

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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**PLAINTIFFS' MOTION TO COMPEL  
DEFENDANT MICHAEL BIENES TO PRODUCE DOCUMENTS**

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, Michael Bienes ("Defendant"), to Produce Documents, and in support thereof states as follows:

1. On April 1, 2014, Plaintiffs served the Defendant with Plaintiffs' Second Request for Production of Documents (the "Request"), seeking documents related to lawsuits in which Defendant was named as a party and documents related to judgments entered against Defendant. A true and correct copy of the Request is attached hereto as **Exhibit "A."**

2. On May 1, 2014, Defendant asserted numerous general objections and objected to both requests with the same objection: that such requests are irrelevant and "and not likely to lead to the discovery of admissible evidence and is an improper and premature attempt to discover information bearing on the collectability of any potential judgment entered in this

action.” A true and correct copy of Defendant’s Response and Objections to Plaintiff’s Request is attached hereto as **Exhibit “B.”**

3. On May 28, 2014, counsel for Plaintiffs and counsel for Defendant met and conferred to discuss Defendant’s responses, and counsel for Plaintiffs agreed to limit the Requests to documents sufficient identify all lawsuits relating to S&P, P&S and/or the Bernard L. Madoff Investment Securities, LLC (“Madoff”) in which Defendant was named as party. Counsel for Defendant agreed to produce in response to the request as limited.

4. To date, Defendant has failed to produce such documents. Moreover, Defendant has failed to provide any date by when he would produce such documents.

5. Documents sufficient to identify litigation that relates to P&S, S&P and/or Madoff in which the Defendant is a party is likely to lead to the production of admissible evidence because such litigation directly bears on the claims and defenses asserted in this action that arise from the same set of facts, and Defendant has agreed to produce them.

6. There is consequently no justification for Defendant’s refusal to produce documents at this time.

7. Accordingly, Defendant’s refusal to produce documents is only meant to delay Plaintiffs’ obtaining documents related to this action and it is appropriate to strike Defendant’s objections and to compel Defendant to produce all documents responsive to the Requests.

8. 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 produce all responsive documents and provide complete responses.

Certification of Good Faith and CLP 5.3

On May 28, 2014 counsel for Defendant and for the Plaintiffs participated in a meet and confer in a good faith attempt to resolve the issues addressed in the instant Motion. During the May 28, 2014 meet and confer, Defendant agreed to supplement his production as described above. As addressed above, Defendant failed to fulfill his obligations, which rendered the filing of this motion to compel necessary.

WHEREFORE the Conservator respectfully requests the entry of an Order: (i) compelling Defendant Bienes to produce the documents requested in Request, including all documents sufficient identify all lawsuits relating to S&P, P&S and/or the Bernard L. Madoff Investment Securities, LLC (“Madoff”) in which Defendant was named as party and (ii) such other and further relief as this Court deems necessary and proper.

Dated: June 16, 2014

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via Electronic Mail and U.S. Mail this 16th day of June, 2014, upon the following:

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By: s/Leonard K. Samuels

# *EXHIBIT A*

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

**Case No: 12-034123(07)  
Complex Litigation Unit**

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,

v.

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, KELCO FOUNDATION,  
INC., a Florida Non Profit Corporation, VINCENT  
T. KELLY, an individual, VINCENT BARONE, an  
individual, EDITH and SAM ROSEN, individuals,  
PREMIER MARKETING SERVICES, INC., a  
Florida Corporation, and SCOTT HOLLOWAY, an  
individual,

Defendants.

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**PLAINTIFFS' SECOND REQUEST  
FOR PRODUCTION OF DOCUMENTS  
TO DEFENDANT MICHAEL BIENES**

Pursuant to Rule 1.350 of the Florida Rules of Civil Procedure, Plaintiffs, P&S Associates, General Partnership (“P&S”), S&P Associates, General Partnership (“S&P”) and

Philip Von Kahle as Conservator on behalf of P&S and S&P (“Conservator”) (collectively and individually referred to as, the “Partnerships” or “Plaintiffs”), by and through their undersigned attorneys, request that Defendant Michael Bienes (“Defendant”), produce the following described documents and tangible things in accordance with Rule 1.350 and the definitions and instructions stated below, at the offices of Berger Singerman, 350 East Las Olas Blvd, Suite 1000, Fort Lauderdale, FL 33131, within 30 days of service of this Request.

### **DEFINITIONS AND INSTRUCTIONS**

The following definitions shall apply to this Request:

A. “You”, “Your”, or “Defendant” as used herein means Defendant Michael Bienes, and includes any and all agents, employees, servants, officers, directors, attorneys and any other person or entity acting or purporting to act on his behalf, or any other entity or person under the direct control of Michael Bienes.

B. “P&S” as used herein means Plaintiff P&S Associates, General Partnership, and includes any and all agents, employees, servants, officers, directors, attorneys and any other person or entity acting or purporting to act on its behalf.

C. “S&P” as used herein means Plaintiff S&P Associates, General Partnership, and includes any and all agents, employees, servants, officers, directors, attorneys and any other person or entity acting or purporting to act on its behalf.

D. “Person” as used herein means any natural person or any entity, including without limitation any individual, firm, corporation, company, joint venture, trust, tenancy, association, partnership, business, agency, department, bureau, board, commission, or any other form of public, private or legal entity. Any reference herein to any public or private company, partnership, association, or other entity include such entity’s subsidiaries and affiliates, as well as the present and former directors, officers, employees, attorneys, agents and anyone acting on behalf of, at the direction of, or under the control of the entity, its subsidiaries or its affiliates.

E. “Documents” shall mean the original or copies of any tangible written, typed, printed or other form of recorded or graphic matter of every kind or description, however produced or reproduced, whether mechanically or electronically recorded, draft, final original, reproduction, signed or unsigned, regardless of whether approved, signed, sent, received, redrafted, or executed, and whether handwritten, typed, printed, photostated, duplicated, carbon or otherwise copied or produced in any other manner whatsoever. Without limiting the generality of the foregoing, "documents" shall include correspondence, letters, telegrams, telexes, mailgrams, memoranda, including inter-office and intra-office memoranda, memoranda for files, memoranda of telephone or other conversations, including meetings, invoices, reports, receipts and statements of account, ledgers, notes or notations, notes or memorandum attached to

or to be read with any document, booklets, books, drawings, graphs, charts, photographs, phone records, electronic tapes, discs or other recordings, computer programs, printouts, data cards, studies, analysis and other data compilations from which information can be obtained. Copies of documents, which are not identical duplications of the originals or which contain additions to or deletions from the originals or copies of the originals if the originals are not available, shall be considered to be separate documents.

“Documents” shall also include all electronic data storage documents including but not limited to e-mails and any related attachments, electronic files or other data compilations which relate to the categories of documents as requested below. Your search for these electronically stored documents shall include all of your computer hard drives, floppy discs, compact discs, backup and archival tapes, removable media such as zip drives, password protected and encrypted files, databases, electronic calendars, personal digital assistants, proprietary software and inactive or unused computer disc storage areas.

“Communications” shall mean any oral or written statement, dialogue, colloquy, discussion or conversation and, also, means any transfer of thoughts or ideas between persons by means of documents and includes an transfer of data from one location to another by electronic or similar means.

F. “Related to” shall mean, directly or indirectly, refer to, reflect, mention, describe, pertain to, arise out of or in connection with or in any way legally, logically, or factually be connected with the matter discussed.

G. As used herein, the conjunctions “and” and “or” shall be interpreted in each instance as meaning “and/or” so as to encompass the broader of the two possible constructions, and shall not be interpreted disjunctively so as to exclude any information or documents otherwise within the scope of any request.

H. Any pronouns used herein shall include and be read and applied as to encompass the alternative forms of the pronoun, whether masculine, feminine, neuter, singular or plural, and shall not be interpreted so as to exclude any information or documents otherwise within the scope of any request.

I. Unless otherwise specified herein, the time frame for each request is from and including January 1, 1992 to the present.

J. If you contend that you are entitled to withhold any responsive document(s) on the basis of privilege or other grounds, for each and every such document specify:

- i. The type or nature of the document;
- ii. The general subject matter of the document;
- iii. The date of the document;
- iv. The author, addressee, and any other recipient(s) of the document; and
- v. The basis on which you contend you are entitled to withhold the document.



K. If you assert that any document sought by any request is protected against disclosure as the attorney's work product doctrine or by the attorney-client privilege, you shall provide the following information with respect to such document:

- a. the name and capacity of the person or persons who prepared the documents;
- b. the name and capacity of all addresses or recipients of the original or copies thereof;
- c. the date, if any, borne by the document;
- d. a brief description of its subject matter and physical size;
- e. the source of the factual information from which such document was prepared; and
- f. the nature of the privilege claimed.

L. You must produce all documents within your case, custody or control that are responsive to any of these requests. A document is within your care, custody or control if you have the right or ability to secure the document or a copy thereof from any other person having physical possession thereof.

M. If you at any time had possession, custody or control of a document called for under this request and if such document has been lost, destroyed, purged, or is not presently in your possession, custody or control, you shall describe the document, the date of its loss, destruction, purge, or separation from possession, custody or control and the circumstances surrounding its loss, destruction, purge, or separation from possession, custody or control.

N. All documents produced pursuant hereto are to be produced as they are kept in the usual course of business and shall be organized and labeled (without permanently marking the item produced) so as to correspond with the categories of each numbered request hereof.

O. When appropriate, the singular form of a word should be interpreted in the plural as may be necessary to bring within the scope hereof any documents which might otherwise be construed to be outside the scope hereof.

## DOCUMENTS REQUESTED

1. All documents related to judgments entered against the Defendant from and including January 1, 1992 to the present.
2. Documents sufficient to identify all lawsuits in which the Defendant was named as a party.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via Electronic Mail and/or U.S. Mail this 1st day of April, 2014, upon the following:

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**Case No. 12-034123 (07)**

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By: s/Leonard K. Samuels

*EXHIBIT B*

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

COMPLEX LITIGATION UNIT

CASE NO. CACE 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 RESPONSE TO  
PLAINTIFFS' SECOND REQUEST FOR PRODUCTION OF DOCUMENTS**

Defendant, MICHAEL BIENES ("Bienes"), hereby responds and objects to Plaintiffs'

Second Request for Production of Documents (the "Second Request"), stating:

**BROAD and CASSEL**

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

**GENERAL OBJECTIONS**

1. These responses are made solely in relation to this action and are being offered only for the purpose of responding to the Second Request.

2. Bienes objects to Plaintiffs' Instructions on the grounds that they are overbroad, unduly burdensome, and impose discovery obligations greater than permitted under Fla. R. Civ. P. 1.350.

3. Bienes objects to Plaintiffs' Definitions on the grounds that they are vague and ambiguous, overbroad, unduly burdensome, and impose discovery obligations greater than permitted under Fla. R. Civ. P. 1.350.

4. Bienes objects to the time frame specified for the Second Request—January 1, 1992—on the grounds that it is overbroad and unduly burdensome in its scope.

5. Bienes objects to the Second Request insofar as it purports to require him produce or disclose privileged communications or attorney work product, on the ground that such a requirement is impermissible under the Florida Rules of Civil Procedure. In accordance with Rule 1.280(5), Bienes will produce a separate log of privileged information or communications or attorney work product being withheld from production, if any. Any inadvertent production or disclosure of privileged communications or work product should not be construed as a waiver of the privilege or of the work product doctrine which applies to such inadvertently produced documents or information.

6. Bienes objects to the Second Request insofar as it purports to require him to produce or disclose information that is not relevant, and is not likely or reasonably calculated to lead to the discovery of admissible evidence.

7. Bienes objects to the Second Request insofar as it purports to require him to produce or disclose information that equally ascertainable or available to Plaintiffs or is more readily available to Plaintiffs.

8. Bienes objects to the Second Request insofar as it purports to require U.S. Bank to produce or disclose information that is a matter of public record.

9. Any objection or lack of objection to a particular request is not to be deemed an admission that Bienes has any information responsive to such request.

10. This response is made without prejudice to Bienes's right to supplement his production with any subsequently discovered documents or information responsive to the Second Request.

11. This response is based on the best knowledge and information presently held by Bienes and is subject to correction, modification, or supplementation as and when additional responsive documents or information become known to Bienes.

12. Bienes reserves all other objections as to the admissibility, relevance, confidentiality, and materiality of any facts or information produced in response to the Second Request. No documents or information is currently being withheld on the basis of the foregoing general objections.

### **DOCUMENTS REQUESTED AND SPECIFIC RESPONSES**

1. All documents related to judgments entered against the Defendant from and including January 1, 1992 to the present.

**Response:** Bienes objects to this request on the grounds that seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence and is an improper and premature attempt to discover information bearing on the collectability of any potential judgment entered in this action, however unlikely. Evidence on collectability is not a proper subject of discovery at this stage of the proceedings.



2. Documents sufficient to identify all lawsuits in which the Defendant was named as a party.

**Response:** Bienes objects to this request on the grounds that seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence and is an improper and premature attempt to discover information bearing on the collectability of a potential judgment entered in this action, however unlikely. Evidence on collectability is not a proper subject of discovery at this stage of the proceedings.

Dated this 1st day of May, 2014.

Respectfully submitted,

/s/ Jonathan Etra

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 1, 2014, this notice and the aforementioned interrogatories were served via E-mail to: Thomas E. Messina, Esq., Thomas Zeichman, Messina, P.A., 401 East Las Olas Boulevard, Suite 1400, Ft. Lauderdale, FL 33301 ([tmessana@messana-law.com](mailto:tmessana@messana-law.com), [tmessana@bellsouth.net](mailto:tmessana@bellsouth.net), [mwslawfirm@gmail.com](mailto:mwslawfirm@gmail.com), [tzeichman@messana-law.com](mailto: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](mailto:lsamuels@bergersingerman.com), [vleon@bergersingerman.com](mailto:vleon@bergersingerman.com), [emark@bergersingerman.com](mailto:emark@bergersingerman.com), [lyun@bergersingerman.com](mailto:lyun@bergersingerman.com), [drt@bergersingerman.com](mailto:drt@bergersingerman.com), [sweber@bergersingerman.com](mailto:sweber@bergersingerman.com), [mvega@bergersingerman.com](mailto:mvega@bergersingerman.com), [zhyman@bergersingerman.com](mailto:zhyman@bergersingerman.com), [clamb@bergersingerman.com](mailto:clamb@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), [rep@trippscott.com](mailto:rep@trippscott.com), [ele@trippscott.com](mailto:ele@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., Susan B. Yoffee, 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), [eservices@haileshaw.com](mailto:eservices@haileshaw.com), [syoffee@haileshaw.com](mailto:syoffee@haileshaw.com), [cmarino@haileshaw.com](mailto: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. 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), [eservice@huntgross.com](mailto:eservice@huntgross.com), [Sharon@huntgross.com](mailto:Sharon@huntgross.com)).

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

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