

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.

NOTICE OF SUBPOENA DUCES TECUM FOR VIDEOTAPED DEPOSITIONS

PLEASE TAKE NOTICE that the undersigned attorneys will take the depositions of:

<u>NAME</u>	<u>DATE & TIME</u>	<u>LOCATION</u>
James Judd	July 17, 2014 10:00 a.m.	Broad and Cassel One Financial Plaza 100 S.E. 3rd Avenue Suite 2700 Fort Lauderdale, FL 33394

upon oral examination before Veritext Florida Reporting Co. or any other Notary Public or other officer authorized by law to take depositions in the State of Florida. The oral examination will continue from day to day until completed. The deposition is being taken for the purpose of discovery, for use at trial, or for such other purposes as are permitted under the applicable and governing rules. The deposition will be **videotaped** by Veritext Florida Reporting Co. Further, the deponents are commanded to produce the documents listed on **SCHEDULE A**.

Dated: July 9, 2014.

Respectfully submitted,

/s/ Jonathan Etra

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Counsel for Defendant, Michael Bienes

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 9, 2014, this notice was 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); **(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); and via Regular U.S. Mail to: **(ix)** Michael D. Sullivan & Associates, Inc., 6550 N. Federal Highway, Suite 210, Ft. Lauderdale, FL 33308 (pro se) and **(x)** Michael Sullivan, 2590 N.E. 41st Street, Ft. Lauderdale, FL 33308 (pro se).

/s/ Jonathan Etra _____

Jonathan Etra

SCHEDULE A

DEFINITIONS AND INSTRUCTIONS

1. The terms “You, “Your,” or “Yours” shall mean James Judd, or any of his agents, employees, attorneys, representatives, or anyone acting or purporting to act on its behalf.
2. The term “Michael Bienes” or “Bienes” shall mean the defendant in this action, Michael Bienes, or any of his agents, employees, attorneys, representatives, or anyone acting or purporting to act on its behalf.
3. The term “Michael Sullivan” or “Sullivan” shall mean the defendant in this action, Michael J. Sullivan, or any of his agents, employees, attorneys, representatives, or anyone acting or purporting to act on its behalf.
4. The term “Greg Powell” shall refer to Greg Powell, a former managing general partner of the Partnerships, or any of his agents, employees, attorneys, representatives, or anyone acting or purporting to act on its behalf.
5. The term “Partnership” or “Partnerships” shall mean Plaintiff, P&S Associates, General Partnership, and/or S&P Associates, General Partnership, individually or collectively, as the context or circumstances may call for, or any of their affiliates, predecessors, present or former officers, directors, owners, agents, attorneys, or any other person acting or purporting to act on its behalf.
6. The term “Philip Von Kahle” shall mean the conservator for the Partnerships, Philip J. Von Kahle, or any of his agents, employees, attorneys, representatives, or anyone acting or purporting to act on its behalf.
7. 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.

8. 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.

9. The term “materials” shall be deemed to include all documents, letters, memoranda, notes and any other written communication and written notes of all oral communications, whether in person or by telephone, and every record of every type, including but not limited to, information stored on any electromagnetic storage device, any written, printed, typed recorded or graphic matter, however produced or reproduced or stored, and all drafts, notes or preparatory material concerned with said document, and every additional copy of such record or document where such copy contains any commentary, notations, or other change whatsoever that does not appear on the original or other copy of the document produced. Also included in this definition is any summary of a document or documents called for hereafter.

10. If any document the identification 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.

11. 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.

12. 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.

13. "And" and "or" shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of this Subpoena Duces Tecum all documents or materials that might otherwise be construed to be outside its scope.

DOCUMENTS REQUESTED

YOU ARE HEREBY COMMANDED to produce at your deposition the following documents:

1. All documents or materials that refer, evidence, or relate to communications between You and Michael Bienes relating in any way to either of the Partnerships.
2. All documents or materials that refer, evidence, or relate to communications between You and Greg Powell relating in any way to either of the Partnerships.
3. All documents or materials that refer, evidence, or relate to communications between You and Michael Sullivan relating in any way to either of the Partnerships.
4. All documents or materials that refer, evidence, or relate to communications between You and either one of the Partnerships or any person acting or purporting to act on their behalf.
5. All documents or materials that refer, evidence, or relate to communications between You and Philip Von Kahle.
6. All documents or materials that refer, evidence, or relate to any investments You may have made in either of the Partnerships.
7. All documents or materials that refer, evidence, or relate to communications between You and any attorney for or acting on behalf of either of the Partnerships.
8. Any and all agreements You entered into with either of the Partnerships and any agreements that were proposed between You and either of the Partnerships.

9. All documents, agreements, materials or communications exchanged between You and any other person or entity that relate in any way to either of the Partnerships or Your investments in either of the Partnerships.
10. All documents or materials in Your possession, custody, or control that relate in any way to either of the Partnerships.

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