

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

CASE NO.: 12-034121 (07)  
Complex Litigation Unit

P &S ASSOCIATES, GENERAL PARTNERSHIP,  
a Florida limited partnership; and S&P  
ASSOCIATES, GENERAL PARTNERSHIP, a  
Florida limited partnership, *et al.*,

Plaintiffs,

v.

JANET A. HOOKER CHARITABLE TRUST, a  
charitable trust, *et al.*,

Defendants.

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**RESPONSES AND OBJECTIONS TO PLAINTIFFS' FIRST REQUEST  
FOR PRODUCTION OF DOCUMENTS TO ETTOH, LTD.**

Defendant, ETTOH, LTD. ("Ettoh"), by and through the undersigned counsel, and pursuant to Florida Rule of Civil Procedure 1.350, hereby files its responses to Plaintiffs' First Request for Production of Documents to Defendant Ettoh, Ltd., stating as follows:

**GENERAL RESPONSES AND OBJECTIONS**

1. Ettoh submits these responses without conceding the relevancy or materiality of the subject matter of any request or of any document, and without prejudice to all objections to the use or further production or admissibility of any document.

2. Ettoh objects to those requests that seek information neither relevant to this action, nor reasonably calculated to lead to the discovery of admissible evidence.

3. Ettoh objects to those requests that seek information exempt from discovery by virtue of its inclusion in any of the following categories:

- a. Information that embodies or discloses confidential communication between Ettoh and its counsel;
  - b. Information that represents the work product of attorneys for Ettoh in this or related actions or which otherwise reflects the mental impressions, conclusions, opinions or legal theories of those attorneys or their agents; and
  - c. Information that has been compiled in anticipation of litigation or for trial by or on behalf of Ettoh or its counsel.
4. Ettoh objects to those requests that are duplicative or cumulative and as to which information may be obtained from another source that is more convenient, less burdensome and less expensive.
5. Ettoh objects to those requests that are unnecessarily burdensome and oppressive.
6. Whenever a request or instruction seeks to impose upon Ettoh greater or broader obligations than those imposed by the Florida Rules of Civil Procedure, the Local Rules of this Court, or applicable substantive law, Ettoh will respond in accordance with such controlling rules and substantive law notwithstanding the obligations purportedly imposed by the request or instruction.
7. Ettoh objects to all requests insofar as they call for any other non-discoverable matters.
8. Ettoh reserves the right to supplement its responses as discovery proceeds.

## **DOCUMENTS REQUESTED**

1. All documents exchanged between Defendant and S&P; Michael D. Sullivan; Steven Jacob; Michael D. Sullivan & Associates, Inc., a Florida Corporation; Steven F. Jacob, CPA & Associates, Inc.; Frank Avellino; Michael Bienes; Kelco Foundation, Inc. a Florida Non Profit Corporation; and/or Vincent T. Kelly.

### **RESPONSE:**

Ettoh objects to this request where it is vague and overly broad in both time and scope. The request therefore seeks, in part, information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Without waiving these objections, and subject to them, Ettoh will produce at a mutually convenient time and location all non-privileged documents in its possession, custody and control, if any, relating to the S&P Associates, General Partnership and/or P&S Associates, General Partnership (collectively the “Partnerships”), and including those exchanged with the referenced individuals.

2. All documents related to communications between Defendant and S&P; Michael D. Sullivan; Steven Jacob; Michael D. Sullivan & Associates, Inc., a Florida Corporation; Steven F. Jacob, CPA & Associates, Inc.; Frank Avellino; Michael Bienes; Kelco Foundation, Inc. a Florida Non Profit Corporation; and/or Vincent T. Kelly.

### **RESPONSE:**

Ettoh objects to this request where it is vague and overly broad in both time and scope. The request therefore seeks, in part, information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Without waiving these objections, and subject to them, Ettoh will produce at a mutually convenient time and location all non-privileged documents in its possession, custody and control, if any, relating to the S&P Associates, General Partnership and/or P&S Associates, General Partnership (collectively the “Partnerships”), and including the related communications with the referenced individuals.

3. All documents that refer to or reflect the transactions and/or events alleged in the Amended Complaint in this action.

**RESPONSE:**

Ettoh will produce all (non-privileged) documents responsive to this request in its possession, custody or control at a mutually convenient time and location.

4. All documents that reflect payments, distributions, and/or transfers of funds between S&P and Defendant. This request includes without limitation all documents that reflect payments, distributions, and/or transfers of funds made and/or received on behalf of S&P.

**RESPONSE:**

Ettoh will produce all (non-privileged) documents responsive to this request in its possession, custody or control at a mutually convenient time and location.

5. All documents that reflect any relationship between Defendant and S&P.

**RESPONSE:**

Ettoh objects to this request where it is so vague that Ettoh cannot reasonably frame a response. Ettoh is aware of no “relationship” that it has or had with S&P, other than investing in the partnership(s) in accordance with controlling partnership agreement(s).

6. All documents related to any requests You made to review the books and records of S&P.

**RESPONSE:**

Ettoh will produce all (non-privileged) documents responsive to this request in its possession, custody, or control at a mutually convenient time and location.

7. All documents that support the assertion that Plaintiffs failed to bring a lawsuit within the time required under the applicable statutes of limitations for each cause of action asserted in the Amended Complaint.

**RESPONSE:**

Ettoh objects to this request to the extent it can be interpreted to impose an obligation upon Ettoh to produce documents generated by undersigned counsel and, thus, protected by the attorney-client privilege and/or work-product doctrine. Without waiving these objections, and subject to them, Ettoh will produce all (non-privileged) documents in its possession, custody, or control (and which are not part of the public domain, *e.g.*, press reports and not produced by Plaintiff) responsive to this request at a mutually convenient time and location.

8. All documents related to distributions, payments, and/or transfers of funds that were received by any partner of S&P.

**RESPONSE:**

Ettoh objects to this request to the extent it purports to impose upon Ettoh an obligation to produce documents of third parties with whom Ettoh is not affiliated and over whom Ettoh has no control. Without waiving these objections, and subject to them, to the extent Plaintiff seeks documents related to distributions, payment and/or transfers of funds received by Ettoh, Ettoh will produce all documents responsive to this request in its possession, custody or control at a mutually convenient time and location.

9. All documents related to any investment advice or accounting advice Defendant received in relation to S&P; including without limitation any documents provided to investment advisors and any reports produced by such investment advisors.

**RESPONSE:**

Ettoh objects to this request to the extent it seeks documents protected by the accountant-client privilege.

Without waiving this objection, and subject to it, Ettoh is not aware of any documents in its possession, custody or control providing it “investment advice” relative to the partnership(s). Ettoh did receive, as, presumably, did all investors, audit reports on an annual basis from the Ahearn Jasco & Co., and (possibly) other accountants providing

audit services to the partnership(s). Ettoh would have relied upon these reports where they confirmed that the partnerships were being operated with proper controls, that the financial statements of the partnership(s) were accurate and maintained in accordance with GAAP, etc.

10. All documents related to the decision by Defendant to invest in S&P.

**RESPONSE:**

Ettoh will produce all documents responsive to this request in its possession, custody or control at a mutually convenient time and location.

11. All documents that support Your alleged entitlement to retain any payments, distributions, and/or transfers of funds from S&P.

**RESPONSE:**

Ettoh objects to this request to the extent it can be interpreted to impose an obligation upon Ettoh to produce documents generated by undersigned counsel and, thus, protected by the attorney-client privilege and/or work-product doctrine. Without waiving these objections, and subject to them, Ettoh will produce all (non-privileged) documents in its possession, custody, or control (and which are not part of the public domain, *e.g.*, press reports) responsive to this request at a mutually convenient time and location.

12. All documents relating to Your knowledge of the amount of distributions that you should have received from S&P.

**RESPONSE:**

Ettoh objects to this request because responding to the request would require Ettoh to accept and apply Plaintiff's theory that Ettoh *should not have received* some portion of the distributions it received from the partnership(s) and then to determine which documents might support that theory. First, any distributions were made in good faith and accordance with the controlling partnership agreement(s), such that the basis of the request is false. Second, requiring Ettoh or its counsel to determine what documents support Plaintiff's case is violative of the work product doctrine.

13. All documents that relate to Your decision not to comply with the demand letter sent to You in November 2012 and the demand letter sent to You in October 2013.

**RESPONSE:**

Ettoh objects to this request to the extent it can be interpreted to impose an obligation upon Ettoh to produce documents generated by undersigned counsel and, thus, protected by the attorney-client privilege and/or work-product doctrine. Without waiving these objections, and subject to them, Ettoh will produce all (non-privileged) documents in its possession, custody, or control (and which are not part of the public domain, *e.g.*, press reports) responsive to this request at a mutually convenient time and location.

14. All documents that support the assertion that You received all payments, distributions, and/or transfers of funds from S&P in accordance with the Partnership Agreements.

**RESPONSE:**

Ettoh objects to this request to the extent it can be interpreted to impose an obligation upon Ettoh to produce documents generated by undersigned counsel and, thus, protected by the attorney-client privilege and/or work-product doctrine. Without waiving these objections, and subject to them, Ettoh will produce all (non-privileged) documents in its possession, custody, or control (and which are not part of the public domain, *e.g.*, press reports) responsive to this request at a mutually convenient time and location.

15. All documents related to the terms of Your investment in S&P.

**RESPONSE:**

Ettoh objects to this request to the extent it can be interpreted to impose an obligation upon Ettoh to produce documents generated by undersigned counsel and, thus, protected by the attorney-client privilege and/or work-product doctrine. Without waiving these objections, and subject to them, Ettoh will produce all (non-privileged) documents in its possession, custody, or control (and which are not part of the public domain, *e.g.*, press reports) responsive to this request at a mutually convenient time and location.

16. All documents that relate to communications between You and other investors in S&P; including but not limited to any correspondence between You and any of the named Defendants in this action.

**RESPONSE:**

Ettoh objects to this request where it is overly broad in time and scope and therefore seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Without waiving these objections, and subject to them, Ettoh will produce at a mutually convenient time and location all non-privileged documents in its possession, custody and control, if any, relating to the S&P Associates, General Partnership and/or P&S Associates, General Partnership (collectively the “Partnerships”), and including the referenced individuals.

17. All documents that relate to Your attempts to verify the amounts stated in your account statements with S&P.

**RESPONSE:**

Ettoh objects to this request because it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Pursuant to the terms of the controlling partnership agreement(s), Ettoh was under no obligation to “verify” its account statements or otherwise manage the partnership(s).

Ettoh further objects to this request to the extent it can be interpreted to impose an obligation upon Ettoh to produce documents generated by undersigned counsel and, thus, protected by the attorney-client privilege and/or work-product doctrine. Without waiving these objections, and subject to them, Ettoh will produce all (non-privileged) documents in its possession, custody, or control reflective of the amount in its account at a mutually convenient time and location.

Dated this 24<sup>th</sup> day of January, 2013.

Respectfully submitted,

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