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

Case No: 12-034121(07)
Complex Litigation Unit

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

Plaintiffs,

vs.

JANET A. HOOKER CHARITABLE TRUST,
et al.,

Defendants.
_____/

ANSWER AND DEFENSES TO THIRD AMENDED COMPLAINT OF DEFENDANTS SUSAN E. MOLCHAN OR THOMAS A. WHITEMAN, JANET B. MOLCHAN TRUST DTD 05/19/94 AND ALEX E. MOLCHAN TRUST DTD 05/19/94

ANSWER

Defendants SUSAN E. MOLCHAN OR THOMAS A. WHITEMAN ("SUSAN MOLCHAN"), JANET B. MOLCHAN TRUST DTD 05/19/94 ("JANET MOLCHAN") and ALEX E. MOLCHAN TRUST DTD 05/19/94 ("ALEX MOLCHAN" and, collectively with SUSAN MOLCHAN and JANET MOLCHAN, the "Molchan Defendants"), answer the numbered paragraphs of the Third Amended Complaint as follows:

1. Admitted, except denied that all events giving rise to the claims alleged occurred in Broward County, Florida.
2. Admitted.
3. Admitted.

4. Without knowledge and therefore denied.

5. Without knowledge and therefore denied.

6. Without knowledge and therefore denied.

7. Without knowledge and therefore denied.

8. Without knowledge and therefore denied.

9. Without knowledge and therefore denied.

10. Without knowledge and therefore denied.

11. Without knowledge and therefore denied.

12. Without knowledge and therefore denied.

13. Without knowledge and therefore denied.

14. Without knowledge and therefore denied.

15. Without knowledge and therefore denied.

16. Without knowledge and therefore denied.

17. Without knowledge and therefore denied.

18. Without knowledge and therefore denied.

19. Without knowledge and therefore denied.

20. Without knowledge and therefore denied.

21. Without knowledge and therefore denied.

22. Admitted.

23. Admitted.

24. Without knowledge and therefore denied.

25. Without knowledge and therefore denied.

26. Without knowledge and therefore denied.

27. Without knowledge and therefore denied.

28. Without knowledge and therefore denied.

29. Without knowledge and therefore denied.

30. Without knowledge and therefore denied.

31. Without knowledge and therefore denied.

32. Admitted.

33. Denied that Exhibit A is a detailed list of the distributions and disbursements to the accounts at P&S of the Molchan Defendants. The Molchan Defendants state affirmatively that Exhibit A omits reinvested quarterly distributions attributable to monies received by P&S from Bernard L. Madoff Investment Securities, LLC ("BLMIS").

34. Without knowledge and therefore denied.

35. Admitted.

36. The Amended and Restated P&S Partnership Agreement (the "P&S Partnership Agreement") speaks for itself; otherwise, without knowledge and therefore denied.

37. The Molchan Defendants reiterate their answers to paragraphs 22, 23, 32 and 33; otherwise, denied.

38. Admitted that all of the funds invested in P&S by the Molchan Defendants were then invested with BLMIS; otherwise; without knowledge and therefore denied.

39. The P&S Partnership Agreement speaks for itself; otherwise, without knowledge and therefore denied.

40. The P&S Partnership Agreement speaks for itself; otherwise, without knowledge and therefore denied.

41. The P&S Partnership Agreement speaks for itself; otherwise, without knowledge and therefore denied.

42. The P&S Partnership Agreement speaks for itself; otherwise, without knowledge and therefore denied.

43. The P&S Partnership Agreement speaks for itself; otherwise, without knowledge and therefore denied. The Molchan Defendants state affirmatively that Article Ten of the P&S Partnership Agreement has no application to them because they withdrew and dissociated from P&S more than 12 years ago pursuant to Article Nine of the P&S Partnership Agreement and Fla. Stat. § 620.8701. Upon their withdrawal and dissociation from P&S, a full settlement, accord and satisfaction of their accounts with P&S was made in accordance with Section 9.03 and Article 11 of the P&S Partnership Agreement and Fla. Stat. § 620.8701.

44. The P&S Partnership Agreement speaks for itself; denied that the Molchan Defendants violated any of the provisions of Article Ten of the P&S Partnership Agreement.

45. The P&S Partnership Agreement speaks for itself; denied that the Molchan Defendants ever defaulted under the provisions of Article Ten of the P&S Partnership Agreement or that their partnership interest in P&S was ever "assigned, transferred or terminated" within the meaning of Article Ten of the P&S Partnership Agreement.

46. The Order speaks for itself; otherwise, without knowledge and therefore denied.

47. Denied as to the Molchan Defendants.

48. Denied that the Molchan Defendants received any distributions that were not made from the monies P&S received from BLMIS; otherwise, without knowledge and therefore denied.

49. Denied as to the Molchan Defendants.

50. Denied that the Molchan Defendants received any improper distributions from P&S; admitted that the Molchan Defendants received Demand Letters from Smith in the form attached as Exhibit E; otherwise, without knowledge and therefore denied.

51. The form of the Demand Letter speaks for itself; denied that the Molchan Defendants received any improper distributions from P&S.

52. Denied as to the Molchan Defendants.

53. Denied that the Molchan Defendants received any improper distributions from P&S; otherwise, without knowledge and therefore denied.

54. Without knowledge and therefore denied.

55. Without knowledge and therefore denied.

56. Without knowledge and therefore denied.

57. Admitted.

58. Admitted.

59. Admitted.

60. Admitted.

61. The Order Appointing Conservator speaks for itself; otherwise, without knowledge and therefore denied.

62. The Conservator's Motion for Summary Judgment in the Interpleader Action speaks for itself; otherwise, without knowledge and therefore denied.

63. Denied that the issues raised in the Interpleader Action involved anything other than the method of distributing available cash assets to the current partners of P&S and S&P.

Denied that the adjudication of the Interpleader Action has any bearing on the alleged liability of the Molchan Defendants in this action.

64. Denied that the issues raised in the Interpleader Action involved anything other than the method of distributing available cash assets to the current partners of P&S and S&P. Denied that the adjudication of the Interpleader Action has any bearing on the alleged liability of the Molchan Defendants in this action.

65. Denied as to the Molchan Defendants.

66. Denied as to the Molchan Defendants.

67. Denied as to the Molchan Defendants.

68. Admitted that the attorneys for Conservator sent demand letters to the Molchan Defendants on October 18, 2013; denied that such demand letters were sent out because P&S is "in the process of winding up." The Molchan Defendants state affirmatively that such demand letters were a pretext to state a non-existent causes of action against them under Fla. Stat. § 620.8807 and Article Ten of the P&S Partnership Agreement, neither of which has any application to them because they withdrew and dissociated from P&S more than 12 years ago pursuant to Fla. Stat. § 620.8701 and Article Nine of the P&S Partnership Agreement.

69. Admitted as to the Molchan Defendants; otherwise, without knowledge and therefore denied.

70. Denied as to Molchan Defendants; otherwise, without knowledge and therefore denied.

71. Denied that P&S or the Conservator is a proper party to assert claims on behalf of individual partners in P&S who are "Net Losers"; otherwise, admitted.

72. Without knowledge and therefore denied.

COUNT I
BREACH OF STATUTORY DUTY (NEGLIGENCE)

73. The Molchan Defendants reiterate their answers to paragraphs 1 through 72 and incorporate those answers herein by this reference.

74. Denied as to the Molchan Defendants. In this regard, the Molchan Defendants state affirmatively that upon their withdrawal and dissociation from P&S, a full settlement, accord and satisfaction of their accounts with P&S was made in accordance with Section 9.03 and Article 11 of the P&S Partnership Agreement and in accordance with Fla. Stat. § 620.8701. At that time, their account balances were zero and they ceased to have capital accounts with P&S thereafter. Any purported capital accounts generated with respect to them since Margaret Smith was appointed "Managing General Partner" of P&S are a recent invention created by the Plaintiffs for the purposes of this litigation.

75. Denied that the Molchan Defendants are currently partners in P&S. In this regard, the Molchan Defendants state affirmatively that they already settled their P&S accounts more than 12 years ago.

76. Denied as to the Molchan Defendants. In this regard, the Molchan Defendants state affirmatively that all distributions received by them from P&S were taken in good faith and for a reasonably equivalent value, which value consisted of the antecedent debt to them reflected on the books and/or financial records of P&S in accordance with the procedures set forth in the P&S Partnership Agreement, to which all of the partners of P&S agreed. Upon their withdrawal and dissociation from P&S, a full settlement, accord and satisfaction of their accounts with P&S was made in accordance with Section 9.03

and Article 11 of the P&S Partnership Agreement and in accordance with Fla. Stat. § 620.8701. Consequently, Fla. Stat. § 620.8807 is not applicable to the Molchan Defendants pursuant to the express terms of Fla. Stat. § 620.8603(1) and because they are no longer partners in P&S.

77. Denied as to the Molchan Defendants.

78. Denied as to the Molchan Defendants.

79. Denied as to the Molchan Defendants.

80. Denied as to the Molchan Defendants.

81. Denied as to the Molchan Defendants.

WHEREFORE, the Molchan Defendants demand dismissal of Count I of the Third Amended Complaint with prejudice and request court costs and such other and additional relief as the Court deems just and proper.

COUNT II
BREACH OF FLA. STAT. §620.8807

82. The Molchan Defendants reiterate their answers to paragraphs 1 through 72 and incorporate those answers herein by this reference.

83. Denied as to the Molchan Defendants. In this regard, the Molchan Defendants state affirmatively that upon their withdrawal and dissociation from P&S, a full settlement, accord and satisfaction of their accounts with P&S was made in accordance with Section 9.03 and Article 11 of the P&S Partnership Agreement and in accordance with Fla. Stat. § 620.8701. At that time, their account balances were zero and they ceased to have capital accounts with P&S thereafter. Any purported capital accounts generated with respect to them since Margaret Smith was appointed "Managing General

Partner" of P&S are a recent invention created by the Plaintiffs for the purposes of this litigation.

84. Denied that the Molchan Defendants are currently partners in P&S. In this regard, the Molchan Defendants state affirmatively that they already settled their P&S accounts more than 12 years ago.

85. Denied as to the Molchan Defendants. In this regard, the Molchan Defendants state affirmatively that all distributions received by them from P&S were taken in good faith and for a reasonably equivalent value, which value consisted of the antecedent debt to them reflected on the books and/or financial records of P&S in accordance with the procedures set forth in the P&S Partnership Agreement, to which all of the partners of P&S agreed. Upon their withdrawal and dissociation from P&S, a full settlement, accord and satisfaction of their accounts with P&S was made in accordance with Section 9.03 and Article 11 of the P&S Partnership Agreement and in accordance with Fla. Stat. § 620.8701. Consequently, Fla. Stat. § 620.8807 is not applicable to the Molchan Defendants pursuant to the express terms of Fla. Stat. § 620.8603(1) and because they are no longer partners in P&S.

86. Denied as to the Molchan Defendants.

87. Denied as to the Molchan Defendants.

88. Denied as to the Molchan Defendants.

WHEREFORE, the Molchan Defendants demand dismissal of Count II of the Third Amended Complaint with prejudice and request court costs and such other and additional relief as the Court deems just and proper.

COUNT III
BREACH OF CONTRACT

89. The Molchan Defendants reiterate their answers to paragraphs 1 through 72 and incorporate those answers herein by this reference.

90. Without knowledge and therefore denied.

91. Denied as to the Molchan Defendants. In this regard, the Molchan Defendants state affirmatively that all distributions received by them from P&S were taken in good faith and for a reasonably equivalent value, which value consisted of the antecedent debt to them reflected on the books and/or financial records of P&S in accordance with the procedures set forth in the P&S Partnership Agreement, to which all of the partners of P&S agreed. Upon their withdrawal and dissociation from P&S, a full settlement, accord and satisfaction of their accounts with P&S was made in accordance with Section 9.03 and Article 11 of the P&S Partnership Agreement and Fla. Stat. § 620.8701. Such withdrawal was not a "termination" of their partnership interest within the meaning of Section 10.02 of the P&S Partnership Agreement. Consequently, Sections 10.01(a) and (b) of the P&S Partnership Agreement are not applicable to the Molchan Defendants because they are no longer partners in P&S.

92. Denied as to the Molchan Defendants. In this regard, the Molchan Defendants state affirmatively that all distributions received by them from P&S were taken in good faith and for a reasonably equivalent value, which value consisted of the antecedent debt to them reflected on the books and/or financial records of P&S in accordance with the procedures set forth in the P&S Partnership Agreement, to which all of the partners of P&S agreed. Upon their withdrawal and dissociation from P&S, a full settlement, accord

and satisfaction of their accounts with P&S was made in accordance with Section 9.03 and Article 11 of the P&S Partnership Agreement and Fla. Stat. § 620.8701. Such withdrawal was not a "termination" of their partnership interest within the meaning of Section 10.02 of the P&S Partnership Agreement. Moreover, pursuant to Fla. Stat. § 620.8701(4), P&S must indemnify the Molchan Defendants against partnership liabilities, whether incurred before or after their dissociation. Consequently, the refusal of the Molchan Defendants to accede to the demands of the Plaintiffs in this lawsuit cannot reasonably be interpreted as "COMMITTING OR PARTICIPATING IN AN INJURIOUS ACT OF FRAUD, GROSS NEGLECT, MISREPRESENTATION, EMBEZZLEMENT OR DISHONESTY AGAINST THE PARTNERSHIP, OR COMMITTING OR PARTICIPATING IN ANY OTHER INJURIOUS ACT OR OMISSION WANTONLY, WILLFULLY, RECKLESSLY, OR IN A MANNER WHICH WAS GROSSLY NEGLIGENT AGAINST THE PARTNERSHIP, MONETARILY OR OTHERWISE, OR BEING CONVICTED OF ANY ACT OR ACTS CONSTITUTING A FELONY OR MISDEMEANOR, OTHER THAN TRAFFIC VIOLATIONS, UNDER THE LAWS OF THE UNITED STATES OR ANY STATE THEREOF" within the meaning of Section 10.01(g) of the P&S Partnership Agreement.

93. Denied as to the Molchan Defendants.

94. Denied as to the Molchan Defendants.

WHEREFORE, the Molchan Defendants demand dismissal of Count III of the Third Amended Complaint with prejudice and request court costs and such other and additional relief as the Court deems just and proper.

COUNT IV
UNJUST ENRICHMENT

95. The Molchan Defendants reiterate their answers to paragraphs 1 through 34, 37 through 39, 41, 46, 48, 50, 51, 53, 54 through 64 and 67 through 72, and incorporate those answers herein by this reference.

96. Denied as to the Molchan Defendants.

97. Denied as to the Molchan Defendants.

98. Denied as to the Molchan Defendants.

99. Denied as to the Molchan Defendants.

100. Denied as to the Molchan Defendants. In this regard, the Molchan Defendants state affirmatively that all distributions received by them from P&S were taken in good faith and for a reasonably equivalent value, which value consisted of the antecedent debt to them reflected on the books and/or financial records of P&S in accordance with the procedures set forth in the P&S Partnership Agreement, to which all of the partners of P&S agreed. Upon their withdrawal and dissociation from P&S, a full settlement, accord and satisfaction of their accounts with P&S was made in accordance with Section 9.03 and Article 11 of the P&S Partnership Agreement and Fla. Stat. § 620.8701.

101. Denied as to the Molchan Defendants.

WHEREFORE, the Molchan Defendants demand dismissal of Count IV of the Third Amended Complaint with prejudice and request court costs and such other and additional relief as the Court deems just and proper.

COUNT V
MONEY HAD AND RECEIVED

102. The Molchan Defendants reiterate their answers to paragraphs 1 through 34, 37 through 39, 41, 46, 48, 50, 52, 53, 54 through 64 and 67 through 72, and incorporate those answers herein by this reference.

103. Denied as to the Molchan Defendants.

104. Denied as to the Molchan Defendants.

105. Denied as to the Molchan Defendants.

106. Denied as to the Molchan Defendants.

107. Denied as to the Molchan Defendants. In this regard, the Molchan Defendants state affirmatively that all distributions received by them from P&S were taken in good faith and for a reasonably equivalent value, which value consisted of the antecedent debt to them reflected on the books and/or financial records of P&S in accordance with the procedures set forth in the P&S Partnership Agreement, to which all of the partners of P&S agreed. Upon their withdrawal and dissociation from P&S, a full settlement, accord and satisfaction of their accounts with P&S was made in accordance with Section 9.03 and Article 11 of the P&S Partnership Agreement and Fla. Stat. § 620.8701.

108. Denied as to the Molchan Defendants.

WHEREFORE, the Molchan Defendants demand dismissal of Count V of the Third Amended Complaint with prejudice and request court costs and such other and additional relief as the Court deems just and proper.

COUNT VI
AVOIDANCE OF FRAUDULENT TRANSFERS
PURSUANT TO SECTION 726.105(1)(a) OF THE FLORIDA STATUTES

109. The Molchan Defendants reiterate their answers to paragraphs 1 through 72 and incorporate those answers herein by this reference.

110. The P&S Partnership Agreement speaks for itself; otherwise, without knowledge and therefore denied.

111. Denied as to the Molchan Defendants. Also denied that the Plaintiffs have standing to assert claims on behalf of individual partners in P&S.

112. Denied as to the Molchan Defendants. Also denied that the Plaintiffs have standing to assert claims on behalf of individual partners in P&S who are "Net Losers".

113. Denied as to the Molchan Defendants. In this regard, the Molchan Defendants state affirmatively that all distributions received by them from P&S were taken in good faith and for a reasonably equivalent value within the meaning of Section 726.109(1) of the Florida Statutes, which value consisted of the antecedent debt to them reflected on the books and/or financial records of P&S in accordance with the procedures set forth in the P&S Partnership Agreement, to which all of the partners of P&S agreed. Upon their withdrawal and dissociation from P&S, a full settlement, accord and satisfaction of their accounts with P&S was made in accordance with Section 9.03 and Article 11 of the P&S Partnership Agreement and Fla. Stat. §620.8701.

114. Denied as to the Molchan Defendants.

WHEREFORE, the Molchan Defendants demand dismissal of Count VI of the Third Amended Complaint with prejudice and request court costs and such other and additional relief as the Court deems just and proper.

COUNT VII
BREACH OF FIDUCIARY DUTY

115. The Molchan Defendants reiterate their answers to paragraphs 1 through 72 and incorporate those answers herein by this reference.

116. Admitted that the Molchan Defendants duty of loyalty under Fla. Stat. § 620.8404(2)(a) continues with regard to matters arising and events occurring before their dissociation from P&S more than 12 years ago; otherwise, denied.

117. Fla. Stat. § 620.8404(2)(a) speaks for itself; otherwise, denied as to the Molchan Defendants.

118. Denied as to the Molchan Defendants. In this regard, the Molchan Defendants state affirmatively that all distributions received by them from P&S were taken in good faith and for a reasonably equivalent value within the meaning of Section 726.109(1) of the Florida Statutes, which value consisted of the antecedent debt to them reflected on the books and/or financial records of P&S in accordance with the procedures set forth in the P&S Partnership Agreement, to which all of the partners of P&S agreed. Upon their withdrawal and dissociation from P&S, a full settlement, accord and satisfaction of their accounts with P&S was made in accordance with Section 9.03 and Article 11 of the P&S Partnership Agreement and Fla. Stat. §620.8701.

119. Denied that the receipt and retention of distributions from P&S by the Molchan Defendants constituted a violation of their duty of loyalty to P&S or a breach of fiduciary duty to P&S or was in any other way wrongful for the reasons stated above. Consequently, also denied that their refusal to accede to the demand letters discussed above constituted a violation of their duty of loyalty to P&S.

120. Denied as to the Molchan Defendants.

The Molchan Defendants deny all allegations of the Third Amended Complaint not specifically admitted herein.

DEFENSES

1. Counts I and II of the Third Amended Complaint fail to as to the Molchan Defendant because they withdrew and dissociated from P&S more than 12 years ago in accordance with Fla. Stat. §620.8701. The Third Amended Complaint does not (and cannot) allege that such dissociation resulted in the dissolution and winding up of the partnership business. Consequently, under the express terms of Fla. Stat. §620.8603(1), Fla. Stat. §620.8807 cannot be applicable to the Molchan Defendants.
2. Count III of the Third Amended Complaint fails as to the Molchan Defendants because nothing in Sections 4.04, 5.01 and 5.02 of the P&S Partnership Agreement provides a contractual basis for the alleged liability, more than 12 years after the Molchan Defendants withdrawal as partners from P&S, to reimburse remaining "Net Loser" partners for their losses as a result of the collapse of BLMIS. Similarly, Article Ten of the P&S Partnership Agreement provides no contractual basis for any such liability because the Molchan Defendants withdrew and dissociated from P&S more than 12 years ago. Such withdrawal and dissociation cannot be construed as a "termination" of their partnership interest within the meaning of Section 10.02 of the P&S Partnership Agreement. Moreover, they were not in "default" or "defaulting Partners" at the time of their withdrawal and dissociation from P&S. Consequently, since they are not currently partners in P&S, Article Ten can have not application to them and since. Furthermore, Section 10(g) of the P&S Partnership Agreement is not applicable to the Molchan

Defendants in any event because their refusal to accede to the demands of the Plaintiffs in this lawsuit, which demands are frivolous and without legal basis, cannot reasonably be interpreted as "COMMITTING OR PARTICIPATING IN AN INJURIOUS ACT OF FRAUD, GROSS NEGLECT, MISREPRESENTATION, EMBEZZLEMENT OR DISHONESTY AGAINST THE PARTNERSHIP, OR COMMITTING OR PARTICIPATING IN ANY OTHER INJURIOUS ACT OR OMISSION WANTONLY, WILLFULLY, RECKLESSLY, OR IN A MANNER WHICH WAS GROSSLY NEGLIGENT AGAINST THE PARTNERSHIP, MONETARILY OR OTHERWISE, OR BEING CONVICTED OF ANY ACT OR ACTS CONSTITUTING A FELONY OR MISDEMEANOR, OTHER THAN TRAFFIC VIOLATIONS, UNDER THE LAWS OF THE UNITED STATES OR ANY STATE THEREOF" within the meaning of Section 10(g) of the P&S Partnership Agreement.

3. Counts IV and V of the Third Amended Complaint fail as to the Molchan Defendants because they sound in equity and quasi-contract law and, as such, recovery under these counts is precluded by the existence of the P&S Partnership Agreement.

4. Count VI of the Third Amended Complaint fails against the Molchan Defendants under Chapter 726 of the Florida Statutes, Florida's Uniform Fraudulent Transfer Act. Section 726.105(1)(a) of that Act does not, in and of itself, create a cause of action to avoid or seek repayment of "fraudulent transfers" defined therein. Instead, the only cause of action created by the Uniform Fraudulent Transfer Act is set forth in Section 726.108(1) of that statute, which provides that only a "creditor" of a debtor that has made a "fraudulent transfer" may bring an action to avoid that transfer. In the present case, the Plaintiffs are P&S, which made the allegedly fraudulent transfers, and the Conservator.

Since P&S is not "creditor" of itself and since the Conservator "stands in the shoes" of P&S, the only possible "creditors" of the P&S mentioned in Count V are certain unnamed partners in P&S who are "Net Losers". Even assuming the Conservator has standing to bring claims on their behalf, they are estopped from claiming that P&S did not "receive reasonably equivalent value" for the distributions made to the Molchan Defendants because upon their withdrawal and dissociation from P&S, a full settlement, accord and satisfaction of their accounts with P&S was made in accordance with the procedures established by Section 9.03 and Article 11 of the P&S Partnership Agreement, to which the "Net Loser" partners agreed by being signatories to the P&S Partnership Agreement. Moreover, the Plaintiffs allege no ultimate facts supporting their legal conclusion that the Managing General Partners made distributions to the Molchan Defendants with "actual intent to hinder, delay or defraud" the "Net Loser" partners. The Plaintiffs vaguely allude to unspecified breaches of "fiduciary duties of loyalty and care", but, critically, do not allege that the Managing General Partners knew that BLMIS was a Ponzi scheme or that the P&S partnership financial records that they used in determining such distributions did not accurately reflect the information being provided to P&S by BLMIS.

5. Counts I through VI also fail because Section 14.03 of the P&S Partnership Agreement provides, in part, that: THE PARTNERS SHALL HAVE NO LIABILITY TO THE PARTNERSHIP OR TO ANY OTHER PARTNER FOR ANY MISTAKES OR ERRORS IN JUDGMENT, NOR FOR ANY ACT OR OMISSIONS BELIEVED IN GOOD FAITH TO BE WITHIN THE SCOPE OF AUTHORITY CONFERRED BY THIS AGREEMENT. THE PARTNERS SHALL BE LIABLE ONLY FOR ACTS

AND/OR OMISSIONS INVOLVING INTENTIONAL WRONGDOING, FRAUD, AND BREACHES OF FIDUCIARY DUTIES OF CARE AND LOYALTY. Since this exculpatory provision cannot reasonably be interpreted to make innocent investors like the Molchan Defendants liable for breaches of fiduciary duty by the Managing General Partners, Counts I through VI are clearly barred as to the Molchan Defendants by the terms of the P&S Partnership Agreement.

6. All Counts of the Third Amended Complaint are barred by the applicable statute of limitations. The Molchan Defendants received their last distributions from and ceased to be Partners in P&S in the following years, respectively: ALEX MOLCHAN, 1998; SUSAN MOLCHAN, 1999; and JANET MOLCHAN, 2001. The claims presented in the various Counts of the Amended Complaint arise out of the Molchan Defendants receiving those and earlier distributions. The applicable statutes of limitations for these Counts are as follows: Count I: under Fla. Stat. §95.11(3)(p), within four (4) years; Count II: under Fla. Stat. §95.11(3)(p), within four (4) years; Count III: under Fla. Stat. §95.11(2)(b), within five (5) years; Counts IV and V: under Fla. Stat. §95.11(3)(p), within four (4) years; Count VI: under Fla. Stat. §726.110(1), within 4 years after the transfer was made or the obligation was incurred or, if later, within 1 year after the transfer or obligation was or could reasonably have been discovered by the claimant; Count VII: under Fla. Stat. §95.11(3)(p), within four (4) years. All of the distributions to the Molchan Defendants occurred more than 12 years before the filing of the Complaint, with the exception of the last distribution to JANET MOLCHAN, which occurred more than 11 years before the filing of the Complaint. Furthermore, P&S clearly knew about its own distributions to the Molchan Defendants all along and the Conservator "stands in the

shoes" of the Partnerships with regard to such knowledge. Moreover, the BLMIS scandal gained worldwide notoriety in December of 2008 and a partnership meeting for P&S was called and held in January of 2009 where attorneys for P&S explained to the then-current partners of P&S that the partners who had withdrawn and dissociated from P&S before December of 2008 would probably be so-called "Net Winners" and that P&S and/or individual partners might have so-called "Clawback" claims against them. Consequently, the Plaintiffs clearly discovered or could have reasonably discovered the "fraudulent transfers" alleged in the Third Amended Complaint more than 1 year before the filing of the Complaint in this case. Therefore, the claims presented in Count IV of the Third Amended Complaint are clearly barred by the provisions of Fla. Stat. §726.110(1). Likewise, there are no legally tenable allegations of fraud or constructive fraud against the Molchan Defendants and, if there were, they would in any event be barred absolutely by the 12-year statute of repose provisions of Fla. Stat. §95.031(2)(a), with the exception of any related to the final distribution to JANET MOLCHAN. Moreover, there can be no "common law" or "equitable" basis for the application of a "delayed discovery" exception to the operation of theses statutes of limitations in barring the various Counts of the Third Amended Complaint. Aside from provisions for the delayed accrual of a cause of action in cases of fraud, products liability, professional and medical malpractice, and intentional torts based on abuse; there is no other statutory basis for the delayed discovery rule. To hold otherwise would result in courts rewriting the statute, and, in fact, obliterating the statute. *Davis v. Monahan*, 832 So.2d 708, 710-711 (Fla. 2002).

7. All Counts of the Third Amended Complaint are barred by the indemnification provisions of Fla. Stat. §620.8701(4). All distributions received by the Molchan Defendants from

P&S were taken in good faith and for a reasonably equivalent value, which value consisted of the antecedent debt to them reflected on the books and/or financial records of P&S. Upon their withdrawal and dissociation from P&S, a full settlement, accord and satisfaction of their accounts with P&S was made in accordance with Section 9.03 and Article 11 of the P&S Partnership Agreement and Fla. Stat. §620.8701. Consequently, P&S was and is obligated to indemnify the Molchan Defendants "against all partnership liabilities, whether incurred before or after dissociation" pursuant to the provisions of Fla. Stat. §620.8701(4). The Plaintiffs seek money from the Molchan Defendants to pay the "Net Loser" partners of P&S, who they claim are "creditors" of P&S. Therefore, all of the claims of the Plaintiffs set forth in the Third Amended Complaint against the Molchan Defendants are barred by such statutory indemnification obligation.

WHEREFORE, the Molchan Defendants demand dismissal of the claims against them set forth in the Third Amended Complaint with prejudice and request court costs and such other and additional relief as the Court deems just and proper.

Dated: March 10, 2014

Respectfully submitted,

Michael R. Casey
Attorney for Molchan Defendants
SUSAN E. MOLCHAN OR THOMAS A. WHITEMAN, JANET B. MOLCHAN TRUST DTD 05/19/94 and ALEX E. MOLCHAN TRUST DTD 05/19/94
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/s/
Michael R. Casey, Florida Bar No. 217727

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served upon counsel of record by email to the following email addresses this 10th day of March 2014:

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