

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202		DATE FILED: October 24, 2018 2:44 PM FILING ID: 54268433E98D6 CASE NUMBER: 2018CV33011
<b>Plaintiff:</b> Gerald Rome, Securities Commissioner for the State of Colorado  v.  <b>Defendants:</b> Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC		<b>▲ COURT USE ONLY ▲</b>  Case Number: 2018CV33011  Division/Courtroom: 424
Attorneys for Receiver: Patrick D. Vellone, #15284 Michael T. Gilbert, #15009 Rachel A. Sternlieb, #51404 ALLEN VELLONE WOLF HELFRICH & FACTOR P.C. 1600 Stout St., Suite 1100 Denver, Colorado 80202 Phone Number: (303) 534-4499 E-mail: pvellone@allen-vellone.com E-mail: mgilbert@allen-vellone.com E-mail: rsternlieb@allen-vellone.com		
<p style="text-align: center;"><b>RECEIVER'S MOTION TO ESTABLISH CLAIMS ADMINISTRATION PROCEDURE AND TO SET CLAIMS BAR DATE</b></p>		

Harvey Sender, the duly-appointed receiver ("Receiver") for Gary Dragul ("Dragul"), GDA Real Estate Services, LLC, GDA Real Estate Management, LLC, and related entities (collectively, "Dragul and the GDA Entities"), ask the Court to enter an order establishing a claims administration process and setting a claims bar date of February 1, 2019.

## I. BACKGROUND

1. On August 15, 2018, Gerald Rome, Securities Commissioner for the State of Colorado (the "Commissioner"), filed his Complaint for Injunctive and Other Relief against Dragul and the GDA Entities.

2. On August 29, 2018, the Commissioner, Dragul and the GDA Entities filed a Stipulated Motion for Appointment of Receiver, consenting to the appointment of a receiver over Dragul and the GDA Entities pursuant to COLO. REV. STAT. § 11-51-602(1) and C.R.C.P. 66.

3. On August 30, 2018, the Court entered a Stipulated Order Appointing Receiver (the “Receivership Order”), appointing Harvey Sender of Sender & Smiley, LLC as receiver for Dragul and the GDA Entities, and their respective properties and assets, and interests and management rights in related affiliated and subsidiary businesses (the “Receivership Estate” or the “Estate”). Receivership Order at 2, ¶ 5.

4. Under paragraph 13(u) of the Receivership Order at 12, the Receiver is authorized to establish a procedure for asserting claims against the Estate or Receivership Property, for resolving any disputes concerning those claims, and for the distribution of proceeds of the Estate. The Receiver asks the Court to enter an order establishing the procedure for submitting claims against the Estate and setting a claims bar date.

5. One of the primary purposes of a receivership is to “promote orderly and efficient administration of the estate . . . for the benefit of the creditors.” *See Broadbent v. Advantage Software, Inc.*, 415 Fed. Appx. 73, 78 (10th Cir. 2011) (quoting *S.E.C. v. Hardley*, 803 F.2d 1034, 1038 (9th Cir. 1986)). The Court “has extremely broad discretion in supervising an equity receivership and in determining the appropriate procedures to be used in its administration.” *F.D.I.C. v. Bernstein*, 786 F. Supp. 170, 177 (E.D.N.Y. 1992); *see McFarland v. Winnebago South, Inc.*, 863 F. Supp. 1025, 1034 (W.D. Mo. 1994) (recognizing “the receivership court has the power to use summary procedures in allowing, disallowing, and subordinating claims of creditors, so long as creditors have fair notice and a reasonable opportunity to respond.”).

## II. BAR DATE REQUEST

6. The Receiver asks the Court to set a claims bar date of **February 1, 2019**, which the Receiver submits will allow putative claimants sufficient time to consult with counsel (if they so choose) and submit their claims with supporting documentation to the Receiver. Time is of the essence in this case for submitting claims so that the Receiver can ascertain potential claims and evaluate contemplated proposals to sell assets of the Estate.

7. The Receiver has compiled a list of all currently known investors in and creditors of Dragul and the Dragul Entities with potential claims against the Receivership Estate (“Potential Claimants”). Upon the Court’s approval of this Motion, the Receiver proposes to serve the Notice of Claims Bar Date and Procedure for Filing Claims in the form submitted as **Exhibit 1** (the “Notice”) to the Potential Claimants by email where known, or otherwise by U.S. first-class mail.

8. As the Receiver's investigation progresses, there may be additional, unknown claimants of the Estate. For any unknown claimant that does not receive notice of the claims bar date within time sufficient to file a claim by February 1, 2019, the Receiver proposes that, upon discovering an additional claimant, notice of the claims bar date will be provided promptly to that claimant, and that claimant shall have forty-five (45) days to submit a claim to the Receiver in accordance with the proposed procedures below.

### **III. PROPOSED PROCEDURES FOR CLAIMS ADMINISTRATION**

9. The Receiver requests entry of an order, a form of which is submitted with this Motion, requiring any party with a claim against the Estate, to submit a completed claim form with all supporting documentation to the offices of ALLEN VELLONE WOLF HELFRICH & FACTOR P.C., counsel for the Receiver, on or before **February 1, 2019**, or for any currently unknown claimants, within forty-five (45) days of the Receiver's mailing of additional notice. A copy of the proposed claim form is submitted with this Motion as **Exhibit 2** (the "Claim Form").

10. The Receiver will accept claims via e-mail, facsimile, and via U.S. Mail. The Claim Form generally requires a statement, signed and certified under the penalty of perjury, that includes:

- a. Claimant(s) complete name(s);
- b. Claimant(s) contact information;
- c. The exact amount, components, origin, and nature of the claim as it existed on August 30, 2018;
- d. The date the claim arose;
- e. The nature, value, and location of any collateral securing the claim;
- f. Whether the claim bears any interest and, if so, the basis for claiming interest;
- g. Documents that support the claim;
- h. The nature and value of any offset or counterclaim;
- i. Contact information for any attorney representing the claimant;
- j. The case (or proceeding) number and court (or tribunal) where any claims against Receivership Estate were pending as of August 30, 2018 and/or as of the date of filing a claim; and

- k. A certification (as described in the following paragraph of this Motion) providing claimant has dismissed any pending proceedings against Dragul, the Dragul Entities, related entities that are part of the Receivership Estate, or the Estate, and that it will not file or re-file proceedings without the Receiver's consent or leave from this Court.

11. The Receivership Order provides that:

Any parties holding claims against Dragul, GDARES and GDAREM or the Receivership Estate shall not be entitled to participate as creditors in the distribution of recoveries from the Receiver's administration of the Receivership Estate and collection and liquidation of the assets thereof, unless such parties: (I) agree not to file or prosecute independent claims such parties may have (a) on insurance policies and surety bonds issued in connection with Dragul, GDARES and GDAREM operations, or (b) against Dragul, GDARES and GDAREM or any of their Representatives, and (II) promptly dismiss any lawsuits currently pending in connection therewith.

Receivership Order ¶ 16, at 14.

12. In the interest of full, fair, uniform, and efficient claims administration, the Receiver requests that the Court's order approving this Motion require, that any claimant – as a condition of obtaining an allowed claim against the Estate – dismiss (without prejudice) any claim or cause of action pending against Dragul, the Dragul Entities, and any related entities that are part of the Receivership Estate. That condition would allow claims to be administered in a single forum before this Court and conserve the limited resources of the Estate. The certification as contemplated on the Claim Form also requires a statement that claims or causes of action against the Estate will not be filed or re-commenced without the Receiver's consent or this Court's Order.

WHEREFORE, the Receiver asks the Court to enter an order: (a) granting this Motion; (b) approving the Notice of the Claims Process submitted as **Exhibit 1**; (c) directing that claims be filed in writing with the Receiver on the Claim Form attached as **Exhibit 2**; (d) setting a claims bar date of **February 1, 2019**; (e) requiring claimants to dismiss, without prejudice, any claims against Dragul, the Dragul Entities, and any related entities that are part of the Receivership Estate currently pending in other any other court, or waive their right to participate in the Receivership claims administration process; and (f) for any additional relief the Court deems appropriate.

Dated: October 24, 2018.

ALLEN VELLONE WOLF HELEKICH & FACTOR P.C.

By: /s/ Michael T. Gilbert

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ATTORNEYS FOR THE RECEIVER

**CERTIFICATE OF SERVICE**

I hereby certify that on October 24, 2018, I served a true and correct copy of the foregoing **RECEIVER'S MOTION TO ESTABLISH CLAIMS ADMINISTRATION PROCEDURE AND TO SET CLAIMS BAR DATE** via CCE to the following:

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/s/ Marcie J. Morton

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