

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

P&S Associates, General Partnership (“P&S”), S&P Associates, General Partnership (“S&P”) (S&P and P&S are collectively the “Partnerships”), and Philip J. Von Kahle, as Conservator for P&S and S&P (the “Conservator”, and together with the “Partnerships”, the “Plaintiffs”), pursuant to Fla. R. Civ. P. 1.351 and 1.380, hereby file this motion to compel (i) Defendant Frank Avellino (“Defendant Avellino”) to produce documents in response to Plaintiffs’ Fourth Request for Production and (ii) issuance of a subpoena *duces tecum* with deposition upon Nancy Avellino, and in support states:

*I. Defendant Avellino Should Be Compelled To Produce Documents*

1. On January 23, 2015, Plaintiffs served their Fourth Request for Production of Documents on Defendant Avellino (the “Requests”). Attached as **Exhibit “A”** is a copy of the Requests.

2. On March 11, 2015, Defendant served his responses and objections to the Requests (the “Responses”). Attached as **Exhibit “B”** is a copy of Defendant, Frank Avellino’s Response to Plaintiffs’ Fourth Request for Production of Documents.

3. Defendant Avellino’s improper objections to the Requests should be stricken and Defendant Avellino should be compelled to produce all documents responsive to the Requests.

4. First, Defendant Avellino asserted general objections on the ground that the time frame of the Requests from January 1, 1992 to the present is “overbroad and unduly burdensome.” (**Exhibit B**, Response p. 2). Defendant Avellino has not set forth any support for his conclusory assertion that the request is “unduly burdensome” and the requested time frame is plainly relevant because it is the period in which the Partnerships operated and Defendant Avellino referred individuals to the Partnerships. Compl. ¶¶ 21-51. Additionally, beyond conclusory objections of “overly broad” and “unduly burdensome” – with no supporting facts, Defendant Avellino has not set forth any basis why he should not be required to produce electronically stored information in response to the Requests. Defendant Avellino’s foregoing general objections should be stricken.

5. In response to Request No. 9, Defendant Avellino objects to production on the basis of “objection” and that “This request seeks personal financial information protected from disclosure by Florida’s Constitution, which information is irrelevant to this dispute.” (**Exhibit B**, Response No. 9). However, Defendant Avellino has not identified what information he contends is private financial information and it is unclear what documents if any he is withholding given that he has produced documents “subject to” his objection. Such an objection is improper and should be stricken. *Berlinger v. Wells Fargo, N.A.*, :11-CV-459-FTM-99, 2012 WL 640708, at \*1 (M.D. Fla. Feb. 28, 2012) (“This Court has held in the past that “if an objection to a discovery

request is raised, and then the question is answered ‘subject to’ or ‘without waiving the objection this court is reluctant sustain the objection”).

6. Finally, in response to Request No. 12, Defendant Avellino asserted yet another undescribed “objection.” **Exhibit B**, Response No. 12. The objection should be stricken because it is conclusory and Defendant Avellino did not articulate a basis for it. To the extent that Defendant Avellino is asserting the attorney-client privilege, he failed to provide a privilege log, as required. Plaintiffs are unable to determine whether documents are being withheld on the basis of privilege and Defendant Avellino should produce all responsive documents.

7. After the parties met and conferred on March 25, 2015, Defendant Avellino refused to produce additional documents.

8. This Court should strike Defendant Avellino’s objections and compel him to produce all documents in response to the Requests, to the extent that they exist.

## *II. Response to Objection to Subpoena on Nancy Avellino*

9. On February 13, 2015, Plaintiffs filed a notice of intent to serve a subpoena *duces tecum* with deposition on Nancy Avellino, spouse of Defendant Avellino (the “Notice”)<sup>1</sup>. Mrs. Avellino was a manager of 27 Cliff, LLC, an entity which received the improper kickbacks that form the basis of the instant lawsuit. Attached to the Notice is a Subpoena Duces Tecum with Taking Deposition of Nancy Avellino on Oral Testimony (the Subpoena”). The Subpoena seeks documents related to payments and transfers that Nancy Avellino and 27 Cliff, LLC received from the former managing general partner of the Partnerships and entities that are related to the improper kickbacks alleged in the Complaint.

10. On February 24, 2015, Defendant filed an objection to the Notice (the

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<sup>1</sup> The Notice is attached hereto as **Exhibit “C”**.

“Objection”).<sup>2</sup> The Objection is conclusory in that it does not state how the Subpoena seeks information that is irrelevant or not likely to lead to the discovery of admissible evidence when the improper payments received by 27 Cliff, LLC form the basis of this lawsuit. Additionally, the objections fail to identify what information is private financial information, what privileges and immunities prevent disclosure, or why Ms. Avellino should not be required to produce electronically stored information beyond conclusory statement that it would require “hiring or retention of costly professionals.”

11. Defendant Avellino’s objections to the Notice should be overruled and Plaintiffs should be permitted to issue the Subpoena and to take Mrs. Avellino’s deposition.

Certification of Good Faith and CLP 5.3

On March 25, 2015, counsel for Avellino, Gary Woodfield, and for the Plaintiffs, Steve Weber and Thomas Zeichman, participated in a meet and confer in a good faith attempt to resolve the issues addressed in the instant Motion. At that time, Avellino’s counsel agreed to produce certain additional documents and to coordinate deposition dates for Mrs. Avellino, but did not agree to withdraw his objections. Accordingly, the filing of this motion to compel was necessary.

WHEREFORE Plaintiffs respectfully request the entry of an Order: (i) striking Defendant Avellino’s general and specific objections to the Requests; (ii) ordering Defendant Avellino to produce all documents responsive to Requests 1 through 11 of the Requests, to the extent that responsive document exist; (iii) denying Defendant Frank Avellino’s Objection to Plaintiff’s Notice of Intent to Serve Subpoena Duces Tecum with Deposition Upon Nancy Avellino; (iv) authorizing

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<sup>2</sup> The Objection is attached hereto as **Exhibit “D”**.

Plaintiffs to issue the Subpoena; and (iv) for such other and further relief as this Court deems just and proper.

Dated: March 26, 2015

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and

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**Exhibit "A"**

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

CASE NO. 12-034123 (07)

P&S ASSOCIATES, GENERAL PARTNERSHIP, a Florida limited partnership; and S&P ASSOCIATES, GENERAL PARTNERSHIP, a Florida limited partnership, PHILIP VON KAHLE as Conservator of P&S ASSOCIATES, GENERAL PARTNERSHIP, a Florida limited partnership, and S&P ASSOCIATES, GENERAL PARTNERSHIP, a Florida limited partnership,

Plaintiffs,

v.

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

Defendants.

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

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

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

### **DEFINITIONS AND INSTRUCTIONS**

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

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

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

C. “P&S” as used herein means independently and/or collectively, P&S Associates, General Partnership and includes any and all agents, employees, servants, officers, directors, attorneys and any other person or entity acting or purporting to act on its behalf.

D. “S&P” as used herein means independently and/or collectively, P&S Associates, General Partnership and includes any and all agents, employees, servants, officers, directors, attorneys and any other person or entity acting or purporting to act on its behalf.

E. “Person” as used herein means any natural person or any entity, including without limitation any individual, present and former director, officer, employee, contractor, firm, corporation, company, joint venture, trust, tenancy, association, partnership, business, agency, department, bureau, board, commission, or any other form of public, private or legal entity. Any reference herein to any public or private company, partnership, association, or other entity include such entity’s subsidiaries and affiliates, as well as the present and former directors, officers, employees, attorneys, agents and anyone acting on behalf of, at the direction of, or under the control of the entity, its subsidiaries or its affiliates.

F. “Documents” shall mean the original or copies of any tangible written, typed, printed or other form of recorded or graphic matter of every kind or description, however produced or reproduced, whether mechanically or electronically recorded, draft, final original, reproduction, signed or unsigned, regardless of whether approved, signed, sent, received, redrafted, or executed, and whether handwritten, typed, printed, photostated, duplicated, carbon or otherwise copied or produced in any other manner whatsoever. Without limiting the generality of the foregoing, “Documents” shall include correspondence, letters, telegrams, telexes, mailgrams, memoranda, including inter-office and intra-office memoranda, memoranda for files, memoranda of telephone or other conversations, including meetings, invoices, reports, receipts and statements of account, ledgers, notes or notations, notes or memorandum attached to or to be read with any Document, booklets, books, drawings, graphs, charts, photographs, phone records, electronic tapes, discs or other recordings, computer programs, printouts, data cards, studies, analysis and other data compilations from which information can be obtained. Copies of Documents, which are not identical duplications of the originals or which contain additions to or deletions from the originals or copies of the originals if the originals are not available, shall be considered to be separate documents.

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

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

G. “Communications” shall mean any oral or written statement, dialogue, colloquy, discussion or conversation and, also, means any transfer of thoughts or ideas between persons by means of documents and includes any transfer of data from one location to another by electronic or similar means.

H. “Concerning” shall mean, directly or indirectly, relate to, refer to, reflect, mention, describe, pertain to, arise out of or in connection with or in any way legally, logically, or factually be connected with the matter discussed.

I. “Identify” as used herein shall mean:

1. when used in reference to an individual, to state his full name, his present or last known address, his telephone number, the full name and present or last known address of his employer or business, and his position with such employer or business;

2. when used in reference to a corporation, partnership, unincorporated association, or other entity, to state its full name and its present or last known address, and fully describe the business or activity in which the entity is engaged;

3. when used in reference to a document, to state the date, author, type of document, the person or persons to whom it or copies of it were sent, and its present or last known location and custodian. If any document was, but is no longer, in your possession or custody or subject to your control, state what disposition was made of it, the date of such disposition, and the reason for such disposition;

4. in the case of an agreement, its date, the place where it occurred, the identity of all persons who were parties to the agreement, the identity of each person who has knowledge of the agreement and all other persons present when it was made, and the subject matter of the agreement

5. when used in reference to a statement, a representation, a directive or other information, state the time and date it was made, the location where it was made, the location where it was received (if other than the location where it was made), and the nature and specific content of it, and identify each person to whom it was made, each person present when it was made or received, and each person having care custody or control or it in any form.

J. As used herein, the conjunctions “and” and “or” shall be interpreted in each instance as meaning “and/or” so as to encompass the broader of the two possible constructions, and shall not be interpreted disjunctively so as to exclude any information or documents otherwise within the scope of any Request.

K. When appropriate, the singular form of a word should be interpreted in the plural as may be necessary to bring within the scope hereof any documents which might otherwise be construed to be outside the scope hereof.

L. Any pronouns used herein shall include and be read and applied as to encompass the alternative forms of the pronoun, whether masculine, feminine, neuter, singular or plural, and shall not be interpreted so as to exclude any information or documents otherwise within the scope of the Request.

M. If you assert that any document called for by a Request is protected against disclosure on the grounds of the attorney work product doctrine or by the attorney-client privilege, or any other assertion of privilege, you must provide the following information with respect to such document:

1. the name and capacity of the person or persons who prepared the documents;
2. the name and capacity of all addresses or recipients of the original or copies thereof;
3. the date, if any, borne by the document;
4. a brief description of its subject matter and physical size;
5. the source of the factual information from which such document was prepared; and
6. the nature of the privilege claimed.

N. You must produce all Documents within Your possession, care, custody or control that are responsive to any of these Requests. A Document is deemed within Your care, custody or control if You have the right or ability to secure the document or a copy thereof from any other person having physical possession thereof.

O. All Documents produced pursuant hereto are to be produced as they are kept in the usual course of business and shall be organized and labeled (without permanently marking the item produced) so as to correspond with the categories of each numbered request hereof.

P. Production of Electronically Stored Information (“ESI”) or any electronically stored data shall be in native format unless otherwise agreed, consistent with **Schedule A**. In producing Documents consisting of electronically stored data in machine-readable form in response to any Request, provide such data in a form that does not require specialized or proprietary hardware or software.

Q. Each hard copy Document is to be produced, with all non-identical copies and drafts thereof, in its entirety, without alteration, abbreviation or reduction and shall be produced either in the manner they are kept in the usual course of business or organized to correspond with the Request to which they are responsive. If any Document is produced in redacted form, state with particularity the reason(s) it was not produced in full and describe generally those portions of the Document that are not being produced

R. All Documents that respond, in whole or in part, to any part or clause of any paragraph of these Requests shall be produced in their entirety, including all attachments and enclosures. Only one copy need be produced of Documents that are responsive to more than one paragraph or are identical except for the person to whom it is addressed if You indicate the Persons or group of Persons to whom such Documents were distributed. Documents that in their original condition were stapled, clipped, or otherwise fastened together shall be produced in such form. Please place the Documents called for by each paragraph in a separate file folder or other enclosure marked with Respondents’ name and the paragraph to which such Documents respond, and if any Document is responsive to more than one Request, indicate each Request to which it responds.

S. If you at any time had possession, custody or control of a Document called for under these Requests and if such Document has been lost, destroyed, purged, or is not presently in your possession, custody or control, you shall describe the Document, the date of its loss, destruction, purge, or separation from possession, custody or control and the circumstances surrounding its loss, destruction, purge, or separation from possession, custody or control.

T. Pursuant to the Florida Rules of Civil Procedure, You are under a duty seasonably to supplement any response to these Requests for which You learn that the response is in some material respect incomplete or incorrect and if the additional or

corrective information has not otherwise been made known during the discovery process or in writing.

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

**SCHEDULE “A”**

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

Plaintiffs request that all ESI (electronically stored information) be produced as follows:

ESI will be produced (printed and loaded) in 300DPI resolution or greater, Group IV Monochrome Tagged Image File Format (.TIF) files in single-page format, with **ALL** native files provided and word searchable OCR/extracted text (Optical Character Recognized – i.e. searchable text) in UTF-8 format. Color photographs should be produced as color JPEG images. Email natives will be delivered in MSG or EML format. Load files will be provided in Opticon (.OPT) format and an IPRO LFP (.lfp) format. Metadata will be provided in a DAT file with standard Concordance delimiters. The text files containing the OCR/Extracted Text shall be produced in multi-page format with the name corresponding to its associated document. **All small and oversized images should be resized to fit on 8.5x11 canvas.**

The files should be delivered with the following folder structure:

**IMAGES** – contains the TIF and JPG files, up to 10,000 items.  
**DATA** – contains the OPT and LFP files and the metadata text file (DAT)  
**NATIVES** – contains all the original native files named as the BEGDOC  
**TEXT** – contains the document-level OCR/Extracted text files named as the BEGDOC

<b><u>Eclipse Metadata Field</u></b>	<b><u>Field Description</u></b>
BegDoc	BegDoc
EndDoc	EndDoc
BegAttach	BegAttach
EndAttach	EndAttach
Application	Application/Application Name
AttachmentIDs	Bates numbers of attachment(s)
Attachments	Names of attachment files

AttachRange	Attachment Range
Authors	Document author
BCC	BCC (Name + email)
CC	CC (Name + email)
Companies	Company name
Custodian	Custodian (Last, First)
DateCreated	Date created (MM/DD/YYYY)
DateReceived	Date email received (MM/DD/YYYY)
DateSaved	Date last saved (MM/DD/YYYY)
DateSent	Date email sent (MM/DD/YYYY)
Doctitle	Title
FileType	Document Type Description
FileExtension	File extension
Doclink	Link to native files produced
ExtractedText	Link to text files produced
Filename	Original filename
FileSize	File size in bytes
Folder	Relative Path (Inbox, Sent, etc.)
From	Sender (Name + email)
Hash_Code	MD5 hash
Header	Email header
InternetMSGID	IntMsgID
MessageID	MsgID
NumAttachments	Attachment count
NumPages	Page count
ParentID	Parent bates number
Password_Protect	Y/N field
Read	Y/N
SHA1	SHA1 hash
Sources	CD, DVD, hard drive; brief desc. of data
StoreID	Name of PST/NSF file (if relevant)
Subject	Email/Document subject
TimeReceived	Time email received (12-hour HH:MM)
TimeSent	Time email sent (12-hour HH:MM)
To	To (Name + email)

For **.xls (Excel), .ppt (PowerPoint), and .doc (Word)** files the following additional metadata fields should be included:

Excel_Comments	Comments
Excel_HiddenColumns	Hidden Columns
Excel_HiddenRows	Hidden Rows
Excel_HiddenWorksheets	Hidden Worksheets
Num_Lines	Number of lines

Num_Paragraphs	Number of paragraphs
Num_slides	Number of slides
Num_Notes	Number of notes
Num_HiddenSlides	Number of hidden slides
Num_Multimedia	Number of multimedia clips
Security	Security

## **DOCUMENT REQUESTS**

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

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

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

Respectfully submitted,

BERGER SINGERMAN LLP  
*Attorneys for Plaintiffs*  
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**CERTIFICATE OF SERVICE**

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

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*Attorneys for Michael Bienes*

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

**Exhibit "B"**

IN THE CIRCUIT COURT OF THE 17<sup>TH</sup> 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.

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

Defendant, Frank Avellino, responds and objects to Plaintiffs' Fourth Request for Production of Documents dated January 23, 2015 (the "Request") as follows:

**GENERAL OBJECTIONS**

Defendant objects to the characterization of the Request as continuing in nature which goes beyond the obligations set forth in Rule 1.280(e), Florida Rules of Civil Procedure.

Defendant objects to the production of documents at the offices of plaintiff's counsel. Documents will be produced or made available for inspection at a mutually convenient location in Palm Beach County, Florida or as otherwise agreed to between the parties.

Defendant objects to the definition of "You" or "Your" or "Defendant" to the extent that it seeks privileged communications with their attorneys and accountants.

Defendant objects to this request to the extent it requires the production of documents in a manner otherwise as permitted by the Florida Rules of Civil Procedure.

Defendant objects to the time frame specified – January 1, 1992 to the present – on the grounds that it is overbroad and unduly burdensome.

Defendant objects to the request to produce electronically stored information (“ESI”) are overly broad and unduly burdensome in that it applies to documents, materials and ESI the retrieval of which would require the hiring or retention of costly professionals, assuming the existence of such information.

## **DEFENDANTS' RESPONSE TO REQUEST FOR PRODUCTION**

1. All documents concerning any transfers and/or payments of funds from Sullivan & Powell/Solutions In Tax to You.

**RESPONSE:** Defendant has no responsive documents.

2. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan & Assoc. to You.

**RESPONSE:** Defendant has no responsive documents.

3. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan to You.

**RESPONSE:** Defendant has no responsive documents.

4. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan & Assoc. to 27 Cliff, LLC.

**RESPONSE:** See documents attached (Bates stamp# AVELLINO\_P&S000692).

5. All documents concerning any transfers and/or payments of funds from Sullivan & Powell/ Solutions In Tax to 27 Cliff, LLC.

**RESPONSE:** Defendant has no responsive documents.

6. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan to 27 Cliff, LLC.

**RESPONSE:** Defendant has no responsive documents.

7. All documents sent from Sullivan & Powell / Solutions In Tax, Michael D. Sullivan, and/or Michael D. Sullivan & Assoc. to You.

**RESPONSE:** See documents attached (Bates stamp# AVELLINO\_P&S000693 – AVELLINO\_P&S000709).

8. All documents sent from Sullivan & Powell / Solutions In Tax, Michael D. Sullivan, and/or Michael D. Sullivan & Assoc. to 27 Cliff, LLC.

**RESPONSE:** Defendant has no responsive documents.

9. To the extent not already produced in response to a request, all documents concerning 27 Cliff, LLC.

**RESPONSE:** Objection. This request seeks personal financial information protected from disclosure by Florida’s Constitution, which information is irrelevant to this dispute. Subject to and without waiving such objection, see documents responsive to Request No 4.

10. All documents concerning the “referral fees” that You identified in Your Response to Interrogatory No. 12 of Plaintiffs’ First Set of Interrogatories to Defendant Frank Avellino.

**RESPONSE:** See document produced in response to Request No. 4 and documents previously produced in this matter.

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

**RESPONSE:** See response to Request No. 10.

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

**RESPONSE:** Objection. Seeks attorney client privileged communication.

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 11<sup>th</sup> day of March, 2015, the foregoing document is being served on those on the attached service list by electronic service via the Florida Court E-Filing Portal in compliance with Fla. Admin Order No. 13-49.

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

*Attorneys for Defendants*

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By:     /s/     Gary A. Woodfield

Gary A. Woodfield, Esq.

Florida Bar No. 563102

Susan Yoffee, Esq.

Florida Bar No. 511919

## SERVICE LIST

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[msanchez@broadandcassel.com](mailto:msanchez@broadandcassel.com)  
*Attorneys for Michael Bienes*

**Exhibit "C"**

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

CASE NO. 12-034123 (07)

P&S ASSOCIATES, GENERAL PARTNERSHIP,  
a Florida limited partnership; and S&P  
ASSOCIATES, GENERAL PARTNERSHIP, a  
Florida limited partnership, PHILIP VON KAHLE  
as Conservator of P&S ASSOCIATES, GENERAL  
PARTNERSHIP, a Florida limited partnership, and  
S&P ASSOCIATES, GENERAL PARTNERSHIP,  
a Florida limited partnership

Plaintiffs,

v.

MICHAEL D. SULLIVAN, an individual,  
STEVEN JACOB, an individual, MICHAEL D.  
SULLIVAN & ASSOCIATES, INC., a Florida  
corporation, STEVEN F. JACOB, CPA &  
ASSOCIATES, INC., a Florida corporation,  
FRANK AVELLINO, an individual, MICHAEL  
BIENES, an individual, VINCENT BARONE, an  
individual, and PREMIER MARKETING  
SERVICES, INC., a Florida Corporation,

Defendants.

---

**NOTICE OF INTENT TO SERVE SUBPOENA *DUCES TECUM*  
WITH DEPOSITION UPON NANCY AVELLINO**

TO: See all counsel on attached Certificate of Service

**YOU ARE HEREBY** notified that after ten (10) days from receipt of this notice, if service is by delivery, or fifteen (15) days from the date of service if service is by mail, and if no objections are received from any party, the undersigned will issue the attached Subpoena *Duces Tecum* With Deposition of Nancy Avellino on Oral Testimony, pursuant to Fla. R. Civ. P. 1.351(c) upon the following:

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

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

February 13, 2015

Respectfully Submitted,

BERGER SINGERMAN, LLP

*Attorneys for Plaintiffs*

350 East Las Olas Blvd, Suite 1000

Fort Lauderdale, FL 33301

Telephone: (954) 525-9900

Direct: (954) 712-5138

Facsimile: (954) 523-2872

By: s/ Zachary P. Hyman

Leonard K. Samuels

Florida Bar No. 501610

Etan Mark

Florida Bar No. 720852

Steven D. Weber

Florida Bar No. 47543

Zachary P. Hyman

Florida Bar No. 98581

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via

Electronic Mail this 13th day of February, 2015 upon the following:

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

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

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[ccavallo@broadandcassel.com](mailto:ccavallo@broadandcassel.com)  
Broad and Cassel  
One Biscayne Boulevard, 21st Floor  
2 S. Biscayne Boulevard  
Miami, FL 33131  
Tel.: 305-373-9400  
Fax.: 305-373-9443  
*Attorneys for Michael Bienes*

By: s/ Zachary P. Hyman

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

CASE NO. 12-034123 (07)

P&S ASSOCIATES, GENERAL PARTNERSHIP,  
a Florida limited partnership; and S&P  
ASSOCIATES, GENERAL PARTNERSHIP, a  
Florida limited partnership, PHILIP VON KAHLE  
as Conservator of P&S ASSOCIATES, GENERAL  
PARTNERSHIP, a Florida limited partnership, and  
S&P ASSOCIATES, GENERAL PARTNERSHIP,  
a Florida limited partnership

Plaintiffs,

v.

MICHAEL D. SULLIVAN, an individual,  
STEVEN JACOB, an individual, MICHAEL D.  
SULLIVAN & ASSOCIATES, INC., a Florida  
corporation, STEVEN F. JACOB, CPA &  
ASSOCIATES, INC., a Florida corporation,  
FRANK AVELLINO, an individual, MICHAEL  
BIENES, an individual, VINCENT BARONE, an  
individual, and PREMIER MARKETING  
SERVICES, INC., a Florida Corporation,

Defendants.

---

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

STATE OF FLORIDA:

To All Singular Sheriffs of Said State:

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

**YOU ARE HEREBY COMMANDED** to appear at the offices of **Berger Singerman, LLP, 2650 North Military Trail, Suite 240 Boca Raton, Florida 33431** (the “**Berger Singerman Office**”), on March 17, 2015 at **11:00 a.m.** and to produce the documents listed on

**Schedule "A"** attached hereto on or before **March 12, 2015** to the Berger Singerman Office. All electronically stored information ("ESI"), as defined herein, shall be produced in accordance with the definitions and instructions.

These items will be inspected and may be copied at that time. You will not be required to surrender the original items. You may comply with this subpoena by providing legible copies of the items to be produced to the attorney whose name appears on this subpoena on or before the scheduled date of production. You may condition the preparation of the copies upon the payment in advance of the reasonable cost of preparation. You have the right to object to the production pursuant to this subpoena at any time before production by giving written notice to the attorney whose name appears on this subpoena.

If you fail to appear or produce the documents listed on Schedule A, you may be in contempt of Court.

You are subpoenaed to appear by the following attorneys and unless excused from this subpoena by these attorneys or the Court, you shall respond to this Subpoena as directed.

Dated: February 13, 2015

ZACHARY P. HYMAN

For the Court

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

IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS ANY ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. WITHIN TWO WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE, CONTACT BETTY LETTS AT (954) 831-6364, 201 S.E. 6TH ST. ROOM 136, FT. LAUDERDALE, FL 33301. THE PHONE LINE WILL ACCOMMODATE VOICE OR TDD TRANSMISSIONS FOR THE HEARING IMPAIRED OR VOICE IMPAIRED.

DAPRE AKO KI FET AVEK AMERICANS WITH DISABILITIES ACT, TOUT MOUN KI GINYIN YUN BEZWEN ESPESIAL POU AKOMODASIYON POU YO PATISIPE NAN PWOGRAM SA-A DWE, NAN YUN TAN REZONAB AVAN NINPOT ARANJMAN KAPAB FET, YO OWE KONTAKTE ADMINISTRATIVE OFFICE OF THE COURT, 201 S.E. 6TH ST., ROOM 136, FORT LAUDERDALE, FLORIDA 33301 OR TELEPHONE VOICE/TDD (954) 831-6364

DE ACUERDO CON EL ACTO O DECRETO DE LOS AMERICANOS CON IMPEDIMENTOS, INHABILITADOS, PERSONAS EN NECESIDAD DEL SERVICIO ESPECIAL PARA PARTICIPAR EN ESTE PROCEDIMIENTO DEBERAN, DENTRO DE UN TIEMPO RAZONABLE, ANTES DE CUALQUIER PROCEDIMIENTO, PONERSE EN CONTACTO CON LA OFICINA ADMINISTRATIVA DE LA CORTE, 201 S.E. 6TH ST., ROOM 136, FORT LAUDERDALE, FLORIDA 33301 OR TELEPHONE VOICE/TDD (954) 831-6364

EN ACCORDANCE AVEC LA LOI DES "AMERICANS WITH DISABILITIES", LES PERSONNES EN BESOIN D'UNE ACCOMMODATION SPECIALE POUR PARTICIPER A CES PROCEDURES DOIVENT, DANS UN TEMPS RAISONABLE, AVANT D'ENTREPRENDRE AUCUNE AUTRE DEMARCHE, CONTACTER L'OFFICE ADMINISTRATIVE DE LA COURT, 201 S.E. 6TH ST., ROOM 136, FORT LAUDERDALE, FLORIDA 33301 OR TELEPHONE VOICE/TDD (954) 831-6364.

**SCHEDULE "A"**  
**DEFINITIONS AND INSTRUCTIONS**

The following definitions shall apply to this Request:

A. "You", "Your" or "Nancy Avellino" as used herein means Nancy Avellino and includes any and all agents, employees, servants, officers, directors, attorneys and any other person or entity acting or purporting to act on his behalf, or any other entity or person under the direct control of Nancy Avellino.

B. "P&S" as used herein means Plaintiff P&S Associates, General Partnership, and includes any and all agents, employees, servants, officers, directors, attorneys and any other person or entity acting or purporting to act on its behalf.

C. "S&P" as used herein means Plaintiff S&P Associates, General Partnership, and includes any and all agents, employees, servants, officers, directors, attorneys and any other person or entity acting or purporting to act on its behalf.

D. "Avellino" as used herein means Frank Avellino, a named Defendant in this action.

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

F. "Person" as used herein means any natural person or any entity, including without limitation any individual, present and former director, officer, employee, contractor, firm, corporation, company, joint venture, trust, tenancy, association, partnership, business, agency, department, bureau, board, commission, or any other form of public, private or legal entity. Any reference herein to any public or private company, partnership, association, or other entity include such entity's subsidiaries and affiliates, as well as the present and former directors, officers, employees, attorneys, agents and anyone acting on behalf of, at the direction of, or under the control of the entity, its subsidiaries or its affiliates.

G. "Documents" shall mean the original or copies of any tangible written, typed, printed or other form of recorded or graphic matter of every kind or description, however produced or reproduced, whether mechanically or electronically recorded, draft, final original, reproduction, signed or unsigned, regardless of whether approved, signed, sent, received, redrafted, or executed, and whether handwritten, typed, printed, photostated, duplicated, carbon or otherwise copied or produced in any other manner whatsoever. Without limiting the generality of the foregoing, "Documents" shall include correspondence, letters, telegrams, telexes, mailgrams, memoranda, including inter-office and intra-office memoranda, memoranda for files, memoranda of telephone or other conversations, including meetings, invoices, reports, receipts and statements of account, ledgers, notes or notations, notes or memorandum attached to or to be read with any Document, booklets, books, drawings, graphs, charts, photographs, phone records, electronic tapes, discs or other recordings, computer programs, printouts, data cards, studies, analysis and other data compilations from which information can be obtained. Copies of Documents, which are not identical duplications of the originals or which contain additions to or deletions from the originals or copies of the originals if the originals are not available, shall be considered to be separate documents.

H. Documents, as defined herein, includes electronically stored information, which shall be produced in its native format including its metadata, in the manner set forth on **Schedule “A”**.

I. “Communications” shall mean any oral or written statement, dialogue, colloquy, discussion or conversation and, also, means any transfer of thoughts or ideas between persons by means of documents and includes any transfer of data from one location to another by electronic or similar means.

J. “Concerning” shall mean, directly or indirectly, relate to, refer to, reflect, mention, describe, pertain to, arise out of or in connection with or in any way legally, logically, or factually be connected with the matter discussed.

K. “Identify” as used herein shall mean:

when used in reference to an individual, to state his full name, his present or last known address, his telephone number, the full name and present or last known address of his employer or business, and his position with such employer or business.

1. when used in reference to a corporation, partnership, unincorporated association, or other entity, to state its full name and its present or last known address, and fully describe the business or activity in which the entity is engaged.
2. when used in reference to a document, to state the date, author, type of document, the person or persons to whom it or copies of it were sent, and its present or last known location and custodian. If any document was, but is no longer, in your possession or custody or subject to your control, state what disposition was made of it, the date of such disposition, and the reason for such disposition.
3. in the case of an agreement, its date, the place where it occurred, the identity of all persons who were parties to the agreement, the identity of each person who has knowledge of the agreement and all other persons present when it was made, and the subject matter of the agreement.
4. when used in reference to a statement, a representation, a directive or other information, state the time and date it was made, the location where it was made, the location where it was received (if other than the location where it was made), and the nature and specific content of it, and identify each person to whom it was made, each person present when it was made or received, and each person having care custody or control or it in any form.

L. As used herein, the conjunctions “and” and “or” shall be interpreted in each instance as meaning “and/or” so as to encompass the broader of the two possible constructions,

and shall not be interpreted disjunctively so as to exclude any information or documents otherwise within the scope of any Request.

M. When appropriate, the singular form of a word should be interpreted in the plural as may be necessary to bring within the scope hereof any documents which might otherwise be construed to be outside the scope hereof.

N. Any pronouns used herein shall include and be read and applied as to encompass the alternative forms of the pronoun, whether masculine, feminine, neuter, singular or plural, and shall not be interpreted so as to exclude any information or documents otherwise within the scope of the Request.

O. If you assert that any document called for by a Request is protected against disclosure on the grounds of the attorney work product doctrine or by the attorney-client privilege, or any other assertion of privilege, you must provide the following information with respect to such document:

1. the name and capacity of the person or persons who prepared the documents;
2. the name and capacity of all addresses or recipients of the original or copies thereof;
3. the date, if any, borne by the document;
4. a brief description of its subject matter and physical size;
5. the source of the factual information from which such document was prepared;  
and
6. the nature of the privilege claimed.

P. You must produce all Documents within Your possession, care, custody or control that are responsive to any of these Requests. A Document is deemed within Your care, custody or control if You have the right or ability to secure the document or a copy thereof from any other person having physical possession thereof.

Q. All Documents produced pursuant hereto are to be produced as they are kept in the usual course of business and shall be organized and labeled (without permanently marking the item produced) so as to correspond with the categories of each numbered request hereof.

R. Production of Electronically Stored Information (“ESI”) or any electronically stored data shall be in native format unless otherwise agreed. In producing Documents consisting of electronically stored data in machine-readable form in response to any Request, provide such data in a form that does not require specialized or proprietary hardware or software.

S. It is requested that all ESI be produced as native files and single-page TIFF images with corresponding load files. Each image and native file shall be produced along with its corresponding metadata and extracted text.

T. Each hard copy Document is to be produced, with all non-identical copies and drafts thereof, in its entirety, without alteration, abbreviation or reduction and shall be produced either in the manner they are kept in the usual course of business or organized to correspond with the Request to which they are responsive. If any Document is produced in redacted form, state with particularity the reason(s) it was not produced in full and describe generally those portions of the Document that are not being produced

U. All Documents that respond, in whole or in part, to any part or clause of any paragraph of these Requests shall be produced in their entirety, including all attachments and enclosures. Only one copy need be produced of Documents that are responsive to more than one paragraph or are identical except for the person to whom it is addressed if You indicate the Persons or group of Persons to whom such Documents were distributed. Documents that in their original condition were stapled, clipped, or otherwise fastened together shall be produced in such form. Please place the Documents called for by each paragraph in a separate file folder or other enclosure marked with Respondents' name and the paragraph to which such Documents respond, and if any Document is responsive to more than one Request, indicate each Request to which it responds.

V. If you at any time had possession, custody or control of a Document called for under these Requests and if such Document has been lost, destroyed, purged, or is not presently in your possession, custody or control, you shall describe the Document, the date of its loss, destruction, purge, or separation from possession, custody or control and the circumstances surrounding its loss, destruction, purge, or separation from possession, custody or control.

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

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

Plaintiffs, P & S Associates, General Partnership ("P&S"), S & P Associates, General Partnership ("S&P"), (collectively referred to as, the "Partnerships"), and Philip Von Kahle as Conservator on behalf of the Partnerships (the "Conservator", and collectively with the Partnerships, the "Plaintiffs/Judgment Creditors"), requests that all ESI (electronically stored information) be produced as follows:

- i. ESI will be produced (printed and loaded) in 300DPI resolution or greater, Group IV Monochrome Tagged Image File Format (.TIF) files in single-page format, with **ALL** native files provided and word searchable OCR/extracted text (Optical Character Recognized – i.e. searchable text) in UTF-8 format. Color photographs should be produced as color JPEG images. Email natives will be delivered in MSG or EML format. Load files will be provided in Opticon (.OPT) format and an IPRO LFP (.lfp) format. Metadata will be provided in a DAT file with standard Concordance delimiters. The text files containing the OCR/Extracted Text shall be produced in multi-page format with the name corresponding to its associated document. **All small and oversized images should be resized to fit on 8.5x11 canvas.**

The files should be delivered with the following folder structure:

**IMAGES** – contains the TIF and JPG files, up to 10,000 items.

**DATA** – contains the OPT and LFP files and the metadata text file (DAT)

**NATIVES** – contains all the original native files named as the BEGDOC

**TEXT** – contains the document-level OCR/Extracted text files named as the BEGDOC

<b><u>Eclipse Metadata Field</u></b>	<b><u>Field Description</u></b>
BegDoc	BegDoc
EndDoc	EndDoc
BegAttach	BegAttach
EndAttach	EndAttach
Application	Application/Application Name
AttachmentIDs	Bates numbers of attachment(s)
Attachments	Names of attachment files
AttachRange	Attachment Range
Authors	Document author
BCC	BCC (Name + email)
CC	CC (Name + email)
Companies	Company name
Custodian	Custodian (Last, First)

DateCreated	Date created (MM/DD/YYYY)
DateReceived	Date email received (MM/DD/YYYY)
DateSaved	Date last saved (MM/DD/YYYY)
DateSent	Date email sent (MM/DD/YYYY)
Doctitle	Title
FileType	Document Type Description
FileExtension	File extension
Doclink	Link to native files produced
ExtractedText	Link to text files produced
Filename	Original filename
FileSize	File size in bytes
Folder	Relative Path (Inbox, Sent, etc.)
From	Sender (Name + email)
Hash_Code	MD5 hash
Header	Email header
InternetMSGID	IntMsgID
MessageID	MsgID
NumAttachments	Attachment count
NumPages	Page count
ParentID	Parent bates number
Password_Protect	Y/N field
Read	Y/N
SHA1	SHA1 hash
Sources	CD, DVD, hard drive; brief desc. of data
StoreID	Name of PST/NSF file (if relevant)
Subject	Email/Document subject
TimeReceived	Time email received (12-hour HH:MM)
TimeSent	Time email sent (12-hour HH:MM)
To	To (Name + email)

**For .xls (Excel), .ppt (PowerPoint), and .doc (Word) files** the following additional metadata fields should be included:

Excel_Comments	Comments
Excel_HiddenColumns	Hidden Columns
Excel_HiddenRows	Hidden Rows
Excel_HiddenWorksheets	Hidden Worksheets
Num_Lines	Number of lines
Num_Paragraphs	Number of paragraphs
Num_slides	Number of slides
Num_Notes	Number of notes
Num_HiddenSlides	Number of hidden slides
Num_Multimedia	Number of multimedia clips
Security	Security

## DOCUMENT REQUESTS

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

**Exhibit "D"**

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

CASE NO. 12-034123 (07)

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

Plaintiffs,

vs.

MICHAEL D. SULLIVAN, et al.,

Defendants.

---

**DEFENDANT FRANK AVELLINO'S OBJECTION TO PLAINTIFF'S  
NOTICE OF INTENT TO SERVE SUBPOENA DUCES TEUM WITH DEPOSITION  
UPON NANCY AVELLINO**

Defendant, Frank Avellino ("Avellino"), pursuant to Rule 1.351, Florida Rules of Civil Procedure, objects to Plaintiff's Notice of Intent to Serve Subpoena Duces Tecum with Deposition Upon Nancy Avellino (the "Subpoena") on grounds that it: (a) seeks documents, materials or electronically stored information (ESI) concerning the private financial information of both Nancy Avellino, who is not a party to this lawsuit, and of Frank Avellino, both of which are protected from disclosure by Florida's Constitution; (b) is overbroad and unduly burdensome in that the Subpoena requests nearly two dozen categories of documents, materials and ESI the retrieval of which (assuming for the sake of argument it even exists and is in the possession, custody or control of Mrs. Avellino) going back more than twenty years which would require the hiring or retention of costly professionals; (c) seeks information which is protected by a recognized privilege or immunity from disclosure pursuant to applicable law; and (d) otherwise

calls for disclosure of information that is irrelevant and not likely to lead to the discovery of admissible evidence.

WHEREFORE, Defendant Frank Avellino request that the Court enter an Order sustaining his objections to the Subpoena, denying Plaintiff's request to issue the Subpoena, and awarding any such other and further relief as the Court deems just and proper.

Dated this 24th day of February, 2015.

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

*Attorneys for Defendant Frank Avellino*

660 U.S. Highway One, Third Floor

North Palm Beach, FL 33408

Phone: (561) 627-8100

Fax: (561) 622-7603

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[bpetroni@haileshaw.com](mailto:bpetroni@haileshaw.com)

[eservices@haileshaw.com](mailto:eservices@haileshaw.com)

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 24th day of February, 2015, the foregoing document is being served on those on the attached service list by electronic service via the Florida Court E-Filing Portal in compliance with Fla. Admin Order No. 13-49.

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

## SERVICE LIST

THOMAS M. MESSANA, ESQ.  
MESSANA, P.A.  
SUITE 1400, 401 EAST LAS OLAS BOULEVARD  
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