

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.

---

**CONSERVATOR'S MOTION TO COMPEL DEFENDANT  
FRANK AVELLINO TO PRODUCE DOCUMENTS AND PROVIDE BETTER  
RESPONSES TO PLAINTIFFS INTERROGATORIES**

Philip J. Von Kahle (the "Conservator"), as Conservator for P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P") (the "Partnerships", and together with the Conservator, the "Plaintiffs"), pursuant to Fla. R. Civ. P. 1.380, hereby file this Motion to Compel Defendant, Frank Avellino ("Defendant"), to Provide Better Responses to Plaintiffs' Interrogatories and Request for Production, and in support thereof states as follows:

1. On January 29, 2014, Plaintiffs served Defendant with Plaintiffs' First Set of Interrogatories (the "Interrogatories") and Plaintiffs' First Request for Production of Documents (the "Requests").
2. On April 4, 2014, Defendant provided his initial responses to the Interrogatories and Requests (the "Initial Responses"). However, Defendant's responses were deficient and inadequate.
3. After the parties met and conferred on April 24, 2014, Defendant provided supplemental responses to the Plaintiffs discovery requests (the "Supplemental Responses").



Attached as **Exhibit A** is a copy of Defendant's Supplemental Response to Plaintiffs' First Request for Production of Documents; attached as **Exhibit B** is a copy of Defendant's Supplemental Objections and Answers and Objections to Plaintiffs' First Set of Interrogatories.

4. Like the Initial Responses, the Supplemental Responses fail to adequately respond to Plaintiffs' discovery requests and Defendant's numerous objections that are meant to prevent Plaintiffs from obtaining responsive information and documents should be stricken.

5. First, Defendant's objections to Plaintiffs' Requests for Production should be stricken and Defendant should be compelled to produce all responsive documents to those requests. Defendant has incorporated numerous "general objections" into his responses. These "general objections" make it impossible to determine whether Defendant has produced all responsive documents or is relying on his general objections in answering one or more requests, and they are meritless. For example, Defendant "objects to the time period commencing in 1992 as overly burdensome" even though the Partnerships were created in approximately 1992 and any documents responsive to the Requests from 1992 to the present are relevant to this action. See **Exhibit B** at General Objection 5. Moreover, any such objection as to burdensomeness is improperly asserted because Defendant has failed to set adequately set forth in his responses the reason *why* such a time period is unduly burdensome. *Allstate Ins. Co. v. Boecher*, 733 So. 2d 993, 994 (Fla. 1999) ("We note, however, that at the time the Fourth District rendered its decision in *Boecher*, there were no affidavits, depositions, or other sworn testimony in the record to support Allstate's claims of undue burden"). Defendant has incorporated similar objections to Plaintiffs' requested time frame in his specific objections to the requests and, for the same reasons, those objections are improper and any responsive documents from 1992 to the present are relevant and should be produced. See **Exhibit B** at Responses 2, 8, 13.



6. Additionally, in many cases Defendant states that he will produce documents “subject to” or “subject to and without waiving” objections posed in response to Plaintiffs’ requests. See **Exhibit B** at Response 8, 13. Answering Plaintiffs’ discovery requests “subject to” or otherwise without waiving Defendant’s objections is improper and his objections should be stricken and he should be compelled to produce all responsive documents. See *Mann v. Island Resorts Dev., Inc.*, 3:08CV297/RS/EMT, 2009 WL 6409113, at \*3 (N.D. Fla. Feb. 27, 2009) (“Thus, a responding party is given only two choices: to answer or to object. Objecting but answering subject to the objection is not one of the allowed choices”)

7. Moreover, many of Defendant’s responses leave Plaintiffs unsure whether documents exist at all because Defendant has responded with “Defendant does not believe any such documents exist” rather than affirmatively stating that no such documents exist (as he has done in other places). Defendant should be ordered to search for and produce any such documents by a date certain. See **Exhibit B** at Responses 10, 11, 12, 13, 15, 19. Similarly, to the extent that Defendant states that he is searching for documents or that he “continues to search for responsive documents but has produced all such documents that have been located at this time”, he should be required to produce all documents by a date certain. See **Exhibit B** at Responses 1, 3, 4, 5, 6, 14, 17, 18.

8. Second, Defendant’s responses to Plaintiffs’ interrogatories are fatally flawed, his objections should be stricken, and Defendant should be required to provide better answers. For example, Defendant has unreasonably objected to the meaning of the word “undertakings” even though Plaintiffs’ have defined that term in the most inclusive manner and Defendant has provided no alternative definition (see **Exhibit B** at Response to Interrogatory No. 3). He is doing so to avoid providing a fully responsive answer and he should be ordered to do so.



9. Florida Rule of Civil Procedure 1.380 provides that a party may seek to compel a party to provide discovery responses where a party fails to provide an answer. Failure to provide an answer includes incomplete or evasive answers. Fla. R. Civ. P. 1.380(a)(3). As discussed above, the Defendant's answers to Plaintiffs' discovery are incomplete and evasive. Accordingly, it is appropriate to compel the Defendant to provide complete responses.

Certification of Good Faith and CLP 5.3

On April 24, 2014, counsel for Avellino and for the Plaintiffs participated in a meet and confer in a good faith attempt to resolve the issues addressed in the instant Motion. At that time, Avellino agreed to supplement his Initial Responses. As addressed above, the Supplemental Responses remain inadequate and the filing of this motion to compel was necessary.

WHEREFORE the Conservator respectfully requests the entry of an Order: (i) compelling Defendant to provide Plaintiffs with better responses to the Interrogatories; (ii) striking Defendant's general objections, striking Defendant's specific objections, and ordering Defendant to produce all documents responsive to Requests 1, 2, 3, 4, 5, 6, 8, 10, 11, 12, 13, 14, 15, 17, 18, 19, and (iv) for such other and further relief as this Court deems reasonable and just.

Dated: May 28, 2014

By: /s/ Leonard K. Samuels

Leonard K. Samuels  
Florida Bar No. 501610  
Etan Mark  
Florida Bar No. 720852  
Attorney for Plaintiffs  
BERGER SINGERMAN LLP  
350 East Las Olas Boulevard, Suite 1000  
Fort Lauderdale, Florida 33301  
Telephone: (954) 525-9900  
Fax: (954) 523-2872  
lsamuels@bergersingerman.com  
emark@bergersingerman.com



and

By: /s/ Thomas M. Messana

Thomas M. Messana, Esq.  
Florida Bar No. 991422  
Thomas G. Zeichman, Esq.  
Florida Bar No. 99239  
Attorneys for Plaintiffs  
MESSANA, P.A.  
401 East Las Olas Boulevard, Suite 1400  
Ft. Lauderdale, FL 33301  
Telephone: (954) 712-7400  
Facsimile: (954) 712-7401  
Email: tmessana@messana-law.com



**Exhibit A**

Defendant's Supplemental Response to Plaintiffs' First Request for Production of Documents



IN THE CIRCUIT COURT OF THE 17<sup>TH</sup> JUDICIAL CIRCUIT OF FLORIDA,  
IN AND FOR BROWARD COUNTY

CASE NO.: 12-034123 (07)

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

Plaintiffs,

v.

MICHAEL D. SULLIVAN, et al.,

Defendants.

---

**DEFENDANT, FRANK AVELLINO'S SUMMPLEMENTAL RESPONSE TO  
PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Defendant, Frank Avellino, files his supplemental response and objections to Plaintiff's First Request for Production of Documents dated January 29, 2014 (the "Request") as follows:

**GENERAL OBJECTIONS**

1. Defendant objects to the characterization of the Request as continuing in nature which goes beyond the obligations set forth in Rule 1.280(e), Florida Rules of Civil Procedure.
2. Defendant objects to the production of documents at the offices of plaintiff's counsel. Documents will be produced or made available for inspection at a mutually convenient location in Palm Beach County, Florida or as otherwise agreed to between the parties.
3. Defendant objects to the definition of "You" or "Your" or "Defendant" to the extent that it seeks privileged communications with their attorneys and accountants.
4. Defendant objects to this request to the extent it requires to produce documents in a manner otherwise as permitted by the Florida Rules of Civil Procedure.



5. Defendant objects to the time period commencing in 1992 as overly burdensome. Defendant has no obligation to nor has he maintained potentially responsive documents going back to 1992.

These objections are incorporated into each of the requests unless otherwise stated.



## **DEFENDANTS' SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION**

1. All documents exchanged between Defendant and S&P; P&S; Michael D. Sullivan; Steven Jacob; Michael D. Sullivan & Associates, Inc., a Florida corporation; Steven F. Jacob, CPA & Associates, Inc.; Gregg Powell; Kelco Foundation, Inc., a Florida Non Profit Corporation; Vincent T. Kelly; Vincent Barone; Edith Rosen; Sam Rosen; Premier Marketing Services, Inc., a Florida corporation; Grosvenor Partners, Ltd.; Avellino Family Foundation, Inc.; Mayfair Ventures; Kenn Jordan Foundation; Elaine Ziffer; James & Valerie Brue Judd; Roberta and Vania Alves; Janet A. Hooker Charitable Trust; Gilbert Kahn and Donald Kahan; Carone Family Trust; Carone Gallery, Inc. Pension Trust; Carone Marital Trust #1 UDT 1/26/00; Carone Marital Trust #2 UTD 1/26/00; Matthew D. Carone Revocable Trust; James A. Jordan Living Trust; Fernando Esteban; Margaret "E.K. Esteban; James A. Jordon; Marvin Seperson; and/or Scott Holloway; and any partner of P&S and/or S&P.

**RESPONSE:** As a result of the parties meet and confer, Plaintiffs agreed to limit this request to all documents exchanged between Defendant and S & P and P & S. With such limitation, the documents previously produced respond to this request. Defendant continues to search for responsive documents but has produced all such documents that have been located at this time.

2. All documents exchanged between Avellino & Bienes and S&P; P&S; Michael D. Sullivan; Steven Jacob; Michael D. Sullivan & Associates, Inc., a Florida corporation; Steven F. Jacob, CPA & Associates, Inc.; Gregg Powell; Kelco Foundation, Inc. a Florida Non Profit Corporation; Vincent T. Kelly; Vincent Barone; Edith Rosen; Sam Rosen; Premier Marketing Services, Inc.; a Florida Corporation; Grosvenor Partners, Ltd.; Avellino Family Foundation, Inc.; Mayfair Ventures; Kenn Jordan Foundation; Elaine Ziffer; Michael Bienes; Richard Wills; and/or Scott Holloway; and any partner of P&S and/or S&P.



**RESPONSE:** As a result of the parties meet and confer, Plaintiffs agreed to limit this request to all documents exchanged between Avellino & Bienes and S & P and P & S. However, with this limitation, this request remains overly burdensome, harassing and requires the production of documents which are irrelevant and not likely to lead to admissible evidence. Avellino & Bienes ceased doing business more than twenty years ago. To the extent that any records still exist they have no relevance to this litigation and would require a significant expenditure of time and money to locate and produce.

3. All documents related to communications between Defendant and S&P; P&S; Michael D. Sullivan; Steven Jacob; Michael D. Sullivan & Associates, Inc., a Florida Corporation; Steven F. Jacob, CPA & Associates, Inc.; Frank Avellino; Gregg Powell; Kelco Foundation, Inc., a Florida Non Profit Corporation; Vincent T. Kelly; Vincent Barone; Edith Rosen; Sam Rosen; Premier Marketing Services, Inc., a Florida Corporation; Michael Bienes; Scott Holloway; Richard Wills and any partner of P&S and/or S&P.

**RESPONSE:** As a result of the parties meet and confer, Plaintiffs agreed to limit the request to all documents exchanged between Defendant and S & P and P & S. With such limitation, the documents previously produced respond to this request. Defendant continues to search for responsive documents but has produced all such documents that have been located to date.

4. All documents related to any payments, transfers of funds, and/or compensation that You receive from Avellino & Bienes; S&P; P&S; Michael D. Sullivan; Steven Jacob; Michael D. Sullivan & Associates, Inc., a Florida Corporation; Steven F. Jacob, CPA & Associates, Inc.; Frank Avellino; Gregg Powell; Sullivan & Powell; Kelco Foundation, Inc. a Florida Non Profit Corporation; Vincent T. Kelly; Vincent Barone; Edith Rosen; Sam Rosen; Premier Marketing Services, Inc., a Florida Corporation; Scott Holloway; and/or any partner of P&S and/or S&P.

**RESPONSE:** As a result of the parties meet and confer, Plaintiffs agreed to limit this request to all documents exchanged between Defendant and S & P and P & S. With such limitation, the documents previously produced respond to this request. Defendant



**continues to search for responsive documents but has produced all such documents that have been located at this time.**

5. All documents that refer to or reflect the transactions and/or events alleged in the Amended Complaint in this action.

**RESPONSE:** As a result of the parties meet and confer, Plaintiffs agreed to limit this request to all documents exchanged between Defendant and S & P and P & S. With such limitation, the documents previously produced respond to this request. Defendant continues to search for responsive documents but has produced all such documents that have been located at this time.

6. All documents that reflect Your receipt of any of the Kickbacks alleged in the Amended Complaint in this action.

**RESPONSE:** Defendant received referral fees from or on behalf of Michael Sullivan, records of which will be produced if located.

7. Unless such documents have been produced in response to a previous request, all documents concerning the factual basis for any affirmative defense that You will assert in this action.

**RESPONSE:** Objection. No answer has been filed by Defendant in this action. Defendant is unable at this time to identify what affirmative defenses, if any, he intends to assert in this action.

8. All documents related to Avellino & Bienes' involvement with S&P and/or P&S, and/or the involvement of any partners in P&S and/or S&P with Avellino & Bienes.

**RESPONSE:** As a result of the parties meet and confer this request has been limited to those partners of S & P and P & S of whom Avellino is aware, which includes Michael Sullivan and Gregory Powell.

Since this involves records of Avellino & Bienes, Avellino's objection to Request No. 2 is incorporated herein. Subject to and without waiving such objections, Defendant does not believe any responsive documents exist.



9. Any and all correspondence between You and any of current and/or former partner of P&S and/or S&P; including but not limited to any correspondence between You and any of the named Defendants in this action.

**RESPONSE:** See response to Request No. 1.

10. All communications made regarding investment advice and/or financial performance of S&P and P&S to partners of the P&S and/or S&P and/or potential investors in P&S and/or S&P.

**RESPONSE:** Defendant does not believe any such documents exist.

11. Any and all documents relating to your investment or decision to invest in P&S and/or S&P.

**RESPONSE:** Defendant does not believe any such documents exist.

12. Any and all documents and communications concerning the suitability of investment in P&S and/or S&P regardless of whether those persons or entities who received such communications or documents actually invested in S&P and/or P&S.

**RESPONSE:** Defendant does not believe any such documents exist.

13. Any and all documents relating to communications between You and/or Avellino & Bienes and any entity whose name includes the term “Holy Ghost.”

**RESPONSE:** Pursuant to the parties meet and confer, Plaintiffs’ counsel advised that “Holy Ghost” was an investor in Avellino & Bienes. Avellino continues to have no



recollection of “Holy Ghost” or that it was an investor in Avellino & Bienes. To the extent Plaintiffs seek production of documents from Avellino & Bienes, Avellino incorporates his response to Request No. 2 herein. Subject to such objections, Avellino does not believe any such documents exist.

14. Any documents which evidence or relate to any transfers made to any entity in which you hold an interest, and any subsequent transfers thereafter that relate to P&S and/or S&P.

**RESPONSE:** Pursuant to the parties meet and confer, Plaintiffs have agreed to limit this request to documents relating to transfers relating to P & S and S & P. Avellino will produce any documents responsive to this request that can be located.

15. Any and all documents and correspondence concerning You and the Securities and Exchange Commission, the Florida Office of Financial Regulation, and any other Governmental Regulatory Agency, including but not limited to any internal memorandum concerning compliance with regulations promulgated by such entities.

**RESPONSE:** Objection. This request is overly burdensome, and seeks documents irrelevant to this action and not likely to lead to admissible evidence. Additionally, the term “internal memorandum” is vague and ambiguous. Subject to and without waiving such objections, Defendant has no responsive documents other than possibly documents regarding a 1992 consent judgment entered into with the SEC, which documents are irrelevant and not likely to lead to admissible evidence, and, in any event, are publically available. Pursuant to the parties meet and confer, Plaintiffs requested that Avellino identify any documents that may have been sealed. Avellino is not aware of any such documents.

16. All documents evidencing or referencing that You and/or Avellino & Bienes were active in the management of the Partnerships.

**RESPONSE:** None exist.



17. All documents evidencing or relating to any transfers made to Reverend Richard Wills and/or Christ Church United Methodist in Ft. Lauderdale by You or on Your behalf, or by Avellino & Bienes or on Avellino & Bienes' behalf.

**RESPONSE:** Pursuant to the parties meet and confer, Plaintiffs agreed to limit this request to documents relating to P & S and S & P. Subject to such limitation, Avellino will produce all such responsive documents that can be located.

18. All correspondence between You and Reverend Richard Wills.

**RESPONSE:** Pursuant to the parties meet and confer, Plaintiffs agreed to limit this request to documents relating to P & S and S & P. Subject to such limitation, Avellino will produce all such responsive documents that can be located.

19. All documents that relate to any contact with, or communication between You and/or Avellino & Bienes and any partners of P&S and/or S&P.

**RESPONSE:** This seeks the same documents as sought by Request Nos. 9 and 13. Defendant incorporates herein his responses to those requests.



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 19<sup>th</sup> day of May 2014, the foregoing document is being served on those on the attached service list by email.

**HAILE, SHAW & PFAFFENBERGER, P.A.**

*Attorneys for Defendants*

660 U.S. Highway One, Third Floor

North Palm Beach, FL 33408

Phone: (561) 627-8100

Fax: (561) 622-7603

[gwoodfield@haileshaw.com](mailto:gwoodfield@haileshaw.com)

[bpetroni@haileshaw.com](mailto:bpetroni@haileshaw.com)

[eservices@haileshaw.com](mailto:eservices@haileshaw.com)

[syoffee@haileshaw.com](mailto:syoffee@haileshaw.com)

[cmarino@haileshaw.com](mailto:cmarino@haileshaw.com)

By: /s/ Gary A. Woodfield  
Gary A. Woodfield, Esq.  
Florida Bar No. 563102  
Susan Yoffee, Esq.  
Florida Bar No. 511919



## SERVICE LIST

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

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

PETER G. HERMAN, ESQ.  
TRIPP SCOTT, P.A.  
15<sup>TH</sup> FLOOR  
110 SE 6<sup>TH</sup> STREET  
FORT LAUDERDALE, FL 33301  
[pgh@trippscott.com](mailto:pgh@trippscott.com)  
*Attorneys for Defendants Steven F. Jacob  
and Steven F. Jacob CPA & Associates, Inc.*

JONATHAN ETRA, ESQ.  
MARK F. RAYMOND, ESQ.  
SHANE MARTIN, ESQ.  
BROAD AND CASSEL  
One Biscayne Tower, 21<sup>st</sup> Floor  
2 South Biscayne Blvd.  
Miami, FL 33131  
[mraymond@broadandcassel.com](mailto:mraymond@broadandcassel.com)  
[ssmith@broadandcassel.com](mailto:ssmith@broadandcassel.com)  
[jetra@broadandcassel.com](mailto:jetra@broadandcassel.com)  
[msouza@broadandcassel.com](mailto:msouza@broadandcassel.com)  
[smartin@broadandcassel.com](mailto:smartin@broadandcassel.com)  
[msanchez@broadandcassel.com](mailto:msanchez@broadandcassel.com)  
*Attorneys for Michael Bienes*



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

*PAUL V. DeBIANCHI, ESQ.*  
PAUL V. DeBIANCHI, P.A.  
111 S.E. 12<sup>th</sup> Street  
Fort Lauderdale, FL 33316  
[Debianchi236@bellsouth.net](mailto:Debianchi236@bellsouth.net)  
*Attorneys for Father Vincent P. Kelly; Kelco  
Foundation, Inc.*

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



**Exhibit B**

Defendant's Supplemental Objections and Answers and Objections to  
Plaintiffs' First Set of Interrogatories



IN THE CIRCUIT COURT OF THE 17<sup>TH</sup> JUDICIAL CIRCUIT OF FLORIDA,  
IN AND FOR BROWARD COUNTY

CASE NO.: 12-034123 (07)

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

Plaintiffs,

v.

MICHAEL D. SULLIVAN, et al.,

Defendants.

---

**DEFENDANT FRANK AVELLINO'S NOTICE OF FILING SUPPLEMENTAL  
OBJECTIONS AND ANSWERS TO PLAINTIFF'S FIRST SET OF  
INTERROGATORIES**

Defendant, Frank Avellino, by and through his undersigned counsel, hereby gives notice of filing his supplemental objections and answers to Plaintiff's First Set of Interrogatories propounded upon him on January 29, 2014.

I HEREBY CERTIFY that original answers were served by U.S. Mail upon Thomas M. Messina, Esq., and a true and correct copy of the foregoing was served via e-mail upon the all counsel of record on the attached service list this 19th day of May, 2014.

**HAILE, SHAW & PFAFFENBERGER, P.A.**

*Attorneys for Defendant*

660 U.S. Highway One, Third Floor

North Palm Beach, FL 33408

Phone: (561) 627-8100

Fax: (561) 622-7603

[gwoodfield@haileshaw.com](mailto:gwoodfield@haileshaw.com)

[bpetroni@haileshaw.com](mailto:bpetroni@haileshaw.com)

[eservices@haileshaw.com](mailto:eservices@haileshaw.com)

By: /s/ Gary A. Woodfield

Gary A. Woodfield, Esq.

FL Bar No. 563102



## SERVICE LIST

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

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

PETER G. HERMAN, ESQ.  
TRIPP SCOTT, P.A.  
15<sup>TH</sup> FLOOR  
110 SE 6<sup>TH</sup> STREET  
FORT LAUDERDALE, FL 33301  
[pgh@trippscott.com](mailto:pgh@trippscott.com)  
*Attorneys for Defendants Steven F. Jacob  
and Steven F. Jacob CPA & Associates, Inc.*

JONATHAN ETRA, ESQ.  
MARK F. RAYMOND, ESQ.  
SHANE MARTIN, ESQ.  
CHRISTOPHER CAVALLO, ESQ.  
BROAD AND CASSEL  
One Biscayne Tower, 21<sup>st</sup> Floor  
2 South Biscayne Blvd.  
Miami, FL 33131  
[mraymond@broadandcassel.com](mailto:mraymond@broadandcassel.com)  
[ssmith@broadandcassel.com](mailto:ssmith@broadandcassel.com)  
[ccavallo@broadandcassel.com](mailto:ccavallo@broadandcassel.com)  
[jetra@broadandcassel.com](mailto:jetra@broadandcassel.com)  
[msouza@broadandcassel.com](mailto:msouza@broadandcassel.com)  
[smartin@broadandcassel.com](mailto:smartin@broadandcassel.com)  
[msanchez@broadandcassel.com](mailto:msanchez@broadandcassel.com)  
*Attorneys for Michael Bienes*



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

*PAUL V. DeBIANCHI, ESQ.*  
PAUL V. DeBIANCHI, P.A.  
111 S.E. 12<sup>th</sup> Street  
Fort Lauderdale, FL 33316  
[Debianchi236@bellsouth.net](mailto:Debianchi236@bellsouth.net)  
*Attorneys for Father Vincent P. Kelly; Kelco  
Foundation, Inc.*

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



IN THE CIRCUIT COURT OF THE 17<sup>TH</sup> JUDICIAL CIRCUIT OF FLORIDA,  
IN AND FOR BROWARD COUNTY

CASE NO.: 12-034123 (07)

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

Plaintiffs,

v.

MICHAEL D. SULLIVAN, et al.,

Defendants.

---

**DEFENDANT FRANK AVELLINO'S SUPPLEMENTAL ANSWERS TO PLAINTIFFS'**  
**FIRST SET OF INTERROGATORIES**

Defendant, Frank Avellino ("Defendant"), files this supplemental response to Plaintiffs' First Set of Interrogatories as follows:

**GENERAL OBJECTIONS**

1. Defendant objects to Plaintiffs' Interrogatories insofar as they seek information subject to the attorney/client privilege and the work product doctrine. A privilege log will be provided if appropriate.

**SUPPLEMENTAL ANSWERS TO INTERROGATORIES**

**Interrogatory No. 1:** Please identify the name and address of each person assisting in the drafting of answers to these interrogatories, and for each person, state his/her position and relationship to Defendant.

**Response:** Frank Avellino, Defendant  
Gary Woodfield, Attorney for Defendant



**Interrogatory No. 2:** Please identify the names and addresses of all persons who are believed or known by Defendant or his attorneys to possess any knowledge of any facts described in the Amended Complaint and/or in any pleadings related to this action filed with the Court, including the specific matters of which each such person has knowledge.

**Response:** Frank Avellino  
c/o Gary A. Woodfield, Esq.  
Haile, Shaw & Pfaffenberger, P.A.  
660 US Highway One, Third Floor  
North Palm Beach, FL 33408

**Knowledge of his non-participation in the formation, management or any other involvement of S&P/P&S and knowledge of referral fees received from Michael Sullivan.**

Michael Sullivan  
2590 NE 41<sup>st</sup> Street  
Fort Lauderdale, FL 33308

**Knowledge of S&P/P&S and the payment of referral fees.**

Michael Bienes  
3200 Port Royale Dr. N., Apt., 100  
Fort Lauderdale, FL 33308

**May have knowledge regarding S&P/P&S and receipt of referral fees.**

**Interrogatory No. 3:** Please describe the nature of Your relationship with Sullivan, including but not limited to all business and personal undertakings prior to 1992.

**Response:** Object to the term "undertakings" as vague and ambiguous. I have known Michael Sullivan as a co-parishioner of our church for many years. I had no business dealings with Sullivan prior to approximately 1992. My only dealing with Michael Sullivan was limited to a brief discussion regarding his decision to form his partnerships and my providing his contact information to several investors. When Michael Sullivan advised me that he intended to continue to invest with BLMIS after Avellino and Bienes ceased its business I advised him that I could not have any involvement in such endeavor and that he would have to deal with BLMIS himself. Several individuals who had



invested in Avellino & Bienes expressed to me that they wanted to continue to invest in BLMIS. I provided them with Michael Sullivan's contact information. Michael Sullivan provided me with a referral fee for some of these investors which I either accepted or directed to be paid to others, including charitable foundations.

**Interrogatory No. 4:** Please describe the nature of Your relationship with S&P and/or P&S including but not limited to circumstances prior to 1992 leading up to the creating of S&P and P&S; management of S&P and P&S; and the frequency You interacted with the operations of S&P and P&S.

**Response:** I have had no relationship with or involvement in these entities other than initial discussions with Michael Sullivan on his decision to form his partnerships and providing potential investors with Michael Sullivan's contact information, as more fully set forth in the proceeding interrogatory response. I have some recollection of Michael Sullivan contacting me on one or more occasions in which he had a particular question regarding administrative matters to which I may have provided responses but I do not now recollect the specifics of such conversations.

**Interrogatory No. 5:** Please describe the relationship between You and Avellino Family Foundation, Inc., including any relationship by and through Avellino & Bienes.

**Response:** I assisted in the formation and was a member of the board of the Avellino Family Foundation, a charitable organization.

**Interrogatory No. 6:** Please describe the relationship between You and Grosvenor Partners, Ltd. including any relationship by and through Avellino & Bienes.

**Response:** I assisted in the formation of and for a period of time was involved in the operation and management of Grosvenor Partners, Ltd. and was a partner in such entity.

**Interrogatory No. 7:** Please describe the relationship between You and Mayfair Ventures, including any relationship by and through Avellino & Bienes.



**Response:** I assisted in the formation of and was involved in the operation and management of Mayfair Ventures and was a partner in such entity.

**Interrogatory No. 8:** Please describe the relationship between You, and Paragon Ventures, and/or Donald Kahan including any relationship by and through Avellino & Bienes.

**Response:** To my recollection Donald Kahn was a friend or acquaintance of Michael Bienes who may have been an investor in one of Michael Sullivan's partnerships. Aside from the foregoing, I had no relationship with Paragon Ventures or Donald Kahn. I do not recall how I acquired the information included in this response.

**Interrogatory No. 9:** Please describe the relationship between You and the Kenn Jordan Foundation, Inc., including any relationship by and through Avellino & Bienes.

**Response:** I assisted in the formation of Kenn Jordan Foundation, Inc. and participated in its operation.

**Interrogatory No. 10:** Please describe the relationship between You and Elaine Ziffer, including any relationship by and through Avellino & Bienes.

**Response:** To my knowledge Elaine Ziffer was a friend or acquaintance of Michael Bienes who at one time invested with Grosvenor Partners.

**Interrogatory No. 11:** State all facts and/or circumstances under which Defendant received any transfers of funds, payments, and/or distributions from P&S and/or S&P.

**Response:** I do not believe that I received any transfer of funds, payments and/or distributions from P&S and/or S&P. Referral fees that I received came from Sullivan or a related entity and not from P&S or S&P.

**Interrogatory No. 12:** State all facts and/or circumstances under this Defendant received any transfers of funds, payments, and/or distributions from Sullivan.

**Response:** I received referral fees for some potential investors to whom I provided contact information for Michael Sullivan who ultimately invested with him, and possibly others who were previously invested in Avellino & Bienes. I



**believe all such payments were made by Michael Sullivan through MDS & Associates.**

**Interrogatory No. 13:** Please identify all persons and/or entities to whom assets of P&S and/or S&P were given and/or transferred for any purpose including, but not limited to, custodian possession and/or payment.

**Response:** It is my understanding that the partnerships invested their funds with Bernard L. Madoff Investment Securities. Other than that, I am not aware of any other transfers.

I am aware that \$50,000 was transferred to Reverend Richard Wills, at my request but it was my understanding that such funds did not come from either P & S or S & P.

**Interrogatory No. 14:** Describe the relationship between and among Defendant and P&S and/or S&P; Michael D. Sullivan; Steven Jacob; Sullivan & Powell Solutions in Tax; Guardian Angel Trust, LLC; Michael D. Sullivan & Associates, Inc., Steven F. Jacob, CPA & Associates, Inc.; Michael Bienes; Kelco Foundation, Inc.; and/or Vincent T. Kelly.

**Response:** I had no relationship with P&S and/or S&P. As previously stated I have known Michael Sullivan from the church that we attended for many years. I have had no relationship with Steve Jacob, Sullivan & Powell Solutions in Tax, Guardian Angel Trust, LLC, Steven F. Jacob, or CPA & Associates, Inc. I believe the referral payments made by Michael Sullivan were made through MDS & Associates, which I assume is the same as Michael D. Sullivan & Associates, Inc. Michael Bienes and I were partners in an accounting practice and in Avellino & Bienes. Vincent T. Kelly was a priest at St. John the Baptist Roman Catholic Church and was known to me through Michael Bienes.

**Interrogatory No. 15:** Please state the nature of your relationship with Reverend Richard Wills, the Christ Church United Methodist in Ft. Lauderdale and any parishioners of that Church, including any relationship by and through Avellino & Bienes.



**Response:** I object to this request that it inquires of my relationship with “any parishioners of that church”, in that such request is overly burdensome, seeks information not relevant to this litigation or is likely to lead to admissible evidence and constitutes an improper invasion of my privacy.

Subject to and without waiving such objections, I had a social relationship with Bishop Wills who was my minister at Christ Church United Methodist Church as well as a friend. At some point in time I requested that Michael Sullivan transfer \$50,000 that constituted referral fees he was going to pay me be sent to Bishop Wills. I also had social relationships with some of the other parishioners of the church.

**Interrogatory No. 16:** Identify all communications between and among Defendant and P&S and/or S&P; Michael D. Sullivan; Steven Jacob; Sullivan & Powell Solutions in Tax; Guardian Angel Trust, LLC; Michael D. Sullivan & Associates, Inc., Steven F. Jacob, CPA & Associates, Inc.; Michael Bienes; Kelco Foundation, Inc.; and/or Vincent T. Kelly. For each communication identified, state all facts and/or circumstances surrounding the communication.

**Response:** Pursuant to the meet and confer held between the parties, Plaintiffs agreed to limit this interrogatory to communications related to S & P and P & S. The only conversations that I presently recall are those with Michael Sullivan as set forth in my response to Interrogatories 3, 4, and 14.

**Interrogatory No. 17:** Please identify practices concerning communications of any kind made to partners of S&P and/or P&S regarding partnership distributions at any time prior to the filing of the Amended Complaint.

**Response:** Pursuant to the meet and confer held between the parties Plaintiffs clarified this interrogatory as seeking information regarding any document retention policy. I have no such policy, per se. Although I maintained such business records for a period of time, when I sold my residence in Fort Lauderdale and moved I caused a significant amount of my old records to be destroyed.



**Interrogatory No. 18:** Please identify all persons who maintained, or were in possession of, books and records, accounting records, ledgers, disbursement records or other business records of P&S and/or S&P, and your basis for such knowledge.

**Response:** I am not aware of who maintained or possessed such books and records. I assume that while he was alive Greg Powell or Michael Sullivan had such records since I understood that they were the general partners of the partnerships.

**Interrogatory No. 19:** Please identify all management fees paid to Avellino & Bienes, You, or any entities You control, or to be paid on your behalf to any unrelated entities including the applicable rates, work performed and accounting thereof.

**Response:** Pursuant to the meet and confer held between the parties, Plaintiffs limited this request to management fees related to P & S and S & P. I am aware of fees paid to me by Michael Sullivan, the exact amount of which I am presently uncertain. As previously addressed in response to Interrogatory No. 13, I requested that Michael Sullivan forward \$50,000 of such fees he intended to provide me to Bishop Wills.

I do not presently recall how the amounts paid to me were determined.

**Interrogatory No. 20:** Identify any accounting and/or investment advice given and/or received by You concerning investment in P&S and/or P&S.

**Response:** I do not recall giving or receiving any accountings or investment advice from or to P & S or S & P. As identified in response to Interrogatory 3, I did provide Michael Sullivan contact information to several Avellino & Bienes investors but I did not provide nor did that constitute investment or accounting advice.

**Interrogatory No. 21:** Identify the names and addresses of all entities in which you or one of your relatives hold a controlling interest. For each entity listed, please list the relationship you have with such entities and any transfers those entities received from P&S and/or S&P.



**Response:** Pursuant to the parties' meet and confer, Plaintiffs have agreed to limit this request to related to P & S and S & P and that "transfers" relates to the transfer of money. As so limited, I am not aware of any. It may be that some of the referral fees provided me by Michael Sullivan went to 27 Cliff Road, which is an entity that I own and control.

**Interrogatory No. 22:** Please identify all factors which led to and were considered as part of your decision to move and locate your business in South Florida, and in the office next to S&P and P&S's offices.

**Response:** Objection as irrelevant and not likely to lead to admissible evidence. My decision to open an office in Florida made many years ago was a personal life-style and health related decision that is irrelevant to this litigation and constitutes an improper invasion of my privacy. I took space in the office building located in Ft. Lauderdale which decision had nothing to do with its proximity to S&P and P&S offices.

**Interrogatory No. 23:** Identify the date and nature of any inquiries or investigations concerning P&S and/or S&P, and their financial stability.

**Response:** Objection. This interrogatory is vague and unintelligible. I do not know what is meant by "inquiries" or "investigations" or who may have made any. Subject to and without waiving this objection and subject to my interpretation of this interrogatory, I am not aware of any.

**Interrogatory No. 24:** Why do you believe that you or any entities you controlled received the payments described in the Amended Complaint as "Kickbacks."

**Response:** Pursuant to the parties meet and confer, Plaintiffs' term "Kickbacks" relates to the referral fees provided me by Michael Sullivan. It is my belief that Michael Sullivan shared a portion of his management fee with Michael Bienes and me relating to those Avellino & Bienes clients who ultimately invested with P & S or S & P.



**Interrogatory No. 25:** Please state the names of all persons who had knowledge of the payments that you received from Plaintiffs, and the facts and circumstances which led to their knowledge of such payments.

**Response:** Pursuant to the parties' meet and confer, the payments referred to in the interrogatory also include any payments from Michael Sullivan or any entities related to him. As so modified, I believe that aside from myself, Michael Sullivan and Gregory Powell had knowledge of such transfers as well as Michael Bienes.

**Interrogatory No. 26:** Please state the names and contact information of all partners of P&S and S&P which you communicated with.

**Response:** I do not know who are all the partners of P & S and S & P and therefore am unable to identify partners of such entities with whom I have communicated. As previously stated I have had communication with Michael Sullivan and his deceased partner, Greg Powell. Further, I have had communication with a number of investors in S & P and P & S, such as Father Kelly and others who I knew from my church.

**Interrogatory No. 27:** Please state the date and nature of all transfers of money to you or any entities that you control from P&S and/or S&P.

**Response:** I am not aware of any such transfers of money.

**Interrogatory No. 28:** Please describe the relationship between You and James and Valerie Judd, including any relationship by and through Avellino & Bienes.

**Response:** I believe that James and Valerie Judd were friends with Michael Bienes.



**ACKNOWLEDGEMENT**

By: Frank Avellino  
Frank Avellino

STATE OF New York )  
 ) SS:  
COUNTY OF New York )

BEFORE ME, the undersigned authority, personally appeared Defendant Frank Avellino who, being first duly sworn, deposes and states that the answers to the foregoing Interrogatories are true and correct.

SWORN AND SUBSCRIBED before me, this 16 day of May, 2014, by Frank Avellino who is        personally known to me or ✓ has provided Florida Driver's License as identification.

Christopher  
Notary Public, State of New York  
Commission No. 01 RI6272227

My Commission Expires: 11/13/16

