

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 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. 5<sup>th</sup> 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.

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**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.

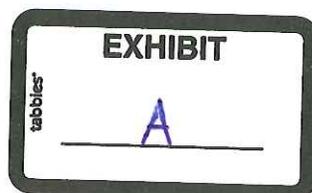
**PLAINTIFFS' NOTICE OF TAKING DEPOSITION OF DEFENDANT  
FRANK AVELLINO**

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

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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,

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**CERTIFICATE OF SERVICE**

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

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