

DISTRICT COURT, DENVER COUNTY, COLORADO
1437 Bannock Street, Room 256
Denver, CO 80202

Plaintiff: DAVID S. CHEVAL, ACTING SECURITIES
COMMISSIONER FOR THE STATE OF COLORADO,

v.

Defendants: GARY DRAGUL; GDA REAL ESTATE
SERVICES, LLC; AND GDA REAL ESTATE
MANAGEMENT LLC

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Brian R. Leedy #35940
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Case No. 2018CV33011

Division: 424

**MOTION BY AARON METZ TO INTERVENE AND TO LIFT STAY
FOR LIMITED PURPOSES**

Aaron Metz, through his attorneys Haddon, Morgan & Foreman, P.C., moves to intervene pursuant to C.R.C.P. 24 for the limited purposes of (1) asking the Court to lift the stay imposed by the Receivership Order so that he may request an Order to Show Cause and Contempt Citation against defendants Gary Dragul, GDA Real Estate Services, LLC (“GDA RES”) and GDA Real Estate Management, LLC (“GDA REM”) in a separation action, *Colorado Department of Public Health & Environment v. YM RETAIL 07 A, LLC, GDA Real Estate Management, Inc., GDA Real Estate Services, LLC d/b/a The GDA Companies, Gary Dragul,*

and Aaron Metz, Denver District Court Case 13-CV-33076 (“Environmental Action”); and (2) permitting Mr. Metz to file a limited objection to the Proposed Settlement Agreement Concerning Turnover Motion. As further grounds, he asserts as follows:

C.R.C.P. 121 § 1-15(8) CONFERRAL

Sueanna P. Johnson, Assistant Attorney General acting as counsel for David S. Cheval, Acting Securities Commissioner for the State of Colorado (“Plaintiff”) and Michael T. Gilbert and Rachel Sternlieb, counsel for Harvey Sender, the court-appointed Receiver (“Receiver”) oppose the relief requested.

Jeffery A. Springer, counsel for Defendants Gary Dragul (“Dragul”), GDA Real Estate Services, LLC (“GDA RES”) and GDA Real Estate Management, LLC (“GDA REM”) (together with GDA RES, the “GDA Entities”), has not responded to the request for conferral.

BACKGROUND

There are two separate civil actions pending in separate Denver District Courts against Dragul, GDA RES and GDA REM.

Environmental Action¹

Mr. Metz along with YM Retail 07 A (“YM Retail”), Dragul and the GDA Entities are co-defendants in the Environmental Action, currently pending before Judge Whitney in Division 203. The Enforcement Action pertains to the need to perform remediation of environmental contamination that occurred at 6460 East Yale Avenue, Denver, Colorado (the “Property”). A settlement agreement was reached in the Enforcement Action on January 19, 2015. The

¹ The facts concerning the Environmental Action are summarized in pertinent parts here, but are more fully described with supporting exhibits in Defendant Aaron Metz’s Motion for Relief from Judgment, Request for Stay, and for Declaratory Judgment filed in *CDPHE v. YM Retail, et al.*, 2013CV33076 (Feb. 27, 2019).

agreement provided for joint and several liability of Dragul, the GDA Entities, YM Retail, and Mr. Metz, and it became an order of the Court on January 20, 2015 (hereafter “Remediation Order”), attached hereto as Exhibit A.

At the time of the Environmental Action, Mr. Metz was an employee of GDA RES. Dragul owned and operated GDA RES and GDA REM (and he owns an interest in YM Retail). Dragul hired one lawyer to represent himself, GDA RES and his employee, Mr. Metz. Mr. Dragul funded the litigation, told his employee Mr. Metz to “not worry,” and agreed to indemnify him. The lawyer, however, was subject to an inherent conflict of interest based on his joint representation of parties with divergent interests, but he never sought or obtained from Mr. Metz any waiver of conflict pursuant to Colorado Rule of Professional Conduct 1.7. On the day of trial in the Environmental Action when the settlement agreement was brokered, the lawyer simply told Mr. Metz to sign the document, without explaining its terms, including the potential for Mr. Metz to be personally liable for indeterminate expenses associated with the clean-up of the Property.

In August 2018, Mr. Metz resigned from his position with GDA RES. In November 2018, Mr. Metz hired undersigned counsel and first learned of the conflict of interest that his prior counsel had operated under during the litigation of the Environmental Action and the negotiation of the Remediation Order.

On January 23, 2019, CDPHE filed a Motion for Order to Show Cause and Contempt Citation Against Defendant Aaron Metz, scheduled for hearing on February 11, 2020 in Division 203. CDPHE moved to hold only Mr. Metz in contempt for “not funding the Remediation Work.” Ex. B. According to the motion, CDPHE did not move to hold Dragul or the Dragul

entities in contempt due to the stay issued in this action. *Id.* at 5. CDPHE contends that Mr. Metz, a former employee of Dragul and GDA RES, should be held solely responsible for the cost of remediation of the Property.

Mr. Metz filed on February 27, 2019 a Motion for Relief from Judgment, Request for Stay and for Declaratory Judgment to, *inter alia*, relieve him of his obligations under the Remediation Order pursuant to C.R.C.P. 60(b). That Motion is scheduled for hearing before Judge Whitney on February 10, 2020, one day prior to CDPHE's contempt hearing.²

Civil Fraud Action

On August 15, 2018, the Colorado Securities Commissioner filed his Complaint for Injunctive and Other Relief against Dragul and the GDA Entities in the instant case ("Civil Fraud"). On August 30, 2018, the Court appointed Harvey Sender as receiver over Dragul, the GDA Entities, their respective properties and assets, and their interests and management rights in related affiliated and subsidiary businesses (the "Receivership Estate") pursuant to C.R.S. § 11-51-602(1), C.R.C.P. 66. Receivership Order at 2, ¶ 5.

The Receivership Order also provided:

It is further Ordered that all actions in equity or at law against the Receiver, Dragul, GDARES and GDAREM, or the Receivership Estate are hereby enjoined (and any actions already pending are hereby stayed), pending further action by this Court. The Receiver is instructed to file a request for an Order to Show Cause if any business, entity, or person commences or continues the prosecution of any action in any other court seeking relief in equity or at law against the Receiver, Dragul, GDARES and GDAREM or the Receivership Estate *without first seeking relief from this stay of proceedings.*

Id. at 18, ¶ 26 (emphasis added).

² Judge Whitney has ruled that the Rule 60(b) Motion should be heard first, and then, if necessary, he will proceed to the Order to Show Cause proceedings against Mr. Metz.

Shortly after the Receivership Order entered, the Receiver directed counsel for Dragul and the GDA Entities (who then also represented Mr. Metz and YM Retail) to file in the Enforcement Action a “Notice of Receivership and Stay,” noting that the assets of the defendants to that action “are part of the Receivership Estate and this action may therefore affect the Receivership Estate.” *See* Ex. C at ¶ 3, 5 (Notice of Receivership and Stay).

On December 5, 2019, the Receiver filed a Motion to Approve Settlement Agreement with Dragul Concerning Turnover Motion. Pursuant to the proposed Settlement Agreement, Dragul and his wife will turn over certain property and assets to the Receivership Estate, and Dragul “stipulates to the entry of judgment against him for \$120,000.” Motion at 4, ¶ 7(B). Presumably, property turned over by Dragul to the Receivership Estate is intended to satisfy creditors identified by the Receiver who will apply all such revenues, incomes and sales proceeds according to the priorities established by the Receivership Order at ¶ 22. Mr. Metz submitted a claim pursuant to the Receiver’s established Claims Procedure authorized by this Court for funds to be used to remediate the Property.

Mr. Metz seeks to intervene in this case, and to lift the stay of proceedings concerning Dragul and the GDA Entities, in order to permit him to request an Order to Show Cause and Contempt Citation Against Mr. Gary Dragul and the GDA Entities in the Enforcement Action, to permit one court to hear in one action the respective culpability of all the defendants to that action for failure to comply with the terms of the Remediation Order. He also seeks to interpose a limited objection to the Proposed Settlement Agreement to the extent it includes a \$120,000 monetary judgment against Dragul which has the effect of depleting assets of Dragul that otherwise could be used to satisfy his obligations in the remediation action.

ARGUMENT

I. This Court Should Allow Mr. Metz to Intervene for Limited Purposes in this Action

A. Rule 24(a) – Intervention of Right.

C.R.C.P. 24(a)(2) provides for intervention as of right where (1) the applicant claims an interest in the subject matter of the litigation; (2) disposition of the action may impair or impede the applicant's ability to protect that interest; and (3) the applicant's interest is not adequately represented by existing parties. *Mauro by & through Mauro v. State Farm Mut. Auto. Ins. Co.*, 2013 COA 117, ¶ 13, 410 P.3d 495, 498, citing *Feigin v. Alexa Grp., Ltd.*, 19 P.3d at 26 (Colo. 2001). C.R.C.P. 24 should be liberally interpreted to allow, whenever possible and compatible with efficient and due process, issues related to the same transaction to be resolved in the same lawsuit and at the trial court level. *Feigin*, at 26; *O'Hara Grp. Denver, Ltd. v. Marcor Housing Sys., Inc.*, 197 Colo. 530, 541, 595 P.2d 679, 687 (1979).

Colorado has a “flexible approach” to determining whether a party possesses an interest in intervening under C.R.C.P. 24(a)(2), and the supreme court has held that the existence of an interest “should be determined in a liberal manner” and the interest requirement “should not be viewed formalistically.” *Feigin* at 29; *see O'Hara Grp.* at 687. This requirement is a prerequisite rather than a determinative criterion for intervention. *Feigin*, at 29; *O'Hara Grp.* at 687.

B. Rule 24(b) – Permissive Intervention.

Rule 24(b) permits “Permissive Intervention” when an “applicant’s claim or defense and the main action have a question of law or fact in common.” Rule 24(b) “gives the trial court considerable discretion” in permitting intervention and provides for intervention “so long as the intervention will not unduly delay or prejudice the rights of the original parties. *In re Marriage*

of Paul, 978 P.2d 136, 139 (Colo. App. 1998) citing *Rutenbeck v. Grossenbach*, 867 P.2d 36 (Colo.App.1993).

C. Intervention of Right and Permission Intervention are Warranted.

Mr. Metz is entitled to intervene by right in the Civil Fraud Action pursuant to Rule 24(a)(2). First, Mr. Metz has an interest in the subject matter of the litigation, specifically, using Dragul and GDA Entities' funds for remediation of the Property. Mr. Metz's obligations in the Enforcement Action depend upon the ability of the other Defendants to pay the costs of the remediation. Second, disposition of this action may impair or impede Mr. Metz's ability to protect his interest in applying Dragul and GDA Entities' funds to the costs for remediation, as opposed to other uses of the money. Third, Mr. Metz's interest is not adequately represented by existing parties, as CDHPE has sought to enforce the Remediation Order against Mr. Metz alone, and the Receiver's objective is to direct Dragul and GDA Entities' funds to satisfy creditors other than CDPHE. To wit, CDPHE (represented by the same Attorney General's Office representing Plaintiff in this action) has not sought to intervene in this case, nor to ensure that Dragul or the GDA Entities interests in the Receivership Estate are directed towards the environmental remediation of the Property. Mr. Metz's interest in the disposition of funds and the manner they are used to remediate the property exists coextensively with the Remediation Order signed by Judge Madden on January 20, 2015. As long as Mr. Metz is deemed to be subject to this Order he has economic and, apparently, penal, interests in having as much money from Dragul and the GDA Entities to remediate the property. Thus, decisions about what funds are received from Dragul and the GDA Entities, whether any judgments should be imposed on Dragul and the GDA Entities, what funds should be allocated to the remediation, and the cost of

the remediation impact Mr. Metz significantly and he has a due process rights to notice and an opportunity to be heard regarding these decisions.

The subject matter of litigation in this action directly affects Mr. Metz and his liability under the Remediation Order. Disposition of this matter may impair or impede his ability to protect his interest in the preserving the ability of a jointly and severally liable codefendant to contribute to the remediation costs. His interest is not adequately represented by the Receiver, the Securities Commissioner, Dragul or the GDA Entities.

Additionally, Mr. Metz is entitled to intervene pursuant to Rule 24(b). Mr. Metz's "claim and the main action have questions of law and fact in common." Rule 24(b) "gives the trial court considerable discretion" in permitting intervention which should be "liberally construed" to permit resolution of "all related controversies in one action. *Great Neck Plaza, L.P. v. Le Peep Restaurants, LLC*, 37 P.3d 485 (Colo. App. 2001). The common questions of fact pertain to the availability of funds from Dragul and the Dragul Entities to fund the environmental remediation. Whether the funds should be applied in the first instance to creditors or to the clean-up of a contaminated site in the City of Denver should be decided in one court.

Finally, intervention by Mr. Metz "will not unduly delay or prejudice the rights of the original parties" given the questions of law and fact, and parties, in common. He does not seek to delay any current proceedings before this Court.

II. The Court Should Lift the Stay in the Receivership Order to the Extent it Precludes Litigation of Dragul and the Dragul Entities' Liability for Remediation of the Property through a Simultaneous Contempt Proceeding

Mr. Metz seeks to lift the stay to the extent he may be allowed to file in the Environmental Action a Motion for Order to Show Cause and Contempt Citation against Dragul, GDA RES and GDA REM. A proposed motion is attached hereto as Exhibit D.

At present, there are two conflicting paths being pursued simultaneously in two different courtrooms of the Denver District Court. In Division 203, one party, Aaron Metz, is facing contempt proceedings for not fully funding out of his own personal pocket an unspecified cost associated with the environmental remediation of a property in which his former boss and company owned a possessory interest. Although his liability is purportedly joint and several with Dragul and the Dragul Entities, he is precluded from seeking such contribution by virtue of the stay imposed in this case. At the same time, in this Division, the Receiver is acting pursuant to the Receivership Order to take possession of all of the property and possessions of Dragul and the Dragul Entities and then to apply those revenues, incomes and sale proceeds to payment of certain obligations according to the priorities described in the Order at ¶ 22. Notably, the Receivership Order makes no special allowance for payment of funds pursuant to a Court Ordered Remediation agreement. *Id.*

In essence, the Receiver in this matter is acting at cross-purposes with the Receiver appointed over YM Retail in the Environmental Action, whose mission it is to fund the remediation of the Property. Defendant Dragul and his Entities only possess so many assets. Where this action permits the possession and disbursement of those assets to creditors who suffer from any securities fraud violations committed by Mr. Dragul, that necessarily means fewer

assets available to pay for the remediation of the Property under the terms of the Remediation Order. Mr. Metz stands to lose all of his personal assets to pay for a remediation he did not cause at a Property he never owned.

Mr. Metz asks this Court to lift the stay solely to the extent that Dragul and his Entities can be joined in the Environmental Action with respect to who failed to pay for the remediation, when and for how much. If the Court in that action deems Dragul to be in contempt for a certain amount of money towards the remediation, such award could be entered in this Court and deemed a priority for payment from the Receivership Estate. All parties could be heard with respect to the priority it should be granted. Without Dragul's participation in the contempt proceedings, there stands the risk of an inconsistent judgment; the Court in the Environmental Action might determine that Mr. Metz is only partially, or minimally, responsible for payment towards the remediation but the parties will be without sufficient funding to complete the necessary remediation work.

III. The Court Should Allow Mr. Metz to Interpose a Limited Objection to the Proposed Settlement Agreement.

The Court also lift the stay to the extent necessary to allow Mr. Metz to interpose a limited objection to the proposed settlement agreement, as attached hereto as Exhibit E. Mr. Metz does not oppose the bulk of the Turnover Motion, but would seek an opportunity to be heard as to the proposal that Mr. Dragul is ordered to pay a \$120,000 judgment to the Receivership Estate, rather than to pay that same money towards the funding of the environmental cleanup pursuant to the Remediation Order. Although Mr. Metz has standing to object to the settlement agreement to extent he already is a person who has made a claim under the procedure established by the Receiver, he also seeks to separately object based on his real

interest in avoiding a contempt citation in the Environmental Action based, in substantial part, on the inaction of his co-defendant and former employer, Dragul.

CONCLUSION

As outlined above Mr. Metz is entitled to intervene in the instant matter by right and permission. The Complaint filed by the Attorney General in this action against Mr. Dragul and his GDA Entities resulted in a Receivership Order which is asserted to stay enforcement of the Remediation Order against all Defendants in the Environmental Action, except Mr. Metz and YM Retail. The Notice filed in the Enforcement Action by Mr. Metz's own counsel at the time of filing, specifically asked the Court to construe the Receivership Order as a stay as to all Defendants, except Mr. Metz. As it stands, based on the actions of others, and due to circumstances beyond his control, CDHPE seeks to enforce the Remediation Order against Mr. Metz alone. Consequently, his interest in this matter, and the questions of fact and law in common with the Enforcement Action, support granting his request to intervene.

Likewise, this Court should lift the stay imposed by the Receivership Order to the extent it bars a request by Mr. Metz to join Mr. Dragul and his Entities to the contempt proceedings concerning the failure to fund the remediation of the Property. Permitting Mr. Dragul and his entities' liability for funding in the same hearing, before one judge, conserves judicial resources and those of the parties, ensures that all funds available for the remediation are conserved for that purpose, and reduces the risk of inconsistent judgments in different courtrooms.

Finally, this Court should permit Mr. Metz to intervene for the limited purpose of filing a separate objection to the Proposed Settlement Agreement to the extent it imposes an additional \$120,000 judgment against Mr. Dragul.

WHEREFORE, Mr. Metz moves to intervene by right and permission in the instant matter pursuant to Colorado Rule of Civil Procedure 24 and asks that the Receivership Order stay be lifted to the extent it will permit Mr. Metz to file a Motion for Order to Show Cause and Contempt Citation against Defendants Gary Dragul, GDA RES and GDA REM in Case No. 13-CV-33076. He also asks that he be permitted to interpose a limited objection to the Proposed Settlement Agreement.

Dated December 13, 2019.

Respectfully submitted,

s/ Laura A. Menninger

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Attorneys for Aaron Metz

Certificate of Service

I certify that on December 13, 2019, a copy of this *Motion by Aaron Metz to Intervene and to Lift Stay for Limited Purposes* was served via Colorado Courts E-filing system to the following parties:

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s/ Nicole Simmons

DISTRICT COURT, DENVER COUNTY, COLORADO 1437 Bannock Street, Room 256 Denver, CO 80202	DATE FILED: January 20, 2015 CASE NUMBER: 2013CV33076 <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Plaintiff: COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT v. Defendants: YM RETAIL 07 A, LLC; GDA REAL ESTATE MANAGEMENT, INC; GDA REAL ESTATE SERVICES, LLC d/b/a THE GDA COMPANIES; GARY DRAGUL; AND AARON METZ	
<i>Attorneys for Defendants YM Retail 07 A, LLC and GDA Real Estate Management, Inc.</i> Jonathan G. Pray, #36576 BROWNSTEIN HYATT FARBER SCHRECK, LLP 410 Seventeenth Street, Suite 2200 Denver, CO 80202 Phone: 303.223.1100 Fax: 303.223-1111 Email: jpray@bhfs.com <i>Attorneys for Defendants GDA Real Estate Services, LLC, Gary Dragul and Aaron Metz</i> Benjamin A. Kahn, #29073 Megan R. Kahn, #42093 The Conundrum Group, LLP Attorneys at Law P.O. Box 848 Salida, CO 81201 Phone Number 303-377-7890 Fax: 888-788-4457 Email: ben@conundrumlaw.com megan@conundrumlaw.com	Case Number: 2013CV33076 (previously consolidated with 2013CV34476) Division: 203
STIPULATION AND PROPOSED ORDER REGARDING PARTIES' SETTLEMENT AGREEMENT	

This Stipulation Regarding Parties' Settlement Agreement (the "Stipulation") is made by and between Defendants YM Retail 07 A, LLC, GDA Real Estate Management, Inc., GDA Real Estate Services, LLC, Gary Dragul and Aaron Metz (collectively, "Defendants"), and the Colorado Department of Public Health and Environment ("CDPHE"). Defendants and CDPHE are collectively referred to herein as the "Parties," and each individually as a "Party."

1. YM Retail 07 A, LLC (“Owner”) is the owner of that certain real property described in Exhibit A to the Receivership Order, as that term is defined below (the “Property”).

2. Brian J. Baker (“Receiver”) is acting as the court-appointed receiver of the Property pursuant to that certain Order Granting Ex Parte Verified Motion for Appointment of Receiver dated on or about October 17, 2013 by the Denver District Court (the “Receivership Order”) issued in the litigation styled as MLMT 2005-LC1 Yale Retail, LLC v. YM Retail 07 A, LLC, Case No. 2013-CV-34476 (the “Receivership Litigation”).

3. The Receiver believes that the environmental remediation of the Property set forth below will enhance the value of the Property in an amount in excess of the costs of performing such work. The Receiver therefore believes that the settlement described below is in the best interests of the Receivership Estate, and the Receiver is willing to perform according to the terms set out below.

4. Defendants shall cause remedial work to be performed at the Property sufficient to bring the Property into compliance with the Colorado Hazardous Waste Act., C.R.S. § 25-15-101 *et seq.*, the Colorado Hazardous Waste Regulations, 6 C.C.R. 1007-3, the Colorado Basic Standards for Groundwater, 5 C.C.R. 1002-41, and other applicable state laws and regulations pertaining to environmental pollution (the “Work”).

5. Defendants and the Receiver have estimated that the cost of the Work will be between \$126,540 and \$252,200.

6. Beginning in January, 2015, Defendants shall collectively make eight monthly payments to an escrow account the (“Escrow”) held by a third party escrow company in the amount of \$12,500, for a total of \$100,000 (the “Defendant’s Contribution”).

7. The Receiver shall deposit \$150,000 in the Escrow on August 3, 2015 (the “Receiver Contribution”).

8. FUNDING OF THE WORK.

a. The “Cost of the Work” shall mean all out-of-pocket costs paid to third-party contractors and environmental consultants hired by Defendants to complete the Work (collectively, the “Contractors”).

b. Defendants shall be responsible for paying the Cost of the Work to the Contractors. Defendants shall hire and supervise Casey Resources, Inc. (“Casey”) or another environmental contractor mutually agreeable to the Parties to bid and supervise the Work. The Receiver shall be entitled to review and promptly comment on all communications between Defendants and Casey and between Defendants and CDPHE relating to the performance of the Work.

c. In the event that the Cost of the Work is less than \$250,000, Defendants and the Receiver will cause the difference between \$250,000 and the Cost of the Work to be released from the Escrow to the Owner and Receiver in proportionate shares based on their respective contributions upon receipt of a “no action letter” or equivalent.

d. In the event that the Cost of the Work is in excess of \$250,000, Defendants shall be solely responsible for any such excess.

9. Defendants shall cause the Work to be commenced on or before August 3, 2015. Defendants are jointly and severally liable for performing the Work. The Receiver shall cause Defendants and the Contractors to be granted access to the Property for the purposes of completing the Work. Defendants and the Receiver shall enter into such other contracts, agreements, and stipulations as are necessary to effect the purposes of this Stipulation.

10. To facilitate the Receiver’s Contribution, the Parties request that Paragraph 24 of the Receivership Order be modified to allow the Receiver to retain the amount necessary to fund the Receiver’s Contribution, in addition to the amounts up to \$20,000 that the Receiver may currently retain.

11. Defendants confess liability for a civil penalty in the amount of \$62,500, which shall be paid to CDPHE’s Hazardous Materials & Waste Management Division in five monthly installments of \$12,500, beginning on September 1, 2015.

12. Nothing in this Stipulation shall be construed to alter, affect, or modify Defendants’ rights, if any, against the plaintiff in the Receivership Litigation (the “Lender”) or the Lender’s rights, if any, against Defendants in any proceeding or under the Promissory Note and other loan documents more specifically described in the Receivership Order.

13. Each Party shall execute all instruments and documents and take all actions as may be reasonably required to effectuate this Stipulation.

14. SCOPE AND EFFECT OF AGREEMENT

a. Upon Court approval, this Stipulation shall be binding upon the Parties, the Receiver, and their successors and assigns.

b. This Stipulation shall remain an enforceable Order of the Court until the Court determines, in response to a petition by any Party, that all requirements of the Stipulation have been satisfied.

c. Until termination of this Stipulation and satisfaction of Defendants’ obligations under the Stipulation, this Court shall retain jurisdiction over both the subject matter of this Stipulation and the Parties.

d. Defendants’ non-compliance with the terms of this Stipulation shall be enforceable by a contempt action before the Court.

e. Upon Defendants' full compliance with this Stipulation, the Division shall stipulate to a dismissal of this case.

15. SIGNATORIES

a. Each undersigned representative of a Party to this Stipulation certifies that he or she is fully authorized to enter into the terms and conditions of this Stipulation and to execute and legally bind such Party to this document.

b. The Parties enter into this Stipulation and submit it to the Court for approval and entry as an Order of the Court, on this 19th day of January, 2015.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

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Attorneys for Plaintiff
*Counsel of Record

Undersigned counsel for the Receiver confirms and represents that the statements attributed above to the Receiver are true and correct.

TEMKIN WIELGA & HARDT LLP

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Attorneys for Brian J. Baker

SO ORDERED this 20th day of January, 2015. The Defendants, CDPHE, and the Receiver shall proceed according to the terms set out above.

BY THE COURT:



John W. Madden, IV
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of January, 2015, I electronically filed a true and correct copy of the **STIPULATION AND PROPOSED ORDER REGARDING PARTIES' SETTLEMENT AGREEMENT** with the clerk of Court using the Colorado ICCES system which will send notification of such filing and service upon the following counsel of record:

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s/Penny G. Lalonde
Penny G. Lalonde, Paralegal

<p>DISTRICT COURT, DENVER COUNTY, COLORADO</p> <p>1437 Bannock Street, Room 256 Denver, CO 80202</p> <hr/> <p>COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT,</p> <p>Plaintiff,</p> <p>v.</p> <p>YM RETAIL 07 A, LLC, GDA REAL ESTATE MANAGEMENT, INC., GDA REAL ESTATE SERVICES, LLC d/b/a THE GDA COMPANIES, GARY DRAGUL, AND AARON METZ,</p> <p>Defendants.</p>	<p>DATE FILED: January 23, 2019 6:19 PM FILING ID: 605D965F3F338 CASE NUMBER: 2013CV33076</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>PHILIP J. WEISER, Attorney General JASON E. KING, Senior Assistant Attorney General* MARY EMILY SPLITEK, Assistant Attorney General*</p> <p>1300 Broadway, 7th Floor, Denver, CO 80203 E-mail: jason.king@coag.gov; emily.splitek@coag.gov Telephone: (720) 508-6283; (720) 508-6453 Registration Numbers: 34376, 46619 *Counsel of Record</p>	<p>Case No.: 13CV33076 (previously consolidated with 13CV34476)</p> <p>Division: 203</p>
<p>PLAINTIFF’S MOTION FOR ORDER TO SHOW CAUSE AND CONTEMPT CITATION AGAINST DEFENDANT AARON METZ AND TO RE-OPEN DISCOVERY</p>	

Plaintiff, the Colorado Department of Public Health and Environment, (“the Department”), by and through the Office of the Colorado Attorney General, hereby moves this Court, pursuant to C.R.C.P. 107, to direct the issuance of a citation to Defendant Aaron Metz, ordering him to appear before the Court to show cause why

he should not be held in contempt for willful violation of the Stipulation and Order Regarding Parties' Settlement Agreement dated January 20, 2015 ("Remediation Order") **attached hereto as Exhibit 1**, and thereafter, issue an order requiring Aaron Metz to pay remedial contempt sanctions. The Department also moves the court to re-open discovery for the limited purpose of obtaining relevant financial information regarding Mr. Metz' present ability to comply with the Remediation Order. Contrary to Mr. Metz' assertion, this case is not stayed against him, as further explained below.

The Court consolidated this case with *MLMT 2005-LC1 Yale Retail, LLC v. YM Retail 07 A, LLC*, Case No. 13-CV-34476 ("Receivership Action") for administrative purposes. The Receivership Action appointed Brian J. Baker as Receiver ("Receiver") for Defendant YM Retail 07, LLC ("YM Retail") and associated real property it owns - a shopping center located at 6460 East Yale Avenue, Denver, Colorado, ("Property"). The Department concurrently filed two separate motions to formally intervene in the Receivership Action and to amend the First Amended Receivership Order authorizing the Receiver to direct YM Retail assets to fund environmental cleanup at the Property.

In support of this Motion, the Department submits the Affidavit of Colleen Brisnehan, an employee of the Department, **attached hereto as Exhibit 2**, and states as follows:

C.R.C.P. 121 § 1-15(8) CONFERRAL

Although conferral is not required for this Motion, undersigned counsel conferred with the following regarding this Motion: Laura Menninger, counsel for Defendant Aaron Metz; Jason Wesoky, counsel for Defendants YM Retail and GDA Real Estate Management, Inc. (“GDA REM”); Benjamin Kahn, counsel for Defendants Gary Dragul and GDA Real Estate Services, LLC (“GDA RES”); and Brad Schacht and Betsy Temkin, counsel for the Receiver. Mr. Metz’ opposes this motion. The Receiver does not oppose the Motion. The remaining parties did not offer a position.

BACKGROUND AND ARGUMENT

Aaron Metz is a Party to the Remediation Order, and it is thus binding on him. *Ex. 1: Remediation Order* at p.3 ¶ 14(a). By its terms, the Remediation Order remains an enforceable Order of the Court until the Court determines all requirements of the Agreement have been satisfied. *Id.* at p.3 ¶ 14(b).

Pursuant to the Remediation Order, all five Defendants are jointly and severally liable for performing environmental remediation work (“Remediation Work”) to address contaminated soils and groundwater at the Property. *Id.* p.2 ¶ 4; p.3 ¶ 9. The purpose of the work is to ensure conditions at the property achieve compliance with Colorado’s Hazardous Waste Act, § 25-15-101, *et seq.*, C.R.S. (“Act”); the Colorado Hazardous Waste Regulations, 6 C.C.R. 1007-3 (“Regulations”); the Colorado Basic Standards for Groundwater, 5 C.C.R. 1002-41;

and other applicable state laws and regulations pertaining to environmental pollution. *Id.* at p.2 ¶ 4.

The Remediation Order required Defendants and Receiver to deposit \$250,000 into an escrow account to fund the Remediation Work. *Id.* at p.2 ¶¶ 6, 7. The escrow account funded some Remediation Work including soil remediation activities, and investigation and characterization activities to determine the extent of contamination. *Ex. 2: Brisnehan Affidavit* at p.3 ¶ 9.

The Remediation Order states Defendants are responsible for providing additional funding if the cost of the Remediation Work exceeds \$250,000. *Ex.1: Remediation Order* at p.3 ¶ (8)(d). Defendants have not made additional funds available for the Remediation Work. *Ex. 2: Brisnehan Affidavit* at p.3 ¶ 12.

In July of 2018, Defendants' contractor submitted a remediation work plan on Defendants' behalf to the Department for approval. *Id.* at p.3 ¶ 11. The Department approved the work plan later that same month. *Id.* The contractor also presented Defendants with the proposed plan and cost estimate for the remaining Remediation Work, along with a request for approval to move forward with the work. *Id.* In September of 2018, the contractor notified the Department it had not obtained approval to implement the remaining Remedial Work. *Id.* Defendants owe approximately \$40,000 to the contractor for services in relation to the Remedial Work performed to date. *Id.* at p.3 ¶ 12.

The remediation work plan proposes implementing the remaining Remediation Work in three phases: Phase I would cost approximately \$143,000 to \$193,000; and Phases II and III would together cost approximately \$400,000 to \$600,000. *Id.* The total cost of remediation would thus be approximately \$543,000 to \$833,000. *Id.*

On August 15, 2018, the Colorado Securities Commissioner filed a civil fraud action against three of the five Defendants – Gary Dragul, GDA REM, and GDA RES in *Rome v. Dragul, et al.*, Denver County District Court Case No. 2018CV33011 (“Fraud Action”). On August 30, 2018, Judge Egelhoff granted the parties’ Stipulated Order Appointing Receiver (“Fraud Receiver Order”), **attached hereto as Exhibit 3**, staying “all actions in equity or at law against the Fraud Receiver, Dragul, GDA RES, and GDA REM, or the Receivership Estate.” *Id.* at p.18 ¶ 26. The Fraud Receiver Order defined the “Receivership Estate” as the assets of Gary Dragul, GDA RES, GDA REM, as well as assets of subsidiaries or related companies. *Id.* at p.3 ¶ 9.

On September 26, 2018, Defendants filed a Notice of Receivership and Stay in the instant case (“Stay Notice”), **attached hereto as Exhibit 4**. The Stay Notice incorrectly states the assets of all Defendants are part of the Fraud Action’s Receivership Estate. *Id.* at p.2 ¶ 3. Mr. Metz is not a party to the Fraud Action, and there is no reason why Mr. Metz’ assets would be considered part of the

Receivership Estate. As such, the Fraud Receiver Order's stay provision does not apply to Mr. Metz or his assets.

Mr. Metz willfully violated the Remediation Order by not funding the Remediation Work in derogation of the authority and dignity of the Court.

THEREFORE, THE DEPARTMENT REQUESTS THIS COURT TO:

1. Issue an Order to Show Cause, directing the Clerk of the Court to issue a Citation to Show Cause, and set a Show Cause hearing requiring Mr. Metz to show cause why he should not be found in contempt of the Remediation Order;
2. If no cause is found, set the matter for a Contempt Hearing to coincide with the hearing requested in the Department's concurrently filed Motion to Amend the First Amended Receivership Order;
3. Re-open discovery for a three-month period for the limited purpose of obtaining relevant financial information regarding Mr. Metz' present ability to comply with the Remediation Order. Discovery shall be conducted pursuant to C.R.C.P. 26(b) and limited to:
 - a. 20 interrogatories;
 - b. 20 requests for production of documents; and
 - c. one deposition of Mr. Metz;
4. If found in contempt, impose remedial sanctions against Mr. Metz requiring him to fund the Remediation Work, or a portion thereof;
5. Award the Department its reasonable attorney fees in connection with this Motion; and
6. Provide such other relief as the Court determines is appropriate.

Respectfully submitted this 23rd day of January, 2019.

PHILIP J. WEISER
Attorney General

*E-filed pursuant to C.R.C.P. 121 § 1-26. A duly
signed original is on file at the Colorado
Department of Law.*

/s/ Jason E. King

JASON E. KING, 34376*

Senior Assistant Attorney General

MARY EMILY SPLITEK, 46619*

Assistant Attorney General

Hazardous & Solid Waste/CERCLA Litigation
Unit

Natural Resources & Environment Section
Attorneys for Colorado Department of Public
Health and Environment

*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **MOTION FOR ORDER TO SHOW CAUSE AND CONTEMPT CITATION AGAINST DEFENDANT AARON METZ, AND TO RE-OPEN DISCOVERY (with Exhibits 1-4 and Proposed Order)** upon the following Parties this 23rd day of January, 2019, via the Colorado Courts E-Filing System, as follows:

Party Name	Party Type	Party Status	Attorney Name
Aaron Metz	Defendant	Active	Brian Rowland Leedy (Haddon Morgan and Foreman PC) Laura A Menninger (Haddon Morgan and Foreman PC)
Brian J. Baker	Receiver	Active	Brad W Schacht (Otten Johnson Robinson Neff and Ragonetti PC)
Gary Dragul	Defendant	Active	Benjamin Alexander Kahn (The Conundrum Group LLP) Megan Rae Kahn (The Conundrum Group LLP)
GDA Co	DBA	Active	N/A
GDA Real Estate Mgmt Inc	Defendant	Active	Jason Bryan Wesoky (Darling Milligan PC)
GDA Real Estate Serv LLC	Defendant	Active	Benjamin Alexander Kahn (The Conundrum Group LLP) Megan Rae Kahn (The Conundrum Group LLP)
Mlmt 2005-LC1 Yale Retail LLC	Plaintiff	Active	Gregory Paul Szewczyk (Ballard Spahr LLP) Patrick Harold Pugh (Ballard Spahr LLP)
Ym Retail 07 A LLC	Defendant	Active	Jason Bryan Wesoky (Darling Milligan PC)

/s/ Laura F. Kelly

Laura F. Kelly

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202-5385 Tel: (303) 649-6355</p>	<p>DATE FILED: September 23, 2013 8:36:19 PM FILE NO: D2605D965F3E338 CASE NUMBER: 2013CV36076</p>
<p>Plaintiff: COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, v. Defendant: YM RETAIL 07 A, LLC, GDA REAL ESTATE MANAGEMENT, INC., GDA REAL ESTATE SERVICES, LLC d/b/a THE GDA COMPANIES, GARY DRAGUL, AND AARON METZ And Plaintiff: MLMT 2005-LCT YALE RETAIL, LLC v. Defendant: YM RETAIL 07 A, LLC</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p><i>Attorneys for Defendants GDA Real Estate Management, Inc. and YM Retail 07 A, LLC</i> Jason B. Wesoky, #34241 Darling Milligan PC 1331 17th Street, Suite 800 Denver, CO 80202 Phone: 303-623-9133 Fax: 303-623-9129 Email: jwesoky@darlingmilligan.com</p> <p><i>Attorneys for Defendants GDA Real Estate Services, LLC, Gary Dragul and Aaron Metz</i> Benjamin A. Kahn, #29073 Megan R. Kahn, #42093 The Conundrum Group, LLP Attorneys at Law P.O. Box 848 Salida, CO 81201 Phone Number 303-377-7890 Facsimile : 888-788-4457 E-mail: ben@conundrumlaw.com megan@conundrumlaw.com</p>	<p>Case No.: 2013CV33076</p> <p>(Consolidated with 2013CV34476, for administrative purposes only)</p> <p>Division/Ctrm.: 203</p>
<p style="text-align: center;">NOTICE OF RECEIVERSHIP AND STAY</p>	

Defendants, YM Retail 07 A, LLC (“YM Retail”), GDA Real Estate Management, LLC (“GDAREM”) GDA Real Estate Services, LLC d/b/a The GDA Companies, and Gary J. Dragul (“Dragul”), hereby submit this Notice of Receivership and Stay.

1. On August 30, 2018, a Stipulated Order Appointing Receiver (the “Receivership Order”) was entered in *Rome v. Dragul, et al.*, Case No. 2018CV33011, Denver County District Court (the “Receivership Court”) appointing Harvey Sender as Receiver for Dragul, GDAREM and a number of related entities. A true and correct copy of the Receivership Order is attached hereto as **Exhibit A**.

2. The Receivership Order expressly enjoins and stays all actions that may affect the Receivership Estate. *See Ex. A*, at ¶ 26, at 18, ¶ 9, at 3, and Complaint for Injunctive and Other Relief, attached hereto as **Exhibit B**, at ¶ 21, at 5. The Receivership Estate includes:

Dragul [...] GDARES, GDAREM, and all of their assets, including, but not limited to, all real and personal property, including tangible and intangible assets, their interests in any subsidiaries or related companies, management and control rights, claims, and causes of action, wherever located, including without limitation the “LLC Entities” identified in the Commissioner’s Motion and Complaint for Injunctive and Other Relief, or assets (including those of Dragul) of any kind or of any nature whatsoever related in any manner, or directly or indirectly derived, from investor funds from the solicitation or sale of securities as described in the Complaint, or derived indirectly or indirectly from investor funds.

Ex. A, at ¶ 9.

3. The assets of the defendants in this case are part of the Receivership Estate and this action may therefore affect the Receivership Estate. The case is therefore stayed. *See id.*

4. The Receivership Order directs the Receiver to request an Order to Show Cause if any person commences or continues the prosecution of any action in any other court seeking relief in equity or at law against the Receivership Estate without first obtaining relief from the Receivership Court. **Ex. A**, at ¶ 26, at 18.

5. This Notice has been filed at the direction of and with the consent of the Receiver.

DATED: September 26, 2018.

Darling Milligan P.C.

s/ Jason B. Wesoky

Jason B. Wesoky, #34241

Attorneys for Defendants GDA Real Estate Management, Inc. and YM Retail 07 A, LLC

The Conundrum Group, LLP Attorneys at Law

s/Benjamin A. Kahn
Benjamin A. Kahn, #29073
*Attorneys for Defendants GDA Real Estate
Services, LLC, Gary Dragul and Aaron Metz*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 26th day of September, 2018, a true and correct copy of **Notice of Receivership and Stay** was filed and served via the Colorado Courts E-Filing system to the following:

RECEIVER:

Mr. Brian J. Baker
Court Appointed Receiver
1401 Lawrence Street, Suite 1100
Denver, Colorado 80202
E-mail: b.baker@cushwake.com

COUNSEL FOR COLO. DEPT. OF HEALTH:

Mr. Jason E. King
Office of the Colo. A.G.
1300 North Broadway, FL 10
Ralph L. Carr Colorado Judicial Center
Denver, CO 80203-2104
E-mail: jason.king@coag.gov

COUNSEL FOR MLMT 2005-LC1 YALE

RETAIL:

Mr. Gregory P. Szewczyk
Mr. Patrick H. Pugh
Ballard Spahr, LLP
1225 17th Street, Suite 2300
Denver, CO 80202-5596
E-mail: szewczyk@ballardspahr.com
E-mail: pughp@ballardspahr.com

COUNSEL FOR RECEIVER:

Mr. Brad W. Schacht
Otten Johnson Robinson Neff & Ragonetti, PC
950 17th Street, Suite 1600
Denver, CO 80202
E-mail: brad@ottenjohnson.com

/s/LeighAn M. Jaskiewicz

LeighAn M. Jaskiewicz, Paralegal

In accordance with C.R.C.P. 121 § 1-26(7), a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the Court upon request.

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street, Room 256 Denver, CO 80202</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr style="width: 20%; margin: auto;"/> <p style="text-align: center;">Case No. 2013CV33076 Division: 203</p>
<p>Plaintiff: COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT,</p> <p>v.</p> <p>Defendant: YM RETAIL 07 A, LLC, GDA REAL ESTATE MANAGEMENT, INC., GDA REAL ESTATE SERVICES, LLC d/b/a THE GDA COMPANIES, GARY DRAGUL, AND AARON METZ</p>	
<p>LAURA A. MENNINGER, #34444 BRIAN R. LEEDY, #35940 JEFFREY S. PAGLIUCA, #12462 HADDON, MORGAN AND FOREMAN, P.C. 150 East 10th Avenue Denver, CO 80203 Tel 303.831.7364 Fax 303.832.2628 lmenninger@hmflaw.com bleedy@hmflaw.com jpagliuca@hmflaw.com <i>Attorneys for Aaron Metz</i></p>	
<p style="text-align: center;">AARON METZ’S MOTION FOR ORDER TO SHOW CAUSE AND CONTEMPT CITATION AGAINST DEFENDANTS GARY DRAGUL, GDA REAL ESTATE MANAGEMENT, INC., AND GDA REAL ESTATE SERVICES, LLC d/b/a THE GDA COMPANIES</p>	

Aaron Metz, by and through Haddon, Morgan & Foreman, P.C., hereby moves this Court, pursuant to C.R.C.P. 107, to direct the issuance of citations to Defendants Gary Dragul (“Dragul”), GDA Real Estate Management, Inc. (“GDA REM”), and GDA Real Estate Services, LLC (“GDA RES,” collectively with GDA REM, the “GDA Entities”), ordering them to appear

before the Court to show cause why they should not be held in contempt for violation of the Stipulation and Order Regarding Parties' Settlement Agreement dated January 20, 2015 ("Remediation Order"), attached hereto as Exhibit 1, and thereafter, issue an order requiring Dragul, GDA REM and GDA RES to pay remedial contempt sanctions.

Mr. Metz has filed a Motion to Intervene and a Motion to Lift the Stay for purposes of this Order to Show Cause and Contempt Citation request in *Cheval v. Dragul, et. al.*, 2018CV33011 ("Civil Fraud Action"). In that case, on August 30, 2018, the Court appointed Harvey Sender as Receiver and a issued a stay barring litigation against Dragul and the Dragul Entities ("Fraud Receivership Order"). *See* Notice of Receivership and Stay (Sept. 26, 2018). Mr. Metz also has moved to consolidate this action with the Civil Fraud Action.

BACKGROUND

On January 19, 2015, defendants Dragul and the Dragul Entities, through counsel, signed a settlement agreement to resolve claims brought against them by CDPHE to force environmental remediation of a property owned and managed by Dragul and the Dragul Entities located at 6460 E. Yale Ave. (the "Property"). On January 20, 2015, Judge Madden, signed the settlement agreement, rendering it an order of the Court ("Remediation Order").

The Remediation Order provides, in pertinent part, that:

(4) Defendants shall cause remedial work to be performed at the Property sufficient to bring the Property into compliance with the Colorado Hazardous Waste Act, C.R.S. § 25-15-101 *et seq.*, the Colorado Hazardous Waste Regulations, 6 C.C.R. 1007-3, the Colorado Basic Standards for Groundwater, 5 C.C.R. 1002-41, and other applicable state laws and regulations pertaining to environmental pollution (the "Work")....

(8) Funding of the Work

(a) The “Cost of the Work” shall mean all out-of-pocket costs paid to third-party contractors and environmental consultants hired by Defendants to complete the Work.

(b) Defendants shall be responsible for paying the Cost of the Work to the Contractors....

(d) In the event that the Cost of the Work is in excess of \$250,000, Defendants shall be solely responsible for such excess.

(9) Defendants shall cause the Work to be commenced on or before August 3, 2015. Defendants are jointly and severally liable for performing the Work. ...

(14) Scope and Effect of Agreement

(a) Upon Court approval, this Stipulation shall be binding upon the Parties, the Receiver, and their successors and assigns....

(c) Until termination of this Stipulation and satisfaction of Defendants’ obligations under the Stipulation, this Court shall retain jurisdiction over both the subject matter of this Stipulation and the Parties.

(d) Defendants’ non-compliance with the terms of this Stipulation shall be enforceable by a contempt action before the Court.

Ex. 1 at 2-3.

In July 2018, a contractor hired by Dragul and the Dragul Entities, Terracon, submitted a remediation work plan to CDPHE for approval. Affidavit of Colleen Brisnehan (Ex. 2) at 3, ¶ 11. CDPHE approved the work plan later that month. *Id.* Terracon presented Dragul and the Dragul Entities with the proposed plan and cost estimate for the remaining remediation work, along with a request for approval to move forward with the work. *Id.* In September 2018, Terracon informed CDPHE it had not obtained approval to implement the remaining work. *Id.* GDA, one of the Dragul Entities, reportedly owes approximately \$40,000 to Terracon for services in relation to work previously performed. *Id.* at ¶ 12 & Ex. A (Letter of Terracon to Brisnehan dated Nov. 13, 2018) (“GDA owes Terracon approximately \$40,000 for work that has already been completed on the project.”).

Receiver Cordes & Co., appointed to oversee remediation of the remaining parcel of the “Property” owned by YM Retail in *MLMT 2005-LC1 Yale Retail, LLC v. YM Retail 07 A, LLC.*, Case No. 13CV34476, reports that the current estimated cost to complete Phase 1 of the Terracon proposal is \$207,600. *See* Second Report of Receiver Dated Nov. 11, 2019 at 3. However, Cordes & Co. estimates that it can currently commit only \$78,000 towards Phase 1 tasks. *Id.* Cordes & Co. has not ascertained with any certainty the cost of completing Phases 2 or 3 of the Terracon proposal. *Id.* at Ex. II.

Defendants Dragul and the Dragul Entities have not provided additional funds to allow Cordes & Co. to proceed with Phase 1 tasks. Ex. 2, *Brisnehan Affidavit* at ¶ 12.

Dragul and the Dragul Entities are in violation of the Remediation Order by not funding the Work in derogation of the authority and dignity of the Court.

THEREFORE, AARON METZ REQUESTS THIS COURT TO:

1. Issue an Order to Show Cause, directing the Clerk of the Court to issue a Citation to Show Cause, and set a Show Cause hearing requiring Gary Dragul, GDA RES and GDA REM to show cause why they should not be found in contempt of the Remediation Order;
2. If no cause is found, set the matter for a Contempt Hearing;
3. If found in contempt, impose remedial sanctions against Dragul, GDA REM and GDA RES in the amount necessary to complete the Work as defined by the Remediation Order;
4. Award Mr. Metz his reasonable attorney fees in connection with this Motion; and
5. Provide such other relief as the Court determines is appropriate.

Dated: December 13, 2019.

Respectfully submitted,

s/ Laura A. Menninger

LAURA A. MENNINGER, #34444

BRIAN R. LEEDY, #35940

JEFFREY S. PAGLIUCA, #12462

HADDON, MORGAN AND FOREMAN, P.C.

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lmenninger@hmflaw.com

bleedy@hmflaw.com

jpagliuca@hmflaw.com

Attorneys for Aaron Metz

Certificate of Service

I certify that on December 13, 2019, a copy of this *AARON METZ'S MOTION FOR ORDER TO SHOW CAUSE AND CONTEMPT CITATION AGAINST DEFENDANTS GARY DRAGUL, GDA REAL ESTATE MANAGEMENT, INC., AND GDA REAL ESTATE SERVICES, LLC d/b/a THE GDA COMPANIES* was served via upon the following:

s/ _____

DISTRICT COURT, DENVER COUNTY, COLORADO 1437 Bannock Street, Room 256 Denver, CO 80202	DATE FILED: January 20, 2015 CASE NUMBER: 2013CV33076 <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Plaintiff: COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT v. Defendants: YM RETAIL 07 A, LLC; GDA REAL ESTATE MANAGEMENT, INC; GDA REAL ESTATE SERVICES, LLC d/b/a THE GDA COMPANIES; GARY DRAGUL; AND AARON METZ	
<i>Attorneys for Defendants YM Retail 07 A, LLC and GDA Real Estate Management, Inc.</i> Jonathan G. Pray, #36576 BROWNSTEIN HYATT FARBER SCHRECK, LLP 410 Seventeenth Street, Suite 2200 Denver, CO 80202 Phone: 303.223.1100 Fax: 303.223-1111 Email: jpray@bhfs.com <i>Attorneys for Defendants GDA Real Estate Services, LLC, Gary Dragul and Aaron Metz</i> Benjamin A. Kahn, #29073 Megan R. Kahn, #42093 The Conundrum Group, LLP Attorneys at Law P.O. Box 848 Salida, CO 81201 Phone Number 303-377-7890 Fax: 888-788-4457 Email: ben@conundrumlaw.com megan@conundrumlaw.com	Case Number: 2013CV33076 (previously consolidated with 2013CV34476) Division: 203
STIPULATION AND PROPOSED ORDER REGARDING PARTIES' SETTLEMENT AGREEMENT	

This Stipulation Regarding Parties' Settlement Agreement (the "Stipulation") is made by and between Defendants YM Retail 07 A, LLC, GDA Real Estate Management, Inc., GDA Real Estate Services, LLC, Gary Dragul and Aaron Metz (collectively, "Defendants"), and the Colorado Department of Public Health and Environment ("CDPHE"). Defendants and CDPHE are collectively referred to herein as the "Parties," and each individually as a "Party."

EXHIBIT 1

EXHIBIT A

1. YM Retail 07 A, LLC (“Owner”) is the owner of that certain real property described in Exhibit A to the Receivership Order, as that term is defined below (the “Property”).

2. Brian J. Baker (“Receiver”) is acting as the court-appointed receiver of the Property pursuant to that certain Order Granting Ex Parte Verified Motion for Appointment of Receiver dated on or about October 17, 2013 by the Denver District Court (the “Receivership Order”) issued in the litigation styled as MLMT 2005-LC1 Yale Retail, LLC v. YM Retail 07 A, LLC, Case No. 2013-CV-34476 (the “Receivership Litigation”).

3. The Receiver believes that the environmental remediation of the Property set forth below will enhance the value of the Property in an amount in excess of the costs of performing such work. The Receiver therefore believes that the settlement described below is in the best interests of the Receivership Estate, and the Receiver is willing to perform according to the terms set out below.

4. Defendants shall cause remedial work to be performed at the Property sufficient to bring the Property into compliance with the Colorado Hazardous Waste Act., C.R.S. § 25-15-101 *et seq.*, the Colorado Hazardous Waste Regulations, 6 C.C.R. 1007-3, the Colorado Basic Standards for Groundwater, 5 C.C.R. 1002-41, and other applicable state laws and regulations pertaining to environmental pollution (the “Work”).

5. Defendants and the Receiver have estimated that the cost of the Work will be between \$126,540 and \$252,200.

6. Beginning in January, 2015, Defendants shall collectively make eight monthly payments to an escrow account the (“Escrow”) held by a third party escrow company in the amount of \$12,500, for a total of \$100,000 (the “Defendant’s Contribution”).

7. The Receiver shall deposit \$150,000 in the Escrow on August 3, 2015 (the “Receiver Contribution”).

8. FUNDING OF THE WORK.

a. The “Cost of the Work” shall mean all out-of-pocket costs paid to third-party contractors and environmental consultants hired by Defendants to complete the Work (collectively, the “Contractors”).

b. Defendants shall be responsible for paying the Cost of the Work to the Contractors. Defendants shall hire and supervise Casey Resources, Inc. (“Casey”) or another environmental contractor mutually agreeable to the Parties to bid and supervise the Work. The Receiver shall be entitled to review and promptly comment on all communications between Defendants and Casey and between Defendants and CDPHE relating to the performance of the Work.

c. In the event that the Cost of the Work is less than \$250,000, Defendants and the Receiver will cause the difference between \$250,000 and the Cost of the Work to be released from the Escrow to the Owner and Receiver in proportionate shares based on their respective contributions upon receipt of a “no action letter” or equivalent.

d. In the event that the Cost of the Work is in excess of \$250,000, Defendants shall be solely responsible for any such excess.

9. Defendants shall cause the Work to be commenced on or before August 3, 2015. Defendants are jointly and severally liable for performing the Work. The Receiver shall cause Defendants and the Contractors to be granted access to the Property for the purposes of completing the Work. Defendants and the Receiver shall enter into such other contracts, agreements, and stipulations as are necessary to effect the purposes of this Stipulation.

10. To facilitate the Receiver’s Contribution, the Parties request that Paragraph 24 of the Receivership Order be modified to allow the Receiver to retain the amount necessary to fund the Receiver’s Contribution, in addition to the amounts up to \$20,000 that the Receiver may currently retain.

11. Defendants confess liability for a civil penalty in the amount of \$62,500, which shall be paid to CDPHE’s Hazardous Materials & Waste Management Division in five monthly installments of \$12,500, beginning on September 1, 2015.

12. Nothing in this Stipulation shall be construed to alter, affect, or modify Defendants’ rights, if any, against the plaintiff in the Receivership Litigation (the “Lender”) or the Lender’s rights, if any, against Defendants in any proceeding or under the Promissory Note and other loan documents more specifically described in the Receivership Order.

13. Each Party shall execute all instruments and documents and take all actions as may be reasonably required to effectuate this Stipulation.

14. SCOPE AND EFFECT OF AGREEMENT

a. Upon Court approval, this Stipulation shall be binding upon the Parties, the Receiver, and their successors and assigns.

b. This Stipulation shall remain an enforceable Order of the Court until the Court determines, in response to a petition by any Party, that all requirements of the Stipulation have been satisfied.

c. Until termination of this Stipulation and satisfaction of Defendants’ obligations under the Stipulation, this Court shall retain jurisdiction over both the subject matter of this Stipulation and the Parties.

d. Defendants’ non-compliance with the terms of this Stipulation shall be enforceable by a contempt action before the Court.

e. Upon Defendants' full compliance with this Stipulation, the Division shall stipulate to a dismissal of this case.

15. SIGNATORIES

a. Each undersigned representative of a Party to this Stipulation certifies that he or she is fully authorized to enter into the terms and conditions of this Stipulation and to execute and legally bind such Party to this document.

b. The Parties enter into this Stipulation and submit it to the Court for approval and entry as an Order of the Court, on this 19th day of January, 2015.

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Jason E. King, #34376*
Senior Assistant Attorneys General
Hazardous & Solid Waste Unit
Natural Resources and Environment Section
Attorneys for Plaintiff
*Counsel of Record

Undersigned counsel for the Receiver confirms and represents that the statements attributed above to the Receiver are true and correct.

TEMKIN WIELGA & HARDT LLP

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Attorneys for Brian J. Baker

SO ORDERED this 20th day of January, 2015. The Defendants, CDPHE, and the Receiver shall proceed according to the terms set out above.

BY THE COURT:



John W. Madden, IV
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of January, 2015, I electronically filed a true and correct copy of the **STIPULATION AND PROPOSED ORDER REGARDING PARTIES' SETTLEMENT AGREEMENT** with the clerk of Court using the Colorado ICCES system which will send notification of such filing and service upon the following counsel of record:

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s/Penny G. Lalonde
Penny G. Lalonde, Paralegal

<p>DISTRICT COURT, DENVER COUNTY, COLORADO</p> <p>1437 Bannock Street, Rm 256 Denver, CO 80202</p> <hr/> <p>COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT,</p> <p>Plaintiff,</p> <p>v.</p> <p>YM RETAIL 07 A, LLC, GDA REAL ESTATE MANAGEMENT, INC., GDA REAL ESTATE SERVICES, LLC d/b/a THE GDA COMPANIES, GARY DRAGUL, AND AARON METZ,</p> <p>Defendants.</p>	<p>DATE FILED: January 23, 2019 6:19 PM FILING ID: 605D965F3F338 CASE NUMBER: 2013CV33076</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>PHILIP J. WEISER, Attorney General JASON E. KING, Senior Asst. Attorney General* MARY EMILY SPLITEK, Asst. Attorney General* 1300 Broadway, 7th Floor, Denver, CO 80203 E-mail: jason.king@coag.gov; emily.splitek@coag.gov Phone Numbers: (720) 508-6283; (720) 508-6453 Registration Numbers: 34376, 46619 *Counsel of Record</p>	<p>Case No.: 13CV33076 (previously consolidated with 13-CV-34476)</p> <p>Courtroom: 203</p>
AFFIDAVIT OF COLLEEN BRISNEHAN	

Colleen Brisnehan, being duly sworn, states:

1. I have a degree in geophysical engineering. I am employed in the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and Environment (“the Department”). I have been employed by the Department for 18 years. As an Environmental Protection Specialist in the Department, I am responsible for ensuring that releases of hazardous waste are properly investigated and remediated.

2. The Department is the Colorado state agency vested with responsibility for enforcing the Colorado Hazardous Waste Act, C.R.S. §§ 25-15-101 et seq. (“the Act”) and implementing regulations, 6 C.C.R. 1007-3 (“Regulations”).
3. I have been working on the enforcement action against Defendants Gary Dragul, Aaron Metz, GDA Real Estate Management, Inc. (“GDA REM”), GDA Real Estate Services, LLC (“GDA RES”), and YM Retail 07 A, LLC (“YM Retail”) (collectively “Defendants”) since 2013. The subject of this action is a former dry cleaning facility located at 6460 E. Yale Ave., Denver, Colorado (“Property”). The Department has been working to address hazardous waste contamination at the Property since 2006 when Defendants, through an environmental consultant, informed the Department of a release of a dry cleaning solvent known as perchloroethylene (“PCE”) at the Property.
4. I am the Department’s project manager responsible for ensuring that releases from the Property are mitigated and that Defendants meet their cleanup obligations. This involves the review of work plans and reports submitted by the Defendants and their contractors, and discussions with the Defendants, and/or their contractors through meetings, email and phone calls.
5. In 2008, Defendants submitted, and the Department approved, a “Corrective Action Plan” (“CAP”) to investigate and remediate the PCE contamination pursuant to the Act and the Regulations.
6. From 2008 to 2013, Defendants repeatedly failed to perform activities required under their CAP, including requirements to submit groundwater monitoring data and a remediation plan. By violating the CAP, Defendants also violated the Act and the Regulations. The Department met numerous times with Defendants over the five-year period, attempting to resolve these violations and resume investigations and remediation of the Property.
7. It appeared as though the cleanup was back on track when Defendants submitted a revised CAP in December 2012. However, Defendants took no action to implement the revised CAP after the Department approved it.
8. In 2015, Defendants admitted liability for cleanup actions at the Property and put aside \$250,000 to cover remedial work. Defendants agreed to provide additional funding should costs exceed \$250,000.

9. In November and December of 2015, soil remediation activities were conducted at the Property in accordance with a Division-approved remediation plan. The soil remediation involved the excavation of contaminated soil from an area located under the existing parking lot, which was previously the location of the former Silver State Cleaners. Additional site characterization conducted after completion of the soil excavation indicated soil and groundwater contamination remain beneath the existing building.
10. Due to my role in overseeing cleanup at the Property, I am aware that Casey Resources, a contractor Defendants hired to do required characterization and remedial work at the Property, conducted investigation and characterization work necessary to determine the extent of contamination from 2015 to 2017.
11. On July 2, 2018, Terracon Consultants, Inc. ("Terracon"), the Defendants' current contractor, submitted a remediation work plan to the Department on the Defendants' behalf. The plan includes installation of a groundwater treatment and monitoring system as well as a soil vapor extraction system to address indoor air contamination. The Department approved this plan on July 16, 2018. Terracon also provided Defendants with a detailed cost estimate for field work and other activities necessary to address contamination at the Property. On September 12, 2018, Terracon notified the Department that it has been unable to reach the Defendants to obtain approval to move forward with remediation. Terracon has thus stopped working at the site.
12. Funds set aside in 2015 are nearly depleted, and no new funds have been made available by Defendants. Terracon is owed approximately \$40,000 for previous work associated with work plan preparation and remediation design. Nov. 13, 2018 Letter from Terracon to Colleen Brisnehan, **attached hereto as Ex. A**, at 1. Full remediation would take place in three phases. *Id.* at 2. According to Terracon, Phase I would cost approximately \$143,000 to \$193,000, and Phases II and III would together cost approximately \$400,000 to \$600,000. *Id.* The total cost of remediation (including the \$40,000 currently owed to Terracon) is thus approximately \$583,000 to \$833,000.
13. While remediation of contaminated soils and groundwater is of long-term significance, there is an immediate need for funds to address indoor air contamination. In August 2017, indoor air samples found vapor concentrations above safe levels for workers in two units within the

contaminated building. There are now open saw cuts and holes in the concrete in those two units due to investigation by Defendants' contractor. These were temporarily left open in anticipation of the installation of a vapor mitigation system; however, they remain open because of Defendants' failure to give Terracon approval to implement the remediation work plan. The cuts and holes in the concrete make it easier for volatile organic compounds to move from the subsurface into the units, and as a result, indoor air conditions within the building have likely worsened and will need to be addressed immediately.

- 14. To date, Defendants have made no additional funds available for remediation at the Property.

I have nothing further to say.

Colleen Brisnehan
Colleen Brisnehan

1/18/19
Date

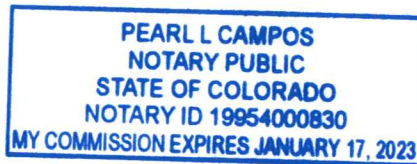
State of Colorado)
County of Denver)

Subscribed and sworn to before me in the county of Denver, State of Colorado, this 18 day of January, 2019.

Notary Public Pearl L. Campos

My Commission expires:

1/17/2023



DISTRICT COURT, DENVER COUNTY, COLORADO 1437 Bannock Street, Room 256 Denver, CO 80202	
Plaintiff: DAVID S. CHEVAL, ACTING SECURITIES COMMISSIONER FOR THE STATE OF COLORADO, v. Defendants: GARY DRAGUL; GDA REAL ESTATE SERVICES, LLC; AND GDA REAL ESTATE MANAGEMENT LLC	
Laura A. Menninger, #34444 Brian R. Leedy #35940 Jeffrey S. Pagliuca, #12462 HADDON, MORGAN AND FOREMAN, P.C. 150 East 10th Avenue Denver, CO 80203 Tel: 303.831.7364 Fax: 303.832.2628 lmessenger@hmflaw.com bleedy@hmflaw.com jpagliariuca@hmflaw.com <i>Attorneys for Aaron Metz</i>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr style="width: 20%; margin: auto;"/> <p style="text-align: center;">Case No. 2018CV33011</p> <p style="text-align: center;">Division: 424</p>
AARON METZ’S LIMITED OBJECTION TO PROPOSED SETTLEMENT AGREEMENT CONCERNING TURNOVER MOTION	

Aaron Metz, through his attorneys Haddon, Morgan & Foreman, P.C., hereby files this limited objection to the Receiver’s Motion to Approve Settlement Agreement with Dragul Concerning Turnover Motion.

Mr. Metz has filed a Motion to Intervene in this action as well as a Motion to Consolidate this action with the *CDPHE v. YM Retail*, Case No. 13-CV-33076, pending before Judge Whitney in Division 203. Subject to his right to intervene, he files this limited objection to the

proposed settlement agreement because the Receivership Order provides for Court approval within 10 days after the motion is filed and served.

Mr. Metz does not object to the Settlement Agreement to the extent it orders Dragul or the Dragul entities to surrender any property to the Receivership Estate. He does, however, object to the imposition of the entry of judgment against Mr. Dragul in the amount of \$120,000, only to the extent that such moneys reduce the funds available from Mr. Dragul to satisfy his obligations to fund remediation of the Property as he is obligated to do pursuant to the Remediation Order entered in *CDPHE v. YM Retail*. That Remediation Order, entered by the Court in 2015, obligates Mr. Dragul to joint and several liability with Mr. Metz, the Dragul Entities (defendants in this action) and YM Retail to fund the environmental clean-up of Property contaminated by PCE's. To the extent that the payment of a judgment in this case reduces the amount of money Mr. Dragul has available to satisfy his obligations to fund remediation in the environmental action, Mr. Metz objects.

Because of the potential for conflict between the resolutions in this case and the *CDPHE* case, Mr. Metz has moved to consolidate the two actions into one court. He also has moved to moved to lift the stay barring him from seeking recovery from Mr. Dragul or the Dragul Entities towards any remediation award imposed in that action. For the additional reasons articulated in those Motions, Mr. Metz likewise requests notice and an opportunity to be heard in this case on the propriety of a judgment as against Mr. Dragul given the unfunded remediation in the *CDPHE* matter.

Dated December 13, 2019.

Respectfully submitted,

s/ Laura A. Menninger

Laura A. Menninger, #34444

Brian R. Leedy, #35940

Jeffrey S. Pagliuca, #12462

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Attorneys for Aaron Metz

Certificate of Service

I certify that on December 13, 2019, a copy of this *Aaron Metz's Limited Objection to Proposed Settlement Agreement Concerning Turnover Motion* was served via Colorado Courts E-filing system and or U.S. Postal Mail to the following parties:

s/ _____