

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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**DEFENDANT FRANK AVELLINO'S MOTION FOR PROTECTIVE ORDER**

Defendant, Frank Avellino ("Avellino"), by and through his undersigned counsel, moves this court, pursuant to Rule 1.280(c), Florida Rules of Civil Procedure, for a protective order precluding the Plaintiffs from taking the deposition of defendant Frank Avellino ("Avellino") on Wednesday, March 9, 2016, and as grounds therefore states as follows:

1. On February 24, 2016, this Court issued an oral ruling that Plaintiffs could conduct a one-hour deposition of Avellino limited to the Errata sheet he filed in this action on December 8, 2016, and documents he has produced since his last deposition. Undersigned counsel, who attended the February 24, 2016 hearing, does not recall the Court placing any time requirement on when this deposition is to be conducted.<sup>1</sup>

2. Plaintiffs have unilaterally noticed Avellino's deposition for March 9, 2016, a copy of which is attached as Exhibit "A".

3. Undersigned counsel repeatedly advised Plaintiffs' counsel that he and his client were not available anytime during the week of March 7. Plaintiffs' counsel are insistent that the

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<sup>1</sup> The Court's oral ruling has not been reduced to a written order and Plaintiffs' counsel have not provided a copy of the transcript of the hearing.

deposition be conducted before the hearing on their Motion to Strike scheduled for March 14, 2016, however, undersigned counsel has no availability to conduct the deposition this week nor does he recall that the Court ordered the deposition to proceed this week. To attempt to accommodate Plaintiffs, undersigned counsel has offered to produce Avellino for deposition on the morning of March 14, before Plaintiffs' hearing on their Motion to Strike scheduled for 2:00 that day.

4. Avellino filed the Errata sheet on December 8, 2016, three months ago. Plaintiffs have had ample time to seek the deposition of Avellino. Their procrastination should not be to the detriment of Avellino and his counsel.

5. Undersigned counsel is presently on four trial dockets and cannot accommodate Plaintiffs' counsel's continuous unilateral demands for discovery on their terms and conditions.

#### CERTIFICATE OF GOOD FAITH CONFERENCE

On several occasions the past week undersigned counsel had telephone and email communications with Zachary P. Hyman, Esq., one of the many attorneys for Plaintiffs to attempt to schedule the deposition of Avellino at as mutually convenient date and time but have been unable to do so.

WHEREFORE, defendant, Frank Avellino, requests that this Court enter an order that the deposition of Avellino unilaterally scheduled by Plaintiffs for March 9, 2016 not go forward on that date and for such other and further relief as is appropriate in the circumstances.

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7<sup>th</sup> day of March, 2016, the foregoing document is being served on those on the attached service list by electronic service via the Florida Court E-Filing Portal in compliance with Fla. Admin Order No. 13-49.

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

CASE NO. 12-034123 (07)

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

Plaintiffs,

v.

MICHAEL D. SULLIVAN, an individual,  
STEVEN JACOB, an individual, MICHAEL D.  
SULLIVAN & ASSOCIATES, INC., a Florida  
corporation, STEVEN F. JACOB, CPA &  
ASSOCIATES, INC., a Florida corporation,  
FRANK AVELLINO, an individual, MICHAEL  
BIENES, an individual, VINCENT BARONE, an  
individual, and PREMIER MARKETING  
SERVICES, INC., a Florida Corporation,

Defendants.

**PLAINTIFFS' NOTICE OF TAKING ONE-HOUR  
DEPOSITION OF DEFENDANT FRANK AVELLINO**

**TO: ALL COUNSEL LISTED ON CERTIFICATE OF SERVICE**

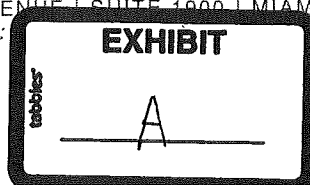
**PLEASE TAKE NOTICE** that the undersigned attorneys will take the deposition of:

Deponent	Date	Time	Location
FRANK AVELLINO	Wednesday March 9, 2016	3:00 p.m. [1 hour]	Berger Singerman LLP One Town Center Road Suite 301 Boca Raton, FL 33486

 **BERGER SINGERMAN**

1450 BRICKELL AVENUE, SUITE 1000, MIAMI, FLORIDA 33131-3453  
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Said deposition will be taken before a Notary Public or any officer authorized to administer oaths in the State of Florida, and a person who is neither a relative nor employee of such attorney or counsel, and who is not financially interested in this action. The deposition is being taken for the purposes of discovery, for use at trial, or for such other purposes as are permitted under the Rules of Court.

Respectfully submitted,

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cc: Empire Legal Reporting

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 2nd day of March, 2016, a true and correct copy of the foregoing document was served on the following parties:

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