

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.

STEVEN JACOB, *et al.*,

Defendants.

**PLAINTIFFS' RESPONSE TO NON-PARTY DIANNE BIENES'
MOTION FOR PROTECTIVE ORDER REGARDING HER 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 Non-Party Dianne Bienes' Motion for Protective Order Regarding Her Deposition (the "Motion for Protective Order"). In support thereof, Plaintiffs state as follows:

1. Yet again, a motion for protective order is being filed days before a deposition set months ago. Almost three months ago, on May 22, 2015, Plaintiffs sent Dianne Bienes' counsel, and cc'd the other parties' counsel, a copy of a subpoena duces tecum with taking deposition of Dianne Bienes on oral testimony (the "Subpoena"), asked if they would accept service of it, and asked if they had any objection to her deposition on August 18, 2015. *See Exhibit A*. There was no objection or response and Ms. Bienes conveniently relegates that e-mail to a footnote on the last page of her Motion for Protective Order.

2. Two weeks later, on June 3, 2015, Dianne Bienes was personally served with the Subpoena, setting her deposition for August 18, 2015. She was served again on June 16, 2015.

3. Plaintiffs wish to take Ms. Bienes' deposition and it is the reason why they asked Ms. Bienes if there was any objection to the August 18 date. It should come as no surprise given the history of court orders regarding depositions of the defendants in this action (Michael Bienes' counsel also represents Ms. Bienes (see **Exhibit B**)), that Ms. Bienes waited until two business days before her deposition to file the instant Motion for Protective Order (just as Mr. Bienes and Mr. Avellino waited days before their depositions to file motions for protective orders regarding their depositions (see **Exhibit C**)). Ms. Bienes waited despite knowing for months that Plaintiffs were proceeding with Ms. Bienes' deposition on August 18 unless Ms. Bienes could propose a new date to Plaintiffs that all parties agreed on.

4. Plaintiffs have advised Ms. Bienes that they are not adverse to rescheduling her deposition but that they wish to enter into an agreed court order such that she **shall** appear on that date and will pay Plaintiffs costs incurred in preparing for her deposition if she does not appear – with caveats in the case of a medical necessity, which this Court previously adopted for Defendant Frank Avellino – a serial deposition canceller (see **Exhibit D**).

5. While this is the first time that Ms. Bienes is seeking to avoid her deposition, Plaintiffs wish to circumvent the same cycle of preparation, cancellation, and re-preparation that they have experienced with Defendant Avellino, and has thus far been avoided with Defendant Bienes, through the entering of a court order regarding her appearance.

6. Moreover, given that it is Ms. Bienes proposing this new date for her deposition, September 25, 2015, there should be no problem with her entering into an order, unless she has already pre-determined that she will not appear.

7. Unless Ms. Bienes faces sanctions for her failure to appear at her deposition in the future, Plaintiffs fear that Ms. Bienes will seek to avoid being deposed causing Plaintiffs and the Conservator to incur costly fees and expenses as they have already done for other depositions in this action.

WHEREFORE, Plaintiffs request that this Court enter an order (i) denying the Motion for Protective Order; (ii) setting Ms. Bienes for deposition and providing that Ms. Bienes shall pay Plaintiffs any costs Plaintiffs incur in preparing for her deposition if she fails to appear, except in the case of a medical emergency; and (iii) granting such other and further relief as the Court may deem just and appropriate under the circumstances.

Dated: August 17, 2015

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Fort Lauderdale, FL 33301
Telephone: (954) 525-9900
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By: s/ LEONARD K. SAMUELS
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Florida Bar No. 99239

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of August, 2015, a true and correct copy of the foregoing document was served on the following parties:

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Attorneys for Michael Bienes

By: s/Leonard K. Samuels
Leonard K. Samuels

Susan Ochoa



From: Steven D. Weber
Sent: Friday, May 22, 2015 5:00 PM
To: Jonathan Etra (jetra@broadandcassel.com)
Cc: Thomas Zeichman (tzeichman@messana-law.com); Gary Woodfield (gwoodfield@haileshaw.com); PGH@trippscott.com; ele@trippscott.com
Subject: S&P et al. v. Jacob et al.
Attachments: C:\Users\sweber\AppData\Local\Temp\iScrub\Email\1432328391\0.pdf

Jonathan,
Will you accept service on behalf of Dianne Bienes of the attached subpoena? We are happy to work with you and the other parties on a different date for the deposition if there is any objection to it.
Thank you

BERGER SINGERMAN

Steven D. Weber

1450 Brickell Avenue | Suite 1900 | Miami FL 33131
office: (305) 755-9500 | direct: (305) 982-4025 | fax: (305) 714-4340
email: SWeber@bergersingerman.com
website: www.bergersingerman.com
doing business in Florida resource: www.flabusinesslaw.com



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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.

**SUBPOENA DUCES TECUM WITH TAKING
DEPOSITION OF DIANNE BIENES ON ORAL TESTIMONY**

STATE OF FLORIDA:

To All Singular Sheriffs of Said State:

**TO: Dianne Bienes
3200 Port Royale Dr. N. Apt. 100
Fort Lauderdale, FL 33308**

YOU ARE HEREBY COMMANDED to appear at the offices of **Berger Singerman, LLP, 350 E. Las Olas Blvd Suite 1000, Fort Lauderdale, FL 33301** (the “**Berger Singerman Office**”), on **August 18, 2015 at 11:00 a.m.** and to produce the documents listed on **Schedule “A”** attached hereto in compliance with the Court’s Order attached hereto as **Exhibit A**. All electronically stored information (“ESI”), as defined herein, shall be produced in accordance with the definitions and instructions.

These items will be inspected and may be copied at that time. You will not be required to surrender the original items. You may comply with this subpoena by providing legible copies of the items to be produced to the attorney whose name appears on this subpoena on or before the scheduled date of production. You may condition the preparation of the copies upon the payment in advance of the reasonable cost of preparation. You may mail or deliver the copies to the attorney whose name appears on this subpoena and thereby eliminate your appearance at the time and place specified above. You have the right to object to the production pursuant to this

DRAFT: APRIL 23, 2015

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subpoena at any time before production by giving written notice to the attorney whose name appears on this subpoena.

If you fail to appear or produce the documents listed on Schedule A, you may be in contempt of Court.

You are subpoenaed to appear by the following attorneys and unless excused from this subpoena by these attorneys or the Court, you shall respond to this Subpoena as directed.

Dated: May 22, 2015

STEVEN D. WEBER

For the Court

By: s/ Steven D. Weber

BERGER SINGERMANN LLP

Attorneys for Plaintiffs

1450 Brickell Avenue, Suite 1900

Miami, FL 33131

Telephone: (305) 982-4025

Facsimile: (305) 714-4340

IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS ANY ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. WITHIN TWO WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE, CONTACT BETTY LETTS AT (954) 831-6364, 201 S.E. 6TH ST. ROOM 136, FT. LAUDERDALE, FL 33301. THE PHONE LINE WILL ACCOMMODATE VOICE OR TDD TRANSMISSIONS FOR THE HEARING IMPAIRED OR VOICE IMPAIRED.

DAPRE AKO KI FET AVEK AMERICANS WITH DISABILITIES ACT, TOUT MOUN KI GINYIN YUN BEZWEN ESPESİYAL POU AKOMODASIYON POU YO PATISIPE NAN PWOGAM SA-A DWE, NAN YUN TAN REZONAB AVAN NINPOT ARANJMAN KAPAB FET, YO OWE KONTAKTE ADMINISTRATIVE OFFICE OF THE COURT, 201 S.E. 6TH ST., ROOM 136, FORT LAUDERDALE, FLORIDA 33301 OR TELEPHONE VOICE/TDD (954) 831-6364

DE ACUERDO CON EL ACTO O DECRETO DE LOS AMERICANOS CON IMPEDIMENTOS, INHABILITADOS, PERSONAS EN NECESIDAD DEL SERVICIO ESPECIAL PARA PARTICIPAR EN ESTE PROCEDIMIENTO DEBERAN, DENTRO DE UN TIEMPO RAZONABLE, ANTES DE CUALQUIER PROCEDIMIENTO, PONERSE EN CONTACTO CON LA OFICINA ADMINISTRATIVA DE LA CORTE, 201 S.E. 6TH ST., ROOM 136, FORT LAUDERDALE, FLORIDA 33301 OR TELEPHONE VOICE/TDD (954) 831-6364

EN ACCORDANCE AVEC LA LOI DES "AMERICANS WITH DISABILITIES", LES PERSONNES EN BESOIN D'UNE ACCOMMODATION SPECIALE POUR PARTICIPER A CES PROCEDURES DOIVENT, DANS UN TEMPS RAISONABLE, AVANT D'ENTREPRENDRE AUCUNE AUTRE DEMARCHE, CONTACTER L'OFFICE ADMINISTRATIVE DE LA COURT, 201 S.E. 6TH ST., ROOM 136, FORT LAUDERDALE, FLORIDA 33301 OR TELEPHONE VOICE/TDD (954) 831-6364.

SCHEDULE "A"
DEFINITIONS AND INSTRUCTIONS

The following definitions shall apply to this Request:

A. "You", "Your" or "Dianne Bienes" as used herein means Dianne 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 Dianne 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. "Avellino" as used herein means Frank Avellino, a named Defendant in this action.

E. "Bienes" as used herein means Michael Bienes, a named Defendant in this action.

F. "Person" as used herein means any natural person or any entity, including without limitation any individual, present and former director, officer, employee, contractor, 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.

G. "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.

H. Documents, as defined herein, includes electronically stored information, which shall be produced in its native format including its metadata, in the manner set forth on **Schedule "A"**.

I. "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 any transfer of data from one location to another by electronic or similar means.

J. "Concerning" shall mean, directly or indirectly, relate to, 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.

K. "Identify" as used herein shall mean:

when used in reference to an individual, to state his full name, his present or last known address, his telephone number, the full name and present or last known address of his employer or business, and his position with such employer or business.

1. when used in reference to a corporation, partnership, unincorporated association, or other entity, to state its full name and its present or last known address, and fully describe the business or activity in which the entity is engaged.
2. when used in reference to a document, to state the date, author, type of document, the person or persons to whom it or copies of it were sent, and its present or last known location and custodian. If any document was, but is no longer, in your possession or custody or subject to your control, state what disposition was made of it, the date of such disposition, and the reason for such disposition.
3. in the case of an agreement, its date, the place where it occurred, the identity of all persons who were parties to the agreement, the identity of each person who has knowledge of the agreement and all other persons present when it was made, and the subject matter of the agreement.
4. when used in reference to a statement, a representation, a directive or other information, state the time and date it was made, the location where it was made, the location where it was received (if other than the location where it was made), and the nature and specific content of it, and identify each person to whom it was made, each person present when it was made or received, and each person having care custody or control or it in any form.

L. 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.

M. 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.

N. 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 the Request.

O. If you assert that any document called for by a Request is protected against disclosure on the grounds of the attorney work product doctrine or by the attorney-client privilege, or any other assertion of privilege, you must provide the following information with respect to such document:

1. the name and capacity of the person or persons who prepared the documents;
2. the name and capacity of all addresses or recipients of the original or copies thereof;
3. the date, if any, borne by the document;
4. a brief description of its subject matter and physical size;
5. the source of the factual information from which such document was prepared; and
6. the nature of the privilege claimed.

P. You must produce all Documents within Your possession, care, custody or control that are responsive to any of these Requests. A Document is deemed 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.

Q. 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.

R. Production of Electronically Stored Information ("ESI") or any electronically stored data shall be in native format unless otherwise agreed. In producing Documents consisting of electronically stored data in machine-readable form in response to any Request, provide such data in a form that does not require specialized or proprietary hardware or software.

S. It is requested that all ESI be produced as native files and single-page TIFF images with corresponding load files. Each image and native file shall be produced along with its corresponding metadata and extracted text.

T. Each hard copy Document is to be produced, with all non-identical copies and drafts thereof, in its entirety, without alteration, abbreviation or reduction and shall be produced either in the manner they are kept in the usual course of business or organized to correspond with the Request to which they are responsive. If any Document is produced in redacted form, state with particularity the reason(s) it was not produced in full and describe generally those portions of the Document that are not being produced

U. All Documents that respond, in whole or in part, to any part or clause of any paragraph of these Requests shall be produced in their entirety, including all attachments and enclosures. Only one copy need be produced of Documents that are responsive to more than one paragraph or are identical except for the person to whom it is addressed if You indicate the Persons or group of Persons to whom such Documents were distributed. Documents that in their original condition were stapled, clipped, or otherwise fastened together shall be produced in such form. Please place the Documents called for by each paragraph in a separate file folder or other enclosure marked with Respondents' name and the paragraph to which such Documents respond, and if any Document is responsive to more than one Request, indicate each Request to which it responds.

V. If you at any time had possession, custody or control of a Document called for under these Requests 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.

W. Unless otherwise specified herein, the time frame for each Request is from and including January 1, 1993 to the present.

DOCUMENTS REQUESTED

1. All documents concerning any transfers and/or payments of funds from Sullivan & Powell / Solutions In Tax to You.
2. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan & Assoc. to You.
3. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan to You.
4. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan & Assoc. to 56 Arlington House, LLC.
5. All documents concerning any transfers and/or payments of funds from Sullivan & Powell / Solutions In Tax to 56 Arlington House, LLC.
6. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan to 56 Arlington House, LLC.
7. All documents concerning any transfers and/or payments of funds from 56 Arlington House, LLC to Bienes.
8. All documents sent from Sullivan & Powell / Solutions In Tax, Michael D. Sullivan, and/or Michael D. Sullivan & Assoc to You.
9. All documents sent from Sullivan & Powell / Solutions In Tax, Michael D. Sullivan, and/or Michael D. Sullivan & Assoc to 56 Arlington House, LLC.
10. To the extent not already produced in response to a request, all documents concerning 56 Arlington House, LLC.

11. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan & Assoc. to F.P.O.M., Inc.
12. All documents concerning any transfers and/or payments of funds from Sullivan & Powell / Solutions In Tax to F.P.O.M., Inc.
13. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan to F.P.O.M., Inc.
14. All documents concerning any transfers and/or payments of funds from Michael F.P.O.M., Inc. to Bienes.
15. All documents sent from Sullivan & Powell / Solutions In Tax, Michael D. Sullivan, and/or Michael D. Sullivan & Assoc to F.P.O.M., Inc.
16. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan & Assoc. to American Friends of the Covent Garden, Inc.
17. All documents concerning any transfers and/or payments of funds from Sullivan & Powell / Solutions In Tax to American Friends of the Covent Garden, Inc.
18. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan to American Friends of the Covent Garden, Inc.
19. All documents concerning any transfers and/or payments of funds from Covent Garden, Inc. to Bienes.
20. All documents sent from Sullivan & Powell / Solutions In Tax, Michael D. Sullivan, and/or Michael D. Sullivan & Assoc to American Friends of the Covent Garden, Inc.
21. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan & Assoc., Michael D. Sullivan, and/or Sullivan & Powell / Solutions In Tax to Bienes.

SCHEDULE "A"

Production of Electronically Stored Information (ESI) FORM OF PRODUCTION

Plaintiffs, P & S Associates, General Partnership ("P&S"), S & P Associates, General Partnership ("S&P"), (collectively referred to as, the "Partnerships"), and Philip Von Kahle as Conservator on behalf of the Partnerships (the "Conservator", and collectively with the Partnerships, the "Plaintiffs/Judgment Creditors"), requests that all ESI (electronically stored information) be produced as follows:

ESI will be produced (printed and loaded) in 300DPI resolution or greater, Group IV Monochrome Tagged Image File Format (.TIF) files in single-page format, with **ALL** native files provided and word searchable OCR/extracted text (Optical Character Recognized – i.e. searchable text) in UTF-8 format. Color photographs should be produced as color JPEG images. Email natives will be delivered in MSG or EML format. Load files will be provided in Opticon (.OPT) format and an IPRO LFP (.lfp) format. Metadata will be provided in a DAT file with standard Concordance delimiters. The text files containing the OCR/Extracted Text shall be produced in multi-page format with the name corresponding to its associated document. **All small and oversized images should be resized to fit on 8.5x11 canvas.**

The files should be delivered with the following folder structure:

IMAGES – contains the TIF and JPG files, up to 10,000 items.
DATA – contains the OPT and LFP files and the metadata text file (DAT)
NATIVES – contains all the original native files named as the BEGDOC
TEXT – contains the document-level OCR/Extracted text files named as the BEGDOC

<u>Eclipse Metadata Field</u>	<u>Field Description</u>
BegDoc	BegDoc
EndDoc	EndDoc
BegAttach	BegAttach
EndAttach	EndAttach

Application	Application/Application Name
AttachmentIDs	Bates numbers of attachment(s)
Attachments	Names of attachment files
AttachRange	Attachment Range
Authors	Document author
BCC	BCC (Name + email)
CC	CC (Name + email)
Companies	Company name
Custodian	Custodian (Last, First)
DateCreated	Date created (MM/DD/YYYY)
DateReceived	Date email received (MM/DD/YYYY)
DateSaved	Date last saved (MM/DD/YYYY)
DateSent	Date email sent (MM/DD/YYYY)
Doctitle	Title
FileType	Document Type Description
FileExtension	File extension
Doclink	Link to native files produced
ExtractedText	Link to text files produced
Filename	Original filename
FileSize	File size in bytes
Folder	Relative Path (Inbox, Sent, etc.)
From	Sender (Name + email)
Hash_Code	MD5 hash
Header	Email header
InternetMSGID	IntMsgID
MessageID	MsgID
NumAttachments	Attachment count
NumPages	Page count
ParentID	Parent bates number
Password_Protect	Y/N field
Read	Y/N
SHA1	SHA1 hash
Sources	CD, DVD, hard drive; brief desc. of data
StoreID	Name of PST/NSF file (if relevant)
Subject	Email/Document subject
TimeReceived	Time email received (12-hour HH:MM)
TimeSent	Time email sent (12-hour HH:MM)
To	To (Name + email)

For .xls (Excel), .ppt (PowerPoint), and .doc (Word) files the following additional metadata fields should be included:

Excel_Comments	Comments
Excel_HiddenColumns	Hidden Columns
Excel_HiddenRows	Hidden Rows
Excel_HiddenWorksheets	Hidden Worksheets
Num_Lines	Number of lines
Num_Paragraphs	Number of paragraphs
Num_slides	Number of slides
Num_Notes	Number of notes
Num_HiddenSlides	Number of hidden slides
Num_Multimedia	Number of multimedia clips
Security	Security



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

CASE NO. 12-034123 (7)

S&P ASSOCIATES, GENERAL PARTNERSHIP, ET
AL.

Plaintiffs,

v.

MICHAEL D. SULLIVAN, an individual, ET AL.,

Defendants.

**ORDER ON FRANK AVELLINO'S MOTION
FOR PROTECTIVE ORDER REGARDING HIS DEPOSITION**

THIS MATTER came before the Court on June 8, 2015, on Defendant Frank Avellino's Motion for Protective Order Regarding His Deposition. The Court, having reviewed the Motion and Plaintiff's Response, having heard argument from counsel for the parties during a telephonic hearing, and being otherwise duly advised in the premises, it is, hereby

ORDERED and **ADJUDGED** as follows:

1. The Motion is ruled upon as follows:

Avellino is excused from appearing for deposition on June 9, 2015. Avellino was, at the telephonic hearing, ordered to appear for deposition within 30 days of June 8, 2015 at Berger Singerman LLP 2650 North Military Trail Boca Raton, FL 33431 at 10:00 a.m., unless a date beyond this 30 day period is agreed upon by counsel. Counsel for the parties have agreed, and it is so ordered, that Frank Avellino appear at deposition on July 16, 2015 at the above noted location.

DONE AND ORDERED in Chambers this ___ day of June, 2015.

HONORABLE JACK TUTER
Circuit Court Judge

Copies furnished to:
All counsel of record

Electronically signed by Judge Tuter, Jack on 2015/06/16 11:16:58 EST.

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

CASE NO. 12-034123 (7)

P & S
S&P ASSOCIATES, GENERAL PARTNERSHIP, ET
AL.

Plaintiffs,

v.

MICHAEL D. SULLIVAN, an individual, ET AL.,

Defendants.

**ORDER ON MICHAEL BIENES' MOTION
FOR PROTECTIVE ORDER REGARDING HIS DEPOSITION**

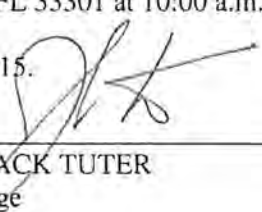
THIS MATTER came before Defendant Michael Bienes' Motion for Protective Order Regarding His Deposition. The Court, having reviewed the Motion and being otherwise duly advised in the premises, it is, hereby

ORDERED and **ADJUDGED** as follows:

1. The Motion is ruled upon as follows:

Bienes is excused from appearing for deposition on June 16, 2015. The parties have agreed, and it is so ordered, that Michael Bienes appear at deposition on July 17, 2015 at Berger Singerman LLP, 350 E. Las Olas Blvd., Suite 1000, Fort Lauderdale, FL 33301 at 10:00 a.m.

DONE AND ORDERED in Chambers this 16 day of June, 2015.



HONORABLE JACK TUTER
Circuit Court Judge

Copies furnished to:
All counsel of record

EXHIBIT A



IN THE CIRCUIT COURT OF THE 17TH
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.

**DEFENDANT FRANK AVELLINO'S MOTION FOR PROTECTIVE
ORDER REGARDING HIS DEPOSITION**

Defendant, Frank Avellino, by and through his undersigned counsel, files this Motion for Protective Order Regarding his Deposition and as grounds therefor states as follows:

1. Plaintiffs' counsel has scheduled the deposition of Frank Avellino ("Avellino") to be taken on June 9, 2015.
2. Avellino is not available to have his deposition taken on June 9, 2015 because he has medical issues which necessitate treatment in New York on that date.
3. In addition, in order to be properly prepared for the deposition, there is outstanding discovery owed from Plaintiffs, some of which Plaintiff has objected to and refused to produce and some of which has been agreed to be produced but to date no such production has been provided. Avellino has filed a Motion to Compel the production of such documents. Avellino's deposition should not proceed until the requested documents are produced.
4. The undersigned counsel has requested that Plaintiffs' counsel reschedule Avellino's deposition, and has provided Plaintiffs' counsel with 26 alternative dates in July and

August that Avellino can be available to be deposed. However, to date Plaintiffs' counsel has refused to move the date to one of the alternative dates proposed.

5. There is no prejudice to moving the date of Avellino's deposition because the parties had agreed to conduct depositions only after the matter was at issue, which just occurred. In addition, Plaintiff's counsel has requested and obtained from the Court an extension to respond to Avellino's pending Motion for Summary Judgment until after Avellino's deposition is conducted.

WHEREFORE Defendant Frank Avellino respectfully requests that this Court enter an Order granting his Motion for Protective Order to reschedule the June 9, 2015 date for his deposition to one of the alternative dates proposed by Defendant's counsel.

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 5th day of June, 2015.

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By: /s/ Gary A. Woodfield
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IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

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

Plaintiffs,

vs.

CASE NO.: CACE 12-034123 (07)

MICHAEL D. SULLIVAN, et al.,

Defendants.

**MICHAEL BIENES' MOTION FOR
PROTECTIVE ORDER REGARDING HIS DEPOSITION**

Defendant Michael Bienes ("Bienes"), pursuant to Rule 1.280 of the Florida Rules of Civil Procedure, hereby moves for the Court to enter a protective order regarding his deposition.

In support of this motion, Bienes states:

1. Plaintiffs have scheduled Bienes' deposition to take place on June 16, 2015.
2. The Court should enter a protective order prohibiting Bienes' deposition from going forward unless and until Plaintiffs have produced all documents responsive to Bienes' Third Request for Production (the "Third Request"), which was served to Plaintiffs nearly three months ago, on March 17, 2015.
3. Bienes needs these documents in order to adequately prepare for his deposition. In fact, these documents are already the subject of Bienes' Amended Motion to Compel, which was filed with the Court and served to the parties on Friday, June 5, 2015. A true and correct copy of the Amended Motion to Compel is attached as **Exhibit 1** and is incorporated herein by reference.
4. Bienes' attorneys have repeatedly conferred in good faith with Plaintiffs' counsel in order to obtain this discovery without the need for court action, but have been unable to do so.

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5. In fact, nearly a month ago, on May 1, 2015, Bienes' counsel sent Plaintiffs' attorneys an e-mail outlining what he believed to be a reasonable plan for discovery and addressing how best to get this case ready for trial. The letter again stressed the importance of Bienes' receiving the documents that are the subject of the Third Request in advance of Bienes' sitting for his deposition. The letter also requested Plaintiffs' counsel to provide dates for Bienes' attorneys to take the depositions of the Conservator and of co-Defendant, Mr. Sullivan. A true and correct copy of the May 1st e-mail to Plaintiffs' attorneys is attached as **Exhibit 2**. Plaintiffs never responded to the May 1st e-mail. Plaintiffs have not produced any documents. And Plaintiffs have not provided any dates for Bienes' attorneys to take the Conservator's or Mr. Sullivan's deposition. Since Plaintiffs seem incapable or unwilling to honor their discovery obligations on their own, the Court should enter a Protective Order prohibiting Bienes' deposition from going forward until Plaintiffs have produced all documents responsive to the Third Request and provided Bienes' with dates for the Conservator's and Mr. Sullivan's depositions.

6. Plaintiffs will not be prejudiced if they are ordered to produce documents responsive to the Third Request before taking Bienes' deposition. By contrast, if Bienes is forced to sit for his deposition without the opportunity to first receive and review the documents that are the subject of the Third Request, he will be unduly prejudiced. Plaintiffs, then, will have succeeded in turning the discovery process in this case from a fact-finding endeavor to a trial by ambush. The Court should not permit them to do so.

CLP 5.3 Certification

In accordance with Rule 5.3 of the Complex Litigation Unit Procedures, the undersigned certifies that on June 8, 2015, he and Jonathan Etra conferred in good faith with Plaintiffs' counsel Leonard K. Samuels, Esq. regarding the relief requested in this motion, but counsel have been unable to resolve the issues raised herein.

WHEREFORE, Bienes respectfully requests that this Court enter a Protective Order prohibiting Bienes' deposition scheduled for June 16, 2015, from going forward until such time as Plaintiffs have produced all documents responsive to the Third Request, and granting to Bienes any such other and further relief the Court deems just and proper.

Dated this 8th day of June, 2015.

Respectfully submitted,

/s/ Shane P. Martin

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Counsel for Defendant, Michael Bienes

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 8, 2015, this notice and the aforementioned interrogatories were served via E-mail to: (i) Thomas E. Messana, Esq., Thomas Zeichman, Esq., Messana, 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); and (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).

/s/ Shane P. Martin

Shane P. Martin, Esq.

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

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

Plaintiffs,

vs.

CASE NO.: CACE 12-034123 (07)

MICHAEL D. SULLIVAN, et al.,

Defendants.

**MICHAEL BIENES' AMENDED
MOTION TO COMPEL PLAINTIFFS TO PRODUCE
DOCUMENTS RESPONSIVE TO HIS THIRD REQUEST FOR PRODUCTION**

Defendant Michael Bienes, pursuant to Rule 1.380 of Florida Rules of Civil Procedure and Rule 5.15 of the Complex Litigation Unit Procedures, moves for an order compelling Plaintiffs to immediately produce all documents responsive to his Third Request for Production. In support, Bienes states:

1. On March 17, 2015, Bienes served Plaintiffs with his Third Request for Production ("Third Request"), a copy of which is attached as **Exhibit A**.
2. On April 21, 2015, Plaintiffs served their Responses and Objections to the Third Request ("Response"), a copy of which is attached as **Exhibit B**.
3. Plaintiffs have, throughout this action, employed a host of tactics designed to help them avoid their discovery obligations. All the while, Plaintiffs have amended their complaint *five* times, significantly expanding the scope of this lawsuit as well as their claims against Bienes. What began as a case over allegedly improper commissions and management fees now involves claims seeking millions of dollars in damages from Bienes relating to alleged investments in BLMIS.

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4. Now, in their Fifth Amended Complaint, Plaintiffs allege that Bienes, along with Defendant Frank Avellino, created a “network of ‘front men’ feeder fund partnerships and charitable foundations throughout the United States to invest in BLMIS,” two of which Plaintiffs claim to have been the Partnerships at issue in this lawsuit. *See* Fifth Am. Compl. ¶ 20. According to Plaintiffs, Bienes and co-Defendant Avellino exercised control over the partnerships and made sure Sullivan managed the partnerships in accordance with their wishes. *See* Fifth Am. Compl. ¶¶ 26-36.

5. The Response is just further evidence of Plaintiffs’ litigation strategy: cherry-pick through reams of documents, producing only those Plaintiffs believe are beneficial to their case while withholding documents that refute their claims or would assist Bienes in preparing his defense. Put another way, Plaintiffs seem to be intent on a trial by ambush.

6. Bienes does not make this charge lightly. To the contrary, Bienes has good reason to believe that the Plaintiffs have received various documents in this action and in others, either by way of document request, subpoena, or informally, that are not only discoverable by Bienes, but that have been withheld because they tend to show Plaintiffs’ allegations against him are baseless. By way of example, at the only deposition taken in this case thus far—that of non-party husband and wife James and Valerie Judd—in questioning Mr. and Mr. Judd, Plaintiffs’ attorneys were repeatedly caught referencing or relying on documents they obtained in connection with another litigation but that had not been produced to Bienes. In an effort to bring these documents to the light of day, Bienes served the Third Request.

7. The Third Request seeks only two categories of documents from Plaintiffs. Request a. seeks “All documents You obtained via document request, subpoena, or informally in this litigation, in any other litigation in which the Conservator is involved, or otherwise.”

Request b. seeks “All documents produced by the Conservator in any litigation in which the Conservator is involved.”

8. Despite the straightforward nature of these requests, Plaintiffs refuse to produce any documents and instead have interposed various improper and baseless objections. Plaintiffs assert improper general objections, including objections to Bienes’ definitions and instructions. These should be overruled out of hand, if not entirely stricken.

9. To make matters worse, Plaintiffs object to each request on the grounds that it is “overly broad in scope, unduly burdensome, and seeks documents not reasonably likely to lead to the discovery of admissible evidence in this action.” Asserting conclusory, boilerplate objections that the requests are “unduly burdensome and overly broad” without providing any factual support is improper and sanctionable. *First City Developments of Florida, Inc. v. Hallmark of Hollywood Condo. Ass’n, Inc.*, 545 So. 2d 502, 503 (Fla. 4th DCA 1989) (objections that discovery is “overly broad” and “burdensome” have “little meaning without substantive support”); *First Healthcare Corp. v. Hamilton*, 740 So. 2d 1189, 1194 (Fla. 4th DCA 1999) (holding that where a party objects to discovery requests by boilerplate objections without any merit, such objections are not made in good faith and are sanctionable). Plaintiffs’ objections should therefore be overruled and Plaintiffs compelled to immediately produce all documents responsive to the Third Request.

10. Contrary to Plaintiff’s position, documents the Conservator has obtained or produced in this and other actions are patently relevant to the matters at issue in this lawsuit. A brief look at the background of the Conservator’s appointment makes this abundantly clear.

11. The Conservator was appointed on January 17, 2013, and charged with, among other things, gathering the assets of the Partnerships and distributing them to the limited partners.

Since his appointment, the Conservator has become involved in four actions pending in this court, including the instant action.

12. The first of those four is an action styled as *P&S Associates, General Partnership, et al v. Roberta P. Alves, et al.* Case No.: 12-028324 (07). This is an action by the Partnerships against investors/partners. The complaint was for interpleader and declaratory relief, in which the Partnerships sought a declaration as to the proper method of distribution of the Partnership monies, including settlement funds received by the Partnerships from the Trustee of BLMIS. Among other things, it is alleged in this action that certain of the investors received commissions and/or referral fees which should be used as a set-off for the particular investors. Although it cannot be determined from the docket sheet or the Conservator's website the full extent of discovery conducted in this particular case, based on pleadings filed it is clear the Conservator received the Partnerships' accounting records from Glass Ratner, and that the Conservator elicited if not received additional information from the Partnerships' principals and related entities. All of this information is relevant and discoverable by Bienes in the context of the instant lawsuit. In addition, depositions of investors were noticed and presumably taken in that litigation. Such sworn testimony would be relevant and discoverable, here.

13. The second case is styled as *Margaret Smith, et al v. Janet A. Hooker Charitable Trust, et al.*, Case No.: 12-34121 (07). This action was brought by Margaret Smith on behalf of the Partnerships against individual investors. The complaint alleges improper distributions from capital contributions of other partners not from profits, breach of contract, unjust enrichment, money had and received, and fraudulent transfer. From what can be gleaned from the public records, similar to the above case, the discovery in this case relates to the knowledge of the investors, what information and documents the investors and partnerships have in their

possession and/or control. It also refers specifically to what involvement, if any, the Defendants, such as Bienes, had in bringing the investors to the Partnerships. (The interrogatories served on Defendants ask questions related to how they became invested in the Partnership, and to identify any communications with specific individuals/entities, such as Sullivan, Steven Jacob, Frank Avellino, Michael Bienes, Kelco Foundation and Vincent Kelly.) Such discovery is relevant to this lawsuit and is discoverable by Bienes.

14. The third case is styled *Matthew Carbone, as Trustee, etc., et al v. Michael D. Sullivan*, Case No.: 12-24051 (07). This action was brought by an individual investor, represented by the Conservator's attorneys, against Michael Sullivan. The Verified Complaint alleged Sullivan diverted millions of dollars from the Partnerships to pay additional management fees and commissions to co-conspirators and sought a temporary injunction against Sullivan. Again, although it is difficult if not impossible to know from the public filings all the discovery exchanged in the context of this lawsuit, it is revealed that the Conservator has possession of the Partnership books and records; conducted meetings with investors, Sullivan, and professionals. For example, a notice of production was served on Becker & Poliakoff LLP and Helen Davis Chaitman, requesting partnership books and records and other documents. There are pleadings filed which dispute the issue of whether or not all books and records were turned over in discovery and pursuant to court orders. The alleged diversion of Partnerships' assets pursued in this action form the basis for the claims against Avellino in the instant action and, thus, documents from such action are clearly relevant. Moreover, when the Conservator or its attorneys obtained Partnership records and thus, allegedly became aware of the payments allegedly made to Bienes which Plaintiffs seek to recover in this action, is directly relevant to the

defense based on the statute of limitations that the instant action is time-barred. Accordingly, the discovery obtained is relevant to the instant lawsuit; and

15. The fourth of these cases is the instant lawsuit, which was filed on December 12, 2012. Prior to and subsequent to Bienes' being served in this matter, discovery such as documents and interrogatory answers have been obtained from the other parties in this matter, and non-parties, but have not been provided to Bienes. Any discovery which has been obtained in this lawsuit is indisputably relevant and discoverable and should be provided to Bienes without further delay.

16. For the foregoing reasons, Plaintiffs' objections should be overruled and they should be compelled to immediately provide documents responsive to the Third Request.

17. Plaintiffs also should be sanctioned for their unjustified refusal to respond to Bienes' legitimate discovery requests. Pursuant to Fla. R. Civ. P. 1.380(a)(4), the court "shall require the party ... whose conduct necessitated the motion [to compel] ... to pay to the moving party the reasonable expenses incurred in obtaining the order including attorneys' fees, unless the court finds that the movant failed to certify in the motion that a good faith effort was made to obtain the discovery without court action, that the opposition to the motion was substantially justified, or that other circumstances make an award of expenses unjust." Plaintiffs' continued indifference toward their discovery obligations and their insistence on a trial by ambush have unnecessarily prolonged this action and hampered Bienes' ability to prepare for trial. An award of Bienes' reasonable expenses including the attorneys' fees he has incurred in connection with this Motion would be just and proper.

CLP 5.3 Certification

In accordance with Rule 5.3 of the Complex Litigation Unit Procedures, the undersigned certifies that he has conferred in good faith with Plaintiffs' counsel regarding the relief requested in this Motion, but counsel have been unable to resolve the issues raised herein.

WHEREFORE, Bienes respectfully requests that this Court enter an Order: (i) compelling Plaintiffs provide all documents responsive to the Third Request within seven (7) days of the Court's Order together with a privilege log of any documents withheld from production on the basis of a recognized privilege; (ii) awarding Bienes the reasonable attorneys' fees he incurred in connection with this Motion; and (iii) granting to Bienes any such other and further relief the Court deems just and proper.

Dated this 5th day of June, 2015.

Respectfully submitted,

/s/ Shane P. Martin

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I HEREBY CERTIFY that on June 5, 2015, this notice and the aforementioned interrogatories were served via E-mail to: (i) Thomas E. Messana, Esq., Thomas Zeichman, Esq., Messana, 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); and (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).

/s/ Shane P. Martin

Shane P. Martin, Esq.

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
THIRD REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF**

Defendant, Michael Bienes ("Bienes"), pursuant to Fla. R. Civ. P. 1.350 and 1.351,
hereby requests that Plaintiff, Philip J. Von Kahle, as Conservator of P&S General Partnership
and S&P General Partnership ("Plaintiff"), provide the documents requested herein within thirty

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EXHIBIT "A"

(30) days of receipt hereof in accordance with the Definitions and Instructions provided.

DEFINITIONS AND INSTRUCTIONS

1. "Partnerships" shall mean P&S Associates, General Partnership, and S&P Associates, General Partnership.

2. "You" or "Your" shall mean the Partnerships and their partners, associates, members, representatives, agents, attorneys, or anyone acting or purporting to act on their behalf, including the Conservator.

3. "Bienes" shall mean Defendant, Michael Bienes.

4. "Sullivan" shall mean Defendant, Michael D. Sullivan.

5. "Powell" shall mean alleged Managing General Partner of the Partnerships, Gregory Powell, now deceased.

6. "Avellino" shall mean Defendant, Frank Avellino.

7. "Kelly" shall mean Defendant, Vincent T. Kelly.

8. "Jacob" shall mean Defendant, Steven F. Jacob.

9. "Holloway" shall mean Defendant, Scott Holloway.

10. "Barone" shall mean Defendant, Vincent Barone.

11. "Kelco" shall mean Defendant, Kelco Foundation, Inc.

12. "BLMIS" shall mean Bernard L. Madoff Investment Securities, LLC.

13. 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.

14. 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.

15. 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.

16. 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.

17. If you claim the attorney-client or other privilege or the work product doctrine is applicable to any document the production of which is sought by the requests below, then with respect to each such document, you **must provide a privilege log** which identifies the document by stating the type, author(s), addressee(s) and recipient(s), present and previous custodian, location, subject matter, and sufficient additional information to explain the claim of privilege and to enable adjudication of the propriety of that claim.

18. If any document the production 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.

19. 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.

20. 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.

21. "And" and "or" shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of this Request all responses that might otherwise be construed to be outside its scope.

22. If any document the production 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.

23. All other names or terms herein not specifically defined or identified shall have the same meaning as is commonly understood and referred to by and among the parties. Except as otherwise defined above, all capitalized terms herein shall have the same meaning and definition as described or referenced in the Complaint.

DOCUMENT REQUESTS

- a. All documents You obtained via document request, subpoena, or informally in this litigation, in any other litigation in which the Conservator is involved, or otherwise.
- b. All documents produced by the Conservator in any litigation in which the Conservator is involved.

Dated this 17th day of March, 2015.

Respectfully submitted,

/s/ Jonathan Etra

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Counsel for Defendant, Michael Bienes

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 17, 2015, 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, tmessana@bellsouth.net, mwslawfirm@gmail.com, 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, vleon@bergersingerman.com, emark@bergersingerman.com, lyun@bergersingerman.com, drt@bergersingerman.com, sweber@bergersingerman.com, mvega@bergersingerman.com, zhyman@bergersingerman.com, clamb@bergersingerman.com); Peter G. Herman, Esq., Tripp Scott, 110 S.E. 6th Street, 15th Floor, Ft. Lauderdale, FL 33301 (pgh@trippscott.com, rep@trippscott.com, ele@trippscott.com); Paul V. DeBianchi, Esq., Paul V. DeBianchi, P.A., 111 S.E. 12th Street, Ft. Lauderdale, FL 33316 (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, bpetroni@haileshaw.com, eservices@haileshaw.com, syoffee@haileshaw.com, 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. 41st 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, athomson@proskauer.com, 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, eservice@huntgross.com, Sharon@huntgross.com).

/s/ Jonathan Etra

Jonathan Etra

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

COMPLEX LITIGATION UNIT

PHILIP J. VON KAHLE, as Conservator of
P&S Associates, General Partnership and
S&P Associates, General Partnership

CASE NO.: 12-034123 (07)

Plaintiffs,

v.

MICHAEL D. SULLIVAN, et al.,

Defendants.

**PLAINTIFFS' RESPONSES AND OBJECTIONS TO DEFENDANT,
MICHAEL BIENES' THIRD REQUEST FOR PRODUCTION OF DOCUMENTS**

Plaintiffs, by and through the undersigned counsel, hereby provide responses and objections to Defendant Michael Bienes' ("Bienes") Fifth Request for Production of Documents to Plaintiffs (the "Requests"), pursuant to Rule 1.350 of the Florida Rules of Civil Procedure.

GENERAL OBJECTIONS

Plaintiffs object to producing documents that are protected by the attorney-client privilege, attorney work product doctrine, or any other applicable privilege.

OBJECTIONS TO DEFINITIONS

1. Plaintiffs object to the definition of "You" in Definition #1 of the Requests as vague, ambiguous, unduly burdensome, and overly broad in scope because it demands Plaintiffs produce documents concerning P&S Associates, General Partnership's and S&P, Associates, General Partnership's (collectively, the "Partnerships") "partners, associates, members, representatives, agents, attorneys, or anyone acting or purporting to act on Plaintiff's behalf or under his control" which may include entities or persons over which Plaintiffs lack any control

EXHIBIT "B"

or from which Plaintiffs have no ability to obtain documents and persons or entities of which Plaintiffs have no knowledge. Plaintiffs are unable to obtain and produce responsive documents from persons who purport to act on behalf of Plaintiffs without Plaintiffs' knowledge. Plaintiffs object to the definition of "You" to the extent that it seeks privileged communications with their attorneys and accountants.

RESPONSES AND OBJECTIONS TO REQUESTS FOR PRODUCTION

a. All documents You obtained via document request, subpoena or informally in this litigation, in any other litigation in which the Conservator is involved or otherwise.

Objections:

Plaintiffs object to this request as vague and ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence because the term "Conservator" is undefined and is susceptible to more than one interpretation.

Plaintiffs object to this request on the grounds that it is vague and ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence because it is unclear from the undefined terms "informally" and "or otherwise" what is the scope of this request as the Conservator is involved in and receives documents in numerous contexts, proceedings, and actions that do not concern the claims or defenses in this action.

Plaintiffs object to this request because it is not constrained by any time limitation and requesting all documents obtained "via document request, subpoena or informally . . . in any other litigation in which the Conservator is involved or otherwise" is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence because the Conservator is involved in and receives documents in numerous contexts, proceedings, and actions that do not concern the claims or defenses in this action. To the extent

that this Request seeks documents which were produced to the Conservator in litigation where the Partnerships are named as parties, it may seek documents that were produced pursuant to a confidentiality order.

Plaintiffs object to this request because it may seek documents which were produced to the Conservator pursuant to a confidentiality order.

Plaintiffs object to this request because it may seek documents that are publicly available, including but not limited to documents available at <http://www.floridaconservator.com/>

Response:

Plaintiffs cannot determine what, if any, privileged documents are responsive to this request because it is overly broad in scope, unduly burdensome, and seeks documents not reasonably likely to lead to the discovery of admissible evidence in this action, for the reasons stated above. Plaintiffs will serve a privilege log identifying any privileged documents that are responsive to this request after the Court rules on Plaintiffs' objections to this request and determines the permissible scope of this request. *State Farm Fla. Ins. Co. v. Coburn*, 136 So. 3d 711 (Fla. 2d DCA 2014) (“[A] party is required to file a [privilege] log only if the information is otherwise discoverable”); *see also Gosman v. Luzinski*, 937 So. 2d 293, 296 (Fla. 4th DCA 2006) (“Where a party claims that the production of documents is burdensome and harassing, such as was done here, the scope of the discovery is at issue. Until the court rules on the request, the party responding to the discovery does not know what will fall into the category of discoverable documents”).

b. All documents produced by the Conservator in any litigation in which the Conservator is involved.

Objections:

Plaintiffs object to this request as vague and ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence because the term "Conservator" is undefined and is susceptible to more than one interpretation.

Plaintiffs object to this request because it is not constrained by any time limitation and requesting all documents "produced by the Conservator in any litigation in which the Conservator is involved" is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence because the Conservator is involved in and produces documents in numerous litigations that do not concern the claims or defenses in this action. To the extent that this request seeks documents which the Conservator produced in litigation where the Partnerships are named as parties, it may seek documents that were produced pursuant to a confidentiality order.

Plaintiffs object to this request because it may seek documents which were produced by the Conservator pursuant to a confidentiality order.

Plaintiffs object to this request because it may seek documents that are publicly available, including but not limited to documents available at <http://www.floridaconservator.com/>

Response:

Plaintiffs cannot determine what, if any, privileged documents are responsive to this request because it is overly broad in scope, unduly burdensome, and seeks documents not reasonably likely to lead to the discovery of admissible evidence in this action, for the reasons stated above. Plaintiffs will serve a privilege log identifying any privileged documents that are responsive to this request after the Court rules on Plaintiffs' objections to this request and determines the permissible scope of this request. *State Farm Fla. Ins. Co. v. Coburn*, 136 So. 3d 711 (Fla. 2d DCA 2014) ("[A] party is required to file a [privilege] log only if the information is

otherwise discoverable"); *see also Gosman v. Luzinski*, 937 So. 2d 293, 296 (Fla. 4th DCA 2006) ("Where a party claims that the production of documents is burdensome and harassing, such as was done here, the scope of the discovery is at issue. Until the court rules on the request, the party responding to the discovery does not know what will fall into the category of discoverable documents").

Dated: April 21, 2015

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of April, 2015, a true and correct copy of the foregoing document was served on the following parties:

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By: s/Leonard K. Samuels
Leonard K. Samuels

Shane Martin

From: Jonathan Etra
Sent: Friday, May 01, 2015 3:43 PM
To: 'Leonard K. Samuels'; 'Steven D. Weber'; 'Thomas M. Messana (tmessana@messana-law.com)'; 'Thomas Zeichman (tzeichman@messana-law.com)'; 'Michelle L. Albrecht'; 'Gary Woodfield (gwoodfield@haileshaw.com)'; Mark Raymond; Shane Martin; 'Zachary P. Hyman'
Subject: Case Management

Dear Lenny and Steve,

I am writing about case management and specifically how to get this case on track and ready for trial, in the hope that we can work together to get past the discovery disputes.

We now have a complaint that needs to be answered and so hopefully the pleadings will soon be closed.

The question becomes how to manage and coordinate discovery, hopefully, in a constructive fashion.

Here is our position. First, we need your documents. I was extremely disappointed in your response to our third request for production. We are separately contacting you to meet and confer about this failing. While you can force us to file a motion to compel and set a hearing, that will only delay this case and prevent depositions from going forward. You are the plaintiff. We would think you would want to produce the documents and get this issue behind you so you move forward to trial.

Second, we need the depositions of the conservator and Mr. Sullivan. As to the Conservator, he is the plaintiff, and we need to make sure we have our discovery and frankly ask the questions we need to ask to deal with the allegations that the conservator has made. As to Mr. Sullivan, he is a most critical witness to the facts underlying your allegations.

After we get the documents, we can proceed with these depositions to be followed by the Defendants and their spouses subject to the the Judge's recent orders.

Please feel free to call me to discuss.

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

CASE NO. 12-034123 (7)

S&P ASSOCIATES, GENERAL PARTNERSHIP,
ET AL.,

Plaintiffs,

v.

STEVEN F. JACOB, an individual, ET AL.,

Defendants.

**ORDER GRANTING IN PART AND DENYING IN
PART DEFENDANT FRANK AVELLINO'S MOTION
FOR PROTECTIVE ORDER REGARDING HIS DEPOSITION**

THIS MATTER came before the Court on Defendant Frank Avellino's Motion for Protective Order Regarding His Deposition (the "Motion"). The Court, having reviewed the Motion, having heard argument from counsel for the parties, and being otherwise duly advised in the premises, it is, hereby

ORDERED and **ADJUDGED** as follows:

1. The Motion is GRANTED in part and DENIED in part as follows:
 - a. Defendant Frank Avellino ("Avellino") is excused from appearing for deposition on July 17, 2015, as previously ordered by this Court's order dated June 16, 2015.
 - b. Defendant Avellino shall appear for deposition on September 9, 2015, at Berger Singerman LLP, One Town Center Road, Suite 301, Boca Raton, Florida 33486 at 10:00 a.m (the "Deposition").
 - c. Defendant Avellino's failure to appear at the Deposition may result in the imposition of sanctions including but not limited to striking any and all

pleadings filed by Defendant Avellino in this action, as well as imposition against Defendant Avellino of an award of attorney's fees to Plaintiffs for all attorney's fees and costs incurred by Plaintiffs in preparing for the Deposition, Avellino's deposition scheduled for June 9, 2015, and Defendant Avellino's deposition scheduled for July 16, 2015.

d. In the event that Defendant Avellino does not appear for the Deposition, Defendant Avellino shall submit a notarized affidavit to the Court, no later than September 11, 2015, that sets forth the reasons that Defendant Avellino did not appear for the Deposition.

i. If Defendant Avellino does not appear for the Deposition due to any medical reason, Defendant Avellino shall submit to the Court, no later than September 11, 2015, a notarized affidavit by a licensed Doctor of Medicine ("M.D.") that sets forth the reasons that Defendant Avellino did not appear for the Deposition and that includes an attestation from the M.D. that due to Defendant Avellino's medical condition, which will be described in the affidavit, Defendant Avellino was physically unable to appear for the Deposition.

e. The depositions of Plaintiffs and Michael D. Sullivan shall not occur prior to Plaintiffs conducting the depositions of Defendant Avellino and Defendant Michael Bienes.

DONE AND ORDERED in Chambers this 28 day of July, 2015.



HONORABLE JACK TUTER
Circuit Court Judge

Copies furnished to:
All counsel of record