

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

CASE NO.: 12-034121 (07)

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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**RESPONSE AND MEMORANDA  
IN OPPOSITION TO DEFENDANT CONGREGATION OF THE HOLY GHOST,  
WESTERN PROVINCE'S MOTION TO COMPEL BETTER ANSWERS TO SECOND  
REQUEST FOR ADMISSIONS TO PLAINTIFFS**

Plaintiffs, P & S Associates, General Partnership (“P&S”), and S & P Associates, General Partnership (“S&P”) (collectively and individually referred to as, the “Partnerships”) and Phillip Von Kahle, as Conservator of P&S and S&P (collectively with the Partnerships, the “Plaintiffs”), by and through their undersigned attorneys, file this response to Defendant Congregation of the Holy Ghost, Western Province’s (“Western Province”) Motion to Compel Better Answers to Second Request for Admissions to Plaintiffs (“Motion”). In support thereof, Plaintiffs state as follows:

**SUMMARY OF ARGUMENT**

Western Province’s Motion should be denied because it seeks answers to 12 requests for admission that impermissibly seek a legal conclusion, and are properly objectionable. Accordingly, Plaintiffs’ objections to Western Province’s 12 requests for admissions should be

sustained and Western Province's Motion should be denied.

### **LEGAL ARGUMENT AND BACKGROUND**

1. On May 16, 2014, the final day of discovery, Western Province issued a Second Request for Admissions onto Plaintiffs.

2. Plaintiffs objected to 12 of 14 of those requests for admissions because they improperly called for a legal conclusion: specifically, whether Western Province was disassociated from P&S during 12 different time periods. See Requests 1-12 attached hereto as **Exhibit A**.

3. On July 1, 2014, Western Province filed its Motion, asking this court to overrule Plaintiffs' objections to those 12 requests.

#### **I. WHETHER WESTERN PROVINCE DISSOCIATED FROM P&S SEEKS AN OBJECTIONABLE LEGAL CONCLUSION.**

4. Requests for admission that call for purely legal conclusions are not permissible requests for admission. Motion at 3 (citing *Davis v. Dollar Rent a Car Systems Inc.*, 909 So.2d 297 (Fla. 5th DCA, 2004) ("We conclude that while the current rule now allows for requests directed to opinions, facts, and the application of law to facts, it continues to make no provision for requests seeking a purely legal conclusion")).

5. Whether Western Province "dissociated from the P&S partnership" is a purely legal conclusion. The Motion incorrectly contends that Western Province's requests for admissions involve the "application of law to fact." Courts find that the relationship to or existence of a partnership or other entity is a purely legal conclusion. See e.g., *Boyd v. Walker*, 251 So. 2d 333, 336 (Fla. 3d DCA 1971) ("a mere allegation of the existence of a partnership is purely a legal conclusion"); see also *Kislak v. Kreedian*, 95 So. 2d 510, 514 (Fla. 1957) (holding

that the allegation that a joint adventure existed is a purely legal conclusion);<sup>1</sup> *Synder v. City of Delray Beach*, 736 So. 2d 1243, 1247 (Fla. 4th DCA 1999) (holding that allegations of agency and respondent superior are legal conclusions); *McKissick v. Bilger*, 480 So. 2d 211, 212 (Fla. 1st DCA 1985) (“A mere allegation that a joint venture is created is a legal conclusion”). Along those same lines, whether Western Province disassociated from P&S is a legal conclusion prohibited under Fla. R. Civ. P. 1.370.

6. As such, Western Province’s Motion should be denied and Plaintiffs’ objections should be sustained.

### **CONCLUSION**

WHEREFORE Plaintiff requests that this Court enter an order denying the Motion to Compel Better Answers to Second Request for Admissions to Plaintiffs, together with such other and further relief as the Court may deem just and appropriate under the circumstances.

Dated: July 10, 2014

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<sup>1</sup> The *Kislak* Court also noted that “while ‘joint adventure’ and partnership are separate legal relationships, both are governed by the same rules of law.”

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via  
Electronic Mail on this 10th day of July, 2014 upon the following:

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