

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-81085-CIV-HURLEY/HOPKINS

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

Plaintiff,

v.

PAULETTE THEODULE, an individual,

Defendant.

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**DEFENDANT'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF  
RECEIVER'S MOTION TO STRIKE AFFIRMATIVE DEFENSES AND  
INCORPORATED MEMORANDUM OF LAW**

Defendant PAULETTE THEODULE ("Defendant") by her undersigned counsel, hereby files her Memorandum of Law in Opposition to Plaintiff Receiver's Motion to Strike Affirmative Defenses and Incorporated Memorandum of Law [DE 10], and states as follows:

As an initial matter, Plaintiff did not confer with the undersigned regarding the relief sought by the Motion in accordance with Local Rule 7.1A3. Nevertheless, Defendant will consent to the relief sought as to the First Affirmative Defense.

As to the Second Affirmative Defense, prior to filing her Answer, Defendant secured copies of the front and back of the \$393,000 payment<sup>1</sup> allegedly provided to the Defendant by George Theodule.<sup>2</sup> (See Complaint, Ex.1, p.20). On September 9, 2009, these copies were provided to Plaintiff's counsel which reflect that the funds represented thereby were never

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<sup>1</sup> The payment was in the form of a Washington Mutual Bank Official Check.

<sup>2</sup> George Theodule, Defendant's son, is the Receiver's primary target regarding an alleged Ponzi scheme and the subject of related litigation.

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delivered to Defendant and were redeposited back into George Theodule's account negating any causes of action regarding said funds. It is disingenuous for the Plaintiff to argue in his Motion that the defense is not supported by any facts or that it fails to provide "fair notice" of the nature of the defense (See Pl. Motion, ¶ 12). As such, Defendant should be permitted to amend the Second Affirmative Defense if the Court deems it necessary.

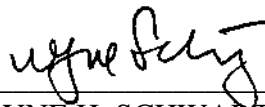
WHEREFORE, Defendant PAULETTE THEODULE respectfully requests that she be permitted to amend her Second Affirmative Defense if necessary, together with such further relief as the Court deems just and proper.

**CERTIFICATE OF SERVICE**

I hereby certify that on this date, 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 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.

Dated: October 9, 2009  
Boca Raton, Florida

Respectfully submitted,



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PAULETTE THEODULE**