

IN THE CIRCUIT COURT OF THE 17<sup>TH</sup>  
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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**DEFENDANT FRANK AVELLINO'S OBJECTION TO PLAINTIFFS' NOTICE OF  
INTENT TO SERVE SUBPOENA DUCES TECUM WITHOUT DEPOSITION UPON 27  
CLIFF, LLC**

Defendant, Frank Avellino, pursuant to Fla. R. Civ. P. 1.351, files this Objection to Plaintiffs' Notice of Intent to Serve Subpoena Duces Tecum Without Deposition Upon 27 Cliff, LLC (the "Notice"), and in support thereof, states as follows:

1. On October 23, 2015, Plaintiffs served the Notice, a copy of which is attached hereto as Exhibit "A".
2. The subpoena attached to the Notice contains ten requests covering a time period from January 1, 1993 to the present seeking documents some of which have been previously requested and produced, documents which have no relevance to this action, documents that are privileged and documents that impinge on the constitutional privacy rights of Avellino and his non-party wife. This request constitutes nothing more than continued harassment by Plaintiffs.
3. On January 23, 2015, Plaintiffs served their Fourth Request for Production of Documents to Defendant Frank Avellino, a copy of which is attached hereto as Exhibit "B". In

such request, Plaintiffs' Requests 4, 5, 6, 8 and 9 sought documents from 27 Cliff, LLC ("27 Cliff"). Even though Plaintiffs' request to Avellino for the production of 27 Cliff documents was improper, Avellino responded and produced responsive documents.

4. The only involvement 27 Cliff has with any of the allegations in this action is that it was the recipient of \$260,159.16 paid by Sullivan and Powell on behalf of Avellino. There is no dispute that 27 Cliff received such monies and Avellino, who was the sole manager of 27 Cliff, a Florida limited liability company formed in 2003, has produced the Account Quick Report from 27 Cliff that reflects the dates and amounts of payments it received from Sullivan and Powell. A copy of the Report is attached hereto as Exhibit "C".

5. Avellino objects to Requests 1, 2, 4 and 5 because such requests seek financial information of 27 Cliff, a non-party, which has no relevance to any of the issues raised by the pleadings in this matter. This action concerns payments made by Sullivan and Powell to Avellino. Avellino does not dispute that he received the funds paid to 27 Cliff and has previously produced documentary evidence of such payments. How such funds were subsequently spent has no relevance to this action. After years of exhaustive discovery, Plaintiffs cannot identify any evidence that 27 Cliff had any involvement in this matter. This is another classic attempt of Plaintiffs' fishing expedition in hopes of resurrecting their sinking action.

6. Avellino further objects to Requests 1, 2, 4 and 5 in that documents responsive to such requests seek personal financial information of Avellino and his non-party wife, production of which would constitute an invasion of their privacy. 27 Cliff was nothing more than a checking account utilized by Avellino and his wife. 27 Cliff was never involved in any business,

nor did it have any business dealings with Sullivan or Powell. The information requested is protected from discovery by Article 1, Section 23 of the Florida Constitution.

7. Avellino objects to Request 6 in that it seeks privileged communication subject to a joint defense agreement among the parties.

8. Avellino objects to Request 7 in that it seeks privileged accountant client communication.

WHEREFORE, Defendant, Frank Avellino, respectfully requests the entry of an order sustaining Defendant's objection to the Notice, denying Plaintiffs' request to issue the subpoena on 27 Cliff and such other and further relief as this Court deems necessary and proper.

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

*Attorneys for Defendant Frank Avellino*

660 U.S. Highway One, Third Floor

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Phone: (561) 627-8100

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By: /s/ Gary A. Woodfield  
Gary A. Woodfield, Esq.  
Florida Bar No. 563102

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 6th day of November, 2015, 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.

By: /s/ Gary A. Woodfield  
Gary A. Woodfield, Esq.  
Florida Bar No. 563102

SERVICE LIST

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*Attorneys for Michael Bienes*

**IN THE CIRCUIT COURT OF THE  
17TH 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; 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,

v.

STEVEN JACOB, AN INDIVIDUAL, STEVEN F.  
JACOB, CPA & ASSOCIATES, INC., A  
FLORIDA CORPORATION, FRANK  
AVELLINO, AN INDIVIDUAL, AND MICHAEL  
BIENES, AN INDIVIDUAL,

Defendants.

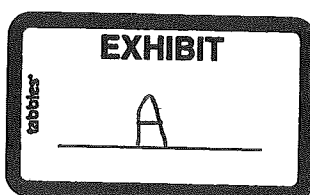
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**NOTICE OF INTENT TO SERVE SUBPOENA DUCES TECUM  
WITHOUT DEPOSITION UPON 27 CLIFF, LLC**

TO: See all counsel on attached Certificate of Service

**YOU ARE HEREBY** notified that after ten (10) days from receipt of this notice, if  
service is by delivery, or fifteen (15) days from the date of service if service is by mail, and if no  
objections are received from any party, the undersigned will issue the attached Subpoena *Duces  
Tecum* Without Deposition, pursuant to Fla. R. Civ. P. 1.351(c) upon the following:

**27 Cliff, LLC  
By Serving it's Registered Agent, Frank Avellino  
223 Coral Ln  
Palm Beach, FL 33480**



The materials received pursuant to the attached Subpoena will be used for discovery, for use at trial, or for such other purposes as are permitted under the applicable Florida Statutes and Florida Rules of Civil Procedure.

October 23, 2015

By: /s/ Steven D. Weber  
Steven D. Weber  
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## SERVICE LIST

I HEREBY CERTIFY that on this 23rd day of October, 2015, the foregoing was filed using the Florida Courts E-Filing Portal, which sent notification to the following parties:

Peter G. Herman, Esq.  
Tripp Scott  
110 SE 6<sup>th</sup> Street  
15<sup>th</sup> Floor  
Fort Lauderdale, FL 33301  
Tel.: 954-525-7500  
Fax.: 954-761-8475  
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*Attorneys for Steven Jacob; Steven F. Jacob  
CPA & Associates, Inc.*

Gary A. Woodfield, Esq.  
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Miami, FL 33131  
Tel.: 305-373-9400  
Fax.: 305-373-9443  
*Attorneys for Michael Bienes*

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



**IN THE CIRCUIT COURT OF THE  
17TH 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; 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,

v.

STEVEN JACOB, AN INDIVIDUAL, STEVEN F.  
JACOB, CPA & ASSOCIATES, INC., A  
FLORIDA CORPORATION, FRANK  
AVELLINO, AN INDIVIDUAL, AND MICHAEL  
BIENES, AN INDIVIDUAL,

Defendants.

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**SUBPOENA DUCES TECUM WITHOUT DEPOSITION OF 27 CLIFF, LLC**

STATE OF FLORIDA:

To All Singular Sheriffs of Said State:

**TO: 27 Cliff, LLC  
By Serving it's Registered Agent, Frank 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 **November 13, 2015 at 11:00 a.m.** and to produce the documents listed on **Schedule "A"**. All electronically stored information ("**ESI**"), as defined herein, shall be produced in accordance with the definitions and instructions attached hereto as **Exhibit "A"**.

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 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** and fail to execute and complete the affidavit attached hereto as **Schedule C**, 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: October 23, 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 ESPESIJAL 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 "27 Cliff, LLC" as used herein means 27 Cliff, LLC and includes any and all agents, employees, servants, officers, directors, managers, attorneys and any other person or entity acting or purporting to act on its behalf, or any other entity or person under the direct control of 27 Cliff, LLC.

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, 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.

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

F. "Sullivan" as used herein means Michael D. Sullivan, 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.

G. "Michael D. Sullivan & Associates, Inc." as used herein means Michael D. Sullivan & Associates, Inc., 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.

H. Sullivan & Powell, Inc. as used herein means Sullivan & Powell, Inc., 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.

I. Solutions in Tax, Inc. as used herein means Solutions in Tax, Inc., 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.

J. "Powell" as used herein means Gregory O. Powell.

K. "BLMIS" as used herein means Bernard L. Madoff Investment Securities, LLC

L. "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.

M. "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.

N. 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 "B"**.

O. "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.

P. "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.

Q. "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.

R. 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.

S. 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.

T. 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.

U. 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.

V. 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.

W. 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.

X. 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.

Y. 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.

Z. 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

AA. 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.

BB. 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.

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

DD. You are required to execute and complete the affidavit attached hereto as **Schedule "C"**, in connection with any documents produced in response to this Subpoena.

### DOCUMENT REQUESTS

1. All documents concerning any transfers and/or payments of funds from You to Avellino or any other person or entity, including but not limited to all cancelled checks, or wire transfer support.

2. All tax returns that You filed, or that were filed on your behalf with the Internal Revenue Service, between January 1, 1999 and the present.

3. All documents and communications related to any transfers of funds and/or payments between You and Sullivan; Michael D. Sullivan & Associates, Inc.; Sullivan & Powell, Inc.; and/or Solutions in Tax, Inc.

4. All documents pertaining to all open or closed checking, savings, bank credit cards, NOW, Time or other deposit or checking account in Your name or under Your signatory authority, including but not limited to applications for credit, credit reports, monthly statements, financial statements, signature cards, corporate board authorization minutes, bank statements, cancelled checks, deposit checks, wire transfer forms, credit and debit memorandums, IRS Form 1099, IRS Form 1089, correspondence, or back-up withholding documents.

5. All Forms 4789 and Form 4790 filed with the Department of Treasury, Internal Revenue Service or the United States Customs Service by You between January 1, 2000 and the present, concerning currency transaction conducted by You or on Your behalf.

6. All documents exchanged between You and Bienes, including but not limited to any documents exchanged between You and Bienes' lawyers.

7. All documents and communications exchanged between You and Ahearn Jasco & Company, P.A. related to S&P; P&S; Sullivan; Michael D. Sullivan & Associates, Inc.; Sullivan & Powell, Inc.; and/or Solutions in Tax, Inc.

8. All documents and communications related to S&P and/or P&S.

9. All documents and communications related to Sullivan; Michael D. Sullivan & Associates, Inc.; Sullivan & Powell, Inc.; and/or Solutions in Tax, Inc.

10. All documents and communications between You and Sullivan; Michael D. Sullivan & Associates, Inc.; Sullivan & Powell, Inc.; Solutions in Tax, Inc.; S&P; P&S; any partner of S&P; and/or any partner of P&S.

#### **SCHEDULE "B"**

#### **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

SCHEDULE "C"

**AFFIDAVIT OF RECORDS CUSTODIAN OF 27 CLIFF, LLC  
CERTIFYING RECORDS**

BEFORE ME, the undersigned authority, personally appeared \_\_\_\_\_, the Records Custodian of 27 Cliff, LLC who, does hereby state and declare as follows:

1. My name is \_\_\_\_\_. I am the Records Custodian of 27 Cliff, LLC.

2. I have personal knowledge of the facts set forth in this Declaration and am otherwise competent to testify as to the facts set forth herein.

3. On \_\_\_\_\_, 27 Cliff, LLC furnished to Philip Von Kahle, as Conservator of P&S Associates, General Partnership and S&P Associates, General Partnership, **documents bearing the Bates Nos.** \_\_\_\_\_ pursuant to the \_\_\_\_\_, 2015 Subpoena *Duces Tecum* Without Deposition of 27 Cliff, LLC.

4. These documents are true, correct and authentic copies of business records of 27 Cliff, LLC. They contain information supplied by or transmitted by persons with knowledge acting within the course of 27 Cliff, LLC's regularly conducted business activity. They are kept in the course of 27 Cliff, LLC's regularly conducted business activity. In addition, they are the types of documents that 27 Cliff, LLC regularly makes and relies upon when engaging in its business activities.

5. I declare, certify, verify and state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
**Signature of Records Custodian of 27 Cliff, LLC**  
**Print name:** \_\_\_\_\_

**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; 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,

v.

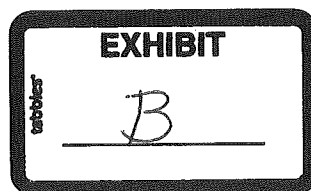
STEVEN JACOB, an individual, STEVEN  
F. JACOB, CPA & ASSOCIATES, INC., a  
Florida corporation, FRANK AVELLINO,  
an individual, and MICHAEL BIENES, an  
individual,

Defendants.

---

**PLAINTIFFS' FOURTH REQUEST FOR PRODUCTION OF DOCUMENTS TO  
DEFENDANT FRANK AVELLINO**

Pursuant to Rule 1.350 of the Florida Rules of Civil Procedure, Plaintiffs, P&S Associates, General Partnership ("P&S"), S&P Associates, General Partnership ("S&P") and Philip Von Kahle as Conservator on behalf of P&S and S&P ("Conservator") (collectively and individually referred to as, the "Partnerships" or "Plaintiffs"), by and through their undersigned attorneys, request that Defendant Frank Avellino ("Defendant"), produce the following described documents and tangible things in



accordance with Rule 1.350 and the definitions and instructions stated below, at the offices of Berger Singerman, 350 East Las Olas Blvd, Suite 1000, Fort Lauderdale, FL 33131, within 30 days of service of this Request.

### **DEFINITIONS AND INSTRUCTIONS**

As used in this request, the following words shall have their common meanings and shall include the meanings indicated:

A. "Request" or "Requests" as used herein means the Document Requests listed below.

B. "You", "Your", or "Avellino" as used herein means independently and/or collectively, Frank Avellino, and includes any and all agents, employees, servants, officers, directors, attorneys and any other person or entity acting or purporting to act on Your behalf.

C. "P&S" as used herein means independently and/or collectively, 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.

D. "S&P" as used herein means independently and/or collectively, 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.

E. "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.

F. "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.

"Documents" shall also include all electronic data storage documents including but not limited to e-mails and any related attachments, electronic files or other data compilations which relate to the categories of documents as requested below. Your search for these electronically stored documents shall include all of your computer hard drives, floppy discs, compact discs, backup and archival tapes, removable media such as zip drives, password protected and encrypted files, databases, electronic calendars, personal digital assistants, proprietary software and inactive or unused computer disc storage areas.

The meaning of "Documents" shall be construed as broadly as permitted by the Florida Rules of Civil Procedure.

G. "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.

H. “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.

I. “Identify” as used herein shall mean:

1. 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;

2. 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;

3. 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;

4. 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

5. 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.

J. 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.

K. 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.

L. 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.

M. 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.

N. 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.

O. 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.



P. Production of Electronically Stored Information (“ESI”) or any electronically stored data shall be in native format unless otherwise agreed, consistent with Schedule A. 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.

Q. 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

R. 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.

S. 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.

T. Pursuant to the Florida Rules of Civil Procedure, 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.

U. Unless otherwise specified herein, the time frame for each Request is from and including January 1, 1992 to the present.

**SCHEDULE "A"**

**Production of Electronically Stored Information (ESI)  
FORM OF PRODUCTION**

Plaintiffs request 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

## 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 sent from Sullivan & Powell / Solutions In Tax, Michael D. Sullivan, and/or Michael D. Sullivan & Assoc to You.
8. All documents sent from Sullivan & Powell / Solutions In Tax, Michael D. Sullivan, and/or Michael D. Sullivan & Assoc to 27 Cliff, LLC.
9. To the extent not already produced in response to a request, all documents concerning 27 Cliff, LLC.
10. All documents concerning the “referral fees” that You identified in Your Response to Interrogatory No 12. of Plaintiffs’ First Set of Interrogatories to Defendant Frank Avellino.

11. All documents concerning the “referral fees” that You identified in Your Response to Interrogatory No. 24 of Plaintiffs’ First Set of Interrogatories to Defendant Frank Avellino.

12. All documents and communications exchanged between You and any person identified in response to Interrogatory No. 1 of Frank Avellino’s First Set of Interrogatories that relate to S&P and/or P&S.

Respectfully submitted,

BERGER SINGERMAN LLP  
*Attorneys for Plaintiffs*  
350 East Las Olas Blvd, Suite 1000  
Fort Lauderdale, FL 33301  
Telephone: (954) 525-9900  
Facsimile: (954) 523-2872

By: s/Leonard K. Samuels  
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Steven D. Weber  
Florida Bar No. 47543  
sweber@bergersingerman.com

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 23rd day of January, 2015, a true and correct copy of the foregoing was served upon the following parties:

Peter G. Herman, Esq.  
Tripp Scott  
110 SE 6<sup>th</sup> Street  
15<sup>th</sup> Floor  
Fort Lauderdale, FL 33301  
Tel.: 954-525-7500  
Fax.: 954-761-8475  
[pgh@trippscott.com](mailto:pgh@trippscott.com)  
*Attorneys for Steven Jacob; Steven F. Jacob CPA & Associates, Inc.*

Gary A. Woodfield, Esq.  
Haile, Shaw & Pfaffenberger, P.A.  
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North Palm Beach, FL 33408  
Tel.: 561-627-8100  
Fax.: 561-622-7603  
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[bpetroni@haileshaw.com](mailto:bpetroni@haileshaw.com)  
[eservices@haileshaw.com](mailto:eservices@haileshaw.com)  
*Attorneys for Frank Avellino*

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Miami, FL 33131  
Tel.: 305-373-9400  
Fax.: 305-373-9443  
*Attorneys for Michael Bienes*

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



**27 CLIFF, LLC**  
**Account QuickReport**  
**All Transactions**

Type	Date	Name	Memo	Split	Amount
<b>FEES</b>					
Sullivan & Powell					
Deposit	4/10/2004	Michael D. Sullivan & Associates, Inc	Sullivan	NORTHERN TRUST BANK	51,983.62
Deposit	3/1/2005	Michael D. Sullivan & Associates, Inc	Deposit	NORTHERN TRUST BANK	50,205.57
Deposit	3/6/2008	Michael D. Sullivan & Associates, Inc	2005	NORTHERN TRUST BANK	37,488.81
Deposit	3/5/2007	Michael D. Sullivan & Associates, Inc	2006	NORTHERN TRUST BANK	89,615.57
Deposit	1/30/2008	Michael D. Sullivan & Associates, Inc	2007	NORTHERN TRUST BANK	50,804.43
Total Sullivan & Powell					280,159.16
Total FEES					280,159.16
<b>TOTAL</b>					<b>280,159.16</b>

