

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

CASE NO: 12-34121 (07)  
Complex Litigation Unit

PHILIP J. VON KAHLE, as Conservator of  
P&S Associates, General Partnership, and  
S&P Associates, General Partnership,

Plaintiffs,

v.

JANET A. HOOKER CHARITABLE  
TRUST, et al,

Defendants.

---

**NOTICE OF FILING AFFIDAVIT OF JULIANNE M. JONES  
IN COMPLIANCE WITH JULY 21, 2014 COURT ORDER**

Defendant, JULIANNE M. JONES (properly known as JULIANNE MATARAGAS), in compliance with this Court's July 21, 2014 Order on *Defendant Julianne Mataragas' Motion to Vacate Clerk's Default*, files the attached Affidavit Supporting Excusable Neglect.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by e-filing to Leonard K. Samuels, Esq., Etan Mark, Esq., Steven D. Weber, Esq., at Berger Singerman LLP, 350 East Las Olas Boulevard, Suite 1000, Fort Lauderdale, FL 33301, [lsamuels@bergersingerman.com](mailto:lsamuels@bergersingerman.com), [emark@bergersingerman.com](mailto:emark@bergersingerman.com), [sweber@bergersingerman.com](mailto:sweber@bergersingerman.com), this 30th day of July, 2014.

TRIPP SCOTT, P.A.  
Counsel for Defendant  
JULIANNE MATARAGAS JONES  
110 SE 6<sup>th</sup>, St, 15<sup>th</sup> Fl.  
Fort Lauderdale, FL 33301  
Phone 954 525 7500  
Fax 954 761 8475

By: s/Peter G. Herman  
Peter G. Herman  
Fla. Bar No. 353991  
Primary: [pgh@trippscott.com](mailto:pgh@trippscott.com)

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Defendants.

AFFIDAVIT OF DEFENDANT JULIANNE M. JONES  
SUPPORTING EXCUSABLE NEGLIGENCE

STATE OF NEW YORK

COUNTY OF SUFFOLK

BEFORE ME, the undersigned authority, personally appeared JULIANNE M. JONES  
(properly known as JULIANNE MATARAGAS), who, after being by me duly sworn on oath,  
deposes and states:

1. My name is JULIANNE MATARAGAS JONES and I am over 18 years  
of age.
2. I make this Affidavit on personal knowledge of the facts herein.
3. In or about August of 1993, my mother, Theresa Mataragas, became an investor  
in S&P Associates, General Partnership.

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4. In or about August of 2002, unbeknownst to me, my mother named me and my sister, Geraldine Valicenti, as beneficiaries of her S&P account.

5. My mother took and used all of her interest and for herself and to pay her bills. I received none of that money, and it was gone long before my sister and I inherited this account.

6. Once this account became joint among my mother, sister and me in August 2002, I did not sign a single check that was disbursed. In fact, as mentioned above, I had absolutely no knowledge that my name was even on the account before my mother's death in 2004. The first time I became aware that I was on the account was when my sister and I became joint holders in February 2005.

7. I never sought out an investment in S&P Associates; I inherited the account.

8. On February 16, 2005, my sister wrote a letter (attached as "Exhibit A"), advising S & P of my mother's death. She stated that she knew nothing about the company, and asked to be sent specific information. On at least two occasions, S & P did not send us the partnership agreement or any other information, telling her she should have the partnership agreement already. They kept saying "you should have everything already".

9. My sister and I shared disbursements of \$11,044 before my sister got out of the fund on June 30, 2006.

10. On or about May 1, 2006, I invested into S&P approximately \$110,000 which was from the sale of a house.

11. The letter dissolving my interest in the partnership came approximately one year later -- not long enough for my \$110,000 investment to have earned very much.

On October 23, 2007, I wrote a letter to S&P requesting that my membership in the partnership be dissolved and requesting redemption of the total balance in my account (attached to my previous affidavit).

12. On or about July 20, 2013, a Summons was left on my front porch and a copy of the front sheet of a lawsuit was sent through the mail to my address about a week later. I was never served by a process server.

13. Upon the Summons being left on my porch, I consulted a lawyer in New York where I live and a family member consulted with a lawyer in Florida. Based on the lawyers' advice, I did not respond to the Complaint.

14. On or about September 23, 2013, I answered my door and a man asked for Theresa Jones or Theresa Mataragas. (Theresa Mataragas is my mother's name, who was deceased at that time.) No papers were left.

15. On or about May 22, 2014, a Federal Express package was left at my door. It contained a notice of hearing. Since I was advised by attorneys that I wasn't served, I disregarded the notice of hearing.

16. On or about June 3, 2014, Peter Herman, whom I considered hiring prior to this time, was reviewing emails and came across a court filing from May 22, 2014, which was an e-filed Notice of Hearing on several Motions for Final Default Judgment. He was monitoring this case, as well as a companion case, for another client, and noticed that the May 22, 2014 Notice of Hearing listed a Motion for Final Default Judgment against me. At that time, I asked him to represent me. He filed on my behalf a Motion to Quash Service of Process and Vacate Clerk's Default (attached hereto as **Exhibit "A"**).

17. On June 16, 2014, the Court denied my Motion to Quash and, therefore, on July 11, 2014, Mr. Herman filed on my behalf a Motion to Vacate Clerk's Default (attached hereto as Exhibit "B"). (This Motion to Vacate Clerk's Default also contains, as an exhibit, my answer to the Third Amended Complaint. Prior to this time, I had not received a copy of the Second or Third Amended Complaints.)

18. On July 21, 2014, this Court deferred ruling on my Motion to Vacate Clerk's Default and ordered that I file this Affidavit supporting excusable neglect.

FURTHER AFFIANT SAYETH NAUGHT.

  
JULIANNE MATARAGAS JONES

SWORN TO and subscribed before me this 30th day of July, 2014.

  
Notary Public

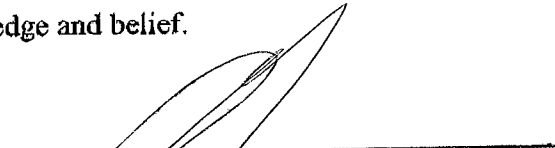
[NOTARY STAMP]

**KATHLEEN M. McDOFF**  
Notary Public, State of New York  
No. 01MC6165102  
Qualified in Suffolk County  
Commission Expires June 30, 2015

**ATTESTATION BY PETER G. HERMAN**

As an officer of the Court, with respect to any statements above which are relative to my involvement, which might be construed by the Court as hearsay, I hereby attest that those statements are true and accurate to best of my knowledge and belief.

731733v1 999439.0001

  
PETER G. HERMAN

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

CASE NO: 12-24121 (07)  
Complex Litigation Unit

PHILIP J. VON KAHLE, as Conservator of  
P&S ASSOCIATES, GENERAL  
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GENERAL PARTNERSHIP,

Plaintiffs,

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JANET A. HOOKER CHARITABLE TRUST,  
et al,

Defendants

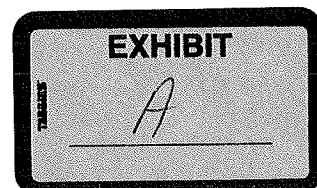
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**MOTION TO QUASH SERVICE OF PROCESS**  
**AND VACATE CLERK'S DEFAULT**

Defendant, JULIANNE MATARAGAS, by and through undersigned counsel, files this Motion to Quash Service of Process and Vacate Clerk's Default for failure to comply with Florida Statute §48.031, and states:

1. Defendant was never properly served with a Summons in this case and therefore the Clerk's Default should not have been entered (see Affidavit attached hereto).
2. Accordingly, the Defendant was not required to respond to the Complaint.
3. The Court lacks jurisdiction over this Defendant.

WHEREFORE, Defendant requests an order quashing the service of process and vacating the Clerk's Default which was entered against her, and for all further relief as this Court deems just and proper.



I HEREBY CERTIFY that a true copy of the foregoing has been furnished by e-filing to Leonard K. Samuels, Esq., Etan Mark, Esq., Steven D. Weber, Esq., at Berger Singerman LLP, 350 East Las Olas Boulevard, Suite 1000, Fort Lauderdale, FL 33301, [lsamuels@bergersingerman.com](mailto:lsamuels@bergersingerman.com), [emark@bergersingerman.com](mailto:emark@bergersingerman.com), [sweber@bergersingerman.com](mailto:sweber@bergersingerman.com), this 3<sup>rd</sup> day of June, 2014.

TRIPP SCOTT, P.A.  
Counsel for Defendant  
JULIANNE M. JONES  
110 SE 6<sup>th</sup>, St, 15<sup>th</sup> Fl.  
Fort Lauderdale, FL 33301  
Phone 954 525 7500  
Fax 954 761 8475

By: s/Peter G. Herman  
Peter G. Herman  
Fla. Bar No. 353991  
Primary: [pgh@trippscott.com](mailto:pgh@trippscott.com)  
Secondary: [ele@trippscott.com](mailto:ele@trippscott.com)

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Plaintiffs,

v

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et al,

Defendants

AFFIDAVIT OF JULIANNE MATARAGAS

STATE OF NEW YORK  
COUNTY OF Suffolk

I, JULIANNE MATARAGAS, being first duly sworn on oath, deposes and states:

1. My name is Julianne Mataragas and I make this affidavit on personal knowledge of the matters herein.

2. I have never been personally served with a summons concerning this case.

3. According to the Alias Summons filed as an exhibit to the Motion for Final Default Judgment, it indicates under paragraph #3, the description of the person being served or spoken to on behalf of defendant was a white male with brown hair, age 56, weight 161-200 lbs, height 5' 4"-5' 8". The description in #3 is not the description of my husband and I have personal knowledge that he was not served with the summons.

4. Also, the Alias Summons filed as an exhibit to the Motion for Final Default Judgment is addressed to Julianne M. Jones at 1817 S.E. Deming Avenue, Port St. Lucie, Florida,



which was my mother's address; however, it is not my address. My mother's name is Theresa Mataragas and she died in 2004.

5. I ultimately received a copy of the complaint via mail.

FURTHER AFFIANT SAYETH NAUGHT

*Julianne Mataragas*  
JULIANNE MATARAGAS

2014. SWORN TO and subscribed before me this 3<sup>rd</sup> day of June

*[Signature]*  
Notary Public

NOTARY STAMP.

KATHLEEN M. MCGOFF  
Notary Public, State of New York  
No. 01MC0165102  
Qualified in Suffolk County  
Commission Expires June 30, 2015  
*Suffolk, NY*

IN THE CIRCUIT COURT OF THE 17<sup>TH</sup> JUDICIAL CIRCUIT  
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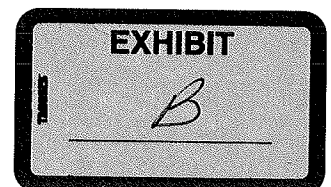
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P&S ASSOCIATES, GENERAL  
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GENERAL PARTNERSHIP, a Florida  
limited partnership; Phil von Kahle as  
Conservator of P&S ASSOCIATES,  
GENERAL PARTNERSHIP, a Florida  
limited partnership; and S&P  
ASSOCIATES, GENERAL  
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partnership,

Plaintiffs,

v.

JANET A. HOOKER CHARITABLE  
TRUST, a charitable trust; DIANE M.  
DEN BLEYKER, an individual; ETTOH  
LTD., a Florida limited partnership;  
ERSICA P. GIANNA, an individual and  
as Trustee; CATHERINE B. AND BERRY C.  
SMITH, individuals; EDNA A. PROFE  
REV. LIV. TRUST; HERBERT IRWIG  
REVOCABLE TRUST; EDITH ROSEN,  
an individual; RICHARD F. AND BETTE  
WEST, individuals; GREGG WALLICK,  
an individual; JAMES AND VALERIA  
BRUCE JUDD, individuals; JULIANNE  
M. JONES, an individual; JESSE A. AND  
LOIS GOSS, Trustees; LISA RYAN, an  
individual; GERTRUDE GORDON, an  
individual; SAM ROSEN, an individual;  
PARAGON VENTURES, LTD., an  
Austrian limited partnership; HOLY  
GHOST FATHERS INTERNATIONAL  
FUND #2, a Tax-exempt Organization;  
SUSAN E. MOLCHAN OR THOMAS A.  
WHITEMAN, individuals; JANET B.



MOLCHAN TRUST DTD 5/19/94;  
ROBERT A. UCHIN REV TRUST;  
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Organization; HOLY GHOST FATHERS  
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Tax-exempt Organization;  
CONGRAGATION OF THE HOLY  
GHOST-WESTERN PROVIDENCE, a  
Tax-exempt Organization; ABRAHAM  
OR RITA NEWMAN, individual; JOHN  
J. CROWLEY, and/or JONATHAN  
CROWLEY, individuals; and ALEX E.  
MOLCHAN TRUST DTD 5/19/94;

Defendants.

---

**DEFENDANT, JULIANNE MATARAGAS',**  
**MOTION TO VACATE CLERK'S DEFAULT**

Defendant, JULIANNE MATARAGAS, by and through undersigned counsel, and pursuant to Rule 1.500, Fla. R. Civ. P., hereby files this Motion to Vacate the Default entered against her and as grounds therefore would state as follows:

1. On or about December 10, 2012, Plaintiffs filed its Complaint against Defendant, JULIANNE M. JONES (properly known as JULIANNE MATARAGAS) (hereafter "Defendant").

2. Pursuant to the Court docket, on February 5, 2014, a Default was entered against Defendant JULIANNE M. JONES.

3. On June 3, 2014, Defendant filed a Motion to Quash Service of Process and Vacate Clerk's Default with her attached Affidavit (see motion and affidavit attached hereto as **Exhibit "A"**).

4. At the hearing on said Motion to Quash, the Court found that Defendant was properly served with the Plaintiff's Complaint.

5. Based on the Court's finding, Defendant is filing her Answer and Affirmative Defenses to Plaintiffs' Complaint, before any default judgment being requested or entered.

6. Defendant's Answer and Affirmative Defenses is attached hereto as **Exhibit "B"**.

7. The Court has broad discretion in determining whether the facts constitute excusable neglect to justify vacating a default. Anish v. Topiwala, 430 So.2d 990, 991 (Fla. 3d DCA 1983).

8. When ruling on a motion to vacate a default, the Court must consider whether the moving party (1) has shown excusable neglect; (2) has a meritorious defense to the opposing party's claims; and (3) has exercised due diligence in obtaining relief after learning of the default. Szucs v. Qualico Development, Inc., 893 So.2d 708, 710 (Fla. 2d DCA 2005).

9. The Florida Courts have a long-standing policy of liberality toward the vacating of defaults where the defendant demonstrates excusable neglect, because the Courts favor the resolution of disputes on the merits rather than by default. Ellis v. Ellis, 404 So.2d 774, 776 (Fla. 2d DCA 1981).

10. Furthermore, if there be any reasonable doubt in the matter of vacating a default, it should be resolved in favor of granting the application and allowing a trial upon the merits of the case.

11. In the instant case, any delay and/or failure to respond to Plaintiff's Complaint by the Defendant was simply the result of excusable neglect on Defendant's part in that she was under the impression that service of process was not achieved upon her.

12. "A meritorious defense, as required to vacate a default, is established where a proposed answer is attached to its motion to vacate, which answer sets out in detail a number of affirmative defenses." Elliott v. Aurora Loan Services, LLC, 31 So.3d 304 (2010).

13. Accordingly, it is appropriate for this Court to grant this Motion to Vacate the Default because Defendant shows excusable neglect; because Defendant has meritorious defenses to the opposing party's claims, and because Defendant has acted with all due haste to remedy the situation.

WHEREFORE, Defendant, JULIANNE MATARAGAS, respectfully requests this Court grant relief from, and otherwise vacate the default entered in this action, permit the filing of Defendant's Answer and Affirmative Defenses which is attached hereto as **Exhibit "B"**, and for any further relief this Court deems just and proper.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by e-filing to Leonard K. Samuels, Esq., Etan Mark, Esq., Steven D. Weber, Esq., at Berger Singerman LLP, 350 East Las Olas Boulevard, Suite 1000, Fort Lauderdale, FL 33301, [lsamuels@bergersingerman.com](mailto:lsamuels@bergersingerman.com), [emark@bergersingerman.com](mailto:emark@bergersingerman.com), [sweber@bergersingerman.com](mailto:sweber@bergersingerman.com), this 11th day of July, 2014.

TRIPP SCOTT, P.A.  
Counsel for Defendant  
JULIANNE M. JONES  
110 SE 6<sup>th</sup>, St, 15<sup>th</sup> Fl.  
Fort Lauderdale, FL 33301  
Phone 954 525 7500  
Fax 954 761 8475

By: s/Peter G. Herman  
Peter G. Herman  
Fla. Bar No. 353991

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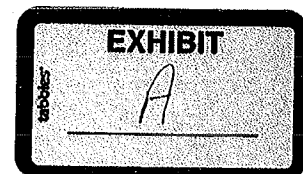
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TRIPP SCOTT, P.A.  
Counsel for Defendant  
JULIANNE M. JONES  
110 SE 6<sup>th</sup>, St, 15<sup>th</sup> Fl.  
Fort Lauderdale, FL 33301  
Phone 954 525 7500  
Fax 954 761 8475

By: s/Peter G. Herman  
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Fla. Bar No. 353991  
Primary: [pgh@trippscott.com](mailto:pgh@trippscott.com)  
Secondary: [ele@trippscott.com](mailto:ele@trippscott.com)



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**AFFIDAVIT OF JULIANNE MATARAGAS**

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I, JULIANNE MATARAGAS, being first duly sworn on oath, deposes and states:

1. My name is Julianne Mataragas and I make this affidavit on personal knowledge of the matters herein.

2. I have never been personally served with a summons concerning this case.

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5. I ultimately received a copy of the complaint via mail.

FURTHER AFFLIANT SAYETH NAUGHT

*Julianne Mataragas*  
JULIANNE MATARAGAS

SWORN TO and subscribed before me this 3<sup>rd</sup> day of June  
2014.

*[Signature]*  
Notary Public

NOTARY STAMP.

KATHLEEN M. McGOFF  
Notary Public, State of New York  
No. 01MC8165102  
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Commission Expires June 30, 2015  
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Defendants.

---

**DEFENDANT, JULIANNE MATARAGAS',**  
**ANSWER TO PLAINTIFFS' THIRD AMENDED COMPLAINT**

Defendant, JULIANNE MATARAGAS, by and through undersigned counsel, files her  
Answer to Plaintiffs' Third Amended Complaint, in like-numbered paragraphs, as follows:

1. Denied.
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. 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. Without knowledge and therefore denied.
23. Without knowledge and therefore denied.
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. Without knowledge and therefore denied.
33. Without knowledge and therefore denied.
34. Without knowledge and therefore denied.
35. Admitted.
36. Without knowledge and therefore denied.
37. Without knowledge and therefore denied.
38. Without knowledge and therefore denied.
39. Without knowledge and therefore denied.
40. Without knowledge and therefore denied.
41. Without knowledge and therefore denied.
42. Without knowledge and therefore denied.
43. Without knowledge and therefore denied.
44. Admitted.
45. Without knowledge and therefore denied.
46. Without knowledge and therefore denied.
47. Without knowledge and therefore denied.
48. Without knowledge and therefore denied.
49. Without knowledge and therefore denied.
50. Without knowledge and therefore denied.
51. Without knowledge and therefore denied.
52. Without knowledge and therefore denied.
53. 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. Without knowledge and therefore denied.
61. Without knowledge and therefore denied.
62. Without knowledge and therefore denied.
63. Without knowledge and therefore denied.
64. Without knowledge and therefore denied.
65. Without knowledge and therefore denied.
66. Without knowledge and therefore denied.
67. Without knowledge and therefore denied.
68. Without knowledge and therefore denied.
69. Without knowledge and therefore denied.
70. Denied.
71. Denied.
72. Denied.
73. Denied.
74. Without knowledge and therefore denied.
75. Without knowledge and therefore denied.
76. Without knowledge and therefore denied.
77. Without knowledge and therefore denied.

78. Denied.
79. Denied.
80. Denied.
81. Denied.
82. Denied.
83. Without knowledge and therefore denied.
84. Without knowledge and therefore denied.
85. Without knowledge and therefore denied.
86. Denied.
87. Denied.
88. Denied.
89. Denied.
90. Denied.
91. Denied.
92. Denied.
93. Denied.
94. Denied.
95. Denied.
96. Denied.
97. Denied.
98. Denied.
99. Denied.
100. Denied.



101. Denied.
102. Denied.
103. Denied.
104. Denied.
105. Denied.
106. Denied.
107. Denied.
108. Denied.
109. Denied.
110. Denied.
111. Denied.
112. Denied.
113. Denied.
114. Denied.
115. Denied.
116. Denied.
117. Denied.
118. Denied.
119. Denied.
120. 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**

Counts IV and V of the Third Amended Complaint rely on quasi-contractual theories that are barred by the existence of an express contract concerning the identical subject matter; Counts IV and V thus fail to state a cause of action upon which relief can be granted.

### **Fifth Affirmative Defense**

Each and every cause of action in the Third Amended Complaint is barred by the doctrine of *in pari delicto*, where the Plaintiff stands in the shoes of the Managing General Partner(s) of the Partnerships and Plaintiff alleges that such Managing General Partner(s) engaged in fraud in making the transfers at issue.

### **Sixth Affirmative Defense**

Each and every cause of action set forth in the Third Amended Complaint is barred by the equitable doctrine of unclean hands, for the reasons set forth in the Fifth Affirmative Defense.

### **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. Ettoh reserves its right to supplement or amend this Answer and Affirmative Defenses as discovery progresses.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by e-filing to Leonard K. Samuels, Esq., Etan Mark, Esq., Steven D. Weber, Esq., at Berger Singerman LLP, 350 East Las Olas Boulevard, Suite 1000, Fort Lauderdale, FL 33301, [lsamuels@bergersingerman.com](mailto:lsamuels@bergersingerman.com), [emark@bergersingerman.com](mailto:emark@bergersingerman.com), [sweber@bergersingerman.com](mailto:sweber@bergersingerman.com), this 11th day of July, 2014.

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Primary: [pgh@trippscott.com](mailto:pgh@trippscott.com)  
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