

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

COMPLEX LITIGATION UNIT

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

CASE NO.: 12-034123 (07)

Plaintiffs,

v.

MICHAEL D. SULLIVAN, et al.,

Defendants.

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**PLAINTIFFS' MOTION TO COMPEL:  
(1) DEFENDANT MICHAEL BIENES TO PRODUCE DOCUMENTS  
AND  
(2) ISSUANCE OF SUBPOENA *DUCES TECUM* WITH  
DEPOSITION OF DIANNE BIENES**

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 Michael Bienes (“Defendant Bienes”) to produce documents in response to Plaintiffs’ Fourth Request for Production and (ii) issuance of a subpoena *duces tecum* with deposition upon Dianne Bienes, and in support states:

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

1. On January 23, 2015, Plaintiffs served their Fourth Request for Production of Documents on Defendant Bienes (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 Michael Bienes’ Responses and Objections to Plaintiffs’ Fourth Request for Production of Documents.

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

4. First, Defendant Bienes’ improper general objections should be stricken. Defendant Bienes 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 Bienes 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 Bienes referred individuals to the Partnerships. Compl. ¶¶ 21-51. Additionally, beyond conclusory objections of “overly broad”, “unduly burdensome”, “vague and ambiguous”, and “impose discovery obligations greater than permitted under Fla. R. Civ. P. 1.350” – with no supporting facts, Defendant Bienes has not set forth any basis for his objections to Plaintiffs’ instructions or definitions accompanying the Requests. Defendant Bienes’ general objections No. 6 and 7 are similarly conclusory. Finally, although Defendant Bienes states “No documents or information is currently being withheld on the basis of the foregoing general objections” at the tail end of his general objection No. 12, it is unclear if Defendant Bienes is not withholding any documents only on the basis of general objection No. 12 or all objections. For foregoing reasons, Defendant Bienes’ general objections should be stricken.

5. Defendant Bienes incorporates the same blanket objection in response to all of the specific requests of the Requests: (1) that they “seek[] documents, materials or electronically stored information (“ESI”) concerning the private financial information protected from disclosure by Florida’s Constitution”; (2) that they would require the hiring or retention of costly professionals to obtain documents, materials and ESI; (3) that they seek information which is protected by a recognized privilege or immunity from disclosure pursuant to applicable law; and (4) they seek information that is irrelevant and not likely to lead to the discovery of admissible evidence (the “Blanket Objection”).

6. The Blanket Objection should be stricken with respect to all specific requests of the Requests because the requests are plainly relevant in that they seek documents related to payments and transfers that Defendant Bienes, 56 Arlington House, LLC, and other entities received from the former managing general partner of the Partnerships and from entities that are related to the improper kickbacks alleged in the Complaint. Defendant Bienes has not identified with any particularity any privilege, burden, or law that would protect his disclosure of such information, and his objections should be stricken.

7. After the parties met and conferred on March 25, 2015, Defendant Bienes refused to produce documents or reconsider his objections.

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

## *II. Defendant Bienes’ Objections to the Subpoena on Dianne Bienes Should be Stricken*

9. On February 13, 2015, Plaintiffs filed a notice of intent to serve a subpoena *duces tecum* with deposition on Dianne Bienes, spouse of Defendant Bienes (the “Notice”)<sup>1</sup>. Mrs.

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

Bienes was a director of 56 Arlington House, 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 Dianne Bienes on Oral Testimony (the Subpoena”). The Subpoena seeks documents related to payments and transfers that Dianne Bienes, 56 Arlington House, LLC, and other entities received from the former managing general partner of the Partnerships and from entities that are related to the improper kickbacks alleged in the Complaint.

10. On February 23, 2015, Defendant Bienes filed an objection to the Notice (the “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 form the basis of this lawsuit. Additionally, the objections fail to identify what information is private financial information, what privileges and immunities prevent disclosure of the information requests, or why Mrs. Bienes should not be required to produce electronically stored information beyond conclusory statement that it would require “hiring or retention of costly professionals.”

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

#### Certification of Good Faith and CLP 5.3

On March 25, 2015, counsel for Bienes and for the Plaintiffs participated in a meet and confer in a good faith attempt to resolve the issues addressed in the instant Motion. At that time, Bienes’ counsel refused to reconsider his position. As addressed above, the filing of this motion to compel was necessary.

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

WHEREFORE Plaintiffs respectfully request the entry of an Order: (i) striking Defendant Bienes' general and specific objections to the Requests; (ii) ordering Defendant Bienes to produce all documents responsive to Requests 1 through 12 of the Requests, to the extent that responsive documents exist; (iii) denying Defendant Michael Bienes' Objection to Plaintiff's Notice of Intent to Serve Subpoena Duces Teum with Deposition Upon Dianne Bienes; (iv) authorizing 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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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 26th day of March, 2015, the foregoing was filed using the Florida Courts E-Filing Portal, which sent notification to the following parties:

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

**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.

\_\_\_\_\_ /

**PLAINTIFFS' FOURTH REQUEST FOR PRODUCTION OF DOCUMENTS TO  
DEFENDANT MICHAEL BIENES**

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 Michael Bienes (“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 “Bienes” as used herein means independently and/or collectively, Michael Bienes, 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 56 Arlington House, LLC.
5. All documents concerning any transfers and/or payments of funds from Sullivan & Powell / Solutions In Tax to 56 Arlington House, LLC.
6. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan to 56 Arlington House, 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 You received from Sullivan & Powell / Solutions In Tax, Michael D. Sullivan, and/or Michael D. Sullivan & Assoc.
9. All documents sent from Sullivan & Powell / Solutions In Tax, Michael D. Sullivan, and/or Michael D. Sullivan & Assoc to 56 Arlington House, LLC.
10. All documents 56 Arlington House, LLC received from Sullivan & Powell / Solutions In Tax, Michael D. Sullivan, and/or Michael D. Sullivan & Assoc.
11. To the extent not already produced in response to a request, all documents concerning 56 Arlington House, LLC.

12. All documents concerning to the “annual checks” referenced in Your response to Interrogatory No. 12 of Plaintiffs’ First Set of Interrogatories to Defendant Michael Bienes.

13. All documents concerning to the “payments” made by Sullivan to You that are referenced in Your response to Interrogatory No. 24 of Plaintiffs’ First Set of Interrogatories to Defendant Michael Bienes.

14. All documents concerning any transfers and/or payments of funds from Sullivan & Powell / Solutions In Tax to FPOM, Inc. and/or American Friends of the English Chamber Orchestra Music Society, Inc.

15. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan & Assoc. to FPOM, Inc. and/or American Friends of the English Chamber Orchestra Music Society, Inc.

16. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan to FPOM, Inc. and/or American Friends of the English Chamber Orchestra Music Society, Inc.

17. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan & Assoc. to American Friends of Covent Garden, Inc.

18. All documents concerning any transfers and/or payments of funds from Sullivan & Powell / Solutions In Tax to American Friends of Covent Garden, Inc.

19. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan to American Friends of Covent Garden, Inc.

20. All documents sent from Sullivan & Powell / Solutions In Tax, Michael D. Sullivan, and/or Michael D. Sullivan & Assoc. to FPOM, Inc. and/or American Friends of the English Chamber Orchestra Music Society, Inc.

21. All documents FPOM, Inc. and/or American Friends of the English Chamber Orchestra Music Society, Inc. received from Sullivan & Powell / Solutions In Tax, Michael D. Sullivan, and/or Michael D. Sullivan & Assoc.

22. All documents sent from Sullivan & Powell / Solutions In Tax, Michael D. Sullivan, and/or Michael D. Sullivan & Assoc. to American Friends of Covent Garden, Inc.

23. All documents American Friends of Covent Garden, Inc. received from Sullivan & Powell / Solutions In Tax, Michael D. Sullivan, and/or Michael D. Sullivan & Assoc.

24. To the extent not already produced in response to a request, all documents concerning FPOM, Inc. and/or American Friends of the English Chamber Orchestra Music Society, Inc.

25. To the extent not already produced in response to a request, all documents concerning American Friends of Covent Garden, Inc.

26. To the extent not already produced in response to a request, all documents concerning any transfers and/or payments of funds from Sullivan & Powell / Solutions In Tax, Michael D. Sullivan, and/or Michael D. Sullivan & Assoc. to any entity for which you are, or were, an officer, director, or manager.

27. All documents and communications exchanged between You and any person identified in Plaintiffs' Response to Interrogatory Number 2 of Defendant Michael Bienes' First Set of Interrogatories.

Respectfully submitted,

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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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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/Leonard K. Samuels  
Leonard K. Samuels

**EXHIBIT**

**B**

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

COMPLEX LITIGATION UNIT

CASE NO. CACE 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,

vs.

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, KELKO FOUNDATION,  
INC., a Florida Non Profit Corporation,  
and VINCENT T. KELLY, an individual,

Defendants.

---

**DEFENDANT MICHAEL BIENES' RESPONSES AND OBJECTIONS  
TO PLAINTIFFS' FOURTH REQUEST FOR PRODUCTION OF DOCUMENTS**

Defendant, MICHAEL BIENES ("Bienes"), pursuant to Rule 1.350, Florida Rules of  
Civil Procedure, hereby responds and objects to Plaintiffs' Fourth Request for Production of  
Documents (the "Fourth Request"), as follows:

**BROAD and CASSEL**

One Biscayne Tower, 21st Floor 2 South Biscayne Blvd. Miami, Florida 33131-1811 305.373.9400



**GENERAL OBJECTIONS**

1. These responses are made solely in relation to this action and are being offered only for the purpose of responding to the Fourth Request.

2. Bienes objects to Plaintiffs' Instructions on the grounds that they are overbroad, unduly burdensome, and impose discovery obligations greater than permitted under Fla. R. Civ. P. 1.350.

3. Bienes objects to Plaintiffs' Definitions on the grounds that they are vague and ambiguous, overbroad, unduly burdensome, and impose discovery obligations greater than permitted under Fla. R. Civ. P. 1.350.

4. Bienes objects to the time frame specified for the Fourth Request—January 1, 1992—on the grounds that it is overbroad and unduly burdensome in its scope.

5. Bienes objects to the Fourth Request insofar as it purports to require him produce or disclose privileged communications or attorney work product, on the ground that such a requirement is impermissible under the Florida Rules of Civil Procedure. In accordance with Rule 1.280(5), Bienes will produce a separate log of privileged information or communications or attorney work product being withheld from production, if any. Any inadvertent production or disclosure of privileged communications or work product should not be construed as a waiver of the privilege or of the work product doctrine which applies to such inadvertently produced documents or information.

6. Bienes objects to the Fourth Request insofar as it purports to require him to produce or disclose information that is not relevant, and is not likely or reasonably calculated to lead to the discovery of admissible evidence.

7. Bienes objects to the Fourth Request insofar as it purports to require him to produce or disclose information that equally ascertainable or available to Plaintiffs or is more readily available to Plaintiffs.

8. Bienes objects to the Fourth Request insofar as it purports to require U.S. Bank to produce or disclose information that is a matter of public record.

9. Any objection or lack of objection to a particular request is not to be deemed an admission that Bienes has any information responsive to such request.

10. This response is made without prejudice to Bienes' right to supplement his production with any subsequently discovered documents or information responsive to the Fourth Request.

11. This response is based on the best knowledge and information presently held by Bienes and is subject to correction, modification, or supplementation as and when additional responsive documents or information become known to Bienes.

12. Bienes reserves all other objections as to the admissibility, relevance, confidentiality, and materiality of any facts or information produced in response to the Third Request. No documents or information is currently being withheld on the basis of the foregoing general objections.

**DOCUMENTS REQUESTED AND SPECIFIC RESPONSES**

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

**Response:** Bienes objects to this request on the grounds that it: (a) seeks documents, materials or electronically stored information (“ESI”) concerning the private financial information protected from disclosure by Florida’s Constitution; (b) is overbroad 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, that is, assuming for the sake of argument *only* such documents, information or ESI exists and is in the possession, custody or control of Bienes in the first place; (iii) seeks information which is protected by a recognized privilege or immunity from disclosure pursuant to applicable law; and (iv) otherwise calls for disclosure of information that is irrelevant and not likely to lead to the discovery of admissible evidence.

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

**Response:** See response to request no. 1.

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

**Response:** See response to request no. 1.

4. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan & Assoc. to 56 Arlington House, LLC.

**Response:** See response to request no. 1.

5. All documents concerning any transfers and/or payments of funds from Sullivan & Powell / Solutions In Tax to 56 Arlington House, LLC.

**Response:** See response to request no. 1.

6. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan to 56 Arlington House, LLC.

**Response:** See response to request no. 1.

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

**Response:** See response to request no. 1.

8. All documents You received from Sullivan & Powell / Solutions In Tax, Michael D. Sullivan, and/or Michael D. Sullivan & Assoc.

**Response:** See response to request no. 1.

9. All documents sent from Sullivan & Powell / Solutions In Tax, Michael D. Sullivan, and/or Michael D. Sullivan & Assoc to 56 Arlington House, LLC.

**Response:** See response to request no. 1.

10. All documents 56 Arlington House, LLC received from Sullivan & Powell/Solutions In Tax, Michael D. Sullivan, and/or Michael D. Sullivan & Assoc.

**Response:** See response to request no. 1.

11. To the extent not already produced in response to a request, all documents concerning 56 Arlington House, LLC.

**Response:** See response to request no. 1.

12. All documents concerning to the "annual checks" referenced in Your response to Interrogatory No. 12 of Plaintiffs' First Set of Interrogatories to Defendant Michael Bienes.

**Response:** See response to request no. 1.

13. All documents concerning to the "payments" made by Sullivan to You that are referenced in Your response to Interrogatory No. 24 of Plaintiffs' First Set of Interrogatories to Defendant Michael Bienes.

**Response:** See response to request no. 1.

14. All documents concerning any transfers and/or payments of funds from Sullivan & Powell/Solutions In Tax to FPOM, Inc. and/or American Friends of the English Chamber Orchestra Music Society, Inc.

**Response:** See response to request no. 1.

15. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan & Assoc. to FPOM, Inc. and/or American Friends of the English Chamber Orchestra Music Society, Inc.

**Response:** See response to request no. 1.

16. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan to FPOM, Inc. and/or American Friends of the English Chamber Orchestra Music Society, Inc.

**Response:** See response to request no. 1.

17. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan & Assoc. to American Friends of Covent Garden, Inc.

**Response:** See response to request no. 1.

18. All documents concerning any transfers and/or payments of funds from Sullivan & Powell/Solutions In Tax to American Friends of Covent Garden, Inc.

**Response:** See response to request no. 1.

19. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan to American Friends of Covent Garden, Inc.

**Response:** See response to request no. 1.

20. All documents sent from Sullivan & Powell/Solutions In Tax, Michael D. Sullivan, and/or Michael D. Sullivan & Assoc. to FPOM, Inc. and/or American Friends of the English Chamber Orchestra Music Society, Inc.

**Response:** See response to request no. 1.

21. All documents FPOM, Inc. and/or American Friends of the English Chamber Orchestra Music Society, Inc. received from Sullivan & Powell/Solutions In Tax, Michael D. Sullivan, and/or Michael D. Sullivan & Assoc.

**Response:** See response to request no. 1.

22. All documents sent from Sullivan & Powell/Solutions In Tax, Michael D. Sullivan, and/or Michael D. Sullivan & Assoc to American Friends of Covent Garden, Inc.

**Response:** See response to request no. 1.

23. All documents American Friends of Covent Garden, Inc. received from Sullivan & Powell / Solutions In Tax, Michael D. Sullivan, and/or Michael D. Sullivan & Assoc.

**Response:** See response to request no. 1.

24. To the extent not already produced in response to a request, all documents concerning FPOM, Inc. and/or American Friends of the English Chamber Orchestra Music Society, Inc.

**Response:** See response to request no. 1.

25. To the extent not already produced in response to a request, all documents concerning American Friends of Covent Garden, Inc.

**Response:** See response to request no. 1.

26. To the extent not already produced in response to a request, all documents concerning any transfers and/or payments of funds from Sullivan & Powell/Solutions In Tax,

Michael D. Sullivan, and/or Michael D. Sullivan & Assoc. to any entity for which you are, or were, an officer, director, or manager.

**Response:** See response to request no. 1.

27. All documents and communications exchanged between You and any person identified in Plaintiffs' Response to Interrogatory Number 2 of Defendant Michael Bienes' First Set of Interrogatories.

**Response:** See response to request no. 1.

Dated this 27th day of February, 2015.

Respectfully submitted,

/s/ Shane P. Martin

Shane P. Martin (056306)

[smartin@broadandcassel.com](mailto:smartin@broadandcassel.com)

BROAD AND CASSEL

One Biscayne Tower, 21<sup>st</sup> Floor

2 South Biscayne Boulevard

Miami, Florida 33131

Telephone: 305.373.9400

Facsimile: 305.373.9443

*Counsel for Defendant, Michael Bienes*

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on February 27, 2015, this notice and the aforementioned interrogatories were served via E-mail to: **(i)** Thomas E. Messina, Esq., Thomas Zeichman, Esq., Messina, P.A., 401 East Las Olas Boulevard, Suite 1400, Ft. Lauderdale, FL 33301 ([tmessana@messana-law.com](mailto:tmessana@messana-law.com), [tzeichman@messana-law.com](mailto:tzeichman@messana-law.com)) (Counsel for Plaintiffs); **(ii)** Leonard K. Samuels, Esq., Etan Mark, Esq., Steven D. Weber, Esq., Zachary P. Hyman, Esq., Berger Singerman LLP, 350 East Las Olas Boulevard, Suite 1000, Fort Lauderdale, FL 33301 ([lsamuels@bergersingerman.com](mailto:lsamuels@bergersingerman.com), [emark@bergersingerman.com](mailto:emark@bergersingerman.com), [sweber@bergersingerman.com](mailto:sweber@bergersingerman.com), [zhyman@bergersingerman.com](mailto:zhyman@bergersingerman.com)) (Counsel for Plaintiff Margaret Smith); **(iii)** Peter G. Herman, Esq., Tripp Scott, 110 S.E. 6<sup>th</sup> Street, 15<sup>th</sup> Floor, Ft. Lauderdale, FL 33301 ([pgh@trippscott.com](mailto:pgh@trippscott.com)) (Counsel for Steven Jacob and Steven F. Jacob CPA and Associates); **(iv)** Paul V. DeBianchi, Esq., Paul V. DeBianchi, P.A., 111 S.E. 12<sup>th</sup> Street, Ft. Lauderdale, FL 33316 ([Debianchi236@bellsouth.net](mailto:Debianchi236@bellsouth.net)); **(v)** Gary A. Woodfield, Esq., Haile, Shaw & Pfaffenberger, P.A., 660 U.S. Highway One, Third Floor, North Palm Beach, FL 33408 ([gwoodfield@haileshaw.com](mailto:gwoodfield@haileshaw.com), [bpetroni@haileshaw.com](mailto:bpetroni@haileshaw.com), [eservice@haileshaw.com](mailto:eservice@haileshaw.com)) (Counsel for Defendant Frank Avellino); **(vi)** Harry Winderman, Esq., One Boca Place, 2255 Glades Road, Boca Raton, FL 33431 ([harry4334@hotmail.com](mailto:harry4334@hotmail.com)); **(vii)** Matthew Triggs, Esq., Andrew Thomson, Esq. Proskauer Rose LLP, 2255 Glades Road, Suite 421 Atrium, Boca Raton, FL 33431 ([mtriggs@proskauer.com](mailto:mtriggs@proskauer.com), [athomson@proskauer.com](mailto:athomson@proskauer.com), [florida.litigation@proskauer.com](mailto:florida.litigation@proskauer.com)); and **(viii)** Robert J. Hunt, Esq., Debra D. Klingsberg, Esq., Hunt & Gross, P.A., 185 Spanish River Boulevard, Suite 220, Boca Raton, FL 33431 ([bobhunt@huntgross.com](mailto:bobhunt@huntgross.com), [dklingsberger@huntgross.com](mailto:dklingsberger@huntgross.com), [eService@huntgross.com](mailto:eService@huntgross.com), [Sharon@huntgross.com](mailto:Sharon@huntgross.com)).

*/s/ Shane P. Martin*

Shane P. Martin



**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, et al.,

Defendants.

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**NOTICE OF INTENT TO SERVE SUBPOENA *DUCES TECUM*  
WITH DEPOSITION UPON DIANNE BIENES**

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 Dianne Bienes on Oral Testimony, pursuant to Fla. R. Civ. P. 1.351(c) upon the following:

**Dianne Bienes  
3200 Port Royale Dr. N. Apt. 100  
Fort Lauderdale, FL 33308**

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 SINGERMANN, 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  
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CPA & Associates, Inc.*

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*Attorneys for Frank Avellino*

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Fax.: 305-373-9443  
*Attorneys for Michael Bienes*

By: s/ Zachary P. Hyman

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.

---

**SUBPOENA DUCES TECUM WITH TAKING  
DEPOSITION OF DIANNE BIENES ON ORAL TESTIMONY**

STATE OF FLORIDA:

To All Singular Sheriffs of Said State:

**TO: Dianne Bienes  
3200 Port Royale Dr. N. Apt. 100  
Fort Lauderdale, FL 33308**

**YOU ARE HEREBY COMMANDED** to appear at the offices of **Berger Singerman, LLP, 350 E. Las Olas Blvd Suite 1000, Fort Lauderdale, Fl 33301 (the “Berger Singerman Office”)**, on **March 19, 2015** at **11:00 a.m.** and to produce the documents listed on **Schedule “A”** attached hereto on or before **March 15, 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 HYMAN

For the Court

By: s/ Zachary 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 ESPESİYAL 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.

## **DEFINITIONS AND INSTRUCTIONS**

The following definitions shall apply to this Request:

A. “You”, “Your” or “Dianne Bienes” as used herein means Dianne Bienes 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 Dianne Bienes.

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.

### **SCHEDULE "A"**

#### **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

## DOCUMENTS REQUESTED

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 56 Arlington House, LLC.
5. All documents concerning any transfers and/or payments of funds from Sullivan & Powell / Solutions In Tax to 56 Arlington House, LLC.
6. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan to 56 Arlington House, LLC.
7. All documents concerning any transfers and/or payments of funds from 56 Arlington House, LLC to Bienes.
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 56 Arlington House, LLC.
10. To the extent not already produced in response to a request, all documents concerning 56 Arlington House, LLC.
11. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan & Assoc. to F.P.O.M., Inc.

12. All documents concerning any transfers and/or payments of funds from Sullivan & Powell / Solutions In Tax to F.P.O.M., Inc.
13. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan to F.P.O.M., Inc.
14. All documents concerning any transfers and/or payments of funds from Michael F.P.O.M., Inc. to Bienes.
15. All documents sent from Sullivan & Powell / Solutions In Tax, Michael D. Sullivan, and/or Michael D. Sullivan & Assoc to F.P.O.M., Inc.
16. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan & Assoc. to American Friends of the Covent Garden, Inc.
17. All documents concerning any transfers and/or payments of funds from Sullivan & Powell / Solutions In Tax to American Friends of the Covent Garden, Inc.
18. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan to American Friends of the Covent Garden, Inc.
19. All documents concerning any transfers and/or payments of funds from Covent Garden, Inc. to Bienes.
20. All documents sent from Sullivan & Powell / Solutions In Tax, Michael D. Sullivan, and/or Michael D. Sullivan & Assoc to American Friends of the Covent Garden, Inc.
21. All documents concerning any transfers and/or payments of funds from Michael D. Sullivan & Assoc., Michael D. Sullivan, and/or Sullivan & Powell / Solutions In Tax to Bienes.

**EXHIBIT**

**D**

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

COMPLEX LITIGATION UNIT

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,

vs.

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, KELKO FOUNDATION,  
INC., a Florida Non Profit Corporation,  
and VINCENT T. KELLY, an individual,

Defendants.

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**DEFENDANT MICHEAL BIENES'  
OBJECTION TO PLAINTIFF'S NOTICE OF INTENT TO  
SERVE SUBPOENA DUCES TECUM WITH DEPOSITION TO DIANNE BIENES**

Defendant, Michael Bienes ("Bienes"), pursuant to Rule 1.351, Florida Rules of Civil Procedure, objects to Plaintiff's Notice of Intent to Serve Subpoena *Duces Tecum* With Deposition to Dianne Bienes (the "Subpoena") on the grounds that it: (a) seeks documents,

**BROAD and CASSEL**



materials or electronically stored information (“ESI”) concerning the private financial information of both Dianne Bienes, who is a not even a party to this lawsuit, and of Michael Bienes, 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. Bienes) would require the hiring or retention of costly professionals; (iii) seeks information which is protected by a recognized privilege or immunity from disclosure pursuant to applicable law; and (iv) otherwise calls for disclosure of information that is irrelevant and not likely to lead to the discovery of admissible evidence.

**WHEREFORE**, Defendant, Michael Bienes, requests 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 23rd day of February, 2015.

Respectfully submitted,

/s/ Jonathan Etra

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*Counsel for Defendant, Michael Bienes*

## CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on February 23, 2015, this notice and the aforementioned interrogatories were served via E-mail to: **(i)** Thomas E. Messina, Esq., Thomas Zeichman, Esq., Messina, P.A., 401 East Las Olas Boulevard, Suite 1400, Ft. Lauderdale, FL 33301 ([tmessana@messana-law.com](mailto:tmessana@messana-law.com), [tzeichman@messana-law.com](mailto:tzeichman@messana-law.com)) (Counsel for Plaintiffs); **(ii)** Leonard K. Samuels, Esq., Etan Mark, Esq., Steven D. Weber, Esq., Zachary P. Hyman, Esq., Berger Singerman LLP, 350 East Las Olas Boulevard, Suite 1000, Fort Lauderdale, FL 33301 ([lsamuels@bergersingerman.com](mailto:lsamuels@bergersingerman.com), [emark@bergersingerman.com](mailto:emark@bergersingerman.com), [sweber@bergersingerman.com](mailto:sweber@bergersingerman.com), [zhyman@bergersingerman.com](mailto:zhyman@bergersingerman.com)) (Counsel for Plaintiff Margaret Smith); **(iii)** Peter G. Herman, Esq., Tripp Scott, 110 S.E. 6<sup>th</sup> Street, 15<sup>th</sup> Floor, Ft. Lauderdale, FL 33301 ([pgh@trippscott.com](mailto:pgh@trippscott.com)) (Counsel for Steven Jacob and Steven F. Jacob CPA and Associates); **(iv)** Paul V. DeBianchi, Esq., Paul V. DeBianchi, P.A., 111 S.E. 12<sup>th</sup> Street, Ft. Lauderdale, FL 33316 ([Debianchi236@bellsouth.net](mailto:Debianchi236@bellsouth.net)); **(v)** Gary A. Woodfield, Esq., Haile, Shaw & Pfaffenberger, P.A., 660 U.S. Highway One, Third Floor, North Palm Beach, FL 33408 ([gwoodfield@haileshaw.com](mailto:gwoodfield@haileshaw.com), [bpetroni@haileshaw.com](mailto:bpetroni@haileshaw.com), [eservice@haileshaw.com](mailto:eservice@haileshaw.com)) (Counsel for Defendant Frank Avellino); **(vi)** Harry Winderman, Esq., One Boca Place, 2255 Glades Road, Boca Raton, FL 33431 ([harry4334@hotmail.com](mailto:harry4334@hotmail.com)); **(vii)** Matthew Triggs, Esq., Andrew Thomson, Esq. Proskauer Rose LLP, 2255 Glades Road, Suite 421 Atrium, Boca Raton, FL 33431 ([mtriggs@proskauer.com](mailto:mtriggs@proskauer.com), [athomson@proskauer.com](mailto:athomson@proskauer.com), [florida.litigation@proskauer.com](mailto:florida.litigation@proskauer.com)); **(viii)** Robert J. Hunt, Esq., Debra D. Klingsberg, Esq., Hunt & Gross, P.A., 185 Spanish River Boulevard, Suite 220, Boca Raton, FL 33431 ([bobhunt@huntgross.com](mailto:bobhunt@huntgross.com), [dklingsberger@huntgross.com](mailto:dklingsberger@huntgross.com), [eService@huntgross.com](mailto:eService@huntgross.com), [Sharon@huntgross.com](mailto:Sharon@huntgross.com)); and via Regular U.S. Mail to: **(ix)** Michael D. Sullivan & Associates, Inc., 6550 N. Federal Highway, Suite 210, Ft. Lauderdale, FL 33308 (pro se) and **(x)** Michael Sullivan, 2590 N.E. 41<sup>st</sup> Street, Ft. Lauderdale, FL 33308 (pro se).

/s/ Jonathan Etra

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Jonathan Etra