

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

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

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**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  
REPLY TO DEFENDANT GEORGE THEODULE'S RESPONSE TO ORDER GRANTING  
PLAINTIFF'S APPLICATION FOR ORDER TO SHOW CAUSE**

Defendant George Theodule's Response (DE 47) (the "Response") to Order Granting Plaintiff's Application for Order to Show Cause (DE 31) (the "Show Cause Order") fails to demonstrate any basis for his noncompliance 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 (the "Sworn Accounting Orders"). Remarkably, Theodule does not even discuss the more than \$1.5 million in cash withdrawals the Commission previously identified or the \$1.7 million he transferred to his personal bank accounts. Instead, he makes unsubstantiated or irrelevant claims to argue he could not comply with the Sworn Accounting Orders. Theodule has not met his burden and the Court should hold him in contempt. In support of this Reply, the Commission 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 Sworn Accounting Orders. In response, he does not dispute he failed to comply with the Sworn

Accounting Orders; however, Theodule claims he attempted to comply with the Court's Order to the best of his ability, but compliance was impossible. Response at ¶7 and p.4.

2. Theodule bears the burden to demonstrate his purported inability to comply with the Sworn Accounting Orders. His Response, however, does not even address the most basic disclosure failures the Commission identified as the very basis for the Show Cause Order. DE 24 at 3-4. For example, Theodule gives no explanation as to the whereabouts of the more than \$1.5 million he withdrew in cash from Creative Capital Consortium, LLC or A Creative Capital Concept\$, LLC (collectively, "Creative Capital") accounts.

3. Additionally, he still does not disclose any compensation he received from Creative Capital or address any of the net approximately \$1.7 million Theodule transferred from Creative Capital accounts to his personal bank accounts. DE 5-2 at 8 n.4. Rather, Theodule apparently claims the assets of Creative Capital were so commingled with his personal finances that he required access to Creative Capital's records to perform his accounting. Response at ¶1.

4. Furthermore, Theodule repeatedly references the initial five-day time frame imposed on him to prepare the sworn accounting, yet he does not discuss his efforts to provide the accounting in those five days. He also fails to describe any efforts to supplement his sworn accounting before the Commission sought the Show Cause Order or even after the Court issued the Show Cause Order. Certainly, Theodule has always had access to his personal bank account records, but he still has not identified any compensation Creative Capital paid him.

5. Finally, the Response claims a considerable portion of Theodule's personal property was stolen in late January (after the sworn accounting was due), but he does not swear to the theft in his declaration or include any police report that might corroborate this claim. Furthermore, the declarations submitted in support of the Response contain typed, not original signatures and,

although the Commission has requested copies of the original signed declarations, Theodule has not provided them. Response at Exhibits E and F.

6. Quite simply, Theodule has not met his burden to show why his failure to comply with the Sworn Accounting Orders should be excused and the Court should hold him in contempt. Should the Court decide not to hold Theodule in contempt based solely on his inadequate showing in the Response, the Commission requests an evidentiary hearing to fully explore Theodule's purported inability to comply with the Sworn Accounting Orders.

Respectfully submitted,

March 17, 2009

By: Brian K. Barry  
Brian K. Barry, Esq.  
Senior Trial Counsel  
Florida Bar No. 0632287  
Direct Dial: (305) 982-6382  
Email: [barryb@sec.gov](mailto:barryb@sec.gov)

Christopher E. Martin  
Senior Trial Counsel  
SD Fla. Bar. No. A5500747  
Direct Dial: (305) 982-6386  
Email: [martinc@sec.gov](mailto:martinc@sec.gov)

Attorneys for Plaintiff  
**SECURITIES AND EXCHANGE COMMISSION**  
801 Brickell Avenue, Suite 1800  
Miami, Florida 33131  
Telephone: (305) 982-6300  
Facsimile: (305) 536-4154

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on March 17, 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

Brian K. Barry

**SERVICE LIST**

Securities and Exchange Commission v. Creative Capital Consortium, LLC, et al.  
Case No. 08-81565-CIV-HURLEY/HOPKINS  
United States District Court, Southern District of Florida

Russell C. Weigel, III, Esq.  
Russell C. Weigel, III, P.A.  
5775 Blue Lagoon Drive  
Suite 100  
Miami, Florida 33126  
Tel: (786) 888-4567  
Fax: (786) 787-0456  
*Counsel for Defendant George L. Theodule*  
Service by CM/ECF

David C. Cimo, Esq.  
Carmen Contreras-Martinez, Esq.  
Martin J. Keane, Esq.  
Genovese Joblove & Battista, PA  
4400 Bank of America Tower  
100 SE 2<sup>nd</sup> Street  
Miami, FL 33131  
Telephone: (305) 349-2300  
Facsimile: (305) 349-2310  
*Counsel for Receiver Jonathan E. Perlman, Esq.*  
Service by CM/ECF

Bradford A. Patrick, Esq.  
CHAMBERLIN PATRICK, PA  
3001 North Rocky Point Drive East, Ste 200  
Tampa, FL 33607  
Telephone: (813) 374-2216  
Facsimile: (813) 374-2217  
*Counsel for Dolce Regency Suites LLC*  
Service by CM/ECF