

<p>DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202 720.865.8612</p>	<p>DATE FILED: January 14, 2020 10:49 AM FILING ID: A2C9EF03172B5 CASE NUMBER: 2018CV33011</p>
<p>Plaintiff: David S. Cheval, Acting 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>▲ COURT USE ONLY ▲</p>
<p>Attorneys for Receiver:</p> <p>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>Case Number: 2018CV33011</p> <p>Division/Courtroom: 424</p>
<p style="text-align: center;">RECEIVER’S MOTION TO APPROVE FOUR SETTLEMENT AGREEMENTS</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”), asks the Court to enter an order approving four settlement agreements identified below. Copies of the

settlement agreements are submitted as **Exhibits 1-4** (the “Settlement Agreements”).

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), 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, as well as their interests and management rights in related affiliated and subsidiary businesses (the “Receivership Estate” or the “Estate”). Receivership Order at 2, ¶ 5.

4. Under the Receivership Order, the Receiver has the authority to prosecute causes of action against third-parties, including claims held by creditors. Receivership Order ¶¶ 13(o) & (s).

5. The Receiver identified claims, including claims under COLO. REV. STAT. § 38-8-101-113, against the four settling parties identified below. On August 30, 2019, the Receiver filed a complaint in Denver District Court against Bank of America,

American Express Company, and Discover Bank seeking to recover what the Receiver alleged were fraudulent transfers they received from Dragul and the GDA entities, Case No. 2019CV33375. That case was removed to the United States District Court in Colorado and is pending as *Sender v. Bank of Am., et al.*, Case No. 1:19-cv-02875-WJM-NYW.

6. On August 30, 2019, the Receiver also filed a similar complaint against Joseph Peirce in Denver District Court also seeking to recover fraudulent transfers Mr. Peirce received from Dragul and the GDA entities, *Sender v. Becker, et al.*, Case No. 2019CV33374. Before commencing these actions, the Receiver contacted potential defendants in an effort to resolve claims against before filing a lawsuit. This process resulted in the settlement with Mr. Meer.

7. The proposed Settlement Agreements resolve the disputes between the Receiver and the four parties listed below regarding certain transfers they received from Dragul and the GDA entities before the Receiver was appointed.

	Party	Claim Amount	Proposed Settlement
1.	Richard Meer	\$7,532.00	\$3,766.00
2.	American Express Company	\$80,769.00 ¹	\$80,769.00

¹ The Receiver’s initial claim against American Express was for \$8,308,946.42. As a result of informal discovery, the Receiver determined that AMEX had defenses to the majority of the

	Party	Claim Amount	Proposed Settlement
3.	Discover Bank	\$10,597.97	\$8,478.37
4.	Joseph Peirce	\$8,203.00	\$3,500.00
	Total	\$107,101.97	\$96,513.37

II. The Settlement Agreements are in the best interests of the Estate and its creditors.

8. There exists little Colorado authority with respect to factors the Court should consider in determining whether to approve a Receiver’s settlement agreement. In analogous bankruptcy contexts, courts consider whether “the settlement is fair and equitable and in the best interests of the estate.” In considering whether to approve a settlement, bankruptcy courts consider four primary factors: “the probable success of the underlying litigation on the merits, the possible difficulty in collection of a judgment, the complexity and expense of the litigation, and the interests of creditors in deference to their reasonable views.” *Kopp v. All Am. Life Ins. Co. (In re Kopexa Realty Venture Co.)*, 213 B.R. 1020, 1022 (B.A.P. 10th Cir. 1997); *Kaiser Steel Corp. v. Frates (In re Kaiser Steel Corp.)*, 105 B.R. 971, 977 (D. Colo. 1989). Courts also recognize that deference should be given to the business judgment

transfers at issue and that the Estate’s maximum recovery from AMEX was \$80,769.00, which is the amount of the proposed AMEX settlement.

of the Receiver. *See, e.g., In re OptInRealBig.com, LLC*, 345 B.R. 277, 291 (Bankr. D. Colo. 2006) (deferring to the business judgment of the bankruptcy trustee).

9. Considering these factors, the Court should approve the Settlement Agreements. Although the Receiver believes his claims to recover the transfers to the settling parties are strong, the settling parties could, and would be expected to, raise various defenses to those claims. The proposed agreements resolve those potential litigation claims without further expense or litigation risk, will result in the dismissal of the pending actions against the settling parties thereby eliminating significant litigation costs for the Estate and result in the prompt payment of funds to the Estate.

10. Pursuant to paragraph 10 of the Receivership Order, Court approval of any motion filed by the Receiver shall be given as a matter of course within 10 days after the motion is filed and served. As reflected by the certificate of service below, this Motion is being served on all parties who have appeared in this case and on all currently known creditors of the Estate.

WHEREFORE, the Receiver asks the Court to enter an Order approving the Settlement Agreements.

Dated: January 14, 2020.

ALLEN VELLONE WOLF HELFRICH & FACTOR
P.C.



By: /s/ Michael T. Gilbert

Patrick D. Vellone

Michael T. Gilbert

Rachel A. Sternlieb

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E-mail: rsternlieb@allen-vellone.com

ATTORNEYS FOR THE RECEIVER

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2020, I served a true and correct copy of the foregoing **RECEIVER'S MOTION TO APPROVE FOUR SETTLEMENT AGREEMENTS** via CCE to the following:

Robert W. Finke
Sueanna P. Johnson
Ralph L. Carr Judicial Building
1300 Broadway, 8th Floor
Denver, Colorado 80203
Robert.Finke@coag.gov
Sueanna.Johnson@coag.gov

*Counsel for David S. Cheval, Acting
Securities Commissioner*

Jeffery A. Springer
Springer and Steinberg P.C.
1600 Broadway, Suite 1200
Denver, Colorado 80202
jspringer@springersteinberg.com

*Counsel for Defendants, Gary
Dragul, GDA Real Estate Services,
LLC and GDA Real Estate
Management, LLC*

A copy of the Motion was also served by electronic mail and/or U.S. Mail first-class, postage-prepaid on all currently known creditors of the Receivership Estate to the addresses set forth on the service list maintained in the Receiver's records. A Copy of the Motion was additionally served by electronic mail to the following:


Joe Goldhammer, Esq.
joe@rosenblattgosch.com
John Berman, Esq.
jab@jaberman.com
Counsel for Richard Meer

John Bernstein, Esq.
John.Bernstein@KutakRock.com
Counsel for Chase Bank, N.A.

John A. Chanin, Esq.
jchanin@fostergraham.com
Frank N. White, Esq.
Frank.White@AGG.com
*Counsel for American Express
Company*

Erin Edwards, Esq.
Erin.edwards@akerman.com
Counsel for Bank of America, N.A.

Katie Beaudin, Esq.
kbeaudin@sycr.com
Counsel for Discover Bank


/s/ Teresa Silcox

Settlement Agreement and Mutual Release

I. Parties

DATE FILED: January 14, 2020 10:49 AM
FILING ID: A2C9EF03172B5
CASE NUMBER: 2018CV33011

This Settlement Agreement and Mutual Release ("Agreement") is entered into on November 11, 2019, by and between Richard Meer ("Meer") and Harvey Sender (the "Receiver"), in his capacity as Receiver for Gary J. Dragul ("Dragul"), GDA Real Estate Services, LLC ("GDARES"), GDA Real Estate Management, LLC ("GDAREM"), and a number of related entities (the "Estate"). Dragul, GDARES, GDAREM, and all related entities are referred to as "Dragul and the GDA Entities"; Meer and the Receiver are each a "Party," and jointly the "Parties."

II. Recitals

A. On August 30, 2018, the Court in *Rome v. Gary Dragul, et al.*, Case No. 2018CV33011 Denver County District Court (the "Receivership Action"), entered a Stipulated Order Appointing Receiver ("Receivership Order") which appointed the Receiver.

B. Under the Receivership Order, the Receiver is authorized, among other things, to take immediate possession and control of all of the assets of the Estate, to investigate any pursue all claims and causes of action on behalf of the Estate, including claims on behalf of creditors premised on fraudulent transfer or similar theories.

C. Based on the Receiver's investigation, numerous investors lost some or all of their principal investments with Dragul and the GDA Entities, and the Receiver has identified claims the Estate has against Meer to recover transfers Meer received from Dragul and the GDA Entities (the "Claims").

D. The Parties, after having conferred with counsel and made such inquiries as they deem reasonably necessary, and having had the opportunity to review such documents as they deem necessary and appropriate, now desire to settle all Claims that the Estate may have against Meer and that Meer may have against the Estate.

III. Covenants

For good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals Incorporated. The representations and recitals set forth above are true and correct and are made a part of this Agreement.
2. Receivership Court Approval. This Agreement is subject to approval by the Receivership Court and the Receiver shall file a motion requesting approval of

the Agreement by the Receivership Court. If this Agreement is challenged by anyone as not being fair, adequate, or reasonable, the Receiver shall take reasonable steps to defend this Agreement and to affirm the Receiver's view that the terms of the Agreement are fair and equitable to the Estate and all parties in interest. The Agreement shall be deemed null and void if not approved by an order entered by the Receivership Court.

3. Effective Date. The Effective Date of this Agreement shall be the first business day after an order is entered by the Receivership Court approving it.

4. Settlement Payment. Within 10 days after the Effective Date, Meer shall pay the Estate \$3,766.00 (the "Settlement Payment"). The Settlement Payment shall be made payable to "Harvey Sender, Receiver" and delivered to counsel for the Receiver.

5. Mutual Releases.

a) Except for the obligations under this Agreement, upon the Receiver's receipt of the Settlement Payment, the Receiver on behalf of the Estate releases and forever discharges Meer and his representatives and agents from any and all claims, causes of action, manner of actions, debts, suits, rights, notes, covenants, liabilities, accounts, contracts, agreements, promises, damages, losses, attorneys' fees, costs and expenses, and demands whether known or unknown, matured or unmatured, accrued or unaccrued, direct or indirect, suspected or unsuspected, fixed or contingent, in law or equity, including without limitation claims for fraudulent transfer or fraud arising out of or relating in any manner to the Estate.

b) Upon the Effective Date, Meer, for himself, his predecessors, heirs, successors, assigns, agents, representatives, attorneys and all persons acting through and under him, releases and forever discharges the Receiver and the Estate, all creditors of the Estate, all persons who received transfers from Dragul and/or the GDA Entities (including, but not limited to, immediate and subsequent transferees) and their respective predecessors, successors, heirs, assigns, agents, representatives, attorneys, and all persons acting by, through or under them, whether or not the identity of such persons is known to Meer, from any and all claims, except for the obligations under this Agreement.

6. Compromise of Disputed Claims. It is expressly understood and agreed that the terms of this Agreement are contractual and not mere recitals and that the agreements contained herein, and the consideration transferred hereunder, are to compromise doubtful and disputed claims and that no releases or other consideration given shall be construed or considered an admission of liability. To the contrary, this Agreement is entered into to avoid litigation and any further dispute or claims and to buy peace to the extent described herein.

7. Specific Performance. The Receivership Court shall, upon application of any Party, require specific performance by any other Party of any obligation hereunder. The Parties consent to the jurisdiction and venue of the Receivership Court.

8. Waiver of Jury Trial. The Parties irrevocably and unconditionally waive to the fullest extent permitted by applicable law any right they may have to trial by jury of any claim or cause of action, or in any legal proceeding, directly or indirectly based upon or arising out of this Agreement.

9. Authorization. The Parties represent and warrant that no promise or inducement has been offered except as expressly set forth herein; that the person signing this Agreement on behalf of each Party is both authorized and legally competent to execute this Agreement and accepts full responsibility therefor; and, that it has not assigned, transferred or hypothecated any claim or interest identified herein.

10. Successors. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties and their legal representatives, successors and assigns, whether by operation of law or otherwise.

11. Controlling Law. This Agreement is made and entered into in the State of Colorado, and shall in all respects be interpreted, enforced, and governed by and under the laws of the State of Colorado, without reference to Colorado's law on conflicts of law.

12. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable.

13. Fair Interpretation. This Agreement is the product of negotiations between the Parties and shall be given fair interpretation. The Parties acknowledge this Agreement shall be deemed to have been mutually prepared so that the rule of construction that ambiguities are to be resolved against the drafting Party shall not be employed in interpreting this Agreement.

14. Parties Advised by Counsel. The Parties acknowledge they have been represented by counsel or have had the opportunity to consult with counsel with respect to this Agreement and all matters covered by and relating to it.

15. No Waiver of Breaches of Agreement. The failure by a Party to insist on strict compliance with any of the covenants or restrictions in this Agreement shall not be construed as a waiver, nor shall any course of action deprive a Party of the right to require strict compliance with this Agreement.

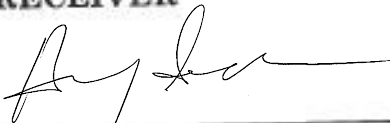
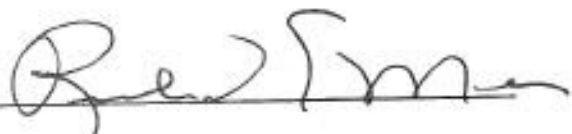
16. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with regard to the subject matter hereof and supersedes all prior and contemporaneous representations, contracts, or agreements of any nature. Any modification of any provision of this Agreement shall not be valid unless in writing and executed by the Parties.

17. Costs and Attorneys' Fees. Each Party shall bear its own costs and attorneys' fees incurred prior to the Effective Date. In connection with any litigation, mediation, arbitration, or other proceeding brought to enforce the terms of this Agreement, the prevailing Party shall be entitled to recover from the other Party its costs and reasonable attorneys' fees, through and including any appeal or post-judgment proceeding.

18. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the document. Signatures delivered by facsimile and email as electronic files shall be deemed effective as originals.

19. Headings and Titles. The headings and titles in this Agreement are for convenience only and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision herein.

IN WITNESS WHEREOF, the Parties hereto hereby execute this Agreement and as of the date first above written.

RECEIVER  _____ Harvey Sender Dated: <u>11-11-19</u>	RICHARD MEER  _____ Dated: <u>11-10-19</u>
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Settlement Agreement and Mutual Release

I. Parties

DATE FILED: January 14, 2020 10:49 AM

FILING ID: A2C9EF03172B5

CASE NUMBER: 2018CV33011

This Settlement Agreement and Mutual Release (Agreement) is entered into on November __, 2019, by and between American Express Company (“AMEX”), and Harvey Sender (the “Receiver”), in his capacity as Receiver for Gary J. Dragul (“Dragul”), GDA Real Estate Services, LLC (“GDARES”), GDA Real Estate Management, LLC (“GDAREM”), and a number of related entities (the “Estate”). Dragul, GDARES, GDAREM, and all related entities are referred to as “Dragul and the GDA Entities”; AMEX and the Receiver are each a “Party,” and jointly the “Parties.”

II. Recitals

A. On August 30, 2018, the Court in *Rome v. Gary Dragul, et al.*, Case No. 2018CV33011 Denver County District Court (the “Receivership Action”), entered a Stipulated Order Appointing Receiver (“Receivership Order”) which appointed the Receiver.

B. Under the Receivership Order, the Receiver is authorized, among other things, to take immediate possession and control of all of the assets of the Estate, to investigate and pursue all claims and causes of action on behalf of the Estate, including claims on behalf of creditors premised on fraudulent transfer or similar theories.

C. Based on the Receiver’s investigation, numerous investors lost some or all of their principal investments with Dragul and the GDA Entities, and the Receiver has identified claims the Estate has against AMEX to recover credit card transfers AMEX received from Dragul and the GDA Entities (the “Claims”).

D. The Parties, after having conferred with counsel and made such inquiries as they deem reasonably necessary, and having had the opportunity to review such documents as they deem necessary and appropriate, now desire to settle all claims, including without limitation the Claims, that the Estate may have against AMEX and that AMEX may have against the Estate.

III. Covenants

For good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals Incorporated. The representations and recitals set forth above are true and correct and are made a part of this Agreement.

2. Receivership Court Approval. This Agreement is subject to approval by the Receivership Court and the Receiver shall file a motion requesting approval of

the Agreement by the Receivership Court. If this Agreement is challenged by anyone as not being fair, adequate, or reasonable, the Receiver shall take reasonable steps to defend this Agreement and to affirm the Receiver's view that the terms of the Agreement are fair and equitable to the Estate and all parties in interest. The Agreement shall be deemed null and void if not approved by an order entered by the Receivership Court, and in that event, the Receiver shall promptly return to AMEX any portion of the Settlement Payment, as provided and defined below, that has previously been delivered to the Receiver.

3. Effective Date. The Effective Date of this Agreement shall be the first business day after an order is entered by the Receivership Court approving it.

4. Settlement Payment. Within 30 (thirty) days after the later of (a) execution of this Agreement by both Parties and (b) delivery to AMEX's counsel of a current IRS Form W-9 completed by the payee designated below, AMEX shall pay the Estate \$80,769.00 (the "Settlement Payment"). The Settlement Payment shall be made payable to "Harvey Sender, Receiver" and delivered to counsel for the Receiver. In the event that the Settlement Payment is delivered to the Receiver prior to the Effective Date, the Receiver shall hold the Settlement Payment in trust pending the occurrence of the Effective Date.

5. Mutual Releases.

a) Except for the obligations under this Agreement, upon the Receiver's receipt of the Settlement Payment and occurrence of the Effective Date, the Receiver on behalf of the Estate releases and forever discharges AMEX, its affiliates (including, without limitation, American Express Travel Related Services Company, Inc. and American Express National Bank f/k/a American Express Centurion Bank and successor by merger to American Express Bank, FSB, and its representatives and agents from any and all claims, causes of action, manner of actions, debts, suits, rights, notes, covenants, liabilities, accounts, contracts, agreements, promises, damages, losses, attorneys' fees, costs and expenses, and demands whether known or unknown, matured or unmatured, accrued or unaccrued, direct or indirect, suspected or unsuspected, fixed or contingent, in law or equity, including without limitation claims for fraudulent transfer or fraud arising out of or relating in any manner to the Estate.

b) Upon the Effective Date, AMEX, for itself, its affiliates, predecessors, heirs, successors, assigns, agents, representatives, attorneys and all persons acting through and under it, releases and forever discharges the Receiver (in his capacity as such) and the Estate, and all creditors of the Estate (in their capacities as such), and all persons who received transfers from Dragul and/or the GDA Entities (including, but not limited to, immediate and subsequent transferees) and their respective predecessors, successors, heirs, assigns, agents, representatives, attorneys, and all persons acting by, through or under them,

whether or not the identity of such persons is known to AMEX, from any and all claims relating to such transfers, except for the obligations under this Agreement. For the avoidance of doubt, and notwithstanding the foregoing or any other provision of this Agreement, the release given by AMEX herein does not extend to any contractual obligations (including charges on credit or charge cards) by any entities or individuals other than Dragul and the GDA Entities.

6. Compromise of Disputed Claims. It is expressly understood and agreed that the terms of this Agreement are contractual and not mere recitals and that the agreements contained herein, and the consideration transferred hereunder, are to compromise doubtful and disputed claims and that no releases or other consideration given shall be construed or considered an admission of liability. To the contrary, this Agreement is entered into to avoid litigation and any further dispute or claims and to buy peace to the extent described herein.

7. Specific Performance. The Receivership Court shall, upon application of any Party, require specific performance by any other Party of any obligation hereunder. The Parties consent to the jurisdiction and venue of the Receivership Court.

8. Waiver of Jury Trial. The Parties irrevocably and unconditionally waive to the fullest extent permitted by applicable law any right they may have to trial by jury of any claim or cause of action, or in any legal proceeding, directly or indirectly based upon or arising out of this Agreement.

9. Authorization. The Parties represent and warrant that no promise or inducement has been offered except as expressly set forth herein; that the person signing this Agreement on behalf of each Party is both authorized and legally competent to execute this Agreement and accepts full responsibility therefor; and, that it has not assigned, transferred or hypothecated any claim or interest identified herein.

10. Successors. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties and their legal representatives, successors and assigns, whether by operation of law or otherwise.

11. Controlling Law. This Agreement is made and entered into in the State of Colorado, and shall in all respects be interpreted, enforced, and governed by and under the laws of the State of Colorado, without reference to Colorado's law on conflicts of law.

12. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable.

13. Fair Interpretation. This Agreement is the product of negotiations between the Parties and shall be given fair interpretation. The Parties acknowledge this Agreement shall be deemed to have been mutually prepared so that the rule of construction that ambiguities are to be resolved against the drafting Party shall not be employed in interpreting this Agreement.

14. Parties Advised by Counsel. The Parties acknowledge they have been represented by counsel or have had the opportunity to consult with counsel with respect to this Agreement and all matters covered by and relating to it.

15. No Waiver of Breaches of Agreement. The failure by a Party to insist on strict compliance with any of the covenants or restrictions in this Agreement shall not be construed as a waiver, nor shall any course of action deprive a Party of the right to require strict compliance with this Agreement.

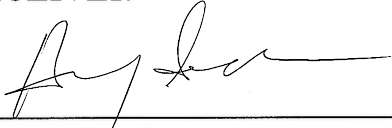

16. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with regard to the subject matter hereof and supersedes all prior and contemporaneous representations, contracts, or agreements of any nature. Any modification of any provision of this Agreement shall not be valid unless in writing and executed by the Parties.

17. Costs and Attorneys' Fees. Each Party shall bear its own costs and attorneys' fees incurred prior to the Effective Date. In connection with any litigation, mediation, arbitration, or other proceeding brought to enforce the terms of this Agreement, the prevailing Party shall be entitled to recover from the other Party its costs and reasonable attorneys' fees, through and including any appeal or post-judgment proceeding.

18. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the document. Signatures delivered by facsimile and email as electronic files shall be deemed effective as originals.

19. Headings and Titles. The headings and titles in this Agreement are for convenience only and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision herein.

IN WITNESS WHEREOF, the Parties hereto hereby execute this Agreement and as of the date first above written.

RECEIVER  _____ Harvey Sender Dated: <u>12-2-19</u>	AMERICAN EXPRESS COMPANY  _____ Its Representative Dated: <u>Nov. 26, 2019</u>
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RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement (“Agreement”) is made between Harvey Sender (the “Receiver”), as Receiver for Gary Dragul, GDA Real Estate Services, LLC, GDA Real Estate Management, LLC, and a number of related entities (collectively, the “GDA Persons”) and Discover Bank (“Discover”). Discover and the Receiver are each a “Party,” and jointly the “Parties.”

WHEREAS, on August 30, 2018, the Court in *Rome v. Gary Dragul, et al.*, Case No. 2018CV33011 Denver County District Court (the “Receivership Court”), entered a Stipulated Order Appointing Receiver (“Receivership Order”) which appointed the Receiver for the GDA Persons thereby creating the Receivership estate (“Estate”);

WHEREAS, under the Receivership Order, the Receiver is authorized, among other things, to take immediate possession and control of all of the assets of the Estate, to investigate and pursue the Estate’s claims and causes of action, including claims premised on fraudulent transfer or similar theories;

WHEREAS, the Receiver identified claims the Estate believes it has against Discover relating to certain transfers Discover received from the GDA Persons;

WHEREAS, Receiver sued Discover in the District Court, Denver County, State of Colorado, which action was later removed to the United States District Court for the District of Colorado, under Case No. 1:19-cv-02875-WJM-NYW (the “Lawsuit”), in connection with Discover® Card account number ending in 5730 (“the Account”);

WHEREAS, the Parties desire to settle, resolve, and dispose of any and all claims asserted in the Lawsuit in order to avoid expensive, time-consuming, and uncertain litigation;

WHEREAS, nothing contained herein is to be construed as an admission of liability on the part of Discover. To the contrary, Discover specifically denies any actual or constructive knowledge that any monies paid to Discover in relation to the Account allegedly were related to illegal activity, and denies any liability for any of the claims alleged in the Lawsuit; and

WHEREAS, the terms of this Agreement represent the compromise of disputed claims in the Lawsuit and do not in any way signify that there was wrongdoing on any Party’s part.

NOW, THEREFORE, in consideration of the foregoing, and in consideration of the covenants contained herein, Receiver and Discover agree as follows:

1. This Agreement is subject to approval by the Receivership Court and the Receiver shall file a motion requesting approval of the Agreement by the Receivership Court. If this Agreement is challenged by anyone as not being fair, adequate, or

reasonable, the Receiver shall take reasonable steps to defend this Agreement and to affirm the Receiver's view that the terms of the Agreement are fair and equitable to the Estate and all parties in interest. The Agreement shall be deemed null and void if not approved by an order entered by the Receivership Court.

2. The Effective Date of this Agreement shall be the first business day after an order is entered by the Receivership Court approving it.
3. Discover shall pay Receiver \$8,478.37 (the "Settlement Payment") within 30 days after the Effective Date. The Settlement Payment shall be made payable to "Harvey Sender, Receiver" and delivered to counsel for the Receiver.
4. Within seven days of the Effective Date, the Receiver shall deliver a completed W-9 form containing Receiver's information.
5. Within five days of the Settlement Payment, the Parties shall file a stipulation in the Lawsuit dismissing all the Receiver's claims against Discover with prejudice, each Party to bear its own attorneys' fees and costs.
6. Upon the Effective Date, and except for the obligations under this Agreement, Receiver releases and forever discharges Discover, and its parent(s), affiliates, subsidiaries, predecessors, successors, and the officers, directors, agents, assigns, servants, employees and attorneys of these entities, from any and all claims, causes of action, damages, losses, debts, obligations, agreements, liabilities, judgments, debts, attorneys' fees, costs and expenses, known or unknown, suspected or unsuspected, fixed or contingent, whether arising under state law, federal law, common law or otherwise, which arise directly or indirectly out of any facts, events, or transactions that occurred from the beginning of time through the date that Receiver executes this Agreement related to, arising from or out of, or based upon the Account (or any other accounts the GDA Persons and any of their representatives, assigns, employees, trusts, estates, and/or spouses, including but not limited to Shelly Dragul, may have with Discover), or which were or could have been asserted in the Lawsuit.
7. Upon the Effective Date, and except for the obligations under this Agreement, Discover, for itself, its parent(s), affiliates, subsidiaries, predecessors, successors, and the officers, directors, agents, assigns, servants, employees and attorneys of these entities, releases and forever discharges the Receiver and the Estate and their assigns, servants, employees, representatives, agents, and attorneys, from any and all claims, causes of action, damages, losses, debts, obligations, agreements, liabilities, judgments, debts, attorneys' fees, costs and expenses, known or unknown, suspected or unsuspected, fixed or contingent, whether arising under state law, federal law, common law or otherwise, which arise directly or indirectly out of any facts, events,

or transactions that occurred from the beginning of time through the date that Discover executes this Agreement related to, arising from or out of, or based upon the Account (or any other accounts the GDA Persons and any of their representatives, assigns, employees, trusts, estates, and/or spouses, including but not limited to Shelly Dragul, may have with Discover), or which were or could have been asserted in the Lawsuit.

8. It is expressly understood and agreed that the terms of this Agreement are contractual and not mere recitals and that the agreements contained herein, and the consideration transferred hereunder, are to compromise doubtful and disputed claims and that no releases or other consideration given shall be construed or considered an admission of liability. To the contrary, this Agreement is entered to avoid litigation and any further dispute or claims and to buy peace to the extent described herein.
9. The Parties represent and warrant that as of the date of this Agreement (i) they do not have and are not aware of any claims, demands, actions, causes of action, suits, damages, liabilities, judgments, debts, attorneys' fees, costs or expenses, whether based in contract law, tort law, equity, statute, regulation, or otherwise, whether state, federal, or local, known or unknown or asserted or unasserted ("Claims"), against any Party other than the Claims released by this Agreement and (ii) they have no present intention to make or assert any Claims against any Party.
10. Receiver represents and warrants that he (i) has not transferred, assigned or otherwise sold any portion of the Claims alleged against Discover in the Lawsuit or released by this Agreement, and (ii) is the sole holder of such Claims.
11. The Parties represent and warrant that there have been no representations or promises made by any Party on which any Party relied in connection with this Agreement other than what is set forth herein in writing. The Parties further represent and warrant that no Party is being induced to enter into this Agreement by anything other than the written words contained in this Agreement.
12. The Parties represent and warrant that they have had an adequate opportunity to review all aspects of this Agreement with an attorney of their choosing, that they understand all the provisions of the Agreement, and that they are voluntarily accepting its terms.
13. Should any clause, sentence, paragraph or other part of this Agreement be finally adjudged by any court of competent jurisdiction to be unconstitutional, invalid or in any way unenforceable, such adjudication shall not affect, impair, invalidate or nullify the Agreement, but shall affect only the clause, sentence, paragraph or other parts so adjudged.

14. This Agreement shall be governed by and construed in accordance with the substantive law of the State of Colorado.
15. The Receivership Court shall be the exclusive forum for any dispute arising under this Agreement, and upon application by either Party, the Receivership Court may require specific performance by either Party of its obligations hereunder. Each Party hereby consents to the exclusive jurisdiction and venue of the Receivership Court for any disputes relating to or arising under this Agreement.
16. This Agreement constitutes the entire agreement and understanding between the parties hereto and shall not be modified or altered except by written instrument duly executed by the parties hereto.
17. Each Party shall bear its own costs and attorneys' fees. In connection with any litigation, mediation, arbitration, or other proceeding brought to enforce the terms of this Agreement, the prevailing Party shall be entitled to recover from the other Party its costs and reasonable attorneys' fees, through and including any appeal or post-judgment proceeding.
18. As provided in this Agreement, written notice to Discover shall be provided to:

Discover Financial Services
Attn: Law Department / Litigation
2500 Lake Cook Road
Riverwoods, IL 60015

Written notice to the Receiver shall be provided to:

Michael Gilbert
Allen Vellone Wolf Helfrich & Factor P.C.
1600 Stout Street, Suite 1100
Denver, CO 80202

19. This Agreement may be signed in counterparts and facsimile signatures will be deemed originals.

Dated: 12/20, 2019

Harvey Sender, as Receiver for Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC

[Handwritten signature]

Dated: 12/19, 2019

DISCOVER BANK

By: *[Handwritten signature]*

Its: VP

Settlement Agreement and Mutual Release

I. Parties

DATE FILED: January 14, 2020 10:49 AM
FILING ID: A2C9EF03172B5
CASE NUMBER: 2018CV33011

This Settlement Agreement and Mutual Release ("Agreement") is entered into on December __, 2019, by and between Joseph Peirce ("Peirce") and Harvey Sender (the "Receiver"), in his capacity as Receiver for Gary J. Dragul ("Dragul"), GDA Real Estate Services, LLC ("GDARES"), GDA Real Estate Management, LLC ("GDAREM"), and a number of related entities (the "Estate"). Dragul, GDARES, GDAREM, and all related entities are referred to as "Dragul and the GDA Entities"; Peirce and the Receiver are each a "Party," and jointly the "Parties."

II. Recitals

A. On August 30, 2018, the Court in *Rome v. Gary Dragul, et al.*, Case No. 2018CV33011 Denver County District Court (the "Receivership Action"), entered a Stipulated Order Appointing Receiver ("Receivership Order") which appointed the Receiver.

B. Under the Receivership Order, the Receiver is authorized, among other things, to take immediate possession and control of all of the assets of the Estate, to investigate any pursue all claims and causes of action on behalf of the Estate, including claims on behalf of creditors premised on fraudulent transfer or similar theories.

C. Based on the Receiver's investigation, numerous investors lost some or all of their principal investments with Dragul and the GDA Entities, and the Receiver has identified claims the Estate has against Peirce to recover transfers Peirce received from Dragul and the GDA Entities (the "Claims").

D. The Parties, after having conferred with counsel and made such inquiries as they deem reasonably necessary and having had the opportunity to review such documents as they deem necessary and appropriate, now desire to settle all claims, including without limitation the Claims (as defined in this Agreement), that the Estate may have against Peirce and that Peirce may have against the Estate.

III. Covenants

For good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals Incorporated. The representations and recitals set forth above are true and correct and are made a part of this Agreement.

2. Receivership Court Approval. This Agreement is subject to approval by the Receivership Court and the Receiver shall file a motion requesting approval of the Agreement by the Receivership Court. If this Agreement is challenged by anyone as not being fair, adequate, or reasonable, the Receiver shall take reasonable steps to defend this Agreement and to affirm the Receiver's view that the terms of the Agreement are fair and equitable to the Estate and all parties in interest. The Agreement shall be deemed null and void if not approved by an order entered by the Receivership Court.

3. Effective Date. The Effective Date of this Agreement shall be the first business day after an order is entered by the Receivership Court approving it.

4. Settlement Payment. Within 10 days after the Effective Date, Peirce shall pay the Estate \$3,500.00 (the "Settlement Payment"). The Settlement Payment shall be made payable to "Harvey Sender, Receiver" and delivered to counsel for the Receiver.

5. Mutual Releases.

a) Except for the obligations under this Agreement, upon the Receiver's receipt of the Settlement Payment, the Receiver on behalf of the Estate releases and forever discharges Peirce and his representatives and agents from any and all claims, causes of action, manner of actions, debts, suits, rights, notes, covenants, liabilities, accounts, contracts, agreements, promises, damages, losses, attorneys' fees, costs and expenses, and demands whether known or unknown, matured or unmatured, accrued or unaccrued, direct or indirect, suspected or unsuspected, fixed or contingent, in law or equity, including without limitation claims for fraudulent transfer or fraud arising out of or relating in any manner to the Estate.

b) Upon the Effective Date, Peirce, for himself, his predecessors, heirs, successors, assigns, agents, representatives, attorneys and all persons acting through and under him, releases and forever discharges the Receiver and the Estate, all creditors of the Estate, all persons who received transfers from Dragul and/or the GDA Entities (including, but not limited to, immediate and subsequent transferees) and their respective predecessors, successors, heirs, assigns, agents, representatives, attorneys, and all persons acting by, through or under them, whether or not the identity of such persons is known to Peirce, from any and all claims, except for the obligations under this Agreement.

6. Compromise of Disputed Claims. It is expressly understood and agreed that the terms of this Agreement are contractual and not mere recitals and that the agreements contained herein, and the consideration transferred hereunder, are to compromise doubtful and disputed claims and that no releases or other consideration given shall be construed or considered an admission of liability. To

the contrary, this Agreement is entered into to avoid litigation and any further dispute or claims and to buy peace to the extent described herein.

7. Specific Performance. The Receivership Court shall, upon application of any Party, require specific performance by any other Party of any obligation hereunder. The Parties consent to the jurisdiction and venue of the Receivership Court.

8. Waiver of Jury Trial. The Parties irrevocably and unconditionally waive to the fullest extent permitted by applicable law any right they may have to trial by jury of any claim or cause of action, or in any legal proceeding, directly or indirectly based upon or arising out of this Agreement.

9. Authorization. The Parties represent and warrant that no promise or inducement has been offered except as expressly set forth herein; that the person signing this Agreement on behalf of each Party is both authorized and legally competent to execute this Agreement and accepts full responsibility therefor; and, that it has not assigned, transferred or hypothecated any claim or interest identified herein.

10. Successors. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties and their legal representatives, successors and assigns, whether by operation of law or otherwise.

11. Controlling Law. This Agreement is made and entered into in the State of Colorado, and shall in all respects be interpreted, enforced, and governed by and under the laws of the State of Colorado, without reference to Colorado's law on conflicts of law.

12. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable.

13. Fair Interpretation. This Agreement is the product of negotiations between the Parties and shall be given fair interpretation. The Parties acknowledge this Agreement shall be deemed to have been mutually prepared so that the rule of construction that ambiguities are to be resolved against the drafting Party shall not be employed in interpreting this Agreement.

14. Parties Advised by Counsel. The Parties acknowledge they have been represented by counsel or have had the opportunity to consult with counsel with respect to this Agreement and all matters covered by and relating to it.

15. No Waiver of Breaches of Agreement. The failure by a Party to insist on strict compliance with any of the covenants or restrictions in this Agreement

shall not be construed as a waiver, nor shall any course of action deprive a Party of the right to require strict compliance with this Agreement.

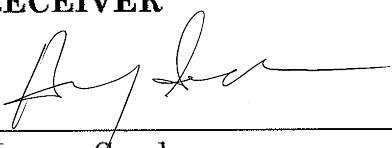
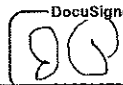
16. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with regard to the subject matter hereof and supersedes all prior and contemporaneous representations, contracts, or agreements of any nature. Any modification of any provision of this Agreement shall not be valid unless in writing and executed by the Parties.

17. Costs and Attorneys' Fees. Each Party shall bear its own costs and attorneys' fees incurred prior to the Effective Date. In connection with any litigation, mediation, arbitration, or other proceeding brought to enforce the terms of this Agreement, the prevailing Party shall be entitled to recover from the other Party its costs and reasonable attorneys' fees, through and including any appeal or post-judgment proceeding.

18. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the document. Signatures delivered by facsimile and email as electronic files shall be deemed effective as originals.

19. Headings and Titles. The headings and titles in this Agreement are for convenience only and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision herein.

IN WITNESS WHEREOF, the Parties hereto hereby execute this Agreement and as of the date first above written.

<p>RECEIVER</p>  <hr/> <p>Harvey Sender</p> <p>Dated: <u>12/30/2019</u></p>	<p>JOSEPH PEIRCE</p> <p>DocuSigned by:</p>  <hr/> <p>2A25A27830824BF...</p> <p>Dated: <u>12/30/2019</u></p>
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