

IN THE CIRCUIT COURT OF THE 17<sup>TH</sup>  
JUDICIAL CIRCUIT IN AND FOR  
BROWARD COUNTY, FLORIDA

CASE NO. 12-034123 (07)

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

Plaintiffs,

vs.

MICHAEL D. SULLIVAN, et al.,

Defendants.

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**DEFENDANT FRANK AVELLINO'S MEMORANDUM IN  
OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF  
DOCUMENTS PURSUANT TO PLAINTIFF'S THIRD REQUEST FOR PRODUCTION**

Defendant, Frank Avellino ("Avellino"), by and through his undersigned attorneys, files this Memorandum in Opposition to Plaintiff's Motion to Compel Defendant Frank Avellino to Produce Documents in Response to Plaintiff's Third Request for Production (the "Motion") and states as follows:

1. On June 11, 2014, Plaintiff served his third request for the production of documents to which Avellino timely served his response objecting to such further production of documents. Plaintiff has now moved to compel the production. Avellino's objections to the documents sought are appropriate. Consequently, Plaintiff's Motion should be denied.

2. Plaintiff's Requests 1 and 2 seek all documents "relating to" Bernard L. Madoff and his company, Bernard L. Madoff Investment Securities, LLC ("BLMIS") from January 1, 1960 to the present, a period of over 54 years. Initially, the term "related to" is hopelessly vague and Plaintiff's definition of such term in its request does not add clarity ("Related to" shall

mean, directly or indirectly, 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”). In any event, the only documents Avellino has responsive to these requests are those relating to his and his family’s personal investments with BLMIS.

3. For many years, Avellino, together with Michael Bienes, operated an investment business that invested with BLMIS (“A&B”). A&B ceased doing business in 1992 and Avellino no longer has any A&B records. Thus, to the extent that Plaintiff seeks records of A&B, Avellino has none.

4. Since 1992, Avellino has invested his and his family’s funds in BLMIS through various partnerships. Since 2004, this has been predominately through Aster Associates, a Florida general partnership. Documents generated from such investments consist of the monthly brokerage statements received from BLMIS, the communication relating to additions and withdrawals from such account and the Aster Associates’ accounting and tax documents. Presently, the only documents Avellino maintains with regard to such investments are some accounting records and tax returns. Aster Associates has no relationship to P&S and S&P, nor does it relate to nor is it relevant to the claims asserted in this action. Rather, these documents constitute personal financial information of Avellino and his family. These are the only documents that would be responsive to Requests 1 through 4.

5. As stated in Avellino’s response to Plaintiff’s document request, there are no documents responsive to Request No. 6. Thus, the only remaining request is Request No. 5, which seeks documents produced in an action brought against Avellino and others in New York Supreme Court. That action involved a claim brought by investors in Kenn Jordan Associates (“KJA”), a partnership established by Kenn Jordan that invested in BLMIS that Avellino

managed upon the death of Kenn Jordan. KJA had nothing to do with P&S or S&P and documents produced in that action have no relevance to the issues in this action.

6. Plaintiff's contention that the documents sought relate to claims asserted in the third amended complaint is inaccurate, but, in any event, no longer valid even if true since the court in granting in part Avellino's motion to dismiss the third amended complaint has dismissed those claims to which such documents purportedly relate.

7. Avellino hereby adopts the arguments asserted by Michael Bienes in his response to Plaintiff's motion to compel to the extent such arguments are applicable.

WHEREFORE, defendant, Avellino requests that this Court enter an order denying Plaintiff's motion to compel.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 10th day of September, 2014, 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.

**HAILE, SHAW & PFAFFENBERGER, P.A.**

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