

IN THE CIRCUIT COURT OF THE 17<sup>TH</sup> 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.

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**NOTICE OF FILING DOCUMENTS IN SUPPORT OF AMENDED  
JOINT MOTION FOR SUMMARY JUDGMENT**

Defendants, Frank Avellino and Michael Bienes, by and through their undersigned counsel, hereby give notice of filing the following in support of their Joint Amended Motion for Summary Judgment:

- 1) pages 47 – 53 of the Deposition of Michael D. Sullivan taken December 1, 2015;
- 2) Plaintiffs' Amended Answers and Objections to Defendant Frank Avellino's Fourth Set of Interrogatories to Plaintiff.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 4<sup>th</sup> day of March, 2016, the foregoing document with the attached deposition excerpt 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.

**HAILE, SHAW & PFAFFENBERGER, P.A.**

*Attorneys for Defendant Avellino*  
660 U.S. Highway One, Third Floor  
North Palm Beach, FL 33408  
Phone: (561) 627-8100  
Fax: (561) 622-7603  
[gwoodfield@haileshaw.com](mailto:gwoodfield@haileshaw.com)  
[bpetroni@haileshaw.com](mailto:bpetroni@haileshaw.com)

By: /s/ Gary A. Woodfield  
Gary A. Woodfield, Esq.  
Florida Bar No. 563102

**BROAD AND CASSEL**

*Attorneys for Michael Bienes*  
One Biscayne Tower, 21<sup>st</sup> Floor  
2 South Biscayne Blvd.  
Miami, FL 33131  
Phone (305) 373-9400  
Fax (305) 37309433  
[mraymond@broadandcassel.com](mailto:mraymond@broadandcassel.com)  
[jetra@broadandcassel.com](mailto:jetra@broadandcassel.com)  
[smartin@broadandcassel.com](mailto:smartin@broadandcassel.com)  
[ssmith@broadandcassel.com](mailto:ssmith@broadandcassel.com)  
[msoza@broadandcassel.com](mailto:msoza@broadandcassel.com)  
[manchez@broadandcassel.com](mailto:manchez@broadandcassel.com)

By: /s/ Mark Raymond  
Mark Raymond (373397)  
Jonathan Etra (686905)  
Shane P. Martin (056306)

SERVICE LIST

THOMAS M. MESSANA, ESQ.  
THOMAS ZEICHMAN, ESQ.  
MESSANA, P.A.  
SUITE 1400, 401 EAST LAS OLAS BOULEVARD  
FORT LAUDERDALE, FL 33301  
[tmessana@messana-law.com](mailto:tmessana@messana-law.com)  
[tzeichman@messana-law.com](mailto:tzeichman@messana-law.com)  
*Attorneys for Plaintiffs*

LEONARD K. SAMUELS, ESQ.  
ETHAN MARK, ESQ.  
MICHAEL O. WEISZ, ESQ.  
ZACHARY P. HYMAN, ESQ.  
BERGER SINGERMAN  
350 EAST LAS OLAS BOULEVARD, STE 1000  
FORT LAUDERDALE, FL 33301  
[emark@bergersingerman.com](mailto:emark@bergersingerman.com)  
[lsamuels@bergersingerman.com](mailto:lsamuels@bergersingerman.com)  
[mweisz@bergersingerman.com](mailto:mweisz@bergersingerman.com)  
[zhyman@bergersingerman.com](mailto:zhyman@bergersingerman.com)  
[mvega@bergersingerman.com](mailto:mvega@bergersingerman.com)  
[DRT@bergersingerman.com](mailto:DRT@bergersingerman.com)  
*Attorneys for Plaintiff*

PETER G. HERMAN, ESQ.  
PETER G. HERMAN, ESQ.  
THE HERMAN LAW GROUP, P. A.  
1401 E. BROWARD BLVD., STE 206  
FORT LAUDERDALE, FL 33301  
[pgh@thglaw.com](mailto:pgh@thglaw.com)  
*Attorneys for Defendants Steven F. Jacob  
and Steven F. Jacob CPA & Associates, Inc.*

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

3 COMPLEX LITIGATION UNIT

4 CASE NO: 12-034123(07)

5 P&S ASSOCIATES, GENERAL PARTNERSHIP, a  
6 Florida limited partnership; and S&P  
7 ASSOCIATES, GENERAL PARTNERSHIP, a  
8 Florida limited partnership; PHILIP  
9 VON KAHLE as Conservator of P&S  
10 ASSOCIATES, GENERAL PARTNERSHIP, a  
11 Florida limited partnership; and S&P  
12 ASSOCIATES, GENERAL PARTNERSHP, a  
13 Florida limited partnership,

14 Plaintiffs,

15 V

16 MICHAEL D. SULLIVAN, an individual,  
17 STEVEN JACOB, an individual, MICHAEL D.  
18 SULLIVAN & ASSOCIATES, INC., a Florida  
19 corporation, STEVEN F. JACOB, CPA &  
20 ASSOCIATES, INC., a Florida  
21 corporation, FRANK AVELLINO, an  
22 individual, MICHAEL BIENES, an  
23 individual, KELKO FOUNDATION, INC., a  
24 Florida non profit corporation, and  
25 VINCENT T. KELLY, an individual,

Defendants.

Deposition of MICHAEL D. SULLIVAN  
(Volume I)

21 Tuesday, December 1, 2015  
22 One Financial Plaza, Suite 2700  
23 Fort Lauderdale, Florida 33394  
24 10:16 a.m. - 1:25 p.m.

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

**CERTIFIED  
COPY**

MUDRICK COURT REPORTING, INC.

561-615-8181

**EXHIBIT**

1

1 Q. Entitled Books and Records on page four.

2 Do you see that?

3 A. Yes.

4 Q. Now, was this amended and restated

11:02:53 5 partnership agreement provided to all the partners  
6 who joined the partnership?

7 A. I believe it was.

8 Q. Okay. And pursuant to paragraph 7.03 did

9 all the partners have the ability to inspect and  
11:03:13 10 audit the books and records of the partnership?

11 MR. SAMUELS: Object to the form of the  
12 question.

13 BY MR. WOODFIELD:

14 Q. You can answer.

11:03:20 15 A. Any time they wanted to.

16 Q. And ultimately, let's say, pick a year,  
17 2007, do you recall approximately how many  
18 investors or partners you had in the partnership?

19 A. Couple hundred. I can't tell you the  
11:03:42 20 number.

21 Q. Now, at any time did any of those partners  
22 request to inspect the books and records?

23 A. Yes.

24 Q. On how many occasions?

11:03:54 25 A. Anywhere between five and ten.

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

4 MR. SAMUELS: Objection, timeframe.

11:04:06

5 BY MR. WOODFIELD:

6 Q. You can answer.

7 A. Yes, I do.

8 Q. And can you identify any of the ones that  
9 you recall that requested to inspect the books and  
10 records of the partnerships?

11:04:16

11 MR. SAMUELS: Same objection.

12 THE WITNESS: I cannot, do not remember  
13 the names. But there was a group of people in  
14 Boca Raton. If I see a list I could probably  
15 tell you a couple of them, in particular, the  
16 Festus Stacy, Helen and Festus Stacy, they sent  
17 their advisor, Patrick Kelly, in with a CPA.  
18 He came and inspected the books and records. I  
19 remember him going to our CPA, Ahearn and  
20 Jasco, having conversations with them. And he  
21 may have come in one or two times to inspect  
22 the books and records.

11:04:28

11:04:49

23 BY MR. WOODFIELD:

24 Q. He being who, this individual?

11:04:56

25 A. Patrick.

1 MR. SAMUELS: Same objection as to  
2 timeframe.

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

11:05:09

6 BY MR. WOODFIELD:

7 Q. Do you recall when that inspection took  
8 place?

11:05:18

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

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

11:05:30

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

11:05:44

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

21 A. All of them.

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

24 A. 6550 North Federal Highway, Suite 210.

11:05:56

25 Q. And what documents did your accountant

1 have?

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

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

12 A. Oh, yeah.

13 Q. -- being a Ponzi scheme?

14 A. Yes.

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

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

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

23 A. No, not that I am aware of.

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



1 the inspection?

2 MR. SAMUELS: Object to the form of the  
3 question.

4 BY MR. WOODFIELD:

11:07:13 5 Q. You can answer.

6 A. I believe we probably would have -- I  
7 can't tell you. I know I talked to Patrick at some  
8 time, and he said everything looked real good, he  
9 was happy where everything was.

11:07:29 10 Q. Now, you have identified this foundation  
11 that conducted this inspection?

12 A. Uh-huh.

13 Q. Do you recall any other of the partners  
14 who also conducted any inspection of the books and  
11:07:43 15 records?

16 MR. SAMUELS: Object to the form of the  
17 question.

18 THE WITNESS: They also, Festus Stacy also  
19 sent somebody else in about three or four or  
11:07:52 20 five years earlier to look at the books and  
21 records as well. I don't remember his name.

22 BY MR. WOODFIELD:

23 Q. Was that someone on behalf of the  
24 foundation?

11:07:58 25 A. Yes.

1 Q. What about other than the foundation, did  
2 any of the other investors/general partners request  
3 to inspect the books and records?

4 A. They did. There was this group in Boca  
11:08:12 5 Raton, they would come in from year to year. God,  
6 I just can't remember the names of the people. But  
7 we did have those from time to time. Somebody was  
8 there, they wanted the records, they were right  
9 there, we just put them in the conference room and  
11:08:25 10 showed them what they wanted.

11 Q. How did it come about that S&P and P&S  
12 obtained additional investors?

13 A. Well, Greg and I went ahead and, you know,  
14 we contacted various people that we knew. And  
11:09:03 15 there was a point in time where either Frank or  
16 Mike would say, hey, this is somebody that called  
17 us and said they want to invest with you. They  
18 gave them my name, and we would contact those.  
19 Usually they would contact us.

11:09:31 20 Q. With regard to running the business of P&S  
21 and S&P --

22 A. Uh-huh.

23 Q. -- who was involved in running the  
24 business?

11:09:40 25 A. Greg ran most of the business. I would

1 sit down and talk with the people. Greg was a  
2 former IRS auditor, so he was more of the  
3 statistician, the keeper of the books.

11:10:02

4 Q. Okay. And what role did you play in the  
5 operation of the business?

11:10:16

6 A. Well, we would -- there wasn't a lot to  
7 really do. When people -- it was much like a bank  
8 where people would make deposits and issue checks.  
9 So this wasn't something that really required a lot  
10 of time, a lot of decision making. It was just  
11 very simple and straightforward. It was a matter  
12 of accounting.

11:10:29

13 Q. In the operation of these businesses, P&S  
14 and S&P, did Frank Avellino have any involvement in  
15 the management decisions?

16 A. None whatsoever.

17 MR. SAMUELS: Object to the form.

18 THE WITNESS: None whatsoever.

19 BY MR. WOODFIELD:

11:10:34

20 Q. Did Mr. Bienes have any involvement in the  
21 management decisions?

22 A. None whatsoever.

11:10:56

23 Q. Did there come a time where your investors  
24 would request to have money taken out of the  
25 account?

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

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, et al.,

Plaintiffs,

v.

STEVEN JACOB, et al.,

Defendants.

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**NOTICE OF SERVICE OF PLAINTIFFS' AMENDED ANSWERS  
AND OBJECTIONS TO DEFENDANT AVELLINO'S FOURTH SET OF  
INTERROGATORIES TO PLAINTIFF**

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 gives notice of service of his Amended Answers and Objections to Defendant Frank Avellino's Fourth Set of Interrogatories to Plaintiff.

Dated: September 18, 2015

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

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

---

 **BERGER SINGERMANN**

1450 BRICKELL AVENUE | SUITE 1900 | MIAMI, FLORIDA 33131-3453  
t: 305-755-9500 | f: 305-714-4340 | WWW.BERGERSINGERMANN.COM

Florida Bar No. 501610  
lsamuels@bergersingerman.com  
Etan Mark  
Florida Bar No. 720852  
emark@bergersingerman.com  
Steven D. Weber  
Florida Bar No. 47543  
sweber@bergersingerman.com

**and**

MESSANA, P.A.  
Attorneys for Conservator  
401 East Las Olas, Suite 1400  
Fort Lauderdale, FL 33303  
Telephone: (954) 712-7400  
Facsimile: (954) 712-7401  
Email: tmessana@messana-law.com  
By: /s/ Thomas M. Messana  
Thomas M. Messana, Esq.  
Florida Bar No. 991422  
Brett D. Lieberman, Esq.  
Florida Bar No. 69583  
Thomas G. Zeichman, Esq.  
Florida Bar No. 99239

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this September 18, 2015, a true and correct copy of the foregoing document was served on the following parties:

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

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

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

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

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

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

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

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

Plaintiffs,

v.

STEVEN JACOB, et al.,

Defendants.  
-----/

**PLAINTIFFS' AMENDED ANSWERS AND OBJECTIONS  
TO DEFENDANT FRANK AVELLINO'S  
FOURTH SET OF INTERROGATORIES TO PLAINTIFF**

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"), submits his amended answers and objections to Defendant Avellino's Fourth Set of Interrogatories to Plaintiff as follows:

**MEET AND CONFER**

On September 8, 2015, Plaintiffs' attorney, Thomas Zeichman, met and conferred with Defendant Avellino's attorney, Gary Woodfield, in a good faith attempt to work through objections raised by Plaintiffs to Defendant Avellino's Fourth Set of Interrogatories to Plaintiff (the "Meet and Confer"). At the conclusion of the Meet and Confer, Plaintiffs agreed to provide amended answers and objections by September 18, 2015.

### **OBJECTIONS TO DEFINITIONS**

**Objection to Definition Number 1:** Plaintiffs object to the definition of “Partnerships” as vague, ambiguous, and overly broad with respect to scope because the word “agents” may include Plaintiffs’ attorneys and such documents are protected by the attorney-client and/or work product privilege. Plaintiffs do not waive their right to assert the attorney-client and/or work product privilege. Consistent with the discussion during the Meet and Confer, Defendant Avellino clarified that his definitions are not intended to include work product or attorney-client privileged information. Plaintiffs confirmed that they are not objecting on the basis that information is privileged merely because it is in the possession of an attorney.

**Objection to Definition Number 2:** Plaintiffs object to the definition of “You” or “Your” as vague, ambiguous, and overly broad with respect to scope because the word “agents” may include Plaintiffs’ attorneys and such documents are protected by the attorney-client and/or work product privilege. Plaintiffs do not waive their right to assert the attorney-client and/or work product privilege. Consistent with the discussion during the Meet and Confer, Defendant Avellino clarified that his definitions are not intended to include work product or attorney-client privileged information. Plaintiffs confirmed that they are not objecting on the basis that information is privileged merely because it is in the possession of an attorney.

### **OBJECTIONS TO INSTRUCTIONS**

**Objection to Instruction Number 2:** Consistent with the discussion during the Meet and Confer, Defendant Avellino clarified that his instructions are not intended to include work product or attorney-client privileged information and Plaintiffs confirmed that they are not objecting on the basis that information is privileged merely because it is in the possession of an attorney. Plaintiffs responses are not intended and do not constitute a waiver of any privilege.



**Objection to Instruction Number 3:** Consistent with the discussion during the Meet and Confer, Defendant Avellino clarified that his instructions are not intended to include work product or attorney-client privileged information and Plaintiffs confirmed that they are not objecting on the basis that information is privileged merely because it is in the possession of an attorney. Plaintiffs responses are not intended and do not constitute a waiver of any privilege.

**Objection to Instruction Number 4:** Consistent with the discussion during the Meet and Confer, Defendant Avellino clarified that his instructions are not intended to include work product or attorney-client privileged information and Plaintiffs confirmed that they are not objecting on the basis that information is privileged merely because it is in the possession of an attorney. Plaintiffs maintain their objection to Instruction Number 4 and they will not produce a privilege log until after resolution of their other objections to these interrogatories. Once resolved, Plaintiffs reserve the right to produce a privilege log.

### **INTERROGATORIES**

1. Please identify all persons who have knowledge of the allegations contained in Plaintiffs' Fifth Amended Complaint. For each person identified, please set forth the substance of their knowledge.

#### **Response:**

Plaintiffs' understanding from the Meet and Confer is that this interrogatory is only seeking names of individuals who Plaintiffs know have discoverable information of the underlying facts asserted in the Fifth Amended Complaint, and not any persons who may have learned of Plaintiffs' allegations through media accountings, Plaintiffs' website, or publicly disclosed information. Noting that, as agreed during the Meet and Confer, this response shall not be deemed a waiver of any privilege, Plaintiffs respond as follows:

- Michael D. Sullivan –has knowledge related to the Partnerships’ formation, Partnerships’ investment with BLMIS, the Partnerships’ and Sullivan’s relationship with Defendants, the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Frank Avellino - has knowledge related to the Partnerships’ formation, Partnerships’ investment with BLMIS, the Partnerships’ and Sullivan’s relationship with Defendants Avellino and Bienes, the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint, and the allegations asserted against him in the Fifth Amended Complaint.
- Michael Bienes –has knowledge related to the Partnerships’ formation, Partnerships’ investment with BLMIS, the Partnerships’ and Sullivan’s relationship with Defendants Avellino and Bienes, the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint, and other allegations asserted against him in the Fifth Amended Complaint.
- Susan Moss – Moss has knowledge related to the Partnerships’ formation, Partnerships’ investment with BLMIS, the Partnerships’ and Sullivan’s relationship with Defendants Avellino and Bienes, Defendant Avellino bringing investors into the Partnerships, and the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Scott Holloway – Holloway has knowledge about the facts and circumstances which led to the Partnerships and Defendant Avellino’s and Bienes’ relocation to the same office as the Partnerships and the payment and receipt of kickbacks alleged in the Fifth Amended Complaint.
- Sam Rosen – Rosen has knowledge about the payment and receipt of kickbacks alleged in the Fifth Amended Complaint and Defendants Avellino and Bienes bringing investors

into the Partnerships.

- Father Vincent T. Kelly – Kelly has knowledge about the payment and receipt of kickbacks alleged in the Fifth Amended Complaint.
- Steven Jacob – has knowledge about the payment and receipt of kickbacks alleged in the Fifth Amended Complaint and other allegations asserted against him.
- Nancy Avellino – Avellino has knowledge related to the Partnerships' formation, Partnerships' investment with BLMIS, the Partnerships' and Sullivan's relationship with Defendants Avellino and Bienes, Defendant Avellino and Bienes bringing investors into the Partnerships, and the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Dianne Bienes – Bienes has knowledge related to the Partnerships' formation, Partnerships' investment with BLMIS, the Partnerships' and Sullivan's relationship with the Defendants, Defendant Avellino and Bienes bringing investors into the Partnerships, and the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Bernard L. Madoff – Madoff has knowledge related to the Partnerships' formation, the purpose of the Partnerships, Partnerships' investment with BLMIS, the Partnerships' and Sullivan's relationship with Defendants Avellino and Bienes, and facts related to Defendants Avellino and Bienes history of investing and bringing investors to BLMIS and of bringing investors to the Partnerships.
- Valerie Judd – Judd has knowledge related to Bienes bringing investors to the Partnerships.
- Greg Wallick and Cindy Wallick – has knowledge of Sullivan or Defendants Avellino and Bienes bringing investors into the Partnerships.

- James Judd – Judd has knowledge related to Bienes bringing investors to the Partnerships.
- Margaret Esteban and Fernando Esteban –have knowledge of Defendant Avellino’s relationship with the Partnerships, handling their transfer of funds to the Partnerships, and Defendant Avellino bringing investors to the Partnerships.
- Bishop Richard Wills –has knowledge of payments made to him by or on behalf of Frank Avellino and the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Thomas Avellino – Avellino has knowledge of the allegations that the Partnerships tracked their investments and the capital they held based exclusively on Defendant Avellino’s advice, and by using the software that Thomas Avellino, Defendant Avellino’s son, provided. Thomas Avellino has knowledge that Defendant Avellino had Thomas Avellino install software for the Partnerships so that Defendant Avellino could ensure that the Partnerships were using the same software as other investment vehicles through which both Defendant Avellino and Defendant Bienes made millions of dollars.
- Rachel Rosenthal – has knowledge of Defendant Avellino’s history of investing with BLMIS and may have knowledge of Defendant Avellino’s relationship with the Partnerships.
- Lorraine McEvoy – has knowledge of Defendant Avellino’s history of investing with BLMIS and may have knowledge of Defendant Avellino’s relationship with the Partnerships.
- Joseph Avellino – has knowledge of Defendant Avellino’s history of investing with BLMIS and may have knowledge of Defendant Avellino’s relationship with the

Partnerships.

- Andrea Aker –has knowledge related to Bienes bringing investors to the Partnerships.
- Lola Kurland - has knowledge related to the Partnerships' formation, Partnerships' investment with BLMIS, and the Partnerships' and Sullivan's relationship with Defendants Avellino and Bienes.
- Ersica Gianna - has knowledge related to the Partnerships' formation, Partnerships' investment with BLMIS, and the Partnerships' and Sullivan's relationship with Defendants Avellino and Bienes.
- Bette Ann Powell - has knowledge related to the Partnerships' formation, Partnerships' investment with BLMIS, and the Partnerships' and Sullivan's relationship with the Defendants Avellino and Bienes.
- Wayne Horwitz - has knowledge of the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- James E. Yonge - has knowledge of the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Abraham Newman - has knowledge of the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Vincent Barone - has knowledge of the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Edith Rosen/Sam Rosen/Premier Marketing Services, Inc.- has knowledge of the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Gary R. Chapman - has knowledge of the payment and receipt of the kickbacks alleged

in the Fifth Amended Complaint.

- Dr. Edward D. Michaelson - has knowledge of the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Jack Kleinman - has knowledge of the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Steve Jacob - has knowledge related to the Partnerships' formation, Partnerships' investment with BLMIS, the Partnerships' and Sullivan's relationship with the Defendants, the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint, and other allegations asserted against him in the Fifth Amended Complaint
- Ralph C. Fox/Ralph C. Fox Trustee - has knowledge of the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Lisa Glatt - has knowledge related to the Partnerships' formation.
- Vania Alves - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- Patricia Hidalgo - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- Stanley & Emile Leonardi - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- Matthew Carone - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- John Crowley - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.

- James Jordan - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- Elaine Ziffer - has knowledge related to Defendant Avellino bringing investors to the Partnerships.
- All persons associated with "Fr. Kelly's group" as identified by Defendant Avellino - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- Rebecca McDonough and other unknown persons at Ahearn Jasco + Company -- has knowledge related to Defendant Avellino's history of investing with Madoff.
- Fred C. Zittles - has knowledge related to Defendant Bienes bringing investors to the Partnerships.
- Mike McCarthy - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships through Father Kelly.
- Sandra Dydo - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- Unknown persons associated with Paragon Ventures - has knowledge related to Defendants Avellino bringing investors to the Partnerships.
- Unknown persons associated with 56 Arlington, LLC - has knowledge of the Partnerships' and Sullivan's relationship with the Defendants, and the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Unknown persons associated with 27 Cliff, LLC - has knowledge of the Partnerships' and Sullivan's relationship with the Defendants, and the payment and receipt of the

kickbacks alleged in the Fifth Amended Complaint

- Unknown persons associated with Direct Response Group, Inc. - has knowledge of the Partnerships' and Sullivan's relationship with the Defendants, and the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Helen Chaitman – has knowledge of Defendant Avellino's and Bienes' relationship to the Partnerships.
- Kenn Jordan - has knowledge related to Defendant Avellino bringing investors to the Partnerships.
- Susan Shaheen - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- John Combs - has knowledge related to Defendant Avellino bringing investors to the Partnerships.
- Donna Lipworth - has knowledge related to Defendants Avellino or Bienes bringing investors to the Partnerships.
- Margaret Lipworth - has knowledge related to Defendants Avellino or Bienes bringing investors to the Partnerships.
- Nicholas or Mary O'Gorman - has knowledge related to Vincent T. Kelly bringing investors to the Partnerships.
- Marvin Seperson - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- Quentin Walter – Kenn Jordan Foundation Investor who communicated with Avellino after BLMIS was revealed as a fraud.



- John Daley – Kenn Jordan Foundation Investor who was involved in litigation against Avellino and communicated with Avellino after BLMIS was revealed as a fraud.
- Weldon J. Stout – Investor in Kenn Jordan Foundation who communicated with BLMIS after it was revealed as a fraud.
- Eric Lipkin – has knowledge of Defendant Avellino's and Bienes' history of investing with BLMIS.
- David Friebling – has knowledge of Defendant Avellino's and Bienes' history of investing with BLMIS.
- All partners of S&P Associates, General Partnership – Defendants attempted to prevent general partners of the Partnerships from accessing the Partnerships' books and records to further conceal Defendants Avellino's and Bienes' involvement in the Partnerships and their receipt of kickbacks through Sullivan writing the partners of the Partnerships a letter denying that Avellino or Bienes had any involvement with the Partnerships or received any fees from them.
- All partners of P&S Associates, General Partnership – Defendants attempted to prevent general partners of the Partnerships from accessing the Partnerships' books and records to further conceal Defendants Avellino's and Bienes' involvement in the Partnerships and their receipt of kickbacks through Sullivan writing the partners of the Partnerships a letter denying that Avellino or Bienes had any involvement with the Partnerships or received any fees from them.

Plaintiffs are continuing to conduct discovery and additional persons may have information responsive to this Interrogatory.

2. Please identify all persons who have knowledge of Plaintiffs' allegations that Avellino received assets of the Partnerships and/or commissions as alleged in paragraph 37 of the Fifth Amended Complaint and for each person identified please set forth the substance of their knowledge.

**RESPONSE:**

Plaintiffs' understanding from the Meet and Confer is that this interrogatory is only seeking names of individuals who Plaintiffs know have discoverable information of the underlying facts asserted in paragraph 37 of the Fifth Amended Complaint, and not any persons who may have learned of Plaintiffs' allegations through media accountings, Plaintiffs' website, or publicly disclosed information. Noting that, as agreed during the Meet and Confer, this response shall not be deemed a waiver of any privilege, Plaintiffs respond as follows:

- Michael D. Sullivan – has knowledge that Avellino received assets of the Partnerships and/or commissions as alleged in paragraph 37 of the Fifth Amended Complaint.
- Frank Avellino - has knowledge that Avellino received assets of the Partnerships and/or commissions as alleged in paragraph 37 of the Fifth Amended Complaint.
- Michael Bienes – has knowledge that Avellino received assets of the Partnerships and/or commissions as alleged in paragraph 37 of the Fifth Amended Complaint.
- Susan Moss – has knowledge that Avellino received assets of the Partnerships and/or commissions as alleged in paragraph 37 of the Fifth Amended Complaint.
- Nancy Avellino – has knowledge that Avellino received assets of the Partnerships and/or commissions as alleged in paragraph 37 of the Fifth Amended Complaint.
- Dianne Bienes – has knowledge that Avellino received assets of the Partnerships and/or commissions as alleged in paragraph 37 of the Fifth Amended Complaint.

Plaintiffs are continuing to conduct discovery and additional persons may have information responsive to this Interrogatory.

3. Please identify all persons who have knowledge of Plaintiffs' allegations that Avellino was a co-conspirator with Sullivan and others, and for each person identified please set forth the substance of their knowledge.

**RESPONSE:**

Plaintiffs' understanding from the Meet and Confer is that this interrogatory is only seeking names of individuals who Plaintiffs know have discoverable information of Plaintiffs' allegations that Avellino was a co-conspirator with Sullivan and others to receive the kickbacks alleged in the Fifth Amended Complaint, and not any persons who may have learned of Plaintiffs' allegations through media accountings, Plaintiffs' website, or publicly disclosed information. Noting that, as agreed during the Meet and Confer, this response shall not be deemed a waiver of any privilege, Plaintiffs respond as follows:

- Michael D. Sullivan – has knowledge related to the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Michael Bienes – has knowledge related to the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint; has knowledge related to Defendant Avellino using the Partnerships to feed investors into BLMIS.
- Susan Moss – has knowledge related to the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Scott Holloway – has knowledge related to the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.

- Sam Rosen – has knowledge related to the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Father Vincent T. Kelly – has knowledge related to the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Steven Jacob – has knowledge related to the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Nancy Avellino – has knowledge related to the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint; has knowledge related to Defendant Avellino using the Partnerships to feed investors into BLMIS.
- Dianne Bienes – has knowledge related to the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint; has knowledge related to Defendant Avellino using the Partnerships to feed investors into BLMIS.
- Bernard L. Madoff – has knowledge related to Defendant Avellino using the Partnerships to feed investors indirectly into BLMIS.
- Valerie Judd – Judd has knowledge related to Bienes bringing investors to the Partnerships.
- Greg Wallick and Cindy Wallick – has knowledge of Sullivan or Defendants Avellino and Bienes bringing investors into the Partnerships.
- James Judd – Judd has knowledge related to Bienes bringing investors to the Partnerships.
- Margaret Esteban and Fernando Esteban – have knowledge of Defendant Avellino's relationship with the Partnerships, handling their transfer of funds to the Partnerships,

and Defendant Avellino bringing investors to the Partnerships.

- Bishop Richard Wills – has knowledge of payments made to him by or on behalf of Frank Avellino and the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Thomas Avellino – Avellino has knowledge of the allegations that the Partnerships tracked their investments and the capital they held based exclusively on Defendant Avellino's advice, and by using the software that Thomas Avellino, Defendant Avellino's son, provided. Thomas Avellino has knowledge that Defendant Avellino had Thomas Avellino install software for the Partnerships so that Defendant Avellino could ensure that the Partnerships were using the same software as other investment vehicles through which both Defendant Avellino and Defendant Bienes made millions of dollars.
- Andrea Aker –has knowledge related to Bienes bringing investors to the Partnerships.
- Wayne Horwitz - has knowledge of the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- James E. Yonge - has knowledge of the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Abraham Newman - has knowledge of the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Vincent Barone - has knowledge of the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Edith Rosen/Sam Rosen/Premier Marketing Services, Inc.- has knowledge of the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Gary R. Chapman - has knowledge of the payment and receipt of the kickbacks alleged

in the Fifth Amended Complaint.

- Dr. Edward D. Michaelson - has knowledge of the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Jack Kleinman - has knowledge of the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Steve Jacob - has knowledge related to the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Ralph C. Fox/Ralph C. Fox Trustee - has knowledge of the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Vania Alves - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- Patricia Hidalgo - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- Stanley & Emile Leonardi - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- Matthew Carone - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- John Crowley - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- James Jordan - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- Elaine Ziffer - has knowledge related to Defendant Avellino bringing investors to the

Partnerships.

- All persons associated with “Fr. Kelly’s group” as identified by Defendant Avellino - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- Fred C. Zittles - has knowledge related to Defendant Bienes bringing investors to the Partnerships.
- Mike McCarthy - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships through Father Kelly.
- Sandra Dydo - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- Unknown persons associated with Paragon Ventures - has knowledge related to Defendants Avellino bringing investors to the Partnerships.
- Unknown persons associated with 56 Arlington, LLC - has knowledge related to the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Unknown persons associated with 27 Cliff, LLC - has knowledge related to the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Unknown persons associated with Direct Response Group, Inc. - has knowledge the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Kenn Jordan - has knowledge related to Defendant Avellino bringing investors to the Partnerships.
- Susan Shaheen - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.

- John Combs - has knowledge related to Defendant Avellino bringing investors to the Partnerships.
- Donna Lipworth - has knowledge related to Defendants Avellino or Bienes bringing investors to the Partnerships.
- Margaret Lipworth - has knowledge related to Defendants Avellino or Bienes bringing investors to the Partnerships.
- Nicholas or Mary O'Gorman - has knowledge related to Vincent T. Kelly bringing investors to the Partnerships.
- Marvin Seperson - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- Eric Lipkin – has knowledge of Defendant Avellino's and Bienes' history of investing with BLMIS.
- David Friebling – has knowledge of Defendant Avellino's and Bienes' history of investing with BLMIS.

Plaintiffs are continuing to conduct discovery and additional persons may have information responsive to this Interrogatory.

4. Please identify all persons who have knowledge of Plaintiffs' allegations that Avellino knew that distributions were being improperly made to Partners and other third parties, but did nothing to prevent it and for each person identified please set forth the substance of their knowledge.

**RESPONSE:**

Plaintiffs' understanding from the Meet and Confer is that this interrogatory is only seeking



names of individuals who Plaintiffs know have discoverable information of Plaintiffs' allegations that Avellino knew that the kickbacks alleged in the Fifth Amended Complaint were being made and did nothing to prevent it, and not any persons who may have learned of Plaintiffs' allegations through media accountings, Plaintiffs' website, or publicly disclosed information. Noting that, as agreed during the Meet and Confer, this response shall not be deemed a waiver of any privilege, Plaintiffs respond as follows:

- Michael D. Sullivan – has knowledge Defendant Avellino knew that the kickbacks alleged in the Fifth Amended Complaint were being made and did nothing to prevent it.
- Michael Bienes – has knowledge Defendant Avellino knew that the kickbacks alleged in the Fifth Amended Complaint were being made and did nothing to prevent it.
- Susan Moss – has knowledge Defendant Avellino knew that the kickbacks alleged in the Fifth Amended Complaint were being made and did nothing to prevent it.
- Frank Avellino - has knowledge Defendant Avellino knew that the kickbacks alleged in the Fifth Amended Complaint were being made and did nothing to prevent it.
- Nancy Avellino – has knowledge Defendant Avellino knew that the kickbacks alleged in the Fifth Amended Complaint were being made and did nothing to prevent it.
- Dianne Bienes – has knowledge Defendant Avellino knew that the kickbacks alleged in the Fifth Amended Complaint were being made and did nothing to prevent it.
- Thomas Avellino – developed and installed the software used by Sullivan to track investments made by the partnerships. Thomas Avellino also had a close relationship with Sullivan and therefore knew of the relationship between Defendant Avellino and the Partnerships.
- Richard Wills – received payments on Defendant Avellino's behalf, for bereavement



services allegedly provided.

- Bernard L. Madoff – controlled Avellino and Bienes' investing with BLMIS, and knew that Avellino and Bienes set up feeder funds to indirectly invest in BLMIS and take kickbacks on account of such investments.

Plaintiffs are continuing to conduct discovery and additional persons may have information responsive to this Interrogatory.

5. Please identify all persons who have knowledge of Plaintiffs' allegations in paragraphs 32 through 36 of the Fifth Amended Complaint and for each person identified please set forth the substance of their knowledge.

**RESPONSE:**

Plaintiffs' understanding from the Meet and Confer is that this interrogatory is only seeking names of individuals who Plaintiffs know have discoverable information of the underlying facts asserted in paragraphs 32 through 36 of the Fifth Amended Complaint, and not any persons who may have learned of Plaintiffs' allegations through media accountings, Plaintiffs' website, or publicly disclosed information. Noting that, as agreed during the Meet and Confer, this response shall not be deemed a waiver of any privilege, Plaintiffs respond as follows:

- Michael D. Sullivan – has knowledge related to the Partnerships' formation, Partnerships' investment with BLMIS, and the Partnerships' and Sullivan's relationship with Defendants Avellino and Bienes as alleged in paragraphs 32 through 36 of the Fifth Amended Complaint.
- Frank Avellino - has knowledge related to the Partnerships' formation, Partnerships' investment with BLMIS, and the Partnerships' and Sullivan's relationship with

Defendants Avellino and Bienes as alleged in paragraphs 32 through 36 of the Fifth Amended Complaint.

- Michael Bienes – has knowledge related to the Partnerships' formation, Partnerships' investment with BLMIS, and the Partnerships' and Sullivan's relationship with Defendants Avellino and Bienes as alleged in paragraphs 32 through 36 of the Fifth Amended Complaint.
- Susan Moss – Moss has knowledge related to the Partnerships' formation, Partnerships' investment with BLMIS, the Partnerships' and Sullivan's relationship with Defendants Avellino and Bienes, Defendant Avellino bringing investors into the Partnerships, and the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Scott Holloway – Holloway has knowledge about the facts and circumstances which led to the Partnerships and Defendant Avellino's and Bienes' relocation to the same office as the Partnerships; has knowledge of reliance on Defendants Avellino and Bienes to understand and explain the operations of BLMIS and the trades that BLMIS allegedly made on behalf of the Partnerships.
- Nancy Avellino – has knowledge related to the Partnerships' formation, Partnerships' investment with BLMIS, and the Partnerships' and Sullivan's relationship with Defendants Avellino and Bienes as alleged in paragraphs 32 through 36 of the Fifth Amended Complaint.
- Dianne Bienes – has knowledge related to the Partnerships' formation, Partnerships' investment with BLMIS, and the Partnerships' and Sullivan's relationship with Defendants Avellino and Bienes as alleged in paragraphs 32 through 36 of the Fifth Amended Complaint.

- Bernard L. Madoff –has knowledge related to the Partnerships’ formation, the purpose of the Partnerships, Partnerships’ investment with BLMIS, the Partnerships’ and Sullivan’s relationship with Defendants Avellino and Bienes, and facts related to Defendants Avellino and Bienes history of investing and bringing investors to BLMIS and of bringing investors to the Partnerships.
- Valerie Judd – Judd has knowledge related to Bienes bringing investors to the Partnerships.
- Thomas Avellino – Avellino has knowledge of the allegations that the Partnerships tracked their investments and the capital they held based exclusively on Defendant Avellino’s advice, and by using the software that Thomas Avellino, Defendant Avellino’s son, provided. Thomas Avellino has knowledge that Defendant Avellino had Thomas Avellino install software for the Partnerships so that Defendant Avellino could ensure that the Partnerships were using the same software as other investment vehicles through which both Defendant Avellino and Defendant Bienes made millions of dollars.
- Bette Ann Powell - has knowledge related to the Partnerships’ formation, Partnerships’ investment with BLMIS, and the Partnerships’ and Sullivan’s relationship with the Defendants Avellino and Bienes as alleged in paragraphs 32 through 36 of the Fifth Amended Complaint.
- Edith Rosen/Sam Rosen/Premier Marketing Services, Inc.- has knowledge of reliance on Defendants Avellino and Bienes to understand and explain the operations of BLMIS and the trades that BLMIS allegedly made on behalf of the Partnerships.
- Donna Lipworth - has knowledge of reliance on Defendants Avellino and Bienes to understand and explain the operations of BLMIS and the trades that BLMIS allegedly

made on behalf of the Partnerships.

- Margaret Lipworth - has knowledge of reliance on Defendants Avellino and Bienes to understand and explain the operations of BLMIS and the trades that BLMIS allegedly made on behalf of the Partnerships.
- Marvin Seperson - has knowledge of reliance on Defendants Avellino and Bienes to understand and explain the operations of BLMIS and the trades that BLMIS allegedly made on behalf of the Partnerships.
- Margaret and Fernando Esteban -- has knowledge of Defendant Avellino handling their transfer of funds to the Partnerships, and Defendant Avellino bringing investors to the Partnerships.

Plaintiffs are continuing to conduct discovery and additional persons may have information responsive to this Interrogatory.

6. Please identify all persons who have knowledge of Plaintiffs' allegations in paragraphs 42 and 43 of the Fifth Amended Complaint and for each person identified please set forth the substance of their knowledge.

**RESPONSE:**

Plaintiffs' understanding from the Meet and Confer is that this interrogatory is only seeking names of individuals who Plaintiffs know have discoverable information of the underlying facts asserted in paragraphs 42 through 43 of the Fifth Amended Complaint, and not any persons who may have learned of Plaintiffs' allegations through media accountings, Plaintiffs' website, or publicly disclosed information. Noting that, as agreed during the Meet and Confer, this response shall not be deemed a waiver of any privilege, Plaintiffs respond as follows:

- Michael D. Sullivan –has knowledge related to the payment and receipt of the kickbacks alleged in paragraphs 42 and 43 of the Fifth Amended Complaint.
- Frank Avellino - has knowledge related to the payment and receipt of the kickbacks and allegations asserted against Defendants Avellino and Bienes alleged in paragraphs 42 and 43 of the Fifth Amended Complaint.
- Michael Bienes – has knowledge related to the payment and receipt of the kickbacks and allegations asserted against Defendants Avellino and Bienes alleged in paragraphs 42 and 43 of the Fifth Amended Complaint.
- Susan Moss – has knowledge of Sullivan’s relationship with Defendants Avellino and Bienes, Defendant Avellino bringing investors into the Partnerships, and the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Father Vincent T. Kelly – Kelly has knowledge about the payment and receipt of kickbacks alleged in the Fifth Amended Complaint.
- Steven Jacob – has knowledge about the payment and receipt of kickbacks alleged in the Fifth Amended Complaint and other allegations asserted against him.
- Nancy Avellino – has knowledge related to the payment and receipt of the kickbacks and allegations asserted against Defendants Avellino and Bienes alleged in paragraphs 42 and 43 of the Fifth Amended Complaint.
- Dianne Bienes – has knowledge related to the payment and receipt of the kickbacks and allegations asserted against Defendants Avellino and Bienes alleged in paragraphs 42 and 43 of the Fifth Amended Complaint.
- Valerie Judd – Judd has knowledge related to Bienes bringing investors to the Partnerships.

- Greg Wallick and Cindy Wallick – has knowledge of Sullivan or Defendants Avellino and Bienes bringing investors into the Partnerships.
- James Judd – Judd has knowledge related to Bienes bringing investors to the Partnerships.
- Margaret Esteban and Fernando Esteban –have knowledge of Defendant Avellino’s relationship with the Partnerships, handling their transfer of funds to the Partnerships, and Defendant Avellino bringing investors to the Partnerships.
- Bishop Richard Wills –has knowledge of payments made to him by or on behalf of Frank Avellino and the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Andrea Aker –has knowledge related to Bienes bringing investors to the Partnerships.
- Vania Alves - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- Patricia Hidalgo - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- Stanley & Emile Leonardi - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- Matthew Carone - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- John Crowley - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- James Jordan - has knowledge related to Defendants Avellino and Bienes bringing

investors to the Partnerships.

- Elaine Ziffer - has knowledge related to Defendant Avellino bringing investors to the Partnerships.
- All persons associated with “Fr. Kelly’s group” as identified by Defendant Avellino - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- Rebecca McDonough and other unknown persons at Ahearn Jasco + Company – has knowledge related to Defendant Avellino’s history of investing with Madoff.
- Fred C. Zittles - has knowledge related to Defendant Bienes bringing investors to the Partnerships.
- Mike McCarthy - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships through Father Kelly.
- Sandra Dydo - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- Unknown persons associated with Paragon Ventures - has knowledge related to Defendants Avellino bringing investors to the Partnerships.
- Unknown persons associated with 56 Arlington, LLC - has knowledge of the Partnerships’ and Sullivan’s relationship with the Defendants, and the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Unknown persons associated with 27 Cliff, LLC - has knowledge of the Partnerships’ and Sullivan’s relationship with the Defendants, and the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint



- Kenn Jordan - has knowledge related to Defendant Avellino bringing investors to the Partnerships.
- Susan Shaheen - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- John Combs - has knowledge related to Defendant Avellino bringing investors to the Partnerships.
- Donna Lipworth - has knowledge related to Defendants Avellino or Bienes bringing investors to the Partnerships.
- Margaret Lipworth - has knowledge related to Defendants Avellino or Bienes bringing investors to the Partnerships.
- Nicholas or Mary O'Gorman - has knowledge related to Vincent T. Kelly bringing investors to the Partnerships.
- Marvin Seperson - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.

Plaintiffs are continuing to conduct discovery and additional persons may have information responsive to this Interrogatory.

7. Please identify all persons who have knowledge of the alleged “kickbacks” in paragraph 46 of the Fifth Amended Complaint and for each person identified please set forth the substance of their knowledge.

**RESPONSE:**

Plaintiffs’ understanding from the Meet and Confer is that this interrogatory is only seeking names of individuals who Plaintiffs know have discoverable information of the underlying facts



of the alleged “kickbacks” in paragraph 46 of the Fifth Amended Complaint, and not any persons who may have learned of Plaintiffs’ allegations through media accountings, Plaintiffs’ website, or publicly disclosed information. Noting that, as agreed during the Meet and Confer, this response shall not be deemed a waiver of any privilege, Plaintiffs respond as follows:

- Michael D. Sullivan – has knowledge of the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Frank Avellino - has knowledge of the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Michael Bienes – has knowledge of the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Susan Moss – has knowledge of the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Scott Holloway – has knowledge of the payment and receipt of kickbacks alleged in the Fifth Amended Complaint.
- Sam Rosen – has knowledge about the payment and receipt of kickbacks alleged in the Fifth Amended Complaint and Defendants Avellino and Bienes bringing investors into the Partnerships.
- Father Vincent T. Kelly – Kelly has knowledge about the payment and receipt of kickbacks alleged in the Fifth Amended Complaint.
- Steven Jacob – has knowledge about the payment and receipt of kickbacks alleged in the Fifth Amended Complaint and other allegations asserted against him.
- Nancy Avellino – has knowledge of Defendant Avellino and Bienes bringing investors into the Partnerships, and the payment and receipt of the kickbacks alleged in the Fifth

Amended Complaint.

- Dianne Bienes – has knowledge of Defendant Avellino and Bienes bringing investors into the Partnerships, and the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Valerie Judd – Judd has knowledge related to Bienes bringing investors to the Partnerships.
- Greg Wallick and Cindy Wallick – has knowledge of Sullivan or Defendants Avellino and Bienes bringing investors into the Partnerships.
- James Judd – Judd has knowledge related to Bienes bringing investors to the Partnerships.
- Margaret Esteban and Fernando Esteban –have knowledge of Defendant Avellino’s relationship with the Partnerships, handling their transfer of funds to the Partnerships, and Defendant Avellino bringing investors to the Partnerships.
- Bishop Richard Wills –has knowledge of payments made to him by or on behalf of Frank Avellino and the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Andrea Aker –has knowledge related to Bienes bringing investors to the Partnerships.
- Wayne Horwitz - has knowledge of the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- James E. Yonge - has knowledge of the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Abraham Newman - has knowledge of the payment and receipt of the kickbacks alleged

in the Fifth Amended Complaint.

- Vincent Barone - has knowledge of the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Edith Rosen/Sam Rosen/Premier Marketing Services, Inc.- has knowledge of the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Gary R. Chapman - has knowledge of the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Dr. Edward D. Michaelson - has knowledge of the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Jack Kleinman - has knowledge of the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Steve Jacob - has knowledge related to the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Ralph C. Fox/Ralph C. Fox Trustee - has knowledge of the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Lisa Glatt - has knowledge related to the Partnerships' formation.
- Vania Alves - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- Patricia Hidalgo - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- Stanley & Emile Leonardi - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.

- Matthew Carone - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- John Crowley - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- James Jordan - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- Elaine Ziffer - has knowledge related to Defendant Avellino bringing investors to the Partnerships.
- All persons associated with 'Fr. Kelly's group' as identified by Defendant Avellino - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- Rebecca McDonough and other unknown persons at Ahearn Jasco + Company -- has knowledge related to Defendant Avellino's history of investing with Madoff.
- Fred C. Zittles - has knowledge related to Defendant Bienes bringing investors to the Partnerships.
- Mike McCarthy - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships through Father Kelly.
- Sandra Dydo - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- Unknown persons associated with Paragon Ventures - has knowledge related to Defendants Avellino bringing investors to the Partnerships.
- Unknown persons associated with 56 Arlington, LLC - has knowledge of the payment

and receipt of the kickbacks alleged in the Fifth Amended Complaint.

- Unknown persons associated with 27 Cliff, LLC - has knowledge of the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint
- Unknown persons associated with Direct Response Group, Inc. - has knowledge of the payment and receipt of the kickbacks alleged in the Fifth Amended Complaint.
- Kenn Jordan - has knowledge related to Defendant Avellino bringing investors to the Partnerships.
- Susan Shaheen - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.
- John Combs - has knowledge related to Defendant Avellino bringing investors to the Partnerships.
- Donna Lipworth - has knowledge related to Defendants Avellino or Bienes bringing investors to the Partnerships.
- Margaret Lipworth - has knowledge related to Defendants Avellino or Bienes bringing investors to the Partnerships.
- Nicholas or Mary O'Gorman - has knowledge related to Vincent T. Kelly bringing investors to the Partnerships.
- Marvin Seperson - has knowledge related to Defendants Avellino and Bienes bringing investors to the Partnerships.

Plaintiffs are continuing to conduct discovery and additional persons may have information responsive to this Interrogatory.

8. Please identify all persons who have knowledge of the allegations in paragraph 50 of the Fifth Amended Complaint and for each person identified please set forth the substance of their knowledge.

**RESPONSE:**

Plaintiffs' understanding from the Meet and Confer is that this interrogatory is only seeking names of individuals who Plaintiffs know have discoverable information of the underlying facts of the allegations in paragraph 50 of the Fifth Amended Complaint, and not any persons who may have learned of Plaintiffs' allegations through media accountings, Plaintiffs' website, or publicly disclosed information. Noting that, as agreed during the Meet and Confer, this response shall not be deemed a waiver of any privilege, Plaintiffs respond as follows:

- Michael D. Sullivan – has knowledge of Defendant Avellino's and Bienes' relationship with the Partnerships and conduct as alleged in paragraph 50 of the Fifth Amended Complaint.
- Frank Avellino - has knowledge of Defendant Avellino's and Bienes' relationship with the Partnerships and conduct as alleged in paragraph 50 of the Fifth Amended Complaint.
- Michael Bienes – has knowledge of Defendant Avellino's and Bienes' relationship with the Partnerships and conduct as alleged in paragraph 50 of the Fifth Amended Complaint.
- Susan Moss – has knowledge of continuing communications between Defendants Avellino and Bienes as alleged in paragraph 50 of the Fifth Amended Complaint.
- Nancy Avellino – has knowledge of Defendant Avellino's and Bienes' relationship with the Partnerships and conduct as alleged in paragraph 50 of the Fifth Amended Complaint.
- Dianne Bienes – has knowledge of Defendant Avellino's and Bienes' relationship with the Partnerships and conduct as alleged in paragraph 50 of the Fifth Amended Complaint.

Plaintiffs are continuing to conduct discovery and additional persons may have information responsive to this Interrogatory.

9. Please set forth all facts which support your contention that the doctrine of delayed discovery is applicable to extend the applicable statute of limitations to the causes of action raised in the Fifth Amended Complaint.

**RESPONSE:**

Plaintiffs' understanding from the Meet and Confer is that Defendant Avellino is not seeking attorney-client communication, attorney work product, or mental impressions and Defendant Avellino confirmed that this response shall not be deemed a waiver of any privilege.

The below facts support that the delayed discovery doctrine applies.

As Managing General Partner of the Partnerships, Sullivan was in possession of certain books and records that demonstrated Defendants' control of the Partnerships, the payment and receipt of the kickbacks, and the fact that those kickbacks were improper because they were composed of funds that originated from the capital contributions of general partners of one or both of the Partnerships. As described in the Fifth Amended Complaint, Defendants Avellino and Bienes were active in the management of the Partnerships and built a relationship of trust and confidence with the Partnerships. Sullivan prevented general partners from accessing all the books and records of the Partnerships to conceal Defendants' involvement in the Partnerships, their receipt of kickbacks, and the improper nature of the kickbacks because of the relationship with Defendants and the control they exerted over the Partnerships through Sullivan.

Through Defendants' conduct and the control that Defendants Avellino and Bienes exerted over the Partnerships through Michael D. Sullivan, they prevented the Partnerships and others from commencing an action against them related to their receipt of the kickbacks. On



August 10, 2012, Sullivan wrote the partners of the Partnerships a letter denying that Defendants Avellino or Bienes had any control over the Partnerships and stating that they did not receive any Partnerships funds – which was false. Sullivan wrote that letter because Defendants Avellino and Bienes were active in the management of the Partnerships, had a built a relationship of trust and confidence with the Partnerships, and continued to control the Partnerships even after it was revealed in December 2008, that Bernard L. Madoff was operating a Ponzi scheme. Moreover, between 2008 and 2012, Sullivan and Defendants Bienes and Avellino corresponded by e-mail regarding the Partnerships, Defendant Avellino received copies of legal documents exchanged between the Partnerships and their counsel, shared a common attorney with the Partnerships after 2008, and Defendant Avellino directed the Partnerships' activities in seeking recovery from the Trustee of Bernard L. Madoff Investment Services, LLC. They did so to prevent a lawsuit against them related to the kickbacks. During a televised interview on PBS in 2009, Defendant Bienes falsely denied referring any investors to the Partnerships for the benefit of distancing himself and Defendant Avellino from any allegations of wrongdoing and for the purpose of hiding the kickbacks. Additionally, Thomas Avellino, on behalf of Defendants Avellino and Bienes, had contact with the Partnerships' lawyers and maintained a business relationship with Sullivan after the BLMIS ponzi scheme was discovered in 2008 to further exert influence over the Partnerships through Sullivan and prevent disclosure of Defendants' wrongdoings. Furthermore, and despite knowing of potential claims against them, Defendants Jacob, Avellino, and Bienes lost or destroyed documents, including but not limited to e-mails, that are relevant to this action.

All of the above conduct breached Defendants Avellino's and Bienes' fiduciary duties to the Partnerships, was intended to hide and shield Defendants from the ramifications of their

wrongful receipt of the kickbacks, and prevent a lawsuit against them related to the payment and receipt of the improper kickbacks.

As a result of Defendants' conduct and Defendants Avellino's and Bienes' above-described control over the Partnerships through Sullivan, it was not until approximately May 2012 that Sullivan finally disclosed portions of the Partnerships' books and records. Critically, only after reviewing and analyzing those documents produced in May 2012, in conjunction with books and records that were received from Sullivan after August 2012, could it have been discovered that the kickbacks that Defendants received were composed of funds that originated from the capital contributions of general partners of one or both of the Partnerships – in contravention of the Partnerships' Partnership Agreements. Therefore, the fraudulent and improper nature of the kickbacks could not have been discovered until those certain books and records of the Partnerships were turned over in August 2012.

In *S&P, et al. v. Hooker, et al.*, Case No. 12-034121, in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, Judge Streitfield previously denied summary judgment and found that there were issues of fact as to when transfers that were composed of funds that originated from the capital contributions of general partners – like the ones at issue here – could have discovered with the exercise of due diligence. Plaintiffs attach hereto as **Exhibit A** affidavits of Barry Mukamal, Margaret Smith, and Philip von Kahle that were filed in *S&P, et al. v. Hooker, et al.*, Case No. 12-034121 and/or *S&P, et al. v. Alves, et al.*, Case No. 12-028324 (07), in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, with further facts that support the response to this Interrogatory.

10. Please identify all persons who have knowledge of the facts set forth in your answer to Question Number 9.

**RESPONSE:**

Consistent with the Meet and Confer, where Defendant Avellino's counsel clarified that the interrogatory is not seeking attorney/client communication, attorney work product, or mental impressions noting that this response shall not be deemed a waiver of any privilege, Plaintiffs respond as follows:

- Michael D. Sullivan
- Michael Bienes
- Frank Avellino
- Susan Moss
- Nancy Avellino
- Thomas Avellino
- Dianne Bienes
- Margaret Smith
- Philip von Kahle
- Barry Mukamal
- Scott Holloway
- Father Vincent T. Kelly
- Bishop Richard Wills
- Lola Kurland
- Bette Ann Powell
- Wayne Horwitz
- James E. Yonge

- Abraham Newman
- Vincent Barone
- Edith Rosen/Sam Rosen/Premier Marketing Services, Inc
- Gary R. Chapman
- Dr. Edward D. Michaelson
- Jack Kleinman
- Steve Jacob
- Ralph C. Fox/Ralph C. Fox Trustee
- Unknown persons associated with 56 Arlington, LLC
- Unknown persons associated with 27 Cliff, LLC
- Unknown persons associated with Direct Response Group, Inc.
- Helen Chaitman
- All partners of S&P Associates, General Partnership
- All partners of P&S Associates, General Partnership

Plaintiffs are continuing to conduct discovery and additional persons may have information responsive to this Interrogatory.

11. Please set forth all facts which support your contention that the doctrine of equitable estoppel is applicable to extend the applicable statute of limitations to the causes of action raised in the Fifth Amended Complaint, including without limitation, all actions or conduct by Avellino which prevented and/or delayed you from filing a lawsuit.

**RESPONSE:**

Plaintiffs' understanding from the Meet and Confer is that Defendant Avellino is not seeking attorney-client communication, attorney work product, or mental impressions and Defendant Avellino confirmed that this response shall not be deemed a waiver of any privilege.

The below facts support Plaintiffs' contention that the doctrine of equitable estoppel is applicable to extend the applicable statute of limitations to the causes of action raised in the Fifth Amended Complaint.

As Managing General Partner of the Partnerships, Sullivan was in possession of certain books and records that demonstrated Defendants' control of the Partnerships, the payment and receipt of the kickbacks, and the fact that those kickbacks were improper because they were composed of funds that originated from the capital contributions of general partners of one or both of the Partnerships. As described in the Fifth Amended Complaint, Defendants Avellino and Bienes were active in the management of the Partnerships and built a relationship of trust and confidence with the Partnerships. Sullivan prevented general partners from accessing all the books and records of the Partnerships to conceal Defendants' involvement in the Partnerships, their receipt of kickbacks, and the improper nature of the kickbacks because of the relationship with Defendants and the control they exerted over the Partnerships through Sullivan.

Through Defendants' conduct and the control that Defendants Avellino and Bienes exerted over the Partnerships through Michael D. Sullivan, they prevented the Partnerships and others from commencing an action against them related to their receipt of the kickbacks. On August 10, 2012, Sullivan wrote the partners of the Partnerships a letter denying that Defendants Avellino or Bienes had any control over the Partnerships and stating that they did not receive any Partnerships funds – which was false. Sullivan wrote that letter because Defendants Avellino and Bienes were active in the management of the Partnerships, had a built a

relationship of trust and confidence with the Partnerships, and continued to control the Partnerships even after it was revealed in December 2008, that Bernard L. Madoff was operating a Ponzi scheme. Moreover, between 2008 and 2012, Sullivan and Defendants Bienes and Avellino corresponded by e-mail regarding the Partnerships, Defendant Avellino received copies of legal documents exchanged between the Partnerships and their counsel, shared a common attorney with the Partnerships after 2008, and Defendant Avellino directed the Partnerships' activities in seeking recovery from the Trustee of Bernard L. Madoff Investment Services, LLC. They did so to prevent a lawsuit against them related to the kickbacks. During a televised interview on PBS in 2009, Defendant Bienes falsely denied referring any investors to the Partnerships for the benefit of distancing himself and Defendant Avellino from any allegations of wrongdoing and for the purpose of hiding the kickbacks. Additionally, Thomas Avellino, on behalf of Defendants Avellino and Bienes, had contact with the Partnerships' lawyers and maintained a business relationship with Sullivan after the BLMIS ponzi scheme was discovered in 2008 to further exert influence over the Partnerships through Sullivan and prevent disclosure of Defendants' wrongdoings. Furthermore, and despite knowing of potential claims against them, Defendants Jacob, Avellino, and Bienes lost or destroyed documents, including but not limited to e-mails, that are relevant to this action.

All of the above conduct breached Defendants Avellino's and Bienes' fiduciary duties to the Partnerships, was intended to hide and shield Defendants from the ramifications of their wrongful receipt of the kickbacks, and prevent a lawsuit against them related to the payment and receipt of the improper kickbacks.

As a result of Defendants' conduct and Defendants Avellino's and Bienes' above-described control over the Partnerships through Sullivan, it was not until approximately May

2012 that Sullivan finally disclosed portions of the Partnerships' books and records. Critically, only after reviewing and analyzing those documents produced in May 2012, in conjunction with books and records that were received from Sullivan after August 2012, could it have been discovered that the kickbacks that Defendants received were composed of funds that originated from the capital contributions of general partners of one or both of the Partnerships – in contravention of the Partnerships' Partnership Agreements. Therefore, the fraudulent and improper nature of the kickbacks could not have been discovered until those certain books and records of the Partnerships were turned over in August 2012.

In *S&P, et al. v. Hooker, et al.*, Case No. 12-034121, in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, Judge Streitfield previously denied summary judgment and found that there were issues of fact as to when transfers that were composed of funds that originated from the capital contributions of general partners – like the ones at issue here – could have discovered with the exercise of due diligence. Plaintiffs attach hereto as **Exhibit A** affidavits of Barry Mukamal, Margaret Smith, and Philip von Kahle that were filed in *S&P, et al. v. Hooker, et al.*, Case No. 12-034121 and/or *S&P, et al. v. Alves, et al.*, Case No. 12-028324 (07), in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, with further facts that support the response to this Interrogatory.

12. Please identify all persons who have knowledge of the facts set forth in your answer to Question Number 11.

**RESPONSE:**

Consistent with the Meet and Confer, where Defendant Avellino's counsel clarified that the interrogatory is not seeking attorney/client communication, attorney work product, or mental

impressions noting that this response shall not be deemed a waiver of any privilege, Plaintiffs respond as follows:

- Michael D. Sullivan
- Michael Bienes
- Frank Avellino
- Susan Moss
- Nancy Avellino
- Dianne Bienes
- Margaret Smith
- Philip von Kahle
- Barry Mukamal
- Scott Holloway
- Father Vincent T. Kelly
- Bishop Richard Wills
- Lola Kurland
- Bette Ann Powell
- Wayne Horwitz
- James E. Yonge
- Abraham Newman
- Vincent Barone
- Edith Rosen/Sam Rosen/Premier Marketing Services, Inc
- Gary R. Chapman





- Dr. Edward D. Michaelson
- Jack Kleinman
- Steve Jacob
- Thomas Avellino
- Ralph C. Fox/Ralph C. Fox Trustee
- Unknown persons associated with 56 Arlington, LLC
- Unknown persons associated with 27 Cliff, LLC
- Unknown persons associated with Direct Response Group, Inc.
- Helen Chaitman
- All partners of S&P Associates, General Partnership
- All partners of P&S Associates, General Partnership

Plaintiffs are continuing to conduct discovery and additional persons may have information responsive to this Interrogatory.

13. Please set forth all facts which support your contention that continuing torts is applicable to extend the applicable statute of limitations to the causes of action raised in the Fifth Amended Complaint, including without limitation, all tortious acts committed by Avellino after 2008 which cause damages to you.

**RESPONSE:**

Plaintiffs' understanding from the Meet and Confer is that Defendant Avellino is not seeking attorney-client communication, attorney work product, or mental impressions and Defendant Avellino confirmed that this response shall not be deemed a waiver of any privilege.

The below facts support Plaintiffs' contention that the continuing torts doctrine is applicable to extend the applicable statute of limitations to the causes of action raised in the Fifth Amended Complaint.

As Managing General Partner of the Partnerships, Sullivan was in possession of certain books and records that demonstrated Defendants' control of the Partnerships, the payment and receipt of the kickbacks, and the fact that those kickbacks were improper because they were composed of funds that originated from the capital contributions of general partners of one or both of the Partnerships. As described in the Fifth Amended Complaint, Defendants Avellino and Bienes were active in the management of the Partnerships and built a relationship of trust and confidence with the Partnerships. Sullivan prevented general partners from accessing all the books and records of the Partnerships to conceal Defendants' involvement in the Partnerships, their receipt of kickbacks, and the improper nature of the kickbacks because of the relationship with Defendants and the control they exerted over the Partnerships through Sullivan.

Through Defendants' conduct and the control that Defendants Avellino and Bienes exerted over the Partnerships through Michael D. Sullivan, they prevented the Partnerships and others from commencing an action against them related to their receipt of the kickbacks. On August 10, 2012, Sullivan wrote the partners of the Partnerships a letter denying that Defendants Avellino or Bienes had any control over the Partnerships and stating that they did not receive any Partnerships funds – which was false. Sullivan wrote that letter because Defendants Avellino and Bienes were active in the management of the Partnerships, had a built a relationship of trust and confidence with the Partnerships, and continued to control the Partnerships even after it was revealed in December 2008, that Bernard L. Madoff was operating a Ponzi scheme. Moreover, between 2008 and 2012, Sullivan and Defendants Bienes and

Avellino corresponded by e-mail regarding the Partnerships, Defendant Avellino received copies of legal documents exchanged between the Partnerships and their counsel, shared a common attorney with the Partnerships after 2008, and Defendant Avellino directed the Partnerships' activities in seeking recovery from the Trustee of Bernard L. Madoff Investment Services, LLC. They did so to prevent a lawsuit against them related to the kickbacks. During a televised interview on PBS in 2009, Defendant Bienes falsely denied referring any investors to the Partnerships for the benefit of distancing himself and Defendant Avellino from any allegations of wrongdoing and for the purpose of hiding the kickbacks. Additionally, Thomas Avellino, on behalf of Defendants Avellino and Bienes, had contact with the Partnerships' lawyers and maintained a business relationship with Sullivan after the BLMIS ponzi scheme was discovered in 2008 to further exert influence over the Partnerships through Sullivan and prevent disclosure of Defendants' wrongdoings. Furthermore, and despite knowing of potential claims against them, Defendants Jacob, Avellino, and Bienes lost or destroyed documents, including but not limited to e-mails, that are relevant to this action.

All of the above conduct breached Defendants Avellino's and Bienes' fiduciary duties to the Partnerships, was intended to hide and shield Defendants from the ramifications of their wrongful receipt of the kickbacks, and prevent a lawsuit against them related to the payment and receipt of the improper kickbacks.

As a result of Defendants' conduct and Defendants Avellino's and Bienes' above-described control over the Partnerships through Sullivan, it was not until approximately May 2012 that Sullivan finally disclosed portions of the Partnerships' books and records. Critically, only after reviewing and analyzing those documents produced in May 2012, in conjunction with books and records that were received from Sullivan after August 2012, could it have been

discovered that the kickbacks that Defendants received were composed of funds that originated from the capital contributions of general partners of one or both of the Partnerships – in contravention of the Partnerships’ Partnership Agreements. Therefore, the fraudulent and improper nature of the kickbacks could not have been discovered until those certain books and records of the Partnerships were turned over in August 2012.

In *S&P, et al. v. Hooker, et al.*, Case No. 12-034121, in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, Judge Streitfield previously denied summary judgment and found that there were issues of fact as to when transfers that were composed of funds that originated from the capital contributions of general partners – like the ones at issue here – could have discovered with the exercise of due diligence. Plaintiffs attach hereto as **Exhibit A** affidavits of Barry Mukamal, Margaret Smith, and Philip von Kahle that were filed in *S&P, et al. v. Hooker, et al.*, Case No. 12-034121 and/or *S&P, et al. v. Alves, et al.*, Case No. 12-028324 (07), in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, with further facts that support the response to this Interrogatory.

14. Please identify all persons who have knowledge of the facts set forth in your answer to Question Number 13.

**RESPONSE:**

- Michael D. Sullivan
- Michael Bienes
- Frank Avellino
- Susan Moss
- Nancy Avellino

- Dianne Bienes
- Margaret Smith
- Philip von Kahle
- Barry Mukamal
- Scott Holloway
- Father Vincent T. Kelly
- Bishop Richard Wills
- Lola Kurland
- Bette Ann Powell
- Wayne Horwitz
- James E. Yonge
- Abraham Newman
- Vincent Barone
- Edith Rosen/Sam Rosen/Premier Marketing Services, Inc
- Gary R. Chapman
- Dr. Edward D. Michaelson
- Jack Kleinman
- Steve Jacob
- Thomas Avellino
- Ralph C. Fox/Ralph C. Fox Trustee
- Unknown persons associated with 56 Arlington, LLC
- Unknown persons associated with 27 Cliff, LLC

- Unknown persons associated with Direct Response Group, Inc.
- Helen Chaitman
- All partners of S&P Associates, General Partnership
- All partners of P&S Associates, General Partnership

Plaintiffs are continuing to conduct discovery and additional persons may have information responsive to this Interrogatory.

15. Please set forth all facts which support your contention that the causes of action raised in the Fifth Amended Complaint are not barred by the applicable statute of limitations.

**RESPONSE:**

Plaintiffs' understanding from the Meet and Confer is that Defendant Avellino is not seeking attorney-client communication, attorney work product, or mental impressions and Defendant Avellino confirmed that this response shall not be deemed a waiver of any privilege.

The below facts support Plaintiffs' contention that the causes of action raised in the Fifth Amended Complaint are not barred by the applicable statute of limitations.

As Managing General Partner of the Partnerships, Sullivan was in possession of certain books and records that demonstrated Defendants' control of the Partnerships, the payment and receipt of the kickbacks, and the fact that those kickbacks were improper because they were composed of funds that originated from the capital contributions of general partners of one or both of the Partnerships. As described in the Fifth Amended Complaint, Defendants Avellino and Bienes were active in the management of the Partnerships and built a relationship of trust and confidence with the Partnerships. Sullivan prevented general partners from accessing all the books and records of the Partnerships to conceal Defendants' involvement in the Partnerships,

their receipt of kickbacks, and the improper nature of the kickbacks because of the relationship with Defendants and the control they exerted over the Partnerships through Sullivan.

Through Defendants' conduct and the control that Defendants Avellino and Bienes exerted over the Partnerships through Michael D. Sullivan, they prevented the Partnerships and others from commencing an action against them related to their receipt of the kickbacks. On August 10, 2012, Sullivan wrote the partners of the Partnerships a letter denying that Defendants Avellino or Bienes had any control over the Partnerships and stating that they did not receive any Partnerships funds – which was false. Sullivan wrote that letter because Defendants Avellino and Bienes were active in the management of the Partnerships, had a built a relationship of trust and confidence with the Partnerships, and continued to control the Partnerships even after it was revealed in December 2008, that Bernard L. Madoff was operating a Ponzi scheme. Moreover, between 2008 and 2012, Sullivan and Defendants Bienes and Avellino corresponded by e-mail regarding the Partnerships, Defendant Avellino received copies of legal documents exchanged between the Partnerships and their counsel, shared a common attorney with the Partnerships after 2008, and Defendant Avellino directed the Partnerships' activities in seeking recovery from the Trustee of Bernard L. Madoff Investment Services, LLC. They did so to prevent a lawsuit against them related to the kickbacks. During a televised interview on PBS in 2009, Defendant Bienes falsely denied referring any investors to the Partnerships for the benefit of distancing himself and Defendant Avellino from any allegations of wrongdoing and for the purpose of hiding the kickbacks. Additionally, Thomas Avellino, on behalf of Defendants Avellino and Bienes, had contact with the Partnerships' lawyers and maintained a business relationship with Sullivan after the BLMIS ponzi scheme was discovered in 2008 to further exert influence over the Partnerships through Sullivan and prevent disclosure

of Defendants' wrongdoings. Furthermore, and despite knowing of potential claims against them, Defendants Jacob, Avellino, and Bienes lost or destroyed documents, including but not limited to e-mails, that are relevant to this action.

All of the above conduct breached Defendants Avellino's and Bienes' fiduciary duties to the Partnerships, was intended to hide and shield Defendants from the ramifications of their wrongful receipt of the kickbacks, and prevent a lawsuit against them related to the payment and receipt of the improper kickbacks.

As a result of Defendants' conduct and Defendants Avellino's and Bienes' above-described control over the Partnerships through Sullivan, it was not until approximately May 2012 that Sullivan finally disclosed portions of the Partnerships' books and records. Critically, only after reviewing and analyzing those documents produced in May 2012, in conjunction with books and records that were received from Sullivan after August 2012, could it have been discovered that the kickbacks that Defendants received were composed of funds that originated from the capital contributions of general partners of one or both of the Partnerships – in contravention of the Partnerships' Partnership Agreements. Therefore, the fraudulent and improper nature of the kickbacks could not have been discovered until those certain books and records of the Partnerships were turned over in August 2012.

In *S&P, et al. v. Hooker, et al.*, Case No. 12-034121, in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, Judge Streitfield previously denied summary judgment and found that there were issues of fact as to when transfers that were composed of funds that originated from the capital contributions of general partners – like the ones at issue here – could have discovered with the exercise of due diligence. Plaintiffs attach hereto as **Exhibit A** affidavits of Barry Mukamal, Margaret Smith, and Philip von Kahle that



were filed in *S&P, et al. v. Hooker, et al.*, Case No. 12-034121 and/or *S&P, et al. v. Alves, et al.*, Case No. 12-028324 (07), in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, with further facts that support the response to this Interrogatory.

16. Please identify all persons who have knowledge of the facts set forth in your answer to Question Number 15.

**RESPONSE:**

Consistent with the Meet and Confer, where Defendant Avellino's counsel clarified that the interrogatory is not seeking attorney/client communication, attorney work product, or mental impressions noting that this response shall not be deemed a waiver of any privilege, Plaintiffs respond as follows:

- Michael D. Sullivan
- Michael Bienes
- Frank Avellino
- Susan Moss
- Nancy Avellino
- Thomas Avellino
- Dianne Bienes
- Margaret Smith
- Philip von Kahle
- Barry Mukamal
- Scott Holloway

- Father Vincent T. Kelly
- Bishop Richard Wills
- Lola Kurland
- Bette Ann Powell
- Wayne Horwitz
- James E. Yonge
- Abraham Newman
- Vincent Barone
- Edith Rosen/Sam Rosen/Premier Marketing Services, Inc
- Gary R. Chapman
- Dr. Edward D. Michaelson
- Jack Kleinman
- Steve Jacob
- Ralph C. Fox/Ralph C. Fox Trustee
- Unknown persons associated with 56 Arlington, LLC
- Unknown persons associated with 27 Cliff, LLC
- Unknown persons associated with Direct Response Group, Inc.
- Helen Chaitman
- All partners of S&P Associates, General Partnership
- All partners of P&S Associates, General Partnership

Plaintiffs are continuing to conduct discovery and additional persons may have information responsive to this Interrogatory.

P&S ASSOCIATES, GENERAL PARTNERSHIP

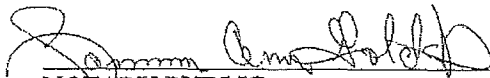
By: 

PHILIP J. VON KAHLE, as Conservator

STATE OF FLORIDA

COUNTY OF Broward

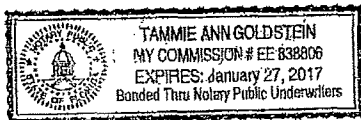
Sworn to or affirmed and signed before me this \_\_\_\_ day of \_\_\_\_\_, 2015  
by Philip J. Von Kahle, as Conservator of P&S Associates, General Partnership, to me known to  
be the person and/or who provided identification consisting of \_\_\_\_\_  
and who executed the foregoing instrument this \_\_\_\_ day of \_\_\_\_\_, 2015.



NOTARY PUBLIC

My Commission Expires: 1/27/17

(SEAL)



S&P ASSOCIATES, GENERAL PARTNERSHIP

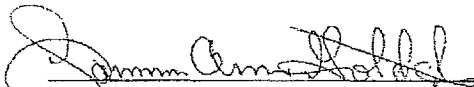
By: 

PHILIP J. VON KAHLE, as Conservator

STATE OF FLORIDA

COUNTY OF Broward

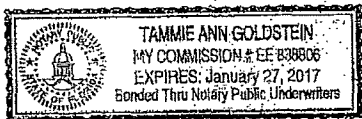
Sworn to or affirmed and signed before me this \_\_\_\_ day of \_\_\_\_\_, 2015  
by Philip J. Von Kahle, as Conservator of S&P Associates, General Partnership, to me known to  
be the person and/or who provided identification consisting of \_\_\_\_\_  
and who executed the foregoing instrument this \_\_\_\_ day of \_\_\_\_\_, 2015.



NOTARY PUBLIC

My Commission Expires: 1/27/17

(SEAL)



***EXHIBIT A***

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

CASE NO.: 12-034121 (04)

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

Plaintiffs,

v.

JANET A. HOOKER CHARITABLE TRUST, a  
charitable trust, *et al.*,

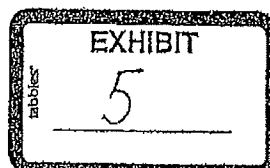
Defendants.

AFFIDAVIT OF MARGARET J. SMITH

STATE OF FLORIDA       )  
                                  .SS  
COUNTY OF BROWARD    )

BEFORE ME, the undersigned authority, personally appeared Margaret J. Smith, who  
deposes and states:

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, in support of Plaintiffs' Response to Defendant Holy Ghost — Western Providence's  
Motion for Summary Judgment.



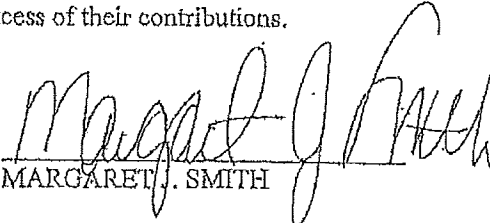
2. I am a Certified Public Accountant employed with the advisory firm of GlassRatner Advisory and Capital Group, LLC ("GlassRatner"). Non-managing partners of P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P," collectively the "Partnerships") retained GlassRatner 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. Only after reviewing and analyzing books and records that were received from Sullivan after August 2012, in conjunction with documents received in approximately May 2012, was it established that certain partners received distributions from the capital contributions of other partners and that certain partners received money in excess of their contributions to the Partnerships.

4. Once the identities of those partners was discovered, on November 13, 2012, as Managing General Partner of the Partnerships, I sent out demand letters to partners who received distributions in excess of their contributions. A copy of one such a demand letter is attached hereto as Exhibit A.

5. To date, and to the best of my knowledge, no partner who received a demand letter has returned any of the distributions that they received in excess of their contributions.

FURTHER AFFIANT SAYETH NAUGHT.

  
MARGARET J. SMITH

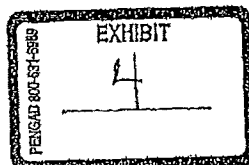
STATE OF FLORIDA       )  
                                  .SS

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. However, 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.
6. It took several months, after receipt of the Partnerships' books and records, from Sullivan to determine the exact amount that the partners who received more than their capital contributions retained.



7. In May of 2013, after reviewing and reconstructing the Partnerships' books and records, in furtherance of my appointment as Conservator of the Partnerships I elected to begin the process of winding the Partnerships down under Florida law.

8. To that end, I filed a *Motion to Approve Plan and Distribution and Establish Objection Procedure*, seeking Court authorization to wind-down the Partnerships, and Court approval of the net-investment method for the distribution of the Partnerships assets. A true and correct copy of the *Motion to Approve Plan and Distribution and Establish Objection Procedure*, is attached hereto as Exhibit B.

9. On October 7, 2013, the Court entered an *Order on Motion for Summary Judgment*, which approved of the "net-investment" method of distribution assets, and permitted me to start the process of winding down the Partnerships.

10. Thus, after October 7, 2013, and I began the process of winding down the Partnerships, because I obtained Court approval to wind down the Partnerships.

11. The Partnerships were never limited partnerships, but were general partnerships.

12. 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 11<sup>th</sup> day of April, 2014 by Philip Von Kahle who is personally known to me or has produced as identification and did/did not take an oath.

Name: 

(Notary Public)

(Affix Seal Below)

5578660-1



GISELLE CROWDER  
NOTARY PUBLIC  
STATE OF FLORIDA  
Commission #00081638  
Expires 4/2/2015



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

Plaintiff,

v

ROBERTA P ALVES, ET AL.,

Defendants.

IN THE CIRCUIT COURT OF THE 17<sup>th</sup>  
JUDICIAL CIRCUIT, IN AND FOR  
BROWARD COUNTY, FLORIDA  
CASE NO. 12-028324 (07)  
Complex Litigation Unit

AFFIDAVIT OF EXPERT BARRY MUKAMAL, CPA

STATE OF FLORIDA                    )  
  )  
COUNTY OF MIAMI DADE            )

BEFORE ME, the undersigned authority, duly authorized to administer oaths and take acknowledgments, personally appeared Barry Mukamal, who, upon being first duly sworn, deposes and says as follows:

1       I am a certified public accountant, and a Partner with the firm Marcum, LLP ("Marcum"). On January 17, 2013 this Court entered its Order Appointing Conservator (the "Order of Appointment") Philip J Von Kahl (the "Conservator") as Conservator for P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P") (collectively, the "Partnerships"). Among other things, the Order of Appointment directed the Conservator to make recommendations with regard to the method of distribution of the Partnerships assets to the partners.

2.       On October 30, 2013, this court entered an Order approving the Conservators Motion to Retain and Compensate Barry Mukamal and Marcum LLP as an Expert Witness, nunc pro tunc to October 1, 2013. As such, I am familiar with the matters set forth herein and submit this Affidavit of Expert.

3 In connection with our employment as an Expert Witness, we were provided with a spreadsheet for S&P that was prepared by the Conservators financial advisor, Michael Moecker and Associates ("Moecker"), titled "1993-2008 by Partner Cash In Cash Out - Real Balance (Investment less distributions)", hereinafter referred to as the "S&P Annual Cash In Cash Out Spreadsheet". The S&P Cash-In Cash-Out Spreadsheet summarized the annual cash contributions and withdrawals by partner for each year for the life of S&P, including partner Guardian Angel. Based on the S&P Cash-In Cash-Out Spreadsheet, partner Guardian Angel made investments in the amount of \$5,188,103.52 and received total distributions in the amount of \$1,298,357.21.

4. We were also provided with a second spreadsheet for S&P that was prepared by Moecker, titled "Summary of Investments and Distribution" (the "S&P Detail Investment & Distribution Spreadsheet"), which spreadsheet included the detail for the new investments in the amount of \$5,188,103.52 and distributions in the amount of \$1,298,357.21 related to partner Guardian Angel.

5 Using the S&P Detail Investment & Distribution Spreadsheet, we selected a statistical sample of the new investments and distributions related to partner Guardian Angel to achieve a 95% confidence level and 90% confidence intervals. We determined a sample size for testing of 68 transactions. For each transaction in our sample, we proceeded to confirm the amount of the investments and distributions listed on the S&P Detail Investment & Distribution Spreadsheet as follows.

- a. Moecker provided Marcum with multiple boxes containing investor records. Specifically, these boxes were organized by year and contained bank statements, copies of checks from investors for new investment, confirmation letters to individual investors, and copies of cancelled checks with respect to investor distributions.<sup>1</sup>
- b. With respect to investments, we agreed the amount on the S&P Detail Investment & Distribution Spreadsheet to copies of investment check(s) from investors and corresponding deposit(s) per bank statements, further corroborated by confirmation letter(s) from S&P to individual investors.
- c. With respect to distributions, we agreed the amounts detailed on the S&P Detail Investment & Distribution Spreadsheet by reference to copies of cancelled checks to investors and corresponding disbursement per banking records.
- d. The S&P Annual Cash-In Cash-Out and S&P Detailed Investment & Distribution Spreadsheet exclude false profit, including the false profit related to the partners that were transferred to Guardian Angel through journal entries.<sup>2</sup>

6 As a result of the testing described above, no exceptions were noted.

7 Based upon my analysis and testing, in my opinion the amounts included for investments of \$5,188,103.52 and distributions of \$1,298,357.21 in the S&P Annual Cash-In Cash-Out Spreadsheet and S&P Detail Investment & Distribution Spreadsheet for partner Guardian Angel are reliable.

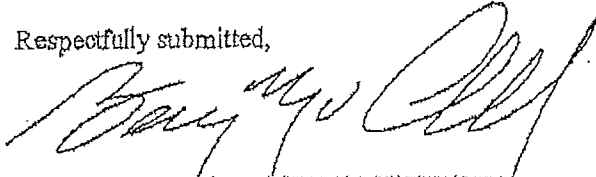
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<sup>1</sup> JS&P banking was conducted through S&P bank accounts, therefore we were provided with S&P bank records. Additionally, we were also provided with Guardian Angel bank statements for the following periods, 6/1/06 – 4/30/13, which statements were incomplete in that the majority of the periods did not include canceled checks or deposit detail. Guardian Angel did not provide bank statements for periods before June 1, 2006.

<sup>2</sup> During 2002 certain partners of S&P and JS&P had their entire investment position (including false profit) transferred via a journal entry from S&P and JS&P to Guardian Angel.

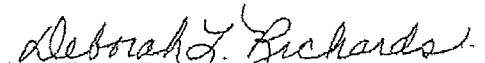
FURTHER AFFIANT SAYETH NAUGHT

Respectfully submitted,



Barry E. Mukamal, CPA/FFS/ABV/CFE/CFP  
Partner  
Marcum, LLP

The foregoing instrument was acknowledged before me this 31<sup>st</sup> day of October 2013 by Barry Mukamal, who is personally known to me and who did take an oath.

  
Notary Public State of Florida at Large

My Commission Expires: *Mar 31, 2017*

