

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

CASE NO. 12-034123 (07)  
COMPLEX LITIGATION UNIT

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

Plaintiffs,

v.

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 and MICHAEL  
BIENES,

Defendants.

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**STEVEN JACOB AND STEVEN F. JACOB, CPA & ASSOCIATES, INC.'s**  
**ANSWER AND AFFIRMATIVE DEFENSES TO**  
**PLAINTIFFS' FIFTH AMENDED COMPLAINT**

STEVEN JACOB and STEVEN F. JACOB, CPA & ASSOCIATES, INC., by and  
through undersigned counsel, file their Answer and Affirmative Defenses to Plaintiffs' Fifth  
Amended Complaint, by like-numbered paragraphs, as follows:

1. Denied
2. Without knowledge, therefore denied.
3. Admitted.

4 – 7. Without knowledge, therefore denied.

8. Admitted.

9. Denied.

10 – 43. Without knowledge, therefore denied.

44 – 45. Denied.

46 – 48. Without knowledge, therefore denied.

49 – 59. Without knowledge, therefore denied.

60. Admitted.

61 – 68. Denied.

69 – 113. Without knowledge, therefore denied.

### **AFFIRMATIVE DEFENSES**

#### **First Affirmative Defense**

Each and every cause of action set forth in the Third Amended Complaint is barred by the limitation on liability contained in ¶ 14.03, of the controlling Partnership Agreements.

#### **Second Affirmative Defense**

Each and every cause of action set forth in the Third Amended Complaint is time barred; the controlling statutes of limitations have expired.

#### **Third Affirmative Defense**

Each and every cause of action set forth in the Third Amended Complaint is barred by the equitable doctrine of laches.

#### **Fourth Affirmative Defense**

The Complaint fails to state a cause of action against the Defendants.

#### **Fifth Affirmative Defense**

The Plaintiff conducted itself in a negligent and careless manner and as a direct and proximate result of said negligence, the Plaintiff caused or contributed to its damages. Therefore, the Plaintiff is barred from recovery in whole, or in part, against these Defendants on the grounds of comparative negligence.

#### **Sixth Affirmative Defense**

Although the negligence of the parties is denied, there may be parties to this lawsuit who caused and contributed to the alleged damages. These Defendants state that they are entitled to a reduction of any amount of damages assessed against the Defendants, either in whole or part, based upon the provisions of Florida's Tort Reform Act, Chapter 768, Florida Statutes (2002).

#### **Seventh Affirmative Defense**

Defendant adopts and incorporates by reference such affirmative defenses as are asserted by the other Defendants in this lawsuit.

#### **RESERVATION OF RIGHTS AND GENERAL DENIAL**

Defendant denies each and every allegation contained in the Third Amended Complaint that is not specifically admitted, and demands strict proof thereof. Defendant reserves his right to supplement or amend this Answer and Affirmative Defenses as discovery progresses.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing was furnished by E-service to:

**LEONARD K. SAMUELS, ESQ.** [lsamuels@bergersingerman.com](mailto:lsamuels@bergersingerman.com) and **ETAN MARK, ESQ.** [emark@bergersingerman.com](mailto:emark@bergersingerman.com), Attorneys for Plaintiff, at Berger Singerman, 350 East Las Olas Blvd, Suite 1000, Fort Lauderdale, FL 33301 and **THOMAS M. MESSANA, ESQ.** [tmessana@messna-law.com](mailto:tmessana@messna-law.com), Attorney for Conservator, at Messana, P.A., 401 E. Las Olas Boulevard, Suite 1400, Fort Lauderdale, FL 33301, this 16<sup>th</sup> day of January, 2015.

TRIPP SCOTT, P.A.  
Attorneys for Defendants,  
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