

**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,  
A CREATIVE CAPITAL CONCEPTS, LLC, and  
GEORGE L. THEODULE,**

**Defendants.**

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**JOINT SCHEDULING AND DISCOVERY REPORT**

Pursuant to Federal Rules of Civil Procedure 16 and 26(f) and S.D. Fla. Local Rule 16.1, the undersigned parties hereby respectfully submit this Joint Scheduling and Discovery Report:

**Scheduling and Discovery Meeting:**

Pursuant to notice issued by Plaintiff Securities and Exchange Commission (“SEC” or “Commission”), the following parties appeared at a scheduling and discovery teleconference, on April 2, 2009:

- Brian K. Barry, Esq., and Rachel K. Paulose, Esq., counsel for the SEC;
- Russell C. Weigel, III, Esq., counsel for Defendant George L. Theodule; and
- Theresa Van Vliet, Esq. and Nancy E. Bergold, Esq., Counsel for Receiver Jonathan E. Perlman, Esq.; and Receiver Jonathan E. Perlman, Esq.

**Case Management Track**

Pursuant to S.D. Fla. Local Rule 16.1.A, the parties request that the Court assign this matter to the standard case management track. The parties anticipate this matter requiring six to ten days of trial. Although this case involves numerous witnesses located out of the jurisdiction,

the one-count complaint alleges discrete misrepresentations. Moreover, the parties do not anticipate calling expert witnesses.

**a. Likelihood of Settlement**

Although it is unknown whether settlement is likely, the parties have discussed – and will continue to discuss – the likelihood of settlement. Any and all offers of settlement made by Defendants must be submitted for consideration and approval by the five-member Commission in Washington, D.C.

**b. Likelihood of Appearance of Additional Parties**

The appearance of additional parties is not anticipated at this time.

**c. Proposed Time Limits**

The parties believe that this case should be assigned to the standard track. Accordingly, the Parties submit the following proposed time limits:

- |                  |   |
|------------------|---|
| July 1, 2009     | Joinder of additional parties and amended pleadings.  |
| January 15, 2010 | The parties shall furnish to opposing counsel a written list containing the names and addresses of all fact witnesses they intend to call at trial.   |
| November 6, 2009 | The parties do not anticipate calling expert witnesses. Should circumstances change, any party calling an expert witness shall produce to opposing counsel the names, addresses, and written reports of all expert witnesses intended to be called at trial and only those expert witnesses listed shall be permitted to testify.                 |
| December 4, 2009 | The parties do not anticipate calling rebuttal expert witnesses. Should circumstances change, any party calling a rebuttal expert witness shall produce to opposing counsel the names, addresses, and written reports of any rebuttal expert witnesses intended to be called at trial. Only those expert witnesses shall be permitted to testify. |
| January 15, 2010 | All discovery must be completed.  |

- March 1, 2010 All summary judgment and other pretrial motions and memorandum of law (except for motions in limine) must be filed.
- April 1, 2010 All responses in opposition to summary judgment motions must be filed.
- April 15, 2010 All replies must be filed.

**d. Proposals for the Formulation and Simplification of Issues**

The parties agreed that they will work together in good faith to simplify the issues for trial, including reaching stipulations of fact and as to the authenticity of documents, and, if appropriate, filing any motions for summary judgment as to issues of law.

**e. Necessity or Desirability of Amendments to the Pleadings**

Defendant Theodule will seek leave of Court to amend his Answer. At this point, the parties do not anticipate otherwise amending their pleadings.

**f. Possibility of Obtaining Admissions of Fact and of Documents**

The parties agreed to work together in good faith to reach stipulations regarding uncontested facts and the authenticity of documents to expedite the trial of this matter.

**g. Avoidance of Unnecessary Proof and Cumulative Evidence**

At this juncture, the parties do not have any specific suggestions to the Court for the avoidance of unnecessary proof and cumulative evidence, but will endeavor to streamline the litigation.

**h. Suggestions on the Advisability of Referring Matters to  
a Magistrate Judge or Master**

The parties do not anticipate having discovery disputes that will require the Court's intervention; however, if such disputes do develop, the parties agree to have those matters referred to the U.S. Magistrate Judge. The parties have not consented to trial before a U.S. Magistrate Judge at this time.

**i. Preliminary Estimate of the Time Required for Trial**

The parties anticipate trial to last no longer than eight days if tried before the Court, or ten days if tried before a jury.

**j. Requested Dates for Conferences Before Trial, Final Pretrial, and Trial**

The parties are not requesting any specific dates, but will leave the setting of all such dates to the Court's sound discretion.

**k. Number of Depositions**

Some of the witnesses in this case reside outside the jurisdiction of the Southern District of Florida. Defendant Theodule also resides outside of the jurisdiction. Accordingly, the parties hereby stipulate that it may be necessary to exceed the limitation provided by Fed. R. Civ. P. 30(a)(2)(A) and agree that each party may take up to fifteen (15) oral/videographic depositions without leave of court.

**l. Other Information That Would Be Helpful to the Court**

The parties have not identified any other matters that would be helpful to the Court.

**Discovery Plan Report**

Pursuant to Federal Rule of Civil Procedure 26(f), the parties developed the following discovery plan:

- (a) In connection with their initial disclosure obligations, the parties will serve their initial disclosures required by Federal Rule of Civil Procedure 26(a)(1) and S.D. Fla. Local Rule 26.1(A) by May 1, 2009.
- (b) The parties will likely seek discovery from, among others, Defendant Theodule; alleged victims; expert witnesses; current or former employees, officers, and directors of Defendants; and any other person or entity who may have relevant knowledge of the claims or defenses pertaining to this matter. Defendant Theodule will seek also discovery from the Receiver and the Commission. The parties do not believe that they should conduct discovery in phases or be limited to particular issues.
- (c) Whenever feasible, the parties will produce all electronically stored information in bate-stamped, OCR text, or pdf format. Alternatively, if unable to produce electronically stored information in such a manner, the parties will produce the information in the currently stored format. The parties further agree that they will maintain all relevant electronically stored information in its original format until final resolution of this matter.
- (d) The parties have agreed that if any party inadvertently produces electronically stored information, or other documents, that the producing party claims after production are privileged, they will notify the opposing party or parties within a reasonable time frame of learning that an inadvertent production had occurred, then all parties who had received such information shall promptly return, sequester or destroy it, and must take reasonable steps to retrieve the information from third parties, including expert witnesses. However, the parties reserve their right to claim that the

information disclosed was not privileged or that the privilege was waived. The parties are requesting that the Court include their agreement in the scheduling order.

- (e) As noted above, the parties have stipulated that it may be necessary to exceed the limitation provided by Federal Rule of Civil Procedure 30(a)(2)(A) and agree that each party may take up to fifteen (15) oral/videographic depositions without leave of court.
- (f) The parties are not requesting that the Court issue any other orders under Federal Rules of Civil Procedure 16(b)-(c) or 26(c).

April 3, 2008

Respectfully submitted,

**SECURITIES AND EXCHANGE  
COMMISSION**  
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**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that on April 3, 2009, 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 on this day on all counsel of record or pro se parties identified on the attached Service List 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.

s/ Rachel K. Paulose  
Rachel K. Paulose

**SERVICE LIST**

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Case No. 08-81565-CIV-HURLEY/HOPKINS  
United States District Court, Southern District of Florida

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**UNITED STATES DISTRICT COURT  
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A CREATIVE CAPITAL CONCEPTS, LLC, and  
GEORGE L. THEODULE,**

**Defendants.**

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**PROPOSED SCHEDULING ORDER**

Pursuant to Local Rule 16.1(B)(2), **IT IS ORDERED AND ADJUDGED** as follows:

1. This case shall be assigned to a STANDARD TRACK.
2. The following timetable shall govern the pretrial procedure in this case. This schedule shall not be modified absent compelling circumstances:

July 1, 2009	Joinder of additional parties and amended pleadings.
January 15, 2010	The parties shall furnish to opposing counsel a written list containing the names and addresses of all fact witnesses they intend to call at trial.
November 6, 2009	The parties do not anticipate calling expert witnesses. Should circumstances change, any party calling an expert witness shall produce to opposing counsel the names, addresses, and written reports of all expert witnesses intended to be called at trial and only those expert witnesses listed shall be permitted to testify.
December 4, 2009	The parties do not anticipate calling rebuttal expert witnesses. Should circumstances change, any party calling a rebuttal expert witness shall produce to opposing counsel the names, addresses, and written reports of any rebuttal expert witnesses intended to be called at trial. Only those expert witnesses shall be permitted to testify.

January 15, 2010	All discovery must be completed.
March 1, 2010	All summary judgment and other pretrial motions and memorandum of law (except for motions in limine) must be filed.
April 1, 2010	All responses in opposition to summary judgment motions must be filed.
April 15, 2010	All replies must be filed.
_____	All summary judgment and other pretrial motions will be resolved by the Court.
_____	Joint Pretrial Stipulation must be filed.
_____	Proposed Findings of Fact and Conclusions of Law <u>or</u> Proposed Jury Instructions must be filed.
_____	Pretrial conference to be held at _____ a.m./p.m.
_____	Trial commences at ____ a.m.

3. If this case is settled, counsel are directed to inform the Court promptly by calling chambers and submitting an appropriate order for dismissal, within ten (10) days of notification of settlement to the Court, pursuant to Fed. R. Civ. P. 41(a)(1).

4. Due to the complex nature of this case, each party may take up to fifteen (15) oral/videographic depositions without leave of court.

5. The parties have agreed to the following regarding disclosure or discovery of electronically stored information: (a) whenever feasible, the parties will produce all electronically stored information in bate-stamped, OCR text, or pdf. format. Alternatively, if unable to produce electronically stored information in such a manner, the parties will produce the information in the currently stored format; and (b) they will maintain all relevant electronically stored information in its original format until final resolution of this matter.

6. The parties have also agreed to the following regarding assertion of claims of privilege or protection of trial preparation material after production: if any party inadvertently produces electronically stored information, or other documents, that the producing party claims after production are privileged, they will notifying the opposing party or parties within a reasonable time frame of learning that an inadvertent production had occurred, then all parties who had received such information shall promptly return, sequester or destroy it, and must take reasonable steps to retrieve the information from third-parties, including expert witnesses. However, the parties reserve their right to claim that the information disclosed was not privileged or that the privilege was waived.

**DONE AND ORDERED** in Chambers at West Palm Beach, Florida this \_\_\_\_ day of \_\_\_\_\_, 2009.

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**DANIEL T.K. HURLEY**  
**UNITED STATES DISTRICT JUDGE**

cc: All Counsel and Parties of Record