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

CASE NO.: 12-034121 (07)

P&S ASSOCIATES, GENERAL PARTNERSHIP, A Florida limited partnership; S&P ASSOCIATES, GENERAL PARNTERSHIP, a Florida limited partnership; Philip von Kahle as Conservator of a Florida limited partnership; and S&P ASSOCIATES, GENERAL PARTNERSHIP, a Florida limited partnership

Plaintiffs,

v.

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

Defendant.

# DEFENDANT, GREGG WALLICK'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT

Defendant, Gregg Wallick ("WALLICK"), by and through his undersigned counsel, hereby serves his response in opposition to Plaintiff's Motion for Default Final Judgment Against Gregg Wallick (the "Default Motion") in support thereof states:

1. On September 4, 2014, Plaintiff served WALLICK with Plaintiff's Motion for Default Final Judgment Against Defendant, Gregg Wallick (the "Default Motion"). A true and correct copy of the Default Motion is attached hereto as **Exhibit "A."** 

2. The Default Motion is the first document that WALLICK ever received in this action. *See* Affidavit of Gregg Wallick attached hereto as **Exhibit "B"** at ¶¶1-3.

3. Specifically, WALLICK was <u>never</u> served with summons or Complaint in this action. See Wallick Affidavit at ¶4.

4. Notwithstanding the fact that WALLICK was not served with process in this case, on July 11, 2014, the Clerk entered a Clerk's Default against WALLICK.

5. It appears from a review of the Default Motion and the attachments thereto that the Clerk's Default was premised upon a "Verified Return of Service" which falsely asserts that WALLICK was served with process at 11901 SW 3<sup>rd</sup> St., Plantation, Florida 33325 (the "Wallick Residence") at 7:00 p.m. on June 25, 2013.

6. Specifically, upon receipt of the Default Motion, WALLICK checked his calendar and confirmed that he was not at the Wallick Residence at 7:00 p.m. on June 25, 2013. Wallick Affidavit at ¶9.

7. As reflected on WALLICK's calendar, on Tuesday, June 25, 2013, at 5:30 p.m., WALLICK had dinner with several acquaintances at Chuck's Steakhouse located at 2428 E. Commercial Blvd, Fort Lauderdale, Florida. Wallick Affidavit at ¶¶10 and 12 and Exhibit "B."

8. From dinner, WALLICK drove to the Community Christian Association located at 5120 N. Federal Highway, Fort Lauderdale, Florida for his regular Men's Christian Bible study class which began at 6:30 p.m. Wallick Affidavit at ¶13.

9. As such, he was <u>not</u> at the Wallick Residence at the time set forth in the return of service.

10. Accordingly, the assertion in the return of service is false and WALLICK was not properly served. Consequently, this Court should vacate the default. *See, e.g. Grosheim v. Greenpoint Mortg. Funding, Inc.*, 819 So.2d 906 (Fla. 4<sup>th</sup> DCA 2002) (quashing service and vacating default is appropriate where there is a reasonable doubt as to the validity of service of process).

2

11. Moreover, it is well-established that a "judgment is void where the service of process is so defective that it amounts to no notice of the proceedings." *See Shepheard v. Deutsche Bank Trust Co. Americas*, 922 So.2d 340 (Fla. 5ht DCA 2006).

12. Here, service was defective as it was never completed.

13. Consequently, on September 16, 2014, WALLICK served and filed his Motion to Quash Service of Process and Vacate Clerk's Default (the "Motion to Quash"). A true and correct copy of the Motion to Quash is attached hereto as **Exhibit "C."** 

14. Prior to the filing of the Motion to Quash and this response, the undersigned conferred with counsel for Plaintiff and advised him of the fact that WALLICK was never served with process. Plaintiff, however, has refused to agree to vacate the Clerk's Default.

15. Accordingly, the undersigned's office is in the process of coordinating a hearing on the Motion to Quash.

16. As such, this Court should deny the Default Motion and/or quash the improper service of process and vacate the Clerk's Default.

WHEREFORE, Defendant, GREGG WALLICK, respectfully requests that this Court enter and Order denying the Default Motion and/or quashing service of process and vacating the clerk's default, and grant such other and further relief as this Court deems just and proper.

# **CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that in accordance with the Supreme Court of Florida's Administrative Order No. AOSC13-49, a true and correct copy of the foregoing has been filed with the Florida Courts E-Filing Portal on this 16<sup>th</sup> day of September, 2014, and a copy of same will be sent by the E-Filing Portal via E-Mail to: Leonard K. Samuels, Esq.,

lsamuels@bergersingerman.com Berger Singerman, LLLP, 350 East Las Olas Boulevard, Suite

1000, Ft. Lauderdale, FL 33301; Thomas M. Messana, Esquire, tmessana@messana-law.com;

and all counsel listed on the attached e-mail list.

DuBosar Navon, PLLC 1800 North Military Trail, Suite 470 Boca Raton, Florida 33431 Phone: (561) 544-8980/Fax: (561) 544-8988

By: /s/ Robert C. Sheres Howard D. DuBosar Florida Bar No. 729108 hdubosar@dubosarnavon.com kdoyle@dubosarnavon.com Robert C. Sheres Florida Bar No. 057227 rsheres@dubosarnavon.com tnovak@dubosarnaon.com P&S Associates et al v. Janet A. Hooker Charitable Trust, et al Case No.: 12-034121 (07) Defendant, Gregg Wallick's Response in Opposition to Plaintiff's Motion for Default Judgment

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P&S Associates et al v. Janet A. Hooker Charitable Trust, et al Case No.: 12-034121 (07) Defendant, Gregg Wallick's Response in Opposition to Plaintiff's Motion for Default Judgment

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# 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; S&P ASSOCIATES, GENERAL PARTNERSHIP, a Florida limited partnership; Philip von Kahle as Conservator of P&S ASSOCIATES, GENERAL PARTNERSHIP, a Florida limited partnership; and S&P ASSOCIATES, GENERAL PARTNERSHIP, a Florida limited partnership,

Plaintiffs,

v.

JANET A. HOOKER CHARITABLE TRUST, a charitable trust, et al.,

Defendants,

# PLAINTIFFS' MOTION FOR DEFAULT FINAL JUDGMENT AGAINST DEFENDANT, GREGG WALLICK

Plaintiffs, P & S Associates, General Partnership ("P&S"), S & P Associates, General Partnership ("S&P"), (collectively referred to as, the "Partnerships"), and Philip Von Kahle as Conservator on behalf of the Partnerships (the "Conservator", and collectively with the Partnerships, the "Plaintiffs"), by and through undersigned counsel and pursuant to Rule 1.500 of the Florida Rules of Civil Procedure, hereby move this Court for entry of a Default Final



Judgment against Defendant, Greg Wallick (the "Defendant"), for its failure to file any responsive pleading or paper in this action, or otherwise assert any defense to this action, and in support of the Motion, Plaintiffs state as follows:

1. On or about June 21, 2013, Defendant, Gregg Wallick was served with process in this action. A true and correct copy of the Affidavit of Service is attached hereto as Exhibit "A".

2. Defendant, despite being served with process, has failed to file or serve any responsive paper in this action within the twenty (20) days of service.

3. As a result, on or about July 11, 2014, the Clerk of this Court entered a Default against Gregg Wallick (the "Defendant"). A true and correct copy of the Clerk's Default is attached hereto as **Exhibit "B"**.

4. Accordingly, the allegations contained in the Complaint are deemed to be admitted by the Defendant.

5. Plaintiffs seek a final default judgment against Defendant, Gregg Wallick for damages in the amount of \$84,974.47, plus prejudgment interest in the amount of \$6,237.84.

6. In support of this Motion, an Affidavit of Indebtedness attesting to how this final judgment sum was derived, signed by Philip J. Von Kahle, Conservator of P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P"), is attached hereto as Exhibit "C".

WHEREFORE, the Plaintiffs hereby respectfully request this Court enter a Final Judgment against Defendant, Gregg Wallick, in the amount of \$84,974.47, plus prejudgment

EBERGER SINGERMAN

<sup>350</sup> EAST LAS OLAS BLVD. | SUITE 1000 | FORT LAUDERDALE, FLORIDA 33301 t: 954-525-9900 | t: 954-523-2872 | WWW.BERGERSINGERMAN.COM

interest in the amount of \$6,237.84, and grant and all such other relief as the Court deems just and appropriate.

Respectfully Submitted,

# BERGER SINGERMAN, LLP

Attorneys for Plaintiffs 350 East Las Olas Blvd, Suite 1000 Fort Lauderdale, FL 33301 Telephone: (954) 525-9900 Direct: (954) 712-5138 Facsimile: (954) 523-2872

By: <u>s/Leonard K. Samuels</u> Leonard K. Samuels

Florida Bar No. 501610 Etan Mark Florida Bar No. 720852 Steven D. Weber Florida Bar No. 47543

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# **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via Electronic Mail upon counsel identified below registered to receive electronic notifications this 25th day of August, 2014 upon the following:

Counsel	E-mail Address;
Ana Hesny, Esq.	ah@assoulineberlowe.com; ena@assoulineberlowe.com
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By:

s/Leonard K. Samuels Leonard K. Samuels

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# EXHIBIT A

# VERIFIED RETURN OF SERVICE

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

CASE NO. 12.-34/2/(07) Complex Litigation Unit

Margaret Smith, et al.,

Plaintiff,

٧.

Janet A Hooker Charitable Trust, et al.,

Defendants.

At the Request of: Michael Moecker & Associates, Inc.

Received by Rogue Intelligence Services Corp. on the 21th day of June, 2013.

To be served on: Gregg Wallick 11901 SW 3rd St. Plantation, Florida 33325.

I, Harrison W. Barrus, do hereby affirm that on the <u>25<sup>th</sup></u> day of <u>June</u>, <u>2013</u> at <u>7:00 PM</u>, I executed service by delivering a true copy of this Alias Summons, and Complaint in accordance with state statutes in the manner marked below:

(X) INDIVIDUAL SERVICE: service on the within named person.
() SUBSTITUTE SERVICE: by serving .
() POSTED SERVICE: after attempting service on \_\_\_\_\_\_ at \_\_\_\_\_ and \_\_\_\_\_ at \_\_\_\_\_ and \_\_\_\_\_ at \_\_\_\_\_.
service was posted in a conspicuous place on the property described herein.
() NON SERVICE: see comments below.

#### Comments:

I certify that I am over the age of 18 and have no interest in the above action and that I am a Special process server in good standing in the judicial circuit in which the process was served. Notary not required pursuant to Florida Statute § 92.525.

Harrison W./Barrus

Certified Process Server # 1322 Affidavit Date:06/28/2013

н улт Бар Бурн с 8, ту сай Гутр. + 19998 У. 87 247 58, знас Бе. 24 33-12 + 1980-11 1-4428 - Ангения С Велиние + Арания + Арания - Нателье «Билеля» (турски Карана) - Алела (Пурски Карана) - Алела (Пурски Карана)

Comment Highwy associate

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

Case No. 12-34121(07) Complex Litigation Unit

MARGARET SMITH, et al.,

Plaintiffs,

VS,

JANET A. HOOKER CHARITABLE TRUST, et al.,

Defendants.

7:00pun 6-25-13

ALIAS SUMMONS

The State of Florida; To Each Sheriff of the State:

YOU ARE HEREBY COMMANDED to serve this Summons and a copy of the Complaint in this action on Defendant:

### Gregg Wallick 11901 SW 3rd St. Plantation, FL 33325

Each defendant is required to serve written defenses to the Complaint on the attorneys for Philip J. Von Kahle, the Conservator of the P & S Associates, General Partnership and the S & P Associates, General Partnership ("Plaintiff's Attorney"), to wit, whose address is:

> Thomas M. Messana, Esq. Messana, P.A. 401 East Las Olas Boulevard, Suite 1400 Fort Lauderdale, Florida 33301 954-712-7400

within twenty (20) days after service of this summons on that defendant, exclusive of the day of service, and to file the original of the defenses with the Clerk of this Court either before service of the Plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

WITNESS my hand and the scal bradid Cour201 of Äpril, 2013. HOWARD C. FORMAN Clerk of the Cilcuit Conf By:

#### **IMPORTANT**

A lawsuit has been filed against you. You have twenty (20) calendar days after this Summons is served on you to file a written response to the attached Complaint with the Clerk of this Court. A phone call will not protect you. Your written response, including the case number given above and the names of the parties, must be filed if you want the court to hear your side of the case. If you do not file your response on time, you may lose the case, and your wages, money, and property may thereafter be taken without further warning from the are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

If you choose to file a written response yourself, at the same time you file your written response to the court you must also mail or take a copy of your written response to the "plaintiff's attorney" named herein.

#### **IMPORTANTE**

Usted ha sido demandado legalmente. Tiene 20 Dias, contados a partir del recibo de esta notificacion, para contestar la demanda adjunta, por escrito, y presentarla ante este tribunal. Una llamada telefonica no lo protegera. Si usted desea que el tribunal considere su defensa, debe presentar su respuesta por escrito, incluyendo el numero del caso y los nombres de las partes interesadas. Si usted no contesta la demanda a tiempo, pudiese perder el caso y podria ser despojado de sus ingresos y propiedades, o privado de sus derechos, sin previo aviso del tribunal. Existen otros requisitos legales. Si lo desea, puede consultar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a una de las oficinas de asistencia legal que aparecen en la guia telefonica.

Si desea responder a la demanda por su cuenta, al mismo tiempo en que presenta su respuesta ante el tribunal, debera usted enviar por correo o entregar una copia de su respuesta a la personal denominada abajo como "Plaintiff/Plaintiff's Attorney" (Demandante o Abogado del Demandante).

#### **IMPORTANT**

Des poursuites judiciares ont ete entreprises contre vous. Vous avez 20 jours consecutifs a partir de la date de l'assignation de cette citation pour deposer une reponse cerite a la plainte cijointe aupres de ce tribunal. Un simple coup de telephone est insuffisant pour vous proteger. Vous etes oblige de deposer votre reponse cerite, avec mention du numero de dossier ci-dessus et du nom des parties nommees ici, si vous souhaitez que le tribunal entende votre cause. Si vous ne deposez pas votre reponse ecrite dans le relai requis, vous risquez de perdre la cause ainsi que votre salaire, votre argent, et vos biens peuvent etre saisis par la suite, sans aucun preavis ulterieur du tribunal. Il y a d'autre obligations juridiques et vous pouvez requerir les services immediats d'un avocat. Si vous ne connaissez pas d'avocat, vous pourriez telephoner a un service de reference d'avocats ou a un bureau d'assistance juridique (figurant a l'annuaire de telephones).

Si vous choisissez de deposer vous-meme une reponse ecrite, il vous faudra egalement, en meme temps que cette formalite, faire parvenir ou expedier une copie de votre reponse ecrite au "Plaintiff/Plaintiff's Attorney" (Plaignant ou a son avocat) nomme ci-dessous.

# EXHIBIT B

Filing # 15829055 Electronically Filed 07/11/2014 03:52:24 PM

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,

ν.

JANET A. HOOKER CHARITABLE TRUST, a charitable trust, *et al.*,

Defendants.

#### DEFAULT

A default is entered in this action against the defendant GREGG WALLICK, as named in the foregoing motion for failure to serve or file any paper as required by law.

Dated on 7-11- , 2014

HOWARD C. FORM As Clerk of the Court

5157022-1

# EXHIBIT C

# 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.

# AFFIDAVIT OF INDEBTEDNESS IN SUPPORT OF MOTION FOR FINAL DEFAULT JUDGMENT

STATE OF FLORIDA ) ) SS COUNTY OF BROWARD )

BEFORE ME, the undersigned authority, personally appeared Philip J. Von Kahle, who deposes and states:

1. I, Philip J. Von Kahle, am above the legal age of majority and otherwise competent to make this affidavit. I make this affidavit of my own personal knowledge, except where otherwise indicated, and have personal knowledge of the facts contained in this Affidavit because I am the Conservator of P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P").

2. I have examined the books, records and documents kept by P&S and S&P concerning the investments made by Defendant, Gregg Wallick (the "Defendant"). These

records are now maintained in the ordinary course of the business of S&P and P&S, and I am responsible for their maintenance or oversee their maintenance. As such, I am intimately familiar with the amount of money that Gregg Wallick invested in S&P and how much money Gregg Wallick received from S&P in connection with her investment in S&P.

3. Pursuant to the allegations in the Complaint(s), Defendant, Gregg Wallick, personally invested \$1,030,375.00 in S&P and personally received \$1,115,349.47. Gregg Wallick received \$84,974.47 in excess of his capital contribution with S&P. Accordingly, Gregg Wallick is obligated to pay \$84,974.47 to S&P.

4. To be as conservative as possible, I have calculated prejudgment interest from the date of my appointment through August 1, 2014, at a rate of 4.75% per annum (daily rate of .0130137%). The amount of prejudgment interest due and owed totals \$6,237.84. Accordingly, Gregg Wallick owes a total of \$91,212.31 to S&P, inclusive of interest.

S&P is therefore entitled to a final default judgment in the amount of \$91,212.31.
 FURTHER AFFIANT SAYETH NAUGHT

NADIRA JOSEPH

Notary Public - State of Florida My Conim. Expires Dec 11, 2017

# STATE OF FLORIDA } COUNTY OF BROWARD }

BEFORE ME, the undersigned authority, on Hof August 2014, personally appeared [PHIUP you KAPPLE] who states after being sworn that the foregoing is true based upon his personal knowledge, information and belief. He is personally known to me or has produced

as identification.

Notary Public, State of Florida Commission No.

My Commission expires:

# IN THE CIRCUIT COURT OF THE 15<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 12-034121 (07)

P&S ASSOCIATES, GENERAL PARTNERSHIP, A Florida limited partnership; S&P ASSOCIATES, GENERAL PARNTERSHIP, a Florida limited partnership; Philip von Kahle as Conservator of a Florida limited partnership; and S&P ASSOCIATES, GENERAL PARTNERSHIP, a Florida limited partnership

Plaintiffs,

v.

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

Defendant.

\_\_\_\_\_/

# AFFIDAVIT OF GREGG WALLICK IN SUPPORT OF MOTION TO QUASH SERVICE OF PROCESS AND VACATE CLERK'S DEFAULT

This day personally appeared before me, the undersigned officer, duly authorized to administer oaths and take acknowledgements, GREGG WALLICK, who, after being by me duly sworn, deposes and says:

1. I am an individual over the age of 18 and attest, under penalty of perjury, that the statements set forth herein are true and correct.

2. On September 4, 2014, I was made aware for the first time that I am a defendant in this action. Specifically, on September 4, 2014, I was served with Plaintiff's Motion for Default Final Judgment Against Defendant, Gregg Wallick (the "Default Motion"). A true and correct copy of the Default Motion is attached hereto as **Exhibit "A."** 

3. The Default Motion is the first document that I ever received in this action.

4. I was <u>never</u> served with summons or Complaint in this action.



5. I am a businessman who is familiar with the litigation process and had I been served with the summons and complaint I would have immediately forwarded the same to my counsel to ensure that a response was timely filed.

6. In fact, that is exactly what I did when I received a copy of the Default Motion.

7. Prior to forwarding the Default Motion to my counsel on September 5, 2013, I reviewed same and ascertained that a Clerk's Default was entered against me based upon a document entitled "Verified Return of Service."

8. The "Verified Return of Service" which was attached to the Default Motion states that I was personally served with the summons and complaint at 7:00 p.m. on June 25, 2013 at my residence located at 11901 SW 3<sup>rd</sup> St., Plantation, Florida 33325. That assertion is false.

9. Upon review of this document, I checked my calendar to ascertain where I was at 7:00 p.m. on June 25, 2013. A true and correct copy of a printout of my calendar on this date is attached hereto as **Exhibit "B."** 

10. As reflected in my calendar I was at a "Bible Study dinner at Chucks" beginning at 5:30 p.m.

11. Specifically, almost every Tuesday evening that I am in town I attend a Men's Christian Bible study class at the Community Christian Association located at 5120 N. Federal Highway, Fort Lauderdale, Florida beginning at 6:30 p.m.

12. As reflected on my calendar, on Tuesday, June 25, 2013, at 5:30 p.m, I had dinner with several acquaintances at Chuck's Steakhouse located at 2428 E. Commercial Blvd, Fort Lauderdale, Florida.

13. After dinner, I went to Bible study class at the Community Christian Association located at 5120 N. Federal Highway, Fort Lauderdale, Florida

14. Bible study class runs from 7:00 p.m. to 8:00 p.m. and I generally do not return home until approximately 8:45 p.m. Therefore, it would have been impossible for me to have been at my residence to be served at 7:00 p.m. on June 25, 2013 to have accepted service of process.

FURTHER AFFIANT SAYETH NOT.

GREGG WALLICK

STATE OF SS: COUNTY O

SWORN TO AND SUBSCRIBED before me this /16 day of September, 2014, by WALLICK, I who is personally known to me, or I GREGG who produced <u>\_\_\_\_</u> as identification. CEASE \_

NOTARY PUBLIC, STATE OF FLORIDA

EUNP, Print Name: My Commission Expires:

# 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; S&P ASSOCIATES, GENERAL PARTNERSHIP, a Florida limited partnership; Philip von Kahle as Conservator of P&S ASSOCIATES, GENERAL PARTNERSHIP, a Florida limited partnership; and S&P ASSOCIATES, GENERAL PARTNERSHIP, a Florida limited partnership,

Plaintiffs,

v.

JANET A. HOOKER CHARITABLE TRUST, a charitable trust, *et al.*,

Defendants.

# PLAINTIFFS' MOTION FOR DEFAULT FINAL JUDGMENT AGAINST DEFENDANT, GREGG WALLICK

Plaintiffs, P & S Associates, General Partnership ("P&S"), S & P Associates, General Partnership ("S&P"), (collectively referred to as, the "Partnerships"), and Philip Von Kahle as Conservator on behalf of the Partnerships (the "Conservator", and collectively with the Partnerships, the "Plaintiffs"), by and through undersigned counsel and pursuant to Rule 1.500 of the Florida Rules of Civil Procedure, hereby move this Court for entry of a Default Final

EXHIBIT

5883321-1

Judgment against Defendant, Greg Wallick (the "Defendant"), for its failure to file any responsive pleading or paper in this action, or otherwise assert any defense to this action, and in support of the Motion, Plaintiffs state as follows:

1. On or about June 21, 2013, Defendant, Gregg Wallick was served with process in this action. A true and correct copy of the Affidavit of Service is attached hereto as Exhibit "A".

2. Defendant, despite being served with process, has failed to file or serve any responsive paper in this action within the twenty (20) days of service.

3. As a result, on or about July 11, 2014, the Clerk of this Court entered a Default against Gregg Wallick (the "Defendant"). A true and correct copy of the Clerk's Default is attached hereto as **Exhibit "B"**.

4. Accordingly, the allegations contained in the Complaint are deemed to be admitted by the Defendant.

5. Plaintiffs seek a final default judgment against Defendant, Gregg Wallick for damages in the amount of \$84,974.47, plus prejudgment interest in the amount of \$6,237.84.

6. In support of this Motion, an Affidavit of Indebtedness attesting to how this final judgment sum was derived, signed by Philip J. Von Kahle, Conservator of P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P"), is attached hereto as Exhibit "C".

WHEREFORE, the Plaintiffs hereby respectfully request this Court enter a Final Judgment against Defendant, Gregg Wallick, in the amount of \$84,974.47, plus prejudgment

BERGER SINGERMAN

<sup>350</sup> EAST LAS OLAS BLVD. | SUITE 1000 | FORT LAUDERDALE, FLORIDA 33301 t: 954-525-9900 | t: 954-523-2872 | WWW.BERGERSINGERMAN.COM

interest in the amount of \$6,237.84, and grant and all such other relief as the Court deems just and appropriate.

Respectfully Submitted,

BERGER SINGERMAN, LLP

Attorneys for Plaintiffs 350 East Las Olas Blvd, Suite 1000 Fort Lauderdale, FL 33301 Telephone: (954) 525-9900 Direct: (954) 712-5138 Facsimile: (954) 523-2872

By: <u>s/Leonard K. Samuels</u> Leonard K. Samuels Florida Bar No. 501610 Etan Mark Florida Bar No. 720852 Steven D. Weber Florida Bar No. 47543

**BERGER SINGERMAN** 

350 EAST LAS OLAS BLVD. | SUITE 1000 | FORT LAUDERDALE, FLORIDA 33301 t: 954-525-9900 | t: 954-523-2872 | WWW.BERGERSINGERMAN.COM

#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via Electronic Mail upon counsel identified below registered to receive electronic notifications this 25th day of August, 2014 upon the following:

Counsel	E-mail Address:
Ana Hesny, Esq.	ah@assoulineberlowe.com; ena@assoulineberlowe.com
Eric N. Assouline, Esq.	ena@assoulineberlowe.com; ah@assoulineberlowe.com
Annette M. Urena, Esq.	aurena@dkdr.com; cmackey@dkdr.com; service-amu@dkdr.com
Daniel W. Matlow, Esq.	dmatlow@danmatlow.com; assistant@danmatlow.com
Debra D. Klingsberg, Esq.	dklingsberg@huntgross.com
Joanne Wilcomes, Esq.	jwilcomes@mccarter.com
Etan Mark, Esq.	emark@bergersingerman.com; drt@bergersingerman.com; lyan@bergersingerman.com
Ryon M. Mccabe, Esq.	rmccabe@mccaberabin.com; e-filing@mccaberabin.com; beth@mccaberabin.com
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Joseph P. Klapholz, Esq.	jklap@klapholzpa.com; dml@klapholzpa.com;
Julian H. Kreeger, Esq.	juliankreeger@gmail.com
L Andrew S Riccio, Esq.	ena@assoulineberlowe.com; ah@assoulineberlowe.com
Leonard K. Samuels, Esq.	lsamuels@bergersingerman.com; vleon@bergersingerman.com; drt@bergersingerman.com

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E-mail Address:
service@dobinlaw.com; mdobin@dobinlaw.com;
mfoster@dkdr.com; cmackey@dkdr.com; kdominguez@dkdr.com
pleadings.RTW@bunnellwoulfe.com; kmc@bunnellwoulfe.com
pleading@LJR@bunnellwoulfe.com
PGH@trippscott.com
bobhunt@huntgross.com; sharon@huntgross.com; eservice@huntgross.com
sweber@bergersingerman.com; lwebster@bergersingerman.com; drt@bergersingerman.com
tgoodwin@mccarter.com; nwendt@mccarter.com; jwilcomes@mccarter.com
tabrams@tabramslaw.com; fcolumbo@tabramslaw.com
tmessana@messana-law.com; tmessana@bellsouth.net; mwslawfirm@gmail.com
zhyman@bergersingerman.com; DRT@bergersingerman.com; clamb@bergersingerman.com
njoseph@moecker.com
pwallace@mathewsllp.com; assistant@wjmlawfirm.com
wim@mathewsllp.com
bpantaleo@edwardswild.com

By:	s/Leonard K. Samuels
	Leonard K. Samuels

# **BERGER SINGERMAN**

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# EXHIBIT A

# VERIFIED RETURN OF SERVICE

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

Margaret Smith, et al.,

Plaintiff,

v,

Janet A Hooker Charitable Trust, et al.,

Defendants.

At the Request of: Michael Moecker & Associates, Inc.

Received by Rogue Intelligence Services Corp. on the 21th day of June. 2013.

To be served on: Gregg Wallick 11901 SW 3rd St. Plantation, Florida 33325.

I, Harrison W. Barrus, do hereby affirm that on the 25<sup>th</sup> day of <u>June</u>, 2013 at 7:00 PM, I executed service by delivering a true copy of this Alias Summons, and Complaint in accordance with state statutes in the manner marked below:

(X) INDIVIDUAL SERVICE: service on the within named person.
() SUBSTITUTE SERVICE: by serving .
() POSTED SERVICE: after attempting service on \_\_/ /\_ at \_\_\_\_ and \_\_/ /\_ at \_\_\_\_\_
service was posted in a conspicuous place on the property described herein.
() NON SERVICE: see comments below.

#### Comments:

I certify that I am over the age of 18 and have no interest in the above action and that I am a Special process server in good standing in the judicial circuit in which the process was served. Notary not required pursuant to Florida Statute § 92.525.

Harrison W./Barrus

Certified Process Server # 1322 Affidavit Date:06/28/2013

Machinal Highwy of souch

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

Case No. 12-34121(07)

Complex Litigation Unit

MARGARET SMITH, et al.,

Plaintiffs,

VS.

JANET A. HOOKER CHARITABLE TRUST, et al.,

Defendants.

7:00pun 6-25-13

### ALIAS SUMMONS

The State of Florida: To Each Sheriff of the State:

YOU ARE HEREBY COMMANDED to serve this Summons and a copy of the Complaint in this action on Defendant:

#### Gregg Wallick 11901 SW 3rd St. Plantation, FL 33325

Each defendant is required to serve written defenses to the Complaint on the attorneys for Philip J. Von Kahle, the Conservator of the P & S Associates, General Partnership and the S & P Associates, General Partnership ("Plaintiff's Attorney"), to wit, whose address is:

> Thomas M. Messana, Esq. Messana, P.A. 401 East Las Olas Boulevard, Suite 1400 Fort Lauderdale, Florida 33301 954-712-7400

within twenty (20) days after service of this summons on that defendant, exclusive of the day of service, and to file the original of the defenses with the Clerk of this Court either before service of the Plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

WITNESS my hand and the seal of said co of Äpril, 2013. HOWAI Clerk By: AD CO

#### **IMPORTANT**

A lawsuit has been filed against you. You have twenty (20) calendar days after this Summons is served on you to file a written response to the attached Complaint with the Clerk of this Court. A phone call will not protect you. Your written response, including the case number given above and the names of the parties, must be filed if you want the court to hear your side of the case. If you do not file your response on time, you may lose the case, and your wages, money, and property may thereafter be taken without further warning from the are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

If you choose to file a written response yourself, at the same time you file your written response to the court you must also mail or take a copy of your written response to the "plaintiff's attorney" named herein.

#### **IMPORTANTE**

Usted ha sido demandado legalmente. Tiene 20 Dias, contados a partir del recibo de esta notificacion, para contestar la demanda adjunta, por escrito, y presentarla ante este tribunal. Una llamada telefonica no lo protegera. Si usted desea que el tribunal considere su defensa, debe presentar su respuesta por escrito, incluyendo el numero del caso y los nombres de las partes interesadas. Si usted no contesta la demanda a tiempo, pudiese perder el caso y podría ser despojado de sus ingresos y propiedades, o privado de sus derechos, sin previo aviso del tribunal. Existen otros requisitos legales. Si lo desea, puede consultar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a una de las oficinas de asistencia legal que aparecen en la guia telefonica.

Si desea responder a la demanda por su cuenta, al mismo tiempo en que presenta su respuesta ante el tribunal, debera usted enviar por correo o entregar una copia de su respuesta a la personal denominada abajo como "Plaintiff/Plaintiff's Attorney" (Demandante o Abogado del Demandante).

#### **IMPORTANT**

Des poursuites judiciares ont ete entreprises contre vous. Vous avez 20 jours consecutifs a partir de la date de l'assignation de cette citation pour deposer une reponse cerite a la plainte cijointe aupres de ce tribunal. Un simple coup de telephone est insuffisant pour vous proteger. Vous etes oblige de deposer votre reponse ecrite, avec mention du numero de dossier ci-dessus et du nom des parties nommees ici, si vous souhaitez que le tribunal entende votre cause. Si vous ne deposez pas votre reponse ecrite dans le relai requis, vous risquez de perdre la cause ainsi que votre salaire, votre argent, et vos biens peuvent etre saisis par la suite, sans aucun preavis ulterieur du tribunal. Il y a d'autre obligations juridiques et vous pouvez requerir les services immediats d'un avocat. Si vous ne connaissez pas d'avocat, vous pourriez telephoner a un service de reference d'avocats ou a un bureau d'assistance juridique (figurant a l'annuaire de telephones).

Si vous choisissez de deposer vous-meme une reponse ecrite, il vous faudra egalement, en meme temps que cette formalite, faire parvenir ou expedier une copie de votre reponse ecrite au "Plaintiff/Plaintiff's Attorney" (Plaignant ou a son avocat) nomme ci-dessous.

# EXHIBIT B

Filing # 15829055 Electronically Filed 07/11/2014 03:52:24 PM

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

CASE NO.: 12-034121 (07)

Ρ &S ASSOCIATES, GENERAL PARTNERSHIP, а Florida limited partnership; S&P ASSOCIATES. and PARTNERSHIP, GENERAL a Florida limited partnership, et al.,

Plaintiffs,

۷.

JANET A. HOOKER CHARITABLE TRUST, a charitable trust, *et al.*,

Defendants.

#### DEFAULT

A default is entered in this action against the defendant GREGG WALLICK, as named in the foregoing motion for failure to serve or file any paper as required by law.

Dated on 7-11- , 2014

HOWARD C. FORM As Clerk of the Court Starying Same Di

5157022-1

# EXHIBIT C

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# 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.

### AFFIDAVIT OF INDEBTEDNESS IN SUPPORT OF MOTION FOR FINAL DEFAULT JUDGMENT

STATE OF FLORIDA ) ) SS COUNTY OF BROWARD )

BEFORE ME, the undersigned authority, personally appeared Philip J. Von Kahle, who deposes and states:

1. I, Philip J. Von Kahle, am above the legal age of majority and otherwise competent to make this affidavit. I make this affidavit of my own personal knowledge, except where otherwise indicated, and have personal knowledge of the facts contained in this Affidavit because I am the Conservator of P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P").

2. I have examined the books, records and documents kept by P&S and S&P concerning the investments made by Defendant, Gregg Wallick (the "Defendant"). These

records are now maintained in the ordinary course of the business of S&P and P&S, and I am responsible for their maintenance or oversee their maintenance. As such, I am intimately familiar with the amount of money that Gregg Wallick invested in S&P and how much money Gregg Wallick received from S&P in connection with her investment in S&P.

3. Pursuant to the allegations in the Complaint(s), Defendant, Gregg Wallick, personally invested \$1,030,375.00 in S&P and personally received \$1,115,349.47. Gregg Wallick received \$84,974.47 in excess of his capital contribution with S&P. Accordingly, Gregg Wallick is obligated to pay \$84,974.47 to S&P.

4. To be as conservative as possible, I have calculated prejudgment interest from the date of my appointment through August 1, 2014, at a rate of 4.75% per annum (daily rate of .0130137%). The amount of prejudgment interest due and owed totals \$6,237.84. Accordingly, Gregg Wallick owes a total of \$91,212.31 to S&P, inclusive of interest.

S&P is therefore entitled to a final default judgment in the amount of \$91,212.31.
 FURTHER AFFIANT SAYETH NAUGHT

Philip J. Von Kahle

# STATE OF FLORIDA } COUNTY OF BROWARD }

BEFORE ME, the undersigned authority, on Hor August 2014, personally appeared [PHILP von KAPPE] who states after being sworn that the foregoing is true based upon his personal knowledge, information and belief. He is personally known to me or has produced

as identification.

-du -Notary Public, State of Florid NADIRA JOSEPH Commission No. Notary Public - State of Florida My Comm. Expires Dec 11, 2017 My Commission expires: Commission # FF 075791 Bonded Through National Notary Assn

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<b>5</b> <sup>00</sup>					
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### IN THE CIRCUIT COURT OF THE 17<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.: 12-034121 (07)

P&S ASSOCIATES, GENERAL PARTNERSHIP, A Florida limited partnership; S&P ASSOCIATES, GENERAL PARNTERSHIP, a Florida limited partnership; Philip von Kahle as Conservator of a Florida limited partnership; and S&P ASSOCIATES, GENERAL PARTNERSHIP, a Florida limited partnership

Plaintiffs,

v.

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

Defendant.

\_\_\_\_\_/

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

Defendant, Gregg Wallick ("WALLICK"), by and through his undersigned counsel, hereby moves this Court for entry of an Order quashing service of process and vacating the Clerk's default entered against him, and in support thereof states:

1. On September 4, 2014, Plaintiff served WALLICK with Plaintiff's Motion for Default Final Judgment Against Defendant, Gregg Wallick (the "Default Motion"). A true and correct copy of the Default Motion is attached hereto as **Exhibit "A."** 

2. The Default Motion is the first document that WALLICK ever received in this action. *See* Affidavit of Gregg Wallick attached hereto as **Exhibit "B"** at ¶¶1-3.

3. Specifically, WALLICK was <u>never</u> served with summons or Complaint in this action. *See* Wallick Affidavit at ¶4.



4. Notwithstanding the fact that WALLICK was not served with process in this case, on July 11, 2014, the Clerk entered a Clerk's Default against WALLICK.

5. It appears from a review of the Default Motion and the attachments thereto that the Clerk's Default was premised upon a "Verified Return of Service" which falsely asserts that WALLICK was served with process at 11901 SW 3<sup>rd</sup> St., Plantation, Florida 33325 (the "Wallick Residence") at 7:00 p.m. on June 25, 2013.

6. Specifically, upon receipt of the Default Motion, WALLICK checked his calendar and confirmed that he was not at the Wallick Residence at 7:00 p.m. on June 25, 2013. Wallick Affidavit at ¶9.

7. As reflected on WALLICK's calendar, on Tuesday, June 25, 2013, at 5:30 p.m., WALLICK had dinner with several acquaintances at Chuck's Steakhouse located at 2428 E. Commercial Blvd, Fort Lauderdale, Florida. Wallick Affidavit at ¶10 and 12 and Exhibit "B."

8. From dinner, WALLICK drove to the Community Christian Association located at 5120 N. Federal Highway, Fort Lauderdale, Florida for his regular Men's Christian Bible study class which began at 6:30 p.m. Wallick Affidavit at ¶13.

9. As such, he was <u>not</u> at the Wallick Residence at the time set forth in the return of service.

10. Accordingly, the assertion in the return of service is false and WALLICK was not properly served. Consequently, this Court should vacate the default. *See, e.g. Grosheim v. Greenpoint Mortg. Funding, Inc.*, 819 So.2d 906 (Fla. 4<sup>th</sup> DCA 2002) (quashing service and vacating default is appropriate where there is a reasonable doubt as to the validity of service of process).

2

11. Moreover, it is well-established that a "judgment is void where the service of process is so defective that it amounts to no notice of the proceedings." See Shepheard v. Deutsche Bank Trust Co. Americas, 922 So.2d 340 (Fla. 5ht DCA 2006).

12. As such, this Court should quash the improper service of process and vacate the Clerk's Default.

WHEREFORE, Defendant, GREGG WALLICK, respectfully requests that this Court enter and Order quashing service of process and vacating the clerk's default, and grant such other and further relief as this Court deems just and proper.

## **CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that in accordance with the Supreme Court of Florida's Administrative Order No. AOSC13-49, a true and correct copy of the foregoing has been filed with the Florida Courts E-Filing Portal on this 16<sup>th</sup> day of September, 2014, and a copy of same will be sent by the E-Filing Portal via E-Mail to: Leonard K. Samuels, Esq., Isamuels@bergersingerman.com Berger Singerman, LLLP, 350 East Las Olas Boulevard, Suite 1000, Ft. Lauderdale, FL 33301; Thomas M. Messana, Esquire, tmessana@messana-law.com; and all counsel listed on the attached e-mail list.

DuBosar Navon, PLLC 1800 North Military Trail, Suite 470 Boca Raton, Florida 33431 Phone: (561) 544-8980/Fax: (561) 544-8988

By: /s/ Robert C. Sheres Howard D. DuBosar Florida Bar No. 729108 hdubosar@dubosarnavon.com kdoyle@dubosarnavon.com Robert C. Sheres Florida Bar No. 057227 rsheres@dubosarnavon.com tnovak@dubosarnaon.com

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Mariaelena Gayo-Guitian, Esq.	mguitian@gib-law.com
Barry P. Gruher, Esq.	bgruher@gjb-law.com
William G. Salim, Jr., Esq.	wsalim@mmsslaw.com
Domenica Frasca, Esq.	dfrasca@mayersohnlaw.com; service@mayersohnlaw.com
Joseph P. Klapholz, Esq.	iklap@klapholzpa.com; dml@klapholzpa.com;
Julian H. Kreeger, Esq.	juliankreeger@gmail.com
L Andrew S Riccio, Esq.	ena@assoulineberlowe.com; ah@assoulineberlowe.com
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Marc S Dobin, Esq.	service@dobinlaw.com; mdobin@dobinlaw.com;
Michael C Foster, Esq.	mfoster@dkdr.com; cmackey@dkdr.com; kdominguez@dkdr.com
Richard T. Woulfe, Esq.	pleadings.RTW@bunnellwoulfe.com; kmc@bunnellwoulfe.com
ouis Reinstein, Esq.	pleading@LJR@bunnellwoulfe.com
Peter Herman, Esq.	PGH@trippscott.com

P&S Associates et al v. Janet A. Hooker Charitable Trust, et al Case No.: 12-034121 (07) Defendant, Gregg Wallick's Motion to Quash Service of Process and Vacate Clerk's Default

Counsel	E-mail Address:
Robert J. Hunt, Esq.	bobhunt@huntgross.com; sharon@huntgross.com; eservice@huntgross.com
Steven D. Weber, Esq.	sweber@bergersingerman.com; <a href="https://webster@bergersingerman.com">webster@bergersingerman.com</a> ; <a href="https://webster@bergersingerman.com">drt@bergersingerman.com</a> ; <a href="https://webstergersingerman.com">drt@bergersingerman.com</a> ; <a href="https://webstergersingerman.com">https://webstergersingerman.com</a> ; <a href="https://webstergersingerman.com">drt@bergersingerman.com</a> ; <a href="https://webstergersingerman.com">drt@bergersingerman.com</a> ; <a href="https://webstergersingerman.com">drt@bergersingerman.com</a> ; <a href="https://webstergersingerman.com">drt@bergersingersingersingerman.com</a> ;

### 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; S&P ASSOCIATES, GENERAL PARTNERSHIP, a Florida limited partnership; Philip von Kahle as Conservator of P&S ASSOCIATES, GENERAL PARTNERSHIP, a Florida limited partnership; and S&P ASSOCIATES, GENERAL PARTNERSHIP, a Florida limited partnership,

Plaintiffs,

ν,

JANET A. HOOKER CHARITABLE TRUST, a charitable trust, et al.,

Defendants.

## PLAINTIFFS' MOTION FOR DEFAULT FINAL JUDGMENT AGAINST DEFENDANT, GREGG WALLICK

Plaintiffs, P & S Associates, General Partnership ("P&S"), S & P Associates, General Partnership ("S&P"), (collectively referred to as, the "Partnerships"), and Philip Von Kahle as Conservator on behalf of the Partnerships (the "Conservator", and collectively with the Partnerships, the "Plaintiffs"), by and through undersigned counsel and pursuant to Rule 1.500 of the Florida Rules of Civil Procedure, hereby move this Court for entry of a Default Final



5883321-1

Judgment against Defendant, Greg Wallick (the "Defendant"), for its failure to file any responsive pleading or paper in this action, or otherwise assert any defense to this action, and in support of the Motion, Plaintiffs state as follows:

1. On or about June 21, 2013, Defendant, Gregg Wallick was served with process in this action. A true and correct copy of the Affidavit of Service is attached hereto as Exhibit "A".

2. Defendant, despite being served with process, has failed to file or serve any responsive paper in this action within the twenty (20) days of service.

3. As a result, on or about July 11, 2014, the Clerk of this Court entered a Default against Gregg Wallick (the "Defendant"). A true and correct copy of the Clerk's Default is attached hereto as **Exhibit "B"**.

4. Accordingly, the allegations contained in the Complaint are deemed to be admitted by the Defendant.

5. Plaintiffs seek a final default judgment against Defendant, Gregg Wallick for damages in the amount of \$84,974.47, plus prejudgment interest in the amount of \$6,237.84.

6. In support of this Motion, an Affidavit of Indebtedness attesting to how this final judgment sum was derived, signed by Philip J. Von Kahle, Conservator of P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P"), is attached hereto as Exhibit "C".

WHEREFORE, the Plaintiffs hereby respectfully request this Court enter a Final Judgment against Defendant, Gregg Wallick, in the amount of \$84,974.47, plus prejudgment

EBERGER SINGERMAN

<sup>350</sup> EAST LAS OLAS BLVD. | SUITE 1000 | FORT LAUDERDALE, FLORIDA 33301 t: 954-525-9900 | t: 954-523-2872 | WWW.BERGERSINGERMAN.COM

interest in the amount of \$6,237.84, and grant and all such other relief as the Court deems just and appropriate.

Respectfully Submitted,

#### BERGER SINGERMAN, LLP

Attorneys for Plaintiffs 350 East Las Olas Blvd, Suite 1000 Fort Lauderdale, FL 33301 Telephone: (954) 525-9900 Direct: (954) 712-5138 Facsimile: (954) 523-2872

By: <u>s/Leonard K, Samuels</u> Leonard K, Samuels Florida Bar No. 501610 Etan Mark Florida Bar No. 720852 Steven D, Weber Florida Bar No. 47543

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### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via Electronic Mail upon counsel identified below registered to receive electronic notifications this 25th day of August, 2014 upon the following:

Counsel	E-mail Address:
Ana Hesny, Esq.	ah@assoulineberlowe.com; ena@assoulineberlowe.com
Eric N. Assouline, Esq.	ena@assoulineberlowe.com; ah@assoulineberlowe.com
Annette M. Urena, Esq.	aurena@dkdr.com; cmackey@dkdr.com; service-amu@dkdr.com
Daniel W. Matlow, Esq.	dmatlow@danmatlow.com; assistant@danmatlow.com
Debra D. Klingsberg, Esq.	dklingsberg@huntgross.com
Joanne Wilcomes, Esq.	jwilcomes@mccarter.com
Etan Mark, Esq.	emark@bergersingerman.com; drt@bergersingerman.com; lyun@bergersingerman.com
Ryon M. Mccabe, Esq.	rmccabe@mccaberabin.com; e-filing@mccaberabin.com; beth@mccaberabin.com
Evan H. Frederick, Esq.	efrederick@mccaberabin.com; e-filing@mccaberabin.com
B. Lieberman, Esq.	blieberman@messana-law.com
Jonathan Thomas Lieber, Esq.	jlieber@dobinlaw.com
Mariaelena Gayo-Guitian, Esq.	mguitian@gjb-law.com
Barry P. Gruher, Esq.	bgruher@gjb-law.com
William G. Salim, Jr., Esq.	wsalim@mmsslaw.com
Domenica Frasca, Esq.	dfrasca@mayersohnlaw.com; service@mayersohnlaw.com
oseph P. Klapholz, Esq.	iklap@klapholzpa.com; dml@klapholzpa.com;
ulian H. Kreeger, Esq.	juliankreeger@gmail.com
Andrew S Riccio, Esq.	ena@assoulineberlowe.com: ah@assoulineberlowe.com
eonard K. Samuels, Esq.	lsamuels@bergersingerman.com; vleon@bergersingerman.com; drt@bergersingerman.com

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,

Counsel	E-mail Address:
Mare S Dobin, Esq.	service@dobinlaw.com; mdobin@dobinlaw.com;
Michael C Foster, Esq.	mfoster@dkdr.com; cmackey@dkdr.com; kdominguez@dkdr.com
Richard T. Woulfe, Esq.	pleadings.RTW@bunnellwoulfe.com; kmc@bunnellwoulfe.com
Louis Reinstein, Esq.	pleading@LJR@bunnellwoulfe.com
Peter Herman, Esq.	PGH@trippscatt.com
Robert J. Hunt, Esq.	bobhunt@huntgross.com; sharon@huntgross.com; cservice@huntgross.com
Steven D. Weber, Esq.	sweber@bergersingerman.com; lwebster@bergersingerman.com; drt@bergersingerman.com
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Thomas L. Abrams, Esq.	tabrams@tabramslaw.com; fcolumbo@tabramslaw.com
Thomas M. Messana, Esq.	tmessana@messana-law.com; tmessana@bellsouth.net; mwslawfirm@gmail.com
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Nadira Joseph	njoseph@moecker.com
D. Patricia Wallace, Esq.	pwallace@mathewsllp.com; assistant@wjmlawfirm.com
Walter J. Mathews, Esq.	wjm@mathewsllp.com
Brian S. Pantaleo, Esq.	bpantaleo@edwardswild.com

By: <u>s/Leonard K. Samuels</u> Leonard K. Samuels

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# EXHIBIT A

1

#### VERIFIED RETURN OF SERVICE

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

CASE NO. 12-34/2/(07) Complex Litigation Unit

Margaret Smith, et al.,

Plaintiff,

ν.

Janet A Hooker Charitable Trust, et al.,

Defendants.

At the Request of: Michael Moecker & Associates, Inc.

Received by Rogue Intelligence Services Corp. on the 21th day of June, 2013.

To be served on: Gregg Wallick 11901 SW 3rd St. Plantation, Florida 33325.

I, Harrison W. Barrus, do hereby affirm that on the <u>25<sup>th</sup></u> day of <u>June</u>, <u>2013</u> at <u>7:00 PM</u>, I executed service by delivering a true copy of this Alias Summons, and Complaint in accordance with state statutes in the manner marked below:

(X) INDIVIDUAL SERVICE: service on the within named person.
() SUBSTITUTE SERVICE: by serving .
() POSTED SERVICE: after attempting service on \_\_\_\_\_\_ at \_\_\_\_\_ and \_\_\_\_\_ at \_\_\_\_\_ at \_\_\_\_\_\_
service was posted in a conspicuous place on the property described herein.
() NON SERVICE: see comments below.

Comments:

I certify that I am over the age of 18 and have no interest in the above action and that I am a Special process server in good standing in the judicial circuit in which the process was served. Notary not required pursuant to Florida Statute § 92.525.

Harrison W./Barrus

Certified Process Server # 1322 Affidavit Date:06/28/2013

а для Блейон с 8, то со Сляр, «11098 5.14 214 с 81, билой с 34, 34722 «1484»-114-4449 Ангонали Слявика «1402248020» Адалия № 643 бинбар Напазара Милозара студения студения стородор Алгонад 1844 Дулица ав Саланд

( amont thighway associate

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

Case No. 12-34121(07) **Complex Litigation Unit** 

MARGARET SMITH, et al.,

Plaintiffs,

VS,

JANET A. HOOKER CHARITABLE TRUST, et al.,

Defendants.

7:00pun 6-25-13

#### ALIAS SUMMONS

The State of Florida: To Each Sheriff of the State:

YOU ARE HEREBY COMMANDED to serve this Summons and a copy of the Complaint in this action on Defendant:

> **Gregg Wallick** 11901 SW 3rd St. Plantation, FL 33325

Each defendant is required to serve written defenses to the Complaint on the attorneys for Philip J. Von Kahle, the Conservator of the P & S Associates, General Partnership and the S & P Associates, General Partnership ("Plaintiff's Attorney"), to wit, whose address is:

> Thomas M. Messana, Esq. Messana, P.A. 401 East Las Olas Boulevard, Suite 1400 Fort Lauderdale, Florida 33301 954-712-7400

within twenty (20) days after service of this summons on that defendant, exclusive of the day of service, and to file the original of the defenses with the Clerk of this Court either before service of the Plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition,

WITNESS my hand and the seal Mayid Coar20 of April, 2013. HOWARD Clerk/of the C Mit Con By: Dep ARD COU

#### **IMPORTANT**

A lawsuit has been filed against you. You have twenty (20) calendar days after this Summons is served on you to file a written response to the attached Complaint with the Clerk of this Court. A phone call will not protect you. Your written response, including the case number given above and the names of the parties, must be filed if you want the court to hear your side of the case. If you do not file your response on time, you may lose the case, and your wages, money, and property may thereafter be taken without further warning from the are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

If you choose to file a written response yourself, at the same time you file your written response to the court you must also mail or take a copy of your written response to the "plaintiff's attorney" named herein.

#### **IMPORTANTE**

Usted ha sido demandado legalmente. Tiene 20 Dias, contados a partir del recibo de esta notificacion, para contestar la demanda adjunta, por escrito, y presentarla ante este tribunal. Una llamada telefonica no lo protegera. Si usted desea que el tribunal considere su defensa, debe presentar su respuesta por escrito, incluyendo el numero del caso y los nombres de las partes interesadas. Si usted no contesta la demanda a tiempo, pudiese perder el caso y podria ser despojado de sus ingresos y propiedades, o privado de sus derechos, sin previo aviso del tribunal. Existen otros requisitos legales. Si lo desea, puede consultar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a una de las oficinas de asistencia legal que aparecen en la guia telefonica.

Si desea responder a la demanda por su cuenta, al mismo tiempo en que presenta su respuesta ante el tribunal, debera usted enviar por correo o entregar una copia de su respuesta a la personal denominada abajo como "Plaintiff/Plaintiff's Attorney" (Demandante o Abogado del Demandante).

#### **IMPORTANT**

Des poursuites judiciares ont ete entreprises contre vous. Vous avez 20 jours consecutifs a partir de la date de l'assignation de cette citation pour deposer une reponse cerite a la plainte cijointe aupres de ce tribunal. Un simple coup de telephone est insuffisant pour vous proteger. Vous etes oblige de deposer votre reponse ecrite, avec mention du numero de dossier ci-dessus et du nom des parties nommees ici, si vous souhaitez que le tribunal entende votre cause. Si vous ne deposez pas votre reponse ecrite dans le relai requis, vous risquez de perdre la cause ainsi que votre salaire, votre argent, et vos biens peuvent etre saisis par la suite, sans aucun preavis ulterieur du tribunal. Il y a d'autre obligations juridiques et vous pouvez requerir les services immediats d'un avocat. Si vous ne connaissez pas d'avocat, vous pourriez telephoner a un service de reference d'avocats ou a un bureau d'assistance juridique (figurant a l'annuaire de telephones).

Si vous choisissez de deposer vous-meme une reponse ecrite, il vous faudra egalement, en meme temps que cette formalite, faire parvenir ou expedier une copie de votre reponse ecrite au "Plaintiff/Plaintiff's Attorney" (Plaignant ou a son avocat) nomme ci-dessous.

# EXHIBIT B

Filing # 15829055 Electronically Filed 07/11/2014 03:52:24 PM

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

CASE NO.: 12-034121 (07)

Ρ &S ASSOCIATES, GENERAL PARTNERSHIP, Florida а limited partnership; алd S&P ASSOCIATES, GENERAL PARTNERSHIP, a Florida limited partnership, et al.,

Plaintiffs,

٧.

JANET A. HOOKER CHARITABLE TRUST, a charitable trust, et al.,

Defendants.

#### DEFAULT

A default is entered in this action against the defendant GREGG WALLICK, as named in the foregoing motion for failure to serve or file any paper as required by law.

Dated on 7-11- , 2014

HOWARD C. FORM As Clerk of the Court

- . .

# EXHIBIT C

#### 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,

٧.

JANET A. HOOKER CHARITABLE TRUST, a charitable trust, *et al.*,

Defendants.

#### AFFIDAVIT OF INDEBTEDNESS IN SUPPORT OF MOTION FOR FINAL DEFAULT JUDGMENT

STATE OF FLORIDA ) ) SS COUNTY OF BROWARD )

BEFORE ME, the undersigned authority, personally appeared Philip J. Von Kahle, who deposes and states:

1. I, Philip J. Von Kahle, am above the legal age of majority and otherwise competent to make this affidavit. I make this affidavit of my own personal knowledge, except where otherwise indicated, and have personal knowledge of the facts contained in this Affidavit because I am the Conservator of P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P").

2. I have examined the books, records and documents kept by P&S and S&P concerning the investments made by Defendant, Gregg Wallick (the "Defendant"). These

records are now maintained in the ordinary course of the business of S&P and P&S, and I am responsible for their maintenance or oversee their maintenance. As such, I am intimately familiar with the amount of money that Gregg Wallick invested in S&P and how much money Gregg Wallick received from S&P in connection with her investment in S&P.

3. Pursuant to the allegations in the Complaint(s), Defendant, Gregg Wallick, personally invested \$1,030,375.00 in S&P and personally received \$1,115,349.47. Gregg Wallick received \$84,974.47 in excess of his capital contribution with S&P. Accordingly, Gregg Wallick is obligated to pay \$84,974.47 to S&P.

4. To be as conservative as possible, I have calculated prejudgment interest from the date of my appointment through August 1, 2014, at a rate of 4.75% per annum (daily rate of .0130137%). The amount of prejudgment interest due and owed totals \$6,237.84. Accordingly, Gregg Wallick owes a total of \$91,212.31 to S&P, inclusive of interest.

S&P is therefore entitled to a final default judgment in the amount of \$91,212.31.
 FURTHER AFFIANT SAYETH NAUGHT

Philip J. Von Kahle

## STATE OF FLORIDA } COUNTY OF BROWARD }

BEFORE ME, the undersigned authority, on <u>H</u> of August 2014, personally appeared [<u>*PHIUP vew KAHLE*</u>] who states after being sworn that the foregoing is true based upon his personal knowledge, information and belief. He is <u>personally known to me</u> or has produced

as identification. du Notary Public, State of Florid NADIRA JOSEPH Commission No. Notary Public - State of Florida My Conim. Expires Dec 11, 2017 My Commission expires: Commission # FF 075791 Bonded Through National Notary Assn

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

CASE NO.: 12-034121 (07)

P&S ASSOCIATES, GENERAL PARTNERSHIP, A Florida limited partnership; S&P ASSOCIATES, GENERAL PARNTERSHIP, a Florida limited partnership; Philip von Kahle as Conservator of a Florida limited partnership; and S&P ASSOCIATES, GENERAL PARTNERSHIP, a Florida limited partnership

Plaintiffs,

v.

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

Defendant.

\_\_\_\_\_/

## AFFIDAVIT OF GREGG WALLICK IN SUPPORT OF MOTION TO QUASH SERVICE OF PROCESS AND VACATE CLERK'S DEFAULT

This day personally appeared before me, the undersigned officer, duly authorized to administer oaths and take acknowledgements, GREGG WALLICK, who, after being by me duly sworn, deposes and says:

1. I am an individual over the age of 18 and attest, under penalty of perjury, that the statements set forth herein are true and correct.

2. On September 4, 2014, I was made aware for the first time that I am a defendant in this action. Specifically, on September 4, 2014, I was served with Plaintiff's Motion for Default Final Judgment Against Defendant, Gregg Wallick (the "Default Motion"). A true and correct copy of the Default Motion is attached hereto as **Exhibit "A."** 

3. The Default Motion is the first document that I ever received in this action.

4. I was <u>never</u> served with summons or Complaint in this action.



5. I am a businessman who is familiar with the litigation process and had I been served with the summons and complaint I would have immediately forwarded the same to my counsel to ensure that a response was timely filed.

6. In fact, that is exactly what I did when I received a copy of the Default Motion.

7. Prior to forwarding the Default Motion to my counsel on September 5, 2013, I reviewed same and ascertained that a Clerk's Default was entered against me based upon a document entitled "Verified Return of Service."

8. The "Verified Return of Service" which was attached to the Default Motion states that I was personally served with the summons and complaint at 7:00 p.m. on June 25, 2013 at my residence located at 11901 SW 3<sup>rd</sup> St., Plantation, Florida 33325. That assertion is false.

9. Upon review of this document, I checked my calendar to ascertain where I was at 7:00 p.m. on June 25, 2013. A true and correct copy of a printout of my calendar on this date is attached hereto as **Exhibit "B."** 

10. As reflected in my calendar I was at a "Bible Study dinner at Chucks" beginning at 5:30 p.m.

11. Specifically, almost every Tuesday evening that I am in town I attend a Men's Christian Bible study class at the Community Christian Association located at 5120 N. Federal Highway, Fort Lauderdale, Florida beginning at 6:30 p.m.

12. As reflected on my calendar, on Tuesday, June 25, 2013, at 5:30 p.m, I had dinner with several acquaintances at Chuck's Steakhouse located at 2428 E. Commercial Blvd, Fort Lauderdale, Florida.

After dinner, I went to Bible study class at the Community Christian Association
 located at 5120 N. Federal Highway, Fort Lauderdale, Florida

14. Bible study class runs from 7:00 p.m. to 8:00 p.m. and I generally do not return home until approximately 8:45 p.m. Therefore, it would have been impossible for me to have been at my residence to be served at 7:00 p.m. on June 25, 2013 to have accepted service of process.

FURTHER AFFIANT SAYETH NOT.

GREGG WALLICK

STATE OF ) ss: COUNTY OF

SWORN TO AND SUBSCRIBED before me this //2 day of September, 2014, by GREGG WALLICK, who is personally known to me, or who produced ML difficult as identification.

NOTARY PUBLIC, STATE OF FLORIDA

Print Name: Cherie Le TEUNEMy Commission Expires: 6/9/17

#### 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; S&P ASSOCIATES, GENERAL PARTNERSHIP, a Florida limited partnership; Philip von Kahle as Conservator of P&S ASSOCIATES, GENERAL PARTNERSHIP, a Florida limited partnership; and S&P ASSOCIATES, GENERAL PARTNERSHIP, a Florida limited partnership,

Plaintiffs,

v,

JANET A. HOOKER CHARITABLE TRUST, a charitable trust, et al.,

Defendants.

#### PLAINTIFFS' MOTION FOR DEFAULT FINAL JUDGMENT AGAINST DEFENDANT, GREGG WALLICK

Plaintiffs, P & S Associates, General Partnership ("P&S"), S & P Associates, General Partnership ("S&P"), (collectively referred to as, the "Partnerships"), and Philip Von Kahle as Conservator on behalf of the Partnerships (the "Conservator", and collectively with the Partnerships, the "Plaintiffs"), by and through undersigned counsel and pursuant to Rule 1.500 of the Florida Rules of Civil Procedure, hereby move this Court for entry of a Default Final



5883321-1

¢.

Judgment against Defendant, Greg Wallick (the "Defendant"), for its failure to file any responsive pleading or paper in this action, or otherwise assert any defense to this action, and in support of the Motion, Plaintiffs state as follows:

1. On or about June 21, 2013, Defendant, Gregg Wallick was served with process in this action. A true and correct copy of the Affidavit of Service is attached hereto as Exhibit "A".

2. Defendant, despite being served with process, has failed to file or serve any responsive paper in this action within the twenty (20) days of service.

3. As a result, on or about July 11, 2014, the Clerk of this Court entered a Default against Gregg Wallick (the "Defendant"). A true and correct copy of the Clerk's Default is attached hereto as **Exhibit "B"**.

4. Accordingly, the allegations contained in the Complaint are deemed to be admitted by the Defendant.

5. Plaintiffs seek a final default judgment against Defendant, Gregg Wallick for damages in the amount of \$84,974.47, plus prejudgment interest in the amount of \$6,237.84.

6. In support of this Motion, an Affidavit of Indebtedness attesting to how this final judgment sum was derived, signed by Philip J. Von Kahle, Conservator of P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P"), is attached hereto as Exhibit "C".

WHEREFORE, the Plaintiffs hereby respectfully request this Court enter a Final Judgment against Defendant, Gregg Wallick, in the amount of \$84,974.47, plus prejudgment

**EBERGER SINGERMAN** 

<sup>350</sup> EAST LAS OLAS BLVD. | SUITE 1000 | FORT LAUDERDALE, FLORIDA 33301 1: 954-525-9900 | 1: 954-523-2872 | WWW.BERGERSINGERMAN.COM

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interest in the amount of \$6,237.84, and grant and all such other relief as the Court deems just and appropriate.

Respectfully Submitted,

BERGER SINGERMAN, LLP

Attorneys for Plaintiffs 350 East Las Olas Blvd, Suite 1000 Fort Lauderdale, FL 33301 Telephone: (954) 525-9900 Direct: (954) 712-5138 Facsimile: (954) 523-2872

By: <u>s/Leonard K. Samuels</u> Leonard K. Samuels Florida Bar No. 501610 Etan Mark Florida Bar No. 720852 Steven D. Weber Florida Bar No. 47543

-BERGER SINGERMAN

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#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via Electronic Mail upon counsel identified below registered to receive electronic notifications this 25th day of August, 2014 upon the following:

Counsel	E-mail Address:
Ana Hesny, Esq.	ah@assoulineberlowe.com; ena@assoulineberlowe.com
Eric N. Assouline, Esq.	ena@assoulineberlowe.com: ah@assoulineberlowe.com
Annette M. Urena, Esq.	aurena@dkdr.com; cmackey@dkdr.com; service-amu@dkdr.com
Daniel W. Matlow, Esq.	dmatlow@danmatlow.com; assistant@danmatlow.com
Debra D. Klingsberg, Esq.	dklingsberg@huntgross.com
Joanne Wilcomes, Esq.	jwilcomes@mccarter.com
Etan Mark, Esq.	emark@bergersingerman.com; drt@bergersingerman.com; lyun@bergersingerman.com
Ryon M. Mccabe, Esq.	rmccabe@mccaberabin.com; e-filing@mccaberabin.com; beth@mccaberabin.com
Evan H. Frederick, Esq.	efrederick@mccaberabin.com; e-filing@mccaberabin.com
B. Lieberman, Esq.	blieberman@messana-law.com
Jonathan Thomas Lieber, Esq.	jlieber@dobinlaw.com
Mariaelena Gayo-Guitian, Esq.	mguitian@gjb-law.com
Barry P. Gruher, Esq.	bgruher@gjb-law.com
William G. Salim, Jr., Esq.	wsalim@mmsslaw.com
Domenica Frasca, Esq.	dfrasca@mayersohnlaw.com; service@mayersohnlaw.com
Joseph P. Klapholz, Esq.	jklap@klapholzpa.com; dml@klapholzpa.com;
Julian H. Kreeger, Esq.	juliankreeger@gmail.com
L Andrew S Riccio, Esq.	ena@assoulineberlowe.com; ah@assoulineberlowe.com
Leonard K. Samuels, Esq.	lsamuels@bergersingerman.com; vleon@bergersingerman.com; drt@bergersingerman.com

## -BERGER SINGERMAN

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Counsel	E-mail Address:
Marc S Dobin, Esq.	service@dobinlaw.com; mdobin@dobinlaw.com;
Michael C Foster, Esq.	mfoster@dkdr.com; cmackey@dkdr.com; kdominguez@dkdr.com
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By:	s/Leonard K. Samuels
5	Leonard K. Samuels

## -BERGER SINGERMAN

350 EAST LAS OLAS BLVD. | SUITE 1000 | FORT LAUDERDALE, FLORIDA 33301 *t:* 954-525-9900 | *t:* 954-523-2872 | WWW.BERGERSINGERMAN.COM

# <u>EXHIBIT</u> A

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## VERIFIED RETURN OF SERVICE

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

CASE NO. 12-34/21(07) Complex Litigation Unit

Margaret Smith, et al.,

Plaintiff,

ν.

Janet A Hooker Charitable Trust, et al.,

Defendants.

At the Request of: Michael Moecker & Associates, Inc.

Received by Rogue Intelligence Services Corp. on the 21th day of June, 2013.

To be served on: Gregg Wallick 11901 SW 3rd St. Plantation, Florida 33325.

I, Harrison W. Barrus, do hereby affirm that on the 25<sup>th</sup> day of <u>June</u>, 2013 at 7:00 PM, I executed service by delivering a true copy of this Alias Summons, and Complaint in accordance with state statutes in the manner marked below:

(X) INDIVIDUAL SERVICE: service on the within named person.
() SUBSTITUTE SERVICE: by serving.
() POSTED SERVICE: after attempting service on \_\_/ \_\_ at \_\_\_ and \_\_/ \_\_ at \_\_\_\_
service was posted in a conspicuous place on the property described herein.
() NON SERVICE: see comments below.

#### Comments:

I certify that I am over the age of 18 and have no interest in the above action and that I am a Special process server in good standing in the judicial circuit in which the process was served. Notary not required pursuant to Florida Statute § 92.525.

Harrison W./Barrus

Certified Process Server # 1322 Affidavit Date:06/28/2013

 B. San Diff Born & Services Comp. • 11000 NW 2414 St. Survise, 24, 202 62. • 105 Service 1:4400 Lines of 01 CL21000, 0. • 4 servey to 64 5 000 so.
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Takenal Highwy ASJOURA

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

Case No. 12-34121(07) Complex Litigation Unit

MARGARET SMITH, et al.,

Plaintiffs,

VS,

JANET A. HOOKER CHARITABLE TRUST, et al.,

Defendants.

7:00pun 6-25-13

#### ALIAS SUMMONS

The State of Florida: To Each Sheriff of the State:

YOU ARE HEREBY COMMANDED to serve this Summons and a copy of the Complaint in this action on Defendant:

#### Gregg Wallick 11901 SW 3rd St. Plantation, FL 33325

Each defendant is required to serve written defenses to the Complaint on the attorneys for Philip J. Von Kahle, the Conservator of the P & S Associates, General Partnership and the S & P Associates, General Partnership ("Plaintiff's Attorney"), to wit, whose address is:

> Thomas M. Messana, Esq. Messana, P.A. 401 East Las Olas Boulevard, Suite 1400 Fort Lauderdale, Florida 33301 954-712-7400

within twenty (20) days after service of this summons on that defendant, exclusive of the day of service, and to file the original of the defenses with the Clerk of this Court either before service of the Plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

WITNESS my hand and the seal of said Courter of Äpril, 2013. HOWARD Clerk of the Circuit Cor By: Doputy 12ARD COU

#### **IMPORTANT**

A lawsuit has been filed against you. You have twenty (20) calendar days after this Summons is served on you to file a written response to the attached Complaint with the Clerk of this Court. A phone call will not protect you. Your written response, including the case number given above and the names of the parties, must be filed if you want the court to hear your side of the case. If you do not file your response on time, you may lose the case, and your wages, money, and property may thereafter be taken without further warning from the are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

If you choose to file a written response yourself, at the same time you file your written response to the court you must also mail or take a copy of your written response to the "plaintiff's attorney" named herein.

#### **IMPORTANTE**

Usted ha sido demandado legalmente. Tiene 20 Dias, contados a partir del recibo de esta notificacion, para contestar la demanda adjunta, por escrito, y presentarla ante este tribunal. Una llamada telefonica no lo protegera. Si usted desea que el tribunal considere su defensa, debe presentar su respuesta por escrito, incluyendo el numero del caso y los nombres de las partes interesadas. Si usted no contesta la demanda a tiempo, pudiese perder el caso y podria ser despojado de sus ingresos y propiedades, o privado de sus derechos, sin previo aviso del tribunal. Existen otros requisitos legales. Si lo desea, puede consultar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a una de las oficinas de asistencia legal que aparecen en la guia telefonica.

Si desea responder a la demanda por su cuenta, al mismo tiempo en que presenta su respuesta ante el tribunal, debera usted enviar por correo o entregar una copia de su respuesta a la personal denominada abajo como "Plaintiff/Plaintiff's Attorney" (Demandante o Abogado del Demandante).

#### **IMPORTANT**

Des poursuites judiciares ont ete entreprises contre vous. Vous avez 20 jours consecutifs a partir de la date de l'assignation de cette citation pour deposer une reponse cerite a la plainte cijointe aupres de ce tribunal. Un simple coup de telephone est insuffisant pour vous proteger. Vous etes oblige de deposer votre reponse cerite, avec mention du numero de dossier ci-dessus et du nom des parties nommees ici, si vous souhaitez que le tribunal entende votre cause. Si vous ne deposez pas votre reponse ecrite dans le relai requis, vous risquez de perdre la cause ainsi que votre salaire, votre argent, et vos biens peuvent etre saisis par la suite, sans aucun preavis ulterieur du tribunal. Il y a d'autre obligations juridiques et vous pouvez requerir les services immediats d'un avocat. Si vous ne connaissez pas d'avocat, vous pourriez telephoner a un service de reference d'avocats ou a un bureau d'assistance juridique (figurant a l'annuaire de telephones).

Si vous choisissez de deposer vous-meme une reponse ecrite, il vous faudra egalement, en meme temps que cette formalite, faire parvenir ou expedier une copie de votre reponse ecrite au "Plaintiff/Plaintiff's Attorney" (Plaignant ou a son avocat) nomme ci-dessous.

# EXHIBIT B

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Filing # 15829055 Electronically Filed 07/11/2014 03:52:24 PM

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

CASE NO.: 12-034121 (07)

Ρ &S ASSOCIATES, GENERAL PARTNERSHIP. Florida limited а partnership; S&P and ASSOCIATES, GENERAL PARTNERSHIP, a Florida limited partnership, et al.,

Plaintiffs,

۷,

JANET A. HOOKER CHARITABLE TRUST, a charitable trust, *et al.*,

Defendants.

#### DEFAULT

A default is entered in this action against the defendant GREGG WALLICK, as named in the foregoing motion for failure to serve or file any paper as required by law.

Dated on <u>7-11-</u>, 2014

HOWARD C. FOR As Clerk of the Court

5157022-1

# EXHIBIT C

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#### 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,

ν.

JANET A. HOOKER CHARITABLE TRUST, a charitable trust, et al.,

Defendants.

#### AFFIDAVIT OF INDEBTEDNESS IN SUPPORT OF MOTION FOR FINAL DEFAULT JUDGMENT

STATE OF FLORIDA ) ) SS COUNTY OF BROWARD )

BEFORE ME, the undersigned authority, personally appeared Philip J. Von Kahle, who deposes and states:

1. I, Philip J. Von Kahle, am above the legal age of majority and otherwise competent to make this affidavit. I make this affidavit of my own personal knowledge, except where otherwise indicated, and have personal knowledge of the facts contained in this Affidavit because I am the Conservator of P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P").

2. I have examined the books, records and documents kept by P&S and S&P concerning the investments made by Defendant, Gregg Wallick (the "Defendant"). These

records are now maintained in the ordinary course of the business of S&P and P&S, and I am responsible for their maintenance or oversee their maintenance. As such, I am intimately familiar with the amount of money that Gregg Wallick invested in S&P and how much money Gregg Wallick received from S&P in connection with her investment in S&P.

3. Pursuant to the allegations in the Complaint(s), Defendant, Gregg Wallick, personally invested \$1,030,375.00 in S&P and personally received \$1,115,349.47. Gregg Wallick received \$84,974.47 in excess of his capital contribution with S&P. Accordingly, Gregg Wallick is obligated to pay \$84,974.47 to S&P.

4. To be as conservative as possible, I have calculated prejudgment interest from the date of my appointment through August 1, 2014, at a rate of 4.75% per annum (daily rate of .0130137%). The amount of prejudgment interest due and owed totals \$6,237.84. Accordingly, Gregg Wallick owes a total of \$91,212.31 to S&P, inclusive of interest.

5. S&P is therefore entitled to a final default judgment in the amount of \$91,212.31.

#### FURTHER AFFIANT SAYETH NAUGHT

Philip J. Von Kahle

# STATE OF FLORIDA COUNTY OF BROWARD

BEFORE ME, the undersigned authority, on *H* of August 2014, personally appeared [*PHILP vol KAHLE*] who states after being sworn that the foregoing is true based upon his personal knowledge, information and belief. He is <u>personally known to me</u> or has produced

as identification.

Notary Public, State of Florid NADIRA JOSEPH Notary Public - State of Florida Commission No. My Comm. Expires Dec 11, 2017 My Commission expires: Commission # FF 075791 Bonded Through National Notary Assn

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