

**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 CONCEPT\$, LLC, and)
GEORGE L. THEODULE,)
)
Defendants.)
_____)**

**PLAINTIFF’S NOTICE OF FILING CONSENT OF DEFENDANT GEORGE
THEODULE TO JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF**

Plaintiff Securities and Exchange Commission files the Consent of Defendant George L. Theodule to a Judgment of Permanent Injunction and Other Relief. The Consent and the proposed Judgment of Permanent Injunction and Other Relief (“Judgment”) are attached to this notice, and the Commission asks the Court to enter the Judgment against Theodule forthwith.

Entry of the Judgment will resolve all issues of liability against Theodule. Accordingly, the Commission requests that this matter be removed from the Court’s January 2010 Trial Calendar. Entry of the Judgment also will moot the summary judgment motions of both Theodule (D.E. 90) and the Commission (D.E. 174). Therefore, the Court may cancel the summary judgment hearing currently scheduled for November 19, 2009. Additionally, entry of the Judgment will moot the Show Cause proceedings related to Theodule’s failure to provide a detailed sworn accounting that began with D.E. 24.

The Judgment provides for payment of disgorgement and a civil penalty, leaving open the amounts. If the Commission and Theodule cannot reach agreement in the near future on a proper amount of disgorgement and a civil penalty, the Commission will file a motion seeking a specific amount of disgorgement and a penalty supported by appropriate evidence, to which Theodule can respond and the Court can set a hearing if it deems one necessary.

Respectfully submitted,

October 16, 2009

By: s/Robert K. Levenson
Robert K. Levenson
Regional Trial Counsel
Florida Bar No. 0089771
Direct Dial No. (305) 982-6341
levensonr@sec.gov

s/Amie Riggle Berlin
Amie Riggle Berlin Esq.
Senior Trial Counsel
Florida Bar No. 06630020
Direct Dial: (305) 982-6322
Email: berlina@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 October 16, 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 this day on all counsel for records or *pro se* parties identified on the below 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 for parties who are not authorized to received electronically Notices of Electronic Filing.

s/Robert K. Levenson
Robert K. Levenson, Esq.

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 2nd Street
Miami, FL 33131
Telephone: (305) 349-2300
Facsimile: (305) 349-2310
Counsel for Receiver Jonathan E. Perlman, Esq.
Service by CM/ECF

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

CASE NO. 08-CV-81565-HURLEY/HOPKINS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

CREATIVE CAPITAL CONSORTIUM, LLC, et al.,

Defendants.

**CONSENT OF DEFENDANT GEORGE L. THEODULE TO JUDGMENT
OF PERMANENT INJUNCTION AND OTHER RELIEF**

1. Defendant George L. Theodule acknowledges service of the Complaint in this action on him and admits the Court's jurisdiction over him and over the subject matter of this action.

2. Without admitting or denying the allegations of the complaint (except as to personal and subject matter jurisdiction, which Theodule admits), Theodule hereby consents to the entry of the Judgment of Permanent Injunction and other Relief ("Judgment") in the form attached and incorporated by reference, which, among other things, provides a permanent injunction to prohibit violations of Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5].

3. Theodule agrees the Court shall order disgorgement of ill-gotten gains, prejudgment interest thereon, and a civil penalty pursuant to Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)]. Theodule further agrees that the amounts of the disgorgement and civil penalty shall be determined by the Court upon motion of the Commission, and that prejudgment



George L. Theodule Initials

interest shall be calculated from December 29, 2008, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). Theodule further agrees that in connection with the Commission's motion for disgorgement and civil penalties, and at any hearing held on such motion: (a) Theodule will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Theodule may not challenge the validity of this Consent or the Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts or sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for disgorgement and civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

4. Theodule waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5. Theodule waives the right, if any, to a jury trial and to appeal from the entry of the Judgment.


6. Theodule enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to Theodule or anyone acting on his behalf except as stated in this Consent or the attached Judgment to induce Theodule to enter into this Consent.

7. Theodule agrees this Consent shall be incorporated into the Judgment with the same force and effect as if fully set forth therein.

8. Theodule will not oppose the enforcement of the Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

9. Theodule waives service of the Judgment and agrees that entry of the Judgment by the Court and filing with the Clerk of the Court will constitute notice to Theodule of its terms and conditions. Theodule further agrees to provide counsel for the Commission, within thirty days after the Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Theodule has received and read a copy of the Judgment.

10. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the claims asserted against Theodule in this civil proceeding. Theodule acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Theodule waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Theodule further acknowledges the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any

 George L. Theodule Initials

disciplinary proceeding before the Commission based on the entry of the injunction in this action, Theodule understands that he shall not be permitted to contest the factual allegations of the Complaint in this action.

11. Theodule understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegation in the Complaint or order for proceedings." 17 C.F.R. § 202.5. In compliance with this policy, Theodule agrees: (i) not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the Complaint or creating the impression that the Complaint is without factual basis; and (ii) that upon the filing of this Consent, Theodule hereby withdraws any papers filed in this action to the extent that they deny any allegation in the Complaint. If Theodule breaches this agreement, the Commission may petition the Court to vacate the Judgment and restore this action to its active docket. Nothing in this paragraph affects Theodule's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

12. Theodule hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Theodule to defend against this action. For these purposes, Theodule agrees that Theodule is not the prevailing party in this action since the parties have reached a good faith settlement.

13. Theodule agrees that the Commission may present the Judgment to the Court for signature and entry without further notice.

14. Theodule agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Judgment.

Approved as to form:

October 15, 2009



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

Dated: October 15, 2009

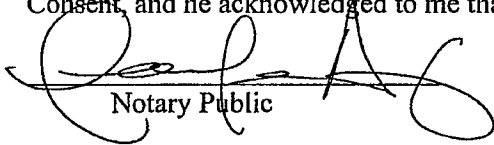


GEORGE L. THEODULE

STATE OF Florida)
))
COUNTY OF Miami-Dade)

ss:

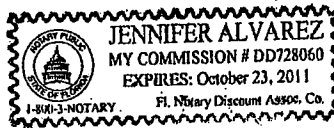
On this 15 day of October, 2009, before me personally appeared GEORGE L. THEODULE who _____ is personally known to me or who produced a D. License driver's license bearing his name and photograph as identification, and who executed this Consent, and he acknowledged to me that he executed the same.




Notary Public

October 23, 2011

Commission Expires



 _____ George L. Theodule Initials

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

CASE NO. 08-CV-81565-HURLEY/HOPKINS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

CREATIVE CAPITAL CONSORTIUM, LLC, et al.,

Defendants.

**JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF
AS TO DEFENDANT GEORGE L. THEODULE**

Plaintiff Securities and Exchange Commission commenced this action by filing its Complaint against, among others, Defendant George L. Theodule. In its Complaint, the Commission sought, among other relief against Theodule, a permanent injunction to prohibit violations of Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]; disgorgement and prejudgment interest; and a civil penalty pursuant to Section 21(d) of the Exchange Act [15 U.S.C. § 78(d)(3)].

Theodule, by virtue of the attached Consent, having entered an appearance and consented to the Court’s jurisdiction over him and over the subject matter of this action, has consented to entry of this Judgment of Permanent Injunction and Other Relief (“Judgment”) without admitting or denying the allegations of the Complaint (except as to subject matter and personal jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from the Judgment. This Court having accepted such Consent, having jurisdiction over Theodule and the subject matter of this action:

I.

SECTION 10(b) and RULE 10b-5 OF THE SECURITIES ACT

IT IS ORDERED AND ADJUDGED that Theodule, his officers, agents, servants, representatives, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) and Rule 10b-5 of the Exchange Act [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

DISGORGEMENT AND CIVIL PENALTY

IT IS FURTHER ORDERED AND ADJUDGED that Theodule shall pay disgorgement of ill-gotten gains, prejudgment interest thereon, and a civil penalty pursuant to Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. The Court shall determine the amounts of the disgorgement and civil penalty upon motion of the Commission. Prejudgment interest shall be calculated from December 29, 2008, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C.

§ 6621(a)(2). In connection with the Commission's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) Theodule will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Theodule may not challenge the validity of the Consent or this Final Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for disgorgement and/or civil penalties, the parties may take discovery, including discovery from appropriate non-parties

III.

INCORPORATION OF THEODULE'S CONSENT

IT IS FURTHER ORDERED AND ADJUDGED that the Consent of Theodule is incorporated herein with the same force and effect as if fully set forth herein, and that Theodule shall comply with all of the undertakings and agreements set forth herein.

IV.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED AND ADJUDGED that the Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Judgment.

V.

CERTIFICATION UNDER RULE 54(b)

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Judgment forthwith and without further notice.

DONE AND ORDERED in chambers at West Palm Beach, Florida this ____ day of
October, 2009.

THE HONORABLE DANIEL T.K. HURLEY
UNITED STATES DISTRICT JUDGE

Copies to all counsel and parties of record