

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' MATERIAL FACTUAL
STATEMENT IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT AS
TO COUNT IV – FRAUDULENT TRANSFER**

Defendants, Frank Avellino and Michael Bienes (collectively the “Defendants”), by and through their undersigned counsel, and pursuant to Section 5 of the Complex Litigation Procedures, provide the following Material Factual Statement as to Count IV (“MFS IV”) in Support of Defendants’ Motion for Summary Judgment as to Fraudulent Transfer:

1. Plaintiffs filed their initial Complaint on December 10, 2012. [Docket Sheet].
2. The sole remaining cause of action asserted against Defendants is Count IV (avoidance of fraudulent transfers). Fifth Amended Complaint (“5AC”); October 28, 2016 Order Granting Summary Judgment on Remaining Counts (“Order”). [5AC; Order]. The 5AC was filed on January 9, 2015. [Docket Sheet].
3. The factual basis for the cause of action against Defendants is the alleged “kickbacks” paid to Defendants. [5AC, ¶¶ 46 and 79].

4. The alleged “kickbacks” paid to Avellino, or an entity alleged to be controlled or directed by Avellino, were paid commencing in 2000, with the last payment made on or about October 1, 2008.

4A. Plaintiffs’ Third Supplemental Responses to Avellino’s First Set of Interrogatories (Interrogatory Answers 2, 4) and documents identified therein;

4B. Plaintiffs’ Responses to Avellino’s Second Set of Interrogatories (Interrogatory Answer 5)¹.

5. The alleged “kickbacks” paid to Bienes were paid commencing in 2000 with the last payment made in 2007. [Plaintiffs’ Supplemental Response to Bienes’ First Set of Interrogatories (Interrogatory Answers 7 and 8)].

6. On December 11, 2008, the Madoff Ponzi scheme became public. [Defendants’ Request for Judicial Notice dated April 14, 2015].

7. All of the books and records of P&S and S&P (the “Partnerships”) were at all times available for inspection and review by the general partners of the Partnerships.

7A. Affidavit of Steven Jacob, sworn to December 5, 2016, (“Jacob Aff.”), attached hereto as Ex. 1;

7B. Affidavit of Sullivan, sworn to December 5, 2016 (“Sullivan Aff.”), attached hereto as Ex. 2;

7C. Deposition of Sullivan, December 1, 2015, pp. 47-52. [Plaintiffs’ Notice of Filing Documents in Support of Motion for Summary Judgment filed March 4, 2016].

¹ Interrogatory Answers and documents designated in paragraphs 4 and 5 were previously filed on April 14, 2015 with Defendants’ Notice of Filing Confidential Information within Court File.

8. Throughout the life of the Partnerships, documents reflecting the payments of management fees were sent to each individual partner.

8A. Plaintiffs' Revised Responses to Bienes' First Set of Interrogatories, pp. 3 and 8, attached hereto as Ex. 3;

8B. Plaintiffs' Responses to Frank Avellino's Third Set of Interrogatories. (Interrogatory 8) attached hereto as Ex. 4;

¶ 7A²; Jacob Aff., ¶7.

9. Not only were statements reflecting the payment of management fees provided to each partner, but the Partnerships' books and records disclosed that a portion of the management fees paid to Sullivan were paid to a number of individuals and entities, including defendants, Avellino and Bienes. Once the Plaintiffs looked at the Partnerships' records, they could see the fees paid to Defendants.

9A. Documents referenced in the Plaintiffs' Third Supplemental Response to Frank Avellino's First Set of Interrogatories to Plaintiff (¶4A, Interrogatory Answer 1) (i.e. AVE 25- AVE89 RTP)³ were partnership records reflecting the management fees paid to A & B (Avellino & Bienes)

¶7A. Jacob Aff., ¶¶8, 13, Ex. F – letter written by several partners indicating that a preliminary review of the records reflected payments to Avellino and Bienes;

¶4A. Plaintiffs' Third Supplemental Responses to Avellino's First Set of Interrogatories (Interrogatory Answers 2 and 4);

² “¶” references previous paragraphs within this MFS IV which contain documents supporting the particular fact referenced.

³ The documents designated within MFS IV 9A were filed within Defendants Frank Avellino and Michael Bienes' Second Joint Motion for Order Granting Approval of Filing Documents Under Seal and Second Notice of Filing Confidential Information Within Court Filing.

¶4B. Plaintiffs' Responses to Avellino's Second Set of Interrogatories (Interrogatory Answer 5);

¶5. Plaintiffs' Supplemental Response to Bienes' First Set of Interrogatories (Interrogatory Answers 5, 7 and 8);

10. The Partnerships also had knowledge of the payments to Avellino and Bienes and the content of the Partnerships' records because in 2008, Sullivan told Patrick Kelly, acting on behalf of the Festus and Stacy Foundation, a partner, when Mr. Kelly went to the Partnerships' offices for the purpose of reviewing the records and the records were made available to him. The same records were turned over to the Foundation's accountant for auditing purposes in November 2011 and, ultimately to Plaintiffs' counsel. [¶7B, Sullivan Aff., ¶10; ¶7A, Jacob Aff. ¶13.]

11. Sullivan, the managing partner of the Partnerships, was not aware that Bernard L. Madoff Investments Securities ("BLMIS") was operating a Ponzi scheme prior to Madoff's arrest on December 11, 2008. [¶7B, Sullivan Aff., Exhibit A, Confidential Settlement Agreement between Sullivan and Plaintiffs, dated June 26, 2014.]

12. A Judgment was entered against Sullivan in this case in favor of Plaintiffs for \$50,000. This Judgment was later satisfied and Sullivan and M.D. Sullivan & Associates were released by Plaintiffs from any additional claims. [¶7B, Sullivan Aff., Exhibit B, Satisfaction of Final Judgment.]

13. On October 28, 2016, this Court ruled that neither equitable estoppel, equitable tolling, nor the continuing tort doctrine has any application to this case, leaving the sole issue raised by Plaintiffs to avoid the entry of the summary judgment being when the partnerships knew or should have known of the alleged "fraudulent transfers." [Order, Docket Sheet].

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of December, 2016, 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.

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By: /s/ Gary A. Woodfield

Gary A. Woodfield, Esq.

Florida Bar No. 563102

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and Steven F. Jacob CPA & Associates, Inc.*

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

CASE NO.: 12-034123 (07)

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

Plaintiffs,

v.

MICHAEL D. SULLIVAN, et al.,

Defendants.

AFFIDAVIT OF STEVEN JACOB

STATE OF FLORIDA }

ss:

COUNTY OF BROWARD }

Steven Jacob, being duly sworn deposes and says:

1. I am a defendant in this action together with Steven F. Jacob CPA & Associates, Inc., a Florida corporation. I submit this affidavit in support of defendants, Frank Avellino ("Avellino") and Michael Bienes' ("Bienes") Motion for Summary Judgment as to Count IV of the Fifth Amended Complaint. The allegations set forth herein are based upon my personal knowledge.

2. I am advised that an issue in connection with the summary judgment motion is when partners of the plaintiff partnerships, P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P") (collectively, the "Partnerships"), knew or could reasonably have discovered that payments which were originated from the Partnerships were made to Avellino and Bienes.



3. I have sublet an office space in the same space as the Partnerships since 2004. In connection with my accounting practice I have acted as a trustee and financial advisor for various clients. In or about 1997, I became aware through Michael Sullivan, the then managing partner of the Partnerships, of the Partnerships' investment with Bernard L. Madoff Investment Securities, LLC ("BLMIS"). After conducting an investigation of this investment opportunity, I provided clients of mine the opportunity to invest in the Partnerships.

4. In connection with my clients' investments in the Partnerships, for the time period 1998 through 2008, I regularly reviewed the books and records of the Partnerships which, at all times were in the offices of the Partnerships and available for review and inspection by me and all partners of the Partnerships.

5. The partnership agreements for the Partnerships provided that the managing partners were entitled to 20% of the profits from the Partnerships' investments, which were referred to as the "Management fees". At some point in time, Michael Sullivan and Gregg Powell, who was a managing partner with Michael Sullivan until his death in 2003, began to pay a portion of their 20% profits to certain partners and others. Approximately ten individuals, including me, received such payments. Frank Avellino and Michael Bienes also received such payments.

6. The majority of the Management fees owed to Michael Sullivan were paid by the Partnerships to him through payments to Michael D. Sullivan & Associates ("MDS"), an entity formed by Michael Sullivan and from which Michael Sullivan made the payments to the others with whom he shared a portion of his Management fees. The books and records of the Partnerships reflected the payments Michael Sullivan made of a portion of his Management fees

to others through MDS, including the payments to Avellino and Bienes. These records were maintained both electronically on the Partnerships' computers and also in hard copy.

7. The payment of a portion of the Management fees to others were reflected in several places in the Partnerships' books and records. Every investor received regular statements on their account which included a line item of "Management Fee Expense." An example of such a statement is the S&P statement to Ersica P. Gianna, dated April 19, 1999, a copy of which is attached hereto as Exhibit "A". Additionally, each partner who received a payment of a portion of the Management fees received a statement reflecting the calculation of such fees that accompanied the payment. An example of such a statement is the statement for Abraham Newman, which is attached hereto as Exhibit "B". Account statements were also maintained for each investor which reflected the Management fees paid. An example of such statements is P&S account statement for investors/partners, Edith and Sam Rosen, attached hereto as Exhibit "C".

8. Other records of the Partnerships also included the payment of the Management fees of those who received such fees. For example, a record of Management fees paid to Avellino and Bienes is attached hereto as Exhibit "D". This record, which specifically identifies the payment of Management fees to Avellino and Bienes, was included in records maintained by the Partnerships, available for inspection by any partner and observed by me from my review of the Partnerships' books and records.

9. The records reflecting the calculation of the Management fees paid to others were also contained in the books and records of the Partnerships. An example of such records is the 2005 Management Fees Calculation attached hereto as Exhibit "E".

10. After the death of Gregg Powell, Susan Moss was a part time bookkeeper who assisted in maintaining the books and records of the Partnerships. Ms. Moss was assisted by the Partnerships' outside accountant, Michael Kuzy. On occasions I would answer questions and provide assistance to Ms. Moss when she requested.

11. Aside from the Partnerships' records that reflected the Management fee payments to Avellino and Bienes being available at all times for inspection by the partners, I am aware that partners of the Partnerships actually inspected the Partnerships' records. In the Fall of 2008, Patrick Kelly, acting on behalf of the Festus & Helen Stacy Foundation, Inc. (the "Foundation"), which was an investor and a partner in the Partnerships, together with Susan Davis, the CPA for the Foundation, visited the Partnerships' offices and reviewed the books and records. Ms. Davis had previously reviewed the Partnerships' books and records years earlier. I did not actually observe what records they chose to review but all of the Partnerships' records, including those that reflected Management fee payments to Avellino and Bienes, were among the Partnerships' records available for their inspection. After such inspection, Mr. Kelly and Michael Sullivan had a discussion about the payment of Management fees, at which I was present. Michael Sullivan told Mr. Kelly of his sharing of Management fees with others, including Avellino and Bienes, and Mr. Kelly expressed an interest in having other clients of his invest in the Partnerships, as well as in whether he could be a recipient of such fees.

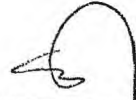
12. In December 2008, the BLMIS Ponzi scheme was made public. At that time, Michael Sullivan had been out of the office for knee replacement surgery and unable to address the multiple issues that arose as a result of such debacle. I agreed to assist in responding to the numerous calls from the partners and thereafter, assist in compiling the records to support the

Partnerships' claims filed with Mr. Picard, the BLMIS trustee. I also assisted in compiling information for the partners to enable them to file individual claims. I also helped in compiling records of the Partnerships in response to a document request from the SEC.

13. In November, 2011, the Foundation insisted and directed that the records of the Partnerships be provided to Ali Ansari, an accountant the Foundation retained to conduct a forensic audit of the Partnerships. Included in the records provided Mr. Ansari were the records described above which reflected the payment of Management fees to others, including Avellino and Bienes. I am not aware whether an audit was ever conducted. Had a review of the records been conducted, the payment of Management fees to Avellino, Bienes and others would have been readily ascertained. I was advised that in May, 2012, the records that were previously provided to Mr. Ansari were turned over to the Berger Singerman law firm. Nevertheless, the accountant on behalf of the Foundation was in actual possession of the Partnership records, including those which reflected the payment of Management fees to Avellino and Bienes, as far back as November, 2011. This is confirmed by the undated letter sent to the partners by Brett Stepelton, a principal of the Foundation, and others in the summer of 2012, a copy of which is attached hereto as Exhibit "F". While the letter complains of not receiving the electronic records, it states that the documents that were provided (which were the documents provided to Mr. Ansari in November, 2011) "... indicate that Mr. Sullivan paid management fees to Frank Avellino and Michael Bienes...".

14. After Michael Sullivan was removed as managing partner of the Partnerships, there were several claims made, including those from the Conservator who was appointed to

liquidate the Partnerships, that records of the Partnerships were not disclosed or provided. I am not aware of what records were claimed not to have been provided but I do know that the records that were provided contained the records described above which reflected the Management fee payments to Avellino and Bienes.

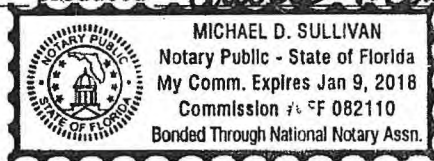


Steven Jacob

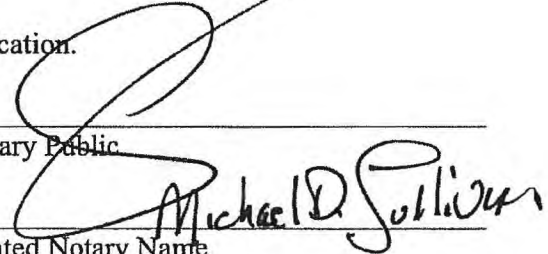
**STATE OF FLORIDA
COUNTY OF BROWARD**

Sworn to and subscribed before me this 5 day of December, 2016, by Steven Jacob, who is:

_____ personally known to me or who has
produced drivers license as identification.



Notary Public



Printed Notary Name

My Commission Expires:

Jan. 9, 2018

April 19, 1999

S & P Associates, General Partnership
 c/o Sullivan & Powell
 Port Royale Financial Center
 6550 North Federal Highway
 Suite 210
 Ft. Lauderdale, FL 33308
 (954) 492-0088 fax (954) 938-0069

SSN/FEI
 262-72-7791

Ersica P. Gianna
 3101 NE 47 Court, #102
 Ft. Lauderdale, FL 33308-5348

NOTE: This report is provided to assist you in evaluating the performance of your account and should NOT be used for Income Tax purposes.

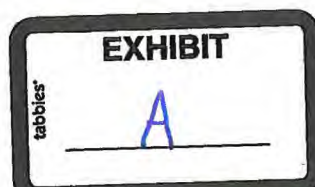
Activity/ Status Report
 1/1/99 to 3/31/99

Balance Forward 12/31/98	210,681.28
Deposits	0.00
Withdrawals	-6,233.86
*Miscellaneous Expenses	0.00
Management Fee Expense	-2,425.32
Adjustments	0.00
Realized Gain/Loss for Current Year	11,956.67
Realized Ending Balance	<u>213,978.77</u>
Unrealized Gain/Loss on Open Securities	169.92
TOTAL REALIZED/UNREALIZED BALANCE	<u>\$214,148.69</u>

NET ANNUALIZED RETURN 18.68%

*Miscellaneous Expenses include legal and accounting fees, taxes, and bank service charges.

All data subject to verification. Please review data for discrepancies.
 Please note that the ending balance may not represent your actual capital account balance. Rather, it represents your balance, subject to the terms of your agreement, assuming a liquidation of the portfolio.



9512 S&P Assoc/ Mgt. fees to Abraham Newman (after 3/23/95)

	A	B	C	D	E	F	G	H	I
1	Account	Name	YTD Mgt. fee	1/1/95	3/23/95	12/31/95	Amt due	paid YTD	Balance due
2	B53-N	Braun	188.10				73.12	41.82	31.30
3	C29-N	Chase	665.98				258.89	175.41	83.48
4	G24-N	Gordon	947.38				368.28	243.81	124.47
5	J30-N	Jacobs	554.86				215.69	132.61	83.08
6	R27-N	Rothbaum	393.56				152.99	102.04	50.95
7	S28-N	Santamaria	331.09				128.71	87.21	41.50
8	S55-N	Siegel	221.55				86.12	45.95	40.17
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19						TOTALS	1,283.81	828.85	454.96
20									(enclosed)
21	You will receive a 1099-MISC for \$828.85 for fees paid to you in 1995.								
22									SIT
23									2/6/96
24									#3614
25									

P&S & S&P_ OUTSIDE COMMISSION_000164

EXHIBIT

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SUMMARY OF ACCOUNT

P&S Associates General Partnership
Account: Edith and Sam Rosen

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance
1993		\$ 30,000.00	\$ (3,466.58)	\$ 26,533.42
1994	\$ 26,533.42	\$ -	\$ (3,643.33)	\$ 22,890.09
1995	\$ 22,890.09	\$ -	\$ (3,708.27)	\$ 19,181.82
1996	\$ 19,181.82	\$ -		\$ 19,181.82
1997	\$ 19,181.82	\$ -		\$ 19,181.82
1998	\$ 19,181.82	\$ -		\$ 19,181.82
1999	\$ 19,181.82	\$ -		\$ 19,181.82
2000	\$ 19,181.82	\$ -		\$ 19,181.82
2001	\$ 19,181.82	\$ -		\$ 19,181.82
2002	\$ 19,181.82	\$ 33,000.00		\$ 52,181.82
2003	\$ 52,181.82	\$ 80,000.00	\$ (150,000.00)	\$ (27,818.18)
2004	\$ (27,818.18)	\$ 385,000.00	\$ (55,000.00)	\$ 302,181.82
2005	\$ 302,181.82	\$ -		\$ 302,181.82
2006	\$ 302,181.82	\$ -		\$ 302,181.82
2007	\$ 302,181.82	\$ 30,000.00		\$ 332,181.82
2008	\$ 332,181.82	\$ -	\$ (150,000.00)	\$ 182,181.82
TOTAL		\$ 528,000.00	\$ (258,468.18)	\$ 269,631.82

Management Fees	Miscellaneous Fees
\$ 946.61	\$ -
\$ 968.74	\$ 189.23
\$ 1,020.13	\$ 62.00
\$ 1,137.41	\$ 95.29
\$ 1,497.07	\$ 25.44
\$ 1,829.51	\$ 19.72
\$ 2,014.09	\$ 52.53
\$ 1,586.88	\$ 48.44
\$ 1,773.72	\$ 135.40
\$ 1,865.09	\$ 37.54
\$ 1,129.45	\$ 88.61
\$ 5,563.47	\$ 145.93
\$ 7,627.52	\$ 122.95
\$ 10,260.74	\$ 103.95
\$ 10,754.35	\$ 117.12
\$ 8,885.85	\$ 1,500.01
TOTAL	\$ 2,843.39

Ending Balance= \$ 120,843.39

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EXHIBIT

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0603 S1 Associates, G/P - Mgt. fees to A7/18/2013

Acct #	Name	YTD Mgt. fee	@50%	from 2000	from 2001	from 2002	Paid	Accrued Amt.
A01	Alves	490.66	245.33					245.33
J147	Judd	1,005.87	502.94					502.94
								0.00
SPJ 037	Jordan	20,908.75	10,454.38					10,454.38
SPJE038	Esteban, F	135.28	67.63					67.63
SPJE039	Esteban, M	3,773.95	1,886.98					1,886.98
			0.00					0.00
								0.00
TOTALS		26,314.49	13,157.25	0	0	0.00		13,157.25
Beines 50% of \$		6,578.63			Avellino	6,578.63		
					less Wills	-3,000.00		
						3,578.63		

P&S & S&P_OUTSIDE COMMISSION_000636



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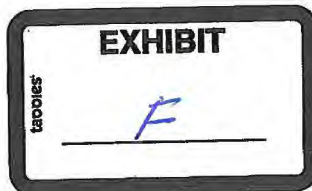
Dear Partner:

Many of you are in receipt of an August 3, 2012 letter from Michael D. Sullivan, the current Managing General Partner of S&P Associates and P&S Associates (together, the "Partnerships"). In that letter, Mr. Sullivan argues that changing the Managing General Partner at this time is not productive and would be a waste of the Partnerships' resources.

It is not surprising that Mr. Sullivan has taken this position. For the better part of the past two years, a group of investors who collectively lost millions of dollars of their investments in the Partnerships have sought more information from Mr. Sullivan concerning his management of the Partnerships. Each Partner has the right to ask for this basic information pursuant to the terms of the Partnership Agreements. Among other things, we have sought complete copies of the general ledgers and banking records as well as all electronic accounting records for the Partnerships. To date, and despite repeated requests, electronic accounting records pertaining to the Partnerships have not been received. Instead, Mr. Sullivan provided these Partners with a collection of disorganized boxes of files which allegedly constituted the entirety of the Partnerships' books and records.

Putting aside the troubling fact that Mr. Sullivan apparently cannot access the electronic records maintained for the Partnerships, a review of the boxes of Partnership files have revealed the following significant concerns. It is important to note that these findings are based on a preliminary review of the documents, which findings may or may not ultimately prove correct following a comprehensive analysis of the books and records:

- The documents indicate that Mr. Sullivan paid management fees to Frank Avellino and Michael Bienes, two individuals who have been prohibited by the Securities and Exchange Commission from participating in the sale of securities. The documents indicate that Mr. Avellino was given a significant, and inappropriate, level of control over the Partnerships. Indeed, in a lawsuit filed by the Trustee for the Liquidation of Bernard L. Madoff Investment Securities, LLC ("BLMIS"), the Trustee alleges that despite the prohibition imposed by the SEC, Mr. Avellino and Mr. Bienes found people such as Mr. Sullivan who were willing to act as "front men to operate partnerships so that they could continue to raise and pool money from others to invest with BLMIS but avoid the scrutiny of the regulators." The lawsuit specifically references S&P and P&S as examples of investment vehicles in which such a "front" was used.
- Based upon a preliminary review of the books and records, Mr. Sullivan paid himself and entities that he controlled over \$8 million in "management fees."
- Review of the tax returns filed for P&S reveal that since inception charitable contributions in excess of \$750,000 were disbursed to a single entity.
- Mr. Sullivan maintained other investment funds, including SPJ Investments, Ltd., JS&P Associates, General Partnership, and Guardian Angel Trust, LLC. For some unknown reason, these entities held millions of dollars of Partnership assets and filed separate tax returns but the books and records for each of these entities are virtually non-existent.
- Based on a review of the documents, millions of dollars were never even invested in BLMIS, contrary to Mr. Sullivan's obligations and responsibilities under the Partnership Agreements.



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- Other individuals were paid "commissions" for the referral of additional partners. These commissions appear to have been paid from Partnership assets.
- Significant documents from 1999 through 2002 and 2004 are missing.

In short, many millions of dollars of Partnership assets are simply unaccounted for. It is important to note that this is neither an exhaustive list of the potential issues with the Partnerships, nor have the Partners been given the benefit of full access to the various Partnerships' books and records, despite repeated requests. Further investigation is certainly required.

To assist in this investigation, many partners have suggested the appointment of Margaret Smith as Managing General Partner. Ms. Smith is a Certified Public Accountant, she is accredited in business valuation, a Certified Valuation Analyst, a Certified Fraud Examiner, a Certified Insolvency and Restructuring Advisor and Certified in Distressed Business Valuation. In the event Ms. Smith, together with the Partnerships' attorneys, determine that there was indeed no malfeasance by Mr. Sullivan or others associated with the Partnerships, then no further action will be taken. If, however, the concerns above are borne out, then the Managing General Partner will have a responsibility to ensure that appropriate action is taken in order to maximize the assets of the Partnerships. This may include seeking the return of funds improperly disbursed, which funds would then be distributed to the Partners, or it may involve the filing of a lawsuit to recover these assets on behalf of the Partnerships. Very simply, many of your fellow Partners do not believe that Mr. Sullivan is best situated to perform this investigation and to determine the best course of remedial action. To that end, many of the Partners believe that his removal is appropriate.

To the extent you have already provided a signed proxy, thank you. If you wish to send in your proxy at this time, of course you may do so. Please send a copy to:

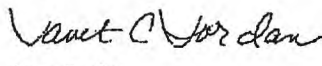
Leonard Samuels
c/o Berger Singerman, LLP
350 East Las Olas Boulevard
Suite 1000
Fort Lauderdale, FL 33301

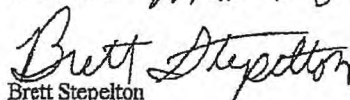
Regards,



Roger Bond

Matt Carone




Janet Jordan


Brett Stepelton


Elaine Ziffer

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08-13-15_PLAINTIFFS_0014685

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

CASE NO.: 12-034123 (07)

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

Plaintiffs,

v.

MICHAEL D. SULLIVAN, et al.,

Defendants.

_____ /

AFFIDAVIT OF MICHAEL SULLIVAN

STATE OF FLORIDA }

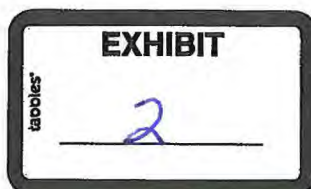
ss:

COUNTY OF BROWARD }

Michael Sullivan, being duly sworn deposes and says:

1. I was a defendant in this action. I was the founder and managing partner of the plaintiff partnerships, P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P") (collectively, the "Partnerships"). I submit this affidavit in support of defendants, Frank Avellino ("Avellino") and Michael Bienes' ("Bienes") Motion for Summary Judgment as to Count IV of the Fifth Amended Complaint. The allegations set forth herein are based upon my personal knowledge.

2. I have reviewed the affidavit of Steven Jacob, sworn to December 5, 2016, submitted in support of the motion, together with the documents attached; it is true and accurate. As set forth in Steven Jacob's affidavit, the documents reflecting management fees paid to me through Michael D. Sullivan & Associates, as well as the payments of a portion of those



management fees paid to others, including Frank Avellino and Michael Bienes, were clearly reflected in the books and records maintained by the Partnerships. The Partnership books and records were available to all partners of the Partnerships at all times, and partners, including the Festus & Helen Stacy Foundation (the "Foundation"), actually reviewed and inspected the Partnership books and records prior to the exposure of Madoff's Ponzi scheme in 2008.

3. I am aware that when my deposition was conducted in this case on December 17, 2015, I did not testify that the payments made to Avellino, Bienes and others were in the records of the Partnerships. At that time I was not shown any of the records of the payments of the Management fees. I have since reviewed the documents attached to Steven Jacob's affidavit and confirm that they are records maintained by the Partnerships that reflect the payment of Management fees to others, including Avellino and Bienes. I was unclear about this at my deposition because I knew that the majority of the Management fees paid to others were made from my company, Michael D. Sullivan & Associates, with some previously paid by Sullivan & Powell/Solutions in Tax (collectively, "MDS"), after the Management fees were paid to me by the Partnerships. However, the Partnerships' records also reflect the payments to others as confirmed by the documents attached to Steven Jacob's affidavit.

4. On June 25, 2014, I entered into a Confidential Settlement Agreement (the "Agreement") with Plaintiffs, a redacted copy of which is attached hereto as Exhibit "A". By the Agreement, I agreed to the entry of a \$50,000 judgment against me. The Agreement further provided that upon the Conservator filing a satisfaction of the judgment the release provisions of the Agreement became effective. On March 13, 2015, Plaintiffs recorded the satisfaction of the judgment entered against me, and thus, the release provisions in paragraph 6 of the Agreement

became effective. A copy of the satisfaction is attached hereto as Exhibit "B". Accordingly, Plaintiffs, including the Conservator and the Partnerships, "... fully, finally and forever released, relinquished, settled and discharged ... all claims, demands, causes of action ... damages ... [or] liability of any nature whatsoever..." which they had against me and MDS. Ex. B, ¶6.

5. I understand that Count IV of the Fifth Amended Complaint purports to assert a claim for Avoidance of Fraudulent Transfer pursuant to § 726.105(1)(a), Florida Statutes, and seeks to recover from Avellino, Bienes and Steven Jacob a portion of my Management fees that I paid to them and alleges that I made such payments to them "... with actual intent to hinder, delay or defraud a creditor of the Partnership." Amended Complaint, ¶ 82. That is completely false; I had no such intent.

6. First, pursuant to the partnership agreements of the Partnerships, I was entitled to 20% of the profits of the Partnerships as a Management fee. The calculation of the 20% of the profits was accurately determined and reviewed and approved by the Partnerships' outside accountant, Mike Kuzy. Upon payment of the Management fees to me that I earned and to which I was entitled I was free to do as I wished with such funds. To whom I subsequently provided a portion of my Management fees is of no right or interest of Plaintiffs.

7. At no time when I was sharing a portion of my Management fees with others did I have any intent to "hinder, delay or defraud a creditor of the Partnerships" when making such payments. I am not aware that the Partnerships, MDS or I had any creditor that could be defrauded by the payment of Management fees to me. While it is true that the Partnerships invested with Madoff which was revealed to be a Ponzi scheme, Plaintiffs agree that I had no knowledge that Madoff was operating a Ponzi scheme. Ex. B, ¶9. Further, if Plaintiffs contend

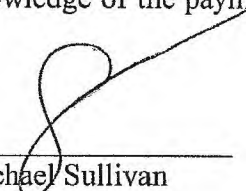
that I or MDS were the debtors that were purportedly defrauding a creditor, at the time I paid a portion of my Management fees to others, I do not know who such a creditor could be. I had not been sued nor been threatened to be sued, and I had no knowledge then, nor do I now, that there was any "creditor of the Partnerships" or of me or MDS that I was purportedly defrauding at the time I made such payments.

8. At no time did I disburse all of my Management fees. I retained the majority of the Management fees and was able to pay my debts as they became due and owing. At the time I was sharing a portion of my Management fees with others, my assets and those of MDS exceeded the sum of our debts, and neither I nor MDS incurred a substantial debt shortly before or after I shared a portion of my Management fees with others.

9. The payments to Avellino and Bienes of a portion of my Management fees were made by me through MDS. Avellino and Bienes had no involvement whatsoever with MDS. They were not general partners of MDS; they are not relatives of any partner of MDS; they did not control MDS.

10. As set forth in Steve Jacob's affidavit and as I am confirming here, partners of the Partnerships had the opportunity to know of the payment of my Management fees as well as the sharing of a portion of my Management fees with others, including Avellino and Bienes, because such payments were reflected in the Partnerships books and records that were at all times available to the partners. Additionally, prior to the revelation of Madoff's Ponzi scheme in December 2008, I had discussions with partners, including Sean and Doug Stepelton of the Foundation, about the sharing of Management fees, including, specifically, sharing with Avellino and Bienes. Again,

The Foundation was a partner of the Partnerships who had actual knowledge of the payment of Management fees to Avellino and Bienes prior to December, 2008.

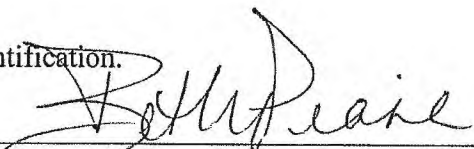

Michael Sullivan

STATE OF FLORIDA

COUNTY OF BROWARD

Sworn to and subscribed before me this 5th day of December, 2016, by Michael Sullivan, who is:

☒ personally known to me or who has
☐ produced _____ as identification.


Notary Public

Beth Piana

Printed Notary Name

My Commission Expires:



CONFIDENTIAL SETTLEMENT AGREEMENT

This Confidential Settlement Agreement and Release (the "Agreement") is made and entered into by and between MICHAEL D. SULLIVAN ("Sullivan") and MICHAEL D. SULLIVAN & ASSOCIATES, INC ("MDS"), on one hand (collectively "Defendants"), and PHILIP VON KAHLE, AS CONSERVATOR OF P&S ASSOCIATES, GENERAL PARTNERSHIP AND S&P ASSOCIATES, GENERAL PARTNERSHIP ("Conservator"), P&S ASSOCIATES, GENERAL PARTNERSHIP ("P&S"), and S&P ASSOCIATES, GENERAL PARTNERSHIP ("S&P"), on the other (collectively "Plaintiffs"). Plaintiffs and Defendants are together referred to as the "Parties."

RECITALS

A. On or about December 10, 2012, a civil action was commenced against Sullivan and MDS, among others, relating to payments made by P&S and S&P, in that certain case styled *P&S Associates, General Partnership and S&P Associates, General Partnership, Plaintiffs v. Michael D. Sullivan, et al.*, Case No. 12-034123 (07) (the "Action").

B. The Parties have agreed to fully and finally resolve all disputes between them, including the claims set forth in the Action, without an admission of liability on the part of Defendants.

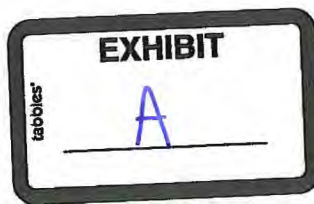
NOW, THEREFORE, for good and valuable consideration as well as the mutual covenants and agreements described herein, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. Recitals. The foregoing recitations are true and correct and are incorporated herein by reference.

2. Prior Disclosures. Prior to entering into this Agreement, the Conservator received and reviewed certain financial statements and disclosures provided by Sullivan. The Conservator's review of those financial statements and disclosures and Sullivan's representation that such financial statements and disclosures are true and accurate was a material factor in the Conservator's decision to enter into this Agreement, and the Conservator justifiably relied on the financial statements and disclosures provided by Sullivan prior to entering into this Agreement.

3. Judgment. Sullivan agrees to entry of a consent judgment against him in the amount of [REDACTED] (the "Judgment") within 45 days from execution of this Agreement. The Plaintiffs agree to forbear from collection activities related to the Judgment through and until April 1, 2015 (the "Forbearance Period"). The Plaintiffs will not record the Judgment during the Forbearance Period.

4. Satisfaction of Judgment. On March 1, 2015, Sullivan will provide a financial affidavit setting forth his complete financial condition as of that date (the "Affidavit"). The Conservator will review the Affidavit. Within 30 days from the receipt of the Affidavit, the Conservator will advise Sullivan if he will seek to collect on the Judgment after the expiration of



the Forbearance Period. If, after reviewing the Affidavit, the Conservator determines in his good faith, reasonable, business judgment that Sullivan does not have the financial ability to pay the Judgment, the Conservator will enter a satisfaction of Judgment (the "Satisfaction").

5. Court Approval. The Parties agree to seek Court approval of the terms of this Agreement. This Agreement is subject to approval by the Court. In the event that this Agreement is not approved by the Court, the Parties shall be returned to the *status quo ante* prior to their entry into this Agreement, and this Agreement shall be deemed null and void.

6. Release. The "Plaintiff Releasors" under this Agreement shall mean the Conservator, P&S, and S&P. The "Defendant Releasees" under this Agreement shall mean Sullivan and MDS, including its past and present officers and directors. Upon the entry of the Satisfaction, without further action by anyone, for good and valuable consideration, including that set forth above, the receipt of which is hereby acknowledged, Plaintiff Releasors, on behalf of themselves, shall be deemed to have, and by operation of law shall have, fully, finally and forever released, relinquished, settled and discharged as to each and every one of the Defendant Releasees all claims, demands, causes of action (whether direct, indirect or otherwise in nature), damages whenever and however incurred, liability of any nature whatsoever (including costs, expenses, penalties and attorneys' fees) whether asserted or otherwise, known or unknown, suspected or unsuspected, accrued or unaccrued, derivative or direct, whether in law, equity or otherwise from the beginning of the world to the date the Agreement is executed. Notwithstanding the foregoing, this Release shall not release Defendants' obligations under this Agreement. Upon the entry of the Satisfaction, without further action by anyone, for good and valuable consideration, including that set forth above, the receipt of which is hereby acknowledged, Defendants, on behalf of themselves, shall be deemed to have, and by operation of law shall have, fully, finally and forever released, relinquished, settled and discharged as to each and every one of the Plaintiff Releasors all claims, demands, causes of action (whether direct, indirect or otherwise in nature), damages whenever and however incurred, liability of any nature whatsoever (including costs, expenses, penalties and attorneys' fees) whether asserted or otherwise, known or unknown, suspected or unsuspected, accrued or unaccrued, derivative or direct, whether in law, equity or otherwise from the beginning of the world to the date the Agreement is executed. Notwithstanding the foregoing, this Release shall not release Plaintiffs' obligations under this Agreement

7. Meeting. Within 3 business days of the execution of this Agreement, and as requested by Plaintiffs thereafter, Defendants agree to meet with Plaintiffs. At these meetings, Defendants agree, as they are able, to cooperate with and assist Plaintiffs in Plaintiffs' evaluation, advancement, and prosecution of claims and causes of action that Plaintiffs have or may have against the non-settling defendants in the Action or which the Conservator may pursue in the future on behalf of P&S and S&P. Such assistance and cooperation shall include, without limitation, (i) meeting with Plaintiffs to answer Plaintiffs' questions, if answers are known, and (ii) providing Plaintiffs with any and all documents relevant to Plaintiffs' questions. During the Parties' meeting on June 25, 2014, the Parties will identify dates no later than 30 days from the date of that meeting whereby Defendants shall provide answers to questions that are transcribed under oath.

8. Confidentiality. The Parties agree that, while they may disclose the fact that they have settled, they will keep the terms and conditions of this Agreement and all related negotiations strictly confidential; provided however, that the Parties shall be able to make disclosures regarding this Agreement to the extent that any such disclosures are required (i) to obtain *in camera* Court approval of this Agreement; (ii) by a binding court order or other compulsory process, providing that the disclosing Party uses reasonable efforts to notify the other Party of a formal request made by any person or entity for such an order or other compulsory process as soon as practical after the request has been made, and the disclosing Party makes all reasonable efforts to object to the disclosure and to quash any efforts to have the Agreement disclosed, (iii) in the normal course of business of one or more of the Parties to their respective insurers, auditors, accountants, tax representatives, attorneys, financial advisors, financial institutions or lending institutions; (iv) by any Party to enforce any term or condition of this Agreement; or (v) as otherwise required by law.

9. Non-Disparagement. Plaintiffs agree that they do not believe that Sullivan was aware that BLMIS was operating a ponzi scheme prior to Madoff's arrest on December 11, 2008. Plaintiffs agree not to represent that Sullivan knew that BLMIS was a ponzi scheme prior to Madoff's arrest on December 11, 2008.

10. No Admission. The Parties agree and acknowledge that nothing contained herein shall be deemed an admission or concession of liability or wrongdoing or any other form of admission with respect to any matter, thing or dispute whatsoever.

11. Miscellaneous. Each individual executing this Agreement below represents and warrants that he or she is fully authorized to (i) execute and deliver this Agreement to the other party on behalf of the party for which he or she is signing and (ii) legally bind the party for which he or she is signing. Each party to this Agreement has consulted with legal counsel regarding the scope and meaning of the terms and conditions set forth herein. This Agreement shall be deemed to have been jointly drafted by the Parties and no ambiguity or claimed ambiguity shall be resolved against any other party on the basis that such party drafted the language claimed to be ambiguous. This Agreement may be signed in two or more duplicate originals, which, taken together, shall constitute but one agreement and any fully executed original of which shall be deemed to be an original. The Parties agree that neither has assigned, pledged, sold or transferred or otherwise conveyed any right, claim, or interest that they have or may have in any matters released herein.

12. Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Florida.

13. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any other agreement or understanding of the Parties with respect to the matters contained herein. This Agreement may not be changed, altered or modified except in writing signed by the party against whom enforcement of such change would be sought.

14. Further Assurances. The Parties shall execute such further documents and do any and all such further things as may be necessary to implement and carry out the intent of this Agreement.

[signature page follows]

P&S ASSOCIATES, GENERAL PARTNERSHIP


S&P ASSOCIATES, GENERAL PARTNERSHIP

By: 

Name: Philip Von Kahle

Its: Conservator


Dated: June 25, 2014

By: 

Name: Philip Von Kahle

Its: Conservator

Dated: June 25, 2014


PHILIP VON KAHLE, as Conservator of P&S
ASSOCIATES, GENERAL PARTNERSHIP and
S&P ASSOCIATES, GENERAL PARTNERSHIP
DATED: June 25, 2014


MICHAEL D. SULLIVAN
DATED: 6/25/14

MICHAEL D. SULLIVAN & ASSOC., INC.,

By: 

Name: Michael D. Sullivan

Its: Perceptis

Dated: 6/26/14

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

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

Plaintiffs,

vs.

MICHAEL D. SULLIVAN, et al.,

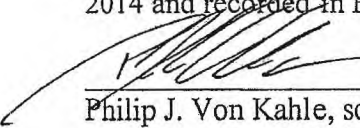
Defendants.

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

**SATISFACTION OF FINAL JUDGMENT
BY CONSENT AGAINST MICHAEL D. SULLIVAN**

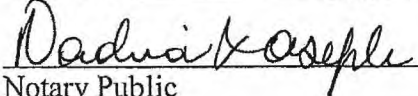
This document is signed by Philip J. von Kahle (the "Conservator"), as Conservator for P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P") (together, the "Partnerships" and with the Conservator, the "Plaintiffs") on March 10, 2015.

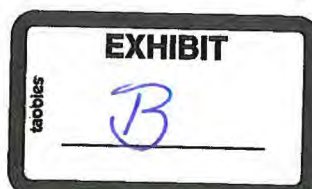
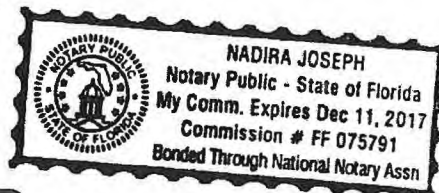
Plaintiffs acknowledge satisfaction of the judgment signed by the Judge on December 19, 2014 and recorded in Broward County, Official Records Book 51352 beginning at Page 691.


Philip J. Von Kahle, solely in his capacity as
as Conservator for P&S Associates, General
Partnership ("P&S") and S&P Associates,
General Partnership ("S&P")
Date: March 11, 2015

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing signature was acknowledged before me this 11 day of March, 2015, by Philip J. von Kahle (the "Conservator"), as Conservator for P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership who produced his driver's license or _____ as identification.


Notary Public



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.

**PLAINTIFFS' NOTICE OF SERVING REVISED RESPONSES TO DEFENDANT
MICHAEL BIENES' FIRST SET OF INTERROGATORIES TO PLAINTIFF**

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"), hereby give notice of serving the Revised Responses to Defendant Michael Bienes' First Set of Interrogatories to Plaintiff, via electronic mail on this 27th day of June, 2014 on all parties on the attached service list.

BERGER SINGERMAN LLP

*Attorneys for Plaintiff Philip Von Kahle as
Conservator for P & S Associates, General
Partnership and S & P Associates, General
Partnership*

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By: s/Leonard K. Samuels
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IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY,
FLORIDA

Case No. 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,

v.

MICHAEL D. SULLIVAN, et al.,

Defendants.

**PLAINTIFF, CONSERVATOR PHILIP J. VON KAHLE'S,
REVISED RESPONSES TO DEFENDANT MICHAEL
BIENES' FIRST SET OF INTERROGATORIES TO PLAINTIFF**


Plaintiff, Philip J. Von Kahle as Conservator of P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P", together with P&S, the "Partnerships") ("Conservator" or "Plaintiff") by and through undersigned counsel, hereby submits his revised responses to Defendant, Michael Bienes' ("Bienes" or "Defendant") First Set of Interrogatories Numbers 3, 4, 6, 9, 10, 14, and 15 to Plaintiff, Philip J. Von Kahle, as Conservator of P&S General Partnership and S&P General Partnership.

OBJECTIONS

All responses of the Plaintiff to Bienes' Interrogatories are made subject to and without waiving these objections common to all interrogatories.

1. The Plaintiff objects to each and every interrogatory to the extent they call for the proprietary, confidential, and/or financial information of the Partnerships and/or a non-party.

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 **BERGER SINGERMAN**

350 East Las Olas Blvd. | Suite 1000 | Fort Lauderdale, Florida 33301
t: 954-525-9900 | f: 954-523-2872 | WWW.BERGERSINGERMAN.COM

2. The Plaintiff objects to the extent the Interrogatories impose a duty to supplement not required by the Florida Rules of Civil Procedure.

3. The Plaintiff's investigation of the facts relevant to the instant matter is in its initial stages and, Plaintiff will respond to Defendant's interrogatories while reserving the right to supplement his responses at a later time. Additionally, there is outstanding discovery, which includes documents to be produced by Frank Avellino, Vincent Kelly, and Kelco Foundation, Inc. that further prevents Plaintiffs from providing complete answers.

Without waiving the general objections, the Plaintiff responds, within the limits of these objections, as set forth below.

RESPONSES AND OBJECTIONS TO INTERROGATORIES

INTERROGATORY #3: With respect to each investor/general partner You allege to have been solicited by Bienes to invest in the Partnerships, please provide the following information:

- a. The name of each investor/general partner;
- b. The amount of each investment;
- c. The date on which each investment was made;
- d. To whom or with whom the investment was made;
- e. A detailed description of the investment; and
- f. A description of all documents relating to each investment.

RESPONSE AND OBJECTION TO INTERROGATORY #3:

Plaintiff objects to the extent that the information sought is in Bienes' possession or could be more easily obtained through other parties or sources. Plaintiff objects to this interrogatory to the extent that it seeks information that is privileged by statute or common law, including attorney work product and privileged communications between attorney and client, or settlement

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communications. Plaintiffs also object to this interrogatory because the undefined term "investor/general partner" is vague and unclear. Further, discovery has only recently begun and the Conservator is still investigating certain claims. To the extent that the term "investor/general partner" refers to general partners in the Partnerships, the Plaintiff responds:

It is believed that the following general partners of P&S were solicited by Bienes to invest in P&S because the books and records of P&S indicate that Bienes received a Kickback (as defined in the operative complaint in this action) in relation to those general partners' investments with P&S. Those general partners' investments were made by the below general partners becoming general partners with P&S, and the amounts and dates of those general partner's investments in P&S are as follows:

■ **Andrea Acker – Invested \$100,000**

	Balance Forward	New Investment	Distributions	Ending Balance
Acker, Andrea J.				
2008	\$ -	\$100,000.00		\$ 100,000.00
Acker Total	\$ -	\$100,000.00		\$ 100,000.00

■ **Carone Family Trust – Invested \$335,000**

	Balance Forward	New Investment	Distributions	Ending Balance
Carone Family Trust				
2004	\$ -	\$335,000.00		\$ 335,000.00
2005	\$335,000.00	\$ -	\$ (90,000.00)	\$ 245,000.00
2006	\$245,000.00	\$ -		\$ 245,000.00
2007	\$245,000.00	\$ -		\$ 245,000.00
2008	\$245,000.00	\$ -		\$ 245,000.00
Carone Family Trust Total		\$335,000.00	\$ (90,000.00)	\$ 245,000.00

■ **Carone Gallery Inc., Pension Trust – Invested \$474,986**

	Balance Forward	New Investment	Distributions	Ending Balance
Carone Gallery, Inc. Pension Trust				
2000	\$ -	\$198,000.00		\$ 198,000.00

Carone Gallery, Inc. Pension Trust	Balance Forward	New Investment	Distributions	Ending Balance
2001	\$198,000.00	\$ -		\$ 198,000.00
2002	\$198,000.00	\$176,500.00		\$ 374,500.00
2003	\$374,500.00	\$100,486.00		\$ 474,986.00
2004	\$474,986.00	\$ -		\$ 474,986.00
2005	\$474,986.00	\$ -		\$ 474,986.00
2006	\$474,986.00	\$ -	\$ (60,000.00)	\$ 414,986.00
2007	\$414,986.00	\$ -	\$ (60,000.00)	\$ 354,986.00
2008	\$354,986.00	\$ -	\$ (60,000.00)	\$ 294,986.00
Carone Gallery, Inc. Pension Trust Total		\$474,986.00	\$ (180,000.00)	\$ 294,986.00

■ **Carone Marital Trust #1 UTD 1/26/00 – Invested \$564,000**

Carone Marital Trust No. 1	Balance Forward	New Investment	Distributions	Ending Balance
2004	\$ -	\$534,000.00	\$ (24,000.00)	\$ 510,000.00
2005	\$510,000.00	\$ -	\$ (64,000.00)	\$ 446,000.00
2006	\$446,000.00	\$ 30,000.00	\$ (32,000.00)	\$ 444,000.00
2007	\$444,000.00	\$ -	\$ (32,000.00)	\$ 412,000.00
2008	\$412,000.00	\$ -	\$ (24,000.00)	\$ 388,000.00
Carone Marital Trust No. 1 Total		\$564,000.00	\$ (176,000.00)	\$ 388,000.00

■ **Carone Marital Trust #2 UTD 1/26/00 – Invested \$660,000**

Carone Marital Trust No. 2	Balance Forward	New Investment	Distributions	Ending Balance
2004	\$ -	\$660,000.00	\$ (30,000.00)	\$ 630,000.00
2005	\$630,000.00	\$ -	\$ (80,000.00)	\$ 550,000.00
2006	\$550,000.00	\$ -	\$ (40,000.00)	\$ 510,000.00
2007	\$510,000.00	\$ -	\$ (40,000.00)	\$ 470,000.00
2008	\$470,000.00	\$ -	\$ (30,000.00)	\$ 440,000.00
Carone Marital Trust No. 2 Total		\$660,000.00	\$ (220,000.00)	\$ 440,000.00

■ Carone, Matthew D. Revocable Trust – Invested \$150,486

Carone, Matthew D. Revocable Trust	Balance Forward	New Investment	Distributions	Ending Balance
2003	\$ -	\$150,486.00		\$ 150,486.00
2004	\$150,486.00	\$ -		\$ 150,486.00
2005	\$150,486.00	\$ -		\$ 150,486.00
2006	\$150,486.00	\$ -	\$ (22,500.00)	\$ 127,986.00
2007	\$127,986.00	\$ -	\$ (30,000.00)	\$97,986.00
2008	\$ 97,986.00	\$ -	\$ (22,500.00)	\$75,486.00
Carone, Matthew Revocable Trust Total		\$150,486.00	\$ (75,000.00)	\$75,486.00

■ Elaine Ziffer – Invested \$1,000,000.

Ziffer, Elaine	Balance Forward	New Investment	Distributions	Ending Balance
2004	\$ -	\$1,000,000.00	\$ (48,000.00)	\$ 952,000.00
2005	\$952,000.00	\$ -	\$ (104,000.00)	\$ 848,000.00
2006	\$848,000.00	\$ -	\$ (90,000.00)	\$ 758,000.00
2007	\$758,000.00	\$ -	\$ (120,000.00)	\$ 638,000.00
2008	\$638,000.00	\$ -	\$ (60,000.00)	\$ 578,000.00
Ziffer Total		\$1,000,000.00	\$ (422,000.00)	\$ 578,000.00

■ Paragon Ventures Ltd. – Invested \$8,000,000

Paragon Ventures Ltd.	Balance Forward	New Investment	Distributions	Ending Balance
2002	\$ -	\$4,000,000.00		\$ 4,000,000.00
2003	\$4,000,000.00	\$1,000,000.00	\$(1,007,058.00)	\$ 3,992,942.00
2004	\$3,992,942.00	\$ -	\$(2,614,748.60)	\$ 1,378,193.40
2005	\$1,378,193.40	\$3,000,000.00	\$(515,880.00)	\$ 3,862,313.40
2006	\$3,862,313.40	\$ -	\$ (31,760.00)	\$ 3,830,553.40
2007	\$3,830,553.40	\$ -	\$(5,729,891.17)	\$(1,899,337.77)
2008	\$(1,899,337.77)	\$ -	\$ (49,418.25)	\$(1,948,756.02)
Paragon Ventures Ltd. - Terminated Total		\$8,000,000.00	\$ (9,948,756.02)	\$(1,948,756.02)

■ James A. Jordan Living Trust – Invested \$400,000

Jordan, James A. Living Trust	Balance Forward	New Investment	Distributions	Ending Balance
2003	\$ -	\$400,000.00		\$ 400,000.00
2004	\$400,000.00	\$ -		\$ 400,000.00
2005	\$400,000.00	\$ -		\$ 400,000.00
2006	\$400,000.00	\$ -		\$ 400,000.00
2007	\$400,000.00	\$ -		\$ 400,000.00
2008	\$400,000.00	\$ -		\$ 400,000.00
Jordan, James A. Living Trust Total		\$400,000.00		\$ 400,000.00

■ Sandra W. Dydo – Invested \$200,000

Dydo, Sandra W.	Balance Forward	New Investment	Distributions	Ending Balance
2008	\$ -	\$200,000.00		\$ 200,000.00
Dydo Total		\$200,000.00		\$ 200,000.00

■ Vincent T. Kelly – Invested \$10,000

Kelly, Vincent T. Reverand	Balance Forward	New Investment	Distributions	Ending Balance
1993		\$ 10,000.00		\$10,000.00
1994	\$ 10,000.00	\$ -		\$10,000.00
1995	\$ 10,000.00	\$ -		\$10,000.00
1996	\$ 10,000.00	\$ -		\$10,000.00
1997	\$ 10,000.00	\$ -		\$10,000.00
1998	\$ 10,000.00	\$ -		\$10,000.00
1999	\$ 10,000.00	\$ -		\$10,000.00
2000	\$ 10,000.00	\$ -		\$10,000.00
2001	\$ 10,000.00	\$ -		\$10,000.00
2002	\$ 10,000.00	\$ -		\$10,000.00
2003	\$ 10,000.00	\$ -		\$10,000.00
2004	\$ 10,000.00	\$ -		\$10,000.00
2005	\$ 10,000.00	\$ -		\$10,000.00
2006	\$ 10,000.00	\$ -		\$10,000.00
2007	\$ 10,000.00	\$ -		\$10,000.00
2008	\$ 10,000.00	\$ -		\$10,000.00
Kelly Total		\$ 10,000.00		\$10,000.00

■ Vincent T. Kelly Trust – Invested \$30,000

Kelly Trust	Balance Forward	New Investment	Distributions	Ending Balance
1993		\$ 30,000.00		\$30,000.00
1994	\$ 30,000.00	\$ -		\$30,000.00
1995	\$ 30,000.00	\$ -		\$30,000.00
1996	\$ 30,000.00	\$ -		\$30,000.00
1997	\$ 30,000.00	\$ -		\$30,000.00
1998	\$ 30,000.00	\$ -		\$30,000.00
1999	\$ 30,000.00	\$ -		\$30,000.00
2000	\$ 30,000.00	\$ -		\$30,000.00
2001	\$ 30,000.00	\$ -		\$30,000.00
2002	\$ 30,000.00	\$ -		\$30,000.00
2003	\$ 30,000.00	\$ -		\$30,000.00
2004	\$ 30,000.00	\$ -		\$30,000.00
2005	\$ 30,000.00	\$ -		\$30,000.00
2006	\$ 30,000.00	\$ -		\$30,000.00
2007	\$ 30,000.00	\$ -		\$30,000.00
2008	\$ 30,000.00	\$ -		\$30,000.00
Kelly Irrevocable Trust				
Total		\$ 30,000.00		\$30,000.00

■ Kelco Foundation – Invested \$23,850.68

Kelco Foundation - Terminated	Balance Forward	New Investment	Distributions	Ending Balance
1994	\$ -	\$ 23,850.68	\$ (23,850.68)	\$ -
1995	\$ -	\$ -		\$ -
1996	\$ -	\$ -		\$ -
1997	\$ -	\$ -		\$ -
1998	\$ -	\$ -		\$ -
1999	\$ -	\$ -		\$ -
2000	\$ -	\$ -	\$ (742.32)	\$ (742.32)
2001	\$ (742.32)	\$ -		\$ (742.32)
2002	\$ (742.32)	\$ -		\$ (742.32)
2003	\$ (742.32)	\$ -		\$ (742.32)
2004	\$ (742.32)	\$ -		\$ (742.32)
2005	\$ (742.32)			\$ (742.32)
2006	\$ (742.32)	\$ -		\$ (742.32)

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Kelco Foundation - Terminated	Balance Forward	New Investment	Distributions	Ending Balance
2007	\$ (742.32)	\$ -		\$ (742.32)
2008	\$ (742.32)	\$ -		\$ (742.32)
Kelco Foundation - Terminated Total		\$ 23,850.68	\$ (24,593.00)	\$ (742.32)

It is believed that the following general partners of S&P were solicited by Bienes to invest in S&P because the books and records of S&P indicate that Bienes received a Kickback (as defined in the operative complaint in this action) in relation to those general partners' investments with S&P. Those general partners' investments were made by the below general partners becoming general partners with S&P, and the amounts and dates of those general partner's investments in S&P are as follows:

■ **Roberta P. Alves & Vania P. Duarte – Invested \$49,000.**

Alves, Roberta P. & Vania P. Duarte	Balance	Contributions	Disbursements
1993		\$40,000.00	
1994	\$ 40,000.00		\$ (5,000.00)
1995	\$ 35,000.00		\$ (3,000.00)
1996	\$ 32,000.00		\$ (3,000.00)
1997	\$ 29,000.00		\$ (2,500.00)
1998	\$ 26,500.00		\$ (2,000.00)
1999	\$ 24,500.00	\$9,000.00	\$ (6,500.00)
2000	\$ 27,000.00		\$ (10,000.00)
2001	\$ 17,000.00		\$ (5,000.00)
2002	\$ 12,000.00		\$ (12,000.00)
2003	\$ -		\$ (5,000.00)
2004	\$ (5,000.00)		
2005	\$ (5,000.00)		
2006	\$ (5,000.00)		
2007	\$ (5,000.00)		
2008	\$ (5,000.00)		\$ (10,000.00)
Alves Total		\$49,000.00	\$ (64,000.00)

■ Janet A. Hooker Charitable Trust – Invested \$4,000,000

Hooker, Janet A. Charitable Trust - Terminated	Balance Forward	New Investment	Distributions	Ending Balance
2002		\$ 4,000,000.00	\$(449,444.90)	\$3,550,555.10
2003	\$3,550,555.10		\$(461,011.62)	\$3,089,543.48
2004	\$3,089,543.48		\$(3,882,018.36)	\$ (792,474.88)
2005	\$ (792,474.88)		\$ (67,405.53)	\$ (859,880.41)
2006	\$ (859,880.41)			\$ (859,880.41)
2007	\$ (859,880.41)			\$ (859,880.41)
2008	\$ (859,880.41)			\$ (859,880.41)
Hooker Charitable Trust - Terminated Total		\$ 4,000,000.00	\$ (4,859,880.41)	\$ (859,880.41)

■ James and Valerie Judd – Invested \$180,000

Judd, James & Valerie Bruce	Balance Forward	New Investment	Distributions	Ending Balance
2000		\$ 180,000.00		\$180,000.00
2001	\$180,000.00			\$180,000.00
2002	\$180,000.00			\$180,000.00
2003	\$180,000.00		\$(100,000.00)	\$ 80,000.00
2004	\$ 80,000.00			\$ 80,000.00
2005	\$ 80,000.00			\$ 80,000.00
2006	\$ 80,000.00			\$ 80,000.00
2007	\$ 80,000.00		\$ (80,000.00)	\$ -
2008	\$ -		\$ (80,000.00)	\$(80,000.00)
Judd Total		\$ 180,000.00	\$(260,000.00)	\$(80,000.00)

Certain general partners in SPJ Investments, Ltd., a general partner in S&P, were solicited to invest in the Partnerships, through SPJ Investments, Ltd., by Bienes because the books and records of the Partnerships indicate that Bienes received a Kickback (as defined in the operative complaint in this action) in relation to those general partners' investments with SPJ Investments, Ltd. Those general partners' investments were made by the below general partners

becoming general partners with SPJ Investments, Ltd., and the amounts and dates of those general partner's investments are as follows:

■ **Esteban, Fernando – Invested \$19,226.39**

Esteban, Fernando	Balance Forward	New Investment	Distributions	Ending Balance
2004	\$ -	\$19,226.39	\$ -	\$ 19,226.39
2005	\$ 19,226.39	\$ -	\$ -	\$ 19,226.39
2006	\$ 19,226.39	\$ -	\$ -	\$ 19,226.39
2007	\$ 19,226.39	\$ -	\$ (930.10)	\$ 18,296.29
2008	\$ 18,296.29	\$ -	\$ (1,566.11)	\$ 16,730.18
Esteban, Fernando Total		\$19,226.39	\$ (2,496.21)	\$ 16,730.18

■ **Esteban, Margaret – Invested \$567,835.65**

Esteban, Margaret	Balance Forward	New Investment	Distributions	Ending Balance
2004	\$ -	\$ 547,717.28	\$ -	\$ 547,717.28
2005	\$547,717.28	\$10,055.38	\$ -	\$ 557,772.66
2006	\$557,772.66	\$10,062.99	\$ -	\$ 567,835.65
2007	\$567,835.65	\$ -	\$ -	\$ 567,835.65
2008	\$567,835.65	\$ -	\$ (28,294.61)	\$ 539,541.04
Esteban, Margaret Total		\$ 567,835.65	\$ (28,294.61)	\$ 539,541.04

■ **Seperson, Marvin – Invested \$280,702.17**

Seperson, Marvin	Balance Forward	New Investment	Distributions	Ending Balance
2007	\$ -	\$ 280,702.17	\$ (6,040.00)	\$ 274,662.17
2008	\$274,662.17	\$ -	\$ (9,963.40)	\$ 264,698.77
Seperson Total		\$ 280,702.17	\$ (16,003.40)	\$ 264,698.77

■ **Jordan, James – Invested \$3,154,869.58**

Jordan, James A.	Balance Forward	New Investment	Distributions	Ending Balance
2004	\$ -	\$ 3,154,869.58	\$ (94,435.01)	\$3,060,434.57
2005	\$3,060,434.57	\$ -	\$ (94,511.39)	\$2,965,923.18
2006	\$2,965,923.18	\$ -	\$ (28,661.53)	\$2,937,261.65

2007	\$2,937,261.65	\$ -	\$ (113,787.00)	\$2,823,474.65
2008	\$2,823,474.65	\$ -	\$ (124,209.08)	\$2,699,265.57
Jordan Total		\$ 3,154,869.58	\$ (455,604.01)	\$2,699,265.57

Documents related to each investment by the above general partners include checks to the Partnerships (MB02154RTP – MB02222RTP) and other partnership records, which are in Plaintiffs possession custody or control and which will be made available for inspection upon request.

INTERROGATORY #4: Please state with specificity all facts supporting Your allegation in Paragraph 23 of the Amended Complaint that Bienes solicited general partner investors “without any reasonable belief as to the advisability in investing in the Partnerships” In Your answer, please identify all documents that support this allegation and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support your allegation. With respect to each such person You identify, please describe the subject matter of such person’s knowledge.

RESPONSE AND OBJECTION TO INTERROGATORY #4:

The Plaintiff objects to the extent that the information sought is in Bienes’ possession or could be more easily obtained through other parties or sources. Plaintiff objects to this interrogatory to the extent that it seeks information that is privileged by statute or common law, including attorney work product and privileged communications between attorney and client, or settlement communications. Plaintiff also objects to this interrogatory because the undefined term general partner investor is vague and unclear.

Notwithstanding the foregoing objection, Plaintiff does not have any records which indicate that Bienes conducted any due diligence or investigation as to the financial stability or

condition of the Partnerships prior to soliciting general partners to invest in the Partnerships. Further, Bienes has admitted in response to Interrogatory Number 22 that he has not investigated the financial condition of the Partnerships. Because Bienes did not conduct any due diligence as to the financial status of the Partnerships, he did not have any reasonable belief as to the advisability in investing in the Partnerships.

Additionally, Plaintiffs have produced documents the following documents that may be responsive to this interrogatory. The Bates numbers of those documents include, but are not limited to:

- Journals - MB00002RTP - MB00005RTP; MB00012RTP - MB00019RTP.
- Management Fee Records - MB00008RTP - MB00010RTP; MB00025RTP - MB00089RTP.
- Checks to Bienes - MB00006RTP

It is believed that Bienes possesses knowledge of the facts that support the allegation.

INTERROGATORY #6: Please state with specificity all facts supporting Your allegation in Paragraph 27 of the Amended Complaint, as it relates to Bienes, that Bienes and the other Defendants "ensured that Sullivan, through entities he exclusively controlled, made distributions to the Kickback Defendants that were in violation of the Partnership Agreements." In Your answer, please identify all documents that support Your allegation and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support Your allegation. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

RESPONSE AND OBJECTION TO INTERROGATORY #6:

Plaintiff objects to the extent that the information sought is in Bienes' possession or could be more easily obtained through other parties or sources. Plaintiff objects to this interrogatory to

the extent that it seeks information that is privileged by statute or common law, including attorney work product and privileged communications between attorney and client, or settlement communications.

Bienes ensured that Sullivan, through entities he exclusively controlled, made distributions to Bienes through entities that he controlled that were in violation of the Partnership Agreements because the Partnerships' books and records reveal amounts listed as outstanding liabilities that relate to funds which were to be paid to Bienes during the time when the Partnerships were in operation. These amounts paid to Bienes refer to Bienes' receipt of kickbacks in exchange for causing individuals and/or entities to invest with the Partnerships. Bienes' request for those kickbacks from the Partnerships ensured that Sullivan made distributions to Bienes or entities that he controlled that were in violation of the Partnership Agreements. Moreover, the fact that kickbacks to Bienes were made to different entities which Bienes controlled or was a member of demonstrates, that Bienes had the authority to control the disbursement of such funds. Additionally, Bienes directly received kickbacks or charitable contributions.

Plaintiffs have produced documents which support this allegations and whose Bates numbers include, but are not limited to:

- Journals - MB00002RTP - MB00005RTP; MB00012RTP - MB00019RTP.
- Management Fee Records - MB00008RTP - MB00010RTP; MB00025RTP - MB00089RTP.
- Checks to Bienes - MB00006RTP
- Bank Statements - MB00096RTP - MB00223RTP.
- MB00337RTP - MB02007RTP.
- Documents in this grouping include the Partnerships spreadsheets and checks.

It is believed that individuals who possess knowledge of the facts that support the allegation are: Bienes (as to his receipt of the kickbacks) and Michael D. Sullivan (as to Bienes' receipt of the kickbacks).

INTERROGATORY #9: Please state with specificity all facts supporting Your allegations in Paragraph 32 of the Amended Complaint, as they relate to Bienes, that Bienes and the other Defendants "knew or should have known that the Kickbacks and distributions to themselves and non-partners were improper" and that "the Kickback Defendants worked with Sullivan to obtain additional Kickbacks based on their solicitation of new investors in one or both of the Partnerships." In Your answer, please identify all documents that support Your allegations and the name(s) of any person(s) with knowledge of the facts that support Your allegations. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

RESPONSE AND OBJECTION TO INTERROGATORY #9:

The Plaintiff objects to the extent that the information sought is in Bienes' possession or could be more easily obtained through other parties or sources. Plaintiff objects to this interrogatory to the extent that it seeks information that is privileged by statute or common law, including attorney work product and privileged communications between attorney and client, or settlement communications. The Plaintiff objects to this interrogatory because it exceeds the amount allowed by the Florida Rules of Civil Procedure. However, the Plaintiff has responded to this interrogatory in order to expedite discovery and advance the procedural posture of this matter, without explicitly waiving their right to object to it on the aforementioned basis.

Bienes knew or should have known that the kickbacks that he received were improper because he was involved in the management of the Partnerships, presumably had access to the

Partnerships' Partnership Agreements, and concealed his receipt of kickbacks that he received in exchange for soliciting investors for the Partnerships.

Documents that support these allegations include but are not limited to:

- Journals - MB00002RTP - MB00005RTP; MB00012RTP - MB00019RTP.
- Management Fee Records - MB00008RTP - MB00010RTP; MB00025RTP - MB00089RTP.
- Checks to Bienes - MB00006RTP
- Bank Statements - MB00096RTP - MB00223RTP.
- MB00337RTP - MB02007RTP. Documents in this grouping include the Partnerships spreadsheets and checks.

Persons who possess knowledge of the facts to support these allegations are:

- Michael D. Sullivan who is believed to have knowledge related Bienes' receipt of the kickbacks
- Frank Avellino who is believed to have knowledge related Bienes' receipt of the kickbacks.

INTERROGATORY #10: Please state with specificity all facts supporting Your allegation in Paragraph 42 of the Amended Complaint, as it relates to Bienes, that "Sullivan inappropriately distributed ... millions of dollars of Partnership funds to assorted general partners from the capital contributions of other general partners, instead of from the Partnerships' profits." In Your answer, please identify all documents that support Your allegations and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support Your allegations. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

RESPONSE AND OBJECTION TO INTERROGATORY #10:

The Plaintiff objects to the extent that the information sought is in Bienes' possession or could be more easily obtained through other parties or sources. Plaintiff objects to this

interrogatory to the extent that it seeks information that is privileged by statute or common law, including attorney work product and privileged communications between attorney and client, or settlement communications. The Plaintiff objects to this interrogatory because it exceeds the amount allowed by the Florida Rules of Civil Procedure. However, Plaintiffs have responded to this interrogatory in order to expedite discovery and advance the procedural posture of this matter, without explicitly waiving their right to object to it on the aforementioned basis.

Notwithstanding the foregoing, Plaintiffs relied on the expert report and opinion of Barry Mukamal in making the assertion at issue in response to Interrogatory Number 10, and have produced a copy of that expert report to Bienes. The expert report and opinion of Barry Mukamal and the documents he relied on in making his determination provides a detailed factual basis for Plaintiffs' allegation.

Documents that support the allegations include but are not limited to:

- The expert report and opinion of Barry Mukamal previously produced to Bienes
- Journals - MB00002RTP - MB00005RTP; MB00012RTP - MB00019RTP.
- Management Fee Records - MB00008RTP - MB00010RTP; MB00025RTP - MB00089RTP.
- Checks to Bienes - MB00006RTP
- Bank Statements - MB00096RTP - MB00223RTP.
- MB00337RTP - MB02007RTP. Documents in this grouping include the Partnerships spreadsheets and checks.

It is believed that individuals who possess knowledge related to this allegation are:

- Michael D. Sullivan who is believed to have knowledge related to the distribution of millions of dollars of Partnership funds to assorted general partners from the capital contributions of other general partners, instead of from the Partnerships' profits.
- Barry Mukamal - regarding the expert report and opinion of Barry Mukamal.

INTERROGATORY #14: Please state with specificity all facts supporting Your allegation in Paragraph 73 of the Amended Complaint that the "kickbacks" Bienes allegedly received were "compensation . . . related to [his] advice concerning investment in the Partnerships." In Your answer, please identify all documents that support Your allegation and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support Your allegation. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

RESPONSE AND OBJECTION TO INTERROGATORY #14:

The Plaintiff objects to the extent that the information sought is in Bienes' possession or could be more easily obtained through other parties or sources. Plaintiff objects to this interrogatory to the extent that it seeks information that is privileged by statute or common law, including attorney work product and privileged communications between attorney and client, or settlement communications. The Plaintiff also objects to Interrogatory Number 14 as duplicative of Interrogatory Number 5. The Plaintiff objects to this interrogatory because it exceeds the amount allowed by the Florida Rules of Civil Procedure. However, Plaintiffs have responded to this interrogatory in order to expedite discovery and advance the procedural posture of this matter, without explicitly waiving their right to object to it on the aforementioned basis.

The "kickbacks" that Bienes received were compensation related to his soliciting general partners and advising general partners to invest in the Partnerships because the "kickbacks" that he received, and the amount of such "kickbacks" was directly tied to certain investors who invested in the Partnerships that are identified in response to Interrogatory #3.

In support, Plaintiffs have produced documents whose Bates numbers include, but are not limited to:

■ Journals - MB00002RTP - MB00005RTP; MB00012RTP - MB00019RTP.

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■ Management Fee Records — MB00008RTP - MB00010RTP; MB00025RTP - MB00089RTP.

■ Checks to Bienes - MB00006RTP

Persons with knowledge of this allegation include Bienes (as to his receipt of kickbacks), Frank Avellino (as to his receipt of kickbacks and Bienes' receipt of kickbacks) and the general partners identified in response to interrogatory #3 (their solicitation by Bienes).

INTERROGATORY #15: Please state with specificity all facts supporting Your allegations in Paragraph 79- 80 of the Amended Complaint, as they relate to Bienes, that Bienes and the other Defendants had "no reasonable grounds" to believe the recommendations You contend they made to investors to invest in the Partnerships were "suitable" for the investors. In Your answer, please identify all documents that support Your allegations and the name(s) of any person(s) with knowledge of the facts that support Your allegations. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

RESPONSE AND OBJECTION TO INTERROGATORY #15:

Plaintiff objects to the extent that the information sought is in Bienes' possession or could be more easily obtained through other parties or sources. Plaintiff objects to this interrogatory to the extent that it seeks information that is privileged by statute or common law, including attorney work product and privileged communications between attorney and client, or settlement communications. The Plaintiff objects to this interrogatory because it exceeds the amount allowed by the Florida Rules of Civil Procedure. However, Plaintiffs have responded to this interrogatory in order to expedite discovery and advance the procedural posture of this matter, without explicitly waiving their right to object to it on the aforementioned basis.

Notwithstanding the foregoing, Plaintiffs do not have any records which indicate that Bienes conducted any due diligence or investigation as to the financial stability or condition of the Partnerships prior to advising people to invest in them. Further, Bienes has admitted in his Interrogatory Number 22 that he has not investigated the financial condition of the Partnerships. Because Bienes did not conduct any due diligence as to the financial status of the Partnerships, he did not have any reasonable grounds to advise that each investment in the Partnerships was a suitable investment. Bienes does not have the necessary licenses to deal in securities which indicates that he could not give qualified investment advice.

Documents that support these allegations include but are not limited to:

- Journals - MB00002RTP - MB00005RTP; MB00012RTP - MB00019RTP.
- Management Fee Records - MB00008RTP - MB00010RTP; MB00025RTP - MB00089RTP.
- Checks to Bienes - MB00006RTP .

Persons with knowledge of these allegations include but are not limited to Bienes.

VERIFICATION

I have read the foregoing answers to the above Interrogatories and do swear under oath and penalty of perjury that they are true and correct.

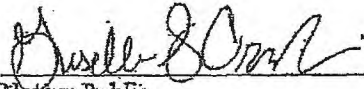
S&P ASSOCIATES, GENERAL PARTNERSHIP
P&S ASSOCIATES, GENERAL PARTNERSHIP

By: 

Philip J. Von Kahle, as Conservator

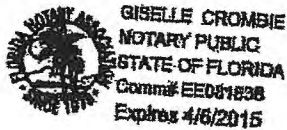
STATE OF FLORIDA)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 27th day of June, 2014, by Philip J. Von Kahle, as Conservator of S&P General Associates, General Partnership, and P&S Associates, General Partnership, who is ☒ personally known to me or has produced as identification and who did/did not take an oath.


Notary Public

(Print or Type Name): Giselle Crombie

My Commission Expires: 4/6/2015



(seal)

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

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

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

Plaintiffs,

vs.

MICHAEL D. SULLIVAN, et al.,

Defendants.

**PLAINTIFFS RESPONSES TO FRANK AVELLINO'S THIRD
SET OF INTERROGATORIES TO PLAINTIFFS**

Plaintiff, Philip J. Von Kahle as Conservator ("Conservator") of P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P", together with P&S, the "Partnerships", with the Conservator, the "Plaintiffs"), by and through his undersigned counsel, hereby submits Plaintiffs' Response to Avellino's Third Set of Interrogatories.

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By: /s/ Thomas M. Messana

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OBJECTIONS TO DEFINITIONS

Objection to Definition Number 1: Plaintiffs object to the term "Partnerships" to the extent that it includes Plaintiffs' attorneys to the extent that it incorporates "attorneys" into the definition because such documents are protected by the attorney-client and/or work product privilege. Plaintiffs do not waive their right to assert the attorney client and/or attorney work product privilege.

Objection to Definition Number 2: Plaintiffs object to the definition of "You" or "Your" to the extent that it refers to Plaintiffs' attorneys. Plaintiffs do not waive their right to assert the attorney client privilege, and/or work product privilege.

OBJECTIONS TO INSTRUCTIONS

Objection to Instruction Number 2: Plaintiffs object to Instruction Number 2 because an objection to a part of an interrogatory, coupled with a response could constitute a waiver of Plaintiffs' right to object to such an interrogatory. Plaintiffs will not take any actions which would otherwise jeopardize their right to respond.

Objection to Instruction Number 3: Plaintiffs object to Instruction Number 3 because it requires them to disclose information which would otherwise be protected by the attorney-client, or attorney-work product privilege. Plaintiffs will not waive their right to assert those applicable privileges. Plaintiffs also object to Instruction Number 3 because it requires Plaintiffs to disclose their mental impressions or investigatory processes, which would require the disclosure of the attorney work-product privilege.

Objection to Instruction Number 4: Plaintiffs object to Instruction Number 4 because they will not produce a privilege log until after resolution of their other objections to these

interrogatories. Once resolved, Plaintiffs reserve the right to produce a privilege log.

INTERROGATORIES

1. With respect to Your allegations in Paragraph 20 of the Third Amended Complaint that "Avellino and Bienes formed a relationship with Sullivan and Powell in an effort to find new avenues to profit from Madoff's Ponzi scheme and to avoid the prohibitions established by the SEC" and "Sullivan and Powell were never informed of Avellino and Bienes's history of SEC violations," please state with specificity all facts supporting Your allegations with regard to Avellino. In Your answer, identify all documents that support Your allegations and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support Your allegations. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

ANSWER:

Before the formation of the Partnerships, Defendant Frank Avellino ("Avellino") and Defendant Michael Bienes ("Bienes") operated an entity known as Avellino & Bienes ("A&B"). A&B operated as what is commonly known as a "feeder fund" through which investors invested money with Bernard L. Madoff Investment Securities ("BLMIS"). On or about September 7, 1993, Avellino and Bienes were permanently enjoined from dealing in securities and A&B was liquidated.

Prior to the liquidation of A&B, Avellino and Bienes worked with several entities that indirectly invested with Madoff through A&B. Among others, those entities included Telfran Investments, LLC; S&P Investment Group, Inc.; and the Ken Jordan Foundation. After A&B was liquidated, those entities invested directly with Madoff while paying Avellino and Bienes kickbacks or management fees. None of the aforementioned entities could have invested with in BLMIS, but for Avellino and Bienes' referral and they paid fees to Avellino and Bienes in exchange for the ability to invest in BLMIS. Sullivan paid half of the management fees that he received from the operation of the Partnerships, based upon the accounts of the partners Avellino and Bienes referred, to Avellino and Bienes and he took such action because Avellino and Bienes used him as a "front man."

After A&B was directed to cease operations by the SEC, Avellino convinced certain investors of A&B to invest with the Partnerships, see Response to Interrogatory No.1 of Avellino's First Set of Interrogatories. Several of the partners in the Partnerships previously held accounts with A&B. Correspondence from Avellino to Greg Powell reflects that Mr. Avellino believed he had a claim to certain partners accounts which were formerly with accounts with A&B and/or were referred by Avellino and Bienes. Avellino negotiated

a fee with Sullivan and Powell for these accounts. (Avellino_P&S000001 - Avellino_P&S000008).

Additionally, spreadsheets which reflect the calculation of fees to be paid to Avellino and Bienes have been provided to Avellino in response to Avellino. AVE00008RTP - AVE00011RTP; AVE00337RTP - AVE00401RTP. Moreover, journals which reflect transfers to Avellino have been provided to Avellino. AVE00001RTP - AVE00005RTP; AVE00012RTP - AVE00019RTP.

Correspondence between Michael Sullivan and Bette Ann-Powell, AVE00253RTP - AVE00255RTP, reflects Avellino's relationship with Sullivan and role between BLMIS and the Partnerships:

"Right off the bat, you should be completely aware that the gift of this business was only given to me not Greg. It came from a close friend in my church, Frank Avellino. He came alone to me as an individual...I was reminded constantly by Frank that this was my gift alone..."

"If something happens to the stock market, to our investors, to Frank our contact or myself this partnership could change drastically."

"I am the person who deals with the main source, Frank Avellino. He has given and entrusted to me this gift and can take it back at any time and earn the entire commission for himself."

"I felt in your heart there was a time that you felt when Greg was called home that you would be a partner in this business. I don't know where you got that idea but that could and would never happen. For one thing Frank Avellino would never have allowed it."

Additionally, Sullivan contacted or called Avellino frequently when Sullivan had questions concerning Madoff. Sullivan also discussed further investments with Madoff in 2002 or 2003 when Gregg Powell passed away. Avellino indicated that he could contact Madoff and tell Madoff that something was going wrong if Sullivan admitted any of Powell's relatives as managing general partner, and Madoff would prevent Sullivan from investing in BLMIS. After that discussion, Avellino and his son, Tom Avellino visited Sullivan in S&P's offices and Tom Avellino provided Sullivan with software which Sullivan was to use to track investments and management fees received and paid by the partnerships.

In an interview with Frontline, Bienes stated that Avellino told Bienes that Avellino could get an account or two with Madoff for Sullivan and Powell. In the same interview, Bienes stated that Avellino introduced Sullivan to Madoff. Further, Bienes stated that Madoff told Avellino and Bienes that they could continue to invest with Madoff as long as their names did not appear on Madoff's books, and consequently Avellino and Bienes established a series of other entities that they used to invest in Madoff.

Avellino sent a fax to Susan Moss which provided information for entities managed by Avellino and Bienes. AVE00224RTP - AVE00228RTP. These entities received commissions from Sullivan. AVE00003RTP-AVE00005RTP

Avellino advised Sullivan on whether to obtain a legal opinion in Partnership matters, and told Sullivan to tell the partner to "invest elsewhere" if the partner sought to pledge an interest in BLMIS securities. AVE00245RTP - AVE00252RTP.

Avellino advised Sullivan regarding whether the partners' Partnership interest were able to be pledged or not. AVE00245RTP - AVE00252RTP. Sullivan would follow Avellino's directions regarding the Partnerships. AVE00245RTP - AVE00252RTP.

Avellino provided Sullivan with contact information (names and phone numbers) for people at BLMIS, including Jodi Crupi who was convicted for her actions related to the Madoff Ponzi Scheme. AVE00252RTP. Avellino advised Sullivan on what to say to Crupi to make account changes at BLMIS. AVE00252RTP.

Correspondence reflects that Avellino worked as an intermediary between Sullivan and investors in the Partnerships. Among this correspondence, Avellino sent over \$500,000 in investor funds via Fed-Ex to the Partnerships. AVE00245RTP - AVE00255RTP; AVE00285RTP - AVE00335RTP.

Avellino provided Sullivan with contact information (names and phone numbers) for people at BLMIS, including but not limited to Jodi Crupi, who was convicted for her actions related to the Madoff Ponzi Scheme. AVE00252RTP. Avellino advised Sullivan on what to say to Crupi to make account changes at BLMIS. AVE00252RTP. In 2009, Bienes continued to refer to Avellino as his partner in a television interview. Bienes claimed that he and Avellino worked together in their business endeavors, and were subsequently engaged in a joint venture. Thus, to the extent that Avellino participated in particular conduct in furtherance of business endeavors with BLMIS, his conduct should be imputed onto Bienes.

Plaintiffs are withdrawing their allegation the Sullivan and Powell were aware of the SEC Prohibition. Plaintiffs have discovered that the Partnerships knew of the SEC prohibition.

Documents which support the allegations: The transcript of Bienes' interview with

Frontline and the documents identified in this response by bates number.

Michael D. Sullivan – Sullivan was the managing general partner of the Partnerships. It is believed that Sullivan has knowledge related to the Partnerships formation, investment with BLMIS, and how access was obtained to invest with BLMIS.

Michael Bienes – Bienes has been associated with Avellino in numerous entities which invested with BLMIS for several decades. It is believed that Bienes has knowledge related to the process for investing with BLMIS, the limited ability to invest with BLMIS, and the Partnerships' decision to invest with BLMIS.

Susan Moss – Mrs. Moss worked in the Partnerships office and communicated with Avellino via fax. Mrs. Moss may have knowledge regarding Sullivan's relationship with Avellino.

2. With respect to Your allegation in Paragraph 22 of the Third Amended Complaint that "Avellino and Bienes presented Sullivan with the idea that he should administer a fund that would invest the monies of others" and that "the proximity of the offices of Avellino and Bienes to the offices of Sullivan and Powell allowed them to exert control over that opportunity," please state with specificity all facts supporting Your allegations with regard to Avellino. In Your answer, identify all documents that support Your allegation and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support Your allegation. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

ANSWER:

See response to Interrogatory No. 1.

Bienes claimed in the PBS front line interview that Sullivan's office was located down the hall from Avellino and Bienes' office in south Florida.

Michael D. Sullivan – Sullivan was the managing general partner of the Partnerships. It is believed that Sullivan has knowledge related to the Partnerships formation, investment with BLMIS, and Avellino's level of involvement with the Partnerships.

Michael Bienes – Bienes has been associated with Avellino in numerous entities which invested with BLMIS for several decades. It is believed that Bienes has knowledge related to the process for investing with BLMIS, Avellino's interest in connecting Sullivan with Madoff, and the Avellino and Bienes office space in Fort Lauderdale.

Scott Holloway – Holloway owned an interest in the building where the Partnerships' offices were located and knows about the facts and circumstances which led to the Partnerships relocation to that venue.

3. With respect to Your allegations in Paragraph 25 of the Third Amended Complaint that "Avellino and Bienes advised the Partnerships, through Sullivan, to invest their funds with BLMIS" and "Avellino and Bienes used the Partnerships, through Sullivan, as a front man for Avellino and Bienes to continue to invest money with Madoff," please state with specificity all facts supporting these allegations with regard to Avellino. In Your answer, please identify all documents that support Your allegations and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support Your allegations. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

ANSWER:

See response to Interrogatory No. 1.

Additionally, in 2010, Avellino consented to entry of a Consent Order against himself and Grosvenor Partners, Ltd. a/k/a Aster Associates based upon an action brought by the Connecticut Department of Banking (the "Connecticut Action"). Like the instant action, the Connecticut Action related to a partnership which invested with BLMIS. In that case, Avellino served as the general partner of Grosvenor. Among other things, the Consent Order provides that "[Grosvenor] offered and sold securities in the form of partnership interests to at least one Connecticut investor absent registration." Further, the Consent Order states that "[Grosvenor] failed to disclose, *inter alia*, that all of the Connecticut investor's funds would be placed with Madoff; the risk of loss of the entire investment; any risk factors related to the investment; any financial information on Respondent or its businesses; and any description as to how the funds would be invested with Madoff." The Consent Order further provides that "Avellino is barred from seeking registration in Connecticut as a broker-dealer, agent, investment adviser or investment adviser agent, as such terms are defined in the Act."

Michael D. Sullivan – Sullivan was the managing general partner of the Partnerships. It is believed that Sullivan has knowledge related to the Partnerships formation, investment with BLMIS, and how access was obtained to invest with BLMIS.

Michael Bienes – Bienes has been associated with Avellino in numerous entities which invested with BLMIS for several decades. It is believed that Bienes has knowledge related to the process for investing with BLMIS, the limited ability to invest with BLMIS, and the

Partnerships' decision to invest with BLMIS.

4. With respect to Your allegations in Paragraph 26 of the Third Amended Complaint that "[t]he Partnerships, through Sullivan, relied on Avellino and Bienes's advice to invest with BLMIS" and "Avellino and Bienes knew of that trust and voluntarily accepted it," please state with specificity all facts supporting Your allegations with regard to Avellino. In Your answer, please identify all documents that support Your allegations and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support Your allegations. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

ANSWER:

See response to Interrogatory No. 1.

Michael D. Sullivan – Sullivan was the managing general partner of the Partnerships. It is believed that Sullivan has knowledge related to the Partnerships formation, investment with BLMIS, and how access was obtained to invest with BLMIS.

Michael Bienes – Bienes has been associated with Avellino in numerous entities which invested with BLMIS for several decades. It is believed that Bienes has knowledge related to the process for investing with BLMIS, the limited ability to invest with BLMIS, and the Partnerships' decision to invest with BLMIS.

5. With respect to Your allegations in Paragraph 27 of the Third Amended Complaint that "Based on Avellino's and Bienes's advice . . . the Partnerships invested millions of dollars of their funds solely with BLMIS" and that "the Partnerships did not have the ability to invest with BLMIS prior to Sullivan meeting Avellino and/or Bienes . . . and the Partnerships would not have been able to invest with BLMIS without Avellino and/or Bienes providing them with access" and that "Sullivan did not have any investments with Madoff before Avellino and/or Bienes provided access," please state with specificity all facts supporting Your allegations with regard to Avellino. In Your answer, please identify all documents that support Your allegations and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support Your allegations. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

ANSWER:

See response to Interrogatory No. 1.

Between 1986 and 1992, Sullivan invested approximately \$750,000 of his and his family's money and another approximately \$250,000 that belonged to third parties with A&B through an entity known as S&P Investment Group, Inc. If Sullivan had the ability to directly invest with Madoff without Avellino and Bienes, he would have directly invested with BLMIS, as opposed to with A&B.

After A&B was liquidated, Sullivan received access to Madoff through his connections with A&B. One of the most important aspects of the Madoff Ponzi scheme was the fact that no investor could place any money with BLMIS unless they were referred to BLMIS by an insider of Madoff, and Avellino and Bienes followed a similar principle as set forth in the PBS Frontline interview that he gave. Prior to 1992, there is no record of Sullivan having any contact, with anyone who could refer him to BLMIS aside from Avellino and Bienes. Moreover, Bienes stated in a PBS Frontline interview that Avellino referred the Partnerships to BLMIS. Because Bienes was Avellino's partner, it appears as though both Avellino and Bienes advised Sullivan to invest in BLMIS through the Partnerships. Additionally, Bienes' demeanor when asked if he referred Sullivan to BLMIS indicates that he did in fact advise Sullivan to invest in BLMIS.

Michael D. Sullivan – Sullivan was the managing general partner of the Partnerships. It is believed that Sullivan has knowledge related to the Partnerships formation, investment with BLMIS, and how access was obtained to invest with BLMIS.

Michael Bienes – Bienes has been associated with Avellino in numerous entities which invested with BLMIS for several decades. It is believed that Bienes has knowledge related to the process for investing with BLMIS, the limited ability to invest with BLMIS, and the Partnerships' decision to invest with BLMIS.

6. With respect to Your allegation in Paragraph 28 of the Third Amended Complaint that "Avellino and Bienes told Sullivan that they would bring their former clients from A&B to the Partnerships if the Partnerships would invest their funds in BLMIS," please state with specificity all facts supporting Your allegation with regard to Avellino. In Your answer, please identify all documents that support Your allegations and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support Your allegations. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

ANSWER:

See response to Interrogatory No. 1. and response to Interrogatory No. 5.

Janet B. Molchan, Alex Whiteman, and Susan Molchan swore, under oath, that they were

referred to the Partnerships through Avellino and Bienes, and were told that they could continue to invest in the "Hedge Fund" that later turned out to be Madoff.

Margaret Lipworth also claimed that prior to investing in the Partnerships, she did not know Sullivan or Powell, but was instead told by Avellino that she could continue to invest as she had with Avellino and Bienes through the Partnerships.

Letters were also sent to several entities within the "Spiritans" network of entities known as the Congregation of the Holy Ghost that stated that investors could invest in the Partnerships, and that such investment would be the same as with A&B.

Sam Rosen testified that after A&B was shut down, Father Kelly approached him and introduced him to Sullivan and the Partnerships.

Additionally, Elaine Ziffer, Matthew Carone, Paragon Ventures, Ltd and Margaret Esteban were former investors in A&B who were referred to the Partnerships by Avellino.

Michael D. Sullivan – Sullivan was the managing general partner of the Partnerships. It is believed that Sullivan has knowledge related to the Partnerships formation, investment with BLMIS, and how access was obtained to invest with BLMIS.

Michael Bienes – Bienes has been associated with Avellino in numerous entities which invested with BLMIS for several decades. It is believed that Bienes has knowledge related to the process for investing with BLMIS, the limited ability to invest with BLMIS, and the Partnerships' decision to invest with BLMIS.

7. With respect to Your allegations in Paragraph 29 of the Third Amended Complaint that "Avellino and Bienes failed to disclose to the Partnerships that BLMIS was a Ponzi scheme: and "Avellino and Bienes was familiar with Madoff's operations since at least the 1970s" and "Avellino and Bienes . . . misled the SEC by providing false documents during the 1992 investigation," please state with specificity all facts supporting Your allegations with regard to Avellino. In Your answer, please identify all documents that support Your allegations and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support Your allegations. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

ANSWER:

See response to Interrogatory No. 1.

A report by the SEC, Report No. OIG-509, reflects that A&B were uncooperative with the audit firm, Price Waterhouse, and certain records were missing. Further, Ira Sorkin,

A&B's counsel during the SEC investigation, referred to A&B's records as "phantom books". The SEC report also indicates that Bienes claimed that A&B repaid a loan to Chemical Bank to avoid explaining the investment strategy to Chemical Bank. A&B also objected to the SEC's interrogatories and refused to provide Madoff's name as the underlying broker in response to the discovery requests. Further, the records concerning the SEC investigation of Avellino and Bienes indicates that once the SEC started to investigate the facts and circumstances of BLMIS, Bienes and Avellino cooperated.

Additionally, Avellino and Bienes were aware that their investments with Madoff did not have a loss for thirty years and that BLMIS was utilizing an inappropriately small accounting firm for such large brokerage operation. Avellino and Bienes were aware that Madoff refused to utilize a larger firm in favor of having a single accountant service the BLMIS account.

Michael D. Sullivan – Sullivan was the managing general partner of the Partnerships. It is believed that Sullivan has knowledge related to the Partnerships formation, investment with BLMIS, and how access was obtained to invest with BLMIS.

Michael Bienes – Bienes has been associated with Avellino in numerous entities which invested with BLMIS for several decades. It is believed that Bienes has knowledge related to the process for investing with BLMIS, the limited ability to invest with BLMIS, and the Partnerships' decision to invest with BLMIS.

8. With respect to Your allegations in Paragraph 31 of the Third Amended Complaint "Avellino, Bienes and Sullivan reached an agreement whereby Avellino and Bienes would receive monies in connection with individuals and/or entities who Avellino and/or Bienes caused to invest in . . . the Partnerships," please state with specificity all facts supporting Your allegations with regard to Avellino. In Your answer, please identify all documents that support Your allegations and the name(s) and contact information (address, telephone number, etc.) of any person(s) with knowledge of the facts that support Your allegations. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

ANSWER:

See response to Interrogatory No. 1. and Interrogatory Number 6.

Every year the Partnerships' management fee ledger contained information concerning fees which were accrued or paid to Avellino or Bienes. Moreover, Avellino admitted to receiving "referral fees" in response to Plaintiffs' First Set of Interrogatories. The management fees or commissions that accrued to the benefit of Avellino and Bienes constituted half of the management fees that Sullivan was to receive based on the accounts which Avellino and Bienes referred.

Further, Avellino caused Bishop Wills to receive a substantial amount of commissions or management fees on his behalf. Avellino would not have had those distributions made on but for his entitlement to them.

Michael D. Sullivan – Sullivan was the managing general partner of the Partnerships. It is believed that Sullivan has knowledge related to the Partnerships formation, investment with BLMIS, and how access was obtained to invest with BLMIS.

Michael Bienes – Bienes has been associated with Avellino in numerous entities which invested with BLMIS for several decades. It is believed that Bienes has knowledge related to the process for investing with BLMIS, the limited ability to invest with BLMIS, and the Partnerships' decision to invest with BLMIS.

9. Please state with specificity all facts that support Your allegations in Paragraph 34 of the Third Amended Complaint that Avellino was "active in the management of the Partnerships" and that he "received checks from prospective investors; distributed the Partnership Agreements to prospective investors; and/or ensured that Sullivan, through the Partnerships or entities that he exclusively controlled, made distribution to . . . Avellino . . . in violation of the Partnership Agreement." In Your answer, please identify all documents that support Your allegations and the name(s) and contact information of any person(s) with knowledge of the facts that support Your allegations. With respect to each such person You identify, please describe the subject matter of such person's knowledge.

ANSWER: See response to Interrogatory No. 1.

The Partnership records, including Ahearn Jasco's time sheets Bates numbered AVE00256RTP – AVE00257RTP, reflect that Avellino was involved in the management of the Partnerships.

Avellino also sent a check to the Partnerships enclosing a check on behalf of the Margaret Esteban, IRA, seeking to invest her funds in the Partnerships.

Michael D. Sullivan – Sullivan was the managing general partner of the Partnerships. It is believed that Sullivan has knowledge related to the Partnerships formation, investment with BLMIS, and how access was obtained to invest with BLMIS.

Michael Bienes – Bienes has been associated with Avellino in numerous entities which invested with BLMIS for several decades. It is believed that Bienes has knowledge related to the process for investing with BLMIS, the limited ability to invest with BLMIS, and the Partnerships' decision to invest with BLMIS.

VERIFICATION

I have read the foregoing answers to the above Interrogatories and do swear under oath and penalty of perjury that they are true and correct.

**S&P ASSOCIATES, GENERAL PARTNERSHIP
P&S ASSOCIATES, GENERAL PARTNERSHIP**

By: 

Philip J. Von Kahle, as Conservator

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 15th day of September, 2014, by Philip J. Von Kahle, as Conservator of S&P General Associates, General Partnership, and P&S Associates, General Partnership, who is ☒ personally known to me or has produced as identification and who did/did not take an oath.



GISELLE CROMBIE
NOTARY PUBLIC
STATE OF FLORIDA
Comm# EE081838
Expires 4/6/2015


Notary Public

(Print or Type Name): Giselle Crombie
My Commission
Expires: 4/6/15

(seal)