

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO.: 09-CIV-20865-HURLEY/HOPKINS

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

Plaintiff, :

v. :

GABRIELLE ALEXIS, et al., :

Defendantss. :

_____ :

ANSWER AND AFFIRMATIVE DEFENSES

Defendants, **GABRIELLE ALEXIS and LAW OFFICES OF GABRIELLE ALEXIS, P.A.** (hereinafter referred to as “Defendants”) by and through undersigned counsel hereby files its Answer and Affirmative Defenses to Plaintiff, **JONATHAN E. PERLMAN, Esq.’s** (hereinafter referred to as “Plaintiff”) Second Amended Complaint (“Complaint”), and states as follows:

THE PARTIES, JURISDICTION AND VENUE

1. Defendants are without knowledge as to the allegations contained in paragraph 1 and demands strict proof thereof at time of trial.
2. Defendants are without knowledge as to the allegations contained in paragraph 2 and demands strict proof thereof at time of trial.

3. Defendants are without knowledge as to the allegations contained in paragraph 3 and demands strict proof thereof at time of trial.
4. Defendants are without knowledge as to the allegations contained in paragraph 4 and demands strict proof thereof at time of trial.
5. Defendants are without knowledge as to the allegations contained in paragraph 5 and demands strict proof thereof at time of trial.
6. Defendants admit the allegations contained in paragraph 6 for jurisdictional purposes only.
7. Defendants admit the allegations contained in paragraph 7 for jurisdictional purposes only.
8. Defendants admit the allegations contained in paragraph 8 for jurisdictional purposes only.
9. Defendants are without knowledge as to the allegations contained in paragraph 9 and demands strict proof thereof at time of trial.
10. Defendants admit the allegations contained in paragraph 10 for jurisdictional purposes only. All insinuations or allegations of liability arising therefrom are hereby denied and Defendants demand strict proof thereof at time of trial.
11. Defendants admits that GAPA is a Florida professional association in which Defendants was an owner, officer, director and/or control person of GAPA, but would deny the remaining allegations contained in paragraph 11 and would demand strict proof thereof at time of trial.

12. Defendant denies the allegations contained in paragraph 12 and demands strict proof thereof at time of trial.

FACTS COMMON TO ALL COUNTS

13. Defendants are without knowledge as to the allegations contained in paragraph 13 and demands strict proof thereof at time of trial.
14. Defendants are without knowledge as to the allegations contained in paragraph 14 and demands strict proof thereof at time of trial.
15. Defendants are without knowledge as to the allegations contained in paragraph 15 and demands strict proof thereof at time of trial.
16. Defendants are without knowledge as to the allegations contained in paragraph 16 and demands strict proof thereof at time of trial.
17. Defendants are without knowledge as to the allegations contained in paragraph 17 and demands strict proof thereof at time of trial.
18. Defendants are without knowledge as to the allegations contained in paragraph 18 and demands strict proof thereof at time of trial.
19. Defendants are without knowledge as to the allegations contained in paragraph 19 and demands strict proof thereof at time of trial.
20. Defendants are without knowledge as to the allegations contained in paragraph 20 and demands strict proof thereof at time of trial.
21. Defendants are without knowledge as to the allegations contained in paragraph 21 and demands strict proof thereof at time of trial.
22. Defendants are without knowledge as to the allegations contained in paragraph 22 and demands strict proof thereof at time of trial.

THE FRAUDULENT INVESTMENT SCHEME

23. Defendants are without knowledge as to the allegations contained in paragraph 23 and demands strict proof thereof at time of trial.
24. Defendants are without knowledge as to the allegations contained in paragraph 24 and demands strict proof thereof at time of trial.
25. Defendants are without knowledge as to the allegations contained in paragraph 25 and demands strict proof thereof at time of trial.
26. Defendants are without knowledge as to the allegations contained in paragraph 26 and demands strict proof thereof at time of trial.
27. Defendants are without knowledge as to the allegations contained in paragraph 27 and demands strict proof thereof at time of trial.
28. Defendants are without knowledge as to the allegations contained in paragraph 28 and demands strict proof thereof at time of trial.
29. Defendants are without knowledge as to the allegations contained in paragraph 29 and demands strict proof thereof at time of trial.
30. Defendants are without knowledge as to the allegations contained in paragraph 30 and demands strict proof thereof at time of trial.
31. Defendants are without knowledge as to the allegations contained in paragraph 31 and demands strict proof thereof at time of trial.
32. Defendants are without knowledge as to the allegations contained in paragraph 32 and demands strict proof thereof at time of trial.
33. Defendants are without knowledge as to the allegations contained in paragraph 33 and demands strict proof thereof at time of trial.

34. Defendants are without knowledge as to the allegations contained in paragraph 34 and demands strict proof thereof at time of trial.
35. Defendants are without knowledge as to the allegations contained in paragraph 35 and demands strict proof thereof at time of trial.
36. Defendants are without knowledge as to the allegations contained in paragraph 36 and demands strict proof thereof at time of trial.
37. Defendants are without knowledge as to the allegations contained in paragraph 37 and demands strict proof thereof at time of trial.
38. Defendants are without knowledge as to the allegations contained in paragraph 38 and demands strict proof thereof at time of trial.
39. Defendants are without knowledge as to the allegations contained in paragraph 39 and demands strict proof thereof at time of trial.
40. Defendants are without knowledge as to the allegations contained in paragraph 40 and demands strict proof thereof at time of trial.
41. Defendants are without knowledge as to the allegations contained in paragraph 41 and demands strict proof thereof at time of trial.
42. Defendants are without knowledge as to the allegations contained in paragraph 42 and demands strict proof thereof at time of trial.
43. Defendants are without knowledge as to the allegations contained in paragraph 43 and demands strict proof thereof at time of trial.
44. Defendants are without knowledge as to the allegations contained in paragraph 44 and demands strict proof thereof at time of trial.

45. Defendants are without knowledge as to the allegations contained in paragraph 45 and demands strict proof thereof at time of trial.
46. Defendants are without knowledge as to the allegations contained in paragraph 46 and demands strict proof thereof at time of trial.
47. Defendants are without knowledge as to the allegations contained in paragraph 47 and demands strict proof thereof at time of trial.
48. Defendants deny the allegations contained in paragraph 48 and demands strict proof thereof at time of trial.
49. Defendants deny the allegations contained in paragraph 49 and demands strict proof thereof at time of trial.
50. Defendants deny the allegations contained in paragraph 50 and demands strict proof thereof at time of trial.
51. The Defendants admits that the firm provided legal services. All insinuations or allegations of liability arising therefrom are denied. The Defendants deny the remaining allegations contained in paragraph 51 and demands strict proof thereof at time of trial. To the extent Retainer Agreement is a written document, Defendants state it speaks for itself.
52. The Defendants admit that the fee agreement would be modified. The Defendants deny the remaining allegations contained in paragraph 52 and demands strict proof thereof at time of trial. To the extent Retainer Agreement and Amendment to Retainer Agreement are written documents, Defendants state that they speak for themselves.

53. The Defendants admit the allegations in paragraph 53 to the extent that Dolce Regency was represented by GAPA. The Defendants deny the remaining allegations contained in paragraph 53 and demands strict proof thereof at time of trial.
54. The Defendants admits that there was and Operating Agreement between Pacific Atlantic Investments, LLC and Theodule. The Defendants denies the remaining allegations contained in paragraph 54. To the extent the Operating Agreement is a written document, it speaks for itself.
55. Defendants deny the allegations contained in paragraph 55 and demands strict proof thereof at time of trial. To the extent the Operating Agreement is a written document, it speaks for itself.
56. The Defendants deny the allegations contained in paragraph 56 and demands strict proof thereof at time of trial.
57. Defendants admit the allegations contained in paragraph 57.
58. Defendants are without knowledge as to the allegations contained in paragraph 58 and demands strict proof thereof at time of trial. To the extent the Dolce Operating Agreement is a written document, Defendants state that it speaks for itself.
59. Defendants are without knowledge as to the allegations contained in paragraph 59 and demands strict proof thereof at time of trial. To the extent the Dolce Operating Agreement is a written document, Defendants state that it speaks for itself.

60. The Defendants deny the allegations contained in paragraph 60 and demands strict proof thereof at time of trial. To the extent the Dolce Operating Agreement is a written document, Defendants state that it speaks for itself.
61. The Defendants admits that a wire transaction occurred. The Defendants deny the remaining allegations contained in paragraph 61 and demands strict proof thereof at time of trial.
62. The Defendants deny the allegations contained in paragraph 62 and demands strict proof thereof at time of trial.
63. The Defendants deny the allegations contained in paragraph 63 and demands strict proof thereof at time of trial.
64. The Defendants deny the allegations contained in paragraph 64 and demands strict proof thereof at time of trial.
65. Defendants are without knowledge as to the allegations contained in paragraph 65 and demands strict proof thereof at time of trial.
66. The Defendants deny the allegations contained in paragraph 66 and demands strict proof thereof at time of trial.
67. Defendants admit the allegations contained in paragraph 67.
68. The Defendants deny the allegations contained in paragraph 68 and demands strict proof thereof at time of trial.
69. The Defendants deny the allegations contained in paragraph 69 and demands strict proof thereof at time of trial.

70. The Defendants deny the allegations contained in paragraph 70 and demands strict proof thereof at time of trial.
71. The Defendants deny the allegations contained in paragraph 71 and demands strict proof thereof at time of trial.
72. The Defendants deny the allegations contained in paragraph 72 and demands strict proof thereof at time of trial.
73. The Defendants deny the allegations contained in paragraph 73 and demands strict proof thereof at time of trial.

COUNT 1

Action to Avoid and Recover Fraudulent Transfers Made By Creative Capital as Debtor Pursuant to Chapter 726 of the Florida Statutes

74. Defendants readopt the responses set forth in paragraphs 1-73 as if fully set forth herein.
75. The Defendants deny the allegations contained in paragraph 75 and demands strict proof thereof at time of trial.
76. The Defendants deny the allegations contained in paragraph 76 and demands strict proof thereof at time of trial.
77. The Defendants deny the allegations contained in paragraph 77 and demands strict proof thereof at time of trial.
78. The Defendants deny the allegations contained in paragraph 78 and demands strict proof thereof at time of trial.
79. The Defendants states that Chapter 726 speaks for itself. The Defendants deny the remaining allegations contained in paragraph 79 and demand strict proof thereof at time of trial.

80. The Defendants deny the allegations contained in paragraph 80 and demands strict proof thereof at time of trial. The Defendants states that Chapter 726 speaks for itself.
81. The Defendants deny the allegations contained in paragraph 81 and demands strict proof thereof at time of trial.
82. The Defendants deny the allegations contained in paragraph 82 and demands strict proof thereof at time of trial.
83. The Defendants denies the allegations contained in paragraph 83 and demands strict proof thereof at time of trial.
84. The Defendants deny the allegations contained in paragraph 84 and demands strict proof thereof at time of trial.

COUNT 2
Unjust Enrichment
(Against the Defendants)

85. Defendants readopt the responses set forth in paragraphs 75-84 as if fully set forth herein.
86. Defendants admit that paragraph 86 purports to plead a claim for unjust enrichment, but denies that basis for such claim exists against the Defendants.
87. The Defendants deny the allegations contained in paragraph 87 and demands strict proof thereof at time of trial.
88. The Defendants deny the allegations contained in paragraph 88 and demands strict proof thereof at time of trial.

89. The Defendants denies the allegations contained in paragraph 89 and demands strict proof thereof at time of trial.
90. The Defendants deny the allegations contained in paragraph 90 and demands strict proof thereof at time of trial.
91. The Defendants deny the allegations contained in paragraph 91 and demands strict proof thereof at time of trial.

COUNT 3
Imposition of Constructive Trust or Equitable Lien
(Against the Defendants)

92. Defendants readopt the responses set forth in paragraphs 86-91 as if fully set forth herein.
93. Defendants admit that paragraph 93 purports to plead a claim for imposition of constructive trust or equitable lien, but denies that basis for such claim exists against the Defendants..
94. The Defendants deny the allegations contained in paragraph 94 and demands strict proof thereof at time of trial.
95. The Defendants deny the allegations contained in paragraph 95 and demands strict proof thereof at time of trial.
96. The Defendants deny the allegations contained in paragraph 96 and demands strict proof thereof at time of trial.
97. The Defendants deny the allegations contained in paragraph 97 and demands strict proof thereof at time of trial.
98. The Defendants deny the allegations contained in paragraph 98 and demands strict proof thereof at time of trial.

COUNT 4
Aiding and Abetting and/or Conspiracy to Breach of Fiduciary Duty
(Against the Defendants)

99. Defendants readopt the responses set forth in paragraphs 93-98 as if fully set forth herein.
100. The Defendants are without knowledge as to the allegations contained in paragraph 100 and demands strict proof thereof at time of trial.
101. The Defendants are without knowledge as to the allegations contained in paragraph 101 and demands strict proof thereof at time of trial.
102. The Defendants are without knowledge as to the allegations contained in paragraph 102 and demands strict proof thereof at time of trial.
103. The Defendants are without knowledge as to the allegations contained in paragraph 103 and demands strict proof thereof at time of trial.
104. The Defendants are without knowledge as to the allegations contained in paragraph 104 and demands strict proof thereof at time of trial.
105. The Defendants are without knowledge as to the allegations contained in paragraph 105 and demands strict proof thereof at time of trial.
106. The Defendants are without knowledge as to the allegations contained in paragraph 106 and demands strict proof thereof at time of trial.

COUNT 5
Conversion
(Against the Defendants)

107. Defendants readopt the responses set forth in paragraphs 100-106 as if fully set forth herein.

108. The Defendants are without knowledge as to the allegations contained in paragraph 108 and demands strict proof thereof at time of trial.
109. The Defendants deny the allegations contained in paragraph 109 and demands strict proof thereof at time of trial.
110. The Defendants deny the allegations contained in paragraph 110 and demands strict proof thereof at time of trial.
111. The Defendants deny the allegations contained in paragraph 111 and demands strict proof thereof at time of trial.

COUNT 5
Professional Malpractice
(Against ALEXIS and GAPA)

112. Defendants readopt the responses set forth in paragraphs 108-112 as if fully set forth herein.
113. Defendants admit that the Receiver purports to plead a claim for professional malpractice against ALEXIS and GAPA but denies that basis to do so exists.
114. The Defendants admits that the firm was retained to perform legal services and not Alexis as an individual. The Defendants denies the remaining allegations in paragraph 114.
115. The Defendants admits the allegations contained in paragraph 115.
116. The Defendants admits the allegations contained in paragraph 116.
117. The Defendants deny the allegations contained in paragraph 117 and demands strict proof thereof at time of trial.

118. The Defendants deny the allegations contained in paragraph 118 and demands strict proof thereof at time of trial.

COUNT 7
Breach of Fiduciary Duty
(Against ALEXIS and GAPA)

119. Defendants readopt the responses set forth in paragraphs 113-118 as if fully set forth herein.

120. Defendants admit that the Receiver purports to plead a claim for breach of fiduciary duty against ALEXIS and GAPA but denies that basis to do so exists.

121. The Defendants admits that the firm was retained by Creative Capital. The Defendants denies the remaining allegations contained in paragraph 121.

122. The Defendants admit that an attorney-client relationship gives rise to a duty, but the Defendants denies the remaining allegations contained in paragraph 122.

123. The Defendants admits the Florida Bar describes ideal ethical standards but Defendants denies the remaining allegations contained in paragraph 123.

124. The Defendants denies the allegations contained in paragraph 124 and demands strict proof thereof.

125. The Defendants denies the allegations contained in paragraph 125 and demands strict proof thereof.

DEMAND FOR JURY TRIAL

Defendants, **GABRIELLE ALEXIS and LAW OFFICES OF GABRIELLE ALEXIS, P.A** , hereby demands a trial by jury as to all issues herein.

AFFIRMATIVE DEFENSES

GABRIELLE ALEXIS and LAW OFFICES OF GABRIELLE ALEXIS, P.A asserts the following affirmative defenses against the Second Amended Complaint. By alleging the matters set forth in these affirmative defenses, **GABRIELLE ALEXIS and LAW OFFICES OF GABRIELLE ALEXIS, P.A** does not hereby allege or admit that it has the burden of proof with respect to such matters. Without admitting any of the allegations of the Second Amended Complaint, **GABRIELLE ALEXIS, and LAW OFFICES OF GABRIELLE ALEXIS, P.A** alleges as follows:

FIRST AFFIRMATIVE DEFENSE

The Second Amended Complaint against ALEXIS fails to state a claim upon which relief can be granted. The Receiver cannot bring an action owned by the Receiver entities against ALEXIS. The Receiver entities were not ALEXIS's clients.

SECOND AFFIRMATIVE DEFENSE

To the extent that the Receiver asserts a claim on behalf of the Receiver entities conduct of the Receiver entities as alleged is attributable to the Receiver. Under principles of in pari delicto and unclean hands such wrongful conduct bars the claim against ALEXIS.

THIRD AFFIRMATIVE DEFENSE

The sole proximate cause of the injuries and damages, if any, allegedly suffered by the Receiver was the fault of person or entities other than ALEXIS, for whose acts or omissions ALEXIS is not legally or otherwise responsible. F.S. § 768.81 is applicable herein, and ALEXIS is entitled to all benefits granted by this statute relating to the effects of contributory fault, apportionment of damages, etc. Specifically, George Theodule is responsible. Discovery is ongoing and ALEXIS reserves the right to amend this affirmative defense to more specifically identify third parties who may be liable.

FOURTH AFFIRMATIVE DEFENSE

The Receiver is barred from recovering some or all of the alleged damages he seeks by virtue of his failure to take reasonable, necessary and appropriate steps to mitigate his alleged damages.

FIFTH AFFIRMATIVE DEFENSE

To the extent that the Receiver is at fault with respect to the matters complained of herein, and/or the alleged damages suffered, any recovery by the Receiver against ALEXIS should be reduced by the proportion of such damages, if any, caused by such comparative fault.

SIXTH AFFIRMATIVE DEFENSE

ALEXIS is entitled to a set-off based upon any settlement or recovery from any other person and/or entity.

SEVENTH AFFIRMATIVE DEFENSE

ALEXIS affirmatively alleges that the Receiver entities did not rely on the actions and/or inactions of ALEXIS to its detriment.

EIGHTH AFFIRMATIVE DEFENSE

ALEXIS states that the alleged actions and/or inactions, if any, attributed to ALEXIS, were not the proximate legal cause of damages, if any, suffered by the Receiver entities.

NINTH AFFIRMATIVE DEFENSE

Plaintiff is barred from recovery herein, as it has no damages which are recoverable and/or which conform to legal standards.

TENTH AFFIRMATIVE DEFENSE

ALEXIS affirmatively alleges that the purported actions and/or omissions attributed to him by the Receiver were not within the scope of her employment when retained by Creative Capital. Accordingly, ALEXIS is not the proximate cause of any damages suffered.

ELEVENTH AFFIRMATIVE DEFENSE

The Receiver is barred from bringing this action against Defendants sounding in professional malpractice as no attorney client relationship existed between the Receivership entities and Defendants with respect to the subject matter of this litigation.

TWELFTH AFFIRMATIVE DEFENSE

Defendants allege that the damages as claimed within Receiver's Second Amended Complaint are the result of the acts or omissions of other persons or entities.

Discovery is ongoing and such persons or entities will be identified accordingly. Defendants rely upon the doctrine of Fabre v. Marin, 623 So.2d 1182 (Fla. 1993). Defendants rely upon the provisions of Florida's Tort Reform Act, Florida Statutes §768.31 et. seq. Specifically, Defendants allege that non party, George Theodule is responsible.

THIRTEENTH AFFIRMATIVE DEFENSE

As its Thirteenth Affirmative Defense, Defendants states that third parties were comparatively at fault with respect to the matters alleged in the Amended Complaint. Should Plaintiffs recover against Defendants, Defendants are entitled to have the amount of such recovery, abated, reduced or eliminated in accordance with each party's respective degree of fault. Defendants further request a judgment and declaration of partial or complete indemnification and contribution against all other parties, named or unnamed, in accordance with the doctrine of apportionment of fault.

Defendants reserves their right to amend this answer to assert additional defenses relating to the Complaint.

All allegations of the Complaint that have not been specifically admitted herein, are hereby denied, and strict proof thereof is demanded.

WHEREFORE, Defendants, **GABRIELLE ALEXIS, an individual and LAW OFFICES OF GABRIELLE ALEXIS, P.A.**, respectfully requests the Court enter judgment in hers favor and against Plaintiff, JONATHAN E. PERLMAN, Esq., as Receiver of Creative Capital Consortium, LLC, et al. and Order any other relief this Court deems appropriate.

DATED: November 20, 2009
Boca Raton, Florida

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, on this 20th day of November, 2009. 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.

By: /s/ Rachel F. Kelman
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