

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

CASE NO.: 12-034121 (04)

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.

**PLAINTIFFS' FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS TO DEFENDANT
HERBERT IRWIG REVOCABLE TRUST**

Pursuant to Rule 1.350 of the Florida Rules of Civil Procedure, Plaintiffs, P&S Associates, General Partnership (“P&S”), S&P Associates, General Partnership (“S&P”) and Philip Von Kahle as Conservator on behalf of P&S and S&P (“Conservator”) (collectively and individually referred to as, the “Partnerships” or “Plaintiffs”), by and through their undersigned attorneys, request that Defendant Herbert Irwig Revocable Trust (“Defendant”), produce the following described documents and tangible things in accordance with Rule 1.350 and the definitions and instructions stated below, at the offices of Berger Singerman, 350 East Las Olas Blvd, Suite 1000, Fort Lauderdale, FL 33131, within 30 days of service of this Request.

DEFINITIONS AND INSTRUCTIONS

The following definitions shall apply to this Request:

A. "You", "Your", or "Defendant" as used herein means Defendant Herbert Irwig Revocable Trust and includes any and all agents, employees, servants, officers, directors, attorneys and any other person or entity acting or purporting to act on its behalf.

B. "P&S" as used herein means Plaintiff P&S Associates, General Partnership, and includes any and all agents, employees, servants, officers, directors, attorneys and any other person or entity acting or purporting to act on its behalf.

C. "S&P" as used herein means Plaintiff S&P Associates, General Partnership, and includes any and all agents, employees, servants, officers, directors, attorneys and any other person or entity acting or purporting to act on its behalf.

D. "Herbert Irwig" as used herein means Herbert Irwig, and includes any and all agents, employees, servants, officers, directors, attorneys and any other person or entity acting or purporting to act on his behalf.

E. "Person" as used herein means any natural person or any entity, including without limitation any individual, firm, corporation, company, joint venture, trust, tenancy, association, partnership, business, agency, department, bureau, board, commission, or any other form of public, private or legal entity. Any reference herein to any public or private company, partnership, association, or other entity include such entity's subsidiaries and affiliates, as well as the present and former directors, officers, employees, attorneys, agents and anyone acting on behalf of, at the direction of, or under the control of the entity, its subsidiaries or its affiliates.

F. "Documents" shall mean the original or copies of any tangible written, typed, printed or other form of recorded or graphic matter of every kind or description, however produced or reproduced, whether mechanically or electronically recorded, draft, final original, reproduction, signed or unsigned, regardless of whether approved, signed, sent, received, redrafted, or executed, and whether handwritten, typed, printed, photostated, duplicated, carbon or otherwise copied or produced in any other manner whatsoever. Without limiting the generality of the foregoing, "documents" shall include correspondence, letters, telegrams, telexes, mailgrams, memoranda, including inter-office and intra-office memoranda, memoranda for files, memoranda of telephone or other conversations, including meetings, invoices, reports, receipts and statements of account, ledgers, notes or notations, notes or memorandum attached to or to be read with any document, booklets, books, drawings, graphs, charts, photographs, phone records, electronic tapes, discs or other recordings, computer programs, printouts, data cards, studies, analysis and other data compilations from which information can be obtained. Copies of documents, which are not identical duplications of the originals or which contain additions to or deletions from the originals or copies of the originals if the originals are not available, shall be considered to be separate documents.

"Documents" shall also include all electronic data storage documents including but not limited to e-mails and any related attachments, electronic files or other data compilations which relate to the categories of documents as requested below. Your search for these electronically stored documents shall include all of your computer hard drives, floppy discs, compact discs, backup and archival tapes, removable media such as zip drives, password protected and encrypted files, databases, electronic calendars, personal digital assistants,

proprietary software and inactive or unused computer disc storage areas. "Communications" shall mean any oral or written statement, dialogue, colloquy, discussion or conversation and, also, means any transfer of thoughts or ideas between persons by means of documents and includes an transfer of data from one location to another by electronic or similar means.

G. "Related to" shall mean, directly or indirectly, refer to, reflect, mention, describe, pertain to, arise out of or in connection with or in any way legally, logically, or factually be connected with the matter discussed.

H. As used herein, the conjunctions "and" and "or" shall be interpreted in each instance as meaning "and/or" so as to encompass the broader of the two possible constructions, and shall not be interpreted disjunctively so as to exclude any information or documents otherwise within the scope of any request.

I. Any pronouns used herein shall include and be read and applied as to encompass the alternative forms of the pronoun, whether masculine, feminine, neuter, singular or plural, and shall not be interpreted so as to exclude any information or documents otherwise within the scope of any request.

J. Unless otherwise specified herein, the time frame for each request is from and including January 1, 1992 to the present.

K. If you contend that you are entitled to withhold any responsive document(s) on the basis of privilege or other grounds, for each and every such document specify:

- i. The type or nature of the document;
- ii. The general subject matter of the document;
- iii. The date of the document;
- iv. The author, addressee, and any other recipient(s) of the document; and
- v. The basis on which you contend you are entitled to withhold the document.

L. If you assert that any document sought by any request is protected against disclosure as the attorney's work product doctrine or by the attorney-client privilege, you shall provide the following information with respect to such document:

- a. the name and capacity of the person or persons who prepared the documents;
- b. the name and capacity of all addresses or recipients of the original or copies thereof;
- c. the date, if any, borne by the document;
- d. a brief description of its subject matter and physical size;
- e. the source of the factual information from which such document was prepared; and
- f. the nature of the privilege claimed.

M. You must produce all documents within your case, custody or control that are responsive to any of these requests. A document is within your care, custody or control if you have the right or ability to secure the document or a copy thereof from any other person having physical possession thereof.

N. If you at any time had possession, custody or control of a document called for under this request and if such document has been lost, destroyed, purged, or is not presently in your possession, custody or control, you shall describe the document, the date of its loss, destruction, purge, or separation from possession, custody or control and the circumstances surrounding its loss, destruction, purge, or separation from possession, custody or control.

O. All documents produced pursuant hereto are to be produced as they are kept in the usual course of business and shall be organized and labeled (without permanently marking the item produced) so as to correspond with the categories of each numbered request hereof.

P. When appropriate, the singular form of a word should be interpreted in the plural as may be necessary to bring within the scope hereof any documents which might otherwise be construed to be outside the scope hereof.

DOCUMENTS REQUESTED

1. All documents exchanged between Defendant and S&P; Michael D. Sullivan; Steven Jacob; Michael D. Sullivan & Associates, Inc., a Florida Corporation; Steven F. Jacob, CPA & Associates, Inc.; Frank Avellino; Michael Bienes; Kelco Foundation, Inc. a Florida Non Profit Corporation; and/or Vincent T. Kelly.

2. All documents related to communications between Defendant and S&P; Michael D. Sullivan; Steven Jacob; Michael D. Sullivan & Associates, Inc., a Florida Corporation; Steven F. Jacob, CPA & Associates, Inc.; Frank Avellino; Michael Bienes; Kelco Foundation, Inc. a Florida Non Profit Corporation; and/or Vincent T. Kelly.

3. All documents exchanged between Herbert Irwig and S&P; Michael D. Sullivan; Steven Jacob; Michael D. Sullivan & Associates, Inc., a Florida Corporation; Steven F. Jacob, CPA & Associates, Inc.; Frank Avellino; Michael Bienes; Kelco Foundation, Inc. a Florida Non Profit Corporation; and/or Vincent T. Kelly.

4. All documents related to communications between Herbert Irwig and S&P; Michael D. Sullivan; Steven Jacob; Michael D. Sullivan & Associates, Inc., a Florida Corporation; Steven F. Jacob, CPA & Associates, Inc.; Frank Avellino; Michael Bienes; Kelco Foundation, Inc. a Florida Non Profit Corporation; and/or Vincent T. Kelly.

5. All documents that refer to or reflect the transactions and/or events alleged in the Amended Complaint in this action.

6. All documents that reflect payments, distributions, and/or transfers of funds between S&P and Defendant. This request includes without limitation all documents that reflect payments, distributions, and/or transfers of funds made on behalf of S&P.

7. All documents that reflect payments, distributions, and/or transfers of funds between S&P and Herbert Irwig. This request includes without limitation all documents that reflect payments, distributions, and/or transfers of funds made on behalf of S&P.

8. All documents that reflect any relationship between Defendant and Herbert Irwig.

9. All documents that reflect any payments and/or transfers of funds between Defendant and Herbert Irwig.

10. All documents that reflect any transfer of right, title, and/or ownership interest to any property between Defendant and Herbert Irwig.

11. All documents that support the allegation that Defendant “did not exist until December 2004” as is alleged in Defendant Herbert Irwig Revocable Trust’s Motion to Dismiss Plaintiffs’ Amended Complaint or in the Alternative, Motion for More Definite Statement.

12. All documents that reflect any relationship between Defendant and S&P.

13. All documents that reflect any relationship between Herbert Irwig and S&P.

14. All documents that support the assertion that “Herbert Irwig dissociated from the Partnership in 2006” as is alleged in Defendant Herbert Irwig Revocable Trust’s Motion to Dismiss Plaintiffs’ Amended Complaint or in the Alternative, Motion for More Definite Statement.

15. All documents that support the assertion that “Irwig Trust is not presently a partner in the Partnership as the partnership interest was bought our years ago” as is alleged in Defendant Herbert Irwig Revocable Trust’s Motion to Dismiss Plaintiffs’ Amended Complaint or in the Alternative, Motion for More Definite Statement.

16. All documents related to distributions, payments, and/or transfers of funds that were received by any partner of S&P.

17. All documents related to any investment advice or accounting advice Defendant and/or Herbert Irwig received in relation to S&P.

Respectfully submitted,

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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 this 10th day of December, 2013, upon the following:

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