

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

COMPLEX LITIGATION UNIT

CASE NO.: 12-034123 (07)

PHILIP J. VON KAHLE, as Conservator of
P&S Associates, General Partnership and
S&P Associates, General Partnership

Plaintiffs,

v.

STEVEN JACOB, et al.,

Defendants.

**PLAINTIFFS' MOTION FOR A PROTECTIVE ORDER IN
RESPONSE TO THE DEPOSITION OF MICHAEL D. SULLIVAN**

Plaintiffs, by and through their undersigned counsel, hereby file this motion for a protective order in response to the deposition of Michael D. Sullivan, and in support thereof state:

1. On October 5, 2015, Defendant Frank Avellino filed and served a *Re-Notice of Taking Deposition Duces Tecum* of Michael Sullivan (the "Notice").
2. Sullivan was the former managing general partner of the Partnerships. The Notice schedules Michael D. Sullivan's ("Sullivan") deposition and requests that Sullivan produce certain documents. A true and correct copy of the Notice is attached hereto as **Exhibit A.**
3. The Notice requests "all documents, including but not limited to written or sworn statements [Sullivan] provided to Plaintiffs' counsel or that Plaintiff's counsel provided

[Sullivan] or [Sullivan's] counsel." *Id.* at 5. Yet, Sullivan entered into a settlement agreement with Plaintiffs and such documents are privileged under the work-product doctrine or the settlement communications privilege or both. Further, Defendant Avellino previously attempted to obtain such documents and this Court rejected those attempts by its Order Granting Defendant Frank Avellino's Motion to Compel Plaintiff to Produce Documents in Response to his Second Request for Production dated April 29, 2014, dated September 15, 2014 and Order Denying Defendant Frank Avellino's Motion for Reconsideration and/or to Compel, dated December 15, 2014. Additional documents were produced by a partner of the Partnership. A copy of the Court's orders are attached hereto as **Exhibit B** and **Exhibit C**.

4. Defendant Avellino should not be allowed another bite at the apple by subpoenaing Sullivan. This Court should prevent any production of documents to anyone but Plaintiffs that is related to or stemming from Sullivan's settlement with Plaintiffs.

5. Finally, many of the documents that are requested by the Subpoena should have been produced in response to this Court's Order Appointing Conservator. Attached hereto as **Exhibit D** is the Order Appointing Conservator. Paragraph 4 of that Order specifically provides that all property of the Partnerships shall be turned over to the Conservator, and Sullivan has no right to such documents, if any exist in his possession. Sullivan has also been specifically ordered by this Court to turnover property of the Partnerships to the Conservator. Attached hereto as **Exhibit E** is the Order Compelling Michael Sullivan to Authorize the Conservator Access to Financial and Insurance Information.

6. Despite the Court's Orders, Sullivan, in his former capacity as managing general partner, may have possession and control over Partnership documents which are protected by the

attorney-client privilege, attorney-work product, accountant-client privilege, or other privilege. Plaintiffs, and not Sullivan, now hold the right to waive any of the Partnerships' applicable privileges and they have not and do not waive any of them.

7. Unless Plaintiffs are allowed to review the documents that Sullivan intends to produce to Avellino for privilege, Plaintiffs will not be able to protect their privileges, or prevent the disclosure of privileged documents.

8. Allowing Plaintiffs to protect applicable privileges will not prejudice Defendants. However, if Sullivan is permitted to produce privileged documents, Plaintiffs may suffer irreparable harm. *Heekin v. Del Col*, 60 So. 3d 437, 439 (Fla. 1st DCA 2011); *Fla. E. Coast Ry. L.L.C. v. Jones*, 847 So.2d 1118 (Fla. 1st DCA 2003) (discussing work product privilege); *Cruz-Govin v. Torres*, 29 So.3d 393 (Fla. 3d DCA 2010) (discussing medical privilege).

9. Accordingly Plaintiffs respectfully request that the Court enter an Order requiring Sullivan to produce to Plaintiffs all documents which are responsive to the Notice within 2 days and at least 5 days before his deposition and preventing Sullivan from producing any documents in response to the Notice or revealing any information during his deposition that Plaintiffs deem privileged.

WHEREFORE Plaintiffs respectfully request the Court enter an Order (i) directing Sullivan to immediately produce all documents responsive to the Notice to Plaintiffs within 2 days and at least 5 days prior to Sullivan's deposition; (ii) preventing Sullivan from producing any documents responsive to the Notice to anyone but Plaintiffs; (iii) prohibiting Sullivan from revealing any documents or information that the Plaintiffs deem privileged; and (iv) granting such further relief as the Court deems just and proper.

Dated: October 13, 2015

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of October, 2015, the foregoing was filed using the Florida Courts E-Filing Portal, which sent notification to the following parties:

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By: s/Leonard K. Samuels
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EXHIBIT A

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

CASE NO.: 12-034123(07)

P & S ASSOCIATES, GENERAL
PARTNERSHIP, a Florida limited
Partnership, *et al*,

Plaintiffs,

v.

MICHAEL D. SULLIVAN, et al.,

Defendants.

_____ /

RE-NOTICE OF TAKING DEPOSITION DUCES TECUM

PLEASE TAKE NOTICE that the undersigned counsel will take the deposition of:

Deponent: Michael Sullivan

Date: October 28, 2015

Time: 9:00 AM

Place: Broad and Cassel
1 Financial Plaza, #2700
Fort Lauderdale, FL 33394

DUCES TECUM: See Attached Exhibit A.

upon oral examination before a Notary Public or other officer authorized by law to take depositions in the State of Florida. The oral examination will continue from day to day until completed. This deposition is being taken for the purposes of discovery, for use at trial, or for such other purposes as are permitted under applicable Florida Rules of Civil Procedure.

KINDLY GOVERN YOURSELF ACCORDINGLY.

EXHIBIT A
DUCES TECUM
DEFINITIONS AND INSTRUCTIONS

As used in this request, the terms listed below are defined as follows:

A. "Communication(s)" means any oral or written transmission of information, thoughts or data, including but not limited to through meeting, conversation, discussion, correspondence, message, electronic or other occurrence whereby thoughts, opinions, or data are transmitted between two or more persons.

B. "Document" is used in its broadest sense under the Rules of Civil Procedure and includes graphic matter of any kind or nature, whether written, printed, typed, recorded, filmed punched, transcribed, taped, or produced or reproduced by any means, including without limitation electronically. The term "document" includes, but is not limited to, all papers, books, contracts, licenses, inter-office communications, records, personal notes, cablegrams, telexes, e-mails, electronic data, studies, calendars, diaries, desk calendars, appointment books, agendas, minutes, pamphlets, envelopes, telephone messages, graphs, records or meetings, summaries or records of telephone conversations, voice mails, summaries or records of personal conversations or interviews, employee notebooks, summaries or records of meetings or conferences, tabulations, analyses, evaluations, projections, work papers, charts, statements, summaries, journals, billing records, and invoices, and all communicative material of any kind. The term "document" also includes every other means by which information is recorded or transmitted, including, but not limited to, photographs, videotapes, tape recordings, microfilms, punch cards, computer programs, printouts, all recordings made through data processing techniques, and the written information necessary to understand and use such materials. The term "documents" is further defined to mean the original, any drafts, and any non-identical copies (i.e., those bearing notations or marks not found on the original). "Documents includes all information electronically created, stored, maintained, transmitted or received by way of computers, networks, telephones, PDAs, hard drives, software, networks, internet, clouds, mobile device or otherwise, regardless of whether printed, and all information referred to as "Electronically Stored Information" (ESI). Such ESI shall be produced in searchable PDF format.

C. "Person" means a natural person, firm, proprietorship association, partnership, corporation, limited liability company, professional association, professional limited liability company, and any other type of organization or entity.

D. The words “relate”, “related to”, “pertain to”, “pertaining to”, or “regarding,” “refer” or “referring” or any derivation thereof, mean: relates to, refers to, contains, concerns, describes, embodies, mentions, constitutes, constituting, supports, corroborates, demonstrates, proves, evidences, shows, refutes, disputes, rebuts, controverts, or contradicts, directly or indirectly, and includes the specific item mentioned.

E. “And” as well as “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the demand all documents which might otherwise be construed to be outside the scope. “Each” shall be construed to include the word “every,” and “every” shall be construed to include the word “each.” “Any” shall be construed to include the word “all”, and “all” shall be construed to include the word “any.”

F. “You” or “Your” refers to Michael Sullivan, individually and jointly with any other person or entity, any of his agents, and anyone acting on his behalf.

INSTRUCTIONS

A. You are to furnish all documents that are in your possession, custody or control, including, without limitation, all documents in the possession, custody or control of any agents, employees, representatives, principals, accountants and/or attorneys as of the date of your response to these requests.

B. If you object to producing any document because of a privilege, you shall make the claim expressly, pursuant to Federal Rule of Civil Procedure 1.280(b)(6), and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

C. If your response to any request refers to or identifies a document that once existed, but it no longer exists, state the circumstances under which it was destroyed or ceased to exist, including:

- (a) The identity of each person who determined that each such document would be removed or destroyed;
- (b) The identity of each person who authorized the destruction or removal of each such document;
- (c) The identity of each person who removed or destroyed each such document;

- (d) The substance and content of each such document; and
- (e) The date and location at which and the manner in which each such document was removed or destroyed.

D. If you object to producing any documents requested pursuant to this Request, produce all documents responsive to each request which do not fall within the parameters of your objections.

E. Prior to incurring any expense in responding to this Request which you will expect or request the Defendant to pay, contact the undersigned counsel with the estimated cost and itemization of same.

F. Unless otherwise specified, this Request includes all documents created or maintained at any time within four years of the date of this Requests, through the date of the production of the documents (“the subject period”). The subject period includes the current time, and the use of the past tense (such as, by way of example only, “have had”) is to be interpreted as including the present tense.

DOCUMENTS WITHHELD

If any document responsive to this subpoena is withheld on the grounds of privilege or other objection, provide the following information with respect to each such document:

- (A) The reason for withholding the document;
- (B) A statement of the basis for the claim of privilege, work product or other ground of non-disclosure;
- (C) A brief description of the document, including (i) the date of the document; (ii) number of pages, attachments and appendices; (iii) the names of its author, authors or preparers and an identification by employment and title of each such person; (iv) the name of each person who was sent, shown blind carbon copied on the document, or has had access to or custody of the document, together with an identification of each such person; (v) the present custodian; (vi) the subject matter of the document; and (vii) in the case of any document relating to or referring to a meeting or conversation, an identification of such meeting or conversation.

DESTROYED DOCUMENTS

If any documents responsive to this subpoena were at one time in existence, but have been lost or destroyed, a list should be provided of the documents so lost or destroyed stating the following information for each such document; (a) the type of document, (b) the date on which it ceased to exist; (c) the circumstances of its loss or destruction, (d) the identity of all persons having knowledge of the circumstances of its loss or destruction, and (e) the identity of all persons having knowledge of its content.

DOCUMENTS

1. All documents, including but not limited to written or sworn statements You provided to Plaintiffs' counsel or that Plaintiff's counsel provided You or Your counsel including, but not limited to in connection with the settlement agreement dated June 26, 2014, that You entered into in this action.

2. All documents that evidence Avellino and/or Bienes' purported involvement in the management of P & S or S & P partnerships (the "Partnerships").

3. All documents that evidence all purported assistance Avellino and/or Bienes provided the Partnerships' in their operation or management.

4. All documents that evidence all purported assistance Avellino and/or Bienes provided in the Partnerships opening accounts with BLMIS.

5. All documents that evidence all purported assistance Avellino and/or Bienes provided in the transfer of A & B customers and accounts to the Partnerships.

6. All documents that evidence all investors Avellino and/or Bienes purportedly brought to the Partnerships.

7. All documents that evidence the reliance by any partners of the Partnerships on Avellino and/or Bienes in investing with the Partnerships.

8. All documents relating to BLMIS or Bernard Madoff provided You by either Avellino or Bienes.

9. All documents that evidence any statements or actions taken by either Avellino or Bienes in preventing or otherwise discouraging any partner from withdrawing their funds from the Partnership.

10. All documents that evidence that either Avellino and/or Bienes sought out new recruits to invest in the Partnerships.

11. All documents that evidence that Avellino purportedly used Bishop Wills to assist in the recruitment of investors in the Partnership.

12. All documents that evidence that Avellino acted as an intermediary for certain partner(s) checks sent to or from the Partnerships.

13. All documents evidencing or relating to all monies provided Avellino and/or Bienes by the Partnerships and/or You or any entity owned or controlled by You.

14. All documents that evidence or relate to any assistance Avellino provided You and/or the Partnerships in seeking the recovery of funds from Picard.

15. All documents that evidence any agreement or understanding by the Partnerships, You, or anyone one or entity owned or controlled by You to pay Avellino any money relating to the Partnerships or otherwise.

16. All documents including but not limited to e-mails sent to You or Your attorney by any attorney representing the Partnerships and/or the Conservator in this action.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of October, 2015, the foregoing document is being served on those on the attached service list by electronic service via the Florida Court E-Filing Portal in compliance with Fla. Admin Order No. 13-49.

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EXHIBIT B

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

CASE NO.: 12-034123 (07)
COMPLEX LITIGATION UNIT

P&S ASSOCIATES, GENERAL
PARTNERSHIP, etc., et al.,

Plaintiffs,

v.

MICHAEL D. SULLIVAN, et al.,

Defendants.

**ORDER GRANTING DEFENDANT FRANK AVELLINO'S MOTION TO COMPEL
PLAINTIFF TO PRODUCE DOCUMENTS IN RESPONSE TO HIS SECOND
REQUEST FOR PRODUCTION DATED APRIL 29, 2014**

THIS CAUSE came before the Court upon Defendant Frank Avellino's Motion to Compel Plaintiff to Produce Documents in Response to His Second Request for Production dated April 29, 2014, and the Court having heard argument of counsel and being fully advised in the premises, hereby

es
ORDERED and **ADJUDGED** that Defendant's motion to compel is granted, in part. Plaintiff shall produce ~~the settlement agreements and related documents entered into with any of the defendants in this action within ten (10) days from the date of this order.~~ *Kelly, Kelco Foundation, and Sullivan* *thirty (30)* Plaintiff may redact such documents to exclude the financial consideration for such settlements. *following* *see below **

DONE AND ORDERED in Chambers at Ft. Lauderdale, Broward County, Florida this *15th* day of September, 2014.

JE Streifeld
The Honorable Jeffrey E. Streifeld
CIRCUIT COURT JUDGE

Conformed copies to:

es
Counsel of record
** AS TO KELLY & KELCO - REDACT ALL OF #2 after the word "Payment"*
AS TO SULLIVAN - REDACT THE DOLLAR AMOUNT OF THE JUDGMENT IN Q. 3.

CASE NO.: 12-034123 (07)
Order Granting Defendant Frank Avellino's
Motion to Compel

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EXHIBIT C

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

**Case No: 12-034123(07)
Complex Litigation Unit**

P&S ASSOCIATES, GENERAL PARTNERSHIP,
a Florida limited partnership; and 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.

MICHAEL D. SULLIVAN, an individual, *ET AL.*,

Defendants.

_____/

**ORDER DENYING DEFENDANT FRANK AVELLINO'S MOTION
FOR RECONSIDERATION AND/OR TO COMPEL**

THIS MATTER came before the Court on Defendant Frank Avellino's Motion for Reconsideration and/or to Compel (the "Motion"). The Court, having reviewed the Motion, having heard argument from counsel for parties, and being otherwise duly advised in the premises, it is hereby

ORDERED AND ADJUDGED as follows:

1. The Motion is denied.

DONE AND ORDERED in Chambers ^{tu} 15 day of December, 2014.



HONORABLE JEFFREY E. STREITFELD
Circuit Court Judge

Copies furnished to:

Leonard K. Samuels, Esq. who is directed to serve same upon all interested parties.

EXHIBIT D

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,

Defendants.

ORDER APPOINTING CONSERVATOR

THIS CAUSE came before the Court at 10:00 a.m. on December 18, 2012, and at 1:30 p.m. on December 21, 2012, upon Plaintiffs' Motion to Appoint Receiver (the "Motion"), and the Court having reviewed the Motion, heard from counsel, and being otherwise duly advised in the premises, finds good cause to grant the relief requested.

Accordingly, it is hereby **ORDERED AND ADJUDGED:**

1. Appointment. Philip J. Von Kahle is hereby appointed Conservator (the "Conservator") of P&S, General Partnership and S&P, General Partnership (together, the "Partnerships").
2. Oath. Within twenty (20) days of the date of this Order, the Conservator shall file with this Court an Oath of Conservator.

3. Bond. The Conservator shall post a surety bond in the amount of \$25,000.00 with the Clerk of Court within thirty (30) days of the date of this Order.

4. Possession of Conservatorship Property. The Conservator shall immediately take possession of all property of the Partnerships. The property of the Partnerships, to the extent it exists, shall include the accounts, books of account, checkbooks, assets, files, papers, contracts, records, documents, monies, securities, choses in action, keys, pass codes and passwords, computer data, archived and historical data, and all other property, of the Partnerships including but not limited to any and all funds being held by any third-party on behalf of the Partnerships (the "Conservatorship Property"), which are within the jurisdiction of this Court, except as is otherwise set forth herein, and shall retain custody, except as is set forth hereinafter, of all such Conservatorship Property, until further order of this Court. All persons and corporations now or hereafter in possession of any Conservatorship Property, or any part thereof, shall forthwith turn over such possession to the Conservator. Further, the Partnerships and any persons in active participation with them, shall 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.

The Conservatorship Property includes, but is not limited to, those assets and funds held by Helen Davis Chaitman, Esq. and Becker & Poliakoff LLP on behalf of or for the benefit of the Partnerships. The Conservatorship Property also includes, but is not limited to, all of the books and records of the Partnerships that have been turned over to and are currently in the possession of Margaret Smith and/or Glass Ratner.

All Conservatorship Property must be returned to or transferred to the Conservator within seven (7) days of the date of this Order. All property turned over to the Conservator shall be

delivered subject to the lien rights of any parties, including the rights of any attorneys to charging, retaining or other common-law liens, and the transfer, delivery or otherwise placing the property in the possession of the Conservator shall not prejudice, destroy or otherwise affect any parties' lien rights..

The Conservator may at any time, apply to this Court for further powers and authority as may be necessary and appropriate to carry out the purposes of this Order.

5. Conservator's Powers. The Conservator is empowered, directed and authorized by this Court to act on its behalf as the Conservator of the Conservatorship Property, and to do any and all things necessary for the proper management, wind-down, preservation, maintenance, protection and administration of the Conservatorship Property. The Conservator shall have and possess all powers and rights to facilitate its management and preservation, maintenance, protection and administration including, but not limited to, the following:

(a) Winding down of the affairs of the Partnerships and distribution of assets of the Partnerships, including following up on the Interpleader action filed with the Court to determine how the partnership funds are to be distributed, making all necessary and appropriate applications to the Court in order to effect such wind-down and distributions;

(b) Reviewing, prosecuting, dismissing, initiating and/or investigating any and all potential claims that may be brought or have been brought on behalf of the Partnerships;

(c) Taking any action which could lawfully be taken by the managing general partner of the Partnerships pursuant to the Partnership Agreements of the respective Partnerships;

(d) Investing the Partnerships' funds in an interest-bearing account or accounts at one or several federally insured banks and/or depository institutions;

(e) Calling a Special Meeting of either or both of the Partnerships;

(f) Paying all fees or costs less than \$2,500.00 out of the Conservatorship Property reasonably necessary to conserve, maintain, secure, operate, preserve and protect the Conservatorship Property, including all such fees or costs incurred prior to date of this Order;

(g) Paying any taxes, assessments and charges in the nature thereof, due in connection with the Conservatorship Property;

(h) Opening accounts in the name of the Conservator in order to fulfill his duties pursuant to this Order;

(I) Hiring legal counsel to assist the Conservator in performing the responsibilities with respect to the Conservatorship Property as set forth in this Order. Nothing contained herein shall require the Conservator to expend any of his own funds.

6. Previous Elections of Managing General Partners. The previous elections of Margaret J. Smith and/or Steven Jacob are moot, provided however, that any party may raise the validity of the election of Margaret J. Smith or anyone Ms. Smith allegedly retained on behalf of the partnerships in connection with any application for compensation.

7. Specific Duties of Conservator. The Conservator shall manage, preserve, protect, and maintain the Conservatorship Property in a reasonable, prudent, diligent and efficient manner. Without limitation of that general duty, the Conservator shall have the following specific duties:

(a) Operating Account. The Conservator may establish and maintain, at a bank whose deposits are insured by the Federal Deposit Insurance Corporation, a separate operating account or accounts into which the Conservator shall deposit all receipts, if any, related to the Conservatorship Property and from which the Conservator shall disburse all amounts due

and payable as reasonable, necessary and proper operating expenses of the Conservatorship Property, subject to the terms of this Order and the availability of funds.

(b) Records. The Conservator shall maintain a system of books and accounts concerning the maintenance of the Conservatorship Property. Upon reasonable notice, and at all reasonable times, the general partners of the Partnerships, and their respective agents, shall have reasonable access to such records, accounts and books and to all other material pertaining to the operation of the Conservatorship Property, all of which the Conservator agrees to keep safe, available and separate from any records not having to do with the operation of the Conservatorship Property.

(c) Legal Requirements. The Conservator shall ensure that all aspects of the Conservatorship Property, and its operation, management, and development, comply with any and all laws, regulations, orders or requirements affecting the Conservatorship Property having jurisdiction there over.

(d) No Waste. Without the approval of the Court, the Conservator shall not suffer, cause or permit: (i) any removal of any Conservatorship Property; nor (ii) any waste of the Conservatorship Property or any of the components thereof.

8. Net Proceeds. Except as otherwise authorized in this Order, all proceeds from the Partnerships' actions shall be held by Conservator in a Conservatorship account or accounts, pending further Order of this Court, subject to paragraph 12, below.

9. No Interference. Except as otherwise requested or authorized by the Conservator, or until further order of this Court, all persons are hereby enjoined from: (i) interfering in any manner with the management of the Conservatorship Property by the Conservator as hereinabove

described until further order of this Court; or (ii) acting or purporting to act on behalf of the Partnerships, Conservatorship Property, and/or the Conservator.

10. Consultation. The Conservator shall meet or confer over the telephone, at least once, with Michael D. Sullivan, Steven Jacob, and Margaret J. Smith, to gather information that may assist him in carrying out his duties as Conservator, for the duration and to the extent that the Conservator deems necessary. The Conservator is encouraged, but is not required, to discuss the affairs of the Partnerships with other individuals as he deems it necessary and using his best judgment.

11. Consultants and Professionals. With the permission of the Court upon appropriate application and notice to all parties in interest, the Conservator may be empowered to retain others to provide legal or accounting services as may be necessary during the period of Conservatorship. All such persons shall be compensated in accordance with Paragraph 12 below.

12. Fees. The Conservator shall be compensated at a rate of \$ 300 per hour, plus the reasonable and necessary out-of-pocket expenses incurred by the Conservator on behalf of the Conservatorship Property, excluding travel, lodging and meal expenses. The Conservator and any professionals the Conservator retains after Court approval shall be authorized to file applications for compensation every sixty (60) days. Applications shall be filed in full with the Court only and shall not be served. The notice of hearing on the application shall be served on all partners and other parties in interest and shall set forth a) the amount of fees and costs that the applicant is seeking and b) a bulletin that any partner or other party in interest may obtain a full copy of the application by contacting the applicant, and provide the name of a person, email

address and telephone number at the applicant's office who can provide a copy of the application.

13. Creation of Website. In light of the significant number of interested parties, a website shall be set up within 20 days of entry of this order to provide notice to all Partners of ongoing developments, including but not limited to reports contemplated by paragraph 12. A notice of the existence of this website shall be mailed to each of the Partners listed on the certificate of service attached to Plaintiffs' Motion to Appoint Receiver. In order to preserve the assets of the Partnerships, any postings on the website will be deemed adequate notice to all Partners unless a Partner specifically requests for information to be mailed to him/her.

14. Applications for Reimbursement. Any accountants, attorneys, consultants and other professionals that have purported to incur costs and fees on behalf of the Partnerships prior to the date of this Order may submit an application within twenty-one (21) calendar days of the date of this Order to be reimbursed by the Partnerships for those amounts. The Conservator shall first review the fee/cost requests to determine a) if they are expenses properly chargeable to the Partnerships and b) if the fees and costs are reasonable. The Conservator shall then present the requests to the Court along with his recommendations and shall serve a notice of hearing in the same manner and that contains the same information as required in Paragraph 12 above. The Court shall make the final determination on any requests for fees and costs, and all partners and other parties in interest shall have the right to object.

15. Judicial Immunity. The Conservator and the Conservator's attorneys and agents: (i) may rely on any and all outstanding court orders, judgments, decrees and rules of law, and shall not be liable to anyone for their own good faith compliance with any such order, judgment, decree or rule of law; (ii) may rely on, and shall be protected in any action upon, any resolution,

certificate, statement, opinion, report, notice, consent, or other document believed by them to be genuine and to have been signed or presented by the proper parties; (iii) shall not be liable to anyone for their good faith compliance with their duties and responsibilities as a Conservator, or as attorney or agent for Conservator; and (iv) shall not be liable to anyone for their acts or omissions, except upon a finding by this Court that such acts or omissions were outside the scope of their duties or were grossly negligent or constitute misfeasance. Except for matters set forth in subsection (iv) of the preceding sentence, persons dealing with the Conservator shall only look to the Conservatorship assets and bond posted by the Conservator to satisfy any liability, and neither the Conservator nor his attorneys or his agents shall have any personal liability to satisfy any such obligation.

16. Further Instructions. The Conservator may at any time upon notice to all partners and parties in interest, apply to this Court for further or other instructions or powers, whenever such instructions or additional powers shall be deemed necessary in order to enable him to perform properly and legally the duties of his Conservatorship and to maintain, operate, protect and preserve the real property.

17. Duration. This Conservatorship will continue for such time until the Court enters an order terminating the Conservatorship and discharging the Conservator; provided that to the extent the Conservator no longer desires to serve in that capacity, upon notice to Plaintiff and Borrower, the Conservator may apply to the Court for termination of his appointment.

18. Jurisdiction. Jurisdiction of this action is retained to enter further orders as are appropriate.

DONE AND ORDERED in Chambers at Broward County, Florida, on this ____ day of
January, 2013.

JEFFREY E. STREITFELD

JAN 17 2013

~~A TRUE COPY~~
HONORABLE JEFFREY E. STREITFELD
Circuit Court Judge

Copies furnished to:

See attached service list

SERVICE LIST

Matthew Carone et al v. Michel D. Sullivan

Case No. 12-24051 (07) Complex Litigation

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Carone Gallery, Inc., Pension Trust c/o Ray Ballotta 7901 SW 6th Court, Suite 140 Plantation, FL 33324	Carone Marital Trust #1 UTD 1/26/00 c/o Ray Ballotta 7901 SW 6th Court, Suite 140 Plantation, FL 33324	Carone Marital Trust #2 UTD 1/26/00 c/o Ray Ballotta 7901 SW 6th Court, Suite 140 Plantation, FL 33324
Mathew D. Carone Revocable Trust c/o Ray Ballotta 7901 SW 6th Court, Suite 140 Plantation, FL 33324	Centro De Capacitacao Da Juventude c/o Fr. Maurice Shortall 88-53 74th Ave. Glendale, NY 11385	Robin L. Costa 3750 Gait Ocean Drive, #1409 Fort Lauderdale, FL 33308
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Robert G. Walsh Family Trust #4 37 Hawkins Avenue Hamberg, NY 14075	Walsh Family Trust #1 37 Hawkins Avenue Hamberg, NY 14075	Walsh Family Trust #2 37 Hawkins Avenue Hamberg, NY 14075
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EXHIBIT E

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, et al.,

Plaintiffs,

v.

MICHAEL D. SULLIVAN, individually,

Defendant.

**ORDER COMPELLING MICHAEL SULLIVAN TO AUTHORIZE THE
CONSERVATOR ACCESS TO FINANCIAL AND INSURANCE INFORMATION**

THIS MATTER came before the Court on August 2, 2013 at 1:30 p.m. upon the court-appointed Conservator of S&P Associates General Partnership and P&S Associates General Partnership (the "Partnerships"), Philip von Kahle's (the "Conservator") *Conservator's Renewed Motion for Contempt and to Compel Turnover of Partnerships' Books, Records and Electronically Stored Information* (the "Renewed Motion").


The Court having reviewed the Renewed Motion, having heard proffer of counsel, having been advised of the agreement of the parties to the entry of the instant order, finding that sufficient notice has been given to all partners and parties-in-interest, and otherwise finding sufficient cause to enter the relief granted herein, for the reasons stated on the record, it is

ORDERED and ADJUDGED as follows:

1. The Renewed Motion is Granted as follows:
2. Michael D. Sullivan ("Sullivan") shall, within five (5) calendar days of receiving any authorization form(s), sign any and all such authorization form(s) that are deemed reasonable or necessary, in the Conservator's sole discretion, to authorize the Conservator to obtain, at the Partnerships' expense, any and all copies of bank statements, cancelled checks, and other financial information of or related to the Partnerships (and their affiliates and insiders including,

but not limited to, Michael D. Sullivan & Associates, Inc., Solutions in Tax, Inc., a/k/a Sullivan & Powell) from BB&T Bank, Republic Bank, Bank of America and other banking institutions with which such entities ever had or have a relationship with (the "Financial Companies"), directly and immediately from the Financial Companies.

3. Sullivan shall, within five (5) calendar days of receiving authorization form(s), sign any and all such authorization form(s) that are deemed reasonable or necessary, in the Conservator's sole discretion, to authorize the Conservator to obtain, at the Partnerships' expense, any and all copies of all insurance policies or insurance related documents of or related to the Partnerships (and their affiliates and insiders including, but not limited to, Michael D. Sullivan & Associates, Inc., Solutions in Tax, Inc., a/k/a Sullivan & Powell) from Cypress Insurance Agency America and any other insurance related entities with which such entities ever had or have a relationship with (the "Insurance Companies"), directly and immediately from the Insurance Companies.

 4. If Sullivan fails to comply with this Order, he ^{may}~~shall~~ be held in contempt.

5. This Court retains jurisdiction to enforce this Order.

6. This Court reserves jurisdiction to enter an award of reasonable fees and costs in favor of the Conservator in connection with the preparation and filing of this Renewed Motion; such award to be considered contemporaneously with that certain related April 24, 2013 *Supplement to Motion for Contempt*.

JEFFREY E. STREITFELD

Done and ordered in Chambers this _____, 2013.

AUG 19 2013

A TRUE COPY

HONORABLE JEFFREY E. STREITFELD
Circuit Court Judge

Copies furnished to:

Thomas M. Messana, Esq. who is directed to serve same upon all interested parties.