

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(WEST PALM BEACH DIVISION)
CASE NO. 9:10-CV-81612
(Ancillary Pro. No. 08-81565-CIV-Hurley/Hopkins)

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

Plaintiff,

vs.

WELLS FARGO BANK, N.A., as
successor-in-interest to Wachovia Bank, N.A.,

Defendant.

**DEFENDANT, WELLS FARGO BANK N.A.'S
ANSWER AND AFFIRMATIVE DEFENSES TO AMENDED COMPLAINT**

Defendant, Wells Fargo Bank, N.A., successor-in-interest to Wachovia Bank, N.A. ("Wells Fargo"), files its Answer and Affirmative Defenses to Plaintiff, Jonathan E. Perlman, Esq., as Court appointed Receiver of Creative Capital Consortium, LLC, et. al., ("Perlman" or "Receiver"), Amended Complaint (ECF No. 19) (the "Amended Complaint"), and states as follows:

PARTIES, JURISDICTION, AND VENUE¹

1. Wells Fargo admits the allegations contained in paragraph 1 of Perlman's Amended Complaint.
2. As and for its response to the allegations in paragraph 2 of Perlman's Amended Complaint, Wells Fargo refers to the Receivership Order for a complete recitation of its contents and interpretation. Except as expressly admitted herein, Wells Fargo denies the remaining

¹ Except as otherwise defined herein, all capitalized terms in this Answer and Affirmative Defenses shall have the same meaning as those terms are defined in the Amended Complaint.

allegations and inferences in paragraph 2 of Perlman's Amended Complaint and specifically denies that Perlman has the authority or standing to pursue any claims to recover damages which were incurred by the investors and creditors of the Receivership Entities.

3. As and for its response to the allegations in paragraph 3 of Perlman's Amended Complaint, Wells Fargo refers to the Receivership Order for a complete recitation of its contents and interpretation. The remaining allegations in paragraph 3 of Perlman's Amended Complaint call for a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the remaining allegations and inferences in paragraph 3 of Perlman's Amended Complaint and specifically denies that Perlman has the authority or standing to pursue any claims in this action, since the Receivership Entities did not incur any damages and any damages, if at all, were incurred by the investors and creditors of the Receivership Entities.

4. Wells Fargo admits that this Court has personal jurisdiction over Wells Fargo, but except as expressly admitted herein, Wells Fargo denies the remaining allegations and inferences in paragraph 4 of Perlman's Amended Complaint.

5. Wells Fargo admits that venue is proper in this Court. Except as expressly admitted herein, Wells Fargo denies the remaining allegations and inferences in paragraph 5 of Perlman's Amended Complaint.

6. Wells Fargo admits that Theodule is a named Defendant in the SEC Receivership Action. Except as expressly admitted herein, Wells Fargo is without knowledge as to, and therefore denies, the remaining allegations in paragraph 6 of Perlman's Amended Complaint.

7. Wells Fargo admits that it is a wholly-owned subsidiary of Wells Fargo & Company, a Delaware corporation. Wells Fargo admits that Wells Fargo & Company merged with Wachovia Corporation and that Wells Fargo Bank, N.A. acquired the assets and liabilities of Wachovia Bank, N.A. Wells Fargo admits that it provides various banking services in several states, including

Florida. Wells Fargo admits that at all times material, it operated branches in West Palm Beach, Florida. Except as expressly admitted herein, Wells Fargo denies the remaining allegations and inferences in paragraph 7 of Perlman's Amended Complaint and expressly denies that it has any liability to Perlman or relative to the transactions at issue in the instant proceeding.

FACTS COMMON TO ALL COUNTS

8. Wells Fargo is without knowledge as to, and therefore denies, the allegations in paragraph 8 of Perlman's Amended Complaint.

9. Wells Fargo is without knowledge as to, and therefore denies, the allegations in paragraph 9 of Perlman's Amended Complaint.

10. As and for its response to the allegations in paragraph 10 of Perlman's Amended Complaint, Wells Fargo refers to the SEC Receivership Action and Complaint filed therein for a complete recitation of its contents and interpretation. Except as expressly admitted herein, Wells Fargo is without knowledge as to, and therefore denies, the remaining allegations and inferences in paragraph 10 of Perlman's Amended Complaint.

11. As and for its response to the allegations in paragraph 11 of Perlman's Amended Complaint, Wells Fargo refers to the SEC Receivership Action and Receivership Order therein for a complete recitation of its contents and interpretation. Except as expressly admitted herein, Wells Fargo is without knowledge as to, and therefore denies, the remaining allegations and inferences in paragraph 11 of Perlman's Amended Complaint.

12. As and for its response to the allegations in paragraph 12 of Perlman's Amended Complaint, Wells Fargo refers to the SEC Receivership Action and Complaint filed therein for a complete recitation of its contents and interpretation. Except as expressly admitted herein, Wells Fargo is without knowledge as to, and therefore denies, the remaining allegations and inferences in paragraph 12 of Perlman's Amended Complaint.

13. As and for its response to the allegations in paragraph 13 of Perlman's Amended Complaint, Wells Fargo refers to the SEC Receivership Action for a complete recitation of its contents and interpretation. Wells Fargo is without knowledge as to, and therefore denies, any allegations regarding efforts to collect on any judgment entered against Theodule. Except as expressly admitted herein, Wells Fargo denies the remaining allegations and inferences in paragraph 13 of Perlman's Amended Complaint.

14. Wells Fargo is without knowledge as to, and therefore denies, the allegations and inferences in paragraph 14 of Perlman's Amended Complaint.

15. Wells Fargo is without knowledge as to, and therefore denies, the allegations and inferences in paragraph 15 of Perlman's Amended Complaint.

**THE FRAUDULENT INVESTMENT SCHEME
OF THE RECEIVERSHIP ENTITIES**

16. Wells Fargo is without knowledge as to, and therefore denies, the allegations and inferences in paragraph 16 of Perlman's Amended Complaint.

17. Wells Fargo is without knowledge as to, and therefore denies, the allegations and inferences in paragraph 17 of Perlman's Amended Complaint.

18. Wells Fargo is without knowledge as to, and therefore denies, the allegations and inferences in paragraph 18 of Perlman's Amended Complaint.

19. Wells Fargo is without knowledge as to, and therefore denies, the allegations and inferences in paragraph 19 of Perlman's Amended Complaint.

20. Wells Fargo is without knowledge as to, and therefore denies, the allegations and inferences in paragraph 20 of Perlman's Amended Complaint.

21. Wells Fargo is without knowledge as to, and therefore denies, the allegations and inferences in paragraph 21 of Perlman's Amended Complaint.

22. Wells Fargo is without knowledge as to, and therefore denies, the allegations and inferences in paragraph 22 of Perlman's Amended Complaint.

23. Wells Fargo is without knowledge as to, and therefore denies, the allegations and inferences in paragraph 23 of Perlman's Amended Complaint.

24. Wells Fargo is without knowledge as to, and therefore denies, the allegations and inferences in paragraph 24 of Perlman's Amended Complaint.

25. Wells Fargo is without knowledge as to, and therefore denies, the allegations and inferences in paragraph 25 of Perlman's Amended Complaint.

26. Wells Fargo is without knowledge as to, and therefore denies, the allegations and inferences in paragraph 26 of Perlman's Amended Complaint.

27. Wells Fargo is without knowledge as to, and therefore denies, the allegations and inferences in paragraph 27 of Perlman's Amended Complaint.

28. Wells Fargo is without knowledge as to, and therefore denies, the allegations and inferences in paragraph 28 of Perlman's Amended Complaint.

29. Wells Fargo is without knowledge as to, and therefore denies, the allegations and inferences regarding any accounts the Receivership Entities maintained at Washington Mutual Bank, and of Theodule's intentions when Theodule and the entities he allegedly controlled opened accounts at Wells Fargo. Except as expressly admitted herein, Wells Fargo denies the remaining allegations and inferences in paragraph 29 of Perlman's Amended Complaint.

30. As and for its response to the allegations in paragraph 30 of Perlman's Amended Complaint, Wells Fargo refers to the unrelated action referenced therein for a complete recitation of its contents and expressly states that in paragraph 30 of the Amended Complaint, Perlman misstates material facts regarding the unrelated action. Except as expressly admitted herein, Wells Fargo denies the remaining allegations and inferences in paragraph 30 of Perlman's Amended Complaint.

31. Wells Fargo denies the allegations and inferences contained in paragraph 31 of Perlman's Amended Complaint.

32. The allegations of paragraph 32 of Perlman's Amended Complaint call for a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo refers to the statutes referenced therein for a complete recitation of their contents. Except as expressly admitted herein, Wells Fargo denies the remaining allegations and inferences in paragraph 32 of Perlman's Amended Complaint.

33. The allegations of paragraph 33 of Perlman's Amended Complaint call for a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the allegations and inferences in paragraph 33 of Perlman's Amended Complaint and Perlman's interpretation of the law set forth in paragraph 33 of Perlman's Amended Complaint.

34. Wells Fargo denies the allegations and inferences contained in paragraph 34 of Perlman's Amended Complaint.

35. Wells Fargo denies the allegations and inferences contained in paragraph 35 of Perlman's Amended Complaint.

36. The allegations of paragraph 36 of Perlman's Amended Complaint regarding KYC requirements call for a legal conclusion to which no response is required. To the extent a response is required to those allegations, Wells Fargo denies the allegations and inferences and Perlman's interpretation of the law set forth in paragraph 36 of Perlman's Amended Complaint. Except as expressly admitted herein, Wells Fargo denies the remaining allegations and inferences in paragraph 36 of Perlman's Amended Complaint and expressly denies any allegation or inference that Wells Fargo was Theodule's partner in any Ponzi scheme.

37. Wells Fargo denies the allegations and inferences in paragraph 37 of Perlman's Amended Complaint.

38. Wells Fargo denies the allegations and inferences in paragraph 38 of Perlman's Amended Complaint and expressly denies any allegation or inference that Wells Fargo failed to comply with any applicable law regarding the handling or treatment of any accounts maintained at Wells Fargo by Theodule and/or the Receivership Entities.

39. The allegations of paragraph 39 of Perlman's Amended Complaint call for a legal conclusion to which no response is required. To the extent a response is required to those allegations, Wells Fargo denies the allegations and inferences in paragraph 39 of Perlman's Amended Complaint.

40. Wells Fargo denies the allegations and inferences in paragraph 40 of Perlman's Amended Complaint.

41. Wells Fargo denies the allegations and inferences in paragraph 41 of Perlman's Amended Complaint.

42. Wells Fargo is without knowledge as to, and therefore denies, the allegations and inferences in paragraph 42 of Perlman's Amended Complaint regarding the accounts allegedly opened at Wells Fargo because Perlman does not identify the names of the accounts or account numbers he is referring to in paragraph 42 of Perlman's Amended Complaint. Except as expressly stated herein, Wells Fargo denies any and all remaining allegations and inferences in paragraph 42 of Perlman's Amended Complaint.

43. Wells Fargo is without knowledge as to, and therefore denies, the allegations and inferences in paragraph 43 of Perlman's Amended Complaint regarding the activity in the accounts because Perlman does not identify the names of the accounts or account numbers he is referring to in paragraph 43 of Perlman's Amended Complaint. Except as expressly stated herein, Wells Fargo denies the remaining allegations and inferences in paragraph 43 of Perlman's Amended Complaint and expressly denies any allegation or inference that Wells Fargo initiated or conducted any

transfers of proceeds or that Wells Fargo had any knowledge of any alleged misconduct relative to any transfer of proceeds from those accounts.

44. Wells Fargo denies the allegations in paragraph 44 of Perlman's Amended Complaint.

45. Wells Fargo denies the allegations and inferences in paragraph 45 of Perlman's Amended Complaint.

46. Wells Fargo denies the allegations and inferences in paragraph 46 of Perlman's Amended Complaint.

47. As and for its response to the allegations in paragraph 47 of Perlman's Amended Complaint, Wells Fargo's internal documents speak for themselves and Wells Fargo refers to those internal documents for a complete recitation of their contents and interpretation. Except as expressly admitted herein, Wells Fargo denies the remaining allegations and inferences in paragraph 47 of Perlman's Amended Complaint and expressly denies any allegation or inference that Wells Fargo had any knowledge of any alleged misconduct relative to any transactions conducted on those accounts.

48. As and for its response to the allegations in paragraph 48 of Perlman's Amended Complaint, Wells Fargo admits that it placed a restraint on an account maintained at Wells Fargo by Wealth Builders Circle, LLC for investigative purposes. Except as expressly admitted herein, Wells Fargo denies the remaining allegations and inferences in paragraph 48 of Perlman's Amended Complaint and expressly denies any allegation or inference that Wells Fargo had any knowledge of any alleged misconduct conducted on the accounts referred to in paragraph 48 of Perlman's Amended Complaint.

49. As and for its response to the allegations in paragraph 49 of Perlman's Amended Complaint, Wells Fargo admits that as part of its ongoing review, Wells Fargo requested and

received a copy of the “Creative Capital Consortium Business Plan”. Except as expressly admitted herein, Wells Fargo denies the remaining allegations and inferences in paragraph 49 of Perlman’s Amended Complaint and expressly denies any allegation or inference that Wells Fargo had any knowledge of any alleged misconduct conducted on the accounts referred to in paragraph 49 of Perlman’s Amended Complaint.

50. As and for its response to the allegations in paragraph 50 of Perlman’s Amended Complaint, the “Creative Capital Consortium Business Plan” speaks for itself and Wells Fargo refers to the “Creative Capital Consortium Business Plan” for a complete recitation of its contents. Except as expressly admitted herein, Wells Fargo denies any and all remaining allegations and inferences in paragraph 50 of Perlman’s Amended Complaint and expressly denies any allegation or inference that Wells Fargo had any knowledge of any alleged misconduct relative to any transfer of proceeds from those accounts.

51. Wells Fargo denies the allegations and inferences in paragraph 51 of Perlman’s Amended Complaint.

52. Wells Fargo denies the allegations and inferences in paragraph 52 of Perlman’s Amended Complaint.

53. Wells Fargo denies the allegations and inferences in paragraph 53 of Perlman’s Amended Complaint.

54. As and for its response to paragraph 54 of Perlman’s Amended Complaint, Wells Fargo admits that on July 24, 2008, Wells Fargo informed Dorothy Delisfort, that it was closing the account previously maintained by Wealth Builder’s Circle because of Wells Fargo’s suspicion there is “no evidence of any investing going on and that funds were merely washing through the account from hand to hand.” Wells Fargo further admits that it closed all other accounts at Wells Fargo which it believed to have any relation and/or connection with Theodule and/or the Receivership

Entities. Except as expressly admitted herein, Wells Fargo denies the remaining allegations and inferences in paragraph 54 of Perlman's Amended Complaint and expressly denies any allegation or inference that Wells Fargo had any knowledge of any alleged misconduct relative to any accounts maintained at Wells Fargo by Theodule and/or the Receivership Entities, or any person or entity they allegedly controlled.

55. Wells Fargo denies the allegations and inferences in paragraph 55 of Perlman's Amended Complaint.

56. Wells Fargo denies the allegations and inferences in paragraph 56 of Perlman's Amended Complaint.

COUNT I – AIDING AND ABETTING BREACH OF FIDUCIARY DUTY

57. As and for its answer to paragraph 57 of the Amended Complaint, Wells Fargo realleges its responses to the allegations of paragraphs 1 through 56 as if fully set forth herein.

58. The allegations of paragraph 58 of Perlman's Amended Complaint call for a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the allegations and inferences in paragraph 58 of Perlman's Amended Complaint

59. The allegations of paragraph 59 of Perlman's Amended Complaint call for a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the allegations and inferences in paragraph 59 of Perlman's Amended Complaint

60. The allegations of paragraph 60 of Perlman's Amended Complaint call for a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the allegations and inferences in paragraph 60 of Perlman's Amended Complaint.

61. Wells Fargo denies the allegations and inferences in paragraph 61 of Perlman's Amended Complaint.

COUNT II – AIDING AND ABETTING CONVERSION

62. As and for its answer to paragraph 62 of the Amended Complaint, Wells Fargo realleges its responses to the allegations of paragraphs 1 through 61 as if fully set forth herein.

63. As and for its response to paragraph 63 of Perlman's Amended Complaint, Wells Fargo admits that Perlman is seeking to recover for aiding and abetting a conversion by Theodule of funds received by the Receivership Entities, but denies that it has any liability to Perlman. Except as expressly admitted herein, Wells Fargo denies the remaining allegations and inferences in paragraph 63 of Perlman's Amended Complaint.

64. The allegations of paragraph 64 of Perlman's Amended Complaint call for a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the allegations and inferences in paragraph 64 of Perlman's Amended Complaint.

65. Wells Fargo denies the allegations and inferences in paragraph 65 of Perlman's Amended Complaint.

66. Wells Fargo denies the allegations and inferences in paragraph 66 of Perlman's Amended Complaint.

COUNT III – COMMON LAW NEGLIGENCE

67. Wells Fargo is not responding to the allegations of Count III of the Amended Complaint, including paragraphs 67-73 of the Amended Complaint, for the reason that this Count was dismissed by the Court on November 22, 2011 pursuant to the Order Granting in Part Defendant's Motion to Dismiss and Denying Defendant's Motion to Strike (ECF No. 52). To the extent a response is required, Wells Fargo denies all allegations and inferences contained in Count III of the Amended Complaint and denies that it has any liability to Perlman.

COUNT IV– WIRE TRANSFER LIABILITY - ARTICLE 4(A)

68. Wells Fargo is not responding to the allegations of Count IV of the Amended Complaint, including paragraphs 74 - 81 of the Amended Complaint, for the reason that this Count was dismissed by the Court on November 22, 2011 pursuant to the Order Granting in Part Defendant's Motion to Dismiss and Denying Defendant's Motion to Strike (ECF No. 52). To the extent a response is required, Wells Fargo denies all allegations and inferences contained in Count IV of the Amended Complaint and denies that it has any liability to Perlman.

COUNT V– WIRE TRANSFER LIABILITY – FEDERAL RESERVE REGULATION J

69. Wells Fargo is not responding to the allegations of Count V of the Amended Complaint, including paragraphs 82 - 92 of the Amended Complaint, for the reason that this Count was dismissed by the Court on November 22, 2011 pursuant to the Order Granting in Part Defendant's Motion to Dismiss and Denying Defendant's Motion to Strike (ECF No. 52). To the extent a response is required, Wells Fargo denies all allegations and inferences contained in Count V of the Amended Complaint and denies that it has any liability to Perlman.

**COUNT VI– AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFERS
PURSUANT TO CHAPTER 726 OF THE FLORIDA STATUTES**

70. As and for its answer to paragraph 93 of the Amended Complaint, Wells Fargo realleges its responses to the allegations of paragraphs 1 through 92 as if fully set forth herein..

71. Wells Fargo admits that the Receivership Bank Customers opened and operated certain bank accounts at Wells Fargo. Except as expressly admitted herein, Wells Fargo denies the remaining allegations and inferences in paragraph 94 of Perlman's Amended Complaint.

72. Wells Fargo denies the allegations and inferences in paragraph 95 of Perlman's Amended Complaint.

73. Wells Fargo denies the allegations and inferences in paragraph 96 of Perlman's Amended Complaint.

74. Wells Fargo denies the allegations and inferences in paragraph 97 of Perlman's Amended Complaint.

75. Wells Fargo denies the allegations and inferences in paragraph 98 of Perlman's Amended Complaint.

**COUNT VII- AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFERS
PURSUANT TO CHAPTER 726 OF THE FLORIDA STATUTES**

76. As and for its answer to paragraph 99 of the Amended Complaint, Wells Fargo realleges its responses to the allegations of paragraphs 1 through 98 as if fully set forth herein..

77. Wells Fargo admits that the Receivership Bank Customers opened and operated certain bank accounts at Wells Fargo. Except as expressly admitted herein, Wells Fargo denies the remaining allegations and inferences in paragraph 100 of Perlman's Amended Complaint.

78. Wells Fargo denies the allegations and inferences in paragraph 101 of Perlman's Amended Complaint.

79. Wells Fargo denies the remaining allegations and inferences in paragraph 102 of Perlman's Amended Complaint.

80. Wells Fargo denies the remaining allegations and inferences in paragraph 103 of Perlman's Amended Complaint.

81. Wells Fargo denies the remaining allegations and inferences in paragraph 104 of Perlman's Amended Complaint.

COUNT VIII – AIDING AND ABETTING FRAUDULENT TRANSFERS

82. Wells Fargo is not responding to the allegations of Count VIII of the Amended Complaint, including paragraphs 105 - 111 of the Amended Complaint, for the reason that this

Count was dismissed by the Court on November 22, 2011 pursuant to the Order Granting in Part Defendant's Motion to Dismiss and Denying Defendant's Motion to Strike (ECF No. 52). To the extent a response is required, Wells Fargo denies all allegations and inferences contained in Count VIII of the Amended Complaint and denies that it has any liability to Perlman.

JURY DEMAND

Pursuant to the applicable Deposit Agreement and Disclosures for Commercial Accounts which governs Wells Fargo's relationship with the Receivership Entities relative to any bank accounts they maintained at Wells Fargo, the Receivership Entities knowingly and voluntarily waived any right to trial by jury on any and all claims. Accordingly, Wells Fargo denies that the Receivership Entities are entitled to a trial by jury on any claims and requests that the jury demand of Perlman be stricken.

AFFIRMATIVE DEFENSES

As and for its First Affirmative Defense, Wells Fargo states that Perlman has no standing to bring this action.

As and for its Second Affirmative Defense, Wells Fargo states that the Receivership Entities suffered no legally cognizable damages, since any damages, if at all, were incurred by the investors in the alleged Ponzi scheme and/or creditors of the Receivership Entities, and not the Receivership Entities.

As and for its Third Affirmative Defense, Wells Fargo states that Perlman is not the proper party in interest to bring any action related to the misconduct of Theodule and/or the Receivership Entities and/or the accounts they maintained at Wells Fargo and that at least one investor is already pursuing her own claims against Wells Fargo for the same alleged damages raised herein.

As and for its Fourth Affirmative Defense, Wells Fargo states that Perlman's claims should be barred since he is seeking damages duplicative of the damages sought in the action styled

Nerline Horace-Manasse, and all others similarly situated v. Wells Fargo Bank, N.A., Case No. 10-81623-Hurley/Hopkins, currently pending in the United States District Court, Southern District of Florida, and any other action which has or may be brought against Wells Fargo by any investor in the alleged Ponzi scheme which is the subject of this action.

As and for its Fifth Affirmative Defense, Wells Fargo states that Perlman's claims are barred because the Receivership Entities are merely the alter-egos of Theodule, his wife Delisfort, and/or other individuals alleged to have perpetrated the alleged misconduct which is the subject of this action.

As and for its Sixth Affirmative Defense, Wells Fargo states that Perlman's claims are barred because the Receivership Entities were owned and/or controlled and/or dominated by Theodule, his wife Delisfort, and/or other individuals, and the Receivership Entities are improperly seeking to recover damages caused by these individuals.

As and for its Seventh Affirmative Defense, Wells Fargo states that Perlman's claims are barred because the transactions on the accounts maintained at Wells Fargo by the Receivership Entities were initiated by persons authorized to conduct transactions on the accounts maintained at Wells Fargo by the Receivership Entities and/or initiated at the direction of persons authorized to conduct transactions on the accounts maintained at Wells Fargo by the Receivership Entities.

As and for its Eighth Affirmative Defense, Wells Fargo states that Perlman's claims are barred by *in pari delicto*.

As and for its Ninth Affirmative Defense, Wells Fargo states that Perlman's claims are barred because there was no honest decision-maker within the Receivership Entities.

As and for its Tenth Affirmative Defense, Wells Fargo states that Perlman's claims are barred because there was no honest person within the Receivership Entities for Wells Fargo to report any alleged misconduct to.

As and for its Eleventh Affirmative Defense, Wells Fargo states that Perlman's claims are barred because Wells Fargo did not have knowledge that any transaction which is the subject of this action was improper or fraudulent at the time the transaction took place.

As and for its Twelfth Affirmative Defense, Wells Fargo states that Perlman's claims are barred because Wells Fargo acted in good faith with regard to any and all transactions which are the subject of this action.

As and for its Thirteenth Affirmative Defense, Wells Fargo states that Perlman's claims are barred because Wells Fargo was in contact with law enforcement within two months of the opening of the accounts which are the subject of this action regarding the activity on those accounts.

As and for its Fourteenth Affirmative Defense, Wells Fargo states that Perlman's claims are barred because the actions allegedly taken by Wells Fargo were not the proximate cause of any alleged loss incurred by the Receivership Entities.

As and for its Fifteenth Affirmative Defense, Wells Fargo states that Perlman's claims are barred because any damages suffered by the Receivership Entities resulted from the acts or omissions of third parties not under the control or direction of Wells Fargo.

As and for its Sixteenth Affirmative Defense, Wells Fargo states that it is entitled to a set-off to the extent Perlman and/or any investor and/or creditor of the Receivership Entities receives any recovery from any other source or third-party.

As and for its Seventeenth Affirmative Defense, Wells Fargo states that Perlman's claims are barred to the extent that the Receivership Entities failed to mitigate their damages.

As and for its Eighteenth Affirmative Defense, Wells Fargo states that Perlman's claims are barred to the extent that the Receivership Entities failed to timely notify Wells Fargo of any improper or unauthorized activity being conducted on any accounts they maintained at Wells Fargo.

As and for its Nineteenth Affirmative Defense, Wells Fargo states that Perlman's claims are barred to the extent that the Receivership Entities failed to maintain proper internal controls to prevent any embezzlement of from their bank accounts and to prevent any improper activity by their officers, directors, agents, and employees.

As and for its Twentieth Affirmative Defense, Wells Fargo states that Perlman's claims are barred to the extent that some or all of investor proceeds were invested.

As and for its Twenty-First Affirmative Defense, Wells Fargo states that Perlman's claims are barred to the extent that some or all of the purported investors, who were members of investment clubs, failed to actively participate in or monitor their investments.

As and for its Twenty-Second Affirmative Defense, Wells Fargo states that Perlman's claims are barred to the extent that some or all of the purported investors, were members of the investment clubs, and as such were participants in the Ponzi scheme to which they now complain.

As and for its Twenty-Third Affirmative Defense, Wells Fargo states that Perlman's claims are barred to the extent that some or all of the purported investors authorized, directed, and/or ratified any investments and/or transactions conducted by Theodule, the Receivership Entities, and/or the Investment Clubs.

As and for its Twenty-Fourth Affirmative Defense, Wells Fargo states that Perlman's claims are barred to the extent that the investors failed to adequately investigate Theodule, the Receivership Entities, and/or the Investment Clubs prior to making their purported investments.

As and for its Twenty-Fifth Affirmative Defense, Wells Fargo states that Perlman's claims are barred to the extent that the investors could not have reasonably relied on unreasonable representations and/or promises regarding the performance of their investment.

As and for its Twenty-Sixth Affirmative Defense, Wells Fargo states that Perlman's claims are barred to the extent that any damages suffered by Perlman resulted from intervening, superseding causes.

As and for its Twenty-Seventh Affirmative Defense, Wells Fargo states that Perlman's claims are barred to the extent the Receivership Entities ratified the activity and transactions that are the subject of this action.

As and for its Twenty-Eighth Affirmative Defense, Wells Fargo states that Perlman's claims are barred because the relationship between Wells Fargo and the Receivership Entities, which maintained accounts at Wells Fargo, is that of debtor and creditor.

As and for its Twenty-Ninth Affirmative Defense, Wells Fargo states that Perlman's claims are barred, in whole or in part, and any recovery must be reduced to the extent any proceeds allegedly misappropriated from the accounts maintained at Wells Fargo by the Receivership Entities were used to pay obligations or business expenses of the Receivership Entities.

As and for its Thirtieth Affirmative Defense, Wells Fargo states that Perlman's claims are barred, in whole or in part, pursuant to the terms of the applicable Deposit Agreement and Disclosures for Commercial Accounts, which governs the relationship between Wells Fargo and the Receivership Entities which maintained accounts at Wells Fargo.

As and for its Thirty-First Affirmative Defense, Wells Fargo states that Perlman's claims are barred pursuant to the doctrine of waiver.

As and for its Thirty-Second Affirmative Defense, Wells Fargo states that Perlman's claims are barred pursuant to the doctrine of laches.

As and for its Thirty-Third Affirmative Defense, Wells Fargo states that Perlman's claims are barred pursuant to the doctrine of estoppel.

As and for its Thirty-Fourth Affirmative Defense, Wells Fargo states that Perlman's claims are barred because the Receivership Entities are bound by the conduct of their officers, directors, agents, and employees.

As and for its Thirty-Fifth Affirmative Defense, Wells Fargo states that it is not liable for the conduct of any employee whose actions were outside of the scope of that employee's scope of employment.

As and for its Thirty-Sixth Affirmative Defense, Wells Fargo states that Perlman's claims are barred because Wells Fargo owed no duty to the Receivership Entities to disclose and/or prevent any misconduct by any signatory and/or authorized representative of the Receivership Entities.

As and for its Thirty-Seventh Affirmative Defense, Wells Fargo states Perlman's claims are barred because as to any and all transfers of proceeds which are the subject of this action, Wells Fargo is a mere conduit and not an initial transferee.

WHEREFORE, Defendant, Wells Fargo Bank, N.A., respectfully requests that this Court enter Final Judgment in its favor and against Plaintiff, Jonathan E. Perlman, Esq., as Court appointed Receiver of Creative Capital Consortium, LLC, et. al., on all claims in the Amended Complaint, enter an award of costs and attorneys' fees in favor of Wells Fargo pursuant to the terms of the applicable Deposit Agreement and Disclosures for Commercial Accounts, and enter such other and further relief as is just and proper.

Dated: December 16, 2011.

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successor-in-interest to Wachovia Bank, N.A.*

CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2011, 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 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.

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SERVICE LIST

*United States District Court
Southern District of Florida*

CASE NO: 10-CV-81612

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