

IN THE CIRCUIT COURT OF THE 17<sup>TH</sup>  
JUDICIAL CIRCUIT IN AND FOR  
BROWARD COUNTY, FLORIDA  
CASE NO. 12-034123 (07)

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

MICHAEL D. SULLIVAN, et al.  
Defendants.

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**DEFENDANT AVELLINO'S AMENDED<sup>1</sup> MOTION TO STRIKE PLAINTIFFS'  
SUPPLEMENTAL RESPONSES AND OBJECTIONS TO AVELLINO'S REQUEST  
FOR PRODUCTION AND SUPPLEMENTAL OBJECTIONS TO INTERROGATORIES  
AND MOTION TO COMPEL PLAINTIFF TO PRODUCE DOCUMENTS AND  
ANSWER INTERROGATORIES**

Defendant Frank Avellino ("Avellino"), moves this Court for an order striking or overruling Plaintiff Philip J. Von Kahle's, as Conservator of P&S Associates and of S&P Associates (hereinafter "Plaintiff") Supplemental Responses and Objections to Avellino's First Request for Production, compelling Plaintiff to produce all requested documents, striking or overruling all objections contained within Plaintiff's Supplemental Responses to Avellino's First Set of Interrogatories, and compelling Plaintiff to better answer interrogatories, and as grounds therefore states as follows:

1. On November 26, 2013, Avellino propounded upon Plaintiff Interrogatories and a Request for Production ("the Request;" the individual paragraphs are referenced as "requests").

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<sup>1</sup> The motion filed on April 7, 2014, inadvertently attached as exhibits Plaintiffs' initial discovery responses rather than Plaintiffs' supplemental responses to which the motion is directed. This amended motion attaches Plaintiffs' supplemental responses to Avellino's request for production and interrogatories as Exhibits A and B, respectively. Since the filing of this motion Plaintiffs have served their second supplemental responses which continue to be objectionable and inadequate. Copies of such second supplemental responses are attached hereto as Exhibits C and D, respectively.

2. Plaintiffs' discovery responses served on or about January 31, 2014 were totally insufficient and evasive. Despite Plaintiff's agreement to file supplemental responses, the supplemental responses are equally as evasive and unresponsive as the initial responses.

3. Plaintiffs' supplemental responses to the Request and to the Interrogatories, which contain the requests and interrogatories themselves (Attached hereto as Exhibits A and B, respectively) are not only evasive and nonresponsive; they are insufficient as a matter of law. It is impossible to tell what the plaintiffs' real objections, if any, are, because Plaintiffs assert general objections to every document requested and every interrogatory propounded, and incorporate those general objections into each and every response and answer – thus obviating the need or the ability to respond to every objection. The entire response to the Request and all objections to the Interrogatories should be stricken as a result of the bad faith evidenced by the nonresponsive, inapplicable responses and objections.

4. Plaintiffs' general responses are not only identical, but they appear to be generic, boiler-plate objections which render the responses entirely meaningless and have no applicability to the instant case. Each and every response and answer incorporates, by way of example and not limitation, objections based upon relevancy, privilege, burdensomeness, oppressiveness, over-broadness, and the proprietary content of the documents requested. Every response and answer incorporates an objection that, to the extent documents and information would be more easily obtained from a third party, they should not be obtained from the Plaintiff. These universal objections, and Plaintiff's interrogatory answers and agreement to produce documents subject to – “and within the limits of” - these objections, make it impossible to know whether Plaintiffs are actually withholding documents or information or producing every document, and all information, as requested.

5. The individual responses and “answers” also include objections which are commonly asserted in reference to many documents and questions and are equally inappropriate. These objections include, for example, objections “to the extent that the information sought is in Avellino’s possession or could be more easily obtained through other parties or sources.”

6. Considering the objections on the merits leads to the same result – they should be overruled. The only non-boiler-plate objections to the Request is an objection based upon “legal conclusion,” which is not a proper objection. The only non-generic, specific objections to any interrogatory are equally without merit as Plaintiffs object to the use of the words “funnel” despite the fact that Plaintiffs used that word in the complaint. Although Plaintiffs have since amended the complaint twice, they intended it to have a certain meaning within their complaint and should employ the same meaning in responding to the production prepared as a direct result of that complaint.

7. Even the answers Plaintiffs did provide are incomplete and insufficient. As detailed in the memorandum filed herewith, when asked, for example, for amounts and dates of payments, Plaintiffs provided amounts with no specific dates.

8. Given the Plaintiffs’ inappropriate use of general and common objections, it is useless and virtually impossible to address each question and request with each response verbatim. Avellino incorporates herein the memorandum filed contemporaneously herewith and the discovery requests and responses attached hereto.

WHEREFORE, Avellino moves to strike or overrule the Plaintiffs’ Supplemental Response and Objections to Avellino’s Request to Produce, and all of Plaintiffs’ supplemental objections to Avellino’s First Set of Interrogatories and to require Plaintiffs to produce all

requested documents and to answer all interrogatories, as well as additional relief more fully set forth in the accompanying memorandum of law.

#### CERTIFICATE OF COMPLIANCE

I hereby certify that counsel for Avellino has contacted Plaintiffs' counsel in a good faith effort to resolve the issues raised in this motion and to secure the information and materials sought through discovery without court action, but to date the issues remain unresolved. On February 13, 2014, Avellino's counsel provided Plaintiffs' counsel with a draft of this motion in which all of the issues and objections set forth herein were raised. On February 18, 2014, undersigned counsel had a telephone conversation with Plaintiffs' attorneys, Thomas Zeichman and Steve Weber, during which call Avellino's objections to Plaintiffs' discovery responses were discussed and Plaintiff agreed to supplement their responses. However, Plaintiffs' supplemental responses failed to remedy Avellino's objections, necessitating the filing of this motion.

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of 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 this 12th day of May, 2014

**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)

[eservices@haileshaw.com](mailto: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](mailto: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](mailto:emark@bergersingerman.com)  
[lsamuels@bergersingerman.com](mailto:lsamuels@bergersingerman.com)  
[sweber@bergersingerman.com](mailto:sweber@bergersingerman.com)  
*Attorneys for Plaintiff*

PETER G. HERMAN, ESQ.  
TRIPP SCOTT, P.A.  
15<sup>TH</sup> FLOOR  
110 SE 6<sup>TH</sup> STREET  
FORT LAUDERDALE, FL 33301  
[pgh@trippscott.com](mailto: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, 21<sup>st</sup> Floor  
2 South Biscayne Blvd.  
Miami, FL 33131  
[mraymond@broadandcassel.com](mailto:mraymond@broadandcassel.com)  
[ssmith@broadandcassel.com](mailto:ssmith@broadandcassel.com)  
[ccavallo@broadandcassel.com](mailto:ccavallo@broadandcassel.com)  
[jetra@broadandcassel.com](mailto:jetra@broadandcassel.com)  
[msouza@broadandcassel.com](mailto:msouza@broadandcassel.com)  
[smartin@broadandcassel.com](mailto:smartin@broadandcassel.com)  
[msanchez@broadandcassel.com](mailto: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](mailto:bobhunt@huntgross.com)  
[dklingsberg@huntgross.com](mailto:dklingsberg@huntgross.com)  
[eService@huntgross.com](mailto:eService@huntgross.com)  
[Sharon@huntgross.com](mailto:Sharon@huntgross.com)  
*Attorneys for Defendant, Scott W. Holloway*

*PAUL V. DeBIANCHI, ESQ.*  
PAUL V. DeBIANCHI, P.A.  
111 S.E. 12<sup>th</sup> Street  
Fort Lauderdale, FL 33316  
[Debianchi236@bellsouth.net](mailto: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](mailto:mtriggs@proskauer.com)  
[florida.litigation@proskauer.com](mailto:florida.litigation@proskauer.com)  
[athomson@proskauer.com](mailto:athomson@proskauer.com)  
*Attorneys for Defendants Kelco Foundation, Inc.  
and Vincent T. Kelly*

IN THE CIRCUIT COURT FOR THE  
SEVENTEENTH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY,  
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PHILIP J. VON KAHLE, as Conservator of  
P&S Associates, General Partnership and  
S&P Associates, General Partnership

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Plaintiffs,

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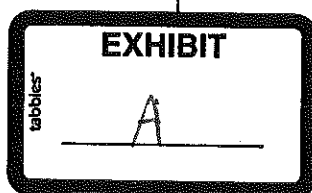
Defendants.

**PLAINTIFFS' SUPPLEMENTAL RESPONSES AND OBJECTIONS TO DEFENDANT  
FRANK AVELLINO'S REQUEST TO PRODUCE TO PLAINTIFF**

Plaintiffs, by and through the undersigned counsel, hereby provides supplemental responses and objections to Defendant, Frank Avellino's ("Avellino") Request for Production of Documents to Plaintiff, pursuant to Rule 1.350 of the Florida Rules of Civil Procedure.

Messana, P.A.  
Attorneys for Conservator  
401 East Las Olas, Suite 1400  
Fort Lauderdale, FL 33303  
Telephone: (954) 712-7400  
Facsimile: (954) 712-7401  
tmessana@messana-law.com

By: /s/ Thomas M. Messana  
Thomas M. Messana  
Florida Bar No. 0991422



### GENERAL OBJECTIONS

All general objections are hereby incorporated into each specific response. Any objection or lack of objection to any portion of the request is not to be deemed an admission that the Plaintiff has documents sought in a particular request.

General Objection 1: Plaintiffs investigation of the facts relevant to the instant matter is in its initial stages and review of documents in their possession is still in its initial phases. It is therefore not possible to provide complete productions at this juncture. However, Plaintiffs will respond to Defendants' request for production while reserving the right to supplement their responses at a later time. Additionally, there is outstanding discovery, including documents to be produced by Frank Avellino which prevent a complete production at this time.

General Objection 2: Plaintiffs will not organize or select documents for Defendants and Plaintiffs will not attempt to indicate in any way which documents (if any) respond to any particular inquiry, but shall produce all documents in the manner in which they are and have been maintained in the ordinary course of Plaintiffs' business and/or in the manner such documents have been stored in the ordinary course of business.

General Objection 3: To the extent that documents are protected by the Work Product or Attorney-Client Privilege, or any other applicable privilege law or rule, Plaintiffs object to their production. To the extent that documents are being withheld on the basis of privilege, Plaintiffs will produce a privilege log upon request and as soon as reasonably practicable.

General Objection 4: Plaintiffs' stated agreement to produce hereunder is not a representation that any such documents exist; rather, it is merely an indication that if such documents exist and are in the possession custody and/or control of Plaintiffs and are not privileged, they will be produced as indicated.



General Objection 5: Plaintiffs' production of any document is not an acknowledgement that such document is relevant to any issue in the litigation between them and Defendants and/or acknowledgement that such document is responsive to any request.

General Objection 6: It is possible that Plaintiffs will inadvertently produce a document that is otherwise privileged. Such inadvertent production is not intended to waive, alter or otherwise impact the privilege with respect to the particular document, with respect to the subject matter(s) reflected in the document and/or otherwise.

General Objection 7: The Plaintiff objects to all requests insofar as they purport to require the production of documents outside the possession, custody, or control of the Plaintiff, on the ground that such discovery is overly broad and unduly burdensome.

General Objection 8: The Plaintiff objects to all requests insofar as they purport to require the production of documents which are in the possession of third parties.

General Objection 9: The Plaintiff objects to all requests insofar as they purport to require an original of a document rather than a "best quality" copy of the document, on the ground that such a requirement is overly burdensome.

General Objection 10: The Plaintiff objects to all requests insofar as they purport to require the production of documents that are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

General Objection 11: The Plaintiff objects to all requests that are harassing, unduly burdensome, oppressive, or overly broad.

General Objection 12: The Plaintiff objects to all requests insofar as they purport to require inspection or production without specifying a reasonable time, place, and manner of making the inspection or production.

General Objection 13: The Plaintiff objects to all requests to the extent they call for the proprietary, confidential, and/or financial information of the Partnerships and/or a non-party to this action, and will only produce responsive documents with the protection of an appropriate protective order.

General Objection 14: The Plaintiff objects to the extent the Requests impose a duty to supplement not required by the Florida Rules of Civil Procedure.

General Objection 15: The Plaintiff reserves the right to raise any other objections to these Requests as they become available and/or known to the Plaintiff.

General Objection 16: Without waiving the general objections and the objections set forth in response to specific requests, the Plaintiff responds, within the limits of these objections, as set forth below.

#### **RESPONSES AND SPECIFIC OBJECTIONS TO REQUESTS TO PRODUCE DOCUMENTS**

1. All documents evidencing and/or referencing any introductions to any of the general partners of the Partnerships by Avellino.

**Response:** Plaintiffs object to Request for Production Number 1 because it seeks the production of documents which are otherwise protected by the attorney-client and/or work product privilege. Subject to the Specific and General Objections above, Plaintiffs are producing non-privileged documents responsive to this Request which are in Plaintiffs possession and control and which have not already been produced in response to another Request above. Responsive documents include, without limitation, bates numbers Ave00322RTP to Ave00336RTP.

2. All documents evidencing and/or referencing any assets of the Partnerships which were funneled to Avellino in the form of commissions or referral fees.

Response: Plaintiffs object to Request for Production Number 2 because it seeks the production of documents which are otherwise protected by the attorney-client and/or work product privilege. Further, Plaintiffs object to the extent that the information sought is in Avellino's possession or could be more easily obtained through other parties or sources. Subject to the Specific and General Objections above, Plaintiffs are producing non-privileged documents responsive to this Request which are in Plaintiffs possession and control and which have not already been produced in response to another Request above. Responsive documents include, without limitation, bates numbers Ave00001RTP to Ave00223RTP; Ave00337RTP to Ave00401RTP.

3. All documents evidencing and/or referencing that Sullivan's management fees came directly from capital contributions of the other partners rather than from the Partnerships' profits.

Response: Plaintiffs object to Request for Production Number 3 because it seeks the production of documents which are otherwise protected by the attorney-client and/or work product privilege. Further, Plaintiffs object to the extent that the information sought is in Avellino's possession or could be more easily obtained through other parties or sources. Subject to the Specific and General Objections above, Plaintiffs are producing non-privileged documents responsive to this Request which are in Plaintiffs possession and control and which have not already been produced in response to another Request above. Responsive documents include, without limitation, bates numbers Ave00001RTP to Ave00223RTP; Ave00337RTP to Ave00401RTP.

4. All documents evidencing and/or referencing that Avellino knew or should have known that Sullivan's management fees came directly from capital contributions of the other partners rather than from the Partnerships' profits.

Response: Plaintiffs object to Request for Production Number 4 because it seeks the production of documents which are otherwise protected by the attorney-client and/or work product privilege. Further, Plaintiffs object to the extent that the information sought is in Avellino's possession or could be more easily obtained through other parties or sources. Subject to the Specific and General Objections above, Plaintiffs are producing non-privileged documents responsive to this Request which are in Plaintiffs possession and control and which have not already been produced in response to another Request above.

5. All documents evidencing and/or referencing that Avellino was a co-conspirator with Sullivan and others.

Response: Plaintiffs object to Request for Production Number 5 because it calls for a legal conclusion. Plaintiffs object to Request for Production Number 5 because it seeks the production of documents which are otherwise protected by the attorney-client and/or work product privilege. Further, Plaintiffs object to the extent that the information sought is in Avellino's possession or could be more easily obtained through other parties or sources. Subject to the Specific and General Objections above, Plaintiffs are producing non-privileged documents responsive to this Request which are in Plaintiffs possession and control and which have not already been produced in response to another Request above.

6. All documents evidencing and/or referencing all management fees or other compensation, distributions or other payments made to Avellino.

Response: Plaintiffs object to Request for Production Number 6 because it seeks the production of documents which are otherwise protected by the attorney-client and/or work product privilege. Further, Plaintiffs object to the extent that the information sought is in Avellino's possession or could be more easily obtained through other parties or sources.

Subject to the Specific and General Objections above, Plaintiffs are producing non-privileged documents responsive to this Request which are in Plaintiffs possession and control and which have not already been produced in response to another Request above. Responsive documents include, without limitation, bates numbers Ave00001RTP to Ave00223RTP; Ave00337RTP to Ave00401RTP.

7. All documents evidencing and/or referencing any controls Avellino had over the Partnerships.

Response: Plaintiffs object to Request for Production Number 7 because "controls" is an undefined term, so the Plaintiff will respond utilizing the meaning of the term as used in the Second Amended Complaint filed in the above-styled action. Plaintiffs object to Request for Production Number 7 because it seeks the production of documents which are otherwise protected by the attorney-client and/or work product privilege. Further, Plaintiffs object to the extent that the information sought is in Avellino's possession or could be more easily obtained through other parties or sources. Subject to the Specific and General Objections above, Plaintiffs are producing non-privileged documents responsive to this Request to the extent that they have been located and have not already been produced in response to another Request above. Responsive documents include, without limitation, bates numbers Ave00245RTP to Ave00257RTP.

8. All documents evidencing and/or referencing that Avellino was active in the management of the Partnerships.

Response: Plaintiffs object to Request for Production Number 8 because it seeks the production of documents which are otherwise protected by the attorney-client and/or work product privilege. Further, Plaintiffs object to the extent that the information sought is in

Avellino's possession or could be more easily obtained through other parties or sources. Subject to the Specific and General Objections above, Plaintiffs are producing non-privileged documents responsive to this Request which are in Plaintiffs possession and control and which have not already been produced in response to another Request above.

9. All documents evidencing and/or referencing the allegation that Avellino knew or should have known of the millions of dollars of Partnership assets were being misappropriated.

Response: Plaintiffs object to Request for Production Number 9 because it seeks the production of documents which are otherwise protected by the attorney-client and/or work product privilege. Further, Plaintiffs object to the extent that the information sought is in Avellino's possession or could be more easily obtained through other parties or sources. Subject to the Specific and General Objections above, Plaintiffs are producing non-privileged documents responsive to this Request which are in Plaintiffs possession and control and which have not already been produced in response to another Request above.

10. All documents evidencing and/or referencing the allegation that Avellino knew that distributions were improperly being made to Partners and other third parties, but did nothing to prevent it.

Response: Plaintiffs object to Request for Production Number 10 because it seeks the production of documents which are otherwise protected by the attorney-client and/or work product privilege. Further, Plaintiffs object to the extent that the information sought is in Avellino's possession or could be more easily obtained through other parties or sources. Subject to the Specific and General Objections above, Plaintiffs are producing non-privileged documents responsive to this Request which are in Plaintiffs possession and control and which have not already been produced in response to another Request above.

11. All documents evidencing and/or referencing any aiding and abetting by Avellino of Sullivan's breach of fiduciary duty of loyalty and care to the Partnerships.

**Response:** Plaintiffs object to Request for Production number 11 because it calls for a legal conclusion. Plaintiffs object to Request for Production Number 11 because it seeks the production of documents which are otherwise protected by the attorney-client and/or work product privilege. Further, Plaintiffs object to the extent that the information sought is in Avellino's possession or could be more easily obtained through other parties or sources. Subject to the Specific and General Objections above, Plaintiffs are producing non-privileged documents responsive to this Request which are in Plaintiffs possession and control and which have not already been produced in response to another Request above.

12. All documents evidencing and/or referencing any damages you allege you incurred as a result of any actions or statements by Avellino.

**Response:** Plaintiffs object to Request for Production Number 12 because it seeks the production of documents which are otherwise protected by the attorney-client and/or work product privilege. Further, Plaintiffs object to the extent that the information sought is in Avellino's possession or could be more easily obtained through other parties or sources. Subject to the Specific and General Objections above, Plaintiffs are producing non-privileged documents responsive to this Request which are in Plaintiffs possession and control and which have not already been produced in response to another Request above.

13. All documents evidencing and/or referencing all management or referral fees, made by or on behalf of the Partnerships.

**Response:** Plaintiffs object to Request for Production Number 13 as overly broad. Producing all documents that relate to the management or referral fees made by or on

behalf of the Partnerships, regardless of whether they were made for, or on behalf of Avellino, is not likely to lead to the production of admissible evidence.

Subject to the foregoing objection Plaintiff responds that documents responsive to this request are being produced and include, without limitation, bates numbers: Ave00402RTP to Ave 02007RTP.



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

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

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

Plaintiffs,

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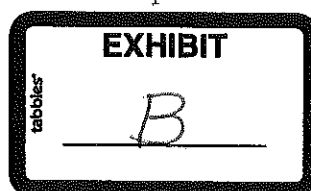
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**PLAINTIFF, CONSERVATOR PHILIP J. VON KAHLE'S SUPPLEMENTAL  
RESPONSES TO FRANK AVELLINO'S NOTICE OF  
SERVING FIRST SET OF INTERROGATORIES TO PLAINTIFF**

Plaintiff, Philip J. Von Kahle as Conservator of P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P", together with P&S, the "Partnerships") ("Conservator") by and through undersigned counsel, hereby submits his supplemental responses to the Defendant Frank Avellino's First Set of Interrogatories to Plaintiff.

Messana, P.A.  
Attorneys for Conservator  
401 East Las Olas, Suite 1400  
Fort Lauderdale, FL 33303  
Telephone: (954) 712-7400  
Facsimile: (954) 712-7401  
tmessana@messana-law.com

By: /s/ Thomas M. Messana  
Thomas M. Messana  
Florida Bar No. 0991422



### OBJECTIONS

All responses of the Plaintiff to Avellino's Interrogatories are made subject to and without waiving these objections common to all interrogatories.

1. The Plaintiff objects to each and every interrogatory to the extent that it seeks information that is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, or otherwise beyond the scope of permissible discovery.

2. The Plaintiff objects to each and every interrogatory to the extent that it is overbroad, unduly burdensome, vague, ambiguous, and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence.

3. The Plaintiff objects to each and every interrogatory to the extent that it seeks information that is privileged by statute or common law, including attorney work product and privileged communications between attorney and client.

4. The Plaintiff objects to each and every interrogatory to the extent that it calls for information that is not in the Plaintiff's current possession or control or could be more easily obtained through other parties or sources.

5. The Plaintiff objects to each and every interrogatory to the extent they call for the proprietary, confidential, and/or financial information of the Partnerships and/or a non-party to this action unless and until an appropriate protective order is entered in this action.

6. The Plaintiff objects to the extent the Interrogatories impose a duty to supplement not required by the Florida Rules of Civil Procedure.

7. The Plaintiff reserves the right to raise any other objections to these Interrogatories as they become available and/or known to the Plaintiff.

8. The Plaintiff's investigation of the facts relevant to the instant matter is in its initial stages

and review of documents in their possession is still in its initial phases. It is therefore not possible to provide complete productions at this juncture. However, Plaintiff will respond to Defendant's interrogatories while reserving the right to supplement his responses at a later time. Additionally, there is outstanding discovery, which includes documents to be produced by Frank Avellino that further prevents Plaintiffs from providing a complete answers. The information supplied in these answers is not based solely on the knowledge of the executing party, but includes knowledge of the party, his agents, representatives, and attorneys unless privileged. The word usage and sentence structure may be that of the attorney assistant in the preparation of these answers and, thus, does not necessarily purport to be the precise language of the executing party.

Without waiving the general objections, the Plaintiff responds, within the limits of these objections, as set forth below.

### INTERROGATORIES

1. Identify each general partner who was introduced to the Partnerships through Avellino, and for each one, identify when he was introduced, by whom he was introduced and identify any other persons who were present when the introductions were made.

ANSWER:

Objection. The Plaintiff objects to the extent that the information sought is in Avellino's possession or could be more easily obtained through other parties or sources. Further, discovery has only recently begun and the Conservator is still investigating certain claims. Without waiver of the foregoing, and subject to the specific and general objections above, the Plaintiff responds:

The following general partners were introduced to P&S through Avellino:

- Andrea Acker
- Carone Family Trust
- Carone Gallery Inc., Pension Trust
- Carone Marital Trust #1 UTD 1/26/00
- Carone Marital Trust #2 UTD 1/26/00
- Carone, Matthew D. Revocable Trust
- Elaine Ziffer
- Paragon Ventures Ltd.
- James A. Jordan Living Trust
- Sandra W. Dydo

The following general partners were introduced to S&P through Avellino:

- Roberta P. Alves & Vania P. Duarte
- Janet A. Hooker Charitable Trust
- James and Valerie Judd
- Vincent T. Kelly
- Kelco Foundation

Certain partners in SPJ Investments, Ltd. a general partner in S&P were introduced through Avellino, including:

- Esteban, Fernando
- Esteban, Margaret
- Seperson, Marvin
- Jordan, James

2. Please specify the specific assets of the Partnerships that you contend were funneled to Avellino, the date they were funneled to him, the amounts, and by whom were they funneled.

ANSWER: Objection. The Plaintiff objects to the extent that the information sought is in Avellino's possession or could be more easily obtained through other parties or sources. Further, discovery has only recently begun and the Conservator is still investigating certain claims. Further, the Interrogatories do not define the word "funnel" or "funneled" and therefore it is overly broad. Without waiver of the foregoing, and subject thereto, the Plaintiff responds:

Avellino or an entity controlled by him received a 50% share of the following distributions by year:

- 2000 – \$1,395.36 (P&S); \$1,990.98 (S&P)
- 2001 – \$ 39,12.11 (P&S); \$41,47.57 (S&P)
- 2002 – \$ 54,650.25 (P&S); \$48,614.39 (S&P)
- 2003 – \$ 58,428.61(P&S); \$42,411.17 (S&P)
- 2004 – \$ 59,257.3(P&S); \$52,954.53 (S&P)
- 2005 – \$ 57,812.85 (P&S); \$41,164.36 (S&P)
- 2006 – \$ 107,398.94 (P&S); \$55,834.78 (S&P)
- 2007 – \$ 73,351.06 (P&S); \$52,257.42 (S&P)

Of these funds, Avellino directed approximately \$50,000.00 to Richard Wills during this period. It is also likely that Avellino received additional funds from Michael D. Sullivan and Associates, but Plaintiffs lack sufficient information to affirmatively state that Avellino received his last distribution in 2007 as the Partnerships' books and records indicate that Avellino was to receive management fees in 2008.

3. Please specify all actions and/or statements made by Avellino which you contend demonstrates or evidences that he was a co-conspirator with Sullivan and others.

ANSWER:

Objection. The Plaintiff objects to the extent that the information sought is in Avellino's possession or could be more easily obtained through other parties or sources. Without waiver of the foregoing, and subject thereto, the Plaintiff responds:

- Certain spread sheets reflect that Avellino directed Sullivan to make payments to others on his behalf. Such documents are being provided in response to Avellino's request for production.
- Certain spread sheets reflect that Avellino directed Sullivan to pay fees to Richard J. Wills of approximately \$50,000.00. Such documents are being provided in response to Avellino's request for production.
- Before the formation of the Partnerships, Avellino and Michael Bienes operated an entity known as Avellino & Bienes ("A&B"). A&B served as what is commonly known as a "feeder fund" for investors to invest money with Bernard L. Madoff Investment Securities ("BLMIS").

- After A&B was directed to cease operations by the SEC, Avellino convinced certain investors of A&B to invest with the Partnerships. The prior action by the SEC put Avellino on notice that his actions were not authorized by law.
- Certain records reflect that Avellino was involved in the Partnerships formation.
- The Partnerships were formed pursuant to written partnership agreements dated December 11, 1992. In 1994, the partnership agreements were amended (the "Partnerships Agreements").
- Frank Avellino recommended that several people invest in the Partnerships.
- Frank Avellino advised Sullivan on whether to obtain a legal opinion in certain Partnership matters.
- Certain correspondence reflects that Avellino worked as an intermediary between Sullivan and investors in the Partnerships. Among this correspondence, Avellino sent over \$500,000 in investor funds via Fed-Ex to the Partnerships.

4. Please identify all management fees which you contend were paid to Avellino, including the amount, the date paid, and the method of payment.

ANSWER:

Objection. The Plaintiff objects to the extent that the information sought is in Avellino's possession or could be more easily obtained through other parties or sources. Management Fees is an undefined term, so the Plaintiff will respond utilizing the meaning of the term as used in the Second Amended Complaint filed in the above-styled action. Further, Plaintiff objects as discovery has only recently begun and the Conservator is still investigating certain claims, and the majority of documents and other information which are necessary to answer this interrogatory are in the possession of third parties and/or Avellino and have not yet been produced to the Plaintiff. Without waiver of the foregoing, and subject to the specific and general objections above, the Plaintiff responds:

Avellino or an entity controlled by him received a 50% share of the following distributions by year:

Date Accrued	Amount	Method of Payment
2000	\$1,395.36 (P&S); \$1,990.98 (S&P)	Check
2001	\$39,12.11 (P&S); \$41,47.57 (S&P)	Check
2002	\$54,650.25 (P&S); \$48,614.39 (S&P)	Check
2003	\$58,428.61 (P&S); \$42,411.17	Check

	(S&P)	
2004 (calculation)	\$59,257.3(P&S); \$52,954.53 (S&P)	
2005(calculation)	\$57,812.85 (P&S); \$41,164.36 (S&P)	
2006	\$107,398.94 (P&S); \$55,834.78 (S&P)	Check
2007	\$73,351.06 (P&S); \$52,257.42 (S&P)	Check

5. Please set forth the facts which support your allegation that Avellino was given a significant, inappropriate and unlawful control over the Partnerships and/or was active in the management of the Partnerships itself.

ANSWER:

**Objection.** The Plaintiff objects to the extent that the information sought is in Avellino's possession or could be more easily obtained through other parties or sources. Without waiver of the foregoing, and subject thereto, the Plaintiff responds:

See response to Interrogatory No. 3.

6. Please identify the witnesses who have knowledge of the facts set forth in your answer to Interrogatory 5 above.

ANSWER:

**Objection.** The Plaintiff objects to the extent that the information sought is in Avellino's possession or could be more easily obtained through other parties or sources. Plaintiff objects to the extent that discovery has recently begun and additional witnesses may be identified. Plaintiff preserves its right to identify and utilize such witnesses. Without waiver of the foregoing, and subject to the specific and general objections above, the Plaintiff responds: Frank Avellino and Michael D. Sullivan have knowledge of certain facts set forth in response to Interrogatory 5 above.

7. Please set forth the facts which support your allegation that Avellino knew or should have known that millions of dollars of Partnership assets were being misappropriated.

ANSWER:

**Objection.** The Plaintiff objects to the extent that the information sought is in Avellino's possession or could be more easily obtained through other parties or sources. Without waiver of the foregoing, and subject thereto, the Plaintiff responds:

See response to Interrogatory No. 3.

8. Please identify the witnesses who have knowledge of the facts set forth in your answer to Interrogatory 7 above.

ANSWER:

**Objection. The Plaintiff objects to the extent that the information sought is in Avellino's possession or could be more easily obtained through other parties or sources.**

9. Please set forth the facts which support your allegation that Avellino knew that distributions were improperly being made to Partners and other third parties, but did nothing to prevent it.

**Objection. The Plaintiff objects to the extent that the information sought is in Avellino's possession or could be more easily obtained through other parties or sources. Without waiver of the foregoing, and subject thereto, the Plaintiff responds:**

See response to Interrogatory No. 3.

ANSWER:

10. Please set forth the facts which support your allegation that Avellino aided and abetted Sullivan's breaches of fiduciary duty of loyalty and care to the Partnerships.

ANSWER:

**Objection. The Plaintiff objects to the extent that the information sought is in Avellino's possession or could be more easily obtained through other parties or sources. Without waiver of the foregoing, and subject thereto, the Plaintiff responds:**

See response to Interrogatory No. 3.

11. Please identify the damages you contend you incurred as a result of any actions or statements by Avellino, and provide the calculation for same.

ANSWER:

**Objection. The Plaintiff objects to this Interrogatory to the extent it seeks an expert opinion. Without waiver of the foregoing, and subject thereto, the Plaintiff responds:**

**Avellino encouraged Sullivan to invest the Partnerships' assets with BLMIS. Avellino encouraged certain partners to invest in the Partnerships and received Kickbacks related to same.**

**The damages to the Partnerships are the amount of their net losses invested with BLMIS, or:**



■ S&P's damages of \$10,131,036; and

■ P&S' damages of \$2,406,624.65.

The damages caused by Defendant Michael Sullivan's breaches of fiduciary duties, or:

\$7,343,947.35

The amount of commissions Avellino improperly received:

\$ 307,790.84, plus an additional \$50,000 or more directed to Richard Wills.

The Plaintiff is still in the process of assessing the claims in relation to this matter, and will likely assert a claim for punitive damages against Avellino, in addition to the aforementioned claims.

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

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

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

Plaintiffs,

vs.

MICHAEL D. SULLIVAN, et al.,

Defendants.

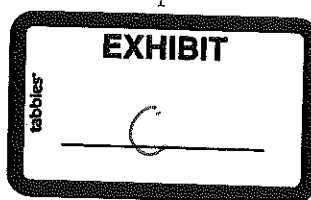
**PLAINTIFFS' SECOND SUPPLEMENTAL RESPONSES AND OBJECTIONS TO  
DEFENDANT FRANK AVELLINO'S REQUEST TO PRODUCE TO PLAINTIFF**

Plaintiffs, by and through the undersigned counsel, hereby provides supplemental responses and objections to Defendant, Frank Avellino's ("Avellino") Request for Production of Documents to Plaintiff, pursuant to Rule 1.350 of the Florida Rules of Civil Procedure.

Messana, P.A.  
Attorneys for Conservator  
401 East Las Olas, Suite 1400  
Fort Lauderdale, FL 33303  
Telephone: (954) 712-7400  
Facsimile: (954) 712-7401  
tmessana@messana-law.com

By: /s/ Thomas M. Messana

Thomas M. Messana  
Florida Bar No. 0991422



### GENERAL OBJECTIONS

General Objection 1: Plaintiffs will respond to Defendants' request for production while reserving the right to supplement their responses at a later time.

General Objection 2: To the extent that documents are protected by the Work Product or Attorney-Client Privilege, or any other applicable privilege law or rule, Plaintiffs object to their production.

General Objection 3: Plaintiffs' production of any document is not an acknowledgement that such document is relevant to any issue in the litigation between them and Defendants and/or acknowledgement that such document is responsive to any request.

General Objection 4: It is possible that Plaintiffs will inadvertently produce a document that is otherwise privileged. Such inadvertent production is not intended to waive, alter or otherwise impact the privilege with respect to the particular document, with respect to the subject matter(s) reflected in the document and/or otherwise.

General Objection 5: The Plaintiff objects to the extent the Requests impose a duty to supplement not required by the Florida Rules of Civil Procedure.

General Objection 6: The Plaintiff reserves the right to raise any other objections to these Requests as they become available and/or known to the Plaintiff.

### **RESPONSES AND SPECIFIC OBJECTIONS TO REQUESTS TO PRODUCE DOCUMENTS**

1. All documents evidencing and/or referencing any introductions to any of the general partners of the Partnerships by Avellino.

Response: Plaintiffs object to this request to the extent that it seeks documents protected by the attorney-client privilege, work product privilege, and/or other privilege because this request seeks documents from, *inter alia*, Plaintiffs' attorneys and is vague is

ambiguous as to what is meant by "referencing any introductions to any of the general partners of the Partnerships by Avellino."

Pursuant to our meet and confer, Plaintiffs will produce non-privileged documents responsive to this Request which are responsive to the allegation that Avellino introduced individuals and/or entities to be investors in the Partnerships and those documents are bearing Bates numbers: AVE00002RTP - AVE00005RTP; AVE00012RTP - AVE00019RTP; AVE00008RTP - AVE00010RTP; and AVE00025RTP - AVE00089RTP.

2. All documents evidencing and/or referencing any assets of the Partnerships which were funneled to Avellino in the form of commissions or referral fees.

Response: Plaintiffs object to Request for Production Number 2 because it seeks the production of documents which are otherwise protected by the attorney-client and/or work product privilege and it is not reasonably calculated to lead to the discovery of admissible evidence because it seeks documents from Plaintiffs' attorneys. Pursuant to our meet and confer, Plaintiffs are producing non-privileged documents responsive to this Request which are in Plaintiffs possession. Responsive documents include, without limitation, bates numbers Ave00001RTP to Ave00223RTP; Ave00337RTP to Ave00401RTP.

3. All documents evidencing and/or referencing that Sullivan's management fees came directly from capital contributions of the other partners rather than from the Partnerships' profits.

Response: Plaintiffs object to Request for Production Number 3 because it seeks the production of documents which are otherwise protected by the attorney-client and/or work product privilege and it is not reasonably calculated to lead to the discovery of admissible evidence because it seeks documents from Plaintiffs' attorneys. Pursuant to our meet and confer, Plaintiffs are producing non-privileged documents responsive to this Request which

are in Plaintiffs possession and control. Responsive documents include, without limitation, bates numbers Ave00001RTP to Ave00223RTP; Ave00337RTP to Ave00401RTP.

4. All documents evidencing and/or referencing that Avellino knew or should have known that Sullivan's management fees came directly from capital contributions of the other partners rather than from the Partnerships' profits.

Response: Plaintiffs object to Request for Production Number 4 because it seeks the production of documents which are otherwise protected by the attorney-client and/or work product privilege and it is not reasonably calculated to lead to the discovery of admissible evidence because it seeks documents from Plaintiffs' attorneys. Pursuant to our meet and confer, Plaintiffs are producing non-privileged documents responsive to this Request which are in Plaintiffs possession and control. Responsive documents include, without limitation, bates numbers Ave00001RTP to Ave00223RTP; Ave00337RTP to Ave00401RTP.

5. All documents evidencing and/or referencing that Avellino was a co-conspirator with Sullivan and others.

Response: Plaintiffs object to Request for Production Number 5 because it seeks the production of documents which are otherwise protected by the attorney-client and/or work product privilege and it is not reasonably calculated to lead to the discovery of admissible evidence because it seeks documents from Plaintiffs' attorneys. Pursuant to our meet and confer, Plaintiffs are producing non-privileged documents responsive to this Request which are in Plaintiffs possession and control. Responsive documents include, without limitation, bates numbers Ave00001RTP to Ave00223RTP; AVE00245RTP - AVE00257RTP; Ave00337RTP to Ave00401RTP.

6. All documents evidencing and/or referencing all management fees or other compensation, distributions or other payments made to Avellino.

**Response:** Plaintiffs object to Request for Production Number 6 because it seeks the production of documents which are otherwise protected by the attorney-client and/or work product privilege and it is not reasonably calculated to lead to the discovery of admissible evidence because it seeks documents from Plaintiffs' attorneys. Pursuant to our meet and confer, Plaintiffs are producing documents responsive to this Request which are in Plaintiffs possession and control. Responsive documents include, without limitation, bates numbers Ave00001RTP to Ave00223RTP; Ave00337RTP to Ave00401RTP.

7. All documents evidencing and/or referencing any controls Avellino had over the Partnerships.

**Response:** Plaintiffs object to Request for Production Number 7 because "controls" is an undefined term, so the Plaintiff will respond utilizing the meaning of the term as used in the Second Amended Complaint filed in the above-styled action. Plaintiffs object to Request for Production Number 7 because it seeks the production of documents which are otherwise protected by the attorney-client and/or work product privilege and it is not reasonably calculated to lead to the discovery of admissible evidence because it seeks documents from Plaintiffs' attorneys. Pursuant to our meet and confer, Plaintiffs are producing non-privileged documents responsive to this Request which are in Plaintiffs possession and control. Responsive documents include, without limitation, bates numbers Ave00245RTP to Ave00257RTP.

8. All documents evidencing and/or referencing that Avellino was active in the management of the Partnerships.

Response: Plaintiffs object to Request for Production Number 8 because it seeks the production of documents which are otherwise protected by the attorney-client and/or work product privilege and it is not reasonably calculated to lead to the discovery of admissible evidence because it seeks documents from Plaintiffs' attorneys. Pursuant to our meet and confer, Plaintiffs are producing non-privileged documents responsive to this Request which are in Plaintiffs possession and control. Responsive documents include, without limitation, bates numbers Ave00001RTP to Ave00223RTP; AVE00245RTP - AVE00257RTP; Ave00337RTP to Ave00401RTP.

9. All documents evidencing and/or referencing the allegation that Avellino knew or should have known of the millions of dollars of Partnership assets were being misappropriated.

Response: Plaintiffs object to Request for Production Number 9 because it seeks the production of documents which are otherwise protected by the attorney-client and/or work product privilege and it is not reasonably calculated to lead to the discovery of admissible evidence because it seeks documents from Plaintiffs' attorneys. Pursuant to our meet and confer, Plaintiffs are producing non-privileged documents responsive to this Request which are in Plaintiffs possession and control. Responsive documents include, without limitation, bates numbers Ave00001RTP to Ave00223RTP; AVE00245RTP - AVE00257RTP; Ave00337RTP to Ave00401RTP.

10. All documents evidencing and/or referencing the allegation that Avellino knew that distributions were improperly being made to Partners and other third parties, but did nothing to prevent it.

Response: Plaintiffs object to Request for Production Number 10 because it seeks the production of documents which are otherwise protected by the attorney-client and/or

work product privilege and it is not reasonably calculated to lead to the discovery of admissible evidence because it seeks documents from Plaintiffs' attorneys. Pursuant to our meet and confer, Plaintiffs are producing non-privileged documents responsive to this Request which are in Plaintiffs possession and control. Responsive documents include, without limitation, bates numbers Ave00001RTP to Ave00223RTP; AVE00245RTP - AVE00257RTP; Ave00337RTP to Ave00401RTP.

11. All documents evidencing and/or referencing any aiding and abetting by Avellino of Sullivan's breach of fiduciary duty of loyalty and care to the Partnerships.

Response: Plaintiffs object to Request for Production Number 11 because it seeks the production of documents which are otherwise protected by the attorney-client and/or work product privilege and it is not reasonably calculated to lead to the discovery of admissible evidence because it seeks documents from Plaintiffs' attorneys. Pursuant to our meet and confer, Plaintiffs are producing non-privileged documents responsive to this Request which are in Plaintiffs possession and control. Responsive documents include, without limitation, bates numbers Ave00001RTP to Ave00223RTP; AVE00245RTP - AVE00257RTP; Ave00337RTP to Ave00401RTP.

12. All documents evidencing and/or referencing any damages you allege you incurred as a result of any actions or statements by Avellino.

Response: Plaintiffs object to Request for Production Number 12 because it seeks the production of documents which are otherwise protected by the attorney-client and/or work product privilege and it is not reasonably calculated to lead to the discovery of admissible evidence because it seeks documents from Plaintiffs' attorneys. Pursuant to our meet and confer, Plaintiffs are producing non-privileged documents responsive to this



Request which are in Plaintiffs possession and control. Responsive documents include, without limitation, bates numbers Ave00001RTP to Ave00223RTP; AVE00245RTP - AVE00257RTP; Ave00337RTP to Ave00401RTP.

13. All documents evidencing and/or referencing all management or referral fees, made by or on behalf of the Partnerships.

Response:

Plaintiffs object to Request for Production Number 13 because it seeks the production of documents which are otherwise protected by the attorney-client and/or work product privilege and it is not reasonably calculated to lead to the discovery of admissible evidence because it seeks documents from Plaintiffs' attorneys. Pursuant to our meet and confer, Plaintiffs are producing non-privileged documents responsive to this Request which are in Plaintiffs possession and control. Responsive documents include, without limitation, bates numbers: Ave00402RTP to Ave 02007RTP.

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

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

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

Plaintiffs,

vs.

MICHAEL D. SULLIVAN, et al.,

Defendants.

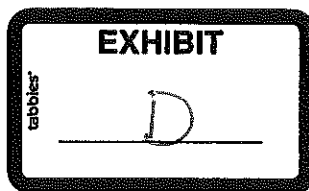
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**PLAINTIFF, CONSERVATOR PHILIP J. VON KAHLE'S SECOND  
SUPPLEMENTAL RESPONSES TO FRANK AVELLINO'S NOTICE OF  
SERVING FIRST SET OF INTERROGATORIES TO PLAINTIFF**

Plaintiff, Philip J. Von Kahle as Conservator of P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P", together with P&S, the "Partnerships") ("Conservator") by and through undersigned counsel, hereby submits his supplemental responses to the Defendant Frank Avellino's First Set of Interrogatories to Plaintiff.

Messana, P.A.  
Attorneys for Conservator  
401 East Las Olas, Suite 1400  
Fort Lauderdale, FL 33303  
Telephone: (954) 712-7400  
Facsimile: (954) 712-7401  
tmessana@messana-law.com

By: /s/ Thomas M. Messana  
Thomas M. Messana  
Florida Bar No. 0991422



### OBJECTIONS

1. The Plaintiff objects to each and every interrogatory to the extent that it seeks information that is privileged by statute or common law, including attorney work product and privileged communications between attorney and client.

2. The Plaintiff objects to each and every interrogatory to the extent that it calls for information that is not in the Plaintiff's current possession or control or could be more easily obtained through other parties or sources.

3. The Plaintiff objects to the extent the Interrogatories impose a duty to supplement not required by the Florida Rules of Civil Procedure.

4. The Plaintiff reserves the right to raise any other objections to these Interrogatories as they become available and/or known to the Plaintiff.

5. Plaintiff reserves the right to provide supplemental responses as additional information becomes available or is made known to Plaintiff.

### INTERROGATORIES

1. Identify each general partner who was introduced to the Partnerships through Avellino, and for each one, identify when he was introduced, by whom he was introduced and identify any other persons who were present when the introductions were made.

ANSWER:

The Plaintiff responds:

The following general partners were introduced to P&S through Avellino:

- Andrea Acker
- Carone Family Trust
- Carone Gallery Inc., Pension Trust
- Carone Marital Trust #1 UTD 1/26/00
- Carone Marital Trust #2 UTD 1/26/00
- Carone, Matthew D. Revocable Trust
- Elaine Ziffer
- Paragon Ventures Ltd.
- James A. Jordan Living Trust
- Sandra W. Dydo

The following general partners were introduced to S&P through Avellino:

- Roberta P. Alves & Vania P. Duarte
- Janet A. Hooker Charitable Trust
- James and Valerie Judd
- Vincent T. Kelly
- Kelco Foundation

Partners in SPJ Investments, Ltd. a general partner in S&P were introduced through Avellino, including:

- Esteban, Fernando
- Esteban, Margaret
- Seperson, Marvin
- Jordan, James

In further response to this Interrogatory, Plaintiffs are willing to produce documents whose bates numbers include:

- Journals - AVE00002RTP - AVE00005RTP; AVE00012RTP - AVE00019RTP.
- Management Fee Records - AVE00008RTP - AVE00010RTP; AVE00025RTP - AVE00089RTP.

2. Please specify the specific assets of the Partnerships that you contend were funneled to Avellino, the date they were funneled to him, the amounts, and by whom were they funneled.

ANSWER Plaintiff reserves the right to provide supplemental responses as additional information becomes available or is made know to Plaintiff. The Plaintiff responds, without waiving its objection:

Avellino or an entity controlled by him received a 50% share of the following distributions by year:

- 2000 – \$1,395.36 (P&S); \$1,990.98 (S&P)
- 2001 – \$ 39,12.11 (P&S); \$41,47.57 (S&P)
- 2002 – \$ 54,650.25 (P&S); \$48,614.39 (S&P)
- 2003 – \$ 58,428.61(P&S); \$42,411.17 (S&P)
- 2004 – \$ 59,257.3(P&S); \$52,954.53 (S&P)
- 2005 – \$ 57,812.85 (P&S); \$41,164.36 (S&P)
- 2006 – \$ 107,398.94 (P&S); \$55,834.78 (S&P)
- 2007 – \$ 73,351.06 (P&S); \$52,257.42 (S&P)

Of these funds, Avellino directed approximately \$50,000.00 to Richard Wills during this period. It is also likely that Avellino received additional funds from Michael D. Sullivan and Associates, but Plaintiffs lack sufficient information to affirmatively state that Avellino received his last distribution in 2007 as the Partnerships' books and records indicate that Avellino was to receive management fees in 2008.

3. Please specify all actions and/or statements made by Avellino which you contend demonstrates or evidences that he was a co-conspirator with Sullivan and others.

ANSWER:

Plaintiff reserves the right to provide supplemental responses as additional information becomes available or is made know to Plaintiff. The Plaintiff responds the following actions and/or statements made by Avellino demonstrate or evidence that Avellino was a co-conspirator with Sullivan and others with respect to the improprieties alleged in the complaint in this action:

- Spreadsheets reflect that Avellino directed Sullivan to make payments to others on his behalf. Such documents are being provided in response to Avellino's request for production, see Bate number AVE00011RTP
- Spreadsheets reflect that Avellino directed Sullivan to pay fees to Richard J. Wills of approximately \$50,000.00. Such documents are being provided in response to Avellino's request for production, see Bates number AVE00011RTP
- Before the formation of the Partnerships, Avellino and Michael Bienes operated an entity known as Avellino & Bienes ("A&B"). A&B served as what is commonly known as a "feeder fund" for investors to invest money with Bernard L. Madoff Investment Securities ("BLMIS").

- After A&B was directed to cease operations by the SEC, Avellino convinced certain investors of A&B to invest with the Partnerships, see Response to Interrogatory No.1. The prior action by the SEC put Avellino on notice that his actions were not authorized by law.
- The Partnership records, including Ahearn Jasco time sheets Bates numbered AVE00256RTP - AVE00257RTP, reflect that Avellino was involved in the Partnerships formation.
- The Partnerships were formed pursuant to written partnership agreements dated December 11, 1992. In 1994, the partnership agreements were amended (the "Partnerships Agreements").
- Frank Avellino recommended that several individuals and/or entities invest in the Partnerships.
- Frank Avellino advised Sullivan on whether to obtain a legal opinion in Partnership matters. AVE00245RTP - AVE00252RTP
- Correspondence reflects that Avellino worked as an intermediary between Sullivan and investors in the Partnerships. Among this correspondence, Avellino sent over \$500,000 in investor funds via Fed-Ex to the Partnerships.

Additionally, Plaintiff is producing documents which are responsive to this Interrogatory. Specifically, Plaintiffs are producing documents whose bates numbers include:

- Journals - AVE00002RTP - AVE00005RTP; AVE00012RTP - AVE00019RTP.
- Management Fee Records - AVE00008RTP - AVE00010RTP; AVE00025RTP - AVE00089RTP.
- Checks - AVE00006RTP - AVE00009RTP

4. Please identify all management fees which you contend were paid to Avellino, including the amount, the date paid, and the method of payment.

ANSWER:

Plaintiff objects that Management Fees is an undefined term, so the Plaintiff will respond utilizing the meaning of the term as used in the Second Amended Complaint filed in the above-styled action. The Plaintiff responds:

Avellino or an entity controlled by him received a 50% share of the following distributions by year:

Date Accrued	Amount	Method of Payment
2000	\$1,395.36 (P&S); \$1,990.98 (S&P)	Check
2001	\$39,12.11 (P&S); \$41,47.57	Check

	(S&P)	
2002	\$54,650.25 (P&S); \$48,614.39 (S&P)	Check
2003	\$58,428.61(P&S); \$42,411.17 (S&P)	Check
2004 (calculation)	\$59,257.3(P&S); \$52,954.53 (S&P)	
2005(calculation)	\$57,812.85 (P&S); \$41,164.36 (S&P)	
2006	\$107,398.94 (P&S); \$55,834.78 (S&P)	Check
2007	\$73,351.06 (P&S); \$52,257.42 (S&P)	Check

Additionally, the Plaintiff is producing documents which are responsive to this Interrogatory. Specifically, Plaintiff is producing documents whose bates numbers include:

- Journals - AVE00001RTP - AVE00005RTP; AVE00012RTP - AVE00019RTP.
- Management Fee Records - AVE00008RTP - AVE00010RTP; AVE00025RTP - AVE00089RTP.
- Checks - AVE00006RTP - AVE00009RTP

5. Please set forth the facts which support your allegation that Avellino was given a significant, inappropriate and unlawful control over the Partnerships and/or was active in the management of the Partnerships itself.

ANSWER:

**The Plaintiff responds:**

See response to Interrogatory No. 3.

Additionally, the Plaintiff is producing documents which are responsive to this Interrogatory. Specifically, Plaintiff is producing documents whose bates numbers include: AVE00245RTP - AVE00252RTP

6. Please identify the witnesses who have knowledge of the facts set forth in your answer to Interrogatory 5 above.

ANSWER:

**Plaintiff responds:**

Witnesses who are believed to have knowledge responsive to this request include;

1. Michael D. Sullivan. It is believed that Mr. Sullivan has knowledge related to Mr. Avellino's receipt of commissions and how such commissions were calculated. Additionally, it is believed that Mr. Sullivan has knowledge as to why certain

accounts were attributed to Avellino & Bienes.

2. **Richard Wills.** The Conservator also believes that certain former investors in Avellino & Bienes or general partners in the Partnerships were approached by Richard Wills on Avellino and/or Bienes behalf to solicit investments in P&S and/or S&P.
3. **Michael Bienes.** It is believed that Michael Bienes worked with Frank Avellino in procuring investors for P&S and S&P.
4. **Vincent T. Kelly.** It is believed that Vincent T. Kelly knew of or worked with Mr. Bienes and Avellino in procuring investors, because he was formerly an investor with Mr. Avellino's former company Avellino & Bienes, and worked to solicit substantial investors in the Partnerships. Vincent T. Kelly also acted as Mr. Bienes' pastor.
5. **Lisa Glatt.** It is believed that Lisa Glatt may have information in relation to the transfer of accounts between Avellino and Bienes and the Partnerships.
6. **Erisca Gianna.** Ms. Gianna, was a former partner of Avellino and Bienes whose account was transferred from S&P to P&S without her knowledge of such fact.
7. **Lola Kurland.** Ms. Kurland worked closely with Avellino and Bienes, and their former partners. It is possible that she had knowledge of the involvement of Michael Sullivan and his relationship with Mr. Avellino as well as Mr. Avellino's advice to partners of P&S and S&P to invest.
8. **Susan Moss.** Ms. Moss worked for S&P and P&S and may have knowledge of Mr. Avellino's involvement in the instant cause of action.
9. **Avellino & Bienes.** Avellino & Bienes, was a general partnership formerly operated by Mr. Bienes, and was liquidated as a result of an enforcement action brought by the SEC in 1993. Many of the former partners in Avellino & Bienes became members of S&P and P&S.
10. **Grosvenor Partners, Ltd.** Plaintiffs believe that Grosvenor Partners, Ltd received substantial transfers from the Partnerships on Mr. Bienes' behalf.
11. **Mayfair Ventures, General Partnership.** Plaintiffs believe that Mayfair Ventures General Partnership received substantial distributions on Mr. Bienes behalf.

7. Please set forth the facts which support your allegation that Avellino knew or should have known that millions of dollars of Partnership assets were being misappropriated.

ANSWER:

The Plaintiff responds:

See response to Interrogatory No. 3.

8. Please identify the witnesses who have knowledge of the facts set forth in your answer to Interrogatory 7 above.



ANSWER:

**Plaintiff responds:**

**See response to Interrogatory No. 6.**

9. Please set forth the facts which support your allegation that Avellino knew that distributions were improperly being made to Partners and other third parties, but did nothing to prevent it.

ANSWER:

**The Plaintiff responds:**

**See response to Interrogatory No. 3.**

**Additionally, documents are being provided in response to this interrogatory. Specifically, Plaintiffs are willing to produce documents whose bates numbers include:**

- Journals - AVE00002RTP - AVE00005RTP; AVE00012RTP - AVE00019RTP.
- Management Fee Records - AVE00008RTP - AVE00010RTP; AVE00025RTP - AVE00089RTP.

**Additional documents that may reflect Avellino's knowledge of fees paid to others include, but are not limited to: AVE00337RTP - AVE02007RTP.**

10. Please set forth the facts which support your allegation that Avellino aided and abetted Sullivan's breaches of fiduciary duty of loyalty and care to the Partnerships.

ANSWER:

**The Plaintiff responds:**

**See response to Interrogatory No. 3.**

**Additionally, documents are being provided in response to this Interrogatory. Specifically, Plaintiffs are willing to produce documents whose bates numbers include, but are not limited to:**

- Journals - AVE00002RTP - AVE00005RTP; AVE00012RTP - AVE00019RTP.
- Management Fee Records - AVE00008RTP - AVE00010RTP; AVE00025RTP - AVE00089RTP.

11. Please identify the damages you contend you incurred as a result of any actions or statements by Avellino, and provide the calculation for same.

ANSWER:

The Plaintiff objects to this Interrogatory to the extent it seeks an expert opinion and reserves the right to supplement this answer as necessary. Without waiving the above objection, the Plaintiff responds:

First, the damages to the Partnerships as a result of Avellino's advice to invest in BLMIS are the amount of the Partnerships' net losses to its investment with BLMIS:

- S&P's damages of \$10,131,036; and
- P&S' damages of \$2,406,624.65.

This calculation was based upon the Net Investment method approved by the BLMIS liquidation Court.

Second, the damages caused by Defendant Michael Sullivan's breaches of fiduciary duties is \$7,343,947.35. This amount was calculated by adding all known kickbacks paid.

Third, the damages to the Partnerships as a result of kickbacks that Avellino improperly received:

\$ 307,790.84, plus an additional \$50,000 or more directed to Richard Wills. See Response to Interrogatory No. 3 which addresses how this number was calculated.