

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
(WEST PALM BEACH DIVISION)

CASE NO. 09-80477-CIV-DTKH

JONATHAN E. PERLMAN, Esq., as court  
appointed Receiver of Creative Capital  
Consortium, LLC, et al.,

Plaintiff,

v.

MARIO THEODULE, an individual,  
SMART INVESTMENT MANAGEMENT  
SERVICES, LLC, a Florida limited liability  
company, GOT SWAGG, INC., a Florida  
corporation, DA BEAT HOUSE, INC., a  
Florida corporation, and CEO of FIVE-5  
BUSINESS SOLUTIONS, INC., a Texas  
corporation,

Defendants.

**ANSWER AND AFFIRMATIVE  
DEFENSES TO COMPLAINT**

Defendants, MARIO THEODULE, an individual, GOT SWAGG, INC., a Florida corporation, and DA BEAT HOUSE, INC., a Florida corporation (hereafter referred to as “Defendants” collectively), by and through their undersigned counsel, answer’s Plaintiff’s Complaint as follows:

1. Defendants admit the allegations in paragraphs 1, 2, 3, 10, 11, 12, 16, 17, 18, 19, 20 and 82 of the Complaint.
2. Defendants deny the allegations in paragraphs 13, 14, 15, 50, 54, 55, 56, 57, 58, 62, 63, 64, 70, 71, 72, 73, 75, 76, 78, 79, 80, 86 and 87 of the Complaint.
3. Defendants are without knowledge as to the truth of the allegations in paragraphs 4, 5, 6, 7, 8, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43,

44, 45, 46, 47, 48, 49, 52, 53, 60, 61, 66, 67, 68, 69, 77, 83, 84 and 85 of the Complaint and therefore deny the same without strict proof thereof.

4. Defendants admit the allegation in paragraph 9 that Mario Theodule is an individual residing in Palm Beach County, Florida and that he is the brother of George Theodule, but deny that he was an “insider” of the Creative Capital Entities.
5. Defendants deny the allegation in paragraph 21 that the Preliminary Injunction entered on January 9, 2009 orders the “disgorgement of ill-gotten gains”, but admit the remaining allegations in paragraph 21.
6. Defendants respond to the paragraphs realleged in paragraph 51, 59, 65, 74 and 81 in the same manner as each paragraph realleged therein was answered individually.
7. As their first affirmative defense, Defendants, MARIO THEODULE, GOT SWAGG, INC. and DA BEAT HOUSE, INC. allege that any funds they received from George Theodule or the “Creative Capital Entities” were legitimately earned as payments for professional computer, web site design and technology consulting services provided by Defendants, and that Defendants had no knowledge nor any reason to suspect that George Theodule or the Creative Capital Entities’ funds may have been obtained by an improper means.
8. As their second affirmative defense, Defendants, MARIO THEODULE, GOT SWAGG, INC. and DA BEAT HOUSE, INC. allege that they did not have any involvement whatsoever in George Theodule or the Creative Capital Entities’ financial transactions, and never reviewed or helped to prepare or maintain any of their financial records.
9. As their third affirmative defense, Defendants, MARIO THEODULE, GOT SWAGG, INC. and DA BEAT HOUSE, INC. allege that they never participated in any improper activities with George Theodule or the Creative Capital Entities, and they never saw

anything suggesting that George Theodule or the Creative Capital Entities were involved in the alleged Ponzi scheme or defrauding of investors

10. As their fourth affirmative defense, Defendants, MARIO THEODULE, GOT SWAGG, INC. and DA BEAT HOUSE, INC. allege that they only conducted business with George Theodule or the Creative Capital Entities from January 2008 through March 2008, and that during this time they provided computer and website design services, but never participated in soliciting investors, receiving investments, or managing funds.

WHEREFORE, Defendants, MARIO THEODULE, an individual, GOT SWAGG, INC., a Florida corporation, and DA BEAT HOUSE, INC., a Florida corporation, demand that Plaintiff's claims shall be DENIED.

CERTIFICATE OF SERVICE: I hereby certify that on May 15, 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 this day on all counsel of record identified on the attached Service List by the transmission of a Notice of Electronic Filing generated by CM/ECF.



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**SERVICE LIST**

Jonathan E. Perlman, Esq. as Receiver v. Mario Theodule, et al.

CASE NO. 09-80477 (CIV-MARRA/JOHNSON)

(Ancillary Proceeding to U.S.D.C. Case No. 08-81565-CIV-HURLEY/HOPKINS)

United States District Court, Southern District Of Florida

(West Palm Beach Division)

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