

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

CASE NO. 09-81226-CIV- HURLEY

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

Plaintiff,

v.

DEVELOPMENT FUNDING AND  
SERVICES, LLC, DANIEL LAVAN, JR. and  
CAROLYN LAVAN,

Defendants.

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**AMENDED MOTION FOR ENTRY OF FINAL DEFAULT  
JUDGMENT AND MEMORANDUM OF LAW**

Jonathan E. Perlman, Esq., the court appointed Receiver (the “Receiver”) of Creative Capital Consortium, LLC and related receivership entities, by and through his undersigned counsel, and pursuant to Rule 55(b) of the Federal Rules of Civil Procedure, moves for entry of final default judgment against the Defendants Development Funding and Services, LLC, Daniel Lavan Jr., and Carolyn Lavan (the “Defendants”). In support of this Motion, the Receiver states:

**INTRODUCTION**

1. On May 7, 2010, the Clerk of Courts for the United States District Court for the Southern District of Florida entered a default against the Defendants Development Funding and Services, LLC and Daniel Lavan, Jr. for failure to appear or otherwise defend. [DE 24 & 25].

2. On June 1, 2010, the Clerk of Courts for the United States District Court for the Southern District of Florida entered a default against the Defendant Carolyn Lavan for failure to appear or otherwise defend. [DE 28-1].

3. On September 10, 2010, the Receiver filed his Motion for Entry of Default Final Judgment (the “Motion”) seeking judgment against the Defendants, jointly and severally, in the amount of \$207,000.00. [DE 32].

4. On October 7, 2010, the Court entered an Order Regarding the Receiver's Motion for Default Judgment noting that in the Motion the Receiver seeks a joint and several judgment against Defendants in the amount of \$207,000.00 for two fraudulent transfers – one in the amount of \$197,000.00 and one in the amount of \$10,000.00. [DE 34]. The Court held that while the Amended Complaint alleges the \$197,000.00 transfer and the allegations support a joint and several judgment, the Amended Complaint does not allege the \$10,000.00 transfer. Further, the exhibits attached to the Motion show that the \$10,000.00 transfer was only received by Defendant Daniel Lavan, Jr.

5. Accordingly, the Receiver files this amended motion for default judgment in which the Receiver seeks (i) a judgment against Defendants, Development Funding and Services, LLC, Daniel Lavan, Jr. and Carolyn Lavan, jointly and severally, in the amount of \$197,000.00 and (ii) a judgment against Defendant Daniel Lavan, Jr. in the amount of \$10,000.00.

### **DISCUSSION**

6. This is an action brought by the court appointed Receiver to collect amounts due the Receivership Estate from the Defendants (the “Amended Complaint”). [DE 5-2]. This action is ancillary to the main proceeding *Securities and Exchange Commission v. Creative Capital Consortium, LLC, et al.*, Case No. 08-81565-CIV-Hurley/Hopkins, pending in the United States District Court, Southern District of Florida.

7. In the Complaint, the Receiver seeks to avoid and recover alleged transfers made by the Receivership Entities and/or their alter ego, George Theodule, (collectively “the

Receivership Transferors”) to the Defendants pursuant to the Florida Uniform Fraudulent Transfer Act (“FUFTA”). The alleged transfers (the “Transfers”) were made to the individual Defendant, Daniel Lavan Jr., a Florida resident, and to the corporate Defendant, Development Funding and Services, LLC, a Florida limited liability company with its principal place of business in Winter Garden, Florida.

8. The Receiver seeks avoidance and recovery of the alleged Transfers under FUFTA based upon alternating theories of actual fraud and constructive fraud. With respect to actual fraud, the alleged Transfers were made by the Receivership Entities with the actual intent to hinder, delay, or defraud creditors. With respect to constructive fraud, the alleged Transfers were made by the Receivership Transferors for less than reasonably equivalent value at a time when the Receivership Transferors were insolvent.

9. In the alternative, the alleged Transfers are recoverable against the Defendants based upon the equitable theories of unjust enrichment and constructive trust. Namely, that the Receivership Transferors conferred an unearned benefit upon the Defendants which should now be disgorged.

10. The Receivership Transferors caused the alleged Transfers to be made to the various Defendants in the amounts and on the dates identified in the Receiver’s Affidavit, attached hereto as Exhibit “A.”

11. The Clerk of Courts for the United States District Court for the Southern District of Florida has entered a default against each of the Defendants for failure to appear or otherwise defend. By the default, each of the Defendants admits the well-plead allegations of fact and liability in the Amended Complaint. *See Miller v. Paradise of Port Richey, Inc.*, 75 F. Supp. 2d 1342, 1346 (M.D. Fla. 1999), *citing Buchanan v. Bowman*, 820 F.2d 359, 361 (11th Cir. 1988).

**DAMAGES**

12. In the instant case, the Receiver's claim for damages is the amount of the fraudulent transfers. In support of the damages alleged in the Amended Complaint, the Receiver has submitted evidence in the form of an affidavit and, therefore, a hearing is not necessary to support the Receiver's request for damages. *See* Exhibit "A." *See also* Fed. R. Civ. P. 55(b)(2), and *Transatlantic Marine Claims Agency, Inc. v. Ace Shipping Corp.*, 109 F.3d 105, 111 (2d Cir. 1997) ("it [is] not necessary for the district court to hold a hearing, as long as it ensured that there was a basis for the damages specified in the default judgment").

13. Accordingly, based on the foregoing, the Receiver requests that the Court enter final default judgments against the Defendants Development Funding and Services, LLC, Daniel Lavan Jr., and Carolyn Lavan. Proposed Final Judgments are attached hereto as Exhibits "B" and "C," respectively.

WHEREFORE, based upon the foregoing, the Receiver, Jonathan E. Perlman, Esq., respectfully requests that this Court enter (i) final judgment in favor of the Receiver and against the Defendants Development Funding and Services, LLC, Daniel Lavan Jr., and Carolyn Lavan, jointly and severally, in the amount of \$197,000.00 and (ii) final judgment in favor of the Receiver and against the Defendant Daniel Lavan, Jr. in the amount of \$10,000.00.

Dated: October 21, 2010  
Miami, Florida

Respectfully submitted,

By: s/ David P. Lemoie

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Attorneys for Receiver  
Jonathan E. Perlman, Esq.

**CERTIFICATE OF SERVICE**

I hereby certify that on October 21, 2010, the foregoing document was electronically filed 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 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/ David P. Lemoie  
David P. Lemoie

**SERVICE LIST**

**JONATHAN E. PERLMAN, ESQ., as court appointed Receiver of Creative Capital Consortium, LLC, et al. v. DEVELOPMENT FUNDING AND SERVICES, LLC, DANIEL LAVAN, JR. and CAROLYN LAVAN  
CASE NO. 09-81226-Civ-Hurley/Hopkins  
United States District Court, Southern District of Florida**

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*Attorneys for the Receiver Jonathan E. Perlman, Esq.*

***Via CM/ECF***

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*Attorney for Defendants Development Funding & Services, LLC,*

*Daniel Lavan, Jr., and Carolyn Lavan*

***Via CM/ECF***

# **EXHIBIT A**

CASE NO.: 09-81226-CIV-Hurley/Hopkins

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

CASE NO. 09-81226-CIV- HURLEY

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

Plaintiff,

v.

DEVELOPMENT FUNDING AND  
SERVICES, LLC, DANIEL LAVAN, JR. and  
CAROLYN LAVAN,

Defendants.

\_\_\_\_\_ /

**AFFIDAVIT OF JONATHAN E. PERLMAN, RECEIVER**

STATE OF FLORIDA                    )  
  )ss  
COUNTY OF MIAMI-DADE         )

Jonathan E. Perlman, Esq., being duly sworn, says:

1. My name is Jonathan E. Perlman. I hereby certify that I am over the age of 18 and am a U.S. citizen and resident of Miami, Florida. I am a partner with the law firm of Genovese, Joblove & Battista, P.A.

2. I make this Affidavit in support of the Plaintiff's Motion for Entry of Final Default Judgment against the Defendants Development Funding and Services, LLC, Daniel Lavan Jr., and Carolyn Lavan (the "Defendants") in the above-styled proceeding. The matters set forth in this affidavit are based upon my personal knowledge of the facts contained therein.

3. On December 28, 2008, the SEC filed its Complaint for Injunctive and Other Relief (the "Complaint") against George Theodule, individually, and the initial Receivership



Entities, Creative Capital Consortium, LLC and A Creative Capital Concept\$, LLC (“Creative Capital”).

4. On December 29, 2008 (the “Receivership Date”), the Court entered the Receivership Order appointing me the Receiver over Creative Capital. Subsequently, the Receivership was further expanded to include United Investment Club, LLC and Reverse Auto Loan, LLC, G\$ Trade Financial, Inc., Unity Entertainment Group, Inc., Wealth Builders Circle, LLC and The Dream Makers Capital Investment, LLC.

5. In discharging my duty as Receiver, I retained several professionals, including the law firm of Genovese, Joblove & Battista, P.A. (“Genovese”), the forensic accounting firm of Kapila & Company (“Kapila”), and a security and investigative firm, The McManus Group (“McManus”), (collectively, the “Professional Advisors”).

6. One significant component of the Receiver’s directive under the Receivership Order is to identify and marshal the assets owned by the Receivership Entities.

7. The following is a summary of my preliminary assessment and findings which may be subject to change as my Professional Advisors and I continue to examine the financial and operational affairs of the Receivership Entities.

#### **Documents Reviewed**

8. My Professional Advisors and I have reviewed financial records relating to the various Receivership Entities, including the following:

- a. The books and records obtained from the corporate offices of the Receivership Entities;<sup>1</sup>

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<sup>1</sup> At the time the Receiver took possession of Creative Capital in December 2008, the offices were completely vacant. The computers, books and other records had all been removed from the

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- b. Financial records belonging to the Receivership Entities turned over to the Receiver by the former accountant for Creative Capital;
- c. Documents obtained from former employees of Creative Capital;
- d. Bank records, including statements and documents supporting deposits and withdrawals for accounts at Washington Mutual Bank ("WaMu"), Wachovia Bank ("Wachovia") and Bank of America ("BOA") including personal accounts for which George Theodule was an authorized signatory obtained by the Receiver from the SEC. In addition, the SEC provided brokerage account statements for accounts at OptionsXpress, Inc. ("OptionsXpress"), thinkorswim, Inc. ("thinkorswim"), and TradeStation Securities, Inc. ("TradeStation");
- e. Additional bank statements, account opening documents, and supporting documentation for all deposits and withdrawals to accounts from Wachovia, WaMu, BOA, Suntrust Bank, N.A. ("SunTrust"), and Bank of North Georgia ("BNG") where the Receivership Entities maintained their accounts, obtained pursuant to subpoenas issued by the Receiver.

#### **Bank Account Review**

9. My forensic accountants have reviewed and analyzed the account activity of the Receivership Entities for the period September 2007 through December 31, 2008. Attached as **Exhibit 1** is a list of the accounts for the Receivership Entities analyzed by Kapila.<sup>2</sup> Of the

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corporate office. To date, no investor database has been located. Further, only limited books and records have been located at the offices of the other Receivership Entities.

<sup>2</sup> Each of the exhibits attached hereto have been provided to me by Kapila in the scope of their engagement as my forensic accountants in this matter.

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seventy-two (72) accounts listed, ten are personal accounts for which Theodule was the account holder. The remaining accounts are business accounts in the names of the various Receivership Entities for which Theodule was an authorized signatory and/or a member/manager of the entity. The following is a summary of the findings to date:

- a. On the Receivership Date, the balances in the various bank accounts maintained by the Receivership Entities totaled only \$29,051.72. Attached as **Exhibit 2** is a summary of the known bank accounts for the Receivership Entities and their balances as of December 31, 2008.
- b. Based on the documents analyzed by the Receiver's forensic accountants, Theodule raised approximately **\$68 million** from investors which was deposited into accounts maintained by the Receivership Entities and various Theodule personal accounts. A detailed breakdown of the disbursement of the \$68 million is attached as **Exhibit 3 - Summary by Category**. The investor funds raised were disbursed as follows:
  - (i) \$23.3 million has been identified as having been diverted by Theodule in fraudulent transfers to third parties, including his wife and close relatives.<sup>3</sup> This amount includes over \$122,000.00 in transfers to Smart Investment Management Service, LLC ("SIMS") and its employees.<sup>4</sup>

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<sup>3</sup> The Receiver has filed twenty-six (26) individual lawsuits to recover these funds on behalf of the receivership estate.

<sup>4</sup> SIMS was a purported self-regulatory agency to which Theodule directed prospective investors to form "investment clubs". See Complaint at ¶18.

- (ii) Theodule misappropriated \$31 million to his personal bank and brokerage accounts as identified in the attached **Exhibit 4 - Summary of George Theodule Transfers**. Of the \$31 million, Theodule transferred over \$20 million dollars to his personal bank accounts, with cash withdrawals and personal expenses such as multiple luxury vehicles, credit card bills, a wedding, extensive travel including a trip to a Hawaiian Resort of over \$1.5 million dollars, and nearly \$8 million to his personal brokerage accounts, all of which was lost in options trading.
- (iii) Only \$20 million has been identified as having been transferred to investment clubs and/or individual investors.

**Brokerage Account Review**

10. My forensic accountants have reviewed and analyzed the brokerage account statements and supporting documentation for each of the accounts which listed Theodule as an authorized trader.<sup>5</sup> Attached as **Exhibit 5** is a list of these nine brokerage accounts analyzed by Kapila. The following is a summary of their findings:

- a. Kapila has identified \$18.2 million dollars of investor funds transferred to brokerage accounts under Theodule's control.<sup>6</sup> The deposits include \$6.4 million from Creative Capital escrow accounts being held by the Law Firm of Gabrielle Alexis, P.A. and \$3.2 from Creative Capital bank

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<sup>5</sup> One of these accounts was a business account in the name of Creative Capital Concepts, a fictitious business name registered to Theodule.

<sup>6</sup> Approximately \$430K more was deposited into the brokerage accounts directly from investors increasing the total amount deposited to the brokerage accounts to \$18.2 million.

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accounts. The remaining \$8.1 million came from Theodule personal bank accounts funded by investor and/or investment club deposits.

- b. Theodule lost money trading in these accounts every month since their inception in January 2007, and never generated any net trading profits. As a result, 98% of the total funds deposited to the brokerage accounts were lost through unsuccessful trading. Attached as **Exhibit 6** is a Summary of Brokerage Account Activity.

11. Based on the foregoing, there were no net trading profits in the brokerage accounts. Further, the bank records and deposition testimony indicate there were no other known sources of income to the Receivership Entities other than investor/investment club deposits. Consequently, any so-called "profit payments" made to investors by the Receivership Entities, could only have come from money raised from other investors, and, as such, the Receivership Entities were operated as a classic Ponzi scheme.

#### **Transfers Made to the Defendants**

12. My forensic accountants and I have reviewed financial records relating to the various Receivership Entities, and have determined that in connection with and in furtherance of the Ponzi scheme perpetrated by Theodule, using funds illicitly obtained from the Ponzi scheme victims, which funds are and were the assets of Creative Capital, Theodule and the Receivership Entities, including Creative Capital, caused the transfers identified in the Receiver's Amended Complaint, as further identified in **Exhibit 7** to this Affidavit, to be made to the Defendants (the "Fraudulent Transfers").

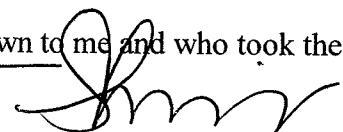
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FURTHER AFFIANT SAYETH NAUGHT.

  
Jonathan E. Perlman, as Court Appointed Receiver

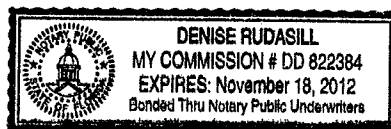
THE FOREGOING instrument was acknowledged before me this 14<sup>th</sup> day of September 2010, by Jonathan E. Perlman, who is personally known to me and who took the oath.

  
NOTARY PUBLIC, STATE OF FLORIDA  
AT LARGE

Print Name: Denise Rudasill

Commission No. \_\_\_\_\_

Commission Expires: \_\_\_\_\_



# **EXHIBIT B**

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

CASE NO. 09-81226-CIV- HURLEY

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

Plaintiff,

v.

DEVELOPMENT FUNDING AND  
SERVICES, LLC, DANIEL LAVAN, JR. and  
CAROLYN LAVAN,

Defendants.

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**FINAL DEFAULT JUDGMENT**

THIS CAUSE is before the Court on Plaintiff's Motion for Entry of Final Default Judgment. Having considered the Motion and the file in this action, and good cause appearing, it is **ORDERED AND ADJUDGED** that:

1. FINAL DEFAULT JUDGMENT is entered against Defendants, Development Funding and Services, LLC, Daniel Lavan Jr., and Carolyn Lavan, jointly and severally, and in favor of the Receiver in the sum of \$197,000.00, for which let execution issue forthwith. Post-judgment interest shall accrue at the current legal rate allowed under 28 U.S.C. § 1961 as of the date of this Final Default Judgment until this judgment is satisfied.

2. In accordance with Section 55.10(1) of the Florida Statutes, the address of the Plaintiff is:

Jonathan E. Perlman, Esq., Receiver  
Genovese Joblove & Battista, P.A.  
100 S.E. Second Street, 44th Floor  
Miami, Florida 33131



David C. Cimo, Esq.  
Counsel for the Receiver  
Genovese Joblove & Battista, P.A.  
100 S.E. Second Street, 44th Floor  
Miami, Florida 33131

3. In accordance with Section 55.01(2) of the Florida Statutes, the address and social security number or tax identification number for the Defendants are as follows:

Development Funding & Services, LLC  
Daniel L. Lavan, Registered Agent  
13750 W. Colonial Drive, Suite 350-156  
Winter Garden, FL  
FEIN: 331215601

Daniel Lavan Jr.  
1432 Marble Crest Way  
Winter Garden, FL 34787  
SSN: 262-49-xxxx

Carolyn Lavan  
1432 Marble Crest Way  
Winter Garden, FL 34787  
SSN: 261-29-xxxx

4. The Court reserves jurisdiction to award the Plaintiff its reasonable attorneys' fees and costs incurred in connection with bringing and prosecuting this action against Defendants.

5. The Court further reserves jurisdiction over this cause and the parties hereto to award Plaintiff its reasonable attorneys' fees and costs incurred in enforcing this Final Default Judgment and to enter any other and further orders for post-judgment relief as may be appropriate.

**DONE** and **ORDERED** in Chambers at West Palm Beach, Florida this \_\_\_\_ day of \_\_\_\_\_, 2010 in the Southern District of Florida.

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DANIEL T.K. HURLEY  
UNITED STATES DISTRICT COURT JUDGE

# **EXHIBIT C**

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

CASE NO. 09-81226-CIV- HURLEY

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

Plaintiff,

v.

DEVELOPMENT FUNDING AND  
SERVICES, LLC, DANIEL LAVAN, JR. and  
CAROLYN LAVAN,

Defendants.

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**FINAL DEFAULT JUDGMENT**

THIS CAUSE is before the Court on Plaintiff's Motion for Entry of Final Default Judgment. Having considered the Motion and the file in this action, and good cause appearing, it is **ORDERED AND ADJUDGED** that:

1. FINAL DEFAULT JUDGMENT is entered against Defendant, Daniel Lavan Jr. and in favor of the Receiver in the sum of \$10,000.00, for which let execution issue forthwith. Post-judgment interest shall accrue at the current legal rate allowed under 28 U.S.C. § 1961 as of the date of this Final Default Judgment until this judgment is satisfied.

2. In accordance with Section 55.10(1) of the Florida Statutes, the address of the Plaintiff is:

Jonathan E. Perlman, Esq., Receiver  
Genovese Joblove & Battista, P.A.  
100 S.E. Second Street, 44th Floor  
Miami, Florida 33131

David C. Cimo, Esq.  
Counsel for the Receiver  
Genovese Joblove & Battista, P.A.  
100 S.E. Second Street, 44th Floor  
Miami, Florida 33131

3. In accordance with Section 55.01(2) of the Florida Statutes, the address and social security number for the Defendant is as follows:

Daniel Lavan Jr.  
1432 Marble Crest Way  
Winter Garden, FL 34787  
SSN: 262-49-xxxx

4. The Court reserves jurisdiction to award the Plaintiff its reasonable attorneys' fees and costs incurred in connection with bringing and prosecuting this action against Defendant.

5. The Court further reserves jurisdiction over this cause and the parties hereto to award Plaintiff its reasonable attorneys' fees and costs incurred in enforcing this Final Default Judgment and to enter any other and further orders for post-judgment relief as may be appropriate.

**DONE** and **ORDERED** in Chambers at West Palm Beach, Florida this \_\_\_\_ day of \_\_\_\_\_, 2010 in the Southern District of Florida.

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DANIEL T.K. HURLEY  
UNITED STATES DISTRICT COURT JUDGE