

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION**

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

**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

**v.**

**CREATIVE CAPITAL CONSORTIUM, LLC,  
A CREATIVE CAPITAL CONCEPTS, LLC, and  
GEORGE L. THEODULE,**

**Defendants.**

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**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S RESPONSE IN  
OPPOSITION TO DEFENDANT GEORGE THEODULE'S MOTION FOR  
EXTENSION OF TIME TO RESPOND TO SHOW CAUSE ORDER AND  
TO RECEIVER'S SECOND MOTION TO EXPAND RECEIVERSHIP**

Plaintiff Securities and Exchange Commission responds in opposition to Defendant George Theodule's Motion for Extension of Time to Respond to Show Cause Order and to Receiver's Second Motion to Expand Receivership (DE 37) (the "Motion"). In opposing any extension for Theodule to respond to this Court's Order to Show Cause (DE 31) (the "Show Cause Order"), the Commission respectfully states as follows:

1. The Court issued the Show Cause Order on February 6, 2009, which required Theodule to show cause why he should not be held in contempt for failing to comply with the Court's December 29 and January 8 Orders (DE 7 and 21) to file a sworn accounting of all his assets, funds, and properties. In the Show Cause Order, the Court noted Theodule's disclosures were "insufficiently specific, and many of the asset entries are cryptic and uninformative." (DE 31 at p.1).

2. Theodule did not respond to the Show Cause Order by the February 23 deadline. In

his Motion, filed the day *after* the deadline had passed, Theodule claims he “needs additional time to complete the accounting as best he is able...” (Motion at ¶2). That statement confuses his requirement to respond to the Show Cause Order with his obligation to provide the sworn accounting. The Show Cause Order was *not* an extension for Theodule to file his sworn accounting; it required him to show why he should not be held in contempt for failing to comply with the Court’s Orders to provide a sworn accounting.<sup>1</sup>

3. Furthermore, Rule 6(b)(1)(B) of the Federal Rules of Civil Procedure only provides for an extension *after* the time has expired for “excusable neglect.” Fed.R.Civ.P. 6(b)(1)(B). The Eleventh Circuit has established the following considerations for excusable neglect: (a) the danger of prejudice to the party opposing the extension; (b) the length of the delay and its potential impact on judicial proceedings; (c) the reason for the delay, including whether it was within the reasonable control of the party requesting the extension; and (d) whether the movant has acted in good faith. *Advanced Estimating Systems, Inc. v. Riney*, 77 F.3d 1322, 1325 (11<sup>th</sup> Cir. 1996).

4. Although it does not appear Theodule even makes an argument for excusable neglect concerning his failure to respond to the *Show Cause Order*, consideration of the Eleventh Circuit’s factors establishes the Court should not grant an extension. Looking to the first two factors, any extension prejudices the Commission and the judicial proceedings because Theodule’s disregard for the Court’s authority has already made it more difficult for the Commission and the Receiver to ascertain what assets Theodule has and potentially bring those assets within the Court-ordered asset freeze or within the scope of the Receivership. For example, Theodule has not disclosed any cash holdings even though the Commission has presented evidence Theodule withdrew more than \$1.5

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<sup>1</sup> Theodule essentially had a lengthy extension because the Commission did not apply for the Show Cause Order until January 26, 2009, after repeated discussions with his prior counsel concerning the inadequate accounting (DE 24).

million in cash from Creative Capital's accounts.<sup>2</sup> Thus, further delay only provides Theodule more opportunity to abscond with the ill-gotten gains he has refused to disclose to the Court, thereby magnifying the harm to the investors he defrauded. Additional delay is even more disconcerting in light of the Receiver's claim Theodule recently tried to sell an asset that should be brought within the Receivership (DE 32 at pp. 8-10).<sup>3</sup>

5. The second two factors also weigh heavily against any extension. Theodule cites two reasons for delay: (1) responding to the Show Cause Order is a "voluminous" matter and (2) Theodule's laptop computer, which had useful information concerning the accounting, was stolen in January (DE 37 at ¶¶1-2). This assertion the laptop, which he claims was stolen during the week of January 26<sup>th</sup> (DE 27 at ¶3), contained useful information concerning the accounting clearly conflicts with Theodule's claim almost three weeks prior to the laptop theft that he did not have or have access to records sufficient to make a complete accounting<sup>4</sup> (DE 20). The "voluminous" claim also seems inconsistent with Theodule's previous statement he does not have or have access to the necessary records. These inconsistencies in addition to the fact Theodule has not supplemented his sworn accounting in any way since the Court issued the Show Cause Order three weeks ago raise concerns whether the delays in providing a full accounting and responding to the Show Cause Order were within Theodule's control and also demonstrate he has not acted in good faith.

Based on the foregoing, Theodule has not demonstrated excusable neglect in failing to respond to the Show Cause Order. Accordingly, the Commission requests the Court deny

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<sup>2</sup> See Declaration of Kathleen Strandell submitted in support of the Commission's Motion for a Temporary Restraining Order and Other Emergency Relief (DE 5, Ex. 2 at ¶7). Ms. Strandell also testified about these cash withdrawals at the preliminary injunction hearing.

<sup>3</sup> For this reason, the Commission also believes the Court should not grant Theodule an extension of time to respond to the Receiver's Second Motion to Expand Receivership (DE 32).

<sup>4</sup> In the Show Cause Order, the Court noted "Theodule's claim that he does not have access to records that would

Theodule's Motion and hold him in contempt for violating the Court's orders that required him to provide a detailed sworn accounting.

Respectfully submitted,

February 27, 2009

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on February 27, 2009, 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 on 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.

s/ Brian K. Barry  
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enable him to make a more specific accounting is not entirely persuasive.” (DE 31 at p. 1).

**SERVICE LIST**

Securities and Exchange Commission v. Creative Capital Consortium, LLC, et al.  
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United States District Court, Southern District of Florida

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