

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO. 12-24051 (07)
COMPLEX LITIGATION UNIT

MATTHEW CARONE, as Trustee for the Carone
Marital Trust #2 UTD 1/26/00, Carone Gallery, Inc.
Pension Trust, Carone Family Trust, Carone Marital
Trust #1 UTD 1/26/00 and Matthew D. Carone
Revocable Trust, JAMES JORDAN, as Trustee for
the James A. Jordan Living Trust, ELAINE ZIFFER,
an individual, and FESTUS AND HELEN STACY
FOUNDATION, INC., a Florida Corporation,

Plaintiffs,

v.

MICHAEL D. SULLIVAN, individually,

Defendant.

NOTICE OF INTENT TO SERVE DOCUMENT
SUBPOENA UPON FRESH START TAX, LLC

Philip J. Von Kahle (the “Conservator”), as Conservator for P&S, General Partnership and S&P, General Partnership (together, the “Partnerships”), by and through his undersigned counsel, hereby gives notice pursuant to Rule 1.351 of the Florida Rules of Civil Procedure of his intent to serve a document subpoena upon Fresh Start Tax, LLC in the form attached hereto as **Exhibit “1”**.

Any party desiring to object to the issuance of the attached Subpoena shall do so within 15 days of the service of this notice, in writing, and serve same upon the undersigned counsel.

Respectfully submitted this 26th day of April, 2013.

MESSANA, P.A.
Attorneys for the Conservator
401 East Las Olas Boulevard, Suite 1400
Fort Lauderdale, FL 33303
Telephone: (954) 712-7400
Facsimile: (954) 712-7401
e-mail: tmessana@messana-law.com
e-mail: blieberman@messana-law.com

By: /s/ Thomas M. Messana
Thomas M. Messana
Florida Bar No. 991422
Brett D. Lieberman
Florida Bar No. 69583

EXHIBIT “1”

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FOUNDATION, INC., a Florida Corporation,

Plaintiffs,

v.

MICHAEL D. SULLIVAN, individually,

Defendant.

SUBPOENA FOR RECORDS PRODUCTION

THE STATE OF FLORIDA:

TO: **Fresh Start Tax, LLC, 3696 North Federal Highway, Suite 301, Fort Lauderdale,
Florida 33308**

YOU ARE COMMANDED to produce for inspection and copying those Documents (as defined in Exhibit "A") listed on Exhibit A hereto at the offices of **Messana, P.A., 401 East Las Olas Boulevard, Suite 1400, Fort Lauderdale, Florida 33301**, on or before **May 14, 2013**. You shall not be required to surrender the original Documents, files or things. The Documents, or files may be sent by U.S. Mail or other delivery method to arrive at the offices of Messana, P.A. on or before **May 14, 2013**. The Documents may be produced to the Conservator by authorizing the Conservator, and his agents, to copy and clone all electronic storage devices and other Documents at Fresh Start Tax, LLC's place of business on or before **May 14, 2013**.

If you fail to produce the Documents, you may be in contempt of court.

You are subpoenaed to produce the Documents by the following attorney, and unless excused from this subpoena by this attorney or the court, you shall respond to this subpoena as directed.

You have the right to object to this production under Rule 1.351 of the Florida Rules of Civil Procedure.

DATED on April 26, 2013.

Thomas M. Messana, Esq.
Florida Bar No. 991422

For the Court

Messana, P.A.
Attorneys for Conservator
401 East Las Olas Boulevard, Suite 1400
Fort Lauderdale, FL 33301
Telephone: (954) 712-7400
e-mail: tmessana@messana-law.com

If you are a person with a disability who needs any accommodation in order to participate in this deposition, you may request such assistance by contacting Elizabeth Mair, 401 East Las Olas Boulevard, Suite 1400, Fort Lauderdale, Florida 33301, telephone number (954) 712-7400 within two working days of your receipt of this subpoena; if you are hearing or voice impaired, call 711.

EXHIBIT A TO SUBPOENA FOR RECORDS PRODUCTION

PRODUCTION REQUESTS

The Deponent shall produce to the Conservator's counsel for inspection and copying all of the Documents and things identified below that are in the Deponent's custody, possession, and control. The Deponent should consult the Definitions and Instructions set forth later in this exhibit when responding to these requests.

1. Any and all Documents reflecting or relating to, in any way, the business operations of the Partnerships at any time.

2. Any and all Documents reflecting or relating, in any way, to the relationship between you and the Partnerships at any time.

3. Any and all Documents reflecting or relating, in any way, to transactions of any kind between you and the Partnerships at any time.

4. Any and all Documents reflecting your interest in the Partnerships at all times.

5. Any and all Documents reflecting your members, principals, interest holders, and managers interest in the Partnerships at all times.

6. Any and all Documents identifying your members, principals, interest holders and managers for all times in which you or any of the aforementioned individuals or entities had any interest in or relationship with the Partnerships.

7. Any and all Documents reflecting any and all correspondences between or amongst you and any of your members, principals, interest holders, and managers, regarding or related, in any way, to the Partnerships.

8. Any and all Documents reflecting or relating to the financial condition of the Partnerships for all time. Such Documents include, but are not limited to, financial statements, tax returns, accounting records, bank account records, checking account records, savings account records, signature cards, bank statements, cancelled checks, debit and credit memos, deposit slips, transcripts of savings accounts, records of transfer of funds by wire or collection, certificates of deposit, investment account records, custodian account records, applications for purchase of manager's checks, cashier's checks and/or treasurer's checks, together with the checks that were purchased, all other Documents necessary to show and identify items credited to and drawn against each account, all correspondence or memoranda relating to each account, and Currency Transaction Reports.

9. Any and all attachments or supporting Documents relating to the financial condition for the Partnerships all time, including, but not limited to, copies of Federal and State tax returns, financial statements, revenue and expense summaries, sales projections, creditor reports and ratings, schedules of assets and liabilities along with applicable bank verifications, and officers notes, etc.

10. Any and all Documents related to any and all bank accounts, or any other accounts, of the Partnerships.

11. Any and all Documents sufficient to show all of your Document retention and/or destruction policy(ies), in effect for all time.

12. Any and all records required to be maintained by or filed with any federal, state, or local governmental entity with regard to the Partnerships.

DEFINITIONS

A. "Document" means any written or graphic matter or other means of preserving thought or expression, and all tangible things from which information can be processed or transcribed, including the originals and all non-identical copies, whether different from the original by reasons of any notation made on such copy or otherwise, including, but not limited to, correspondence, email, memoranda, notes, messages, letters, telegrams, teletype, telefax, bulletins or other communications, circulars, policies, forms, pamphlets, notices, statements, journals, postcards, memoranda or notes of intraoffice and interoffice telephone calls, diaries, manuals, calendars, desk pads, scrapbooks, notebooks, chronological data, minutes, books, reports, magazines, booklets, brochures, instructions, charts, ledgers, invoices, purchase orders, statements of account, credit and debit memoranda, loan agreements, bills, installment contracts, mortgages, deeds of trust, security agreements, certificates of title, financing statements, instruments, expense accounts, work sheets, receipts, returns, computer printouts, prospectuses, financial statements, schedules, worksheets, affidavits, contracts, agreements, promissory notes, partnership agreements, articles of incorporation, catalogue price lists, canceled checks, deposit slips, bank statements, bank books, receipt and disbursement journals, tax returns, check stubs, credit card receipts, income statements, profit and loss statements, drafts, certificates, tabulations, questionnaires, tables, sketches, tax reports, working papers, computer data (including information or programs stored in a computer, whether or not ever printed out or displayed), resumes, address books, appointment books or telephone logs, wire transfer receipts and confirmations, transcripts, statistics, surveys, magazine or newspaper articles, releases, deposition transcripts, pleadings, orders, appraisals, estimates, valuations, opinions, studies, analyses, summaries (and any and all drafts, alterations and modifications, changes, and amendments of any of the foregoing), graphics or oral records or representations of any kind, including without limitation, blueprints, photographs, negatives, charts, graphs, maps, microfiche, microfilm, videotape, recordings, motion pictures, speeches, and electronic, mechanical, electric, or chemical recordings or representations of any kind (including without limitation, tapes, cassettes, disks, recordings), as well as any medium of expressions, fixed and in tangible

form. **Your search for these electronically stored documents shall include all of your computer hard drives, floppy discs, cloud storage, compact discs, backup and archival tapes, removable media such as zip drives, password protected and encrypted files, databases, electronic calendars, personal digital assistants, mobile devices, smartphones, tablets, SMS or MMS text messages, cellular telephone based text communications, Blackberry/Research in Motion “PIN” messages, any text based messages transmitted through a proprietary or public “chat” service (e.g., Google Chat, ICQ Chat, AOL Instant Messenger, MSN Messenger, etc.), proprietary software and inactive or unused computer disc storage areas.** All electronically stored information produced shall be produced in its native format, and all requests expressly include requests for all metadata associated with the files to be produced. All electronically stored information shall include, without limitation, writings, drawings, graphs, charts, photographs, documents, sound recordings, images, and other data or data compilations which are stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form as defined in Rules 1.280 of the Florida Rules of Civil Procedure and §90.951 of the Florida Evidence Code. 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.

- B. “Communication” means any oral or written statement, dialogue, colloquy, discussion, conversation or agreement and, also, means any transfer of thoughts or ideas between persons (as defined herein) by means of documents and includes any transfer of data from one location to another by electronic or similar means, and shall include any private or public message or statement transmitted through any social network or media.
- C. “Any and all documents” means every document or group of documents or communications as above defined known to you, and every such document or communication which can be located or discovered by reasonably diligent effort.
- D. “You” and “your” means and refers to each person and entity to whom these requests are directed and any employee, agent, attorney, any other person acting for, or on behalf of, or under the authority or control of such person or entity, or others who are in possession of or who may have obtained information for or on behalf of such person or entity. It also means and refers to any legal entity as to which such person or entity has served, or does serve, as an officer, director, member, manager, partner, direct owner, or indirect owner.
- E. As used herein, the singular and masculine form of nouns and pronouns shall embrace, and be read and applied as, the plural or feminine or neuter, as circumstances may make appropriate.

- F. "And" as well as "or" shall be construed either disjunctively or conjunctively, as necessary to bring within the scope of this request any documents which might otherwise be construed to be outside of its scope.
- G. "Relate to" including its various forms such as "relating to," shall mean: consist of, refer to, reflect, or be in any way logically or factually connected with the matter discussed.
- H. "Including" is used in the sense of specification and is not to be construed as a word of limitation.
- I. "Partnerships" means S&P Associates, General Partnership and P&S Associates, General Partnership or either of them.
- J. As used herein, "identify" or "identification" means to set forth:
 - a. When used with reference to a person:
 - i. Full name;
 - ii. Present or last known business address; and if an individual, his present or last known address and telephone number;
 - b. When used with reference to a document:
 - i. The date the document bears, and if not, under the date it was written;
 - ii. Name and address of each person who wrote it or participated in the writing of it;
 - iii. The name and address of each person to whom it was addressed and each person to whom a copy was identified as being directed;
 - iv. The name and address of each person who received a copy of the document;
 - v. A description of the document; for instance, a letter, memorandum, etc.;
 - vi. The present location or custodian or if unknown, its last known location or custodian;
 - vii. The present location or custodian of each known copy, or if unknown, its last known location or custodian;
 - viii. If any document is no longer in your possession, or subject to your control, state what disposition was made of it, the reason for such disposition, and the date thereof.
 - c. When used with an oral communication:
 - i. The persons participating in such oral communication;
 - ii. The date, number (telephone) and place at which each person who participated in or heard the oral communication was located;
 - iii. A description of the circumstances surrounding the communication; for instance, meeting, speech, or conversation;
 - iv. The name of each person who was present other than the participants; and
 - v. The substance of the oral communication.

INSTRUCTIONS

- K. All categories of documents to be produced and definitions herein are to be construed broadly. If there is a question whether a category includes a particular document or group of documents, it shall be resolved in favor of production.
- L. All documents are to be produced as they are kept in the usual course of business, including by copying the file folders from which responsive documents are taken. In addition, you are requested to number, organize, and label all responsive documents to correspond with the enumerated request and to identify the person from whose files each document is taken.
- M. You are requested to produce all documents not subject to objection that are known by, possessed or controlled by, or available to you or any of your attorneys, accountants, consultants, representatives, employees, officers, directors, partners or other agents. This duty is not to be limited or affected by the fact that the same document is available through another source.
- N. If any document is known to exist but cannot be produced, that document is to be specifically identified as precisely as possible and the reasons for the inability to produce that document stated.
- O. With respect to any document which is withheld on a claim of privilege, you shall provide a statement signed by its attorney setting forth as to each such document the following information:
 - (i) The name(s) of the sender(s) of the document.
 - (ii) The name(s) of the author(s) of the document.
 - (iii) The name of each person to whom the document or copies thereof were sent or provided.
 - (iv) The name of each person to whom the contents of such document, or any portion thereof, was disclosed.
 - (v) The job title of each individual identified in (a), (b), (c), and (d) above.
 - (vi) The date of the document.
 - (vii) A brief description of the nature and subject matter of the document.
 - (viii) The nature and legal basis of the privilege asserted with respect thereto.