

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 DEFENDANTS
ALAN C. FOX AND ACF PROPERTY MANAGEMENT, INC.**

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 Defendants Alan Fox and ACF Property Management, Inc. (collectively “ACF”):

1. ACF filed a Motion to Dismiss the Receiver’s Complaint pursuant to C.R.C.P. 12(b)(1), 12(b)(5) and 9(b) (the “ACF 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 portions of Argument Section 1 in the ACF Motion, but the Law Firm’s joinder is limited to pages 8 through 10 and the first paragraph of page 11. The Receiver cannot prosecute claims on behalf of unspecified corporate entities and unnamed individual investors.

3. The Law Firm joins in Argument Sections 2(a), 2(b) and 2(c) in the ACF 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 Law Firm’s purported role in any alleged fraud.

4. The Law Firm joins in Argument Sections 5(a), 5(b) and 5(c) in the ACF Motion, to the extent those arguments are applicable to the Receiver’s claims against the Law Firm. The Receiver cannot gloss over the purported predicate acts of the Law Firm or ignore the absence of any actual fraudulent enterprise.

5. The Law Firm joins, in part, Argument Sections 6(b), 6(c) and 6(d) in the ACF Motion with respect to the Fourth through Sixth and Twelfth through Fourteenth Claims for

Relief in The Receiver's Complaint. The Receiver cannot prosecute claims for any alleged "Commissions" to the Law Firm that are time-barred.

6. 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 this 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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