

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

COMPLEX LITIGATION UNIT

CASE NO. 12-034123 (07)

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

Plaintiffs,

vs.

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, KELKO FOUNDATION,  
INC., a Florida Non Profit Corporation,  
and VINCENT T. KELLY, an individual,

Defendants.

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**DEFENDANT MICHAEL BIENES'S MOTION TO COMPEL AND FOR AN  
EXTENSION OF THE DISCOVERY AND DISPOSITIVE MOTION DEADLINES**

Defendant, MICHAEL BIENES ("Defendant" or "Bienes"), pursuant to Rule 1.380,  
Florida Rules of Civil Procedure and Rules 5.10 and 5.14 of the Complex Litigation Unit  
Procedures, moves for the entry of an order compelling Plaintiff Philip Von Kahle, as

**BROAD and CASSEL**

One Biscayne Tower, 21st Floor 2 South Biscayne Blvd. Miami, Florida 33131-1811 305.373.9400

Conservator of P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P"), to immediately provide better responses to Defendant's First Set of Interrogatories ("First Interrogatories") served to Plaintiff on February 18, 2014, and extending the existing discovery and dispositive motion deadlines. Given the time-sensitive nature of his Motion, Defendant requests expedited oral argument pursuant to CLP 5.14. In support of this Motion, Defendant states as follows:

### **INTRODUCTION**

1. This Motion is necessitated by Plaintiff's failure to meaningfully respond to basic discovery. In the First Interrogatories, Defendant requests that Plaintiff provide the names and contact information of witnesses with knowledge of the facts supporting Plaintiff's allegations against Bienes, and to briefly describe the subject matter of their knowledge. Simply put, with the June 25, 2014 discovery cutoff rapidly approaching, Defendant needs to know who, if anyone, he needs to depose, and he needs to know now. Rather than comply with this basic request, Plaintiff has responded, first by giving Defendant no information at all, then by overwhelming him with a comprehensive but meaningless list of every person or entity who bears any connection with this law suit, regardless of whether they know anything at all about Plaintiff's allegations. After days and weeks of trying to resolve these issues without seeking the Court's intervention, with discovery nearly at a close Defendant now has no choice but to seek the Court's assistance in obtaining this information from Plaintiff.

2. Plaintiff's inexplicable delay in providing Defendant with the most basic information about his witnesses also requires Defendant to seek the additional and alternative remedies of an extension of the existing discovery deadline, from June 25 to August 1, 2014, and a corresponding extension of the dispositive motion deadline, from June 2 to July 1, 2014.

### ARGUMENT

3. On February 18, 2014, Bienes served the First Interrogatories to Plaintiff. A true and correct copy of the First Interrogatories is attached as **Exhibit A**.

4. Although comprised of 18 separate interrogatories, the First Interrogatories seek primarily two categories of information from Plaintiff: (1) the names and contact information of persons with knowledge of the facts supporting specific allegations against Bienes, and a brief description of the subject matter of their knowledge; and (2) the identity of any documents that support Plaintiff's allegations. As such, the First Interrogatories are relevant to this lawsuit, and within the bounds of permissible discovery.<sup>1</sup>

5. On April 11, 2014, after receiving multiple extensions of time, Plaintiff served his initial Response to the First Interrogatories ("Initial Response").

6. The Initial Response was patently deficient. Not only did it fail to identify a single document to support Plaintiff's allegations against Bienes, it failed to identify a single person with knowledge of facts to support those allegations.

7. It seemed as though Plaintiff intended to rely on Rule 1.340(c), Florida Rules of Civil Procedure in the Initial Response. But while Rule 1.340(c) allows a party to produce or refer to records in response to an interrogatory in certain circumstances, to be sufficient the answer still must "specify[] the records" and be "in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party interrogated, the records from which the answer may be derived or ascertained." Fla. R. Civ. P. 1.340(c).

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<sup>1</sup> Florida Rule of Civil Procedure 1.280(b) allows discovery of "any matter, not privileged, that is relevant to the subject matter of the pending action." The permissible scope of discovery includes information related "to the claim or defense" of any party, "including the existence description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter." Fla. R. Civ. P. 1.280(b)(1).

8. The Initial Response did neither. Instead, it generically stated that "the conservator is producing documents which are responsive to this interrogatory," or, even less informatively, that "documents are being provided in response to Bienes [sic] request for production."<sup>2</sup>

9. After several rounds of meet-and-confer conferences nearly ended with Bienes having to file a motion to compel more fulsome responses, weeks ago Plaintiff agreed to supplement the Initial Response by identifying the documents and witnesses supporting his allegations. Plaintiff filed his Supplemental Response to the First Interrogatories on April 22, 2014. A true and correct copy of the Supplemental Response is attached as **Exhibit B**.

10. Rather than correct the deficiencies with the Initial Response, the Supplemental Response expanded on them; particularly when it came to identifying witnesses and describing the substance of their knowledge. *See* Interrogatories No. 2-7, and 9-18. Instead of identifying his witnesses and describing their knowledge, Plaintiff offers-up a laundry list of 13 different people and entities and leaves it to Bienes and his attorneys to sort out who knows what about which allegation. With the exception of the Judds, who Plaintiff claims have provided, in an separate, unrelated proceeding, interrogatory answers that detail their knowledge about Defendant's alleged wrongdoing, Plaintiff provides no or entirely speculative descriptions of the named witnesses' knowledge.

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<sup>2</sup> This type of vague reliance on Rule 1.340(c), using it as a shield rather than a discovery tool, is prohibited. Under Florida law, "an answer to an interrogatory must be complete in itself and should not refer to other pleadings or documents or affidavits and thereby attempt to make their contents a part of the answer." *State Road Dept. v. Fla. East Coast Ry. Co.*, 212 So. 2d 315, 317 (Fla. 3d DCA 1968) (holding answer to interrogatory inadequate where answer referenced other documents and attempted to incorporate those documents in the answer). "This is so because, as stated above, the answer made in response to an interrogatory is required to be the sworn answer of the party making it." *Id.*; *see also Summit Chase Condominium Ass'n, Inc. v. Protean Investors, Inc.*, 421 So. 2d 562, 563 (Fla. 3d DCA 1982) (holding that interrogated party not entitled to attach a 140 page letter size document to answers to interrogatories and refer to such document in response to the interrogatories).

11. Bienes has not asked Plaintiff to name who he hopes his witnesses will be, or to speculate about they might say if they ever testify. Bienes has instead asked Plaintiff to identify the people whose knowledge he relied on to support the allegations mentioned in each particular interrogatory, and to explain, briefly, the extent of that person's knowledge. Responding to these interrogatories by providing a large list of people who Plaintiff thinks someday "might" or "could" have knowledge useful to him is not responsive. Instead, it improperly shifts the burden to Bienes to undertake an investigation of Plaintiff's claims that Plaintiff himself was not willing to do. Unless Plaintiff is compelled to provide more fulsome responses, Bienes will be forced to depose more than a dozen different people in order to figure out what they do or do not know about Plaintiff's claims, and all before June 25. Florida's discovery rules do not countenance such a result, and neither should the Court.

12. Accordingly, on May 8, 2014, the undersigned contacted counsel for Plaintiff in an effort to resolve the deficiencies with the Supplemental Response.

13. While Plaintiff's counsel was heartened by the call, and left it with the impression that Plaintiff's attorneys would act promptly to resolve the continued deficiencies with their client's discovery responses, Defendant's counsel followed up with Plaintiff's attorneys after receiving their email recapitulating the call to make sure they intended to address the major flaw with the Supplemental Response—Plaintiff's failure to identify the witnesses he relied on to support the allegations of his Complaint:

There is one huge issue that I don't think is well captured on your list, however, and it [is] something I need to emphasize here. As I explained during the call, the major problem I have with your responses to my interrogatories is that I was looking for your witnesses that you relied upon to support the allegation identified in the interrogatory. I did this so I know who your witnesses are and who I need to depose. Instead of providing your witness list (or acknowledging you don't have anyone), you have (with the exceptions of Judd) given me a large list of

people who might one day have useful information for you. That is not response (since you did not rely on them if you don't know what they are going to say) or proper (since you are making me responsible for deposing them all as if they were your witnesses, when they are not). You are making me depose every one of them, which is not reasonable and cannot be done within the schedule

14. A an email chain including Plaintiff's counsel's May 8, 2014 email to counsel for Bienes, and Bienes's counsel's reply email to specifically address the witness identification issue (quoted above), is attached as **Exhibit C**.

15. The next day, on May 9, 2014, Plaintiff's counsel confirmed that Plaintiff's supplemental responses would be served to Defendant's counsel "early next week" (i.e., the week beginning May 12). An email chain containing Plaintiff's counsel's May 9 email is attached as **Exhibit D**.

16. "Next week" came and went, with no supplemental responses from Plaintiff or his attorneys. As a result, counsel for Bienes was forced, once again, to follow-up with Plaintiff's attorneys on Wednesday, May 14, 2014. Defendant's counsel's May 14 follow-up email to Plaintiff's attorneys is included as part of the email chain attached as Exhibit D to this Motion.

17. In response, Plaintiff's counsel advised that at the time he promised the supplemental responses would be served "early next week" he "did not know that [his client] would be out of town," and informed Bienes's attorneys that he could not "produce supplemental responses without [his client's] review of them." Plaintiff's counsel's May 14 reply email to Defendant's attorneys is included as part of the email chain attached as Exhibit D to this Motion.

18. Later that same day, Defendant's counsel advised that Bienes had no choice but to file a motion to compel the supplemental responses and seek an immediate hearing on the motion. A copy of Defendant's counsel's May 14 email to Plaintiff's attorneys is included among the chain of emails attached as Exhibit D to this Motion.

19. Given the looming discovery cut-off in this case, Defendant's counsel cannot afford to wait any longer to receive an updated/amended Supplemental Response from Plaintiff. In fact, it likely is already too late, and therefore, in an abundance of caution, Defendant also seeks an extension of the discovery deadline from June 25 to August 1, 2014, and a corresponding extension of the dispositive motion cutoff from June 2 to July 1, 2014.

20. Further, since Plaintiff has, on two occasions, served deficient discovery responses to Defendant and is now unjustifiably delaying serving a third, Bienes should be awarded his reasonable attorneys' fees and costs incurred in connection with the filing and disposition of this Motion. Under Fla. R. Civ. P. 1.380(b), the court "shall require the party ... whose conduct necessitated the motion [to compel] ... to pay to the moving party the reasonable expenses incurred in obtaining the order including attorneys' fees, unless the court finds that the opposition to the motion was justified or that other circumstances make an award of expenses unjust." Under these circumstances, an award of sanctions against Plaintiff would be just and proper.

#### **CLP 5.3 Certification**

The undersigned certifies that he has conferred in good faith with Plaintiff's counsel concerning the issues raised in this Motion, but counsel for the parties have been unable to resolve the issues raised herein without Court action.

WHEREFORE, Bienes respectfully requests that this Court enter and order: (i) compelling Plaintiff to immediately provide proper answers to Defendant's First Interrogatories; (ii) awarding Bienes the reasonable attorneys' fees and costs he's incurred in connection with the filing and disposition of this motion; (iii) extending the discovery deadline to August 1, 2014,

and the dispositive motion deadline to July 1, 2014; and (iv) awarding to Bienes any such other and further relief that the Court deems just and proper.

Respectfully submitted,

/s/ Jonathan Etra  
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Telephone: 305.373.9400  
Facsimile: 305.373.9443  
*Counsel for Defendant, Michael Bienes*



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 20, 2014, this notice and the aforementioned interrogatories were served via E-mail to: Thomas E. Messana, Esq., Messana, P.A., 401 East Las Olas Boulevard, Suite 1400, Ft. Lauderdale, FL 33301 ([tmessana@messana-law.com](mailto:tmessana@messana-law.com)); Leonard K. Samuels, Esq., Etan Mar, Esq., Steven D. Weber, Esq., Berger Singerman LLP, 350 East Las Olas Boulevard, Suite 1000, Fort Lauderdale, FL 33301 ([lsamuels@bergersingerman.com](mailto:lsamuels@bergersingerman.com), [emark@bergersingerman.com](mailto:emark@bergersingerman.com), [sweber@bergersingerman.com](mailto:sweber@bergersingerman.com)); Peter G. Herman, Esq., Tripp Scott, 110 S.E. 6<sup>th</sup> Street, 15<sup>th</sup> Floor, Ft. Lauderdale, FL 33301 ([pgh@trippscott.com](mailto:pgh@trippscott.com)); Paul V. DeBianchi, Esq., Paul V. DeBianchi, P.A., 111 S.E. 12<sup>th</sup> Street, Ft. Lauderdale, FL 33316 ([Debianchi236@bellsouth.net](mailto:Debianchi236@bellsouth.net)); Gary A. Woodfield, Esq., Haile, Shaw & Pfaffenberger, P.A., 660 U.S. Highway One, Third Floor, North Palm Beach, FL 33408 ([gwoodfield@haileshaw.com](mailto:gwoodfield@haileshaw.com), [bpetroni@haileshaw.com](mailto:bpetroni@haileshaw.com), [eservice@haileshaw.com](mailto:eservice@haileshaw.com)); and via Regular U.S. Mail to: Michael D. Sullivan & Associates, Inc., 6550 N. Federal Highway, Suite 210, Ft. Lauderdale, FL 33308; Michael Sullivan, 2590 N.E. 41<sup>st</sup> Street, Ft. Lauderdale, FL 33308; and Frank Avellino, 223 Coral Lane, Palm Beach, FL 33480; Matthew Triggs, Esq., Andrew Thomson, Esq. Proskauer Rose LLP, 2255 Glades Road, Suite 421 Atrium, Boca Raton, FL 33431 ([mtriggs@proskauer.com](mailto:mtriggs@proskauer.com), [athomson@proskauer.com](mailto:athomson@proskauer.com), [florida.litigation@proskauer.com](mailto:florida.litigation@proskauer.com)); Robert J. Hunt, Esq., Debra D. Klingsberg, Esq., Hunt & Gross, P.A., 185 Spanish River Boulevard, Suite 220, Boca Raton, FL 33431 ([bobhunt@huntgross.com](mailto:bobhunt@huntgross.com), [dklingsberger@huntgross.com](mailto:dklingsberger@huntgross.com), [eService@huntgross.com](mailto:eService@huntgross.com), [Sharon@huntgross.com](mailto:Sharon@huntgross.com)).

/s/ Jonathan Etra \_\_\_\_\_

Jonathan Etra

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CASE NO. 12-034123 (07)

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

Plaintiffs,

vs.

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, KELKO FOUNDATION,  
INC., a Florida Non Profit Corporation,  
and VINCENT T. KELLY, an individual,

Defendants.

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**DEFENDANT MICHAEL BIENES'S NOTICE OF  
SERVICE OF FIRST SET OF INTERROGATORIES TO PLAINTIFF**

Defendant, Michael Bienes ("Bienes"), pursuant to Fla. R. Civ. P. 1.340, hereby gives  
notice of service of his First Set in Interrogatories to Plaintiff, Philip J. Von Kahle, as  
Conservator of P&S General Partnership and S&P General Partnership ("Plaintiff").

**EXHIBIT**

**A**

/s/ Jonathan Etra

Mark F. Raymond (373397)  
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Facsimile: 305.373.9443

*Counsel for Defendant, Michael Bienes*

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 18, 2014, this notice and the aforementioned interrogatories were served via E-mail to: Thomas E. Messana, Esq., Messana, P.A., 401 East Las Olas Boulevard, Suite 1400, Ft. Lauderdale, FL 33301 ([tmessana@messana-law.com](mailto:tmessana@messana-law.com)); Leonard K. Samuels, Esq., Etan Mar, Esq., Steven D. Weber, Esq., Berger Singerman LLP, 350 East Las Olas Boulevard, Suite 1000, Ft. Lauderdale, FL 33301 ([lsamuels@bergersingerman.com](mailto:lsamuels@bergersingerman.com), [emark@bergersingerman.com](mailto:emark@bergersingerman.com), [sweber@bergersingerman.com](mailto:sweber@bergersingerman.com)); Peter G. Herman, Esq., Tripp Scott, 110 S.E. 6<sup>th</sup> Street, 15<sup>th</sup> Floor, Ft. Lauderdale, FL 33301 ([pgh@trippscott.com](mailto:pgh@trippscott.com)); Paul V. DeBianchi, Esq., Paul V. DeBianchi, P.A., 111 S.E. 12<sup>th</sup> Street, Ft. Lauderdale, FL 33316 ([Debianchi236@bellsouth.net](mailto:Debianchi236@bellsouth.net)); Gary A. Woodfield, Esq., Haile, Shaw & Pfaffenberger, P.A., 660 U.S. Highway One, Third Floor, North Palm Beach, FL 33408 ([gwoodfield@haileshaw.com](mailto:gwoodfield@haileshaw.com), [bpetroni@haileshaw.com](mailto:bpetroni@haileshaw.com), [eservice@haileshaw.com](mailto:eservice@haileshaw.com)); and via Regular U.S. Mail to: Michael D. Sullivan & Associates, Inc., 6550 N. Federal Highway, Suite 210, Ft. Lauderdale, FL 33308; Michael Sullivan, 2590 N.E. 41<sup>st</sup> Street, Ft. Lauderdale, FL 33308; and Frank Avellino, 223 Coral Lane, Palm Beach, FL 33480; Matthew Triggs, Esq., Andrew Thomson, Esq. Proskauer Rose LLP, 2255 Glades Road, Suite 421 Atrium, Boca Raton, FL 33431 ([mtriggs@proskauer.com](mailto:mtriggs@proskauer.com), [athomson@proskauer.com](mailto:athomson@proskauer.com), [florida.litigation@proskauer.com](mailto:florida.litigation@proskauer.com)); Robert J. Hunt, Esq., Debra D. Klingsberg, Esq., Hunt & Gross, P.A., 185 Spanish River Boulevard, Suite 220, Boca Raton, FL 33431 ([bohunt@huntgross.com](mailto:bohunt@huntgross.com), [dklingsberger@huntgross.com](mailto:dklingsberger@huntgross.com), [eService@huntgross.com](mailto:eService@huntgross.com), [Sharon@huntgross.com](mailto:Sharon@huntgross.com)).

/s/ Jonathan Etra

Jonathan Etra

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

COMPLEX LITIGATION UNIT

CASE NO. 12-034123 (07)

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

Plaintiffs,

vs.

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, KELKO FOUNDATION,  
INC., a Florida Non Profit Corporation,  
and VINCENT T. KELLY, an individual,

Defendants.

---

**DEFENDANT MICHAEL BIENES'S  
FIRST SET OF INTERROGATORIES TO PLAINTIFF**

Defendant, Michael Bienes ("Bienes"), pursuant to Fla. R. Civ. P. 1.340, propounds his  
First Set in Interrogatories to Plaintiff, Philip J. Von Kahle, as Conservator of P&S General  
Partnership and S&P General Partnership ("Plaintiff"), to be answered under oath within thirty

BROAD and CASSEL

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(30) days of receipt hereof in accordance with the Definitions and Instructions provided.

### DEFINITIONS AND INSTRUCTIONS

1. "Partnerships" shall mean P&S Associates, General Partnership, and S&P Associates, General Partnership.
2. "You" or "Your" shall mean the Partnerships and their partners, associates, members, representatives, agents, attorneys, or anyone acting or purporting to act on their behalf.
3. "Bienes" shall mean Defendant, Michael Bienes.
4. "Sullivan" shall mean Defendant, Michael D. Sullivan.
5. "Powell" shall mean alleged Managing General Partner of the Partnerships, Gregory Powell, now deceased.
6. "Avellino" shall mean Defendant, Frank Avellino.
7. "Kelly" shall mean Defendant, Vincent T. Kelly.
8. "Jacob" shall mean Defendant, Steven F. Jacob.
9. "Holloway" shall mean Defendant, Scott Holloway.
10. "Barone" shall mean Defendant, Vincent Barone.
11. "Kelco" shall mean Defendant, Kelco Foundation, Inc.
12. "BLMIS" shall mean Bernard L. Madoff Investment Securities, LLC.
13. The term "document" means any written or graphic matter or other means of preserving thought or expression and all tangible things from which information can be processed or transcribed, and shall include the production of documents in the manner in which the documents are ordinarily kept including the following:
  - (a) Any and all writings, drawings, graphs, charts, photographs, and other data compilations from which information can be obtained, translated, if necessary, through detection devices into reasonably usable form.
  - (b) Any and all written, typed, recorded, or graphic matter, however produced or

reproduced, fixed in a tangible medium of expression, of every kind and regardless where located, and all tangible things from which information can be processed or transcribed, including all originals and non-identical copies whether differing from the original by reason of any notation made on such copy or otherwise including but not limited to any summary schedule, memorandum, note, message, statement, letter, telegram, telex, bulletin, inter and intra-office communication, report, diary, desk or pocket calendar or notebook, day book chronological date compilation, appointment book pamphlet, periodical, magazine or newspaper articles, advertisement, list, graph, motion, picture, photograph, x-ray or other machine-produced diagnostic picture or depiction of any kind, chart, index, tape, record, drawing, compilation, tabulation, computer printouts, computer-stored memory component or device including but not limited to hard-drives, disks, diskettes, and e-mail, study, analysis, transcript, minutes, books, date sheet, data processing card or tape, phone records, correspondence, ledgers, invoices, worksheets, receipts, returns, prospectuses, financing statements, schedules, affidavits, contracts, canceled checks, checkbooks, check stubs, transcripts, statistics, surveys, releases, aural records or representations of any kind, microfiche, microfilm, mechanical or electric records or representations of any kind, and any other writing or recording in Your possession, custody or control or Your attorney's possession, custody or control (and any and all drafts, alterations, modifications, changes and/or amendments of any of the foregoing).

(c) Any and all files in which any documents are maintained, including file folders or file jackets, and adjacent or related exhibit folders in which any documents are filed or maintained.

(d) Any and all documents contained on hard drives or other electronic media that You or any of Your attorneys have located on the Internet, whether or not You or Your attorneys have yet printed the documents.

(e) Any and all documents located now or in the past on any computer memory device within Your possession, custody, or control, or within the possession, custody, or control of Your attorneys. "Possession, custody, or control" as used herein shall have the same meaning as in Fla. R. Civ. P. 1.350(a).

(f) Any and all documents of any kind within Your possession, custody, or control, or within the possession, custody, or control of any of Your attorneys.

14. The terms "person," "individual," and "entity" are used interchangeably and each shall mean, but not be limited to: any natural person or fictitious entity whether or not it is incorporated or registered, or trust, or suretyship, institution, or government or government agency or political subdivision, be it foreign or domestic, or board, committee, group, or organization comprised of any of the foregoing or combination thereof, whether they be now or previously existing.

15. The terms “relate to,” “relates to” and “relating to” mean, without limitation, consisting of, reflecting, referring to, embodying, mentioning, discussing, or concerning, directly or indirectly, or having any logical or factual connection with the subject matter identified in a specific request.

16. The term “Communications” means every disclosure, transfer or exchange of information whether written or oral or by telephone, text message, e-mail, personal delivery or otherwise.

17. “And” and “or” shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of this Request all responses that might otherwise be construed to be outside its scope.

18. When you are asked to “identify” a person, individual, or entity that is a natural person, give that person’s full name and current or last known residence, business address and telephone number, employer or last known employer, and title or position.

19. When you are asked to “identify” a person, individual, or entity other than a natural person (an “entity”), give that entity’s full name and any fictitious names it uses, the address and telephone numbers of its principal place of business, and, if it is a corporation, company or partnership, the jurisdiction under the laws of which it has been organized.

20. When you are asked to “identify” a document, state its type (e.g., letter, contract, telegram, report, memorandum, etc.), date, author(s), addressee(s) and recipient(s), title or description sufficient to identify it, its present location, custodian, and substance.

21. When you are asked to “identify” an event or occurrence, including an oral communication, then state its type (e.g., telephone call, face-to-face meeting), its date, place, and length; identity of each person present; identify each document that records, describes, or refers to the event or occurrence; and state its substance. If you claim that the attorney-client or other

privilege or the work product doctrine is applicable to any document the identification of which is sought by these interrogatories, then with respect to each such document, state its type, date, author(s), addressee(s) and recipient(s), present and previous custodian(s), location, subject matter, and sufficient additional information to explain the claim of privilege and to enable adjudication of the propriety of that claim.

22. If you claim that the attorney-client or other privilege or the work product doctrine is applicable to any event or occurrence, including any oral communication the identification of which is sought by these interrogatories, then with respect to each such event or occurrence, state its date, place and length; identify all persons present at all or any part of the event or occurrence; identify all documents that record, refer, or relate to the event or occurrence; state the subject matter of the event or occurrence; and provide sufficient additional information to explain the claim of privilege and to enable adjudication of the propriety of that claim.

23. If any document the identification of which is sought by these interrogatories has been destroyed, then state the date and circumstances of its destruction, and identify the person who destroyed the document and the person who ordered its destruction.



### INTERROGATORIES

1. What is the name and address of the person answering these interrogatories, and, if applicable, the person's official position or relationship to the party(ies) to whom the interrogatories are directed?

ANSWER:

2. Please state with specificity all facts supporting Your allegation in Paragraph 22 of the Amended Complaint that Bienes "sought out and brought general partners into one or both of the Partnerships as investors." In Your answer, please identify all documents that support Your allegation and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support Your allegation. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

ANSWER:

3. With respect to each investor/general partner You allege to have been solicited by Bienes to invest in the Partnerships, please provide the following information:

- a. The name of each investor/general partner;
- b. The amount of each investment;
- c. The date on which each investment was made;
- d. To whom or with whom the investment was made;
- e. A detailed description of the investment; and
- f. A description of all documents relating to each investment.

ANSWER:

4. Please state with specificity all facts supporting Your allegation in Paragraph 23 of the Amended Complaint that Bienes solicited general partner investors "without any reasonable belief as to the advisability in investing in the Partnerships ...." In Your answer, please identify all documents that support this allegation and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support your allegation. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

ANSWER:

5. Please state with specificity all facts supporting Your allegations in Paragraph 24 of the Amended Complaint, as they relate to Bienes, that Bienes and the other named Defendants received "over \$8 million dollars in kickbacks from Sullivan disguised as commissions, management fees, gifts, and/or 'charitable contributions' in return for soliciting investors for one or both of the Partnerships ...." In Your answer, please identify all documents that support Your allegations and the name(s) of any person(s) with knowledge of the facts that support Your allegations. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

ANSWER:

6. Please state with specificity all facts supporting Your allegation in Paragraph 27 of the Amended Complaint, as it relates to Bienes, that Bienes and the other Defendants "ensured that Sullivan, through entities he exclusively controlled, made distributions to the Kickback Defendants that were in violation of the Partnership Agreements." In Your answer, please identify all documents that support Your allegation and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support Your allegation. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

ANSWER:

7. Please state with specificity all facts supporting Your allegation in Paragraph 28(b) of the Amended Complaint that "Bienes received \$357,790.84 in Kickbacks." In Your answer, please identify all documents that support Your allegation and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support Your allegation. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

**ANSWER:**

8. For each Kickback payment you claim Bienes received in Paragraph 28(b) of the Amended Complaint, please provide the following information:

- a. The amount of each payment;
- b. The date on which each payment was made;
- c. To whom each payment was made;
- d. A detailed description of the reason for the payment; and
- e. A description of all documents relating to the payment.

**ANSWER:**

9. Please state with specificity all facts supporting Your allegations in Paragraph 32 of the Amended Complaint, as they relate to Bienes, that Bienes and the other Defendants "knew or should have known that the Kickbacks and distributions to themselves and non-partners were improper" and that "the Kickback Defendants worked with Sullivan to obtain additional Kickbacks based on their solicitation of new investors in one or both of the Partnerships." In Your answer, please identify all documents that support Your allegations and the name(s) of any person(s) with knowledge of the facts that support Your allegations. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

ANSWER:

10. Please state with specificity all facts supporting Your allegation in Paragraph 42 of the Amended Complaint, as it relates to Bienes, that "Sullivan inappropriately distributed ... millions of dollars of Partnership funds to assorted general partners from the capital contributions of other general partners, instead of from the Partnerships' profits." In Your answer, please identify all documents that support Your allegations and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support Your allegations. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

ANSWER:

11. Please state with specificity all facts supporting Your allegation in Paragraph 55 of the Amended Complaint that Bienes "had knowledge of Sullivan's breaches of his fiduciary duties." In Your answer, please identify all documents that support Your allegation and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support Your allegation. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

ANSWER:

12. Please state with specificity all facts supporting Your allegation in Paragraph 56 of the Amended Complaint, as it relates to Bienes, that Bienes and the other Defendants "encouraged or substantially aided [Sullivan's fiduciary] breaches by soliciting investors for the Partnerships, receiving Kickbacks for doing so, and failing to report them to the Partnerships ...." In Your answer, please identify all documents that support Your allegations and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support Your allegations. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

ANSWER:

13. Do you contend that Bienes had a duty to report Sullivan's alleged fiduciary breaches? If so, please state with specificity all facts supporting Your contention. In Your answer, please identify all documents that support Your contention and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support Your contention. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

ANSWER:

14. Please state with specificity all facts supporting Your allegation in Paragraph 73 of the Amended Complaint that the "kickbacks" Bienes allegedly received were "compensation ... related to [his] advice concerning investment in the Partnerships." In Your answer, please identify all documents that support Your allegation and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support Your allegation. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

ANSWER:

15. Please state with specificity all facts supporting Your allegations in Paragraph 79-80 of the Amended Complaint, as they relate to Bienes, that Bienes and the other Defendants had "no reasonable grounds" to believe the recommendations You contend they made to investors to invest in the Partnerships were "suitable" for the investors. In Your answer, please identify all documents that support Your allegations and the name(s) of any person(s) with knowledge of the facts that support Your allegations. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

ANSWER:

16. Do you contend that Bienes was under a duty to investigate the Partnerships as it relates to Sullivan's alleged misconduct that is the subject of the Amended Complaint? If so, please state with specificity all facts supporting your contention. In Your answer, please identify all documents that support Your contention and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support Your contention. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

ANSWER:



17. Please state with specificity all facts supporting Your allegations in Paragraph 82 of the Amended Complaint, as they relate to Bienes, that Bienes and the other Defendants "did not investigate the financial status of the Partnerships or provide any service in exchange for the Kickbacks that they received." In Your answer, please identify all documents that support Your allegations and the name(s) of any person(s) with knowledge of the facts that support Your allegations. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

ANSWER:

18. Please state with specificity all facts supporting Your allegation in Paragraph 93 of the Amended Complaint, as it relates to Bienes, that Bienes "did not receive the reasonable equivalent value for the distributions [he] received." In Your answer, please identify all documents that support Your allegation and the name(s) of any person(s) with knowledge of the facts that support Your allegation. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

ANSWER:

**VERIFICATION**

I have read the foregoing answers to the above Interrogatories and do swear under oath and penalty of perjury that they are true and correct.

**S&P ASSOCIATES, GENERAL PARTNERSHIP  
P&S ASSOCIATES, GENERAL PARTNERSHIP**

By: \_\_\_\_\_  
Philip J. Von Kahle, as Conservator

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014, by Philip J. Von Kahle, as Conservator of S&P General Associates, General Partnership, and P&S Associates, General Partnership, who is \_\_\_\_ personally known to me or \_\_\_\_ has produced \_\_\_\_\_ as identification and who did/did not take an oath.

\_\_\_\_\_  
Notary Public  
(Print or Type Name):  
My Commission Expires:

(seal)

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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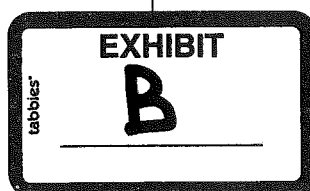
**PLAINTIFF, CONSERVATOR PHILIP J. VON KAHLE'S, SUPPLEMENTAL  
RESPONSE TO DEFENDANT MICHAEL BIENES' FIRST SET OF  
INTERROGATORIES TO PLAINTIFF**

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 Defendant, Michael Bienes ("Bienes" or "Defendant") his First Set of Interrogatories to Plaintiff, Philip J. Von Kahle, as Conservator of P&S General Partnership and S&P General Partnership ("Plaintiff").

**OBJECTIONS**

All responses of the Plaintiff to Bienes' 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 they call for the proprietary, confidential, and/or financial information of the Partnerships and/or a non-party.
2. The Plaintiff objects to the extent the Interrogatories impose a duty to supplement not required by the Florida Rules of Civil Procedure.



3. The Plaintiff's investigation of the facts relevant to the instant matter is in its initial stages and, 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, Vincent Kelly, and Kelco Foundation, Inc. that further prevents Plaintiffs from providing complete answers.

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

#### INTERROGATORIES

1. What is the name and address of the person answering these interrogatories, and, if applicable, the person's official position or relationship to the party(ies) to whom the interrogatories are directed?

##### **ANSWER:**

**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").**

**3613 North 29th Ave  
Hollywood FL 33020**

2. Please state with specificity all facts supporting Your allegation in Paragraph 22 of the Amended Complaint that Bienes "sought out and brought general partners into one or both of the Partnerships as investors." In Your answer, please identify all documents that support Your allegation and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support Your allegation. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

##### **ANSWER:**

**Objection. The Plaintiff objects to the extent that the information sought is in Bienes' possession or could be more easily obtained through other parties or sources. Plaintiff objects to this 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, or settlement communications. Further, discovery has only recently begun and the Conservator is still investigating certain claims. The Plaintiff responds:**

- Before the formation of the Partnerships, Frank 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, Bienes convinced certain investors of A&B to invest with the Partnerships. Upon information and belief, on or about September 7, 1993, Bienes and Avellino were permanently enjoined from dealing in securities. The prior action by the SEC put Bienes on notice that his actions were not authorized by law.
- The Partnerships were formed pursuant to written partnership agreements dated December 11, 1992. In 1994, the partnership agreements were amended (the "Partnerships Agreements").
  - Avellino and Bienes encouraged several people to invest in the Partnerships, including individuals and entities referenced in response to Interrogatory Number 3 below.
- Bienes attended the same church as several of the partners of the Partnerships and recruited certain of them to invest in the Partnerships.
- Bienes did not have a license related to securities for the relevant period.
- Bienes received commissions for based upon the accounts of partners he brought in to the Partnerships.

Additionally, the Conservator is producing documents which are responsive to this Interrogatory.

Plaintiffs' agreement to produce documents which may be responsive to this request for production does not constitute an admission that such documents are relevant to the instant proceedings or that they may be used in evidence. Notwithstanding the foregoing objections, Plaintiffs have agreed to produce the following documents which may be responsive to this request for production. Specifically, Plaintiffs are willing to produce documents whose bates numbers include, but are not limited to:

- Journals - MB00002RTP - MB00005RTP; MB00012RTP - MB00019RTP.
- Management Fee Records - MB00008RTP - MB00010RTP; MB00025RTP - MB00089RTP.
- Checks to Bienes - MB00006RTP
- Judds' Interrogatory Responses - MB02008RTP - MB02025RTP

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

- i. Michael D. Sullivan. It is believed that Mr. Sullivan has knowledge related to Mr. Bienes 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.

- ii. James Judd. It is believed that Mr. Judd has knowledge related to Mr. Bienes solicitation of investors, including Mr. Judd, and others who were connected to the Philharmonic. Additionally, it is believed that Mr. Judd has knowledge of Mr. Bienes giving investment advice. The source of this belief is Mr. Judd's interrogatory responses provided in a related case. Such responses are being produced.
- iii. Valerie Judd. It is believed that Mrs. Judd has knowledge of Mr. Bienes solicitation of her husband, James Judd. The source of this belief is Mrs. Judd's interrogatory responses provided in a related case. Such responses are being produced.
- iv. Frank Avellino. It is believed that Frank Avellino worked with Mr. Bienes in procuring investors for P&S and S&P.
- v. Vincent T. Kelly. It is believed that Vincent T. Kelly knew of or worked with Mr. Bienes in procuring investors, because he was formerly an investor with Mr. Bienes' former company Avellino & Bienes, and worked to solicit substantial investors in the Partnerships. Vincent T. Kelly also acted as Mr. Bienes' pastor.
- vi. 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.
- vii. 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.
- viii. 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. Bienes as well as Mr. Bienes' advice to partners of P&S and S&P to invest.
- ix. Susan Moss. Ms. Moss worked for S&P and P&S and may have knowledge of Mr. Bienes' involvement in the instant cause of action.
- x. Dianne K. Bienes. Mrs. Bienes is Mr. Bienes' Wife, and was intimately involved in Mr. Bienes' investment activities. Mrs. Bienes was intimately involved in the book keeping of entities that Mr. Bienes controlled.
- xi. 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.
- xii. Grosvenor Partners, Ltd. Plaintiffs believe that Grosvenor Partners, Ltd received substantial transfers from the Partnerships on Mr. Bienes' behalf.
- xiii. Mayfair Ventures, General Partnership. Plaintiffs believe that Mayfair Ventures General Partnership received substantial distributions on Mr. Bienes behalf.

Plaintiffs are still in the process of determining the extent and nature of Mr. Bienes involvement in the P&S and S&P, and the extent to which he referred partners to those Partnerships, and may discover and disclose additional investors who were referred to the partnerships by Bienes. Additionally, Plaintiffs submit that each and every person who previously invested with Bienes' former company Avellino & Bienes, and then became an investor in S&P and/or P&S had knowledge of Bienes' advice to invest in the Partnerships. Because Bienes has not responded to any of Plaintiffs discovery requests

that relate to the entity known as Avellino & Bienes, Plaintiffs cannot disclose their identity at this juncture.

3. With respect to each investor/general partner You allege to have been solicited by Bienes to invest in the Partnerships, please provide the following information:

- a. The name of each investor/general partner;
- b. The amount of each investment;
- c. The date on which each investment was made;
- d. To whom or with whom the investment was made;
- e. A detailed description of the investment; and
- f. A description of all documents relating to each investment.

ANSWER:

**Objection.** The Plaintiff objects to the extent that the information sought is in Bienes' possession or could be more easily obtained through other parties or sources. Plaintiff objects to this 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, or settlement communications. Plaintiffs also object to this interrogatory because the undefined term "investor/general partner" is vague and unclear. Further, discovery has only recently begun and the Conservator is still investigating certain claims. To the extent that the term "investor/general partner" refers to general partners in the Partnerships, the Plaintiff responds:

The following general partners of P&S have a relationship to P&S through Bienes and invested with P&S:

- 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

A copy of the partnership agreement for P&S which describes the investment is attached to the Second Amended Complaint filed in this action. These partners generally invested by

sending a check to Michael D. Sullivan.

The following general partners of S&P have a relationship to S&P through Bienes:

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

A copy of the partnership agreement for S&P which describes the investment is attached to the Second Amended Complaint filed in this action. These partners generally invested by sending a check to Michael D. Sullivan.

Certain general partners in SPJ Investments, Ltd., a general partner in S&P, had a relationship with Partnerships and Bienes, including:

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

Additionally, the Conservator is producing documents which are responsive to this Interrogatory. Plaintiffs' agreement to produce documents which may be responsive to this request for production does not constitute an admission that such documents are relevant to the instant proceedings or that they may be used in evidence. Notwithstanding the foregoing objections, Plaintiffs have agreed to produce the following documents which may be responsive to this request for production. Specifically, Plaintiffs are willing to produce documents whose bates numbers include, but are not limited to:

- Checks to the Partnerships: MB02154RTP – MB02222RTP.

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. Bienes 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. James Judd. It is believed that Mr. Judd has knowledge related to Mr. Bienes solicitation of investors, including Mr. Judd, and others who were connected to the Philharmonic. Additionally, it is believed that Mr. Judd has knowledge of Mr. Bienes giving investment advice. The source of this belief is Mr. Judd's interrogatory responses provided in a related case. Such responses are being produced.
3. Valerie Judd. It is believed that Mrs. Judd has knowledge of Mr. Bienes solicitation of her husband, James Judd. The source of this belief is Mrs. Judd's interrogatory responses provided in a related case. Such responses are being produced.
4. 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 the Avellino and/or Bienes behalf to solicit investments in P&S



and/or S&P. Frank Avellino. It is believed that Frank Avellino worked with Mr. Bienes in procuring investors for P&S and S&P.

5. Vincent T. Kelly. It is believed that Vincent T. Kelly knew of or worked with Mr. Bienes in procuring investors, because he was formerly an investor with Mr. Bienes' former company Avellino & Bienes, and worked to solicit substantial investors in the Partnerships. Vincent T. Kelly also acted as Mr. Bienes' pastor.
6. 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.
7. 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.
8. 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. Bienes as well as Mr. Bienes' advice to partners of P&S and S&P to invest.
9. Susan Moss. Ms. Moss worked for S&P and P&S and may have knowledge of Mr. Bienes' involvement in the instant cause of action.

4. Please state with specificity all facts supporting Your allegation in Paragraph 23 of the Amended Complaint that Bienes solicited general partner investors "without any reasonable belief as to the advisability in investing in the Partnerships ...." In Your answer, please identify all documents that support this allegation and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support your allegation. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

**ANSWER:**

The Plaintiff objects to the extent that the information sought is in Bienes' possession or could be more easily obtained through other parties or sources. Plaintiff objects to this 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, or settlement communications. Plaintiff also objects to this interrogatory because the undefined term general partner investor is vague and unclear. To the extent that this interrogatory seeks information relating to general partners in the Partnerships, the Plaintiff responds:

See response to Interrogatory Number 2. Additionally, documents are being provided in response to Bienes' request for production.

Plaintiffs' agreement to produce documents which may be responsive to this request for production does not constitute an admission that such documents are relevant to the instant proceedings or that they may be used in evidence. Notwithstanding the foregoing objections, Plaintiffs have agreed to produce the following documents which may be responsive to this request for production. Specifically, Plaintiffs are willing to produce documents whose bates numbers include, but are not limited to:

- Journals - MB00002RTP - MB00005RTP; MB00012RTP - MB00019RTP.
- Management Fee Records - MB00008RTP - MB00010RTP; MB00025RTP - MB00089RTP.
- Checks to Bienes - MB00006RTP

5. Please state with specificity all facts supporting Your allegations in Paragraph 24 of the Amended Complaint, as they relate to Bienes, that Bienes and the other named Defendants received "over \$8 million dollars in kickbacks from Sullivan disguised as commissions, management fees, gifts, and/or 'charitable contributions' in return for soliciting investors for one or both of the Partnerships ...." In Your answer, please identify all documents that support Your allegations and the name(s) of any person(s) with knowledge of the facts that support Your allegations. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

ANSWER:

The Plaintiff objects to the extent that the information sought is in Bienes' possession or could be more easily obtained through other parties or sources. Plaintiff objects to this 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, or settlement communications. The Plaintiff responds:

See response to Interrogatory Number 2. Additionally, documents are being provided in response to Bienes' request for production. Plaintiffs' agreement to produce documents which may be responsive to this request for production does not constitute an admission that such documents are relevant to the instant proceedings or that they may be used in evidence. Notwithstanding the foregoing objections, Plaintiffs have agreed to produce the following documents which may be responsive to this request for production. Specifically, Plaintiffs are willing to produce documents whose bates numbers include, but are not limited to:

- Journals - MB00002RTP - MB00005RTP; MB00012RTP - MB00019RTP.
- Management Fee Records - MB00008RTP - MB00010RTP; MB00025RTP - MB00089RTP.
- Checks to Bienes - MB00006RTP

Additional bates numbers which reflect fees paid to others include, but are not limited to:

- MB00337RTP - MB02007RTP. Documents in this grouping include the Partnerships spreadsheets and checks.

It is believed that individuals who possess knowledge responsive to this interrogatory are:

- Michael D. Sullivan who is believed to have knowledge related to why transfers were characterized in a particular manner.
- Frank Avellino who was Michael Bienes' former partner and was involved in the foregoing schemes.
- Vincent T. Kelly, who received management fees which were improperly designated as "Charitable Contributions"

6. Please state with specificity all facts supporting Your allegation in Paragraph 27 of the Amended Complaint, as it relates to Bienes, that Bienes and the other Defendants "ensured that Sullivan, through entities he exclusively controlled, made distributions to the Kickback Defendants that were in violation of the Partnership Agreements." In Your answer, please identify all documents that support Your allegation and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support Your allegation. With respect to each such person You identify, please describe the

subject matter of such person's knowledge.

ANSWER:

The Plaintiff objects to the extent that the information sought is in Bienes' possession or could be more easily obtained through other parties or sources. Plaintiff objects to this 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, or settlement communications. The Plaintiff responds:

See response to Interrogatory Number 2. Additionally, the documents reflect that certain transfers were made from Michael D. Sullivan & Assoc. Further, documents are being provided in response to Bienes' request for production.

Plaintiffs' agreement to produce documents which may be responsive to this request for production does not constitute an admission that such documents are relevant to the instant proceedings or that they may be used in evidence. Notwithstanding the foregoing objections, Plaintiffs have agreed to produce the following documents which may be responsive to this request for production. Specifically, Plaintiffs are willing to produce documents whose bates numbers include, but are not limited to:

- Journals - MB00002RTP - MB00005RTP; MB00012RTP - MB00019RTP.
- Management Fee Records - MB00008RTP - MB00010RTP; MB00025RTP - MB00089RTP.
- Checks to Bienes - MB00006RTP
- Bank Statements - MB00096RTP - MB00223RTP.

Plaintiffs have also produced documents which include, but are not limited to:

- MB00337RTP - MB02007RTP. Documents in this grouping include the Partnerships spreadsheets and checks.

It is believed that individuals who possess knowledge responsive to this interrogatory are:

Michael D. Sullivan who is believed to have knowledge related to which entities were used to transfer funds to the Commissions Defendants as defined in the Second Amended Complaint.

Plaintiffs object to this interrogatory because it exceeds the amount allowed by the Florida Rules of Civil Procedure. However, Plaintiffs have responded to this interrogatory as a result of Defendant's attempts to obstruct their efforts to obtain discovery, without waiving the right to later object to and strike their response to this interrogatory.

7. Please state with specificity all facts supporting Your allegation in Paragraph 28(b) of the Amended Complaint that "Bienes received \$357,790.84 in Kickbacks." In Your answer, please identify all documents that support Your allegation and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support Your allegation. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

ANSWER:

**Objection.** The Plaintiff objects to the extent that the information sought is in Bienes' 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 Bienes and have not yet been produced to the Plaintiff. Plaintiff objects to this 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, or settlement communications. The Plaintiff responds:

Bienes 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 (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, documents are being produced which are responsive to this request. These documents include bank statements and printouts from a software program which the Partnerships utilized. Bates numbers for responsive documents include,

Plaintiffs' agreement to produce documents which may be responsive to this request for production does not constitute an admission that such documents are relevant to the instant proceedings or that they may be used in evidence. Notwithstanding the foregoing objections, Plaintiffs have agreed to produce the following documents which may be responsive to this request for production. Specifically, Plaintiffs are willing to produce documents whose bates numbers include, but are not limited to:

- Journals - MB00002RTP - MB00005RTP; MB00012RTP - MB00019RTP.
- Management Fee Records - MB00008RTP - MB00010RTP; MB00025RTP - MB00089RTP.
- Checks to Bienes - MB00006RTP

It is believed that individuals who possess knowledge responsive to this interrogatory are:

Michael D. Sullivan who is believed to have knowledge related to the transfers described in this response.

Frank Avellino, who is believed to have knowledge related to the transfers described in this response.

Plaintiffs object to this interrogatory because it exceeds the amount allowed by the Florida Rules of Civil Procedure. However, Plaintiffs have responded to this interrogatory as a result of Defendant's attempts to obstruct their efforts to obtain discovery, without waiving the right to later object to and strike their response to this interrogatory.

8. For each Kickback payment you claim Bienes received in Paragraph 28(b) of the Amended Complaint, please provide the following information:

- a. The amount of each payment;
- b. The date on which each payment was made;
- c. To whom each payment was made;
- d. A detailed description of the reason for the payment; and
- e. A description of all documents relating to the payment.

ANSWER:

Objection. The Plaintiff objects to the extent that the information sought is in Bienes' 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 Bienes and have not yet been produced to the Plaintiff, and/or which have likely been destroyed by Bienes Plaintiff objects to this 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, or settlement communications. The Plaintiff responds:

Bienes 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	\$3,912.11 (P&S); \$4,147.57 (S&P)	Check
2002	\$54,650.25 (P&S); \$48,614.39 (S&P)	Check
2003	\$58,428.61(P&S); \$42,411.17 (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 Conservator is producing documents which are responsive to this Interrogatory. These documents include bank statements and printouts from a software program which the Partnerships utilized.

Plaintiffs' agreement to produce documents which may be responsive to this request for production does not constitute an admission that such documents are relevant to the instant proceedings or that they may be used in evidence. Notwithstanding the foregoing objections, Plaintiffs have agreed to produce the following documents which may be responsive to this request for production. Specifically, Plaintiffs are willing to produce documents whose bates numbers include, but are not limited to:

- Journals - MB00002RTP - MB00005RTP; MB00012RTP - MB00019RTP. For example, MB00003RTP reflects "Commissions-Michael Bienes".
- Management Fee Records - MB00008RTP - MB00010RTP; MB00025RTP - MB00089RTP.
- Checks to Bienes - MB00006RTP
- Bank Statements - MB00096RTP - MB00223RTP.

It is believed that individuals who possess knowledge responsive to this interrogatory are:

Michael D. Sullivan who is believed to have knowledge related to the transfers described in this response.

Frank Avellino who is believed to have knowledge related to the transfers described in this response.

Plaintiffs object to this interrogatory because it exceeds the amount allowed by the Florida Rules of Civil Procedure. However, Plaintiffs have responded to this interrogatory as a result of Defendant's attempts to obstruct their efforts to obtain discovery, without waiving the right to later object to and strike their response to this interrogatory.

9. Please state with specificity all facts supporting Your allegations in Paragraph 32 of the Amended Complaint, as they relate to Bienes, that Bienes and the other Defendants "knew or should have known that the Kickbacks and distributions to themselves and non-

partners were improper" and that "the Kickback Defendants worked with Sullivan to obtain additional Kickbacks based on their solicitation of new investors in one or both of the Partnerships." In Your answer, please identify all documents that support Your allegations and the name(s) of any person(s) with knowledge of the facts that support Your allegations. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

**ANSWER:**

The Plaintiff objects to the extent that the information sought is in Bienes' possession or could be more easily obtained through other parties or sources. Plaintiff objects to this 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, or settlement communications. The Plaintiff responds:

See response to Interrogatory Number 2. Additionally, documents are being provided in response to Bienes' request for production. Plaintiffs' agreement to produce documents which may be responsive to this request for production does not constitute an admission that such documents are relevant to the instant proceedings or that they may be used in evidence. Notwithstanding the foregoing objections, Plaintiffs have agreed to produce the following documents which may be responsive to this request for production. Specifically, Plaintiffs are willing to produce documents whose bates numbers include, but are not limited to:

- Journals - MB00002RTP - MB00005RTP; MB00012RTP - MB00019RTP.
- Management Fee Records - MB00008RTP - MB00010RTP; MB00025RTP - MB00089RTP.
- Checks to Bienes - MB00006RTP
- Bank Statements - MB00096RTP - MB00223RTP.

Additional responsive bates numbers which reflect fees paid to others include, but are not limited to:

- MB00337RTP - MB02007RTP. Documents in this grouping include the Partnerships spreadsheets and checks.

It is believed that individuals who possess knowledge responsive to this interrogatory are:

Michael D. Sullivan who is believed to have knowledge related to which entities were used to transfer funds to the Kickback Defendants as defined in the Second Amended Complaint. Frank Avellino who is believed to have knowledge related to which entities were used to transfer funds to the Kickback Defendants as defined in the Second Amended Complaint.

Additionally, it is believed that Bienes was involved in the management of the Partnerships because his office was located next to S&P and P&S's offices, S&P and P&S were formed around the time when Bienes was prohibited from engaging in conduct related to the sale or purchase of securities, and Bienes was described by Irving Picard as someone who was intimately involved in the management of the Partnerships.

Plaintiffs object to this interrogatory because it exceeds the amount allowed by the Florida Rules of Civil Procedure. However, Plaintiffs have responded to this interrogatory as a

result of Defendant's attempts to obstruct their efforts to obtain discovery, without waiving the right to later object to and strike their response to this interrogatory.

10. Please state with specificity all facts supporting Your allegation in Paragraph 42 of the Amended Complaint, as it relates to Bienes, that "Sullivan inappropriately distributed ... millions of dollars of Partnership funds to assorted general partners from the capital contributions of other general partners, instead of from the Partnerships' profits." In Your answer, please identify all documents that support Your allegations and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support Your allegations. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

ANSWER:

The Plaintiff objects to the extent that the information sought is in Bienes' possession or could be more easily obtained through other parties or sources. Plaintiff objects to this 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, or settlement communications. The Plaintiff responds:

See response to Interrogatory Number 2. Additionally, documents are being provided in response to Bienes' request for production.

Plaintiffs' agreement to produce documents which may be responsive to this request for production does not constitute an admission that such documents are relevant to the instant proceedings or that they may be used in evidence. Notwithstanding the foregoing objections, Plaintiffs have agreed to produce the following documents which may be responsive to this request for production. Specifically, Plaintiffs are willing to produce documents whose bates numbers include, but are not limited to:

- Journals - MB00002RTP - MB00005RTP; MB00012RTP - MB00019RTP.
- Management Fee Records - MB00008RTP - MB00010RTP; MB00025RTP - MB00089RTP.
- Checks to Bienes - MB00006RTP
- Bank Statements - MB00096RTP - MB00223RTP.

Additional documents whose bates numbers which may reflect fees paid to others include, but are not limited to:

- MB00337RTP - MB02007RTP. Documents in this grouping include the Partnerships spreadsheets and checks.

It is believed that individuals who possess knowledge responsive to this interrogatory are:

Michael D. Sullivan who is believed to have knowledge related to which entities were used to transfer funds to the Kickback Defendants as defined in the Second Amended Complaint.

Plaintiffs object to this interrogatory because it exceeds the amount allowed by the Florida Rules of Civil Procedure. However, Plaintiffs have responded to this interrogatory as a result of Defendant's attempts to obstruct their efforts to obtain discovery, without waiving the right to later object to and strike their response to this interrogatory.



11. Please state with specificity all facts supporting Your allegation in Paragraph 55 of the Amended Complaint that Bienes "had knowledge of Sullivan's breaches of his fiduciary duties." In Your answer, please identify all documents that support Your allegation and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support Your allegation. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

ANSWER:

The Plaintiff objects to the extent that the information sought is in Bienes' possession or could be more easily obtained through other parties or sources. Plaintiff objects to this 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, or settlement communications. Plaintiffs also object to this interrogatory because it is duplicative of Interrogatory No. 2. The Plaintiff responds:

See response to Interrogatory Number 2. Additionally, documents are being provided in response to Bienes' request for production.

Plaintiffs' agreement to produce documents which may be responsive to this request for production does not constitute an admission that such documents are relevant to the instant proceedings or that they may be used in evidence. Notwithstanding the foregoing objections, Plaintiffs have agreed to produce the following documents which may be responsive to this request for production. Specifically, Plaintiffs are willing to produce documents whose bates numbers include, but are not limited to:

- Journals - MB00002RTP - MB00005RTP; MB00012RTP - MB00019RTP.
- Management Fee Records - MB00008RTP - MB00010RTP; MB00025RTP - MB00089RTP.
- Checks to Bienes - MB00006RTP

It is believed that individuals who may possess knowledge responsive to this interrogatory are:

- Michael D. Sullivan
- Frank Avellino
- Michael Bienes
- Steve Jacob

12. Please state with specificity all facts supporting Your allegation in Paragraph 56 of the Amended Complaint, as it relates to Bienes, that Bienes and the other Defendants "encouraged or substantially aided [Sullivan's fiduciary] breaches by soliciting investors for the Partnerships, receiving Kickbacks for doing so, and failing to report them to the Partnerships...." In Your answer, please identify all documents that support Your allegations and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support Your allegations. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

ANSWER:

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

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, or settlement communications. Plaintiff further objects because this interrogatory calls for a legal conclusion. The Plaintiff responds:

See response to Interrogatory Number 2. Additionally, documents are being provided in response to Bienes' request for production.

Plaintiffs' agreement to produce documents which may be responsive to this request for production does not constitute an admission that such documents are relevant to the instant proceedings or that they may be used in evidence. Notwithstanding the foregoing objections, Plaintiffs have agreed to produce the following documents which may be responsive to this request for production. Specifically, Plaintiffs are willing to produce documents whose bates numbers include, but are not limited to:

- Journals - MB00002RTP - MB00005RTP; MB00012RTP - MB00019RTP.
- Management Fee Records - MB00008RTP - MB00010RTP; MB00025RTP - MB00089RTP.
- Checks to Bienes - MB00006RTP
- Bank Statements - MB00096RTP - MB00223RTP.

Additional documents whose bates numbers may reflect fees paid to others include, but are not limited to:

- MB00337RTP - MB02007RTP. Documents in this grouping include the Partnerships spreadsheets and checks.

It is believed that individuals who possess knowledge responsive to this interrogatory are:

Michael D. Sullivan who is believed to have knowledge related to which entities were used to transfer funds to the Commissions Defendants as defined in the Second Amended Complaint.

Plaintiffs object to this interrogatory because it exceeds the amount allowed by the Florida Rules of Civil Procedure. However, Plaintiffs have responded to this interrogatory as a result of Defendant's attempts to obstruct their efforts to obtain discovery, without waiving the right to later object to and strike their response to this interrogatory.

13. Do you contend that Bienes had a duty to report Sullivan's alleged fiduciary breaches? If so, please state with specificity all facts supporting Your contention. In Your answer, please identify all documents that support Your contention and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support Your contention. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

**ANSWER:**

The Plaintiff objects to the extent that the information sought is in Bienes' possession or could be more easily obtained through other parties or sources. Plaintiff objects to this 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, or settlement communications. Plaintiff further objects because this interrogatory

calls for a legal conclusion. The Plaintiff responds:

See response to Interrogatory Number 2. Additionally, documents are being provided in response to Bienes' request for production.

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

- i. Michael D. Sullivan. It is believed that Mr. Sullivan has knowledge related to Mr. Bienes 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.
- ii. James Judd. It is believed that Mr. Judd has knowledge related to Mr. Bienes solicitation of investors, including Mr. Judd, and others who were connected to the Philharmonic. Additionally, it is believed that Mr. Judd has knowledge of Mr. Bienes giving investment advice. The source of this belief is Mr. Judd's interrogatory responses provided in a related case. Such responses are being produced.
- iii. Valerie Judd. It is believed that Mrs. Judd has knowledge of Mr. Bienes solicitation of her husband, James Judd. The source of this belief is Mrs. Judd's interrogatory responses provided in a related case. Such responses are being produced.

Plaintiffs object to this interrogatory because it exceeds the amount allowed by the Florida Rules of Civil Procedure. However, Plaintiffs have responded to this interrogatory as a result of Defendant's attempts to obstruct their efforts to obtain discovery, without waiving the right to later object to and strike their response to this interrogatory.

14. Please state with specificity all facts supporting Your allegation in Paragraph 73 of the Amended Complaint that the "kickbacks" Bienes allegedly received were "compensation... related to [his] advice concerning investment in the Partnerships." In Your answer, please identify all documents that support Your allegation and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support Your allegation. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

#### **ANSWER:**

The Plaintiff objects to the extent that the information sought is in Bienes' possession or could be more easily obtained through other parties or sources. Plaintiff objects to this 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, or settlement communications. The Plaintiff responds:

See response to Interrogatory Number 2. Additionally, documents are being provided in response to Bienes' request for production.

Plaintiffs' agreement to produce documents which may be responsive to this request for production does not constitute an admission that such documents are relevant to the instant proceedings or that they may be used in evidence. Notwithstanding the foregoing objections, Plaintiffs have agreed to produce the following documents which may be responsive to this request for production. Specifically, Plaintiffs are willing to produce documents whose

bates numbers include, but are not limited to:

- Journals - MB00002RTP - MB00005RTP; MB00012RTP - MB00019RTP.
- Management Fee Records - MB00008RTP - MB00010RTP; MB00025RTP - MB00089RTP.
- Checks to Bienes - MB00006RTP

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

- xiv. Michael D. Sullivan. It is believed that Mr. Sullivan has knowledge related to Mr. Bienes 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.

Plaintiffs object to this interrogatory because it exceeds the amount allowed by the Florida Rules of Civil Procedure. However, Plaintiffs have responded to this interrogatory as a result of Defendant's attempts to obstruct their efforts to obtain discovery, without waiving the right to later object to and strike their response to this interrogatory.

15. Please state with specificity all facts supporting Your allegations in Paragraph 79- 80 of the Amended Complaint, as they relate to Bienes, that Bienes and the other Defendants had "no reasonable grounds" to believe the recommendations You contend they made to investors to invest in the Partnerships were "suitable" for the investors. In Your answer, please identify all documents that support Your allegations and the name(s) of any person(s) with knowledge of the facts that support Your allegations. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

ANSWER:

The Plaintiff objects to the extent that the information sought is in Bienes' possession or could be more easily obtained through other parties or sources. Plaintiff objects to this 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, or settlement communications. The Plaintiff responds:

See response to Interrogatory Number 2. Additionally, documents are being provided in response to Bienes' request for production.

Plaintiffs' agreement to produce documents which may be responsive to this request for production does not constitute an admission that such documents are relevant to the instant proceedings or that they may be used in evidence. Notwithstanding the foregoing objections, Plaintiffs have agreed to produce the following documents which may be responsive to this request for production. Specifically, Plaintiffs are willing to produce documents whose bates numbers include, but are not limited to:

- Journals - MB00002RTP - MB00005RTP; MB00012RTP - MB00019RTP.
- Management Fee Records - MB00008RTP - MB00010RTP; MB00025RTP - MB00089RTP.
- Checks to Bienes - MB00006RTP

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

- xv. **Michael D. Sullivan.** It is believed that Mr. Sullivan has knowledge related to Mr. Bienes 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.
- xvi. **James Judd.** It is believed that Mr. Judd has knowledge related to Mr. Bienes solicitation of investors, including Mr. Judd, and others who were connected to the Philharmonic. Additionally, it is believed that Mr. Judd has knowledge of Mr. Bienes giving investment advice. The source of this belief is Mr. Judd's interrogatory responses provided in a related case. Such responses are being produced.
- xvii. **Valerie Judd.** It is believed that Mrs. Judd has knowledge of Mr. Bienes solicitation of her husband, James Judd. The source of this belief is Mrs. Judd's interrogatory responses provided in a related case. Such responses are being produced.

Plaintiffs object to this interrogatory because it exceeds the amount allowed by the Florida Rules of Civil Procedure. However, Plaintiffs have responded to this interrogatory as a result of Defendant's attempts to obstruct their efforts to obtain discovery, without waiving the right to later object to and strike their response to this interrogatory.

16. Do you contend that Bienes was under a duty to investigate the Partnerships as it relates to Sullivan's alleged misconduct that is the subject of the Amended Complaint? If so, please state with specificity all facts supporting your contention. In Your answer, please identify all documents that support Your contention and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support Your contention. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

**ANSWER:**

The Plaintiff objects to the extent that the information sought is in Bienes' possession or could be more easily obtained through other parties or sources. Plaintiff objects to this 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, or settlement communications. The Plaintiff responds:

See response to Interrogatory Number 2. Additionally, because Mr. Bienes was advising people to invest with the Partnerships he was under a duty to investigate such investment. Further, documents are being provided in response to Bienes' request for production. Plaintiffs' agreement to produce documents which may be responsive to this request for production does not constitute an admission that such documents are relevant to the instant proceedings or that they may be used in evidence. Notwithstanding the foregoing objections, Plaintiffs have agreed to produce the following documents which may be responsive to this request for production. Specifically, Plaintiffs are willing to produce documents whose bates numbers include, but are not limited to:

- Journals - MB00002RTP - MB00005RTP; MB00012RTP - MB00019RTP.
- Management Fee Records - MB00008RTP - MB00010RTP; MB00025RTP - MB00089RTP.
- Checks to Bienes - MB00006RTP

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

- xviii. Michael D. Sullivan.** It is believed that Mr. Sullivan has knowledge related to Mr. Bienes 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.
- xix. James Judd.** It is believed that Mr. Judd has knowledge related to Mr. Bienes solicitation of investors, including Mr. Judd, and others who were connected to the Philharmonic. Additionally, it is believed that Mr. Judd has knowledge of Mr. Bienes giving investment advice. The source of this belief is Mr. Judd's interrogatory responses provided in a related case. Such responses are being produced.
- xx. Valerie Judd.** It is believed that Mrs. Judd has knowledge of Mr. Bienes solicitation of her husband, James Judd. The source of this belief is Mrs. Judd's interrogatory responses provided in a related case. Such responses are being produced.

**Plaintiffs object to this interrogatory because it exceeds the amount allowed by the Florida Rules of Civil Procedure. However, Plaintiffs have responded to this interrogatory as a result of Defendant's attempts to obstruct their efforts to obtain discovery, without waiving the right to later object to and strike their response to this interrogatory.**

17. Please state with specificity all facts supporting Your allegations in Paragraph 82 of the Amended Complaint, as they relate to Bienes, that Bienes and the other Defendants "did not investigate the financial status of the Partnerships or provide any service in exchange for the Kickbacks that they received." In Your answer, please identify all documents that support Your allegations and the name(s) of any person(s) with knowledge of the facts that support Your allegations. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

**ANSWER:**

**The Plaintiff objects to the extent that the information sought is in Bienes' possession or could be more easily obtained through other parties or sources. Plaintiff objects to this 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, or settlement communications. The Plaintiff responds:**

**See response to Interrogatory Number 2. Additionally, documents are being provided in response to Bienes' request for production.**

**Plaintiffs' agreement to produce documents which may be responsive to this request for production does not constitute an admission that such documents are relevant to the instant proceedings or that they may be used in evidence. Notwithstanding the foregoing objections, Plaintiffs have agreed to produce the following documents which may be responsive to this request for production. Specifically, Plaintiffs are willing to produce documents whose bates numbers include, but are not limited to:**

- **Journals - MB00002RTP - MB00005RTP; MB00012RTP - MB00019RTP.**
- **Management Fee Records - MB00008RTP - MB00010RTP; MB00025RTP - MB00089RTP.**
- **Checks to Bienes - MB00006RTP**

- Letter to Bette Anne Powell - MB00253RTP - MB00255RTP

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

- Michael D. Sullivan. It is believed that Mr. Sullivan has knowledge related to what services the Defendants provided to the Partnerships.

Plaintiffs object to this interrogatory because it exceeds the amount allowed by the Florida Rules of Civil Procedure. However, Plaintiffs have responded to this interrogatory as a result of Defendant's attempts to obstruct their efforts to obtain discovery, without waiving the right to later object to and strike their response to this interrogatory.

18. Please state with specificity all facts supporting Your allegation in Paragraph 93 of the Amended Complaint, as it relates to Bienes, that Bienes "did not receive the reasonable equivalent value for the distributions [he] received." In Your answer, please identify all documents that support Your allegation and the name(s) of any person(s) with knowledge of the facts that support Your allegation. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

**ANSWER:**

The Plaintiff objects to the extent that the information sought is in Bienes' possession or could be more easily obtained through other parties or sources. Plaintiff objects to this 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, or settlement communications. Additionally, Plaintiffs object to this interrogatory because it calls for a legal conclusion, and because whether Defendant provided value in the context of a fraudulent transfer action is an affirmative defense, and Defendant bears the burden of proof as to that issue. The Plaintiff responds:

See response to Interrogatory Number 2. Further, the Partnerships were net losers in the Madoff Ponzi scheme. Additionally, documents are being provided in response to Bienes request for production.

Plaintiffs object to this interrogatory because it exceeds the amount allowed by the Florida Rules of Civil Procedure. However, Plaintiffs have responded to this interrogatory as a result of Defendant's attempts to obstruct their efforts to obtain discovery, without waiving the right to later object to and strike their response to this interrogatory.

VERIFICATION

I have read the foregoing answers to the above Interrogatories and do swear under oath and penalty of perjury that they are true and correct.

S&P ASSOCIATES, GENERAL PARTNERSHIP  
P&S ASSOCIATES, GENERAL PARTNERSHIP

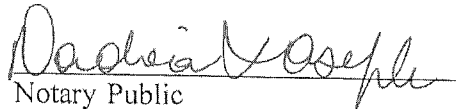
By: 

Philip J. Von Kahle, as Conservator

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 2nd day of April 2014, by Philip J. Von Kahle, as Conservator of S&P General Associates, General Partnership, and P&S Associates, General Partnership, who is ✓ personally known to me or has produced \_\_\_\_\_ as identification and who did/did not take an oath.

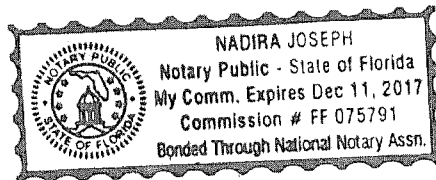


Notary Public

(Print or Type Name):

My Commission Expires:

(seal)





## Shane Martin

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**From:** Jonathan Etra  
**Sent:** Thursday, May 08, 2014 4:25 PM  
**To:** 'Zachary P. Hyman'; 'Thomas Zeichman'  
**Cc:** 'Steven D. Weber'; 'Leonard K. Samuels'; Mark Raymond; Shane Martin  
**Subject:** RE: P&S: Bienes Meet and Confer Summary

Zach and Tom,

I am not sure what you have as my commitments necessarily are commitments, but with that (and I need to review this list more carefully) your summary is useful and I thank you for it.

I also appreciate the way you conducted the call from your end.

There is one huge issue that I don't think is well captured on your list, however, and it something I need to emphasize here. As I explained during the call, the major problem I have with your responses to my interrogatories is that I was looking for your witnesses that you relied upon to support the allegation identified in the interrogatory. I did this so I know who your witnesses are and who I need to depose. Instead of providing your witness list (or acknowledging you don't have anyone), you have (with the exceptions of Judd) given me a large list of people who might one day have useful information for you. That is not responsive (since you did not rely on them if you don't know what they are going to say) or proper (since you are making me responsible for deposing them all as if they were your witnesses, when they are not). You are making me depose every one of them, which is not reasonable and cannot be done within the schedule.

Respectfully, what I need you to do is reexamine your answers and remove whoever is not your witness. And, I need you to do it quickly.

If you don't, I will have no choice but to seek immediate relief from the Court, given the fact discovery deadline.

Sorry for the long e-mail. No desire to go back and forth on these issues by e-mail. But this is really a critical issue for us that needs immediate attention and resolution.

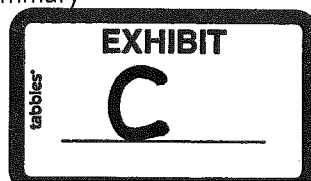
I thank you for your time.

Jonathan

Jonathan Etra  
Tel: 305.373.9447  
Fax: 305.995.6403  
Cell: 305.318.3396  
[jetra@broadandcassel.com](mailto:jetra@broadandcassel.com)

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**From:** Zachary P. Hyman [mailto:ZHyman@bergersingerman.com]  
**Sent:** Thursday, May 08, 2014 3:48 PM  
**To:** Thomas Zeichman; Jonathan Etra  
**Cc:** Steven D. Weber; Leonard K. Samuels; Mark Raymond; Shane Martin  
**Subject:** RE: P&S: Bienes Meet and Confer Summary



Jon,  
Please see the summary of the meet and confer below.  
Thanks,  
Zach

**From:** Thomas Zeichman [<mailto:tzeichman@messana-law.com>]  
**Sent:** Thursday, May 08, 2014 3:46 PM  
**To:** Zachary P. Hyman  
**Subject:** P&S: Bienes Meet and Confer Summary

Bienes Supplemental Responses to the Conservator

### **Request for Production**

#### General Issues

- Jonathan or Shane will attempt to produce documents on Tuesday, May 13.
- Plaintiffs requested that Jonathan contact Bienes's email service provider. Plaintiff will try to provide authority which requires parties to make requests to third parties.

#### Specific Requests

2. by and through broad enough to include Bienes.
3. Plaintiffs agreement to limit to "from P&S and S&P". 1992-1995; 2003 – present (limited to Sullivan and Powell, and entities)". Plaintiffs are providing bates numbers on Erisca.
4. Bienes intends to keep objection.
5. Plaintiffs agreement to limit to communications with named of investors. Plaintiffs will provide names

### **Interrogatory**

3. Bienes response will utilize Jonathan's definition of "undertaking" - financial or more obligation which someone commits to take and completes.
4. Plaintiffs agree to limit to relationship with P&S and S&P.
5. Bienes is keeping answer the same.
- 6 – 7. Bienes is keeping answer the same.
11. Bienes is keeping answer the same.
- 13 and 14. Jon to ask Bienes to identify individuals which received transfers from Sullivan or Sullivan entities.
15. Plaintiffs agree to limit the period to 1992-1995; 2003 – present. Also limiting the parties to Sullivan entities, Avelino, Kelly, P&S and S&P.
- 16 and 17. Bienes is keeping answer the same.
18. Plaintiffs requested that Bienes respond with "charitable contribution" substituted for "management fees". Jon is considering and plans to advise.
19. Bienes is keeping answer the same.
20. Plaintiffs limit interrogatory to "that received transfers from P&S and S&P."
23. Bienes is keeping answer the same.
25. Plaintiffs will provide names.
26. Bienes is keeping answer the same.

Plaintiffs' supplemental responses to Bienes

### **RTP**

Jon is reviewing documents and will advise of issues.

### **Interrogatories**

- 2 and 3. Plaintiffs will supplement witness list.
4. Plaintiffs will review and supplement if appropriate.
5. Plaintiffs are keeping the same.
6. Plaintiffs will review and supplement if appropriate.
7. Plaintiffs will review and supplement if appropriate
- 9 – 18. Plaintiffs will review and supplement if appropriate.

**MESSANA P.A.**

**Thomas Zeichman**  
Attorney at Law

**Messana, P.A.**

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[www.messana-law.com](http://www.messana-law.com)

## Shane Martin

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**From:** Jonathan Etra  
**Sent:** Wednesday, May 14, 2014 6:37 PM  
**To:** Zachary P. Hyman  
**Cc:** tzeichman@messana-law.com; Steven D. Weber; Shane Martin; Mark Raymond  
**Subject:** Re: Interrogatories

We will move to compel and seek immediate hearing. We don't have a choice.

Sent from my iPhone

> On May 14, 2014, at 6:28 PM, "Zachary P. Hyman" <[ZHyman@bergersingerman.com](mailto:ZHyman@bergersingerman.com)> wrote:

>

> Jon,

> When I spoke to you on Friday, I did not know that Phil would be out of town this week, and can't produce supplemental responses without Phil's review of them. We'll get them to you once he returns. I'm happy to discuss your concerns tomorrow if you like.

> Best,

> Zach

>

> -----Original Message-----

> From: Jonathan Etra [<mailto:jetra@broadandcassel.com>]

> Sent: Wednesday, May 14, 2014 5:59 PM

> To: Zachary P. Hyman; 'tzeichman@messana-law.com'; Steven D. Weber

> Cc: Shane Martin; Mark Raymond

> Subject: RE: Interrogatories

>

> Zach,

>

> We have not received the supplemental responses "early [this] week."

>

> We need these asap for reasons explained. I need to know if I have to file a motion and seek early hearing.

>

> We will produce documents to you by Friday, but probably tomorrow.

>

> I am around tomorrow, if you want to discuss any of this.

>

>

>

> Jonathan Etra

> Tel: 305.373.9447

> Fax: 305.995.6403

> Cell: 305.318.3396

> [jetra@broadandcassel.com](mailto:jetra@broadandcassel.com)

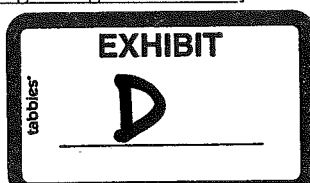
>

>

> -----Original Message-----

> From: Zachary P. Hyman [<mailto:ZHyman@bergersingerman.com>]

> Sent: Friday, May 09, 2014 2:23 PM



> To: Jonathan Etra; [tzeichman@messana-law.com](mailto:tzeichman@messana-law.com); Steven D. Weber

> Subject: Interrogatories

>

> Jon,

> As discussed, we should get you revised interrogatories early next week.

> Thanks,

> Zach

>

> Sent from my iPad

>

>

> \_\_\_\_\_

>

> Pursuant to federal regulations imposed on practitioners who render tax advice ("Circular 230"), we are required to advise you that any tax advice contained herein is not intended or written to be used for the purpose of avoiding tax penalties that may be imposed by the Internal Revenue Service. If this advice is or is intended to be used or referred to in promoting, marketing or recommending a partnership or other entity, investment plan or arrangement, the regulations under Circular 230 require that we advise you as follows: (1) this writing is not intended or written to be used, and it cannot be used, for the purpose of avoiding tax penalties that may be imposed on a taxpayer; (2) the advice was written to support the promotion or marketing of the transaction(s) or matter(s) addressed by the written advice; and (3) the taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

>

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