

<p>DISTRICT COURT, DENVER COUNTY, COLORADO</p> <p>1437 Bannock Street Denver, CO 80202</p> <hr/> <p>GERALD ROME, Securities Commissioner for the State of Colorado,</p> <p>Plaintiff,</p> <p>v.</p> <p>GARY DRAGUL, GDA REAL ESTATE SERVICES, LLC, and GDA REAL ESTATE MANAGEMENT, LLC,</p> <p>Defendants.</p>	<p>DATE FILED: August 21, 2018 5:10 PM FILING ID: DE0A8CAF6B29E CASE NUMBER: 2018CV33011</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>CYNTHIA H. COFFMAN, Attorney General ROBERT W. FINKE, 40756* First Assistant Attorney General SUEANNA P. JOHNSON, 34840* Senior Assistant Attorney General MATTHEW J. BOUILLON MASCARENAS, 46684* Ralph L. Carr Judicial Building 1300 Broadway, 8th Floor Denver, CO 80203 Tel: (720) 508- 6376 Fax: (720) 508-6037 Robert.Finke@coag.gov; Sueanna.Johnson@coag.gov; Matthew.Bouillon@coag.gov *Counsel of Record</p>	<p>Case No.: 2018 CV 33011</p> <p>Courtroom: 424</p>
<p>MOTION FOR TELEPHONE TESTIMONY OF NASH DASWANI WITH REQUEST FOR EXPEDITED RULING</p>	

Gerald Rome, Securities Commissioner for the State of Colorado, by and through the Colorado Attorney General, hereby requests leave to take testimony by telephone of investor Nash Daswani pursuant to C.R.C.P. 43(i)(1), and in

support thereof, states the following:

CERTIFICATE OF COMPLIANCE WITH C.R.C.P. 121 § 1-15(8)

The undersigned counsel hereby certifies that he has conferred with counsel for the Defendants regarding the relief sought herein. The Defendants indicated they oppose this motion.

1. This matter is currently set for hearing on a request by the Commissioner for a preliminary injunction on Wednesday, August 22, 2018 at 1:30 PM.

2. C.R.C.P. 43(i)(1) provides that a party may request leave to present “absentee” testimony to be presented by telephone or some other suitable and equivalent method, and that such request shall be made by written motion “as soon as practicable after the need for absentee testimony becomes known.” *Id.*

3. The Commissioner intends to call Nash Daswani, who has invested in several of the Defendants’ projects, most notably Plainfield, Windsor, Village Crossroads, and Rose. Mr. Daswani resides in Houston, Texas. His testimony is material to the Commissioner’s case, and generally includes the circumstances of the investments he made with the Defendants, statements made to him about the investments, and whether he has received a return on his investments. Mr. Daswani has indicated that he will be available to testify by telephone. The Commissioner estimates that Mr. Daswani’s testimony will take a half hour.

4. The Commissioner believes that the credibility of Mr. Daswani is not at issue. Even assuming the contrary, audible indicia of a witness’s

demeanor is sufficient for the court to make an adequate judgment as to credibility. *Bodensieck v. Industrial Claim Appeals Office*, 183 P.3d 684, 686 (Colo. App. 2008) (citing *Babcock v. Employment Div.*, 696 P.2d 19, 21 (Or. App. 1985)).

5. Given the expedited nature of the hearing and the time and expense to have Mr. Daswani travel to Denver from Houston, the Commissioner believes this request for telephone testimony is reasonable.

6. The Commissioner does not intend to present exhibits through Mr. Daswani.

WHEREFORE, based on the foregoing, the Commissioner respectfully requests an order permitting the testimony of Nash Daswani by telephone at the hearing on Wednesday, August 22, 2018, a request for expedited ruling, and for any other relief the Court deems just and proper.

Respectfully submitted this 21st day of August, 2018.

CYNTHIA H. COFFMAN
Attorney General

/s/ Matthew J. Bouillon Mascareñas

ROBERT FINKE, 40756*

First Assistant Attorney General

SUEANNA P. JOHNSON, 34840*

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MATTHEW J. BOUILLON MASCARENAS,
46684*

Assistant Attorney General

Financial and Health Services Unit

*Attorney for Plaintiff Gerald Rome, Securities
Commissioner*

*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **SECURITIES COMMISSIONER'S MOTION FOR LEAVE TO TAKE TELEPHONE TESTIMONY OF NASH DASWANI** upon all parties herein by e-filing pursuant to C.R.C.P. 121, or by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 21st day of August, 2018, addressed as follows:

Harvey Steinberg, Esq.
Springer and Steinberg, P.C.
1600 Broadway Street
Denver, CO 80202
Attorney for Defendants

/s/ William Russell
Office of the Colorado Attorney General

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Plaintiff,	
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Defendants.	▲ COURT USE ONLY ▲
BY THE COURT	Case No.: 2018 CV 33011 Courtroom: 424
ORDER GRANTING TELEPHONE TESTIMONY OF NASH DASWANI	

This matter comes before the Court on the Plaintiff's Motion for Telephone Testimony of Nash Daswani and Request for Expedited Ruling. The Court, having reviewed the Motion, hereby GRANTS the Motion, and ORDERS that Mr. Daswani may testify by telephone at the preliminary injunction hearing scheduled for August 22, 2018.

DONE this ____ day of August, 2018.

BY THE COURT.

MARTIN EGELHOFF
District Court Judge