

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

CASE NO.: 12-034123 (07)

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

Plaintiffs,

v.

MICHAEL D. SULLIVAN, et al.,

Defendants.

DEFENDANT FRANK AVELLINO'S 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 May 6, 2014, and as grounds therefore states as follows:

1. On March 31, 2014, Plaintiff served a Notice of Deposition unilaterally scheduling the deposition of Frank Avellino for May 6, 2014 in Broward County. A copy of the Notice of Deposition is attached as Exhibit "A".

2. Undersigned counsel advised Plaintiffs' counsel that neither he nor Avellino would be available on May 6, 2014 and that Avellino would be in New York in May for various appointments addressing certain medical issues confronting Avellino. Dates of May 30 or June 3, 4, or 5 were proposed for Avellino's deposition.

3. Plaintiffs' counsel has not agreed to the proposed dates offered by Avellino and insists upon conducting the deposition on an earlier date.

4. Discovery is on-going in this matter and the trial of this action is scheduled for the docket commencing September 29, 2014. Discovery continues until August 15, 2014. The scheduling of Avellino's deposition as proposed by undersigned counsel should not prejudice Plaintiffs.

5. Additionally, Plaintiffs have noticed the deposition of Avellino at its attorney's office in Broward County. Avellino is a resident of Palm Beach County. The deposition should be conducted in Palm Beach County. See, *Donahou v. Matthews*, 660 S.2d 391, 392 (Fla. 5th DCA 1995).

CERTIFICATE OF GOOD FAITH CONFERENCE

On April 24, 2014, undersigned counsel had a telephone conference with Zach Hyman, Esq. and Tom Zeichman, Esq., attorneys for Plaintiffs during which time scheduling of Avellino's deposition was discussed. Plaintiff's counsel advised that they would consider the deposition dates proposed by Defendant, but as to the date of filing of this motion they have not agreed to the proposed dates.

WHEREFORE, defendant, Frank Avellino, requests that this Court enter an order scheduling the deposition of Avellino on or after May 30, 2014 to be conducted in Palm Beach County and for such other and further relief the Court deems appropriate in the circumstances.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of May 2014, 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.

HAILE, SHAW & PFAFFENBERGER, P.A.

Attorneys for Defendants

660 U.S. Highway One, Third Floor

North Palm Beach, FL 33408

Phone: (561) 627-8100

Fax: (561) 622-7603

gwoodfield@haileshaw.com

bpetroni@haileshaw.com

eservices@haileshaw.com

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

SERVICE LIST

THOMAS M. MESSANA, ESQ.
MESSANA, P.A.
SUITE 1400, 401 EAST LAS OLAS BOULEVARD
FORT LAUDERDALE, FL 33301
tmessana@messana-law.com
Attorneys for P & S Associates General Partnership

LEONARD K. SAMUELS, ESQ.
ETHAN MARK, ESQ.
STEVEN D. WEBER, ESQ.
BERGER SINGERMAN
350 EAST LAS OLAS BOULEVARD, SUITE 1000
FORT LAUDERDALE, FL 33301
emark@bergersingerman.com
lsamuels@bergersingerman.com
sweber@bergersingerman.com
Attorneys for Plaintiff

PETER G. HERMAN, ESQ.
TRIPP SCOTT, P.A.
15TH FLOOR
110 SE 6TH STREET
FORT LAUDERDALE, FL 33301
pgh@trippscott.com
*Attorneys for Defendants Steven F. Jacob
and Steven F. Jacob CPA & Associates, Inc.*

JONATHAN ETRA, ESQ.
MARK F. RAYMOND, ESQ.
SHANE MARTIN, ESQ.
CHRISTOPHER CAVALLO, ESQ.
BROAD AND CASSEL
One Biscayne Tower, 21st Floor
2 South Biscayne Blvd.
Miami, FL 33131
mraymond@broadandcassel.com
ssmith@broadandcassel.com
ccavallo@broadandcassel.com
jetra@broadandcassel.com
msouza@broadandcassel.com
smartin@broadandcassel.com
msanchez@broadandcassel.com
Attorneys for Michael Bienes

ROBERT J. HUNT, ESQ.
DEBRA D. KLINGSBERG, ESQ.
HUNT & GROSS, P.A.
185 NW Spanish River Boulevard
Suite 220
Boca Raton, FL 33431-4230
bobhunt@huntgross.com
dklingsberg@huntgross.com
eService@huntgross.com
Sharon@huntgross.com
Attorneys for Defendant, Scott W. Holloway

PAUL V. DeBIANCHI, ESQ.
PAUL V. DeBIANCHI, P.A.
111 S.E. 12th Street
Fort Lauderdale, FL 33316
Debianchi236@bellsouth.net
*Attorneys for Father Vincent P. Kelly; Kelco
Foundation, Inc.*

MATTHEW TRIGGS, ESQ.
ANDREW B. THOMSON, ESQ.
PROSKAUER ROSE, LLP
2255 Glades Road
Suite 421 Atrium
Boca Raton, FL 33431-7360
mtriggs@proskauer.com
florida.litigation@proskauer.com
athomson@proskauer.com
*Attorneys for Defendants Kelco Foundation, Inc.
and Vincent T. Kelly*

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

**Case No: 12-034123(07)
Complex Litigation Unit**

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

Plaintiffs,

v.

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

Defendants.

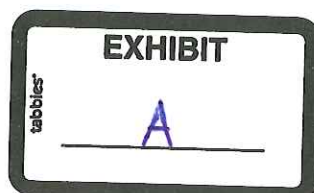
**PLAINTIFFS' NOTICE OF TAKING DEPOSITION OF DEFENDANT
FRANK AVELLINO**

TO: ALL COUNSEL LISTED ON CERTIFICATE OF SERVICE

BERGER SINGERMANN

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

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

Deponent	Date	Time	Location
FRANK AVELLINO	Tuesday, May 6, 2014	9:30 a.m.	Berger Singerman LLP, 350 East Las Olas Boulevard, Suite 1000 Fort Lauderdale, Florida 33301

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 purpose of discovery, for use at trial, or for such other purposes as are permitted under the Rules of Court.

The deposition will continue from day to day until completed and will be recorded via stenographic means.

Respectfully submitted,

BERGER SINGERMAN LLP
Attorneys for Plaintiffs
1450 Brickell Avenue, Suite 1900
Miami, Florida 33131
Telephone: (305) 755-9500
Facsimile: (305) 714-4340

By: s/Steven D. Weber
Leonard K. Samuels
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

cc: Friedman Lombardi & Olsen, Court Reporters



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of March, 2014, a true and correct copy of the foregoing document was served on the following parties:

Peter G. Herman, Esq.
Tripp Scott
110 SE 6th Street
15th Floor
Fort Lauderdale, FL 33301
Tel.: 954-525-7500
Fax.: 954-761-8475
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
Attorneys for Plaintiff

Paul V. DeBianchi, Esq.
Paul V. DeBianchi, P.A.
111 S.E. 12th Street
Fort Lauderdale, FL 33316
Tel.: 954-764-6133
Fax.: 954-764-6131
Debianchi236@bellsouth.net
*Attorneys for Father Vincent P. Kelly; Kelco
Foundation, Inc.*

Mark F. Raymond, Esq.
mraymond@broadandcassel.com
Jonathan Etra, Esq.
jetra@broadandcassel.com
Christopher Cavallo, Esq.
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



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
bpetroni@haileshaw.com
eservices@haileshaw.com
Attorneys for Frank Avellino

Robert J. Hunt, Esq.
Debra D. Klingsberg, Esq.
Hunt & Gross, P.A.
185 Spanish River Boulevard
Suite 220
Boca Raton, FL 33431-4230
Tel: 561-997-9223
Fax: 561-989-8998
Attorneys for Defendant Scott W. Holloway
bobhunt@huntgross.com
dklingsberg@huntgross.com
eService@huntgross.com
Sharon@huntgross.com

Matthew Triggs, Esq.
Andrew Thomson, Esq.
Proskauer Rose LLP
2255 Glades Road, Suite 421 Atrium
Boca Raton, FL 33431
Tel: 561-241-7400
Fax: 561-241-7145
*Attorneys for Defendants Kelco Foundation,
Inc. and Vincent T. Kelly*
mtriggs@proskauer.com
athomson@proskauer.com
florida.litigation@proskauer.com

By: s/Steven D. Weber
Steven D. Weber