

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.

**DEFENDANTS FRANK AVELLINO AND MICHAEL BIENES' JOINT
SUBMISSION IN CONNECTION WITH THE DECEMBER 9, 2015 STATUS
CONFERENCE AND MOTION TO CONTINUE THE TRIAL AND TO
MODIFY THE CASE MANAGEMENT ORDER**

Defendants Frank Avellino ("Avellino"), and Michael Bienes ("Bienes") (collectively, "Defendants") file this Joint Submission in Connection with the December 9, 2015 Status Conference and Motion to Continue the Trial and Modify the Case Management Order, and in support thereof, state as follows:

1. Defendants make this submission based on the discussion that took place at the October 7, 2015 hearing on Plaintiffs' September 23, 2015 Motion for Clarification, or Alternatively, Extension of Time to Complete Discovery. At that time, and after hearing from both sides on their views on scheduling, the Court deferred setting a new schedule, and advised the parties to proceed with discovery and report back at the December 9, 2015 hearing.
2. By way of background, on January 9, 2015, Plaintiffs filed their Fifth Amended Complaint ["FAC"] - the operative complaint.
3. On May 18, 2015, following Defendants' motions to dismiss and the Court's resolution of same, Defendants filed their answers to the FAC.

4. On July 21, 2015, an Order Modifying Amended Case Management Order dated July 15, 2014 was entered, providing for various pretrial deadlines and that the trial will occur in the first quarter of 2016. A copy of the Order is attached hereto as Exhibit "A". On July 22, 2015, this Court entered an Order Setting Trial (the "Trial Order"), a copy of which is attached hereto as Exhibit "B".

5. The Defendants seek relief from the foregoing scheduling orders.

6. From the beginning of the case, Plaintiffs repeatedly insisted upon conducting the depositions of Avellino and Bienes *first*, while Defendants repeatedly indicated that they wanted the depositions of Mr. Sullivan and the Conservator *first*.

7. From Defendants' perspective, the depositions of Mr. Sullivan and the Conservator were most important, in part, because they would permit Defendants to determine which other witnesses to depose out of the dozens of potential witnesses.

8. None of these depositions had taken place prior to the Defendants' answers to the FAC, in view of Plaintiffs' shifting allegation in their various amended complaints.¹

9. However, on July 28, 2015, the Court signed Plaintiffs' proposed order on Plaintiffs' motion to compel the deposition of Avellino, which contained the following provision:

The depositions of Plaintiffs [*i.e.*, the Conservator] and Michael D. Sullivan shall not occur prior to Plaintiffs conducting the depositions of Defendant Avellino and Defendant Michael Bienes.

A copy of the July 28, 2015 Order is attached as Exhibit "C."

¹ The only depositions taken before the FAC were the depositions of Mr. and Mrs. Judd. Defendants understand that the Judds are musicians who frequently are outside the United States, and that the date for their deposition was based on their schedule.

10. The depositions of Avellino and Bienes took place on September 9 and 10, 2015. Under the terms of the Court's July 28, 2015 Order on the sequence of depositions (Exhibit C), Plaintiffs were barred from taking their depositions until then.

11. Since then, Plaintiffs have been stymied in their efforts to secure the depositions of Mr. Sullivan and the Conservator due to claimed lack of availability and Plaintiffs' objections to the document request portions of Defendants' subpoena to Mr. Sullivan (which have not yet been fully resolved).

12. It was not until this week, moreover, that Defendants will finally be given access to what Plaintiffs contend are the complete files they obtained from the partnerships, in whose names this case was brought.

13. Further, typical of Plaintiffs' tactics, Plaintiffs waited until the 35th and final day to respond and they failed and refused to answer Avellino's interrogatories on the calculations of their damages claims. A copy of Plaintiffs' responses to Avellino's damages interrogatories is attached as Exhibit "D." With discovery scheduled to expire in less than a month (with interim holidays), Defendants have no idea of the damages Plaintiffs seek or how they are calculated.

14. In the meantime, Plaintiffs, who appear to have no pretrial litigation budget and plenty of availability for their purposes, have consumed the parties' resources available for this case from mid-September through the end of November 2015 solely on Plaintiffs' discovery, to wit, Plaintiffs took the depositions of Mrs. Avellino, and Ms. Bienes (twice) and they compelled the Defendants to travel to North Carolina for the jailhouse deposition of Mr. Madoff, and to travel to New Jersey for the depositions of Mr. Avellino's son, Thomas Avellino, and former Madoff employee, Eric Lipkin. They filed two rounds of motions for the turnover the computers of Avellino and Bienes and seeking an order requiring those Defendants to provide reports on

their electronic discovery and to authorize AOL to release e-mails, as well as filing a motion to strike Defendants' pleadings.

15. While Plaintiffs have dictated the pre-trial phase through their apparently unlimited budget but limited availability, Defendants had been unable to complete even their first deposition.

16. In fact, Defendants still cannot get Plaintiffs to agree to a scheduling order to respond to Defendants' motion for summary judgment. That motion is scheduled to be heard on January 14, 2016.

17. To date, we still don't have an agreed date for the deposition of the Conservator. The earliest Plaintiffs offered to produce him for deposition is January 2016. This is consistent with Plaintiffs' approach earlier in the case, when they offered to produce the Conservator only at the end of the previous fact discovery deadlines.

18. As to Mr. Sullivan, Defendants were finally able to secure an agreement to depose him on December 1, 2015. The deposition started late due to traffic issues and ended early due to scheduling issues raised by Mr. Sullivan's lawyer. Upon agreement of the parties and the witness, Defendants noticed the continuation of Mr. Sullivan's deposition for December 17; however, counsel for Mr. Sullivan then filed a motion for protective order, which is pending.

19. For obvious reasons, Defendants believe that Mr. Sullivan is a key witness that disproves Plaintiffs' allegations. He and the Defendants are the only witnesses to the key events at issue, and they all agree that Plaintiffs' core allegations are not true. During the few hours of Mr. Sullivan's deposition, he not only began the process of refuting many of Plaintiffs' baseless allegations, he also identified numerous witnesses that need to be deposed on a variety of key

of key defense issues. As expected, Mr. Sullivan is a key witness not only on the merits, but also for identifying other witnesses to be deposed.

20. Based on the foregoing, Defendants again request an extension of the pre-trial deadlines and also seek a continuance of the trial date as necessary to permit Defendants to complete their discovery (and the deposition of their first deposition witness, Mr. Sullivan) and prepare for and brief summary judgment and other motions.

21. This motion is not being made for the purpose of delay, and Plaintiffs have no valid basis to object to Defendants' request or claim prejudice to the relief sought. It is Plaintiffs who have filed six complaints in this action, each asserting new and different facts and claims in each new complaint. Additionally, it is Plaintiffs who have been dilatory in responding to Defendants' discovery demands and have used all means available to them to frustrate Defendants' discovery efforts, while enjoying full discovery on their contentions. Defendants are entitled to sufficient time to prepare their defense. Defendants will be prejudiced if their discovery is cut off before Defendants have had a reasonable opportunity to conduct their discovery. A reasonable extension, however, prejudices no party.

22. Due to the necessity to expeditiously file this motion, undersigned counsel have not been able to obtain the written consent of their clients to the relief sought in continuing the trial, but each undersigned counsel represents that he has conferred with their client and that their clients agree to the relief sought.

WHEREFORE, Defendants request that this Court enter an order continuing the trial of this action, and such other and further relief as the Court deems just and appropriate.

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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 7th day of December, 2015.

By: /s/ Jonathan Etra
Jonathan Etra
Florida Bar No. 686905

EXHIBIT A

**DEFENDANTS FRANK AVELLINO AND MICHAEL BIENES' JOINT
SUBMISSION IN CONNECTION WITH THE DECEMBER 9, 2015 STATUS
CONFERENCE AND MOTION TO CONTINUE THE TRIAL AND TO
MODIFY THE CASE MANAGEMENT ORDER**

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.

**ORDER MODIFYING AMENDED CASE
MANAGEMENT ORDER DATED JULY 15, 2014**

THIS CAUSE came before the Court on Defendants Frank Avellino's and Michael Bienes' Joint Motion to Continue the Trial, for Protective Order, and for a Case Management Conference, and having considered the Case Management Order in this action, it is hereby:

ORDERED and ADJUDGED as follows:

1. This Court's Case Management Order, dated July 15, 2014 (the "Case Management Order") is modified as follows:

a) Paragraph 5 of the Case Management Order is modified to state: "The parties have stipulated and it is ordered that this case shall be ready for trial on February 22, 2016."

b) Paragraph 7 of the Case Management Order is modified to state: "The jury trial of this case shall occur during the 1st Quarter 2016 trial period beginning 1/19 - 4/8/16 with Calendar Call on 12/9/15 @ 8:45. The parties estimate the trial will be completed in 10 days."

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c) Paragraph 8 of the Case Management Order is modified to state: "The Final Case Management Conference is scheduled for _____. The parties shall prepare and provide at the Final Case Management Conference a joint pre-trial statement complying with CLP 9.2."

d) Paragraph 9 of the Case Management Order is modified to state: "The parties shall have until October 9, 2015 to conduct and conclude fact discovery. It is further ordered that the setting of the discovery deadline will not limit any part from filing summary judgment motions during the period, but any such motions should be narrowly drawn to address only issues on which discovery had been completed. If there are still motions pending after the discovery period, the court will set a briefing schedule at that time."

e) Paragraph 10 of the Case Management Order is modified to state: "The plaintiffs shall designate experts expected to be called at trial by November 6, 2015. The defendants shall designate experts expected to be called at trial by November 20, 2015; the plaintiffs shall serve any expert report and provide all information specified by CLP 7.5 by December 11, 2015; the defendants shall serve any expert report and provide all information specified by CLP 7.5 by December 30, 2015; and the parties shall have until January 15, 2016 to conduct and conclude expert discovery."

f) Paragraph 13 of the Case Management Order is modified to state: "Dispositive motions shall be filed by February 5, 2016."

g) Paragraph 14 of the Case Management Order is modified to state: "Motions *in limine* shall be filed by February 17, 2016."

h) Paragraph 15 of the Case Management Order is modified to state: "The parties shall mediate this dispute before January 22, 2016."

DONE AND ORDERED in Chambers at Ft. Lauderdale, Broward County, Florida this

21 day of May, 2015.



The Honorable Jack Tuter
CIRCUIT COURT JUDGE

Conformed copies to:

Attorneys of Record

EXHIBIT B

**DEFENDANTS FRANK AVELLINO AND MICHAEL BIENES' JOINT
SUBMISSION IN CONNECTION WITH THE DECEMBER 9, 2015 STATUS
CONFERENCE AND MOTION TO CONTINUE THE TRIAL AND TO
MODIFY THE CASE MANAGEMENT ORDER**

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

CASE NO.: 12-34123 (07)

COMPLEX CIVIL DIVISION

JUDGE JACK TUTER

**P&S ASSOCIATES
Plaintiff(s)**

vs.

**MICHAEL BIENES, ET AL
Defendant(s)**

**ORDER SETTING TRIAL
PRE-TRIAL INSTRUCTIONS AND CALENDAR CALL**

**THIS CAUSE IS SET FOR THE DOCKET COMMENCING
Tuesday, January 19, 2016 through April 8, 2016
Calendar Call on Wednesday, December 9, 2015, at 8:45 a.m.
Courtroom 970**

**Counsel shall keep apprised of the status and progress
of the cases in front of them on the docket.**

THIS CAUSE is set for Jury/Non Jury Trial before JUDGE JACK TUTER in Courtroom 970, Broward County Courthouse, 201 S.E. 6th Street, Fort Lauderdale, Florida. The parties and their counsel are on notice that due to the nature of the cases and the potential length of trial, cases in the Complex Civil Division are set for an approximate trial date following the completion of the preceding case. Counsel are ordered to monitor the progress of the preceding case to insure their preparation to immediately commence trial when the case is called to trial. COUNSEL ARE ADVISED DUE TO THE LENGTH OF CASES IN THIS DIVISION ANY CIRCUIT JUDGE WHO BECOMES AVAILABLE MAY TRY THIS CASE. AS SUCH EACH CASE ON THIS CALENDAR SHALL BE READY FOR TRIAL WHEN THE CASE IS CALLED. FAILURE TO BE READY WHEN THE CASE IS CALLED MAY

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RESULT IN THE COURT DISMISSING THE CASE OR ORDERING
APPROPRIATE SANCTIONS.

The following requirements are imposed on all parties by the Court:

- I. **NO LATER THAN NINETY (90) DAYS FROM THE DATE OF THIS ORDER - EXPERT WITNESS DISCLOSURE** (Filed with the Clerk and served on all counsel) The parties shall furnish opposing counsel with the names and addresses, along with complete and updated curriculum vitae of all expert witnesses to be called at trial; and all information regarding expert testimony that is required by Fla. R. Civ. P. 1.280 (b)(4)(A); and shall furnish opposing counsel with two (2) alternative dates of availability of all expert witnesses for the purpose of taking their deposition. Both sides shall cooperate in the scheduling of expert depositions.
- II. **NO LATER THAN SIXTY (60) DAYS PRIOR TO TRIAL - MEDICAL EVALUATIONS:** All medical evaluations and other examinations pursuant to Fla. R. Civ. P. 1.360 shall have been completed.
- III. **NO LATER THAN FORTY- FIVE (45) DAYS PRIOR TO TRIAL:** All final discovery shall have been initiated.
- IV. **TEN (10) DAYS PRIOR TO TRIAL:** All pretrial discovery, including discovery depositions or testimony preserved by video of witnesses or experts to be used at trial, shall have been completed. Any motions in limine, shall be filed and served on opposing counsel.
- V. **AT THE TIME OF THE ABOVE NOTICED CALENDAR CALL,** the Joint Pretrial Stipulation must be completed and timely filed with the Clerk *with a copy provided to the undersigned Judge*. At the time of the pretrial conference/calendar call the parties shall be prepared to discuss all items set forth in Fla R. Civ. P. 1.200(b).
- VI. **THE JOINT PRETRIAL STIPULATION MUST CONTAIN IN SEPARATELY NUMBERED PARAGRAPHS: [A joint pretrial stipulation contemplates a single document. It requires that all agreed matters be fully identified, and any disputed matters be specifically delineated with respect to each party]:**
 1. **Statement of the Facts:** A concise, impartial statement of the facts of the case.
 2. **Stipulated Facts:** A list of those facts that can be stipulated and require no proof at the trial.
 3. **Statements of Disputed Law & Fact:** Those issues of law and fact that are to be tried.

4. **Exhibit Lists:** Each party shall separately list all exhibits they intend to introduce into evidence. Each item shall be listed by number and description on a separate schedule attached to the stipulation. Each exhibit shall be specifically described. Generic descriptions of exhibits are subject to being stricken. Counsel shall initial each other's exhibit list and exhibits. All exhibits to be offered in evidence at trial shall have been made available to opposing counsel for examination and initialing. Only those exhibits listed and initialed may be offered in evidence. If any party objects to the introduction of any such exhibit, such objection must be stated in the stipulation, setting forth the grounds with specificity. Demonstrative exhibits (e.g. charts, enlargements of exhibits) to be used at a jury trial must be displayed to all counsel before being shown to the jury.
5. **Witness Lists:** Parties shall attach and furnish counsel with a written list in alphabetical order containing the names and addresses of all witnesses ("rebuttal", "impeachment" or otherwise) intended to be called at trial. Only those witnesses listed shall be permitted to testify. All witness lists shall include a brief description of the substance and scope of the testimony to be elicited from such witness. All expert witnesses and their specialties shall be designated. If any party objects to any witness, such objection must be stated in the stipulation, setting forth the grounds with specificity. At trial, all parties shall be strictly limited to witnesses properly and timely disclosed.
6. **Jury Instructions:** If the trial is a jury trial counsel shall identify all agreed upon standard instructions and all special instructions. Any disputed jury instructions shall be attached and identified as to the party that proposed the instruction. Copies of all agreed upon instructions or disputed instructions shall be attached to the stipulation, along with copies of supporting statutory citations and/or case law.
7. **Verdict Forms:** If the trial is a jury trial the jury verdict form shall be attached and designated as agreed to or disputed. Agreed and/or disputed verdict forms shall be attached.
8. **Peremptory Challenges:** If the trial is a jury trial, state the number of peremptory challenges for each party.
9. **Pending Motions:** Set forth a list of all pending motions with copies attached to the pretrial stipulation. To the extent the court has time prior to commencement of the trial; all pending motions will be heard or set for hearing at the above-noticed pre-trial conference. All parties shall be fully prepared to present legal argument for all pending motions at the pretrial conference.
10. **Trial Estimate:** Each party shall provide an estimate of the number of days of trial for its side.

11. Daubert issues. All DAUBERT related issues involving any requests for hearings on DAUBERT related evidence shall be noticed and heard – or agreed to by the parties – no later than (30) days prior to the trial period. FAILURE TO DO SO SHALL CONSTITUTE A WAIVER OF ANY DAUBERT RELATED EVIDENCE ISSUE. It is within the discretion of the court to remove any case for trial with pending DAUBERT issues.

VII. NO LATER THAN TEN (10) DAYS prior to the trial period set forth above the following shall be completed or heard by the Court:

1. Depositions to preserve testimony of any witness, including experts, shall have been completed;
2. All pretrial motions, depositions or proceedings related thereto and MOTIONS IN LIMINE: All motions to exclude witnesses or evidence of other motions directed to the conduct of the trial for which grounds then exist must be filed and heard prior to commencement of the trial.

VIII. MOTIONS FOR SUMMARY JUDGMENT will **NOT** be heard at the calendar call, pretrial conference or at the time of trial.

IX. SETTLEMENT: Counsel shall immediately notify this Court in the event of settlement and submit a stipulation for and order of dismissal. Counsel shall also notify the Court of any pending hearings that will be canceled as a result of the settlement.

THE PARTIES ARE CAUTIONED
REGARDING THE FOLLOWING POLICIES OF THE COURT:

1. The parties shall do all things reasonable and necessary to assure the availability of their witnesses for the entire trial period or to otherwise preserve their testimony for trial as provided by the Florida Rules of Civil Procedure. See Rules 1.300 and 1.460 Fla.R.Civ.P. and Rule 2.545 of the Florida Rules of Judicial Administration. CONTINUANCES will only be considered on written motion prior to calendar call.
2. NO CONTINUANCES will be granted for reasons that should have been readily apparent to counsel when the trial order was received or expert witnesses are unavailable since testimony may be preserved by deposition. ALL EXPERT TESTIMONY SHALL BE PRESERVED FOR USE AT TRIAL. UNAVAILABILITY OF EXPERTS SHALL NOT BE GROUNDS FOR CONTINUANCE OR DELAY OF THE TRIAL. Continuances requested for reasons relating to failure to follow this Order will not be granted.
3. The parties and counsel should be familiar with Fla.R.Civ.P 1.380 regarding "Failure to Make Discovery: Sanctions", and, Fla. Stat., §57.105, entitled "Attorney's Fee; sanctions for raising unsupported claims or defenses; service of motions; damages for delay of

litigation." The court may impose sanctions for failure to comply with the requirements of this pretrial order including dismissal of the action.

4. FAILURE TO ATTEND, FAILURE TO FOLLOW TIME REQUIREMENTS OR FILE DOCUMENTS REQUIRED BY THIS COURT MAY RESULT IN THE DISMISSAL OF THE ACTION OR THE IMPOSITION OF SANCTIONS INCLUDING STRIKING OF THE PLEADINGS.

5. **MEDIATION IS MANDATORY:** Mediation shall commence no later than (60) days prior to the calendar call. The parties shall comply with Fla. R. Civ. P. 1.700, 1.710, 1.720, and 1.730 as to the conduct of mediation. Plaintiff's counsel is appointed lead counsel to facilitate and schedule the settlement conference with the mediator and all parties. The Courts appoints: _____

_____ as Mediator, unless, within (30) days of this order the parties choose a different mediator. Failure to attend mediation may result in sanctions.

DONE AND ORDERED at Fort Lauderdale, Florida, this 2nd day of July, 2015.



JACK TUTER
CIRCUIT COURT JUDGE
COMPLEX CIVIL DIVISION

Copies furnished to counsel of record:

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. PLEASE CONTACT THE COURT ADMINISTRATOR'S ADA COORDINATOR @954-831-7721 AT LEAST SEVEN DAYS BEFORE YOUR SCHEDULED COURT APPEARANCE, OR IMMEDIATELY UPON RECEIVING THIS NOTIFICATION IF THE TIME BEFORE THE SCHEDULED APPEARANCE IS LESS THAN SEVEN DAYS; IF YOU ARE HEARING IMPAIRED OR VOICE IMPAIRED CALL 954-831-7017, OR CALL THE FLORIDA RELAY SERVICE @1-800-995-8771 (TTY), OR 1-800-995-8770 (VOICE).

EXHIBIT C

DEFENDANTS FRANK AVELLINO AND MICHAEL BIENES' JOINT
SUBMISSION IN CONNECTION WITH THE DECEMBER 9, 2015 STATUS
CONFERENCE AND MOTION TO CONTINUE THE TRIAL AND TO
MODIFY THE CASE MANAGEMENT ORDER

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

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8/7/29


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

EXHIBIT D

**DEFENDANTS FRANK AVELLINO AND MICHAEL BIENES' JOINT
SUBMISSION IN CONNECTION WITH THE DECEMBER 9, 2015 STATUS
CONFERENCE AND MOTION TO CONTINUE THE TRIAL AND TO
MODIFY THE CASE MANAGEMENT ORDER**

IN THE CIRCUIT COURT OF THE 17TH
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.

STEVEN JACOB, et al.,

Defendants.

**PLAINTIFFS' RESPONSES AND OBJECTIONS TO DEFENDANT AVELLINO'S
FIFTH SET OF INTERROGATORIES TO PLAINTIFF**

1. Please specifically delineate the amount of damages as to each defendant you are seeking for each cause of action (Counts I through VII) in the Fifth Amended Complaint, including the specific components of the damages for each cause of action (Count I through VII), and specifically how each damage delineated was calculated.

OBJECTION: Plaintiffs object to Interrogatory Number 1 because it exceeds the number allowed by the Florida Rules of Civil Procedure and by this Court's Order dated April 30, 2015. By Order dated April 30, 2015, Defendant Avellino was permitted to serve an additional 20 interrogatories onto Plaintiffs. However, since the April 30, 2015 Order, Defendant Avellino served 24 interrogatories onto Plaintiffs, as calculated under Florida Rule of Civil Procedure 1.340(a).

2. Please identify all persons who have answered and/or contributed to the answers to Interrogatory Number 1, and specify what portions each answered and/or contributed to.

RESPONSE: Plaintiffs object to Interrogatory Number 2 because it exceeds the number allowed by the Florida Rules of Civil Procedure and by this Court's Order dated April 30, 2015. By Order dated April 30, 2015, Defendant Avellino was permitted to serve an additional 20 interrogatories onto Plaintiffs. However, since the April 30, 2015 Order, Defendant Avellino served 24 interrogatories onto Plaintiffs, as calculated under the Florida Rule of Civil Procedure 1.340(a).

Dated: November 20, 2015

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