

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

CASE NO.: 12-034123 (07)

P&S ASSOCIATES, GENERAL PARTNERSHIP,
a Florida limited partnership, *et al.*,

Plaintiffs,

v.

MICHAEL D. SULLIVAN, *et al.*,

Defendants.

**PLAINTIFFS' RESPONSE TO DEFENDANT FRANK AVELLINO'S
SECOND MOTION FOR PROTECTIVE ORDER REGARDING HIS DEPOSITION**

Plaintiffs P & S Associates, General Partnership (“P&S”), S & P Associates, General Partnership (“S&P”) (collectively, the “Partnerships” or “Plaintiffs”), by and through their undersigned attorneys, file this Response to Defendant Frank Avellino’s Second Motion for Protective Order Regarding His Deposition. In support thereof, Plaintiffs state as follows:

1. Plaintiffs served a Notice (or Re-Notice) of Taking Deposition of Defendant Frank Avellino on March 31, 2014, May 8, 2014, June 24, 2014, November 11, 2014, February 16, 2015. However, for a variety of reasons, Frank Avellino avoided appearing at any of those depositions.

2. After a year of trying to schedule Avellino’s deposition, on or about April 3, 2015, Avellino and Bienes agreed that Avellino would appear for deposition on June 9, 2015, and that Bienes would appear for deposition on June 16, 2015.

3. Two business days before Avellino’s deposition, Avellino filed Avellino’s Motion for Protective Order Regarding His Deposition (the “First Motion for Protective Order”). The Court entered an Order on the First Motion for a Protective Order, and excused Avellino from

appearing at his June 9 deposition, but required Avellino to appear for deposition on July 16, 2015.

4. Yet again, three days before Avellino's scheduled deposition is set to occur, and after Plaintiffs spent considerable time and effort in preparing to take Avellino's deposition, Avellino claimed he was unable to appear for a deposition and filed a Second Motion for a Protective Order. Unless Avellino faces serious sanctions for his failure to appear at his deposition in the future, Avellino will continue to avoid being deposed.

5. While Plaintiffs are sympathetic to the fact that Avellino may be suffering from a medical condition, Avellino's conduct should not be condoned, and seems suspect. Although the doctors notes attached to Avellino's Second Motion for a Protective Order establishes that he had been hospitalized between June 19, and June 25, 2015, and that he had a doctor's appointment on July 13, 2015, they do not establish that Avellino was incapable of appearing for his deposition. Further, there is no reason why Avellino could not have obtained a doctor's note from the doctor he allegedly visited on July 13, 2015 to confirm his inability to appear at deposition.

6. Based on the foregoing, Plaintiffs submit that Avellino's refusal to appear at his duly noticed deposition was not caused by any medical condition, but instead was a result of a willful disregard for this Court's Orders.

7. Plaintiffs request an order denying Avellino's last minute and desperate Motion for Protective Order because Plaintiffs have been seeking Avellino's deposition for more than a year and he has provided no basis to support his requested relief, and request that the Court enter an Order directing Avellino, to appear for his deposition on a date certain, or have a default judgment entered against him.¹

¹ In the event that any additional "health issues" arise, Plaintiffs request that any future continuances of Avellino's deposition for reasons related to his health, must be conditioned on an affidavit, signed under penalty of perjury, from Avellino's doctor which explicitly and timely establishes that Avellino is incapable of appearing for a deposition.

8. Additionally, and because Plaintiffs have sought to depose Avellino on multiple occasions, and Avellino has consistently avoided his obligation to appear at the last minute, Plaintiffs request that Avellino be required to pay their reasonable attorney's fees and costs in connection with the preparation for his deposition.

WHEREFORE, Plaintiffs request that this Court enter an order (i) denying the Second Motion for Protective Order; (ii) awarding attorney's fees and costs incurred in responding to the Second Motion for Protective Order; and (iii) granting such other and further relief as the Court may deem just and appropriate under the circumstances.

Dated: July 16, 2015

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of July, 2015, a true and correct copy of the foregoing document was served on the following parties:

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