

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

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

Plaintiffs,

vs.

CASE NO.: CACE 12-034123 (07)

MICHAEL D. SULLIVAN, et al.,

Defendants.

**MICHAEL BIENES' MOTION FOR
PROTECTIVE ORDER REGARDING HIS DEPOSITION**

Defendant Michael Bienes ("Bienes"), pursuant to Rule 1.280 of the Florida Rules of Civil Procedure, hereby moves for the Court to enter a protective order regarding his deposition.

In support of this motion, Bienes states:

1. Plaintiffs have scheduled Bienes' deposition to take place on June 16, 2015.
2. The Court should enter a protective order prohibiting Bienes' deposition from going forward unless and until Plaintiffs have produced all documents responsive to Bienes' Third Request for Production (the "Third Request"), which was served to Plaintiffs nearly three months ago, on March 17, 2015.
3. Bienes needs these documents in order to adequately prepare for his deposition. In fact, these documents are already the subject of Bienes' Amended Motion to Compel, which was filed with the Court and served to the parties on Friday, June 5, 2015. A true and correct copy of the Amended Motion to Compel is attached as **Exhibit 1** and is incorporated herein by reference.
4. Bienes' attorneys have repeatedly conferred in good faith with Plaintiffs' counsel in order to obtain this discovery without the need for court action, but have been unable to do so.

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5. In fact, nearly a month ago, on May 1, 2015, Bienes' counsel sent Plaintiffs' attorneys an e-mail outlining what he believed to be a reasonable plan for discovery and addressing how best to get this case ready for trial. The letter again stressed the importance of Bienes' receiving the documents that are the subject of the Third Request in advance of Bienes' sitting for his deposition. The letter also requested Plaintiffs' counsel to provide dates for Bienes' attorneys to take the depositions of the Conservator and of co-Defendant, Mr. Sullivan. A true and correct copy of the May 1st e-mail to Plaintiffs' attorneys is attached as **Exhibit 2**. Plaintiffs never responded to the May 1st e-mail. Plaintiffs have not produced any documents. And Plaintiffs have not provided any dates for Bienes' attorneys to take the Conservator's or Mr. Sullivan's deposition. Since Plaintiffs seem incapable or unwilling to honor their discovery obligations on their own, the Court should enter a Protective Order prohibiting Bienes' deposition from going forward until Plaintiffs have produced all documents responsive to the Third Request and provided Bienes' with dates for the Conservator's and Mr. Sullivan's depositions.

6. Plaintiffs will not be prejudiced if they are ordered to produce documents responsive to the Third Request before taking Bienes' deposition. By contrast, if Bienes is forced to sit for his deposition without the opportunity to first receive and review the documents that are the subject of the Third Request, he will be unduly prejudiced. Plaintiffs, then, will have succeeded in turning the discovery process in this case from a fact-finding endeavor to a trial by ambush. The Court should not permit them to do so.

CLP 5.3 Certification

In accordance with Rule 5.3 of the Complex Litigation Unit Procedures, the undersigned certifies that on June 8, 2015, he and Jonathan Etra conferred in good faith with Plaintiffs' counsel Leonard K. Samuels, Esq. regarding the relief requested in this motion, but counsel have been unable to resolve the issues raised herein.

WHEREFORE, Bienes respectfully requests that this Court enter a Protective Order prohibiting Bienes' deposition scheduled for June 16, 2015, from going forward until such time as Plaintiffs have produced all documents responsive to the Third Request, and granting to Bienes any such other and further relief the Court deems just and proper.

Dated this 8th day of June, 2015.

Respectfully submitted,

/s/ Shane P. Martin

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Counsel for Defendant, Michael Bienes

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 8, 2015, this notice and the aforementioned interrogatories were served via E-mail to: **(i)** Thomas E. Messina, Esq., Thomas Zeichman, Esq., Messina, P.A., 401 East Las Olas Boulevard, Suite 1400, Ft. Lauderdale, FL 33301 (tmessana@messana-law.com, tzeichman@messana-law.com) (Counsel for Plaintiffs); **(ii)** Leonard K. Samuels, Esq., Etan Mark, Esq., Steven D. Weber, Esq., Zachary P. Hyman, Esq., Berger Singerman LLP, 350 East Las Olas Boulevard, Suite 1000, Fort Lauderdale, FL 33301 (lsamuels@bergersingerman.com, emark@bergersingerman.com, sweber@bergersingerman.com, zhyman@bergersingerman.com) (Counsel for Plaintiff Margaret Smith); **(iii)** Peter G. Herman, Esq., Tripp Scott, 110 S.E. 6th Street, 15th Floor, Ft. Lauderdale, FL 33301 (pgh@trippscott.com) (Counsel for Steven Jacob and Steven F. Jacob CPA and Associates); **(iv)** Paul V. DeBianchi, Esq., Paul V. DeBianchi, P.A., 111 S.E. 12th Street, Ft. Lauderdale, FL 33316 (Debianchi236@bellsouth.net); **(v)** Gary A. Woodfield, Esq., Haile, Shaw & Pfaffenberger, P.A., 660 U.S. Highway One, Third Floor, North Palm Beach, FL 33408 (gwoodfield@haileshaw.com, bpetroni@haileshaw.com, eservice@haileshaw.com) (Counsel for Defendant Frank Avellino); **(vi)** Harry Winderman, Esq., One Boca Place, 2255 Glades Road, Boca Raton, FL 33431 (harry4334@hotmail.com); **(vii)** Matthew Triggs, Esq., Andrew Thomson, Esq. Proskauer Rose LLP, 2255 Glades Road, Suite 421 Atrium, Boca Raton, FL 33431 (mtriggs@proskauer.com, athomson@proskauer.com, florida.litigation@proskauer.com); and **(viii)** 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, dklingsberger@huntgross.com, eService@huntgross.com, Sharon@huntgross.com).

/s/ Shane P. Martin

Shane P. Martin, Esq.

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P & S ASSOCIATES GENERAL
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CASE NO.: CACE 12-034123 (07)

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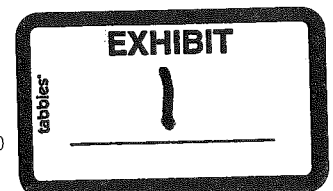
**MICHAEL BIENES' AMENDED
MOTION TO COMPEL PLAINTIFFS TO PRODUCE
DOCUMENTS RESPONSIVE TO HIS THIRD REQUEST FOR PRODUCTION**

Defendant Michael Bienes, pursuant to Rule 1.380 of Florida Rules of Civil Procedure and Rule 5.15 of the Complex Litigation Unit Procedures, moves for an order compelling Plaintiffs to immediately produce all documents responsive to his Third Request for Production. In support, Bienes states:

1. On March 17, 2015, Bienes served Plaintiffs with his Third Request for Production ("Third Request"), a copy of which is attached as **Exhibit A**.
2. On April 21, 2015, Plaintiffs served their Responses and Objections to the Third Request ("Response"), a copy of which is attached as **Exhibit B**.
3. Plaintiffs have, throughout this action, employed a host of tactics designed to help them avoid their discovery obligations. All the while, Plaintiffs have amended their complaint *five* times, significantly expanding the scope of this lawsuit as well as their claims against Bienes. What began as a case over allegedly improper commissions and management fees now involves claims seeking millions of dollars in damages from Bienes relating to alleged investments in BLMIS.

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4. Now, in their Fifth Amended Complaint, Plaintiffs allege that Bienes, along with Defendant Frank Avellino, created a “network of ‘front men’ feeder fund partnerships and charitable foundations throughout the United States to invest in BLMIS,” two of which Plaintiffs claim to have been the Partnerships at issue in this lawsuit. *See* Fifth Am. Compl. ¶ 20. According to Plaintiffs, Bienes and co-Defendant Avellino exercised control over the partnerships and made sure Sullivan managed the partnerships in accordance with their wishes. *See* Fifth Am. Compl. ¶¶ 26-36.

5. The Response is just further evidence of Plaintiffs’ litigation strategy: cherry-pick through reams of documents, producing only those Plaintiffs believe are beneficial to their case while withholding documents that refute their claims or would assist Bienes in preparing his defense. Put another way, Plaintiffs seem to be intent on a trial by ambush.

6. Bienes does not make this charge lightly. To the contrary, Bienes has good reason to believe that the Plaintiffs have received various documents in this action and in others, either by way of document request, subpoena, or informally, that are not only discoverable by Bienes, but that have been withheld because they tend to show Plaintiffs’ allegations against him are baseless. By way of example, at the only deposition taken in this case thus far—that of non-party husband and wife James and Valerie Judd—in questioning Mr. and Mr. Judd, Plaintiffs’ attorneys were repeatedly caught referencing or relying on documents they obtained in connection with another litigation but that had not been produced to Bienes. In an effort to bring these documents to the light of day, Bienes served the Third Request.

7. The Third Request seeks only two categories of documents from Plaintiffs. Request a. seeks “All documents You obtained via document request, subpoena, or informally in this litigation, in any other litigation in which the Conservator is involved, or otherwise.”

Request b. seeks “All documents produced by the Conservator in any litigation in which the Conservator is involved.”

8. Despite the straightforward nature of these requests, Plaintiffs refuse to produce any documents and instead have interposed various improper and baseless objections. Plaintiffs assert improper general objections, including objections to Bienes’ definitions and instructions. These should be overruled out of hand, if not entirely stricken.

9. To make matters worse, Plaintiffs object to each request on the grounds that it is “overly broad in scope, unduly burdensome, and seeks documents not reasonably likely to lead to the discovery of admissible evidence in this action.” Asserting conclusory, boilerplate objections that the requests are “unduly burdensome and overly broad” without providing any factual support is improper and sanctionable. *First City Developments of Florida, Inc. v. Hallmark of Hollywood Condo. Ass’n, Inc.*, 545 So. 2d 502, 503 (Fla. 4th DCA 1989) (objections that discovery is “overly broad” and “burdensome” have “little meaning without substantive support”); *First Healthcare Corp. v. Hamilton*, 740 So. 2d 1189, 1194 (Fla. 4th DCA 1999) (holding that where a party objects to discovery requests by boilerplate objections without any merit, such objections are not made in good faith and are sanctionable). Plaintiffs’ objections should therefore be overruled and Plaintiffs compelled to immediately produce all documents responsive to the Third Request.

10. Contrary to Plaintiff’s position, documents the Conservator has obtained or produced in this and other actions are patently relevant to the matters at issue in this lawsuit. A brief look at the background of the Conservator’s appointment makes this abundantly clear.

11. The Conservator was appointed on January 17, 2013, and charged with, among other things, gathering the assets of the Partnerships and distributing them to the limited partners.

Since his appointment, the Conservator has become involved in four actions pending in this court, including the instant action.

12. The first of those four is an action styled as *P&S Associates, General Partnership, et al v. Roberta P. Alves, et al.* Case No.: 12-028324 (07). This is an action by the Partnerships against investors/partners. The complaint was for interpleader and declaratory relief, in which the Partnerships sought a declaration as to the proper method of distribution of the Partnership monies, including settlement funds received by the Partnerships from the Trustee of BLMIS. Among other things, it is alleged in this action that certain of the investors received commissions and/or referral fees which should be used as a set-off for the particular investors. Although it cannot be determined from the docket sheet or the Conservator's website the full extent of discovery conducted in this particular case, based on pleadings filed it is clear the Conservator received the Partnerships' accounting records from Glass Ratner, and that the Conservator elicited if not received additional information from the Partnerships' principals and related entities. All of this information is relevant and discoverable by Bienes in the context of the instant lawsuit. In addition, depositions of investors were noticed and presumably taken in that litigation. Such sworn testimony would be relevant and discoverable, here.

13. The second case is styled as *Margaret Smith, et al v. Janet A. Hooker Charitable Trust, et al.*, Case No.: 12-34121 (07). This action was brought by Margaret Smith on behalf of the Partnerships against individual investors. The complaint alleges improper distributions from capital contributions of other partners not from profits, breach of contract, unjust enrichment, money had and received, and fraudulent transfer. From what can be gleaned from the public records, similar to the above case, the discovery in this case relates to the knowledge of the investors, what information and documents the investors and partnerships have in their

possession and/or control. It also refers specifically to what involvement, if any, the Defendants, such as Bienes, had in bringing the investors to the Partnerships. (The interrogatories served on Defendants ask questions related to how they became invested in the Partnership, and to identify any communications with specific individuals/entities, such as Sullivan, Steven Jacob, Frank Avellino, Michael Bienes, Kelco Foundation and Vincent Kelly.) Such discovery is relevant to this lawsuit and is discoverable by Bienes.

14. The third case is styled *Matthew Carbone, as Trustee, etc., et al v. Michael D. Sullivan*, Case No.: 12-24051 (07). This action was brought by an individual investor, represented by the Conservator's attorneys, against Michael Sullivan. The Verified Complaint alleged Sullivan diverted millions of dollars from the Partnerships to pay additional management fees and commissions to co-conspirators and sought a temporary injunction against Sullivan. Again, although it is difficult if not impossible to know from the public filings all the discovery exchanged in the context of this lawsuit, it is revealed that the Conservator has possession of the Partnership books and records; conducted meetings with investors, Sullivan, and professionals. For example, a notice of production was served on Becker & Poliakoff LLP and Helen Davis Chaitman, requesting partnership books and records and other documents. There are pleadings filed which dispute the issue of whether or not all books and records were turned over in discovery and pursuant to court orders. The alleged diversion of Partnerships' assets pursued in this action form the basis for the claims against Avellino in the instant action and, thus, documents from such action are clearly relevant. Moreover, when the Conservator or its attorneys obtained Partnership records and thus, allegedly became aware of the payments allegedly made to Bienes which Plaintiffs seek to recover in this action, is directly relevant to the

defense based on the statute of limitations that the instant action is time-barred. Accordingly, the discovery obtained is relevant to the instant lawsuit; and

15. The fourth of these cases is the instant lawsuit, which was filed on December 12, 2012. Prior to and subsequent to Bienes' being served in this matter, discovery such as documents and interrogatory answers have been obtained from the other parties in this matter, and non-parties, but have not been provided to Bienes. Any discovery which has been obtained in this lawsuit is indisputably relevant and discoverable and should be provided to Bienes without further delay.

16. For the foregoing reasons, Plaintiffs' objections should be overruled and they should be compelled to immediately provide documents responsive to the Third Request.

17. Plaintiffs also should be sanctioned for their unjustified refusal to respond to Bienes' legitimate discovery requests. Pursuant to Fla. R. Civ. P. 1.380(a)(4), 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 movant failed to certify in the motion that a good faith effort was made to obtain the discovery without court action, that the opposition to the motion was substantially justified, or that other circumstances make an award of expenses unjust." Plaintiffs' continued indifference toward their discovery obligations and their insistence on a trial by ambush have unnecessarily prolonged this action and hampered Bienes' ability to prepare for trial. An award of Bienes' reasonable expenses including the attorneys' fees he has incurred in connection with this Motion would be just and proper.

CLP 5.3 Certification

In accordance with Rule 5.3 of the Complex Litigation Unit Procedures, the undersigned certifies that he has conferred in good faith with Plaintiffs' counsel regarding the relief requested in this Motion, but counsel have been unable to resolve the issues raised herein.

WHEREFORE, Bienes respectfully requests that this Court enter an Order: (i) compelling Plaintiffs provide all documents responsive to the Third Request within seven (7) days of the Court's Order together with a privilege log of any documents withheld from production on the basis of a recognized privilege; (ii) awarding Bienes the reasonable attorneys' fees he incurred in connection with this Motion; and (iii) granting to Bienes any such other and further relief the Court deems just and proper.

Dated this 5th day of June, 2015.

Respectfully submitted,

/s/ Shane P. Martin

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Counsel for Defendant, Michael Bienes

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I HEREBY CERTIFY that on June 5, 2015, this notice and the aforementioned interrogatories were served via E-mail to: (i) Thomas E. Messana, Esq., Thomas Zeichman, Esq., Messana, P.A., 401 East Las Olas Boulevard, Suite 1400, Ft. Lauderdale, FL 33301 (tmessana@messana-law.com, tzeichman@messana-law.com) (Counsel for Plaintiffs); (ii) Leonard K. Samuels, Esq., Etan Mark, Esq., Steven D. Weber, Esq., Zachary P. Hyman, Esq., Berger Singerman LLP, 350 East Las Olas Boulevard, Suite 1000, Fort Lauderdale, FL 33301 (lsamuels@bergersingerman.com, emark@bergersingerman.com, sweber@bergersingerman.com, zhyman@bergersingerman.com) (Counsel for Plaintiff Margaret Smith); (iii) Peter G. Herman, Esq., Tripp Scott, 110 S.E. 6th Street, 15th Floor, Ft. Lauderdale, FL 33301 (pgh@trippscott.com) (Counsel for Steven Jacob and Steven F. Jacob CPA and Associates); (iv) Paul V. DeBianchi, Esq., Paul V. DeBianchi, P.A., 111 S.E. 12th Street, Ft. Lauderdale, FL 33316 (Debianchi236@bellsouth.net); (v) Gary A. Woodfield, Esq., Haile, Shaw & Pfaffenberger, P.A., 660 U.S. Highway One, Third Floor, North Palm Beach, FL 33408 (gwoodfield@haileshaw.com, bpetroni@haileshaw.com, eservice@haileshaw.com) (Counsel for Defendant Frank Avellino); (vi) Harry Winderman, Esq., One Boca Place, 2255 Glades Road, Boca Raton, FL 33431 (harry4334@hotmail.com); (vii) Matthew Triggs, Esq., Andrew Thomson, Esq. Proskauer Rose LLP, 2255 Glades Road, Suite 421 Atrium, Boca Raton, FL 33431 (mtriggs@proskauer.com, athomson@proskauer.com, florida.litigation@proskauer.com); and (viii) 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, dklingsberger@huntgross.com, eService@huntgross.com, Sharon@huntgross.com).

/s/ Shane P. Martin

Shane P. Martin, Esq.

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
THIRD REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF**

Defendant, Michael Bienes ("Bienes"), pursuant to Fla. R. Civ. P. 1.350 and 1.351,
hereby requests that Plaintiff, Philip J. Von Kahle, as Conservator of P&S General Partnership
and S&P General Partnership ("Plaintiff"), provide the documents requested herein within thirty

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EXHIBIT "A"

(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, including the Conservator.

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. If you claim the attorney-client or other privilege or the work product doctrine is applicable to any document the production of which is sought by the requests below, then with respect to each such document, you **must provide a privilege log** which identifies the document by stating the type, author(s), addressee(s) and recipient(s), present and previous custodian, location, subject matter, and sufficient additional information to explain the claim of privilege and to enable adjudication of the propriety of that claim.

18. If any document the production of which is sought by these requests 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.

19. 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.

20. 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.

21. “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.

22. If any document the production of which is sought by these requests 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.

23. All other names or terms herein not specifically defined or identified shall have the same meaning as is commonly understood and referred to by and among the parties. Except as otherwise defined above, all capitalized terms herein shall have the same meaning and definition as described or referenced in the Complaint.

DOCUMENT REQUESTS

- a. All documents You obtained via document request, subpoena, or informally in this litigation, in any other litigation in which the Conservator is involved, or otherwise.
- b. All documents produced by the Conservator in any litigation in which the Conservator is involved.

Dated this 17th day of March, 2015.

Respectfully submitted,

/s/ Jonathan Etra

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Counsel for Defendant, Michael Bienes

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I **HEREBY CERTIFY** that on March 17, 2015, this notice and the aforementioned interrogatories were served via E-mail to: Thomas E. Messana, Esq., Thomas Zeichman, Messana, P.A., 401 East Las Olas Boulevard, Suite 1400, Ft. Lauderdale, FL 33301 (tmessana@messana-law.com, tmessana@bellsouth.net, mwslawfirm@gmail.com, tzeichman@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, vleon@bergersingerman.com, emark@bergersingerman.com, lyun@bergersingerman.com, drt@bergersingerman.com, sweber@bergersingerman.com, mvega@bergersingerman.com, zhyman@bergersingerman.com, clamb@bergersingerman.com); Peter G. Herman, Esq., Tripp Scott, 110 S.E. 6th Street, 15th Floor, Ft. Lauderdale, FL 33301 (pgh@trippscott.com, rep@trippscott.com, ele@trippscott.com); Paul V. DeBianchi, Esq., Paul V. DeBianchi, P.A., 111 S.E. 12th Street, Ft. Lauderdale, FL 33316 (Debianchi236@bellsouth.net); Gary A. Woodfield, Esq., Susan B. Yoffee, Esq., Haile, Shaw & Pfaffenberger, P.A., 660 U.S. Highway One, Third Floor, North Palm Beach, FL 33408 (gwoodfield@haileshaw.com, bpetroni@haileshaw.com, eservices@haileshaw.com, syoffee@haileshaw.com, cmarino@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. 41st 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, athomson@proskauer.com, 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, eservice@huntgross.com, Sharon@huntgross.com).

/s/ Jonathan Etra

Jonathan Etra

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

COMPLEX LITIGATION UNIT

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

CASE NO.: 12-034123 (07)

Plaintiffs,

v.

MICHAEL D. SULLIVAN, et al.,

Defendants.

**PLAINTIFFS' RESPONSES AND OBJECTIONS TO DEFENDANT,
MICHAEL BIENES' THIRD REQUEST FOR PRODUCTION OF DOCUMENTS**

Plaintiffs, by and through the undersigned counsel, hereby provide responses and objections to Defendant Michael Bienes' ("Bienes") Fifth Request for Production of Documents to Plaintiffs (the "Requests"), pursuant to Rule 1.350 of the Florida Rules of Civil Procedure.

GENERAL OBJECTIONS

Plaintiffs object to producing documents that are protected by the attorney-client privilege, attorney work product doctrine, or any other applicable privilege.

OBJECTIONS TO DEFINITIONS

1. Plaintiffs object to the definition of "You" in Definition #1 of the Requests as vague, ambiguous, unduly burdensome, and overly broad in scope because it demands Plaintiffs produce documents concerning P&S Associates, General Partnership's and S&P, Associates, General Partnership's (collectively, the "Partnerships") "partners, associates, members, representatives, agents, attorneys, or anyone acting or purporting to act on Plaintiff's behalf or under his control" which may include entities or persons over which Plaintiffs lack any control

or from which Plaintiffs have no ability to obtain documents and persons or entities of which Plaintiffs have no knowledge. Plaintiffs are unable to obtain and produce responsive documents from persons who purport to act on behalf of Plaintiffs without Plaintiffs' knowledge. Plaintiffs object to the definition of "You" to the extent that it seeks privileged communications with their attorneys and accountants.

RESPONSES AND OBJECTIONS TO REQUESTS FOR PRODUCTION

a. All documents You obtained via document request, subpoena or informally in this litigation, in any other litigation in which the Conservator is involved or otherwise.

Objections:

Plaintiffs object to this request as vague and ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence because the term "Conservator" is undefined and is susceptible to more than one interpretation.

Plaintiffs object to this request on the grounds that it is vague and ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence because it is unclear from the undefined terms "informally" and "or otherwise" what is the scope of this request as the Conservator is involved in and receives documents in numerous contexts, proceedings, and actions that do not concern the claims or defenses in this action.

Plaintiffs object to this request because it is not constrained by any time limitation and requesting all documents obtained "via document request, subpoena or informally . . . in any other litigation in which the Conservator is involved or otherwise" is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence because the Conservator is involved in and receives documents in numerous contexts, proceedings, and actions that do not concern the claims or defenses in this action. To the extent

that this Request seeks documents which were produced to the Conservator in litigation where the Partnerships are named as parties, it may seek documents that were produced pursuant to a confidentiality order.

Plaintiffs object to this request because it may seek documents which were produced to the Conservator pursuant to a confidentiality order.

Plaintiffs object to this request because it may seek documents that are publicly available, including but not limited to documents available at <http://www.floridaconservator.com/>

Response:

Plaintiffs cannot determine what, if any, privileged documents are responsive to this request because it is overly broad in scope, unduly burdensome, and seeks documents not reasonably likely to lead to the discovery of admissible evidence in this action, for the reasons stated above. Plaintiffs will serve a privilege log identifying any privileged documents that are responsive to this request after the Court rules on Plaintiffs' objections to this request and determines the permissible scope of this request. *State Farm Fla. Ins. Co. v. Coburn*, 136 So. 3d 711 (Fla. 2d DCA 2014) (“[A] party is required to file a [privilege] log only if the information is otherwise discoverable”); *see also Gosman v. Luzinski*, 937 So. 2d 293, 296 (Fla. 4th DCA 2006) (“Where a party claims that the production of documents is burdensome and harassing, such as was done here, the scope of the discovery is at issue. Until the court rules on the request, the party responding to the discovery does not know what will fall into the category of discoverable documents”).

b. All documents produced by the Conservator in any litigation in which the Conservator is involved.

Objections:

Plaintiffs object to this request as vague and ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence because the term “Conservator” is undefined and is susceptible to more than one interpretation.

Plaintiffs object to this request because it is not constrained by any time limitation and requesting all documents “produced by the Conservator in any litigation in which the Conservator is involved” is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence because the Conservator is involved in and produces documents in numerous litigations that do not concern the claims or defenses in this action. To the extent that this request seeks documents which the Conservator produced in litigation where the Partnerships are named as parties, it may seek documents that were produced pursuant to a confidentiality order.

Plaintiffs object to this request because it may seek documents which were produced by the Conservator pursuant to a confidentiality order.

Plaintiffs object to this request because it may seek documents that are publicly available, including but not limited to documents available at <http://www.floridaconservator.com/>

Response:

Plaintiffs cannot determine what, if any, privileged documents are responsive to this request because it is overly broad in scope, unduly burdensome, and seeks documents not reasonably likely to lead to the discovery of admissible evidence in this action, for the reasons stated above. Plaintiffs will serve a privilege log identifying any privileged documents that are responsive to this request after the Court rules on Plaintiffs’ objections to this request and determines the permissible scope of this request. *State Farm Fla. Ins. Co. v. Coburn*, 136 So. 3d 711 (Fla. 2d DCA 2014) (“[A] party is required to file a [privilege] log only if the information is

otherwise discoverable”); *see also Gosman v. Luzinski*, 937 So. 2d 293, 296 (Fla. 4th DCA 2006) (“Where a party claims that the production of documents is burdensome and harassing, such as was done here, the scope of the discovery is at issue. Until the court rules on the request, the party responding to the discovery does not know what will fall into the category of discoverable documents”).

Dated: April 21, 2015

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of April, 2015, a true and correct copy of the foregoing document was served on the following parties:

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By: s/Leonard K. Samuels
Leonard K. Samuels

Shane Martin

From: Jonathan Etra
Sent: Friday, May 01, 2015 3:43 PM
To: 'Leonard K. Samuels'; 'Steven D. Weber'; 'Thomas M. Messana (tmessana@messana-law.com)'; 'Thomas Zeichman (tzeichman@messana-law.com)'; 'Michelle L. Albrecht'; 'Gary Woodfield (gwoodfield@haileshaw.com)'; Mark Raymond; Shane Martin; 'Zachary P. Hyman'
Subject: Case Management

Dear Lenny and Steve,

I am writing about case management and specifically how to get this case on track and ready for trial, in the hope that we can work together to get past the discovery disputes.

We now have a complaint that needs to be answered and so hopefully the pleadings will soon be closed.

The question becomes how to manage and coordinate discovery, hopefully, in a constructive fashion.

Here is our position. First, we need your documents. I was extremely disappointed in your response to our third request for production. We are separately contacting you to meet and confer about this failing. While you can force us to file a motion to compel and set a hearing, that will only delay this case and prevent depositions from going forward. You are the plaintiff. We would think you would want to produce the documents and get this issue behind you so you move forward to trial.

Second, we need the depositions of the conservator and Mr. Sullivan. As to the Conservator, he is the plaintiff, and we need to make sure we have our discovery and frankly ask the questions we need to ask to deal with the allegations that the conservator has made. As to Mr. Sullivan, he is a most critical witness to the facts underlying your allegations.

After we get the documents, we can proceed with these depositions to be followed by the Defendants and their spouses subject to the the Judge's recent orders.

Please feel free to call me to discuss.

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