

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

CASE NO. 10-81612-CIV-HURLEY/HOPKINS

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

Plaintiff,

v.

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

Defendant.

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**RECEIVER'S MOTION FOR LEAVE TO FILE A SECOND AMENDED  
COMPLAINT AND INCORPORATED MEMORANDUM OF LAW**

Plaintiff Jonathan E. Perlman, Esq., the court-appointed Receiver (the "Receiver") of 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., (collectively, the "Receivership Entities"), pursuant to Fed. R. Civ. P. 15(a)(2), files this motion for leave to file a Second Amended Complaint against Defendant Wells Fargo Bank, N.A, as successor-in-interest to Wachovia Bank, N.A. ("Wells Fargo"):

**I. Introduction**

By this Motion, the Receiver seeks leave of Court to file a Second Amended Complaint. For the reasons stated below, the relief requested herein is appropriate under the circumstances. The proposed Seconded Amended Complaint is attached hereto as *Exhibit "A."*

## **II. Factual Background**

The Plaintiff is the duly appointed and acting receiver of the Receivership Entities. On December 21, 2010, the Receiver filed his Complaint in this lawsuit seeking monetary damages, the avoidance of fraudulent transfers and other relief against Wells Fargo in regard to its role as one of the banks used in the multi-million dollar Ponzi scheme that is the subject matter of this receivership action. [ECF No. 1]. On April 5, 2010, the Receiver filed a First Amended Complaint as a matter of right without leave of Court thereby rendering moot Well's Fargo's pending motion to dismiss. [ECF. No. 19]. By Order dated November 11, 2011, the Court granted in part Wells Fargo's motion to dismiss the First Amended Complaint ("Partial Dismissal Order"). [ECF No. 52]. On June 1, 2012, Wells Fargo filed its motion for reconsideration of this Court's Partial Dismissal Order based upon the Court's order of dismissal entered in a separate lawsuit pending by the Receiver against Bank of America involving the Receivership Entities based upon a recent 11<sup>th</sup> Circuit decision. [ECF No. 80]. Since this case was filed in 2010, discovery has proceeded and a pretrial hearing date is currently scheduled for a trial in March, 2013. By Order dated June 22, 2012, the Court stayed discovery pending a ruling on Well's Fargo's motion for reconsideration. [ECF No. 84]. On June 25, 2012, the Receiver filed an unopposed motion for extension of time within which to respond to Wells Fargo's motion for reconsideration.<sup>1</sup> [ECF No. 85].

## **III. Legal Argument and Citation to Authority**

Rule 15(a)(2) of the Federal Rules of Civil Procedure provides that "[t]he court should freely give leave [to amend a pleading] when justice so requires." Fed. R. Civ. P. 15(a)(2). Leave to amend may be denied only in cases marked by a strong showing of delay, futility, bad

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<sup>1</sup> Should this Court grant the Receiver's request for leave to file a Second Amended Complaint, the Receiver would respectfully request that this Court deny the pending motion for reconsideration as moot.

faith or prejudice to the opposing party. *See, e.g., Foman v. Davis*, 371 U.S. 178, 182 (1962). Indeed, the court should allow leave to amend unless there is a “substantial” countervailing reason. *Grayson v. K Mart Corp.*, 79 F.3d 1086, 1110 (11th Cir. 1996); *Espey v. Wainwright*, 734 F.2d 748, 750 (11th Cir. 1984) (“[u]nless there is a substantial reason to deny leave to amend, the discretion of the district court is not broad enough to permit denial.”) (quoting *Dussouy v. Gulf Coast Inv. Corp.*, 660 F.2d 594, 598 (5th Cir.1981)).

Here, leave to amend should be granted because no countervailing factors are present warranting a denial of the motion, and justice so requires it given the liberal standards afforded to amending pleadings.

#### IV. Conclusion

For the reasons set forth above, the Receiver respectfully requests that the Court grant leave to amend to file the attached Second Amended Complaint, and for any other relief the Court deems appropriate.

Dated: June 26, 2012  
Miami, Florida

Respectfully submitted,

By: s/ David C. Cimo

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 26, 2012, 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, 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.

By: s/David C. Cimo  
Attorney

**SERVICE LIST**

**Jonathan E. Perlman, Esq. v. Wells Fargo Bank, N.A.  
Case No. 10-81612-CIV-HURLEY/HOPKINS  
United States District Court Southern District of Florida**

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