

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

CASE NO. 12-028324 (07)
Complex Litigation Unit

P & S ASSOCIATES, GENERAL
PARTNERSHIP and S & P ASSOCIATES,
GENERAL PARTNERSHIP,

Plaintiff,

v.

ROBERTA P. ALVES, ET AL.,

Defendants.

**DEFENDANT, CONGREGATION OF THE HOLY GHOST, WESTERN PROVINCE'S
MOTION FOR EXTENSION OF TIME TO RESPOND TO THIRD AMENDED
COMPLAINT**

Defendant, Congregation of the Holy Ghost, Western Province, by and through undersigned counsel and pursuant to Rule 1.090(b) of the Florida Rules of Civil Procedure, moves this Court for an Order granting an Extension of Time to Respond to the Plaintiffs' Third Amended Complaint for Interpleader and Declaratory Relief and, as grounds therefore, states:

1. The Congregation of the Holy Ghost, Western Province ("Congregation") was served with the Summons and a copy of the Third Amended Complaint on August 14, 2013.
2. The Congregation's Answer to the Third Amended Complaint is due today, September 3, 2013.
3. The Congregation is a religious order with offices in Bethel Park, Pennsylvania.
4. Despite Plaintiffs' reference in the Third Amended Complaint to the Congregation of the Holy Ghost, Western Province, that entity no longer exists. On June 8, 2009, the

Congregation of the Holy Ghost, Western Province merged with the Congregation of the Holy Spirit Under the Protection of the Immaculate Heart of Mary, USA - East. Today, the resulting entity is called the Congregation of the Holy Spirit Province of the United States.

5. As a result of the restructuring and passage of time, the structure of the Congregation is not the same as it was prior to the merger. Representatives, current and former, of the Congregation with knowledge of the facts described in the Third Amended Complaint are not necessarily found where they were in 2003, the last date of a distribution to the Congregation. As such, it is difficult for the Congregation to coordinate with its agents or determine who has the most knowledge. In order to respond to the Third Amended Complaint, the Congregation needs adequate time to identify and locate the proper members of the Congregation with knowledge of the entity formerly known as the Congregation of the Holy Ghost, Western Province.
6. Further, the Congregation's legal co-counsel is on vacation and will not be returning until after the deadline to respond to the Third Amended Complaint has passed. In fact, the Congregation's legal counsel will not be returning until September 9, 2013. The undersigned firm is serving as local counsel for the Congregation. However, without its legal co-counsel, the Congregation will be prejudiced if it is forced to prepare a case strategy before his return. Due to the pre-planned vacation of the Congregation's legal co-counsel, the Congregation needs time to discuss strategy and prepare a proper response. The Plaintiffs will surely not be prejudiced by a twenty-day extension as there are likely

other Defendants in this action who have not yet been properly served.

7. In addition to the unavailability of the Congregation's legal co-counsel, the Congregation has not been properly served with the Summons and a copy of the Third Amended Complaint in this case.

8. Fla. Stat. § 48.031(5) states:

A person serving process shall place, on the first page of at least one of the processes served, **the date and time of service** and his or her identification number and initials for all service of process. The person serving process shall list on the return-of-service form all initial pleadings delivered and served along with the process. The person issuing the process shall file the return-of-service form with the court. (Emphasis added)

9. Contrary to section 48.031(5), Fla. Stat., the Summons received by the Congregation was not properly endorsed. Specifically, the process server failed to place any information relating to the date and time of service on the first page of either the Summons or the copy of the Third Amended Complaint. As such, the Congregation and its counsel had no written record of the date and time of service. The Congregation was left to its own devices to figure out when the Summons and a copy of the Third Amended Complaint was served. Section 48.031(5), Fla. Stat. was designed to eliminate this very situation and to provide notice to each defendant as to the date of service. Verification of the service date was requested from Plaintiffs' counsel. It has not been provided.

10. Upon receiving the Summons and a copy of the Third Amended Complaint, undersigned counsel became aware of the defective service. On August 27, 2013, undersigned counsel wrote to Plaintiffs' counsel to inform him of this fact and to request the date of service

and an extension to September 23, 2013 to submit a response.

11. Despite the Congregation's inquiry, Plaintiffs' counsel was unable to determine the date of service. Plaintiffs' counsel also informed undersigned counsel that the Congregation would not be given an extension of time beyond 15 days to respond to the improperly served Third Amended Complaint. Since no party to the conversation had an exact fix on the date of service, both counsel were addressing an unclear issue, the service date. Thus, the Congregation was left alone to determine the date of service and to timely respond to the Third Amended Complaint while its legal co-counsel was unavailable.
12. A 15-day extension would have moved the due date to respond to the Third Amended Complaint to September 18, 2013. However, as noted above, the Congregation's chief legal counsel is unavailable until September 9, 2013. A request was simply made to give the Congregation's lawyers two weeks to discuss strategy and the import of the Complaint.
13. This motion is not being submitted for the purpose of unnecessary delay or in bad faith. Wherefore, Defendant Congregation of the Holy Ghost, Western Province, respectfully requests an Order of this Court granting an extension of time to file a response to the Plaintiffs' defectively served Third Amended Complaint until September 23, 2013.

DATED: September 3, 2013

Respectfully Submitted,

/s/ Marc S. Dobin

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via email
this 3rd day of September, 2013, to:

<p>Thomas M. Messana Messana, P.A. Post Office Drawer 2485 Fort Lauderdale, FL 33303 954-712-7400; 954-712-7401 - Facsimile tmessana@messana-law.com Attorney for Conservator</p>	<p>Domenica Frasca Mayersohn Law Group, P.A. 101 N.E. Third Avenue Suite 1250 Fort Lauderdale, FL 33301 954-765-1900; 954-713-0702 - Facsimile service@mayersohnlaw.com dfrasca@mayersohnlaw.com Attorney for Defendant Francis J. Mahoney Jr., Personal Representative of the Estate of Mary Ellen Nickens</p>
<p>Thomas Abrams Gamberg & Abrams 1776 North Pine Island Road Suite 309 Fort Lauderdale, FL 33322 954-523-0900; 954-915-9016 - Facsimile tabrams@tabramslaw.com Attorney for Defendant, Lynn Rosen-Lauder</p>	<p>Jason S. Oletsky Akerman, Senterfitt Las Olas Centre II Suite 1600 Fort Lauderdale, FL 33301 954-463-2700; 954-463-2224 - Facsimile jason.oletsky@akerman.com Attorney for Walsh Family Claimants</p>

<p>Carl F. Schoepl Schoepl & Burke, P.A. 4651 North Federal Highway Boca Raton, FL 33431-5176 561-394-8301; 561-394-3121 - Facsimile carl@schoeplburke.com Attorney for Defendants, Burt Moss, Susan Moss, Burt Moss & Associates, Inc. and Burton Harold IRA</p>	<p>William G. Salim, Jr. Moskowitz, Mandell, Salim & Simowitz, P.A. 800 Corporate Drive Suite 500 Fort Lauderdale, FL 33334 954-491-2000; 954-491-2051 - Facsimile wsalim@mmslaw.com Attorney for Defendant, Wayne Horwitz, as Trustee</p>
<p>Robert A. Chaves Gutter Chaves Josepher Rubin Forman Fleisher Miller P.A. 2101 NW Corporate Boulevard Suite 107 Boca Raton, FL 33431-7343 561-998-7847; 561-998-2642 - Facsimile rchaves@floridatax.com Attorney for Defendant Calla Gutter</p>	<p>Richard T. Woulfe Bunnell & Woulfe P.A. One Financial Plaza Suite 1000 100 Southeast Third Avenue Fort Lauderdale, FL 33394 954-761-8600 pleadings.RTW@bunnellwoulfe.com Attorney for Defendant, Robert A. Uchin Revocable Trust</p>

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