

IN THE CIRCUIT COURT OF THE 17<sup>TH</sup>  
JUDICIAL CIRCUIT IN AND FOR  
BROWARD COUNTY, FLORIDA  
CASE NO. 12-034123 (07)

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

vs.

MICHAEL D. SULLIVAN, et al.  
Defendants.

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**DEFENDANT FRANK AVELLINO'S MOTION TO COMPEL PLAINTIFF TO  
PRODUCE DOCUMENTS IN RESPONSE TO HIS SECOND REQUEST FOR  
PRODUCTION DATED APRIL 29, 2014**

Defendant Frank Avellino ("Avellino"), moves this Court for an order compelling Plaintiff Philip J. Von Kahle's, as Conservator of P&S Associates and of S&P Associates (hereinafter "Plaintiff") to produce documents in response to Avellino's Second Request for Production, dated April 29, 2014, and in support therefore states as follows:

1. On April 29, 2014, Avellino propounded upon Plaintiff his Second Request for Production ("the Request").
2. Plaintiffs' served his response to the Request on June 3, 2014, a copy of which is annexed hereto as Exhibit "A".
3. Avellino's Request sought seven categories of documents. Requests 2 through 7 sought documents relevant to allegations of the Second Amended Complaint; Request 1 sought documents relating to settlements Plaintiff has entered into with other defendants in this action.
4. Plaintiff's responses to Requests 2 through 7 continue to make improper objections as Plaintiff made in response to Avellino's first request for production. If documents

are being withheld based upon a claim of privilege then it is incumbent upon Plaintiff to provide a privilege log. If not, then Plaintiff should so state and produce responsive documents.

5. In response to Request 1, Plaintiff refuses to produce documents relating to settlement agreements he entered into with co-defendants in this action based upon a claim of privilege and that such documents are irrelevant.

6. There exists no valid basis to withhold production of documents evidencing Plaintiff's settlements with Avellino's co-defendants in this action. As alleged joint tortfeasors, settlements with co-defendants can impact the determination and amount of any award. As such, settlement agreements are discoverable and admissible. Garrett v. Mohammed, 686 So.2d 629, 630 (Fla. 5<sup>th</sup> DCA 1997). Accordingly, any relevance objection is groundless.

WHEREFORE, Avellino moves this court for the entry of an order compelling Plaintiff to produce all settlement agreements and other documents evidencing the settlement or other resolution Plaintiff has reached with any other defendant in this action, as well as documents being withheld upon a claim of privilege or produce a privilege log.

#### CERTIFICATE OF COMPLIANCE

I hereby certify that counsel for Avellino has contacted Plaintiffs' counsel in a good faith effort to resolve the issues raised in this motion and to secure the information and materials sought through discovery without court action, but to date the issues remain unresolved. On June 4, 2014, Avellino's counsel contacted Plaintiffs' counsel by email requesting that Plaintiff waive his objection to the production of documents in response to request No. 1. On June 20, 2014, Plaintiff's counsel advised that he is precluded from providing the settlement agreements by their terms without a court order.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing document is being served on those on the attached service list by electronic service via the Florida Court E-Filing Portal in compliance with Fla. Admin. Order No. 13-49 this 25th day of June, 2014.

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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.

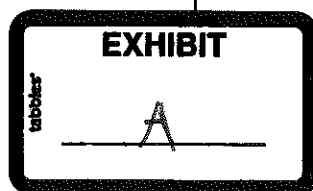
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**PLAINTIFFS' RESPONSES AND OBJECTIONS TO  
DEFENDANT FRANK AVELLINO'S  
SECOND REQUEST TO PRODUCE TO PLAINTIFFS DATED APRIL 29, 2014**

Plaintiffs, by and through the undersigned counsel, hereby provides responses and objections to Defendant, Frank Avellino's ("Avellino") Second Request for Production of Documents to Plaintiffs dated April 29, 2014, pursuant to Rule 1.350 of the Florida Rules of Civil Procedure.

Submitted June 3, 2014.

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### General Objection

General Objection 1: The Plaintiffs object to the extent the Requests impose a duty to supplement not required by the Florida Rules of Civil Procedure.

#### **RESPONSES AND SPECIFIC OBJECTIONS TO REQUESTS TO PRODUCE DOCUMENTS**

1. All settlement agreements or other documents evidencing the settlement or other resolution Plaintiffs have entered into with any defendants in this action.

**Response**: Plaintiffs object to this request because it seeks documents protected by the work product doctrine, attorney client privilege, and settlement communications privilege. Further, Plaintiffs object on the basis that the documents sought are irrelevant and the request is not reasonably calculated to lead to the discovery of admissible evidence because, *inter alia*, settlement agreements or other documents evidencing the settlement or other resolution Plaintiffs have entered into with any defendants in this action have no bearing on the claims and/or defenses in this action. A privilege log will not be provided at this time because the documents sought are not otherwise discoverable. No documents are being produced in response to this request.

2. All documents that reflect, evidence or support your allegations, as set forth in paragraph 20 of the Second Amended Complaint, that Avellino advised Sullivan and thus the Partnerships to invest with BLMIS.

**Response**: Plaintiffs object to Request for Production Number 2 because it seeks the production of documents which are otherwise protected by the attorney-client and/or work product privilege and it is not reasonably calculated to lead to the discovery of admissible evidence because it seeks documents from Plaintiffs' attorneys. Plaintiffs previously provided all non-privilege documents responsive to this request when responding to Avellino's First Request for Production to Plaintiffs. No additional documents are being produced in response to this request.

3. All documents that reflect, evidence or support your allegation, as set forth in paragraph 20 of the Second Amended Complaint, that Avellino “facilitated the Partnerships investment with BLMIS.”

**Response: Plaintiffs object to Request for Production Number 3 because it seeks the production of documents which are otherwise protected by the attorney-client and/or work product privilege and it is not reasonably calculated to lead to the discovery of admissible evidence because it seeks documents from Plaintiffs’ attorneys. Plaintiffs previously provided all non-privilege documents responsive to this request when responding to Avellino’s First Request for Production to Plaintiffs. No additional documents are being produced in response to this request.**

4. All documents that reflect, evidence or support your allegation, as set forth in paragraph 21 of the Second Amended Complaint, that the Partnerships relied on Avellino’s advice and invested all of their money with BLMIS.

**Response: Plaintiffs object to Request for Production Number 4 because it seeks the production of documents which are otherwise protected by the attorney-client and/or work product privilege and it is not reasonably calculated to lead to the discovery of admissible evidence because it seeks documents from Plaintiffs’ attorneys. Plaintiffs previously provided all non-privilege documents responsive to this request when responding to Avellino’s First Request for Production to Plaintiffs. No additional documents are being produced in response to this request.**

5. All documents that reflect, evidence or support your allegation, as set forth in paragraph 21 of the Second Amended Complaint, that the Partnerships would not have access to BLMIS without Avellino’s involvement.

**Response: Plaintiffs object to Request for Production Number 5 because it seeks the production of documents which are otherwise protected by the attorney-client and/or work product privilege and it is not reasonably calculated to lead to the discovery of admissible evidence because it seeks documents from Plaintiffs’ attorneys. Plaintiffs previously provided all non-privilege documents responsive to this request when responding to**



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**Avellino's First Request for Production to Plaintiffs. No additional documents are being produced in response to this request.**

6. All documents that reflect, evidence or support your allegation, as set forth in paragraph 135 of the Second Amended Complaint, that Avellino was a partner in the Partnerships.

**Response: Plaintiffs object to Request for Production Number 6 because it seeks the production of documents which are otherwise protected by the attorney-client and/or work product privilege and it is not reasonably calculated to lead to the discovery of admissible evidence because it seeks documents from Plaintiffs' attorneys. Plaintiffs previously provided all non-privilege documents responsive to this request when responding to Avellino's First Request for Production to Plaintiffs. No additional documents are being produced in response to this request.**

7. All documents that reflect, evidence or support your allegation, as set forth in paragraph 135 of the Second Amended Complaint, that Avellino owed a fiduciary duty to the Partnerships.

**Response: Plaintiffs object to Request for Production Number 7 because it seeks the production of documents which are otherwise protected by the attorney-client and/or work product privilege and it is not reasonably calculated to lead to the discovery of admissible evidence because it seeks documents from Plaintiffs' attorneys. Plaintiffs previously provided all non-privilege documents responsive to this request when responding to Avellino's First Request for Production to Plaintiffs. No additional documents are being produced in response to this request.**