

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

**Case No: 12-034123(07)  
Complex Litigation Unit**

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

Plaintiffs,

v.

STEVEN JACOB, et al.,

Defendants.

**RE-NOTICE OF TAKING DEPOSITION *DUCES TECUM*  
OF NANCY AVELLINO**

**TO: ALL COUNSEL LISTED ON CERTIFICATE OF SERVICE**

**PLEASE TAKE NOTICE** that the undersigned attorneys will take the deposition of:

<b>Deponent</b>	<b>Date</b>	<b>Time</b>	<b>Location</b>
<b>NANCY AVELLINO</b>	<b>Tuesday September 22, 2015</b>	<b>10:00 a.m.</b>	<b>Berger Singerman LLP One Town Center Road Suite 301 Boca Raton, FL 33486</b>

Said deposition will be taken before a Notary Public or any officer authorized to administer oaths in the State of Florida, and a person who is neither a relative nor employee of such attorney or counsel, and who is not financially interested in this action. This deposition is being conducted pursuant to the Subpoena attached hereto as Exhibit 1. The deponent shall also

 **BERGER SINGERMAN**

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bring with her at the time of the deposition, all of the items as directed by the Court's Order dated May 20, 2015, attached hereto as Exhibit "A". The deposition is being taken for the purposes of discovery, for use at trial, or for such other purposes as are permitted under the Rules of Court.

The deposition will continue from day to day until completed and will be recorded via stenographic means.

Respectfully submitted,

BERGER SINGERMAN LLP  
*Attorneys for Plaintiffs*  
1450 Brickell Avenue, Suite 1900  
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By: s/Steven D. Weber

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cc: Friedman Lombardi, Court Reporters

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that on September 3, 2015, a copy of the foregoing was filed with the Clerk of the Court via the E-filing Portal, and served via Electronic Mail by the E-filing Portal upon:

Peter G. Herman, Esq.  
Tripp Scott  
110 SE 6<sup>th</sup> Street, 15<sup>th</sup> Floor  
Fort Lauderdale, FL 33301  
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pgh@trippscott.com  
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***Attorneys for Steven Jacob; Steven F. Jacob  
CPA & Associates, Inc.***

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cmarino@haileshaw.com  
***Attorneys for Defendant, Frank Avellino***

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Harry Winderman, Esq.  
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2255 Glades Road, Suite 218A  
Boca Raton, FL 33431  
Harry4334@hotmail.com  
***Attorneys for Michael D. Sullivan and  
Michael D. Sullivan & Associates, Inc.***

# *EXHIBIT 1*

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

COMPLEX LITIGATION UNIT

CASE NO.: 12-034123 (07)

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

Plaintiffs,

v.

STEVEN JACOB, et al.,

Defendants.

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**SUBPOENA DUCES TECUM WITH TAKING  
DEPOSITION OF NANCY AVELLINO ON ORAL TESTIMONY**

STATE OF FLORIDA:

To All Singular Sheriffs of Said State:

**TO: Nancy Avellino  
223 Coral Ln  
Palm Beach, FL 33480**

**YOU ARE HEREBY COMMANDED** to appear at the offices of **Berger Singerman, LLP, 2650 North Military Trail, Suite 240 Boca Raton, Florida 33431** (the “**Berger Singerman Office**”), on **September 22, 2015 at 10:00 a.m.** for the taking of your deposition in this action, 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 the production portion of 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 have the

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

If you fail to appear for your deposition 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: September 1, 2015

STEVEN D. WEBER

For the Court

By: s/ Steven D. Weber  
BERGER SINGERMAN 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 ESPESIAL POU AKOMODASIYON POU YO PATISIPE NAN PWOGRAM 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, INHABILTADOS, 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 "Nancy Avellino" as used herein means Nancy Avellino 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 Nancy Avellino.

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. Pursuant to Fed. R. Civ. P. 26(e), You are under a duty seasonably to supplement any response to these Requests for which You learn that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known during the discovery process or in writing.

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

## DOCUMENT REQUESTS

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 27 Cliff, LLC.
5. All documents concerning any transfers and/or payments of funds from Sullivan & Powell / Solutions In Tax to 27 Cliff, LLC.
6. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan to 27 Cliff, LLC.
7. All documents concerning any transfers and/or payments of funds from 27 Cliff, LLC to Avellino.
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 27 Cliff, LLC.
10. To the extent not already produced in response to a request, all documents concerning 27 Cliff, LLC.

**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

<b><u>Eclipse Metadata Field</u></b>	<b><u>Field Description</u></b>
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

# Exhibit A

*PHILIP J. VON KAHLE et al v. STEVEN JACOB ET AL.*

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

Case No. 12-034123 (07)  
Complex Litigation Unit

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

Plaintiffs,

vs.

MICHAEL D. SULLIVAN, et al.,

Defendants.

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**ORDER GRANTING PLAINTIFFS' MOTION TO COMPEL: (1) DEFENDANT FRANK  
AVELLINO TO PRODUCE DOCUMENTS AND (2) ISSUANCE OF SUBPOENA  
DUCES TECUM WITH DEPOSITION OF NANCY AVELLINO**

THIS MATTER came before the Court on Plaintiffs' Motion to Compel: (i) Defendant Frank Avellino to Produce Documents and (ii) Issuance of a Subpoena *Duces Tecum* with Deposition of Nancy Avellino (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 as follows.
2. Defendant Frank Avellino's (the "Defendant") general objection to time frame and specific objection to Plaintiffs' Fourth Request for Production of Documents to Defendant Frank Avellino (the "Requests") are overruled and Defendant shall serve an amended response within fifteen (15) days from the date of this order.



3. To the extent that Defendant asserts that a privilege (including objections based on personal or financial privacy) prevents production of any documents responsive to the Requests, Defendant shall produce a privilege log to Plaintiffs no later than May 20, 2015.

4. Defendant Frank Avellino's Objection to Plaintiff's Notice of Intent to Serve Subpoena *Duces Tecum* with Deposition Upon Nancy Avellino is overruled and a Subpoena *Duces Tecum* with Deposition Upon Nancy Avellino (the "Subpoena") may be issued.


5. Nancy Avellino has the right to object to the Subpoena, and this Court will hold a hearing on any objections that she asserts.

6. 45 days before her deposition pursuant to the Subpoena, Nancy Avellino shall:

- a. produce a privilege log that identifies all documents that are responsive to the Subpoena that she asserts are privileged (including objections based on personal or financial privacy) to Plaintiffs and Defendant; and
- b. produce documents responsive to the Subpoena that Nancy Avellino does not assert are privileged (the "Responsive Documents") to Defendant.

7. Within 10 days of Defendant receiving the Responsive Documents, Defendant shall (i) produce a privilege log identifying all the Responsive Documents that Defendant claims are privileged to Plaintiffs; and (ii) produce all the Responsive Documents that Defendant does not claim are privileged to Plaintiffs.

DONE AND ORDERED in Chambers this 20 day of May, 2015.

  
\_\_\_\_\_  
HONORABLE JACK TUTER  
Circuit Court Judge

Copies furnished to:

Thomas M. Messana, Esq. who is directed to serve same upon all interested parties.  
Nancy Avellino, 223 Coral Ln Palm Beach, FL 33480