

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

**CASE NUMBER: 12-034121 CA 07  
Complex Litigation Unit**

**PHILIP J. VON KAHLE, as Conservator of P&S ASSOCIATES,  
GENERAL PARTNERSHIP, and S&P ASSOCIATES,  
GENERAL PARTNERSHIP, MARGARET J. SMITH, as  
Managing General Partner of P&S ASSOCIATES, GENERAL  
PARTNERSHIP, and S&P ASSOCIATES, GENERAL  
PARTNERSHIP, a Florida Limited Partnership,**

**Plaintiffs,**

**vs.**

**JANET A. HOOKER CHARITABLE TRUST, a Charitable  
Trust, et al.,**

**Defendants.**

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**ANSWER AND AFFIRMATIVE DEFENSES TO THIRD  
AMENDED COMPLAINT OF DEFENDANT ERSICA GIANNA**

COMES NOW, the Defendant, Ersica P. Gianna ("Defendant"), by and through the undersigned counsel, and files this her Answer And Affirmative Defenses To Plaintiffs' Third Amended Complaint and would state further as follows:

**ANSWER**

1. Paragraph 1 is denied and strict proof is demanded thereof.
2. Paragraph 2 is admitted.

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3. Paragraph 3 is admitted.
4. Defendant is without knowledge as to paragraphs 4 through 6 and paragraphs 8 through 35, and therefore same are denied and strict proof is demanded thereof.
5. As to paragraph 36, Defendant states that the Partnership Agreements speak for themselves; otherwise Defendant is without knowledge and therefore denies same and demands strict proof thereof.
6. Defendant is without knowledge as to paragraph 37 and therefore same is denied and strict proof is demanded thereof.
7. Paragraph 38 is admitted.
8. As to paragraph 39, Defendant states that the Partnership Agreements speak for themselves; otherwise Defendant is without knowledge and therefore denies same and demands strict proof thereof.
9. As to paragraph 40, Defendant states that the Partnership Agreements speak for themselves; otherwise Defendant is without knowledge and therefore denies same and demands strict proof thereof.
10. As to paragraph 41, Defendant states that the Partnership Agreements speak for themselves; otherwise Defendant is without knowledge and therefore denies same and demands strict proof thereof.
11. As to paragraph 42, Defendant states that the Partnership Agreements speak for themselves; otherwise Defendant is without knowledge and therefore denies same

- and demands strict proof thereof.
12. As to paragraph 43, Defendant states that the Partnership Agreements speak for themselves; otherwise Defendant is without knowledge and therefore denies same and demands strict proof thereof.
  13. As to paragraph 44, Defendant states that the Partnership Agreements speak for themselves; otherwise Defendant is without knowledge and therefore denies same and demands strict proof thereof.
  14. As to paragraph 45, Defendant states that the Partnership Agreements speak for themselves; otherwise Defendant is without knowledge and therefore denies same and demands strict proof thereof.
  15. As to paragraph 46, Defendant states that the Order speaks for itself; otherwise Defendant is without knowledge and therefore denies same and demands strict proof thereof.
  16. Paragraphs 47, 48, 49 and 50 are denied and strict proof is demanded thereof.
  17. Paragraph 51 is admitted.
  18. Paragraph 52 is denied and strict proof is demanded thereof.
  19. Defendant is without knowledge as to paragraphs 53, 54 and 55 and therefore is denying same and demanding strict proof thereof.
  20. Paragraph 56 is denied and strict proof is demanded thereof.
  21. Paragraphs 57, 58, 59 and 60 are admitted.

22. Defendant is without knowledge as to paragraphs 61, 62, 63 and therefore is denying same and demanding strict proof thereof.
23. Paragraphs 64, 65, 66, 67 and 68 are denied and strict proof is demanded thereof.
24. Defendant is without knowledge as to paragraph 69 and therefore is denying same and demanding strict proof thereof.
25. Paragraphs 70, 71 and 72 are denied and strict proof is demanded thereof.

**COUNT I**  
**BREACH OF STATUTORY DUTY (NEGLIGENCE)**

26. As to paragraph 73, the Defendant would restate her answers to paragraphs 1 through 72 and incorporates those answers herein.
27. Paragraph 74 is denied and strict proof is demanded thereof.
28. Paragraph 75 is denied and strict proof is demanded thereof.
29. Paragraph 76 is denied and strict proof is demanded thereof. In this regard, the Defendant states affirmatively that all distributions received by her from the Partnership were taken in good faith, for a reasonably equivalent value, based upon a decision of the Partnership and their Managing General Partners, which value consisted of the antecedent debt to them reflected on the books and/or financial records of the Partnership in accordance with the procedures set forth in the Partnership Agreements.
30. Paragraphs 77, 78, 79, 80 and 81 are denied and strict proof is demanded thereof.

**COUNT II**  
**BREACH OF FLA. STAT. § 620.8807**

31. As to paragraph 82, the Defendant states her answers to paragraphs 1 through 72 and incorporates those answers herein.
32. Paragraphs 83 and 84 are denied and strict proof is demanded thereof.
33. As to paragraph 85, it is denied and strict proof is demanded thereof. In this regard, the Defendant states affirmatively that all distributions received by her from the Partnership were taken in good faith, for a reasonably equivalent value, based upon a decision of the Partnership and their Managing General Partners, which value consisted of the antecedent debt to them reflected on the books and/or financial records of the Partnership in accordance with the procedures set forth in the Partnership Agreements.
34. Paragraphs 86, 87 and 88 are denied and strict proof is demanded thereof.

**COUNT III**  
**BREACH OF CONTRACT**

35. As to paragraph 89, the Defendant states her answers to paragraphs 1 through 72 and incorporates those answers herein.
36. Paragraph 90 is denied and strict proof is demanded thereof.
37. As to paragraphs 91 and 92, same are denied and strict proof is demanded thereof. In this regard, the Defendant states affirmatively that all distributions received by her from the Partnership were taken in good faith, for a reasonably equivalent value,

based upon a decision of the Partnership and their Managing General Partners, which value consisted of the antecedent debt to them reflected on the books and/or financial records of the Partnership in accordance with the procedures set forth in the Partnership Agreements.

38. Paragraphs 93 and 94 are denied and strict proof is demanded thereof.

**COUNT IV**  
**UNJUST ENRICHMENT**

39. As to paragraphs 95, 96, 97, 98 and 99, the Defendant states her answers to paragraphs 1 through 72 and incorporates those answers herein.
40. Paragraphs 100 and 101 are denied and strict proof is demanded thereof.

**COUNT V**  
**MONEY HAD AND RECEIVED**

41. As to paragraphs 102, 103, 104, 105 and 106, the Defendant states her answers to paragraphs 1 through 72 and incorporates those answers herein.
42. Paragraphs 107 and 108 are denied and strict proof is demanded thereof.

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

43. As to paragraph 109, the Defendant states her answers to paragraphs 1 through 72 and incorporates those answers herein.
44. As to paragraph 110, Defendant states that the Partnership Agreements speak for themselves; otherwise Defendant is without knowledge and therefore denies same

and demands strict proof thereof.

45. Paragraphs 111 and 112 are denied and strict proof is demanded thereof. It is also denied that the Plaintiffs have standing to assert claims on behalf of any individual partners.
46. Paragraphs 113 and 114 are denied and strict proof is demanded thereof.

**COUNT VII**  
**BREACH OF FIDUCIARY DUTY**

47. As to paragraph 115, the Defendant states her answers to paragraphs 1 through 72 and incorporates those answers herein.
48. Paragraph 116 is denied and strict proof is demanded thereof.
49. As to paragraph 117, Defendant states that Fla. Stat. § 620.8404(2)(a) speaks for itself; otherwise denied and strict proof is demanded thereof.
50. Paragraphs 118, 119 and 120 are denied and strict proof is demanded thereof.
51. The Defendant, Ersica Gianna, denies all allegations of the Third Amended Complaint not specifically admitted herein.

**AFFIRMATIVE DEFENSES**

1. As and for their First Affirmative Defense, the Defendant, Ersica Gianna, will show the Statute of Limitations had expired on all Counts asserted against her, and all causes of action are time barred.
2. As and for her Second Affirmative Defense, the Defendant asserts that all

disbursements received under the terms of the Partnership Agreements were accepted in good faith, without knowledge of all alleged wrong-doing or unlawful activities raised in the Third Amended Complaint.

3. As and for her Third Affirmative Defense, the Defendant states that Plaintiffs' claims are barred pursuant to § 14.03 of the Partnership Agreement.
4. As and for her Fourth Affirmative Defense, Defendant states that the Plaintiffs' equitable claims fail as a matter of law because Plaintiffs have plead the existence of an express contract.
5. As and for her Fifth Affirmative Defense, Defendant asserts the defense of unclean hands and equitable estoppel attributable to the Plaintiffs' conduct in the course of performing their duties under the Partnership Agreements.
6. As and for her Sixth Affirmative Defense, Defendant states that Plaintiffs have failed to state a cause of action in Count II for breach of Fla. Stat. §620.8807, as there is no independent cause of action created by this statute recognized by the State of Florida.
7. As and for her Seventh Affirmative Defense, Defendant states that Count VI of the Third Amended Complaint fails to state a cause of action under Chapter 726 of the Florida Statutes, Florida's Uniform Fraudulent Transfer Act. Plaintiffs are not creditors under the Act.
8. As and for her Eighth Affirmative Defense, the Defendant states that the



Complaint fails to state a cause of action in that § 14.03 of the Partnership Agreement limits the liability of the Defendant.

9. As and for her Ninth Affirmative Defense, the Defendant states that all counts of the Third Amended Complaint are barred by the indemnification provisions of Fla. Stat. § 620.8701.
10. Defendant, Ersica Gianna, adopts all other affirmative defenses by co-defendants which apply to Defendant, Ersica Gianna.

**WHEREFORE**, Defendant, Ersica Gianna, respectfully demands dismissal of the claims against her set forth in the Third Amended Complaint with prejudice, and requests Court costs together with such other and further relief as this Honorable Court may deem proper.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on March 13, 2014, I electronically filed the foregoing document with the Clerk of the Court and I also certify that the foregoing document is being served this day on all counsel of record in the manner specified, either via the Florida Courts E-Filing Portal or in some other authorized manner for those counsel or parties who are not authorized to receive electronic filings.

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Respectfully submitted,

**ROTELLA LAW, P.A.**

1500 North Federal Highway, Suite 250

Fort Lauderdale, Florida 33304

Telephone: (954) 763-2500

Facsimile: (954) 467-2231

E-Mail: [rotellagar@aol.com](mailto:rotellagar@aol.com)

By: /s/ Gary J. Rotella, Esquire

GARY J. ROTELLA, ESQUIRE

Florida Bar Number: 281115

**SERVICE LIST**

Thomas M. Messana, Esquire  
Brett Lieberman, Esquire  
Messana, P.A.  
Attorneys for Plaintiffs/Conservator  
401 East Las Olas Boulevard, Suite 1400  
Fort Lauderdale, FL 33301  
(954) 712-7400  
(954) 712-7401 fax  
[tmessana@messana-law.com](mailto:tmessana@messana-law.com)  
[blieberman@messana-law.com](mailto:blieberman@messana-law.com)

Leonard K. Samuels, Esquire  
Etan Mark, Esquire  
Steven D. Weber, Esquire  
Berger Singerman  
Special Counsel for Plaintiffs  
350 East Las Olas Boulevard, Suite 1000  
Fort Lauderdale, FL 33301  
(954) 525-9900  
(954) 712-5138 direct  
(954) 523-2872 fax  
[Lsamuels@bergersingerman.com](mailto:Lsamuels@bergersingerman.com)  
[emark@bergersingerman.com](mailto:emark@bergersingerman.com)  
[Sweber@bergersingerman.com](mailto:Sweber@bergersingerman.com)

Gary J. Rotella, Esquire  
Rotella Law, P.A.  
Attorneys for Def/Ersica P. Gianna  
1500 North Federal Highway, Suite 250  
Fort Lauderdale, Florida 33304  
(954) 763-2500  
(954) 467-2231 fax  
[rotellagar@aol.com](mailto:rotellagar@aol.com)

Joseph P. Klapholz, Esquire  
Joseph P. Klapholz, P.A.  
Attorneys for Defs/Abraham Newman,  
Rita Newman and Gertrude Gordon  
2500 Hollywood Boulevard, Suite 212  
Hollywood, FL 33020  
(954) 925-3355  
(954) 923-0185 fax  
[jklap@kldapholzpa.com](mailto:jklap@kldapholzpa.com)  
[dmig@klapholzpa.com](mailto:dmig@klapholzpa.com)

Julian H. Kreeger, Esquire  
Attorneys for Defs/James Bruce Judd  
and Valeria Judd  
2665 S. Bayshore Drive, Suite 220-14  
Miami, FL 33133-5402  
[iuliankreeger@gmail.com](mailto:iuliankreeger@gmail.com)

Michael R. Casey, Esquire  
Attorneys for Defs/Susan E. Molchan or  
Thomas A. Whiteman, Janet B. Molchan  
Trust DTD 05/19/94 and Alex E. Molchan  
Trust DTD 05/19/94  
1831 N.E. 38 Street, #707  
Oakland Park, FL 33308  
(954) 444-2780  
[mcasey666@gmail.com](mailto:mcasey666@gmail.com)

Daniel W. Matlow, Esquire  
Daniel W. Matlow, P.A.  
Attorney for Def/Herbert Irwig Revocable  
Trust  
Emerald Lake Corporate Park  
3109 Stirling Road, Suite 101  
Fort Lauderdale, FL 33312  
(954) 842-2365  
(954) 337-3101 fax  
[dmatlow@danmatlow.com](mailto:dmatlow@danmatlow.com)  
[assistant@danmatlow.com](mailto:assistant@danmatlow.com)

Marc S. Dobin, Esquire  
Jonathan T. Lieber, Esquire  
Dobin Law Group, PA  
Attorneys for Defs/Congregation of the Holy  
Ghost - Western Providence and Carmelo and  
Bertha SantaMaria  
500 University Boulevard, Suite 205  
Jupiter, FL 33458  
(561) 575-5880  
(561) 246-3003 fax  
[service@DobinLaw.com](mailto:service@DobinLaw.com)

Peter G. Herman, Esquire  
Tripp Scott  
Attorneys for Def/Steve Jacobs  
110 S.E. Sixth Street, Suite 1500  
Fort Lauderdale, FL 33301  
(954) 525-7500  
(954) 761-8475 fax  
[PGH@trippscott.com](mailto:PGH@trippscott.com)

Joanne Wilcomes, Esquire  
McCarter & English, LLP  
Attorneys for Def/Holy Ghost Fathers  
HG-Ireland/Kenema  
100 Mulberry Street  
Four Gateway Center  
Newark, NJ 07102  
(973) 848-5318  
(973) 297-3928 fax  
[jwilcomes@mccarter.com](mailto:jwilcomes@mccarter.com)

Michael C. Foster, Esquire  
Daniels Kashtan  
Attorneys for Def/Etto Ltd.  
4000 Ponce de Leon Boulevard, Suite 800  
Coral Gables, FL 33146-1436  
(305) 448-7988  
(305) 448-7978 fax  
[mfoster@dkdr.com](mailto:mfoster@dkdr.com)  
[aurena@dkdr.com](mailto:aurena@dkdr.com)

Michael C. Foster, Esquire  
Tripp Scott, P.A.  
Attorneys for Def/Etto Ltd.  
110 S.E. Sixth Street, 15th Floor  
Fort Lauderdale, FL 33301  
(954) 525-7500  
(954) 761-8475 fax  
[mcf@trippscott.com](mailto:mcf@trippscott.com)

Thomas L. Abrams, Esquire  
Attorneys for Defs/Sam Rosen and Edith Rosen  
1776 N. Pine Island Road, Suite 309  
Plantation, FL 33322  
(954) 523-0900  
(954) 915-9016 fax  
[tabrams@tabramslaw.com](mailto:tabrams@tabramslaw.com)

Ryon M. McCabe, Esquire  
Evan H. Frederick, Esquire  
McCabe Rabin, P.A.  
Attorneys for Def/Catharine Smith  
1601 Forum Place, Suite 505  
West Palm Beach, FL 33401  
(561) 659-7878  
(561) 242-4848 fax  
[rmccabe@mccaberabin.com](mailto:rmccabe@mccaberabin.com)  
[e-filing@mccaberabin.com](mailto:e-filing@mccaberabin.com)  
[efrederick@mccaberabin.com](mailto:efrederick@mccaberabin.com)

Robert J. Hunt, Esquire  
Debra D. Klingsberg, Esquire  
Hunt & Gross, P.A.  
Attorneys for Def/Hampton Financial Group, Inc.  
185 N.W. Spanish River Boulevard, Suite 220  
Boca Raton, FL 33431-4230  
(561) 997-9223  
(561) 989-8998 fax  
[bohunt@huntgross.com](mailto:bohunt@huntgross.com)  
[cklingsberg@huntgross.com](mailto:cklingsberg@huntgross.com)  
[eService@huntgross.com](mailto:eService@huntgross.com)  
[Sharon@huntgross.com](mailto:Sharon@huntgross.com)

Joseph P. Klapholz, Esquire  
Joseph P. Klapholz, P.A.  
Attorneys for Defs/Abraham Newman,  
Rita Newman and Gertrude Gordon  
2500 Hollywood Boulevard, Suite 212  
Hollywood, FL 33020  
(954) 925-3355  
(954) 923-0185 fax  
[jklap@kldapholzpa.com](mailto:jklap@kldapholzpa.com)  
[dmig@klapholzpa.com](mailto:dmig@klapholzpa.com)

Julian H. Kreeger, Esquire  
Attorneys for Defs/James Bruce Judd  
and Valeria Judd  
2665 S. Bayshore Drive, Suite 220-14  
Miami, FL 33133-5402  
[juliankreeger@gmail.com](mailto:juliankreeger@gmail.com)

Michael R. Casey, Esquire  
Attorneys for Defs/Susan E. Molchan or  
Thomas A. Whiteman, Janet B. Molchan  
Trust DTD 05/19/94 and Alex E. Molchan  
Trust DTD 05/19/94  
1831 N.E. 38 Street, #707  
Oakland Park, FL 33308  
(954) 444-2780  
[mcasey666@gmail.com](mailto:mcasey666@gmail.com)

Daniel W. Matlow, Esquire  
Daniel W. Matlow, P.A.  
Attorney for Def/Herbert Irwig Revocable  
Trust  
Emerald Lake Corporate Park  
3109 Stirling Road, Suite 101  
Fort Lauderdale, FL 33312  
(954) 842-2365  
(954) 337-3101 fax  
[dmatlow@danmatlow.com](mailto:dmatlow@danmatlow.com)  
[assistant@danmatlow.com](mailto:assistant@danmatlow.com)  
Marc S. Dobin, Esquire

Jonathan T. Lieber, Esquire  
Dobin Law Group, PA  
Attorneys for Defs/Congregation of the Holy  
Ghost - Western Providence and Carmelo and  
Bertha SantaMaria  
500 University Boulevard, Suite 205  
Jupiter, FL 33458  
(561) 575-5880  
(561) 246-3003 fax  
[service@DobinLaw.com](mailto:service@DobinLaw.com)

Peter G. Herman, Esquire  
Tripp Scott  
Attorneys for Def/Steve Jacobs  
110 S.E. Sixth Street, Suite 1500  
Fort Lauderdale, FL 33301  
(954) 525-7500  
(954) 761-8475 fax  
[PGH@trippscott.com](mailto:PGH@trippscott.com)

Joanne Wilcomes, Esquire  
McCarter & English, LLP  
Attorneys for Def/Holy Ghost Fathers  
HG-Ireland/Kenema  
100 Mulberry Street  
Four Gateway Center  
Newark, NJ 07102  
(973) 848-5318  
(973) 297-3928 fax  
[jwilcomes@mccarter.com](mailto:jwilcomes@mccarter.com)

Michael C. Foster, Esquire  
Daniels Kashtan  
Attorneys for Def/Etto Ltd.  
4000 Ponce de Leon Boulevard, Suite 800  
Coral Gables, FL 33146-1436  
(305) 448-7988  
(305) 448-7978 fax  
[mfoster@dkdr.com](mailto:mfoster@dkdr.com)  
[aurena@dkdr.com](mailto:aurena@dkdr.com)  
Michael C. Foster, Esquire



Dobin Law Group, PA  
Attorneys for Defs/Congregation of the Holy  
Ghost - Western Providence and Carmelo and  
Bertha SantaMaria  
500 University Boulevard, Suite 205  
Jupiter, FL 33458  
(561) 575-5880  
(561) 246-3003 fax  
[service@DobinLaw.com](mailto:service@DobinLaw.com)

Peter G. Herman, Esquire  
Tripp Scott  
Attorneys for Def/Steve Jacobs  
110 S.E. Sixth Street, Suite 1500  
Fort Lauderdale, FL 33301  
(954) 525-7500  
(954) 761-8475 fax  
[PGH@trippscott.com](mailto:PGH@trippscott.com)

Joanne Wilcomes, Esquire  
McCarter & English, LLP  
Attorneys for Def/Holy Ghost Fathers  
HG-Ireland/Kenema  
100 Mulberry Street  
Four Gateway Center  
Newark, NJ 07102  
(973) 848-5318  
(973) 297-3928 fax  
[jwilcomes@mccarter.com](mailto:jwilcomes@mccarter.com)

Michael C. Foster, Esquire  
Daniels Kashtan  
Attorneys for Def/Etto Ltd.  
4000 Ponce de Leon Boulevard, Suite 800  
Coral Gables, FL 33146-1436  
(305) 448-7988  
(305) 448-7978 fax  
[mfoster@dkdr.com](mailto:mfoster@dkdr.com)  
[aurena@dkdr.com](mailto:aurena@dkdr.com)

Tripp Scott, P.A.  
Attorneys for Def/Ettoh Ltd.  
110 S.E. Sixth Street, 15th Floor  
Fort Lauderdale, FL 33301  
(954) 525-7500  
(954) 761-8475 fax  
[mcf@trippscott.com](mailto:mcf@trippscott.com)

Thomas L. Abrams, Esquire  
Attorneys for Defs/Sam Rosen and Edith Rosen  
1776 N. Pine Island Road, Suite 309  
Plantation, FL 33322  
(954) 523-0900  
(954) 915-9016 fax  
[tabrams@tabramslaw.com](mailto:tabrams@tabramslaw.com)

Ryon M. McCabe, Esquire  
Evan H. Frederick, Esquire  
McCabe Rabin, P.A.  
Attorneys for Def/Catharine Smith  
1601 Forum Place, Suite 505  
West Palm Beach, FL 33401  
(561) 659-7878  
(561) 242-4848 fax  
[rmccabe@mccaberabin.com](mailto:rmccabe@mccaberabin.com)  
[e-filing@mccaberabin.com](mailto:e-filing@mccaberabin.com)  
[efrederick@mccaberabin.com](mailto:efrederick@mccaberabin.com)

Robert J. Hunt, Esquire  
Debra D. Klingsberg, Esquire  
Hunt & Gross, P.A.  
Attorneys for Def/Hampton Financial Group, Inc.  
185 N.W. Spanish River Boulevard, Suite 220  
Boca Raton, FL 33431-4230  
(561) 997-9223  
(561) 989-8998 fax  
[bobhunt@huntgross.com](mailto:bobhunt@huntgross.com)  
[clklingsberg@huntgross.com](mailto:clklingsberg@huntgross.com)  
[eService@huntgross.com](mailto:eService@huntgross.com)  
[Sharon@huntgross.com](mailto:Sharon@huntgross.com)