

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 08-81565-CIV-HURLEY/HOPKINS**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

CREATIVE CAPITAL CONSORTIUM,  
LLC, et al.,

Defendants.

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**RECEIVER'S CORRECTED THIRD INTERIM  
STATUS REPORT ON CLAIMS PROCESS PROGRESS**

Jonathan E. Perlman, Esq., is the court-appointed receiver ("Receiver") for 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"). This Corrected Third Interim Status Report on Claims Process Progress supplements the Receiver's prior two status reports filed July 28, 2016 [ECF No. 321] and October 18, 2016 [ECF No. 327]. The Receiver refers to those two filings for additional details as to the Claims Process.

The Court's March 31, 2016, Order Approving Summary Claims Administration Procedures and Distribution Plan ("Procedures Order") [ECF No. 313] set a Claims Bar Date that the Court extended to August 26, 2016, and then extended to September 30, 2016, the date for initial determination of Claims.

**1. The Receiver assembled, organized and reviewed vast amounts of historical data to administer the Claims Procedures.**

As previously reported, the Receiver compiled a “Claims Database” that compiled information about potential Claimants, amounts invested, payments received, dates of investments and repayments, including cross-references to bank statements and other transaction documents. The Receiver’s team updated the Claims Database based on their research and investigation of Claims. The Receiver relied on data in the KapilaMukamal LLP bank account reconstruction (the “Kapila Reconstruction”), a compilation detailing over 12,700 transactions connected to the Receivership and Receivership Entities, in reconstructions of some investment club bank accounts, and in 57 “banker’s boxes” with more than 200,000 pages of documents related to the Receivership Entities seized during the Receiver’s “take down” of the Creative Capital offices (“DOJ Files”).

**2. The Receiver took extraordinary efforts to notify potential Claimants by multiple means, and the number of claims received shows that the Receiver’s efforts were successful.**

After the Court entered the Procedures Order, the Receiver engaged a third-party—BK Attorney Services, LLC ([www.certificateofservice.com](http://www.certificateofservice.com))—to coordinate an initial mailing of “Claims Packets” to 4,789 potential Claimants. The Receiver simultaneously sent Claims Packets by e-mail to over 1,300 potential Claimants included in that initial mailing. As to potential Claimants for whom no contact information was available, the Receiver’s counsel and staff manually searched for contact information on Westlaw® PeopleMap, Google®, and other social media sites, locating contact information for 863 other potential Claimants who were then sent notices. Approximately 1,050 mailings from the first mailing were returned “undeliverable”—50 listed new addresses and notices were sent and about 1,000 had no new

address. The Receiver's team then manually researched contact information for persons with "undeliverable" addresses, and a third wave of 1,108 mailings then went to potential Claimants. The Receiver subsequently sent out Claims Packets to another 100-150 potential Claimants as information surfaced. In total, the Receiver mailed over 6,900 Claims Packets to nearly 5,900 Potential Claimants.

The Receiver also complied with the Procedures Order by posting a publication of general notice in the April 15, 2016, weekend edition of *USA Today* newspaper (on newsstands April 15-17, 2016). Since April 1, the Receiver also made available for downloading a Proof of Claim and Claims Packets on the Receiver's website, [www.creativecapitalreceivership.com](http://www.creativecapitalreceivership.com). The Receiver included on the website a Frequently Asked Questions (FAQs) link to give Claimants additional information about the opportunity and procedures to submit a Claim, and the FAQs have been updated as events unfolded. Several media stories were published surrounding the Court's entry of the Procedures Order, and the Receiver took steps to have those stories include information about how potential Claimants could get information and make a Claim. The Receiver also posted a copy of his first two Interim Status Reports on his website and will post a copy of his Third Interim Status Report as well.

**3. The Receiver received 1,715 timely Proofs of Claim and has issued initial Claim Determinations for all timely Claims received.**

Proofs of Claim began arriving at the Receiver's offices in April 2016, and Proofs of Claim were received on a daily basis through and beyond the August 26, 2016, Claims Bar Date. Beginning in early-April 2016, the Receiver's counsel and staff handled telephone calls and e-mails daily from potential Claimants seeking additional information or assistance in submitting a

Proof of Claim. At the peak, there were 30-40 telephone calls per day and well over 300 e-mails were received.

In total, as of March 27, 2017, the Receiver received and determined 1,754 Proofs of Claim submitted by potential Claimants, of which 1,715 Claims were accepted as timely.<sup>1</sup> Details about the timely Claims received and the Receiver's Claim Determinations were provided in in Schedule A to the Receiver's Second Interim Status Report [ECF No. 327].

**4. The claims review process: (a) afforded legitimate Claimants the benefit of reasonable doubts; (b) was not unnecessarily technical, punitive or bureaucratic; and (c) protected Theodule's victims and legitimate Claimants from again being exploited by persons submitting illegitimate claims.**

The Receiver was committed to a diligent review of all Proofs of Claim to ensure a meaningful assessment, as opposed to a "rubber-stamping," of Claims, because approving undeserving Claims would result in Theodule's victims receiving less money from the Receivership Estate. That review process focused on protecting actual victims and maximizing the recovery for those people who actually lost money, but the Receiver stayed mindful of the cost of protecting victims against being exploited by any fraudulent or unsubstantiated claims.<sup>2</sup>

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<sup>1</sup> The Receiver, after consultation with the SEC, decided in his equitable discretion under §3.02(b) of the Claims Procedures to accept all Proofs of Claims submitted through the submission of the Second Interim Status Report. The Receiver has since logged 39 late-filed Claims (Claim ## 1716-1754), which the Receiver denied as untimely. Some of those claimants have submitted Objections, which will be set for hearing. At the hearing, the Receiver intends to file an additional motion with the Court seeking an Order modifying Section 4.04 of the Claims Procedures and authorizing the Receiver to no longer accept or log any new untimely claims.

<sup>2</sup> All Proofs of Claim and supporting documents were examined together with other documents and data in the Receiver's files. The Receiver undertook to confirm any Investment in a Receivership Entity, identify any Repayments (sometimes listed on the Proof of Claim, but often not), identify any relationships between a Claimant and other persons or other Claimants, that could affect the validity of a Claim, and consider other factors affecting the validity of a Claim. Some Claims were straightforward and properly supported; others were far more complex.

Details as to the Receiver's administration of Claims under the Claims Procedures, the notices provided to Claimants whose Claims were determined, and the procedures for allowing and considering Objections by Claimants when Claims were Disallowed in whole or in part are provided in the two prior Status reports.

As the Receiver has stated consistently, he was committed, when possible and cost-efficient, to supporting any Claim Determination that disallowed a claim in whole or part with source documentation. So, if a Claim was not allowed in full, the Receiver's practice was to include a copy of the source document (e.g., a check payable to the Claimant) so the Claimant could better understand the Receiver's decision. That practice was adopted to increase the perceived fairness of the process and to reduce the number of Objections (because Claimants would be less inclined to challenge a decision if they receive actual documents supporting the Receiver's determination).

**5. The Receiver and his counsel marshalled resources to administer the claims process quickly, fairly and adequately while reducing costs to the Receivership.**

To assist in the claims review process, the Receiver's counsel, Genovese Joblove & Battista, P.A. assigned one full-time staff employee to the claims project, and she spent over 80% of her work time on the claims process from April-December 2016 and another full-time employee who spent over 50% of his time in August and September 2016 on the claims process. GJB also employed two summer interns, one who worked almost exclusively on the claims process and another who worked approximately 33% on the claims process. GJB absorbed all of the overhead expenses of the two full-time employees and the two summer interns (approximately \$40,000) at no cost to the Receiver. GJB also trained several legal assistants about the claims process to ensure that additional resources were available on an as-needed basis. As to

professionals, GJB deployed partner Heather L. Harmon, who has extensive experience in claims processes in bankruptcy and receiverships, partner W. Barry Blum, lead counsel in the *Bank of America* and *Wells Fargo* litigations and the arbitration against optionsXpress and the person most familiar with the Creative Capital scheme, Theodule's network, and CCC's methods of moving funds, and select other attorneys and paralegals trained to assist in the Claims process. The Receiver was regularly updated on progress and was called on to make certain policy decisions regarding the claims process.

**6. The Claims Process resulted in Claim Determinations for 1,715 timely Claims, a December 2016 hearing on all pending and unresolved Objections, and an Interim Distribution in December 2016 of \$4,654,722.11, which was 34% of all Approved Claims.<sup>3</sup>**

The Receiver filed three motions to approve Allowed Claims and one motion to confirm Disallowed Claim Determinations. The Receiver filed on October 18, 2016, his first motion for an order determining Allowed Claims as Approved Claims in accordance with the Claims Procedures [ECF No. 326]. That agreed motion covered 1,103 Allowed Claims, and the Court entered an Order granting the motion on October 19, 2016 [ECF No. 328]. The Receiver then filed his second agreed motion for an order approving Allowed Claims on November 15, 2016 [ECF No. 332]. The second motion covered 349 Allowed Claims, and the Court entered an Order granting the Receiver's second motion on November 16, 2016 [ECF No. 334].

The Receiver also filed on November 15, 2016, an agreed motion for an order confirming that 220 Disallowed Claims were confirmed as Disapproved Claims [ECF No. 333]. The Court entered an Order granting that motion on November 16, 2016 [ECF No. 335].

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<sup>3</sup> The Receiver wire-transferred \$4,653,739.40 to the Receiver's distribution agent on December 8, 2016. The Receiver inadvertently underpaid one Claimant, and the Receiver sent that person a make-up distribution of \$982.71 directly from the Receiver's account.

On December 1, 2016, the Receiver filed his agreed third motion for an order requesting that 26 more Allowed Claims be determined to be Approved Claims under the Claims Procedures [ECF No. 337]. The Court entered an Order granting the third motion on December 5, 2016 [ECF No. 340].

The Receiver also set for evidentiary hearing all unresolved Objections in order to allow for an Interim Distribution in December 2016. Specifically, On November 4, 2016, the Receiver filed an unopposed motion [ECF No. 329] requesting that a hearing be set (at least 23 days from the date of the Court's Order setting the hearing) to address unresolved Objections to the Receiver's Claim Determinations that the Receiver would bring before the Court under the Claims Procedures. The Court granted that motion in an Order dated November 8, 2016 [ECF No. 330] and set a hearing on pending Objections for December 5, 2016, at 9:00 a.m. As required under the Claims Procedures, the Receiver, on November 10, 2016, served a copy of the Court's Order and a Notice of Hearing on Objections on 35 Claimants whose Objections had been timely-filed and were unresolved as of that date [ECF No. 331].

The Receiver also filed on November 30, 2016, an agreed motion for approval of interim distribution [ECF No. 336], requesting authority to make an Interim Distribution in December 2016 of 33% and as much as 34% as agreed by the Receiver and SEC. The Court granted that motion in an Order dated December 5, 2016 [ECF No. 339].

Also, on December 5, 2016, the Court held an evidentiary hearing at which the Receiver brought before the Court 15 Objections made by Claimants to the Receiver's Claim Determinations: those matters were all of the unresolved Objections that were ripe for determination by the Court at the time. Prior to the hearing, the Receiver submitted to the Court

*in camera* the Receiver's "position summaries" for all outstanding Objections [ECF No. 338]. The Receiver also served on all affected Claimants the Receiver's position summary related to that particular Claimant. At the December 5, 2016, hearing, the Court took into evidence as Exhibit 1 the Receiver's binder of Claimant information containing the source documentation related to each Claimant's Claim and Objection upon which the Receiver's position was based [ECF No. 342].

Following the December 5 hearing, the Court, on December 12, 2016, entered its Final Order Determining 15 Disputed Claim Determinations [ECF No. 345] and, under Fed. R. Civ. P. 54(b), a Final Judgment Determining 15 Disputed Claim Determinations [ECF No. 346]. No appeal was lodged on the docket from the Final Judgment entered December 12, 2016.

As a result of the Court's December 12, 2016, Order and Final Judgment, and the three prior Orders on Approved Claims, as of December 12, 2016, there were 1,474 Approved Claims totaling \$13,646,182.65. All of those Approved Claims were included by the Receiver in the Court-approved Interim Distribution in December 2016.

#### **The December Interim Distribution**

On December 8, 2016, the Receiver transferred \$4,653,739.40 to a dedicated bank account controlled by Upshot Services, LLC ("Upshot"), the disbursement agent retained by the Receiver (with the consent of the SEC), to process and track checks paid as part of the Interim Distribution of 34% of all Approved Claims. The Receiver also provided to Upshot the names, addresses, and Approved Claim amounts for the 1,474 Claims that the Court had determined to be Approved Claims as of December 12, 2016. Beginning on December 12, 2016, Upshot began mailing

checks to Claimants with Approved Claims and those checks began to be deposited by Claimants on December 14, 2016.

As of March 27, 2017, 1,474 checks were mailed to Claimants and 1,419 checks (totaling \$4,489,021.44) have been deposited and have cleared the dedicated Upshot bank account. To date, the Receiver and Upshot have corresponded with Claimants about lost or missing checks, address changes, etc., and several replacement checks have been issued to Approved Claimants. Those replacement checks are included in the totals above.

As of March 27, 2016, 55 checks mailed by Upshot to Claimants at the addresses listed on the Proof of Claim (or any updated address provided by a Claimant) remain un-deposited. Under the Claims Procedures, if a check is not negotiated within 120 days of the date of the check, the funds are forfeited and are returned to the Receivership for distribution in satisfaction of other Approved Claims. For most Claimants, that date is April 11, 2017.

### **New Late Claims and Untimely Objections**

Between December 16, 2016, and March 27, 2017, the Receiver and his staff have received communications, correspondence, demands, and occasional threats from persons suggesting that they have a claim against George Theodule and attempting to submit untimely claims. As of March 27, 2017, the Receiver has fielded 39 Proofs of Claim submitted after December 16, 2016, and approximately 30 demands from Allowed Claimants demanding a higher payment than the 34% received. Although the explanations accompanying the late claims vary to a degree, the most common explanation is that the person decided not to submit a Proof of Claim because he or she “thought it was another scam” or “never believed anything would come of it.” Others claim not to have received notice although the Receiver’s records show that notice was given. A

few others claim to have e-mailed information, but the Receiver has no record of ever receiving any information. And a few people say that they never knew about the Receiver's efforts, a claim the Receiver finds dubious; those persons all contacted the Receiver shortly after the distribution checks were mailed in December and they all said that they knew someone who received a check. That suggests to the Receiver that the person was in close communication with at least one actual Claimant and was reasonably aware of the Claims Process.

On February 9, 2017, the Receiver sent notices to all Claimants who submitted Proofs of Claim after December 16, 2016, stating that the Claims were denied as untimely. The Receiver has relied on the course proceedings to date and the Court's Orders as to the number and amounts of Approved Claims; accepting egregiously-late claims after calculating and making the Interim Distribution would prejudice other Claimants who acted timely to preserve and protect their rights. Also, having the Receiver consider these late claims (beyond the limited manner he has done to date) would prejudice other Claimants by increasing the costs of administering the Receivership Estate and reducing the ultimate distributions to Approved Claimants who complied with the Claims Procedures.

As to the approximately 30 Approved Claimants who accepted the Interim Distribution and have since complained about the amount received, the Receiver has responded to their demands, explained the Claims Procedures, including the 34% Initial Distribution, and informed the Claimants that their acceptance and negotiation of the check received for the Interim Distribution effected a release of the Receiver under the Claims Procedures.

Unfortunately, the Receiver will have to set for hearing before the Court these collateral matters to give the people making late-filed claims an opportunity to present their position to the

Court. The Receiver expects to make that request shortly as the Receiver wants to wind up the Receivership Estate as soon as possible and to make a Final Distribution.

This Third Interim Status Report and other updates will be available to Claimants and the public on the Receiver’s website, [www.creativecapitalreceivership.com](http://www.creativecapitalreceivership.com).

Dated: March 30, 2017

Miami, Florida

Respectfully submitted,

s/Jonathan E. Perlman, Esq.  
JONATHAN E. PERLMAN, ESQ.  
Receiver  
-and-

s/W. Barry Blum  
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**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing was filed via the Court’s CM/ECF system, and served via CM/ECF on all counsel for all parties-in-interest on the attached service list this 30th day of March, 2017.

/s/ W. Barry Blum  
W. Barry Blum

**SERVICE LIST**

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**CASE NO.: 08-CIV-81565-HURLEY/HOPKINS**

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