

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

CASE NO. 09-80190-CIV-HURLEY/HOPKINS

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

Plaintiff,

v.

CAPTIN CONSTRUCTION GROUP,  
INC., a Georgia corporation,

Defendant.

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**MOTION FOR LEAVE TO AMEND COMPLAINT TO ADD THIRD-PARTIES AND  
REQUEST FOR CORRESPONDING EXTENSION OF TRIAL DATE AND  
DISCOVERY DEADLINES**

The Plaintiff, Jonathan E. Perlman, Esq., the court-appointed Receiver (the “Receiver”) of Creative Capital Consortium, LLC, A Creative Capital Concept\$, LLC,<sup>1</sup> United Investment Club, LLC, Reverse Auto Loan, LLC, Wealth Builders Circle, LLC, The Dream Makers Capital Investment, LLC, G\$ Trade Financial, Inc. and Unity Entertainment Group, Inc.,<sup>2</sup> hereby files this Agreed Motion For Leave To Amend Complaint To Add Third-Parties And Request For Extension of Trial Date and Discovery Deadlines and states as follows:

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<sup>1</sup> Creative Capital Consortium, LLC and A Creative Capital Concept\$, LLC shall sometimes collectively be referred to herein as “Creative Capital” or the “Creative Capital Entities.”

<sup>2</sup> Since the filing of the Complaint, the Receivership has again been expanded and now includes Creative Capital Consortium, LLC, A Creative Capital Concept\$, LLC, United Investment Club, LLC, Reverse Auto Loan, LLC, Wealth Builders Circle, LLC, The Dream Makers Capital Investment, LLC, G\$ Trade Financial, Inc. and Unity Entertainment Group, Inc. which entities shall sometimes be collectively referred to as the “Receivership Entities.”

**INTRODUCTION AND GROUNDS FOR THE PROPOSED AMENDMENT**

This case is scheduled for calendar call before the United States District Court for the Southern District of Florida on February 18, 2010. By virtue of his original complaint in this case, the Receiver seeks the avoidance and recovery of certain alleged fraudulent transfers from the Receivership Entities to the Defendant in the collective amount of \$150,000. The transfers sought to be avoided arise from real estate transfers among the Defendant and principals of the Receivership Entities. During the course of a recent review of documents obtained by subpoena from a third-party closing and title agent, Homeland Title Services, LLC (“Homeland Title”), the Receiver has identified alleged additional transfers in the collective amount of \$200,000 which arise from the very same underlying factual circumstances set forth by the Receiver in his original complaint. These newly discovered transfers passed through the hands of Homeland Title as an intermediate transferee. Homeland Title subsequently transferred the additional \$200,000 to the Defendant and to a third-party individual identified as Ardelean Valentin. As such, Homeland Title is inextricably intertwined in the Receiver’s claims against Valentin and the Defendant. Likewise, any defenses to be raised by Valentin and the Defendant, are intertwined with the conduct of Homeland Title.

The Receiver therefore desires to add Homeland Title and Valentin as additional defendants in this case and to amend the claims against the Defendant to include those additional transfers identified through discovery. Because this proposed amendment seeks to add new parties to the case, a new trial schedule is requested by Receiver. The Receiver’s new claims are not barred by the statute of limitations, and therefore could ostensibly be prosecuted in a separate action. However, proceeding with all of the claims in one case is far more economical and convenient to all parties involved. Both the new claims and the existing claims involve exactly

the same evidence and will require the very same witness testimony. A copy of the Receiver's proposed Amended Complaint is attached as *Exhibit "A."*

### **LEGAL ARGUMENT**

#### **A. Liberal Amendment of the Pleadings is Allowed as Justice So Requires.**

1. Rule 15(a)(2) of the Federal Rules of Civil Procedure allows for liberal amendment of the pleadings in the interests of justice and provides in relevant part:

**Other Amendments.** In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. *The court should freely give leave when justice so requires.*

Fed.R.Civ.P. 15(a) (Emphasis supplied.)

2. The policy of the federal rules is to permit liberal amendment to facilitate determination of claims on the merits and to prevent litigation from becoming a technical exercise in the fine points of pleading. See, e. g., Foman v. Davis, 371 U.S. at 182, 83 S.Ct. at 230, 9 L.Ed.2d at 225-26; Conley v. Gibson, 355 U.S. 41, 48, 78 S.Ct. 99, 103, 2 L.Ed.2d 80, 86 (1957); Sherman v. Hallbauer, 5 Cir. 1972, 455 F.2d 1236, 1242. Thus, in the absence of any apparent or declared reason-such as undue delay, bad faith or dilatory motive on the part of the movant, or undue prejudice to the opposing party by virtue of allowance of the amendment, the leave sought should, as the rules require, be 'freely given.'" McKinley v. Kaplan, 177 F.3d 1253, 1258 (11<sup>th</sup> Cir. 1999) (quoting Foman v. Davis, 371 U.S. 178, 181-82, 83 S.Ct 227, 9 L.Ed.2d 222 (1962)).

3. The Receiver is acting in good faith in pursuing the avoidance of alleged additional fraudulent transfers which were duly discovered in the normal course of discovery.

Upon discovery of the additional transfers, the Receiver notified the Defendant and sought the Defendant's agreement to amend the pleadings<sup>3</sup>. Although the Receiver acknowledges that the trial date in this case is fast approaching, he nonetheless comes before this Court in the spirit in which Rule 15 was intended with a goal to determine the claims in this case on their merits in the most efficient manner with fairness to all parties involved. Given that the claims against the proposed new third-parties arise from the identical facts and circumstances as the pending claims in this case, it would be unfair and unduly burdensome to the existing parties for the new claims to be tried in a separate proceeding.

**B. The Permissive Joinder of Homeland Title as a Third Party is Warranted Under the Federal Rules of Civil Procedure.**

4. Rule 20(a)(2) of the Federal Rules of Civil Procedure contemplates the permissive joinder of defendants to existing lawsuits when common issues of fact and law arise among them:

(2) **Defendants.** Persons--as well as a vessel, cargo, or other property subject to admiralty process in rem--may be joined in one action as defendants if:

(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or *arising out of the same transaction, occurrence, or series of transactions or occurrences*; and

(B) *any question of law or fact common to all defendants will arise in the action.*

Fed. R. Civ. P. 20(a)(2), emphasis added.

5. “[T]he central purpose of Rule 20 is to promote trial convenience and expedite the resolution of disputes, thereby eliminating unnecessary lawsuits.” Alexander v. Fulton County,

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<sup>3</sup> The Defendant was unable to agree to the relief sought herein. However, in anticipation that the Court will grant the Receiver's relief, the parties have postponed two remaining depositions and their scheduled mediation pending a decision by the Court upon the Receivers motion to amend.

Ga., 207 F.3d 1303, 1323 (11th Cir.2000). “Under the rules, the impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged.” United Mine Workers of America v. Gibbs, 383 U.S. 715, 724, 86 S.Ct. 1130, 1138 16 L.Ed.2d 218, 226 (1966).

6. Rule 20(a) imposes two specific requisites for the joinder of parties: (1) a right to relief must be asserted by, or against, each plaintiff or defendant relating to or arising out of the same transaction or occurrence; and (2) some question of law or fact common to all the parties will arise in the action. Wright & Miller, Federal Practice and Procedure: Civil §1653. The Receiver satisfies the requirements of Rule 20(a) because he seeks relief against all defendants based on the same series of transactions and occurrences. All of the Receiver’s claims in the proposed Amended Complaint against Homeland Title and Valentin arise from the very same real estate transactions underlying the pending claims against the Defendant. Prosecution of these claims in separate lawsuits would unduly waste judicial resources and cause unwarranted expense to all of the parties involved.

7. Furthermore, Fla.Stat. 726.101 et seq<sup>4</sup>., pursuant to which the Receiver seeks avoidance of the alleged fraudulent transfers contemplates recovery against both initial and/or subsequent transferees. As indicated in the Amended Complaint, the Receiver seeks relief jointly and alternatively against Homeland Title (as an initial transferee) and the existing Defendant and Ventin (as a subsequent transferees) for the avoidance and recovery of the transfers related to the very same real estate transactions identified in the initial complaint. Rule 20(a) only requires that plaintiffs have any question of law or fact in common, here, all of the

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<sup>4</sup> It should be noted that the Receiver’s claims against all proposed defendants fall well within the applicable statute of limitations. Fla. Stat. §726.110 contemplates a limitations period which expires four (4) years after the transfer at issue occurred. The Receiver seeks the avoidance of transfers which were made in the year 2008.

questions of law and fact are identical. The situation presented by the facts underlying the Amended Complaint is the very circumstance for which Rule 20 was designed.

**CONCLUSION**

For the reasons set forth above, the Receiver respectfully requests that this Court enter an order granting him leave to file the Amended Complaint and that the trial schedule and discovery deadlines be extended accordingly.

Respectfully submitted this 1st day of February, 2010.

I hereby certify that I am admitted to the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this Court set forth in Local Rule 2090-1)

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By: /s/ David P. Lemoie, Esq.  
David P. Lemoie, Esq. FBN 188311  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via CM/ECF, facsimile and/or U.S. Mail to all parties listed on the attached service list this 1st day of February, 2010.

By: /s/ David P. Lemoie, Esq.  
David P. Lemoie

**SERVICE LIST**

**JONATHAN E. PERLMAN, ESQ., as court appointed Receiver of Creative Capital Consortium, LLC, et al. v. CAPTIN CONSTRUCTION GROUP, INC.**

**United States District Court, Southern District of Florida**

**CASE NO. 09-80190-CIV-HURLEY/HOPKINS**

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

CASE NO. 09-80190-CIV-HURLEY/HOPKINS  
(Ancillary Proceeding to U.S.D.C. Case No. 08-81565-CIV-HURLEY/HOPKINS)

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

Plaintiff,

v.

CAPTIN CONSTRUCTION GROUP, INC., a  
Georgia corporation, HOMELAND TITLE  
SERVICES, LLC, a Georgia limited liability  
Company, and VALENTIN ARDELEAN,

Defendants.

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**FIRST AMENDED COMPLAINT TO AVOID AND RECOVER  
FRAUDULENT TRANSFERS AND FOR OTHER RELIEF**

The Plaintiff, JONATHAN E. PERLMAN, Esq., the court-appointed Receiver (the “Receiver”) of Creative Capital Consortium, LLC, A Creative Capital Concept\$, LLC,<sup>1</sup> United Investment Club, LLC and Reverse Auto Loan, LLC, all Florida limited liability companies,<sup>2</sup> sues CAPTIN CONSTRUCTION GROUP, INC., a Georgia corporation (“CCG”), HOMELAND TITLE SERVICES, LLC (“HOMELAND TITLE”) and VALENTIN ARDELEAN (“ARDELEAN”) (collectively, the “Defendants”), and alleges:

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<sup>1</sup> Creative Capital Consortium, LLC and A Creative Capital Concept\$, LLC shall sometimes collectively be referred to herein as “Creative Capital” or the “Creative Capital Entities.”

<sup>2</sup> Creative Capital Consortium, LLC, A Creative Capital Concept\$, LLC, United Investment Club, LLC and Reverse Auto Loan, LLC shall sometimes be collectively referred to as the “Receivership Entities.”

**THE PARTIES, JURISDICTION AND VENUE**

1. The Receiver was appointed by the United States District Court for the Southern District of Florida pursuant to this Court's Order dated December 29, 2008 (the "Receivership Order") in the action styled: *Securities and Exchange Commission ("SEC") v. Creative Capital Consortium, LLC, A Creative Capital Concept\$, LLC and George L. Theodule* (collectively, the "Receivership Defendants"), Case No. 08-81565-CIV-HURLEY/HOPKINS, pending in the United States District Court, Southern District of Florida (the "SEC Receivership Action").

2. By Order dated December 31, 2008, the receivership was expanded to include United Investment Club, LLC and Reverse Auto Loan, LLC, a Florida limited liability company.<sup>3</sup>

3. Under the terms of the Receivership Order, the Receiver is authorized to investigate the affairs of the Receivership Entities, to marshal and safeguard these entities' assets, and to institute legal proceedings for the benefit and on behalf of the Receivership Entities' investors and other creditors.

4. Pursuant to the Receivership Order, the Receiver is authorized and has standing to assert claims against third parties including but not limited to: (i) all legal and equitable claims available to the Receivership Entities prior to the institution of the SEC Receivership Action; and (ii) claims to avoid and recover fraudulent and preferential transfers receiver for the Receivership Entities and by virtue of his status as a joint lien creditor of the Receivership Entities pursuant to Florida Statutes, 671.201(13) and 679.1021(1)(zz).

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<sup>3</sup> Sancal Investment and Financial Services, Inc. was initially included as part of the December 31, 2008, expanded receivership order, but was later dropped by agreed order as a receivership entity. [DE # 42].

5. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§754 and 1692.

6. This amended complaint is brought to accomplish the objectives of the Receivership Order and is thus ancillary to the Court's exclusive jurisdiction over the receivership estate. Pursuant to the principles of ancillary jurisdiction or supplemental jurisdiction under 28 U.S.C. §1367, the Court in the SEC Receivership Action has supplemental jurisdiction over the claims set forth herein. Hence, venue is also proper in this Court.

7. The Court has personal jurisdiction over the Defendants pursuant to 28 U.S.C. §§754 and 1692.

8. At all times material hereto, George Theodule ("Theodule") was an officer, director, managing agent and/or control person of each of the Creative Capital Entities. Theodule is a named defendant in the SEC Receivership Action. From and after the formation of each Creative Capital Entity, Theodule operated a massive Ponzi scheme receiving over \$60 million of investor funds.

9. The defendant, CAPTIN CONSTRUCTION GROUP, INC. is a Georgia corporation having its principal offices at 910 Woodland Park Drive, Swannee, Georgia, Rockdale County.

10. The defendant, HOMELAND TITLE SERVICES, LLC is a Georgia corporation having its principal offices at 3664 Club Drive, Suite 101, Lawrenceville, Georgia, Rockdale County.

11. The defendant, VALENTIN ARDELEAN, is an individual residing in Rockdale County, Georgia.

**FACTS COMMON TO ALL COUNTS**

12. On December 29, 2008, the Securities and Exchange Commission (“SEC”) filed its Complaint for Injunctive and Other Relief (the “Complaint”) against the Initial Receivership Entities. The SEC alleged that Theodule, through the Receivership Defendants, sold unregistered securities and violated various sections of the Securities Exchange Act of 1934 (the “Exchange Act”).

13. More specifically, the SEC alleged that all of the Receivership Defendants violated section 10(b) of the Exchange Act.

14. The SEC sought a permanent injunction against the Receivership Defendants to restrain them from any further securities law violations.

15. Additionally, the SEC sought (1) an order requiring the Receivership Defendants to provide a sworn accounting of all proceeds they received, directly or indirectly, as a result of the securities law violations; (2) an order requiring the Receivership Defendants to disgorge, with prejudgment interest, any ill-gotten gains they received; (3) the imposition of civil penalties pursuant to section 21(d) of the Exchange Act; (4) an order freezing the Receivership Defendants’ assets pending resolution of the matter; (5) the appointment of a receiver over the Receivership Defendants; (6) an order requiring the Receivership Defendants to take steps necessary to repatriate to the territory of the United States all funds and assets of investors; and (7) an order requiring the Receivership Defendants to preserve records in their custody, possession or subject to their control.

16. On December 29, 2008, upon the request of the SEC, the Receivership Court entered the Receivership Order appointing the Receiver as receiver over Creative Capital, its subsidiaries, successors and assigns.

17. By Order dated December 31, 2008, the receivership was expanded to include United Investment Club, LLC and Reverse Auto Loan, LLC. Further, by Order dated September 21, 2009, the receivership was expanded to include Wealth Builders Circle, LLC, The Dream Makers Capital Investment, LLC, G\$ Trade Financial, Inc., and Unity Entertainment Group, Inc.

18. After a contested hearing, the Court entered a Preliminary Injunction on January 6, 2009 preventing Theodule from continuing to violate the securities laws as well as the other relief requested by the SEC, including disgorgement of ill-gotten gains. The Receivership Defendants consented to the entry of a preliminary injunction by virtue of consents executed and filed by the Receiver on behalf of such entities.

19. The offices of Creative Capital were found vacant when the Receiver obtained access to the premises. While certain documents and records have been recovered, others remain missing or destroyed.

20. Prior to the receivership, Creative Capital, which promised to double investments within 90 days risk free, raised in excess of \$60 million from thousands of investors by and through the use of over 100 investment clubs located in Florida, New Jersey, Georgia and other states.

21. Subsequent to his appointment, the Receiver determined that Creative Capital had no legitimate business operations. Consequently, the Receiver determined that so-called "profit payments" made to investors by the Receivership Defendants, along with other payments that

appear to have no legitimate business purpose, could have only come from money raised from other investors, and, as such, Creative Capital was operated as a classic Ponzi scheme.

22. Since his appointment, the Receiver and his professionals have attempted to locate and secure money illegally raised from investors by the Receivership Defendants and the proceeds thereof. To that extent, the Receiver is initiating lawsuits against persons who illegally diverted assets from Creative Capital's possession, and who are otherwise liable to the Receiver for damages.

23. All conditions precedent to the filing of this action have been performed, waived or have occurred.

**THE FRAUDULENT INVESTMENT SCHEME  
OF THE CREATIVE CAPITAL ENTITIES**

***A. Overview of the Scheme***

24. The Creative Capital Entities have engaged in a fraudulent Ponzi scheme predominately targeting the United States Haitian community since at least November 2007.

25. Holding himself out as a pastor, Theodule ingratiated himself with investors by claiming he was offering his investment expertise to help build wealth in the Haitian community. He also informed investors he used part of his trading profits to fund start-up businesses in the Haitian community, as well as business projects in Haiti and Sierra Leone.

26. The Creative Capital Entities primarily attracted investors through word-of-mouth, and Theodule made his representations during face-to-face meetings in which he touted his ability to double investor funds in just 90 days. Theodule typically depicted his investment plan and boasts of incredible profits trading stocks and options on dry erase boards or flip charts.

27. Theodule also routinely boasted to investors about Creative Capital's high rates of return, and stressed the need to begin investing as soon as possible. He told one investor he had made millionaires out of a significant number of people in the time it had taken her to decide to invest, and pressured her to liquidate the equity in her home to invest with him.

28. The Creative Capital Entities' presentations emphasized the safety and security of investing with them. They guaranteed investors 100% returns with no risk, and claimed to invest in the stocks and options of well-known companies such as Google, John Deere, Monsanto, Best Buy, Gamestop, and others.

29. Since the commencement of the investment scheme, the Creative Capital Entities have raised more than \$60 million from thousands of investors nationwide.

30. While the scheme was being perpetrated, Theodule, using Creative Capital funds and other property owned by Creative Capital, acquired certain real and personal property as nominee for Creative Capital, the actual owner of such property. Indeed, in his sworn accounting of assets filed with the Court, Theodule expressly acknowledged several such assets being acquired in such manner, and that such assets were property of Creative Capital and not of himself individually.

***B. Investor Funds Are Raised Through a Network of Investment Clubs under the Auspices of a Bogus, Self-Regulatory Agency***

31. To add to investors' sense of security, Theodule directed prospective investors to form "investment clubs," which a purported self-regulatory agency, Smart Investment Management Services, LLC ("SIMS"), helped the investors form. This entity also supposedly protected investors through independent verification of their deposits.

32. In reality, SIMS was a private company run by a former Creative Capital employee and not a regulatory entity.

33. The investment clubs pooled investor funds and sent them to Creative Capital for a 90-day period, during which Theodule purportedly traded stocks and options on behalf of the investment club members.

34. Unlike a real investment club, the members did not participate in making investment decisions, rarely had club meetings, and deposited funds exclusively with the Creative Capital Entities.

35. Thus, the investment clubs served principally as vehicles to funnel funds to Theodule and Creative Capital.

36. The investment clubs typically required a minimum \$1,000 investment per investor, which the investor could not withdraw during the 90-day investment period.

37. The investment clubs deposited the investors' funds into their own bank accounts, pooled the funds, and remitted the money to Creative Capital, minus a 10% club commission.

38. At the end of the 90-day investment period, when the Creative Capital Entities had purportedly doubled the investment amount, they supposedly returned the principal and profits back to the investment clubs, minus a 40% commission on the profits. Prior to distributing the proceeds back to the individual club members, the investment clubs typically charged a second 10% commission on the principal.

***C. Fraudulent Misrepresentations and Omissions***

39. In connection with Creative Capital's fraudulent Ponzi scheme, numerous material misrepresentations and omissions were made regarding Creative Capital's business, Theodule's stock trading, and the use of investor funds.

40. For example, Theodule's claimed success in trading stocks and options was demonstrably false. Indeed, soon after his appointment, the Receiver came to learn that of the

more than \$18.3 million that had been deposited in brokerage accounts Theodule controlled, he had lost approximately 98% of those funds trading stocks and options. In fact, Theodule consistently lost money trading in those accounts since November 2007, and never generated any net trading profits.

41. Soon after his appointment, however, the Receiver came to learn that Creative Capital hid its losses from current and prospective investors by transferring approximately \$19.1 million from new investor funds as principal and purported profits to existing investment clubs and individual investors.

42. Additionally, Theodule claimed he used trading profits to fund new business ventures, some of which benefitted the Haitian community in the United States and Haiti, and others in Sierra Leone.

43. In reality, there were no trading profits because the funds of the Creative Capital Entities: (i) had been used to pay earlier investors their purported profits; and (ii) had been misappropriated for the personal use and benefit of Theodule, his friends and his family.

44. Theodule's representations about the safety and security of investors' funds were also patently false. SIMS was not a regulatory agency, but rather a private corporation headed by a former Creative Capital employee.

45. Further, there was no evidence that SIMS has access to or otherwise verified the deposits to ensure the safety of investor funds. To the contrary, the Receiver came to learn that Theodule had commingled investor funds extensively with his own personal accounts and had misappropriated at least \$14 million. This amount includes net transfers of at least \$2.1 million to his personal bank accounts, cash withdrawals of more than \$1.4 million and more than \$700,000 for apparent personal expenses such as multiple luxury vehicles, credit card bills, a

wedding payment for Theodule's marriage, and a down-payment for the purchase of a house, and over \$12.2 million to his personal brokerage accounts.

46. Thus, Theodule misrepresented the safety and security of the Creative Capital investments when he led investors to believe: (i) they could withdraw their funds any time after the initial 90-day investment period; (ii) there was no risk; and (iii) SIMS verified the security of their funds.

47. At all times material hereto, the Creative Capital Entities were undercapitalized and insolvent.

***D. Defendants' Involvement in the Scheme***

48. At all times material hereto, the Defendants had knowledge of, actively participated in and/or otherwise conspired with Theodule in the Ponzi scheme by receiving transfers from Creative Capital for little or no consideration.

49. In or about 2006 and 2007, CCG was the owner, builder and developer of two improved residential properties located at 2204 Victor Court, Loganville, Georgia and 1120 Moccasin Trail, Loganville, Georgia, respectively (collectively the "CCG Properties.")

50. From April 2008 through September 2008, by and through a series of prospective but unconsummated sales of the CCG Properties, Theodule caused funds from Creative Capital to be transferred to the Defendants under the guise of forfeited earnest money deposits. These transfers were disguised as legitimate refunds of earnest monies purportedly paid in connection with the proposed sale of the CCG Properties. The proposed sale of the CCG Properties was structured by Theodule to appear as legitimate property transactions, when in fact these transactions were merely a method to transfer Creative Capital funds for the illicit benefit of Theodule and others.

51. During 2008, Creative Capital paid defendant CCG the total sum of \$250,000. Of this amount, \$150,000 was paid to CCG by Creative Capital directly, and \$100,000 was first paid to HOMELAND TITLE, thereafter transferred to CCG. All said payments, including payments paid to CCG which the Receiver may subsequently discover through the course of his ongoing investigation, shall collectively be referred to herein as the “CCG Transfer.”

52. During 2008, Creative Capital paid defendant ARDELEAN the total sum of \$100,000. This payment of \$100,000 was first paid to HOMELAND TITLE, thereafter transferred to ARDELEAN. All said payments, including payments paid to ARDELEAN which the Receiver may subsequently discover through the course of his ongoing investigation, shall collectively be referred to herein as the “ARDELEAN Transfer.”

53. During 2008 Creative Capital paid HOMELAND TITLE the total sum of \$200,000. All said payments, including payments paid to HOMELAND TITLE which the Receiver may subsequently discover through the course of his ongoing investigation, shall collectively be referred to herein as the “HOMELAND TITLE Transfer.”

**COUNT I**  
**Action to Avoid and Recover Fraudulent Transfers Pursuant**  
**to Chapter 726 of The Florida Statutes**

*(Against Homeland Title as Initial Transferee)*

54. The Receiver realleges paragraphs 1 through 53 above as if fully set forth herein.

55. As a result of investments in Creative Capital made by those Receivership Entities other than Creative Capital and the claims of those other Receivership Entities created in connection therewith, the Receiver, standing in the shoes of the Receivership Entities, is a “creditor” of Creative Capital, as defined by the Florida Uniform Fraudulent Transfer Act at Florida Statutes § 726 .101 et seq. (“FUFTA.”).

56. As a result of the creditor claims among Receivership Entities, at all times material hereto, Creative Capital is a “debtor” as that term is defined by FUFTA.

57. The HOMELAND TITLE Transfers rendered Creative Capital unable to pay the claims of the Receiver and the other Receivership entities in their respective capacities as creditors of Creative Capital under FUFTA.

58. Pursuant to Chapter 726 of the Florida Statutes, a Receiver may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made within four (4) years before the date of the filing of the petition, if the debtor voluntarily or involuntarily –

(A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or (B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and (ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation; (II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital; or (III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured.

59. Pursuant to Chapter 726 of the Florida Statutes, the Receiver may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from – (1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or (2) any immediate or mediate “subsequent” transferee of such initial transferee.

60. The HOMELAND TITLE Transfer constituted a transfer of an interest in property of Creative Capital to HOMELAND TITLE within four years under Chapter 726 of the Florida Statutes.

61. Creative Capital did not receive reasonably equivalent value for the HOMELAND TITLE Transfer and/or the Creative Capital family of companies: (i) were insolvent at the time of HOMELAND TITLE Transfer and or became insolvent as a result thereof; (ii) were engaged or were about to engage in a business or transaction for which the remaining assets of Creative Capital were unreasonably small in relation to the business or transaction; or (iii) intended to incur, or believed or reasonably should have believed that they would incur, debts beyond their ability to pay as they came due.

62. In addition, Creative Capital made the HOMELAND TITLE Transfer with the actual intent to hinder, delay or defraud creditors of Creative Capital and such transfers was not received in good faith by HOMELAND TITLE. Among other badges of fraud, at or near the time of both the HOMELAND TITLE Transfer, Creative Capital: (i) was insolvent; (ii) was not paying its debts as they became due; (ii) did not pay reasonably equivalent value for the HOMELAND TITLE Transfer; (iv) had, through its principals, defrauded creditors of millions of dollars; and (v) absconded.

63. As a result of the above, the Receiver can avoid the HOMELAND TITLE Transfer pursuant to Chapter 726 of the Florida Statutes and recover the value thereof for the benefit of the estate.

WHEREFORE, the Receiver demands judgment against HOMELAND TITLE as follows: (i) determining that the HOMELAND TITLE Transfer was fraudulent and avoiding and

recovering the value thereof for the benefit of the estate; (ii) awarding pre-judgment interest; and (iii) for any other relief the Court deems appropriate.

**COUNT II**  
**Action to Avoid and Recover Fraudulent Transfers Pursuant**  
**to Chapter 726 of The Florida Statutes**

*(Against CCG as Initial Transferee)*

64. The Receiver realleges paragraphs 1 through 63 above as if fully set forth herein.

65. As a result of investments in Creative Capital made by those Receivership Entities other than Creative Capital and the claims of those other Receivership Entities created in connection therewith, the Receiver, standing in the shoes of the Receivership Entities, is a “creditor” of Creative Capital, as defined by the Florida Uniform Fraudulent Transfer Act at Florida Statutes § 726 .101 et seq. (“FUFTA.”).

66. As a result of the creditor claims among Receivership Entities, at all times material hereto, Creative Capital is a “debtor” as that term is defined by FUFTA.

67. The CCG Transfers rendered Creative Capital unable to pay the claims of the Receiver and the other Receivership entities in their respective capacities as creditors of Creative Capital under FUFTA.

68. Pursuant to Chapter 726 of the Florida Statutes, a Receiver may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made within four (4) years before the date of the filing of the petition, if the debtor voluntarily or involuntarily –

(B) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or (B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and (ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation; (II) was engaged in business or a transaction, or was about to engage in business or a

transaction, for which any property remaining with the debtor was an unreasonably small capital; or (III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured.

69. Pursuant to Chapter 726 of the Florida Statutes, the Receiver may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from – (1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or (2) any immediate or mediate “subsequent” transferee of such initial transferee. As an alternative to the Receiver’s allegations in Count I, HOMELAND TITLE acted as a “mere conduit” as that term is defined by Florida law, and CCG is the initial transferee of the CCG Transfer.

70. The CCG Transfer constituted a transfer of an interest in property of Creative Capital to CCG within four years under Chapter 726 of the Florida Statutes.

71. Creative Capital did not receive reasonably equivalent value for the CCG Transfer and/or the Creative Capital family of companies: (i) were insolvent at the time of CCG Transfer and or became insolvent as a result thereof; (ii) were engaged or were about to engage in a business or transaction for which the remaining assets of Creative Capital were unreasonably small in relation to the business or transaction; or (iii) intended to incur, or believed or reasonably should have believed that they would incur, debts beyond their ability to pay as they came due.

72. In addition, Creative Capital made the CCG Transfer with the actual intent to hinder, delay or defraud creditors of Creative Capital and such transfers was not received in good faith by CCG. Among other badges of fraud, at or near the time of both the CCG Transfer, Creative Capital: (i) was insolvent; (ii) was not paying its debts as they became due; (ii) did not

pay reasonably equivalent value for the CCG Transfer; (iv) had, through its principals, defrauded creditors of millions of dollars; and (v) absconded.

73. As a result of the above, the Receiver can avoid the CCG Transfer pursuant to Chapter 726 of the Florida Statutes and recover the value thereof for the benefit of the estate.

WHEREFORE, the Receiver demands judgment against CCG as follows: (i) determining that the CCG Transfer was fraudulent and avoiding and recovering the value thereof for the benefit of the estate; (ii) awarding pre-judgment interest; and (iii) for any other relief the Court deems appropriate.

**COUNT III**  
**Action to Avoid and Recover Fraudulent Transfers Pursuant**  
**to Chapter 726 of The Florida Statutes**

*(Against CCG as Subsequent Transferee)*

74. The Receiver realleges paragraphs 1 through 73 above as if fully set forth herein.

75. As a result of investments in Creative Capital made by those Receivership Entities other than Creative Capital and the claims of those other Receivership Entities created in connection therewith, the Receiver, standing in the shoes of the Receivership Entities, is a “creditor” of Creative Capital, as defined by the Florida Uniform Fraudulent Transfer Act at Florida Statutes § 726 .101 et seq. (“FUFTA.”).

76. As a result of the creditor claims among Receivership Entities, at all times material hereto, Creative Capital is a “debtor” as that term is defined by FUFTA.

77. The HOMELAND TITLE Transfer is a “voidable” transfer under FUFTA, and furthermore rendered Creative Capital unable to pay the claims of the Receiver, and the other three Receivership entities in their respective capacities as creditors of Creative Capital under FUFTA.

78. A portion of the CCG Transfer in the amount of \$100,000 (the “CCG Subsequent Transfer”) arises from funds received by HOMELAND TITLE in connection with the HOMELAND TITLE Transfer. CCG took the CCG Subsequent Transfer as a subsequent transferee of the HOMELAND TITLE Transfer without value and with a lack of good faith pursuant to Florida Statutes § 726.109, and the Receiver may recover the value of the CCG Subsequent Transfer from CCG.

WHEREFORE, the Receiver demands judgment against CCG recovering the value of the CCG Subsequent Transfer, awarding pre-judgment interest; and for any other relief the Court deems appropriate.

**COUNT IV**  
**Action to Avoid and Recover Fraudulent Transfers Pursuant**  
**to Chapter 726 of The Florida Statutes**

*(Against Ardelean as Initial Transferee)*

79. The Receiver realleges paragraphs 1 through 78 above as if fully set forth herein.

80. As a result of investments in Creative Capital made by those Receivership Entities other than Creative Capital and the claims of those other Receivership Entities created in connection therewith, the Receiver, standing in the shoes of the Receivership Entities, is a “creditor” of Creative Capital, as defined by the Florida Uniform Fraudulent Transfer Act at Florida Statutes § 726 .101 et seq. (“FUFTA.”).

81. As a result of the creditor claims among Receivership Entities, at all times material hereto, Creative Capital is a “debtor” as that term is defined by FUFTA.

82. The ARDELEAN Transfers rendered Creative Capital unable to pay the claims of the Receiver and the other Receivership entities in their respective capacities as creditors of Creative Capital under FUFTA.

83. Pursuant to Chapter 726 of the Florida Statutes, a Receiver may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made within four (4) years before the date of the filing of the petition, if the debtor voluntarily or involuntarily –

(C) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or (B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and (ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation; (II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital; or (III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured.

84. Pursuant to Chapter 726 of the Florida Statutes, the Receiver may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from – (1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or (2) any immediate or mediate “subsequent” transferee of such initial transferee. As an alternative to the Receiver’s allegations in Count I, HOMELAND TITLE acted as a “mere conduit” as that term is defined by Florida law, and ARDELEAN is the initial transferee of the ARDELEAN Transfer.

85. The ARDELEAN Transfer constituted a transfer of an interest in property of Creative Capital to ARDELEAN within four years under Chapter 726 of the Florida Statutes.

86. Creative Capital did not receive reasonably equivalent value for the ARDELEAN Transfer and/or the Creative Capital family of companies: (i) were insolvent at the time of ARDELEAN Transfer and or became insolvent as a result thereof; (ii) were engaged or were

about to engage in a business or transaction for which the remaining assets of Creative Capital were unreasonably small in relation to the business or transaction; or (iii) intended to incur, or believed or reasonably should have believed that they would incur, debts beyond their ability to pay as they came due.

87. In addition, Creative Capital made the ARDELEAN Transfer with the actual intent to hinder, delay or defraud creditors of Creative Capital and such transfers was not received in good faith by ARDELEAN. Among other badges of fraud, at or near the time of both the ARDELEAN Transfer, Creative Capital: (i) was insolvent; (ii) was not paying its debts as they became due; (iii) did not pay reasonably equivalent value for the ARDELEAN Transfer; (iv) had, through its principals, defrauded creditors of millions of dollars; and (v) absconded.

88. As a result of the above, the Receiver can avoid the ARDELEAN Transfer pursuant to Chapter 726 of the Florida Statutes and recover the value thereof for the benefit of the estate.

WHEREFORE, the Receiver demands judgment against ARDELEAN as follows: (i) determining that the ARDELEAN Transfer was fraudulent and avoiding and recovering the value thereof for the benefit of the estate; (ii) awarding pre-judgment interest; and (iii) for any other relief the Court deems appropriate.

**COUNT III**  
**Action to Avoid and Recover Fraudulent Transfers Pursuant**  
**to Chapter 726 of The Florida Statutes**

*(Against Ardelean as Subsequent Transferee)*

89. The Receiver realleges paragraphs 1 through 88 above as if fully set forth herein.

90. As a result of investments in Creative Capital made by those Receivership Entities other than Creative Capital and the claims of those other Receivership Entities created in

connection therewith, the Receiver, standing in the shoes of the Receivership Entities, is a “creditor” of Creative Capital, as defined by the Florida Uniform Fraudulent Transfer Act at Florida Statutes § 726.101 et seq. (“FUFTA.”).

91. As a result of the creditor claims among Receivership Entities, at all times material hereto, Creative Capital is a “debtor” as that term is defined by FUFTA.

92. The HOMELAND TITLE Transfer is a “voidable” transfer under FUFTA, and furthermore rendered Creative Capital unable to pay the claims of the Receiver, and the other three Receivership entities in their respective capacities as creditors of Creative Capital under FUFTA.

93. The ARDELEAN Transfer arises from funds received by HOMELAND TITLE in connection with the HOMELAND TITLE Transfer. ARDELEAN took the ARDELEAN Transfer as a subsequent transferee of the HOMELAND TITLE Transfer without value and with a lack of good faith pursuant to Florida Statutes § 726.109, and the Receiver may recover the value of the ARDELEAN Transfer from ARDELEAN.

WHEREFORE, the Receiver demands judgment against ARDELEAN recovering the value of the ARDELEAN Transfer, awarding pre-judgment interest; and for any other relief the Court deems appropriate.

**Count VI**  
**Unjust Enrichment**

*(Against CCG and Ardelean)*

94. The realleges paragraphs 1 through 93 above as if fully set forth herein.

95. This is a claim for unjust enrichment.

96. The Receivership Entities conferred a benefit on CCG and ARDELEAN by making the CCG Transfer and the ARDELEAN Transfer, respectively.

97. CCG and ARDELEAN knowingly and voluntarily accepted and retained the respective benefits conferred by the Receivership Entities.

98. The circumstances are such that it would be inequitable and unjust for CCG and ARDELEAN to retain their respective benefits conferred by the Receivership Entities without paying the Receiver the value thereof.

99. CCG and ARDELEAN have been unjustly enriched at the expense of the Receivership Entities (and, ultimately, their investors).

100. The Receiver is entitled to the return of those amounts in which CCG and ARDELEAN were respectively unjustly enriched through disgorgement or any other appropriate remedy.

WHEREFORE, the Receiver respectfully requests this Court enter judgment in his favor against CCG and ARDELEAN in the amount that each was unjustly enriched, together with interest and costs, and for such further relief as the Court may deem just and proper.

**COUNT III**  
**Imposition of Constructive Trust or**  
**Equitable Lien**

101. The Receiver realleges paragraphs 1 through 100 above as if fully set forth herein.

102. This is a claim to impose a constructive trust or equitable lien.

103. The Receivership Entities conferred a benefit upon CCG and ARDELEAN in the form of the CCG Transfer and the ARDELEAN Transfer respectively.

104. CCG and ARDELEAN knowingly and voluntarily accepted and retained the respective benefits conferred by the Receivership Entities.

105. The circumstances are such that it would be inequitable and unjust for the CCG and ARDELEAN to retain the benefits conferred by the Receivership Entities without paying the Receiver the value thereof.

106. CCG and ARDELEAN have been unjustly enriched at the expense of the Receivership Entities (and, ultimately, their investors).

107. The Receiver is entitled to the return of those amounts in which CCG and ARDELEAN was unjustly enriched through disgorgement or any other appropriate remedy to the extent the proceeds thereof are readily identifiable.

WHEREFORE, the Receiver respectfully requests this Court enter judgment in his favor and against CCG and Ardelean to impose a constructive trust or equitable lien in the amount that each was unjustly enriched, together with interest and costs, and for such further relief as the Court may deem just and proper.

Dated: February \_\_, 2010  
Miami, Florida

Respectfully submitted,

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