records; (iii) continuing to unlawfully access P&S's assets; (iv) continuing to misappropriate assets of P&S for his own benefit; and (v) refusing to acknowledge his removal as Managing General Partner, and absent his removal, S&P will continue to suffer irreparable damage and injury.

WHEREFORE, Plaintiffs, on behalf of P&S, respectfully request that this Court temporarily enjoin Mr. Sullivan, and thereafter make such injunction permanent, from taking the actions set out in paragraph 60, above, and such other and further relief as this Court deems just and proper.

COUNT III

Appointment of a Receiver of S&P (Alternative to Count I)

61. Plaintiff reincorporates and realleges paragraphs 1 through 44 as fully set forth herein.

62. S&P has voted for the removal of Sullivan. Such removal was undertaken in compliance with the terms of the Partnership Agreements.

63. The Plaintiffs seek appointment of a receiver for S&P, in the alternative to the injunctive relief sought in Count I. In the event the Court determines that Mr. Sullivan was not lawfully removed, the Plaintiffs seek the appointment of a receiver to manage the affairs of the S&P, and to be vested with the authority of the Managing General Partner as set out in the S&P Partnership Agreement.

64. As a result of Sullivan's history of misconduct the Partnerships' assets, books and records are in imminent danger of loss, theft, or destruction.

65. Accordingly, pursuant to applicable law, the Court should immediately appoint a receiver to assume control of S&P to oversee the distribution of proceeds to the Partners, preserve the S&P's books and records, and undertake such additional action as is necessary for the benefit of S&P.

WHEREFORE, Plaintiffs, on behalf of S&P, respectfully request that this Court appoint a receiver, Margaret J. Smith, to replace Sullivan as managing general partner from the Partnerships, and such other and further relief as this Court deems just and proper.

COUNT IV
Appointment of a Receiver of P&S (Alternative to Count II)

66. Plaintiff reincorporates and realleges paragraphs 1 through 44 as fully set forth herein.

67. P&S has voted for the removal of Sullivan. Such removal was undertaken in compliance with the terms of the Partnership Agreements.

68. The Plaintiffs seek appointment of a receiver for P&S, in the alternative to the injunctive relief sought in Count II. In the event the Court determines that Mr. Sullivan was not lawfully removed, the Plaintiffs seek the appointment of a receiver to manage the affairs of the P&S, and to be vested with the authority of the Managing General Partner as set out in the S&P Partnership Agreement.

69. As a result of Sullivan's history of misconduct, which misconduct has first come to light in recent weeks, the Partnerships' assets, books and records are in imminent danger of loss, theft, or destruction.

70. Accordingly, pursuant to applicable law, the Court should immediately appoint a receiver to assume control of P&S to oversee the distribution of proceeds to the Partners, preserve the P&S's books and records, and undertake such additional action as is necessary for the benefit of P&S.

WHEREFORE, Plaintiffs, on behalf of P&S, respectfully request that this Court appoint a receiver, Margaret J. Smith, to replace Sullivan as managing general partner from the Partnerships, and such other and further relief as this Court deems just and proper.

PLAINTIFFS DEMAND A JURY ON ALL ISSUES SO TRIABLE.

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