

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-81565-CIV-HURLEY/HOPKINS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

CREATIVE CAPITAL CONSORTIUM, LLC, et al.,

Defendants.

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DEFENDANT GEORGE THEODULE'S RESPONSE TO ORDER GRANTING  
PLAINTIFF'S APPLICATION FOR ORDER TO SHOW CAUSE

Defendant, George Theodule, by and through his undersigned counsel, hereby serves and files his Response to Order Granting Plaintiff's Application for Order to Show Cause, and respectfully states that he has complied to the best of his ability with the December 29, 2008 temporary restraining order [D.E. #7] (the "Order") requiring him to account for all of his assets, funds and properties. Mr. Theodule further states that:

1. The *ex parte* Order, which Plaintiff, the contempt applicant, drafted,<sup>1</sup> provided that Mr. Theodule had **only 5 days** to prepare a multi-year, comprehensive corporate and personal asset and account disclosure over the New Year holiday weekend. At the same time, the Court placed Mr. Theodule's company CREATIVE CAPITAL CONSORTIUM, LLC'S ("CCC") in receivership and appointed an independent receiver over its affairs, including its corporate records. The Receiver then hastily terminated CCC'S external auditor who weeks before had commenced efforts at Mr.

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<sup>1</sup> Plaintiff, which co-investigated the matters alleged in its Complaint with the State of Florida Office of Financial Regulation since at least February 2008, i.e., for at least **ten months** prior to the December 28, 2008 filing of its Complaint and secret applications to the Court during the winter holiday period, can hardly complain that Mr. Theodule's compliance with the Order is unreasonable under the circumstances it created.

Theodule's request to reconcile CCC'S records with those of many investment clubs. Had CCC'S auditor been able to complete her tasks, Mr. Theodule would have been able to provide accurate information in compliance with the Order, and he needs the same information to complete his federal tax returns. Thus, *five days* is an unreasonably short period of time to gather documents under these conditions. Nevertheless, Mr. Theodule, with the assistance of prior counsel, did submit the best accounting he was able to do under the circumstances.

2. Accordingly, Mr. Theodule's accounting was incomplete given the short time constraints. However, Mr. Theodule supplements Exhibit "C" of his initial accounting with the attached Exhibit "C" in which he discloses as much information as is readily and reasonably available to him.
3. Disclosure of most of the accounts has been made informally and has been made by Mr. Theodule's prior legal counsel in this matter. The only known additional accounts not previously disclosed are included in the attached Exhibit "C".
4. In addition, Mr. Theodule has instructed defendant CCC'S external auditor, Carmen Tajeda, and one of his real property attorneys, Gabrielle Alexis, Esq., to provide the Receiver with supplementary documentation on the accounting matters previously disclosed. Upon information and belief, Ms. Tajeda and Ms. Alexis have surrendered copies of all of CCC's records in their possession to the counsel for the Receiver.
5. Mr. Theodule declares under penalty of perjury that to the best of his knowledge, all bank, brokerage, or other intangible property accounts of any kind that are subject to his control or in which he has a beneficial interest anywhere and everywhere in the

world have been disclosed to the Court-Appointed Receiver and to the SEC. *See* attached Exhibit “E”.

6. The declaration of Carmen Tajeda (attached as Exhibit “F”) substantiates Mr. Theodule’s inability to provide greater detail on income related matters. Ms. Tajeda was hired to audit defendant CCC by Mr. Theodule because he was concerned that some customers of one or more investment clubs had requested refunds from defendant CCC but that CCC had no record of their accounts. Commencing in or about December 1, 2008, Ms. Tejada attempted to verify all customers’ deposits of investments clubs that had been tendered to CCC and which customer’s deposits had been refunded and the characteristics of these deposits (principal and/or gain). Ms. Tajeda was also hired to complete Mr. Theodule personal federal income tax returns. Ms. Tajeda’s services for CCC were terminated by the Court-Appointed Receiver. However, Ms. Tajeda declares under penalty of perjury that Mr. Theodule does not have additional accounting information to provide the Court at this time. This is because the reconciliation of accounts by CCC and the various investment clubs has not been completed, and therefore she cannot distinguish what items represent investment advisory fee income to CCC from deductible expenses, nor can she separate Mr. Theodule’s personal compensation and taxable benefits until the records of CCC have been verified. This is the type of information ordered to be disclosed pursuant to Section IV.(A)(a) of the Order and is therefore unavailable.
7. Accordingly, Mr. Theodule has complied with the Order to the best of his ability, and the Court should so find.

**MEMORANDUM OF LAW**

***Impossibility of Compliance Is a Complete Defense to an Alleged Violation of a Court Order***

When a Court issues an order compelling a person to perform an act, the person subject to the order cannot be held in contempt for an alleged violation of the order if the person demonstrates that he has done all he reasonably can to comply with the court order. *Hecht Co. v. Bowles*, 321 U.S. 321 (1944). If the person subject to the court order establishes his inability to comply, the contempt applicant, who has the burden of persuasion, must rebut this showing and prove an actual ability to comply. *CFTC v. Wellington Precious Metals, Inc.*, 950 F.2d 1525, 1529 (11th Cir. 1992), *cert. denied*, 113 S. Ct. 66 (1992).

Mr. Theodule has established that he has done all he reasonably can to comply with the Order. The circumstances created by the SEC and the Receiver make impossible his further compliance with the Order. Further, the contempt applicant, Plaintiff SEC, cannot show that Mr. Theodule *has not done* all he reasonably can to complete the accounting under the circumstances, especially here where the contempt applicant SEC has caused the Court to place Mr. Theodule's company CCC into receivership, which takes away his ready access to files and documents, and where the Receiver has quickly terminated Mr. Theodule's voluntary efforts to audit CCC and to reconcile its accounts for internal control and tax reporting purposes. There is nothing further that Mr. Theodule can reasonably do that he has not attempted to do to comply with the Order. Indeed, further prosecution of Mr. Theodule for a contempt sanction under these circumstances would render punitive the remedy being pursued, which this situation does not warrant.

WHEREFORE, Defendant, George Theodule, respectfully requests that this Court find that he has complied with the Order requiring him to provide an accounting.

Respectfully submitted,

Dated: March 9, 2009

By: s/ Russell C. Weigel, III

Russell C. Weigel, III  
Fla. Bar No. 822159

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the service list below in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically

Notices of Electronic Filing:

Christopher E. Martin, Esq.  
Linda S. Schmidt, Esq.  
Securities and Exchange Commission  
801 Brickell Ave., Ste. 1800  
Miami, FL 33131  
***Counsel for Plaintiff  
Securities & Exchange Commission***

David C. Cimo, Esq,  
Carmen Contreras-Martinez, Esq.  
Genovese Joblove & Battista, P.A.  
4400 Bank of America Tower  
100 Southeast Second Street  
Miami, FL 33131  
***Counsel for the Receiver***

Dated: March 9, 2009

s/ Russell C. Weigel, III

Russell C. Weigel, III

## **EXHIBIT C (Supplement)**

### **George Theodule's Assets**

2004 Mercedes Benz S600 -- Approx. \$30,000. Currently titled in name of Gerson Corominas, but George Theodule has the signed title. Purchased in approximately March 2008.

2005 Hummer, Loganville, GA -- Approx. \$15,000. Title assigned in October 2008 to George Theodule, Jr. as a birthday present.

Household furnishings -- Approx. \$5,000-8,000

1 contemporary adult bedroom set purchased in approximately January or February 2008 from City Furniture.

1 Girl's bedroom furniture set purchased in approximately January or February 2008 from City Furniture.

Jewelry, Loganville, GA -- Approx. \$183,700

Rolex watch (stolen January 2009)

Men's diamond ring, 7 ct. (stolen January 2009)

Gold necklace, gold bracelet (stolen January 2009)

Electronic equipment, Loganville, GA -- Approx. \$4,000

Fry's Electronics Desktop computer (purchased in 2005 or 2006) (stolen January 2009)

2 Samsung flat screen monitors (stolen January 2009)

7 flat screen TV's (Sony and Samsung) (stolen January 2009)

Paintings, Loganville, GA -- Approx. \$5,000

The Last Supper (Stolen January 2009)

3 Paintings remaining (value approx. \$700)

Luggage, Loganville, GA -- Approx. \$4,000

Louis Vitton, 6-7 pieces (stolen January 2009)

1 Louis Vitton brief case remaining, purchased June 2008

Unity Entertainment (25% interest in partnership with Evens St. Claire and George Theodule)

### **CCC Investments and/or Assets**

Accounts at Guaranty Trust Bank (SL) Limited

12 Wilberforce Street, Freetown, Sierra Leone Tel. 228493, as follows:

G\$ Trade & Financial Company Limited, Acct. No. 201/3101387 2/1/0

Good Buy Homes, Acct. No. 201/3101388 2/1/0

House in Jupiter, FL – Value of approximately \$400,000. Titled in name of George Theodule, but was acquired on behalf of CCC. George Theodule never lived in house. Address: 13806 155<sup>th</sup> Place North, Jupiter, FL 33478.

Leased home (recording studio) for the benefit of Unity Entertainment along with partner Evens St. Claire, located in Miami, FL-- -- Approx. \$0.00. Tel. (305) 978-2642.

Turan Air 100,000 restricted shares, Boca Raton, FL -- Approx. \$200,000  
Purchased from owner's daughter. 1700 S. Powerline Road, Ste H, Deerfield Beach, FL 33442. (954) 428-4500. To date, no stock certificate was issued for this transaction.

Marie Jean Baptiste, realtor in Snellville, GA, loan made to stop foreclosure on her property, oral loan -- Approx. \$100,000 . Tel. (707) 580-0048.

Michel Beaubrun (mechanic), resident of Boynton Beach, Florida -- Approx. \$110,000 balance. Tel. (561) 843-0358.

Earlyviews, Inc., 2207 Shoma Drive, Royal Palm Beach, FL 33414; investment of approx. \$300,000, (Kathryn Parker) Tel. (561) 351-3054.

Unity Entertainment (in partnership with Evens St. Claire and George Theodule) -- Approx. \$250,000, investment to convert a house into a recording studio, 50% partnership interest.

Unity Entertainment (\$300,000 earnest money for 2 houses in Loganville, GA, and approximately 6 cars located on Theodule property in Jupiter, Fla.) -- Approx. \$500,000

Caribbean Airways – (Approx. \$250,000 for airline start up expenses, 100% owner)  
Based in Miami, Fla., operated by Mark Renee, Tel. (561) 282-8183.

Elite Luxury Travel, Georgia corporation, located in GA. Clyde Richardson, manager -- Approx. \$15,000 invested, 100% owned by CCC. Tel. (404) 867-2125.

Sky King (owner of Caribbean Airways's leased aircraft), partner is Ron Gilbert, president of G&R Aviation Services, LLC, tel. (727) 687-2175, (407) 446-8604, rgilbert@graviation.com -- Approx. \$600,000 disbursed to advance expenses for Caribbean Airways)

75 Shares of Haiti Development, issued to Mannah Group, in Port of Wilmington, DE, ships goods to/from Haiti -- Approx. \$200,000 investment.

General Insurance Agency, Inc., 8461 Lake Worth Road, Ste. 118, Lake Worth, FL 33467, investment of approx. \$10,000. Mike Nascarella, Tel. (561) 906-6738. Wife, "Indira" (561) 602-5261.

The Mannah Group (subsidiary of CCC in Duluth, GA), operated by Dorothy-- Approx.

\$63,000 paid to third-parties for expenses of the Mannah Group.

Divine Alliance (subsidiary of CCC in Orlando, FL), operated by Ronald Virgil (Tel. (407) 879-5335. -- Approx. \$10,000 paid to third-parties for expenses of the Divine Alliance

Minor stake in BeatHouse.com, located in W. Palm Beach, FL, (online music service under development by Mario Theodule, approx. 25% of company) -- Approx. \$300,000

Jeff Jackson (car dealership investment in Georgia, 60% CCC) -- Approx. \$14,000 investment to set up office. Tel. 404-561-8609.

Stacey Fortunat, realtor in Snellville, GA, loaned approx. \$50,000, advance of commission for purchase of 2 homes for Unity Entertainment. Tel. (954) 849-5171; (718) 866-7322; (678) 754-9604.

Earnest money for real estate P/S contracts provided to realtor Marie Jean Baptiste, not returned -- Approx. \$140,000

Rony Devarenes, located in Miami, FL, was provided \$250,000 for attempting to set up a liaison for Sierra Leon politicians to facilitate hotel development. Tel. (786) 357-5762.

Omega MC Inc, 14575 NW 16 Drive, Miami, 33167, Joel Deeb (Angola Business Opportunities) -- Approx. \$450,000, Tel. (301) 640-6710

Marie Alexandre -- Approx. \$400,000. Tel. (561) 351-1967.

Eve, friend of Marie Alexander, officer of club in Boynton Beach, FL -- Approx. \$35,000 for personal loan.

2002 BMW 745i (black), VIN WBAGL63452DP50607, possessed by Edwige Benoir (678) 887-0201; (770) 995-6588. -- Approx. \$24,500

80 Acres in GA, Bobby Sigmun (realtor), (770) 856-7051; (770) 786-2000. Approx. \$50,000 paid for earnest money.

Mark James, corporate line of credit to buy corporations, (754) 204-7224. -- Approx. \$600,000 wired to his company; he disappeared with the money.

Cavalli Lounge deal (Thierry Boinnard), Miami, FL. -- Approx. \$75,000, personal loan (305) 316-5411. Trying to set up a lounge in a hotel (Boinnard improperly spent this amount on himself).

Skate Board Heist movie (Delvin) (312) 375-3879; (773) 528-7994 -- Approx. \$10,000 invested into development of movie in exchange for a % of profits, still in progress



Tupac Shakur movie, Sherod (561) 840-7757 is contact, -- Approx. \$5,000 paid for movie that never ended up taking place.

Business Expenditure, Krissy McKeon, investment in insurance company in W. Palm Beach, FL, approx. \$100,000, Tel. (561) 301-5867.

James Stephenson, business expense, for setting up business plans and structuring loans for CCC, approx. \$3,000 (678) 437-4900.

“International” (Haitian Restaurant), Lawrenceville, GA. “Michelle” (678) 891-9772; (770) 337-0785; Approx. \$2,000 invested in liquor licenses.

Jean Claugilde Tel. (786) 226-6256; (954) 624-2245, personal loan of approx. \$3,000.

Tennessee land (earnest money), realtor is Avery Petty, (865) 680-0105 -- Approx. \$15,000

Anthony Hinkle, general contractor, approx. \$20,000 paid for hotel building due diligence, (954) 600-0088, Wife “Rosa” (954) 255-7985.

Pat Golden (realtor) (407) 285-4395, approx. \$3,000 paid to find real estate deals.

Reverend Dave Morrison (321) 202-4927, approx. \$5,000 seed money loaned.

Gilbertte Duckens Delisfort, buying a home in Snellville, GA to re-fi and sell and split profit 50/50, \$52,000 invested. (404) 936-3458.

Yollette Williams, (954) 214-3919, bought a condo together in Coral Springs, FL, approx. \$50,000 invested, purchase price was approximately \$132,000.

Marketing firm for foreclosure complaint business (company not formed) with Gabriel Alexis, Esq., located in Boynton Beach, FL, \$225,000 invested. (561) 375-8866; (561) 254-9920.

Yopana Staffing Services, LLC, 1500 N. University Drive, Suite 253, Coral Springs, FL 33071; \$315,000 of which \$28,000 are management fees and accounts payable services and the balance is advanced payroll for CCC employees.

**DECLARATION OF GEORGE THEODULE**

Pursuant to 28 U.S.C. § 1746, I, George Theodule, state as follows:

1. I am over the age of 18 years and am competent to testify under oath as to the following matters.
2. I hereby supplement my sworn accounting previously submitted to the Court with the information attached hereto as Exhibit "C".
3. To the best of my knowledge, all bank, brokerage, or other intangible property accounts of any kind that are subject to my control or in which I have a beneficial interest anywhere and everywhere in the world have been disclosed to the Court-Appointed Receiver and to the Securities and Exchange Commission in the case of *SEC v. CREATIVE CAPITAL CONSORTIUM, LLC, et al*, Case No. 08-81565-CIV-HURLY (S.D. Fla.).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on:

George Theodule

Signature

March 9, 2009

Date

\_\_\_\_\_  
Print Name

### **DECLARATION OF CARMEN TEJEDA**

Pursuant to 28 U.S.C. § 1746, I, Carmen S. Romero-Tejeda, state as follows:

1. I am over the age of 18 years and am competent to testify under oath as to the following matters. My full legal name is Carmen Sofia Romero-Tejeda.
2. My business address is 1500 N. University Drive, Suite 235, Coral Springs, Florida 33071.
3. My current occupation is Tax Accountant.
4. I personally know or have known GEORGE THEODULE.
5. I have known GEORGE THEODULE for 6 months.
6. GEORGE THEODULE engaged my accounting services for CREATIVE CAPITAL CONSORTIUM, LLC because was concerned that some customers of one or more investment clubs would request refunds from CREATIVE CAPITAL CONSORTIUM, LLC, but that CREATIVE CAPITAL CONSORTIUM, LLC had no record of their accounts. I was engaged to verify all customers' deposits of investments clubs had been tendered to CREATIVE CAPITAL CONSORTIUM, LLC and which customer's deposits had been refunded and the characteristics of these deposits (principal and/or gain). The names and addresses of the investment clubs customers were to be kept confidential and not to be submitted to CREATIVE CAPITAL CONSORTIUM, LLC. I recommend an audit of all investment clubs records to accomplish this objective.
7. Commencing in or about December 1, 2008, I undertook to reconcile the bank records of CCC with those of each investment club. Reconciliation was necessary because I learned very early in my assignment that most of the investment clubs did not have complete records and that CCC had outsourced its internal accounting functions to Magda Dominique and/or Mireille Victor who were the principles of Lake Worth, Florida-based United Investment Club. Further, I was told by employees of CCC that all distributions and withdrawals for investor accounts were processed by United Investment Club, in particular Magda Dominique and/or Mireille Victor.
8. When I notified in writing of United Investment Club as to the audit, the same as all investment clubs, it failed to respond to my request. I made my request on approximately November 17, 2008. To date I have not reviewed records from United Investment Club.

9. Upon information and belief, United Investment Club did not have access to CCC's bank or brokerage accounts.
10. My audit function has never been completed because of United Investment Club's non-compliance and because the Court-Appointed Receiver terminated my services on behalf of CCC.
11. As of the date of my termination from CCC as an external auditor, I did determine that certain investor investments were valid but that their funds had never been transmitted to CREATIVE CAPITAL CONSORTIUM, LLC by their respective investment club.
12. The books and records reflected that CREATIVE CAPITAL CONSORTIUM, LLC was independent of any investment club other than United Investment Club.
13. As far as I have been able to determine, the books and records of investment clubs (other than United Investment Club) and those of CREATIVE CAPITAL CONSORTIUM, LLC reflect that assets between them were never co-mingled.
14. The books and records that I have been able to observe reflected that CREATIVE CAPITAL CONSORTIUM, LLC did not improperly utilize the investment funds tendered from one club for the repayment of principal or the payment of principal plus a return on investment to any other investment club.
15. On or about September 15, 2008 I was hired to prepare the federal annual tax returns for GEORGE THEODULE and CREATIVE CAPITAL CONSORTIUM, LLC for the calendar years 2007 and 2008. I did not complete the 2007 or 2008 tax return for CREATIVE CAPITAL CONSORTIUM, LLC because the Court-Appointed Receiver in SEC v. CREATIVE CAPITAL CONSORTIUM, LLC, et al, Case No. 08-81565-CIV-HURLY (S.D. Fla.), instructed me to cease further efforts pertaining to its tax returns. Accordingly, I was compelled to oblige.
16. I have also reviewed the supplemental accounting prepared by GEORGE THEODULE with the assistance of the law firm of Russell C. Weigel, III, and P.A. It is my opinion that GEORGE THEODULE does not have additional information to provide the Court at this time. This is because the reconciliation of accounts by CCC and the various investment clubs has not been completed, and therefore I cannot distinguish what items represent investment advisory fee income to CCC from deductible expenses, nor can I separate GEORGE THEODULE'S personal compensation and taxable benefits until the records of CCC have been verified.
17. I know GEORGE THEODULE to be an honest person.

18. To my knowledge, and based upon my review of various records of CCC, it is my opinion that GEORGES THEODULE was not deliberately or intentionally engaged in a ponzi scheme or otherwise fraudulently managing the money of others.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on:

Carmen S. Romero-Tejeda

Signature

3/9/2009

Date

\_\_\_\_\_  
Print Name