

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, BIENES'S AMENDED RESPONSE TO PLAINTIFFS' FIFTH REQUEST
FOR PRODUCTION OF DOCUMENTS**

Defendant, Michael Bienes ("Bienes"), pursuant to Rule 1.350, Florida Rules of Civil Procedure, and the Court's oral directive of March 14, 2016, serves these Amended Responses and Objections to Plaintiffs' Fifth Request for Production of Documents (the "Fifth Request") and states as follows:

DOCUMENTS REQUESTED AND SPECIFIC RESPONSES

1. All documents and communications exchanged between You and Avellino including but not limited to e-mails sent to You or Your attorney by any attorney representing Bienes.

RESPONSE: Pursuant to the Court's directive, in addition to the documents previously produced, Defendant is to provide a privilege log of all communication initiated by either Avellino or Bienes to the other in which one of their attorneys was copied,

including any responses, for the time period December 2, 2009 through December 31, 2012.

Bienes has no such documents.

2. Any documents which evidence a common interest privilege agreement between You and Bienes.

RESPONSE: Bienes objects to this request on the grounds that it seeks documents and communications the disclosure of which is protected pursuant to a joint defense agreement and/or a common interest privilege, the attorney-client privilege, and the attorney work-produce doctrine. Bienes further objects to logging any communications relating to, subject to, or exchanged under or pursuant to the oral joint defense agreement during the course of or in anticipation of litigation. Subject to and without waiving the foregoing objections, Bienes states that there are no non-privileged documents in his possession, custody, or control that are responsive to this request as the joint defense agreement is oral.

3. All documents pertaining to Your retention or preservation of evidence in connection with litigation being pursued against You.

RESPONSE: Bienes objects to this request on the grounds that it is vague and ambiguous, overbroad, unduly burdensome, calls for the production of documents and communications the disclosure of which is protected by the attorney-client privilege, oral joint defense agreement, common interest privilege, and/or the attorney work-product doctrine. Bienes further objects to this request on the grounds that it seeks documents or communications which are irrelevant and not likely to lead to the discovery of admissible evidence in this action, and asks Bienes to adopt a position taken by Plaintiffs in this action, which he denies. Subject to and without waiving the foregoing, Bienes states that there are

no non-privileged documents or communications responsive to this request within his possession, custody, or control.

4. All tax returns that You filed, or that were filed on Your behalf with the Internal Revenue Service, between January 1, 1999 and the present.

RESPONSE: Pursuant to the Court's oral directive of March 14, 2016, Bienes has provided his counsel with a duly executed authorization directing the IRS to release copies of his 2007 and 2008 tax returns, which counsel is to hold upon receipt.

5. All documents pertaining to all open or closed checking, savings, bank credit cards, NOW, Time or other deposit or checking account in Your name or under Your signatory authority, including but not limited to applications for credit, credit reports, monthly statements, financial statements, signature cards, corporate board authorization minutes, bank statements, cancelled checks, deposit checks, wire transfer forms, credit and debit memorandums, IRS Form 1099, IRS Form 1089, correspondence, or back-up withholding documents.

RESPONSE: Bienes objects to this request on the grounds that it seeks documents, materials or information concerning his private financial information, which is protected from disclosure by Florida's Constitution and other applicable law. Bienes further objects to this request on the grounds that it is overbroad, unduly burdensome, and calls for the production of documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

6. All Forms 4789 and Form 4790 filed with the Department of Treasury, Internal Revenue Service or the United States Customs Service by You between January 1, 2000 and the present, concerning currency transaction conducted by You or on Your behalf.

RESPONSE: Bienes objects to this request on the grounds that it seeks documents, materials or information concerning his private financial information, which is protected from disclosure by Florida's Constitution and other applicable law. Bienes further objects to this request on the grounds that is overbroad, unduly burdensome, and calls for the production of documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence..

7. All documents and communications exchanged between You and Sullivan; Michael D. Sullivan & Associates, Inc.; Sullivan & Powell, Inc.; and/or Solutions in Tax, Inc.

RESPONSE: Documents responsive to this request and in Bienes's possession, custody or control, if any, have been produced to Plaintiffs.

8. All documents and communications exchanged between You and Scott Holloway, Ralph C. Fox, Steve Jacob, Jack Kleinmann, Richard Wills, Edward Michaelson, Gary Chapman, Sam Rosen, Edith Rosen, Marketing Services, Inc., Vincent Barone, Abraham Newman, James E. Yonge, Wayne Horwitz, Direct Response Group, Inc., Susan Moss Booking and Tax Service, and Vincent Kelly.

RESPONSE: Documents responsive to this request and in Bienes's possession, custody or control, if any, have been produced to Plaintiffs.

9. All documents and communications exchanged between You and Helen Chaitman and/or any person or entity associated with the law firm of Becker Poliakoff, P.A. between December 8, 2008 and the present.

RESPONSE: None.

10. All documents and communications exchanged between You and Margaret Esteban and/or Fernando Esteban.

RESPONSE: None.

11. All documents and communications exchanged between You and any general partner of S&P and/or P&S.

RESPONSE: Pursuant to the Court's March 14, 2016 directive, this request is limited to the following 20 individuals:

1. Sandra Dydo
2. Elisabeth Zittel
3. Marvin Seperson
4. James Judd
5. Valerie Judd
6. John Combs
7. Elaine Ziffer
8. Donald Kahn
9. Vincent Kelly
10. Roger Bond
11. Matt Carone
12. Gary Chapman
13. Scott Holloway
14. Ralph Fox
15. Elaine Ziffer
16. James Yonge
17. Vincent Barone
18. Vania Alves
19. Susan Moss
20. John Crowley

Bienes has no documents responsive to this request.

12. All documents and communications relating to Your direct and/or indirect investment with BLMIS, including but not limited to any documents and communications between You and Ahearn & Jasco, P.A.

RESPONSE: Documents responsive to this request and in Bienes's possession, custody or control, if any, have been produced to Plaintiffs.

13. All documents relating to any charitable contributions made by You or for Your benefit.

RESPONSE: Bienes objects to this request on the grounds that it is vague and ambiguous, overbroad, unduly burdensome, and calls for Bienes to produce documents which are more readily available to Plaintiffs or already in the possession of Plaintiffs.

14. All documents related to Sullivan; Michael D. Sullivan & Associates, Inc.; Sullivan & Powell, Inc.; and/or Solutions in Tax, Inc. transferring money to You and/or 27 Cliff, LLC

RESPONSE: Documents responsive to this request and in Bienes's possession, custody or control, if any, have been produced to Plaintiffs.

15. All documents related to Sullivan; Michael D Sullivan & Associates, Inc.; Sullivan & Powell, Inc.; and/or Solutions in Tax, Inc. transferring money to Bienes and/or 56 Arlington House, LLC

RESPONSE: Documents responsive to this request and in Bienes's possession, custody or control, if any, have been produced to Plaintiffs.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of May, 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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