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

MATTHEW CARONE, et al.,

Plaintiffs,

v.

MICHAEL D. SULLIVAN, individually,

Defendant.

_______________________________________/

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

CONSERVATOR'S RESPONSE TO OBJECTIONS TO THE CONSERVATOR'S LITIGATION STATUS REPORT

Philip J. von Kahle (the "Conservator"), as Conservator for P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P) (together, the "Partnerships"), by and through undersigned counsel, hereby files this *Conservator's Response to Objections to the Conservator's Litigation Status Report* (the "Response"), and in support thereof states as follows:

Summary of Argument

Two objections to the Litigation Report were timely filed:[1] one by Michael D. Sullivan and the other by Burt Moss. Mr. Sullivan is a defendant in a lawsuit brought by the Partnerships. Unsurprisingly, Sullivan objects to the lawsuit against him.

Mr. Moss' objection focuses on the fee arrangement of proposed counsel. The Conservator negotiated the fee arrangement with proposed counsel and believes it is in

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[1] On May 31, 2013 Steve Jacob filed his *Opposition Response and Incorporated Memorandum of Law to Conservator's Litigation Status Report Dated May 20, 2013* ("Jacob Opposition"). In response, the Conservator is filing a Motion to Strike Jacob's Opposition. Jacob is not a partner and lacks standing to file an objection. Jacob is not an attorney and cannot represent entities before this Court. Hence, the Jacob Opposition ought to be stricken and, as such, is not addressed herein except to point out that Jacob is a named defendant in the Insider Suit.

the best interests of the Partnerships. Upon information and belief, Mr. Moss' terms are unacceptable to proposed counsel. If replacement counsel were required, the prosecution of the litigation would be delayed. Moreover, there is significant risk that (net-net) it would cost the Partnerships more money than the fee arrangement negotiated by the Conservator. As such, the Conservator is in favor of the fee structure proposed in his motions to employ counsel.

Moreover, other issues weigh in favor of following the Conservator's recommendations in the Litigation Report. For example, certain theories of recovery may be hindered and success may require more time and effort if the Partnerships were required to overcome certain statute of limitations arguments that might be made if the Lawsuits are dismissed.

The Conservator believes that advancing the Lawsuits as recommended in the Litigation Report offers the Partnerships an opportunity to maximize their recoveries while minimizing their exposure to costs and expenses.

Brief Introduction

The Conservator was appointed pursuant to this Court's January 17, 2013 *Order Appointing Conservator* ("Conservator Order" or "C.O.).

Prior to his appointment, Margaret Smith, acting on behalf of and for the benefit of the Partnerships, commenced two separate lawsuits:

- *Margaret Smith as General Partner of P&S Associates, General Partnership and S&P Associates, General Partnership, Plaintiffs v. Janet A. Hooker Charitable Trust, e. al.,* Case No. 12-034121 (07) (the "Net Winner Suit"); and

- *Margaret Smith as General Partner of P&S Associates, General Partnership and S&P Associates, General Partnership, Plaintiffs v. Michael D. Sullivan, et al.,* Case No. 12-034123 (07) (the "Insiders Suit") (together, the "Lawsuits").

In the Insiders Suit, Michael Sullivan ("Sullivan") is accused of transferring millions of dollars of Partnership money to himself and other insiders. He is being sued for, among other things, Breach of Fiduciary Duty, Unjust Enrichment, and Money Had and Received. Based on his investigation to date, the Conservator has found documents evidencing certain allegations made against Sullivan in the Insiders Suit. *See* Litigation Report at 4.

In the Net Winner Suit, the Partnerships seek to recover funds from certain partners who received distributions in excess of their investments (false profits). Since the Partnerships never realized any legitimate profit, such excessive distributions necessarily came at the expense of other Partners who lost more than their contributions. Based on the Conservator's review of the available books and records of the Partnerships, it appears that, in aggregate, certain Partners received millions of dollars more than their investments.

The Conservator was charged with, among other things, investigating the claims and causes of action of the Partnerships, including the Lawsuits, and reporting to this Court whether such claims ought to be pursued for the benefit of the Partnerships. (C.O. at 3.)

On May 14, 2013, the Court conducted a status conference (the "Status Conference"). At the Status Conference the Court requested a report from the Conservator concerning whether pursuing the Lawsuits was in the best interest of the Partnerships.[2] Rather than an exhaustive review of the Lawsuits, the Court asked the

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[2] "I want you to tell me, similar to a motion to amend, now that everything has been checked, our investigation causes us to reach the following conclusion why it's in the best interest of the partnership to proceed with this action at this time." (H'ring Tr. at 37:22 – 38:2).

Conservator to provide "the strongest points, with the understanding is that you are not giving me a full disclosure of every piece of evidence you have." (H'ring Tr. at 38:2-5).

To that end, on May 20, 2013 the Conservator filed his Litigation Status Report (the "Litigation Report"). The recommendations within the Litigation Report were based on, among other things, the Conservator's review of the available books and records and interviews with individuals familiar with the Partnerships and the Madoff Ponzi Scheme.

Concluding that the Lawsuits had legitimate grounds, the Conservator negotiated the proposed fee structure with proposed contingency fee counsel for the Lawsuits. In the Conservator's business judgment the proposed contingency fee arrangement provides the Partnerships with a great opportunity to potentially recover millions of dollars without incurring substantial costs or exposure.

On May 28, 2013, Burt Moss ("Moss") filed his *Response of Party-in-Interest Burt Moss to Conservator's Litigation Status Report Dated May 20, 2013* (the "Moss Response"). Moss Response concerns, among other things, (i) Berger Singerman LLP's ("Berger") fee application and retention; and (ii) issues of collectability of certain defendants.

On May 29, 2013, Michael D. Sullivan ("Sullivan") filed his *Objection to Conservator's Litigation Status Report and Litigation Recommendations* (the "Sullivan Objection" and together with Moss Response, the "Objections").

The Sullivan Objection is an impermissible collateral attack upon the Insider Suit. Such arguments are better handled within the Insiders Suit at the motion to dismiss or summary judgment stage of a proceeding.

Additionally, Sullivan's Objection is flawed in that it: (i) relies upon several misstatements of fact concerning, among other things, the Conservator's investigation of the Lawsuits; (ii) violates a Court Order; and (iii) was filed in Sullivan's self interest, i.e., to dismiss a lawsuit against him without a determination of the merits.

Furthermore, the Objections are inappropriate in that they seek to require more to continue the Lawsuits against the defendants than this Court or Florida law. The Objections are also premature in that they require the Partnerships to prove they will win the Lawsuits (and recover on the judgments) before a formal discovery process.

At the May 14, 2013 Status Conference, the Court made it clear that the purpose of the Litigation Report is to determine whether advancing the Lawsuits is in the best interest of the Partnerships. Specifically, the Court stated:

> So we're on the same page, I'm sure we're communicating, it really wasn't my concept that this phase of the conservatorship would be used to do full discovery in the claims against Mr. Sullivan and anyone other -- either a person or entity who any of the partners might feel did them wrong and they should respond in money damages.
>
> It was my intention to use the conservatorship primarily to do two things. Number one, get that money distributed as we can as soon as possible. **Two, before any further time is spent investigating and litigating, do enough of an investigation to tell me whether it's in the best interest of the partnership to proceed on these claims, with the understanding that you would have to do further discovery.**

(H'ring Tr. 53:4-20).

The Conservator conducted a sufficient investigation to conclude that it is in the best interests of the Partnerships to proceed on the Lawsuits. As stated in the Litigation Report, the Conservator recommends that the Lawsuits be pursued.

Contrary to the Court's explanation of the Conservator's role, the Objections would require the Conservator to expend additional resources on further investigation and presentation of evidence that the Lawsuits will succeed.

Ironically, the same individuals who argue that costs are too high simultaneously argue in favor of spending more money to get to a place where the Conservator has already arrived: the conclusion that pursuing the Lawsuits is in the best interests of the Partnerships.

The Conservator has independently reviewed the books and records of the Partnerships and is the appropriate agent to advance the Lawsuits for the Partnerships.

Accordingly, the Court should approve the recommendations outlined in the Litigation Report.

Sullivan is a Defendant in the Insiders Suit

Sullivan is a named defendant in the Insiders Suit.

Based on his investigation, "the Conservator has identified documents reflecting or tending to evidence, among other things, the following allegations of the Insider Complaint:

- 'Investors' money (much of which was never invested, in BLMIS or otherwise) was used to pay Sullivan and a number of shell entities he set up for that purpose unearned and excessive 'management fees' numbering in the many millions of dollars. One such entity is Defendant Michal D. Sullivan & Associates, Inc.'

- 'The assets of the Partnerships were funneled to Sullivan and other Defendants in the form of 'commissions' or 'referral fees.''

- 'Millions of dollars given to Sullivan to invest were never even invested, contrary to Sullivan's obligations and responsibilities under the Partnership Agreements, and his representations to the general partners themselves.'

- ‘Sullivan earmarked tens of thousands of dollars in "fees" to Frank Avellino and Michael Bienes, two individuals who are prohibited by the Securities and Exchange Commission from participating in the sale of securities.’”[3]

(Litigation Report at 4).

Sullivan’s Objection essentially requests that this court dismiss the Insider Suit without a determination on the merits.

Sullivan also claims that he is unable to stand for a judgment. To date, Sullivan has failed or refused to deliver a sworn financial statement to the Conservator. However, the Conservator has identified documents which reflect that Sullivan siphoned off approximately $10,000,000.00[4] from the Partnerships, including approximately $990,000.000 Sullivan pocketed in 2008, the year the Madoff Ponzi Scheme was discovered.

Needless to say, Sullivan’s goal – to stop the lawsuit against him without consideration of the facts – should not be allowed.

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[3] The Conservator has discovered documentary evidence reflecting that Sullivan associated with and paid commissions and/or referral fees to Frank Avellino and Michael Bienes (“A&B”), defendants in the Insider Lawsuit. In 1992, A&B were investigated by the SEC. “According to the SEC complaint, Avellino & Bienes had apparently been feeding funds to Madoff for years, possibly as long as thirty years, back to 1962. By the late 1980’s, A&B actually had its own feeder funds, at least two smaller firms, funneling funds into it … The SEC’s primary issue with A&B was the lack of proper securities registration per the 1933 Securities Act … The firm was shut down in 1993, an $875,000 fine was paid, and A&B and the other two feeder funs were required to return the funds to investors.” Peter Sander, Madoff – Corruption, Deceit, and the Making of the World’s Most Notorious Ponzi Scheme 93 (The Lyons Press 2009). The Conservator has discovered evidence that A&B were business associates with principals of the Partnerships and that certain investors in A&B’s ‘shut down’ Madoff feeder fund were transferred to the Partnerships.

[4] According to the Partnerships’ respective Partnership Agreements, Sullivan, as Managing General Partner, was apportioned 20% of the profits of the Partnerships. However, since the Partnerships never realized any profit (in typical ponzi fashion, all the monies being returned to the Partnerships was derived from new Partners’ investments rather than profit) Sullivan should not have received any distributions. All of the monies received by Sullivan ought to be returned to the Partners who lost the money.

The Sullivan Objection Violates a Court Order

Prior to the appointment of the Conservator, on August 29, 2012, this Court entered an *Agreed Order Resolving Plaintiff's Emergency Motion for Temporary Injunction* ("Agreed Order").[5] Among other things, the Agreed Order provided that Margaret Smith ("Smith") of GlassRatner was deemed the Managing General Partner for the Partnerships effective upon entry of the Agreed Order.[6] Agreed Order at ¶3.

The Agreed Order also provided that Sullivan would not contest the appointment of Smith. Agreed Order at ¶5 ("[Sullivan] does not now and will not in the future challenge the appointment of Smith as Managing General Partner on August 17, 2012").[7]

After the entry of the Agreed Order, the actions of Berger and GlassRatner were at the direction of Smith, the court-approved manager of the Partnerships.

The Court should disregard the portions of Sullivan's Objection that are based upon his contention that Smith was without authority to initiate the Lawsuits. *See* (Sullivan Objection at ¶¶6-10). Sullivan's previous agreement to waive such argument should bar him from raising the issue now. Failure to comply with the Agreed Order reflects Sullivan's bias as a defendant in the Net Winner Suit.

Conservator's Litigation Report is Based Upon a Sufficient Investigation

At the Status Conference, the Court requested that the Conservator, after sufficient investigation, prepare a report concerning whether pursuing the Lawsuits was in the best interest of the Partnerships. The Court recognized that the Conservator should not have to

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[5] A copy of the Agreed Order is attached hereto at **Exhibit "A"**.

[6] Upon information and belief, Jacob received notice of the Agreed Order and had an opportunity to be heard in connection with its entry.

[7] By filing the Sullivan Objection, Sullivan has violated the Agreed Order.

bring forth all of the evidence supporting the recommendations and stated, "I don't need everything." (H'ring Tr. at 37:21).[8]

Consistent with the Court's direction, the Conservator filed the Litigation Report after performing an independent evaluation[9] of the available information. Moreover, the Litigation Report explains the business judgment supporting its recommendations without inundating the Court with documentary evidence as to the merits. (H'ring Transcript at 34:14-15) ("I'm not going to make any decision about who's right or wrong.")

Pursuant to the Conservator Order, the Conservator was tasked with, among other things, taking possession of all property of the Partnerships (the "Conservatorship Property") including all books, records and computer data, and reviewing, prosecuting, and investigating claims the Partnerships have, had or may have.

To aid the Conservator in his efforts, the Conservator Order required, among others, Defendant to "grant the Conservator unfettered access to any accounts, records, documents, files, plans, engineering reports, permits (whether expired or not), and computer equipment owned by the Partnerships." (Conservator Order at 2). Further, the Conservator Order states, "all persons are hereby enjoined from: (i) interfering in any manner with the management of the Conservatorship Property by the Conservator …." (Conservator Order at 5).

As early as February 17, 2013, the Conservator met with Sullivan to coordinate the transfer of Conservatorship Property.

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[8] Despite such clarification by the Court, Sullivan insists that the Conservator provide the Court with "tangible evidence". (Sullivan Objection at ¶4).

[9] Sullivan's Objection is replete with insinuations challenging the Conservator's impartiality. *See* (Sullivan Objection at ¶¶5, 17, 41, and 46). Sullivan's animosity is not surprising given his status as a defendant in the Insider Suit.

Rather than turning over Conservatorship Property, Sullivan refused to transfer certain information related to the Partnerships. Sullivan and his co-defendant Steve Jacob's ("Jacob") interference and contemptuous behavior is well documented.[10]

Sullivan's representation that the Conservator had all of the documents since the Conservator Order is purposefully misleading. (Sullivan Objection at ¶29).

In fact, only recently, on May 24, 2013, did Sullivan and Jacob provide the Conservator access to additional relevant information that was previously withheld. At present, Jacob has still failed and refused to turnover certain information requested by the Conservator.

During the period of time between the Conservator's demand for electronically stored information and Sullivan's delivery of same, it is unknown what, if anything, was done to protect such information. The Conservator is investigating issues of spoliation.

The Court ought not to permit Sullivan to wrongfully withhold information and then object based upon a purported lack of information in the Litigation Report.

Notwithstanding Sullivan's interference, the Conservator performed a sufficient investigation before filing the Litigation Report. Moreover, Sullivan's Objection is inaccurate where it states that the Conservator failed to contact certain persons with relevant information.

The February 27, 2013 Conservator's Report explains, among other things, that prior to filing the Litigation Report the Conservator:

- Conducted separate meetings with interested parties, including, among others:
  - Steven Jacob
  - Michael Sullivan

[10] *See Conservator's Motion to For Contempt and to Compel Defendant, Michael Sullivan, to Turnover the Partnerships' Books, Records and Electronically Stored Information* (filed April 10, 2013); *Conservator's Motion for Contempt Against Steve Jacob and to Compel Inspection of Conservatorship Property* (filed May 13, 2013).

- Maggie Smith & Carol Fox, GlassRatner
- Certain of the named plaintiffs including, among others: Matthew Carone, Mrs. Janet Jordan, Elaine Ziffer and members of the Stacy Foundation, Inc.
- Several other partners of P&S and S&P

- Conducted meetings with certain attorneys, including, among others:
  - Helen D. Chaitman, Becker & Poliakoff LLP[11]
  - Chad Pugatch, Rice Pugatch Robinson and Schiller, PA
  - Robert Reynolds, Slatkin & Reynolds, P.A.
  - Paul Singerman, Berger Singerman LLP
  - Leonard Samuels, Berger Singerman LLP
  - Etan Mark, Berger Singerman LLP
  - Steve Weber, Berger Singerman LLP
  - Erika Rotbart, Deutsch Rotbart & Associates, P.A.

- Communicated with Madoff Trustee, Irving Picard's counsel at Baker & Hostetler regarding BLMS case.[12]

In addition, the Conservator conducted an exhaustive review of the Conservatorship Property in his possession at that time. The Litigation Report addresses the results of his investigation which support Conservator's recommendation to pursue the Lawsuits.

Net Winner Investigation

Specifically, as to the Net Winner Suit, the Litigation Report identifies approximately 124 'Net Winners' and calculates that the claims against the 'Net Winners' exceed $8,473.00.00[13]. (Litigation Report at 3). The Net Winner Lawsuit seeks to recoup money paid to one Partner at the expense of another.

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[11] Sullivan's Objection inaccurately asserts that the Conservator never "contacted our former attorney's charged with distributing the funds to the Partners"). (Sullivan Objection at ¶49 (o). However, the Conservator met (in person and telephonically) with Chaitman and Pugatch prior to filing the Litigation Report.

[12] Sullivan's Objection argues that a proper pre-Litigation Report investigation would include speaking to the Madoff Trustee. (Sullivan Objection at ¶6).

[13] To conserve resources and in the interest of efficient administration, in the Litigation Report the Conservator recommended pursuing claims against those partners whose 'net winnings' exceed $50,000.00. Based on the available records, it appears that approximately $7,077,000.00 in claims should be pursued against approximately 36 'Net Winners'.

The Conservator and his professional staff performed an independent review of the books and records of the Partnerships as part of the investigation preceding the Litigation Report. The Conservator and his team were required to recreate each account based on the total cash contributions made by the Partner and total cash distributions received by the Partner from the beginning of the Partnerships. Moreover, as the original Partnership records reflected hundreds and hundreds of transactions accounting for reductions of each Partner's capital account for fees and other costs, adjustments were required to determine each Partner's true 'net' position. While the work product of prior professionals was reviewed, the Conservator performed a complete and independent analysis of the Partnerships' books and records. (Sullivan Objection at ¶43).

Additionally, Conservator has been advised on case law relevant to the Net Winners Suit. In addition to a factual investigation, the Conservator's Litigation Report explains the merits of the legal positions of the Net Winners Suit in concluding that it ought to be pursued. (Litigation Report at 3 n.2 *quoting In re Dreier LLP*, 452 B.R. 391, 440 n. 44 (Bankr. S.D.N.Y. 2011) ("[V]irtually every court to address the question has held unflinchingly that to the extent that investors have received payments in excess of the amounts they have invested, those payments are voidable as fraudulent transfers") (citation omitted)). Accordingly, the Litigation Report's recommendations regarding the Net Winner Suit is based upon an adequate investigation and sound business judgment.

<u>Insider Suit Investigation</u>

After a review of all available books and records of the Partnerships, and the allegations of the Insiders Suit complaint (the "Complaint"), the Litigation Report explained

that the Conservator identified particular documentary evidence tending to prove certain specific allegations of the Complaint.

The Sullivan Objection misses the point. The Litigation Report does not "parrot" the Complaint, it reports to the Court and the Partners that the Conservator has found evidence tending to prove that the allegations of the Complaint are accurate. (Litigation Report at 4).

If proven, the Partnerships would be entitled to judgment against certain of the Insider Suit defendants. This investigation and recommendation comports with the Court's direction at the Status Conference.[14]

Further, the Conservator has discovered that certain defendants in the Insider Suit, Frank Avellino ("Avellino") and Michael Bienes ("Bienes"), are prohibited by the Securities and Exchange Commission from participating in the sale of securities. The Litigation Report provides that documents have been identified which reveal payments to Avellino and Bienes for commissions related to the Partnerships. (Litigation Report at 4-5).

To the extent Sullivan requires additional proofs, according to the Florida Rules of Civil Procedure, such requirements ought to be pursued through the appropriate means in the Insider Suit.

Ultimately, as discussed earlier, *see generally* pages 6-7, the Conservator's investigation has unearthed adequate support for the recommendations contained in the Litigation Report regarding the Insiders Suit. As such, the Insiders Suit ought to be pursued.

The Lawsuits Benefit the Partnerships as a Whole and Should be Pursued

As provided in the Litigation Report, the Lawsuits potential recoveries will inure to the benefit of Partnerships and its partners. (Litigation Report at 3, 5). In the Net

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[14] *See supra* at page 3 FN 2 and page 5.

Winners Suit the potential recovery is in the millions of dollars.[15] (Litigation Report at 3). Moreover, the Conservator has identified millions of improper transfers to the Insider Suit defendants that may be appropriately treated in the Net Winner Suit.

If realized, these recoveries would benefit the Partnerships as a whole. Further, due to the infighting between the partners of the Partnerships it is in the Partnerships' best interest to pursue these recoveries with oversight by a third party neutral such as the Conservator.

Further, contrary to contentions of the Objections, individual partners may not be able to pursue the legal theories in the Lawsuits by commencing new lawsuits. Certain legal doctrines including, among others, statute of limitations and standing may foreclose recovery for the Partnerships if the Lawsuits are not advanced. Accordingly, this factor weighs heavily in favor of permitting the Partnerships to advance the Lawsuits.

Potential Defenses

The Moss Response expresses concerns regarding potential defenses to the Lawsuits and the impact on Partnership recovery. As part of the Conservator's review of the facts and relevant case law he has evaluated potential defenses related to the Lawsuits. The Conservator agrees that litigation carries certain inherent risks. However, the Conservator maintains that the Litigation Report and the recommendations therein should be approved.

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[15] According to the analysis of the Partnerships' available books and records, certain partners received, on an aggregate net basis, approximately $8,473.00.00 more than they invested.

Collectability

The Objections reflect potential collectability risks regarding the defendants in the Lawsuits. While collectability is a concern in almost all litigation, the Conservator proposes to advance the litigation on a contingency fee basis with reimbursable expenses[16] capped at $50,000 per lawsuit.[17] Additionally, the Conservator should not be required to prove that each of the defendants is collectible at this stage. To require the Conservator to conduct an investigation for each defendant of the Lawsuits, at this time, would require the expenditure of substantial Partnership assets.

With respect to a cost benefit analysis, inasmuch as (absent appeal), the proposed contingency fee is 33 1/3%, the lawsuits need only recover approximately $150,000.00 to "break even". Upon information and belief and after reasonable inquiry, if the Lawsuits are successful, the judgments will be for millions of dollars. Proposed contingency fee counsel, not the Partnerships, are undertaking the true risk of collection.

Distribution Report

The Conservator has worked diligently and efficiently to advance the *P&S Associates, General Partnership and S&P Associates, General Partnership, Plaintiffs v. Roberta P. Alves*, et. al. Case No. 12-028324 (07) (the "Interpleader Action"). The Sullivan Objection misrepresents the Conservator's efforts in advancing same. (Sullivan Objection at ¶48(h)).

The Conservator filed his recommendations regarding distribution in the Interpleader

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[16] Sullivan's complaint that the $50,000.00/lawsuit cap on reimbursable expenses "effectively guarantees" payment to Berger misses the mark. 'Reimbursable expenses' literally means reimbursing Berger for necessary expenses actually incurred.

[17] Moss Response raises the issue of the propriety of paying Berger's fees for services previously provided to the Partnerships. (Moss Response at 2). Such concerns are better addressed in the Conservator's Fee Report filed with the Court on April 1, 2013.

Action on May 31, 2013, in compliance with the Court's March 20, 2013 *Order Resetting Deadlines and Case Management Conference*.

Conclusion

For the reason stated herein and the Litigation Report, the Objections should be overruled and the Court should permit the Conservator to pursue the Lawsuits, by engaging counsel under the terms of the motions seeking to employ counsel to advance the Net Winner and Insider Suit Lawsuits.

Dated: June 3, 2013

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By: /s/ Thomas M. Messana
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Exhibit A

IN THE CIRCUIT COURT OF THE SEVENTEENTH 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,

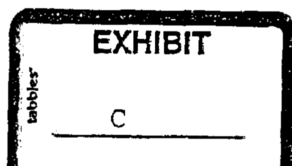
Defendant.

______________________________________/

AGREED ORDER RESOLVING PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY INJUNCTION

THIS CAUSE came before the Court on Plaintiffs' Emergency Motion for Temporary Injunction, and this Court having been advised of an agreement between the parties and being otherwise duly advised in the premises, it is hereby ORDERED that:

1. This Order implements the agreement of the Parties and is entered on an agreed basis. Plaintiffs' Emergency Motion for Temporary Injunction is resolved as provided herein.
2. Defendant Michael D. Sullivan ("Defendant") shall resign as Managing General Partner of both P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P") (together with P&S, the "Partnerships"), and consents to the appointment of Margaret J. Smith ("Ms. Smith") as Managing General Partner in his



stead. Plaintiffs' agreement to allow Defendant to resign is not a waiver of any positions asserted in this action.

3. Ms. Smith is deemed the Managing General Partner of the Partnerships effective upon entry of this Order and will remain as such unless and until she withdraws from her role as Managing General Partner, or is removed consistent with the terms of the Partnership Agreements.

4. As Managing General Partner, Ms. Smith will be given full access to all of the Partnerships' books, records, assets and property and will be afforded all of the rights and duties of a Managing General Partner, including but not limited to those contemplated by Article 8.02 of each of the Partnerships' respective Partnership Agreements.

5. Defendant does not now and will not in the future challenge the appointment of Ms. Smith as Managing General Partner on August 17, 2012. Defendant agrees that he is no longer authorized to act in any capacity as Managing General Partner of the Partnerships, and is to direct all Partnership business to Ms. Smith. In so consenting to his withdrawal as Managing General Partner, Defendant reserves all other rights and defenses, and such consent to Ms. Smith's appointment shall not be deemed or considered an admission of liability either on his own behalf or on behalf of any of his employees, affiliates, assigns or agents.

6. The Parties further reserve all rights with respect to the action styled *P&S Associates, et al. v. Roberta Alves, et al.*, Case No. 2012CA013587, currently pending in the Circuit Court of the 15th Judicial Circuit in and for Palm Beach County (the "Interpleader Case"). Defendant may not act as representative or Managing General Partner of the Partnerships with respect to that action. However, the Parties specifically agree, as a condition of the

relief provided herein, that the Interpleader Case will not be unilaterally dismissed by Ms. Smith in her capacity as the Managing General Partner of the Partnerships. Without prejudice to the rights of the Managing General Partner pursuant to paragraphs 7.05 and 8.02 of the Partnership Agreements, it is the intent of the Parties that the Interpleader Action provide the basis for the methodology used to determine how distributions will be made to partners, *i.e.*, without limitation, based on the amount in the partner's capital account (last statement balance), in the amount of the net investment of the account holder over the life of the account, or based on other equitable principles. Plaintiffs reserve all defenses to the Interpleader Action, and do not, by virtue of this Order, concede that venue in Palm Beach County is appropriate.

7. On or before September 5, 2012, Defendant shall provide to Ms. Smith all books and records not previously provided to Plaintiffs or their representatives, including electronic records of the Partnerships. Subject to Defendant's right to raise any written objection under the Florida Rules of Civil Procedure, Defendant shall provide the books and records of JS&P Associates, General Partnership, and SPJ Investments, Ltd. Defendant has represented that he does not have custody, possession or control of the books or records, electronic or otherwise, of Guardian Angel Trust, LLC. Defendant further agrees to use his best efforts to insure an efficient, orderly and smooth transition from his role as Managing General Partner to Ms. Smith's role as Managing General Partner.

8. This case is hereby stayed pending further order of the Court, but for a period of not less than 60 days, without prejudice to the rights of any parties to this action. This stay will be lifted upon a motion by either party.

9. This Order is binding on all Parties, including Ms. Smith, who is not a named party but has submitted herself to the jurisdiction of this Court by accepting the appointment as Managing General Partner as provided in paragraph 3 above.

10. Defendant, by agreeing to the terms of this Order specifically denies and does not admit any liability or wrongdoing and nothing in this Order shall constitute any finding of liability or wrongdoing either by Defendant or any of his employees, affiliates, assigns or agents. It is Defendant's position that he has agreed to the relief herein to preserve the resources of the Partnerships.

DONE AND ORDERED in Chambers in Broward County, Ft. Lauderdale, Florida, on this ______ day of August, 2012.

JEFFREY E. STREIFELD

AUG 2 9 2012

JEFFREY E. STREITFELD
CIRCUIT COURT JUDGE

A TRUE COPY

Copies furnished to:

All Counsel of Record