

DISTRICT COURT, DENVER COUNTY,
STATE OF COLORADO
1437 Bannock St.
Denver, CO 80202

HARVEY SENDER AS RECEIVER FOR GARY
DRAGUL; GDA REAL ESTATE SERVICES, LLC;
AND GDA REAL ESTATE MANAGEMENT, LLC,

Plaintiff and Counterclaim Defendant,

v.

GARY J. DRAGUL, an individual; BENJAMIN
KAHN, an individual; SUSAN MARKUSCH, an
individual; ALAN C. FOX, an individual; ACF
PROPERTY MANAGEMENT, INC., a California
Corporation; MARLIN S. HERSHEY, an individual;
and PERFORMANCE HOLDINGS, INC., a Florida
Corporation; JOHN AND JANE DOES 1-10; and XYZ
CORPORATION 1-10,

Defendants,

and

THE CONUNDRUM GROUP, LLP, a Colorado
Limited Liability Company,

Defendant and Counterclaimant.

Attorneys for Defendants Benjamin Kahn and The
Conundrum Group, LLP

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Case No.: **2020 CV 30255**

Division: **414**

**LAW FIRM'S PARTIAL JOINDER IN MOTION TO DISMISS BY
DEFENDANT SUSAN MARKUSCH**

Defendants Benjamin Kahn and The Conundrum Group, LLP (collectively, the “Law Firm”), through undersigned counsel, join in and adopt as their own portions of the Motion to Dismiss filed by Defendant Susan Markusch (“Ms. Markusch”):

1. Ms. Markusch filed a Motion to Dismiss The Receiver’s Complaint pursuant to C.R.C.P. 12(b)(1), 12(b)(5) and 12(b)(6) (“Ms. Markusch’s Motion”), arguing in part that the Receiver acted beyond the scope of his authority in asserting claims based on unspecified entities and investors.

2. The Law Firm joins, in part, in Section 2 of Ms. Markusch’s Motion, to the extent those arguments are applicable to the Receiver’s claims against the Law Firm. The Receiver cannot lump the Defendants together and ignore his obligation to plead the who, what, when, where and how of the alleged fraud.

3. The Law Firm reserves all of its rights and defenses and does not waive any arguments set forth in its pending Motion for More Definite Statement.

Dated tis 1st day of April, 2020.

GORDON & REES LLP

Pursuant to C.R.C.P. 121 § 1-26(7), a printed copy of this document with original signatures shall be maintained by the undersigned and will be made available for inspection by other parties or the court, upon request.

/s/ John M. Palmeri

John M. Palmeri, #14252

Margaret L. Boehmer, #45169

ATTORNEYS FOR DEFENDANTS
BENJAMIN KAHN and
THE CONUNDRUM GROUP, LLP

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the above and foregoing was filed and served via the CO-Courts electronic filing system this 1st day of April 2020, which will serve the following.

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