

<p>DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202</p>	
<p>Plaintiff: CHRIS MYKLEBUST, Securities Commissioner for the State of Colorado</p> <p>v.</p> <p>Defendants: GARY DRAGUL, GDA REAL ESTATE SERVICES, LLC, and GDA REAL ESTATE MANAGEMENT, LLC</p>	
<p>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>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p>Case No.: 2018CV33011</p> <p>Division/Courtroom: 424</p>
<p>RECEIVER’S REPLY IN SUPPORT OF MOTION TO APPROVE INCREASED COMMISSION</p>	

Harvey Sender, the duly-appointed receiver (“Receiver”) for Gary J. Dragul (“Dragul”), GDA Real Estate Services, LLC (“GDARES”), and GDA Real Estate Management, LLC (“GDAREM”) (collectively “Objectors”), hereby responds to their

Objection to the Receiver's Motion to Approve Increased Commission at Closing (the "Objection," filed May 22, 2019).

I. Dragul lacks standing to object.

On May 20, 2019, the Receiver filed his Second Motion for Order Authorizing Sale of Summit Marketplace ("Sale Motion") and Motion to Approve Increased Commission at Closing ("Commission Motion"). Although objections are not due until Thursday May 30th, on May 22nd, Dragul, individually, and purportedly on behalf of GDARES and GDAREM, filed an Objection to the Commission Motion only. As of the filing of this reply, no other objection to either Motion has been filed.

While Dragul's counsel of record may represent GDARES and GDAREM in the Securities Commissioner's enforcement action, he does not represent either entity in matters concerning the administration of the Receivership Estate. As confirmed by this Court's August 30, 2018, Receivership Order, Dragul stipulated to the appointment of the Receiver for all Objectors and their respective properties and assets. *See* Receivership Order, at ¶ 5. Dragul thus lacks standing or authority to object to the Commission Motion on behalf of GDARES or GDAREM.

Dragul also lacks standing to object personally. As set forth in paragraph 41 of the Receiver's Second Report (filed May 15, 2019), approximately \$275 million in claims have been filed against the Receivership Estate. Regardless of the outcome of the Receivership case, the Estate will be insolvent, *i.e.*, there will not be sufficient funds to pay all claims. There will be no surplus to return to Dragul. Accordingly,

under well-established receivership and bankruptcy law, Dragul lacks standing to object. *See, e.g., See S.E.C. v. Michael Kenwood Capital Mgmt., L.L.C.*, 630 F. App'x 89, 91 (2nd Cir. 2015) (summary order); *S.E.C. v. Illarramendi*, 2016 WL 11466511, at *2 (D. Conn. Dec. 9, 2016) (defendant lacked standing to object to receiver's proposed distribution because he had not filed claim and would not be affected by distribution); *In re Symka, Inc.*, 518 B.R. 888, 890 (Bankr. D. Colo. 2014) (absent a surplus, debtor lacks standing to object to administration of bankruptcy estate); *In re VistaCare Grp., LLC*, 678 F.3d 218, 225 (receivers and bankruptcy trustees similar in that both oversee administration of debtors' estates).

II. Marcus & Millichap did provide consideration to the Estate to support the increased commission.

If the Court nevertheless chooses to address the substance of Dragul's Objection, it should be denied summarily. Dragul characterizes the Commission Motion as the Estate essentially *giving away* \$68,000 for which Marcus & Millichap has provided no consideration. That is not so. As set forth in the Commission Motion, Marcus & Millichap has refrained from enforcing agreements with the Estate to obtain: (1) an additional \$75,000 in commission on the sale of the Happy Canyon Shoppes; (2) an additional \$15,000 in commission on the anticipated sale of the Ash & Bellaire properties; (3) \$75,000 in marketing fees; and (4) commissions from the sale of the Estate's interest in the five properties conveyed to Isabel Marina, LLC ("Isabel") under this Court's March 29, 2019 Order. Marcus & Millichap agreed to

defer its claims based on the Receiver's agreement to work out a way to partially compensate it.

Marcus & Millichap has conferred substantial benefits on the Estate and its counsel of which Dragul has no inkling. During the marketing, due diligence, and sale of Estate commercial properties, Marcus & Millichap has gone beyond its scope of work to assist the Estate solving issues caused by Dragul's malfeasance, such as the failure both to pay taxes and segregate and retain security deposits. Marcus & Millichap has worked closely with the Receiver and the Estate's professionals to investigate the financial condition of the Estate's commercial properties, GDA's management of those properties before the Receiver was appointed, and to achieve the best possible economic result for the Estate and its creditors. Marcus & Millichap deserves much credit for the Estate being able to close the Happy Canyon Shoppes sale, pursuant to which the Estate received \$600,000. Additionally, Marcus & Millichap has agreed to reduce its commission by \$15,000 on the anticipated sale of the Ash & Bellaire properties. Marcus & Millichap has also deferred a claim for \$75,000 in marketing fees, and for any commission on the sale to Isabel Marina.

Paying an increased commission to Marcus & Millichap from the Summit Marketplace sale will not fully compensate it for its claims. Marcus & Millichap will still be compromising its fees and the Estate will remain in a better economic position as a result. Dragul does not challenge the overall economic benefit Marcus & Millichap has conferred on the Estate. Instead he would have the Receiver refuse to

fairly compensate a most-trusted trusted vendor. While based upon claims filed against the Estate that may be consistent with Dragul's business model, it is not the Receiver's. The increased commission is fair and reasonable given Marcus & Millichap's tireless work on behalf of the Estate and its willingness to compromise its fees.

WHEREFORE, the Receiver asks the Court to approve an increase of 1.5% in Marcus & Millichap's commission from the sale of the Summit Marketplace Property, and authorize the Receiver to pay that commission at the Summit closing.

Dated: May 29, 2019.

ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.

By: /s/ Rachel A. Sternlieb 

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ATTORNEYS FOR THE RECEIVER

CERTIFICATE OF SERVICE

I certify that on May 29, 2019, I served a true and correct copy of the foregoing **RECEIVER'S REPLY IN SUPPORT OF MOTION TO APPROVE INCREASED COMMISSION** via CCE to the following:

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A copy of the foregoing is also being served by electronic mail in accordance with the Court's February 1, 2019, Order Clarifying Notice Procedure and will be posted to the Receiver's website, <http://dragulreceivership.com/>

By: /s/ Terri M. Novoa _____
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