

DISTRICT COURT, DENVER COUNTY STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202	DATE FILED: April 6, 2020 7:49 PM FILING ID: D14D37CE7C0A8 CASE NUMBER: 2020CV30255
<p><b>Plaintiff:</b> HARVEY SENDER, AS RECEIVER FOR GARY DRAGUL; GDA REAL ESTATE SERVICES, LLC; AND GDA REAL ESTATE MANAGEMENT, LLC</p> <p>v.</p> <p><b>Defendants:</b> GARY J. DRAGUL, an individual; BENJAMIN KAHN, an individual; THE CONUNDRUM GROUP, LLP, a Colorado Limited Liability Company; 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 CORPORATIONS 1 – 10.</p>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
<p><b>Attorneys for Plaintiff:</b>          Patrick D. Vellone, #15284          Rachel A. Sternlieb, #51404          Michael T. Gilbert, #15009          ALLEN VELLONE WOLF HELFRICH &amp; FACTOR P.C.          1600 Stout Street, Suite 1900          Denver, Colorado 80202          Phone (303) 534-4499          pvellone@allen-vellone.com          rsternlieb@allen-vellone.com          mgilbert@allen-vellone.com</p>	<p>Case Number: 2020CV30255</p> <p>Division/Courtroom: 414</p>
<b>UNOPPOSED MOTION FOR ENLARGEMENT OF TIME</b>	

Harvey Sender, the duly-appointed receiver (the “Receiver”) for Gary Dragul (“Dragul”), GDA Real Estate Services, LLC, GDA Real Estate Management, LLC, and related entities (collectively, “Dragul and the GDA Entities”), pursuant to C.R.C.P. 6(b), hereby moves for an enlargement of time to respond to the Defendants’ Motion

to Dismiss and Motion for a More Definite Statement. In support thereof, the Receiver states as follows:

**Certificate regarding conferral pursuant to C.R.C.P. 121, § 1-15(8):**

Counsel for the Receiver conferred with counsel for the Defendants and was advised that none of the Defendants oppose the relief requested herein.

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, *Cheval v. Dragul, et al.*, Case No. 2018CV33011 (the “Receivership Action”).

2. On August 29, 2018, the Commissioner, Dragul and the GDA Entities filed a Stipulated Motion for Appointment of Receiver in the Receivership Action, consenting to the appointment of a receiver over Dragul and the GDA Entities pursuant to C.R.S. § 11-51-602(1) and C.R.C.P. 66.

3. On August 30, 2018, the Receivership 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. On January 21, 2020, the Receiver filed a Complaint against the above-captioned Defendants.

5. On March 17, 2020, Defendants Gary J. Dragul, Alan C. Fox and ACF Property Management, Inc. filed motions to dismiss arguing, among other things, that the Receiver failed to plead fraud claims with the requisite specificity. On the same day, Defendants Benjamin Kahn and The Conundrum Group, LLP (the “Kahn Defendants”) filed a motion for a more definite statement and separately filed an Answer and Jury Demand<sup>1</sup>. Responses to those motions are otherwise due April 7, 2020.

6. On March 19, 2020, Defendant Susan Markusch filed a motion to dismiss similarly arguing that the fraud claims should be dismissed for failure to plead with particularity. The Receiver’s response to Defendant Markusch’s motion is otherwise due April 9, 2020.

7. On March 31, 2020, Defendants Performance Holdings, Inc. and Marlin Hershey (the “Hershey Defendants”) filed a motion to stay their responsive pending adjudication of a motion to intervene filed in the Receivership Action. The Receiver’s response to the motion to stay is otherwise due April 21, 2020.

8. In light of Defendants’ arguments, the Receiver intends to file an Amended Complaint setting forth additional allegations regarding the specific fraudulent conduct of the Defendants. The Amended Complaint will render moot the pending motions to dismiss and motion for more definite statement. The Hershey

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<sup>1</sup> The Kahn Defendants subsequently joined portions of the motions to dismiss filed by the other defendants.

Defendants may refile their motion to stay after receipt and review of the Amended Complaint if they deem appropriate.

9. The Receiver may amend as a matter of right under C.R.C.P. 15(a) as to all Defendants other than the Kahn Defendants because motions to dismiss and motions to stay do not constitute “responsive pleadings”. *See Davis v. Paolino*, 21 P.3d 870, 873 (Colo. App. 2001). The Kahn Defendants have also agreed that they will not oppose a motion to amend the Complaint.

10. The Receiver respectfully requests an enlargement of time, through and including May 1, 2020, to file its Amended Complaint.

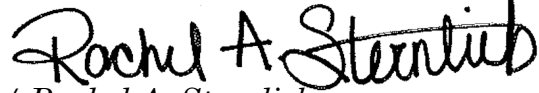
11. No party will be prejudiced by the requested enlargement of time and the request is not made for an improper purpose, such as to delay the proceedings.

12. Pursuant to C.R.C.P. 121, §1-11, the undersigned certifies that a copy of this motion was served on the Receiver.

WHEREFORE, the Receiver requests an enlargement of time in which to respond to Defendants’ pending motions through and including May 1, 2020, at which time the Receiver intends to file an Amended Complaint.

Dated: April 6, 2020.

ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.



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ATTORNEYS FOR THE RECEIVER

**CERTIFICATE OF SERVICE**

I hereby certify that on April 6, 2022, a true and correct copy of the **UNOPPOSED MOTION FOR ENLARGEMENT OF TIME** was filed and served via the Colorado Courts E-Filing system to the following, who have entered an appearance, and via certified mail to Susan Markusch, at the address listed below where she was personally served:

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*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.*