

<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 3:39 PM FILING ID: 6D5DAB9EE6486 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 GERALD HORST 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 Gerald Horst 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 wanted to know the names of the investors and would take it under advisement. At the time of filing, undersigned counsel does not know the Defendants' position but assumes they oppose.

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 Gerald Horst, who has invested in several of the Defendants' projects, most notably CrossPointe and Plaza Mall of Georgia North. Mr. Horst resides in Lititz, Pennsylvania. 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. Horst has indicated that he will be available to testify by telephone. The Commissioner estimates that Mr. Horst's testimony will take a half hour.

4. The Commissioner believes that the credibility of Mr. Horst 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. Horst travel to Denver from Pennsylvania, the Commissioner believes this request for telephone testimony is reasonable.

6. The potential relevant exhibits to Mr. Horst's testimony listed as and attached hereto, are 19 and 20.

WHEREFORE, based on the foregoing, the Commissioner respectfully requests an order permitting the testimony of Gerald Horst 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

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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 GERALD HORST AND EXHIBITS 19 and 20** 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