

<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 3:32 PM FILING ID: 87F20273B9FE6 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, 8<sup>th</sup> Floor Denver, CO 80203 Tel: (720) 508- 6376 Fax: (720) 508-6037 Robert.Finke@coag.gov; Sueanna.Johnson@coag.gov; Matthew.Bouillon@cog.gov *Counsel of Record</p>	<p>Case No.: 2018 CV 33011</p> <p>Courtroom: 424</p>
<p><b>MOTION FOR TELEPHONE TESTIMONY OF W. SCOTT ROCKEFELLER WITH REQUEST FOR EXPEDITED RULING</b></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 Scott Rockefeller 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 she 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 assume 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 W. Scott Rockefeller, who has invested in several of the Defendants' projects, most notably the Plaza Mall of Georgia, LLC. Mr. Rockefeller resides in Cornelius, North Carolina. 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 or lack of disclosures, and whether he has received a return on his investments. Mr. Rockefeller has indicated that he will be available to testify by telephone. The Commissioner estimates that Mr.

Rockefeller's testimony will take a half hour.

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

6. The potential relevant exhibits to Mr. Rockefeller's testimony listed as and attached hereto, are EXHIBITS 13, 14 and 18.

WHEREFORE, based on the foregoing, the Commissioner respectfully requests an order permitting the testimony of Scott Rockefeller 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 21<sup>st</sup> day of August, 2018.

CYNTHIA H. COFFMAN  
Attorney General

/s/ Sueanna P. Johnson

ROBERT FINKE, 40756\*

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*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 W. SCOTT ROCKEFLLER AND EXHIBITS 13, 14 AND 18** 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 21<sup>st</sup> 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