

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  
RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL**

Defendant, MICHAEL BIENES (“Defendant” or “Bienes”) pursuant to Rule 1.380,  
Florida Rules of Civil Procedure and Rules 5.10 and 5.14 of the Complex Litigation Unit  
Procedures, hereby files this response in opposition to the (Second) Motion to Compel Defendant

Michael Bienes to Produce Documents (the “Motion”) filed by Plaintiffs, Phillip J. Von Kahle, P&S Associates General Partnership, and S&P Associates General Partnership (collectively, “Plaintiffs”), stating as follows:

1. Plaintiffs filed its Motion on June 16, 2014, claiming that Bienes's responses to Plaintiffs' Second Request for Production of Documents (the “Second Request”) are incomplete and evasive. The Motion misstates Bienes's position regarding the Second Request, and fails to advise the Court that Bienes's counsel provided supplemental responses to Plaintiffs on June 12, 2014—four days *before* Plaintiff filed this Motion. The Motion should be denied.

2. The Second Request asked Bienes to produce: (1) “All documents related to judgments entered against the Defendant from and including January 1, 1992 to the present”; and (2) “Documents sufficient to identify all lawsuits in which the Defendant was named as a party.” *See* Second Request, Exhibit A to the Motion.

3. Understandably, Bienes initially objected to these requests for several reasons, not least of which being that they were absurdly overbroad, as written, and by all indications seemed to be a premature attempt by Plaintiffs to discover information bearing on collectability.

4. After Plaintiffs' counsel, Mr. Zachary Hyman, and counsel for Bienes, Mr. Jonathan Etra, met and conferred via telephone, Mr. Hyman agreed to limit the requests to seek only documents related to judgments entered in and sufficient to identify only lawsuits relating to Madoff or S&P/P&S.

5. Just days later, however, on June 11, 2014, Mr. Hyman sent Mr. Etra an email that self-servingly recapped their prior meet and confer. Rather than acknowledge his agreement to *limit* the document requests, Mr. Hyman was intent on *widening them* even beyond their initial scope. Mr. Hyman was now claiming that Plaintiffs sought all “documents produced in, or filed

in conjunction with Litigation (sic) that relates to Madoff and/or S&P and/or P&S.” That statement bore no resemblance to what the parties had agreed just days earlier. Mr. Hyman also demanded that Bienes produce these additional documents within an arbitrarily selected 48 hour deadline. A true and correct copy of Mr. Hyman’s June 11 email to Mr. Etra is included among the chain of emails attached as **Exhibit A**.

6. The very next day, on June 12, 2014, Mr. Etra responded, first pointing out that, whether it had been intentional or not, Mr. Hyman’s email certainly seemed to suggest that Plaintiffs were now going back on their agreement to limit the documents requests, and were instead trying to expand them even more than before. Mr. Etra reminded Mr. Hyman of their prior agreement, and explained that he normally would have called to clarify, but felt compelled to put his response in writing given the misleading paper trail Plaintiffs were trying to establish.

7. Although disappointed by Mr. Hyman’s email, Mr. Etra supplemented Bienes’s responses as the parties agreed nonetheless. As to request number 1, Mr. Etra clarified that the only documents related to judgments entered against Bienes in lawsuits related to Madoff or S&P/P&S were, to his knowledge, those concerning the SEC judgment, which he believed had already been produced.<sup>1</sup> As to request number 2, Mr. Etra advised Mr. Hyman that the only lawsuits in which Bienes was named as a defendant were the SEC action and the Piccard lawsuit, both of which Plaintiffs were aware.<sup>2</sup> A true and correct copy of Mr. Etra’s June 12 email is included as part of the attached Exhibit A.

8. Plaintiffs have been provided all documents and information responsive to the Second Request. Long ago, Bienes produced all documents in his possession concerning the SEC judgment, and Plaintiffs have information and documents “sufficient to identify” the

---

<sup>1</sup> Mr. Etra was correct. Those documents, bates numbered BIENES-RFP 000001 – 000043, were produced to Plaintiffs’ counsel via email on May 15, 2014, together with a privilege log of any documents withheld.

Piccard and SEC actions. The Court simply cannot compel Bienes to do that which he has already done. As such, the Motion should be denied.

**WHEREFORE**, Defendant, Michael Bienes, respectfully requests that this Court enter an Order denying Plaintiffs' Motion, and grant to Defendant any such other and further relief that the Court may deem just and proper.

Respectfully submitted,

/s/ Shane P. Martin

Mark F. Raymond (373397)

[mraymond@broadandcassel.com](mailto:mraymond@broadandcassel.com)

[ssmith@broadandcassel.com](mailto:ssmith@broadandcassel.com)

Jonathan Etra (686905)

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

[msoza@broadandcassel.com](mailto:msoza@broadandcassel.com)

Shane P. Martin (056306)

[smartin@broadandcassel.com](mailto:smartin@broadandcassel.com)

[msanchez@broadandcassel.com](mailto:msanchez@broadandcassel.com)

BROAD AND CASSEL

One Biscayne Tower, 21<sup>st</sup> Floor

2 South Biscayne Boulevard

Miami, Florida 33131

Telephone: 305.373.9400

Facsimile: 305.373.9443

*Counsel for Defendant, Michael Bienes*

---

<sup>2</sup> The Piccard lawsuit is referenced in Plaintiffs' Complaint in this action.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on June 19, 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)); Matthew Triggs, Esq., Andrew Thomson, Esq. Proskauer Rose LLP, 2255 Glades Road, Suite 421 Atrium, Boca Raton, FL 33431 ([mtriggs@proskauer.com](mailto:mtriggs@proskauer.com), [athomson@proskauer.com](mailto:athomson@proskauer.com), [florida.litigation@proskauer.com](mailto:florida.litigation@proskauer.com)); Robert J. Hunt, Esq., Debra D. Klingsberg, Esq., Hunt & Gross, P.A., 185 Spanish River Boulevard, Suite 220, Boca Raton, FL 33431 ([bohunt@huntgross.com](mailto:bohunt@huntgross.com), [eservice@huntgross.com](mailto:eservice@huntgross.com), [Sharon@huntgross.com](mailto:Sharon@huntgross.com)) and Harry Winderman ([harry4334@hotmail.com](mailto:harry4334@hotmail.com)).

/s/ Shane P. Martin

Shane P. Martin

## Shane Martin

---

**From:** Jonathan Etra  
**Sent:** Thursday, June 12, 2014 9:50 AM  
**To:** 'Zachary P. Hyman'  
**Cc:** 'Steven D. Weber'; Shane Martin  
**Subject:** Meet and Confer

Zach an Steve:

### A. Plaintiffs' Second Request for Production

Zach sent me the e-mail below yesterday demanding that everything be produced within two days (a deadline of your own making).

Still yesterday you told me you had given up conferring with me and have to file a motion.

This, after refusing to respond (or acknowledge) my meet and confer e-mail from 8 days ago.

If that's the record you want to take to the judge, that is your decision.

Zach's e-mail below is, perhaps inadvertently, somewhat misleading

These were the two requests in your second request for production:

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.

This was obviously absurdly overbroad and Zach and I spoke and Zach agreed to limit to lawsuits relating to Madoff or S&P. (Insofar as Zach's e-mail below suggests that the request seeks "all documents" related to such litigation, that is beyond the scope of even the original request and not what was agreed to. I appreciate that Zach ended his e-mail noting that I can contact him with any questions or concerns, and I normally would have called him, but with the immediate false paper record you are trying to make, I have to put this in writing.)

With the correct limitation:

1. To my knowledge, the only documents responsive to request number 1 is the judgment in the SEC action from the early 90s of which are aware. It's my understanding that this has already been produced.
2. As to request number 2, the only lawsuits are the SEC action that lead to the injunction (of which you are aware) and the Picard lawsuit (of which you also aware). There is no other matter to identify.

### B. Plaintiffs' Pending Motion to Compel

I am still waiting for you to respond to my June 3 e-mail. Shall I file a motion today on that? Shall I send a blizzard of self-serving e-mails? Or, do you want to pick up the phone and have a conversation, which is what I requested.

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

---

**From:** Zachary P. Hyman [mailto:[ZHyman@bergersingerman.com](mailto:ZHyman@bergersingerman.com)]  
**Sent:** Wednesday, June 11, 2014 10:38 AM  
**To:** Jonathan Etra  
**Cc:** Steven D. Weber  
**Subject:** Bienes Supplemental Production

Jon,  
Pursuant to our meet and confer, we agreed that we would limit the documents requested in our second request for production to only documents produced in, or filed in conjunction with Litigation that relates to Madoff and/or S&P and/or P&S. We will need those documents to be produced by Friday. If they aren't produced then, we will be required to take up the issue with the Court. If you have any questions or concerns, please feel free to contact me.  
Thank you,  
Zach



**Zachary P Hyman**  
350 East Las Olas Boulevard | Suite 1000 | Fort Lauderdale FL 33301  
*office:* (954) 525-9900 | *direct:* (954) 712-5180 | *fax:* (954) 523-2872  
[ZHyman@bergersingerman.com](mailto:ZHyman@bergersingerman.com)

 Please consider the environment before printing this email.

This transmission is intended to be delivered only to the named addressee(s) and may contain information that is confidential, proprietary, attorney work-product or attorney-client privileged. If this information is received by anyone other than the named and intended addressee(s), the recipient should immediately notify the sender by E-MAIL and by telephone at the phone number of the sender listed on the email and obtain instructions as to the disposal of the transmitted material. In no event shall this material be read, used, copied, reproduced, stored or retained by anyone other than the named addressee(s), except with the express consent of the sender or the named addressee(s). Thank you.  
\*\*\*\*\*

CIRCULAR 230 DISCLAIMER: This communication does not constitute a "covered opinion" as such term is defined within Circular 230, and does not comply with the requirements for a "covered opinion." We have not conducted, nor have we been asked to conduct, that type of analysis in this communication. To ensure compliance with requirements imposed by the IRS, we must inform you that any U.S. federal tax advice contained in this communication (including any documents or items appended herein) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.  
\*\*\*\*\*