

DISTRICT COURT, DENVER COUNTY STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202	DATE FILED: April 14, 2020 5:57 PM FILING ID: 551EB0C76487A CASE NUMBER: 2020CV30255
<p>Plaintiff: HARVEY SENDER, AS RECEIVER FOR GARY DRAGUL; GDA REAL ESTATE SERVICES, LLC; AND GDA REAL ESTATE MANAGEMENT, LLC</p> <p>v.</p> <p>Defendants: 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;">▲ COURT USE ONLY ▲</p>
Attorneys for Defendant Gary J. Dragul Paul L. Vorndran, Atty. Reg. No. 22098 Christopher S. Mills, Atty. Reg. No. 42042 Jones & Keller, P.C. 1999 Broadway, Suite 3150 Denver, CO 80202 Phone: 303-573-1600 Email: pvorndran@joneskeller.com cmills@joneskeller.com	Case No. 2020CV30255 Courtroom: 414
DEFENDANTS' UNOPPOSED JOINT MOTION FOR EXTENSION OF TIME TO FILE NONPARTY AT FAULT DESIGNATIONS	

Defendants Gary J. Dragul, Benjamin Kahn, The Conundrum Group, LLP, Susan Markusch, Alan C. Fox, ACF Property Management, Inc., Marlin S. Hershey, and Performance Holdings, Inc. (collectively “Defendants”), through undersigned counsel, hereby jointly move this Court for an extension of time up to and including thirty (30) days after the case is deemed at

issue, within which to file their nonparty at fault designations and as grounds therefor, state as follows:

1. Pursuant to C.R.C.P. 121 § 1-15, undersigned counsel for Defendant Gary Dragul, on behalf of all Defendants, conferred with counsel for Plaintiff, and Plaintiff does not oppose the relief sought herein.

2. Pursuant to C.R.C.P. 121 § 1-11, undersigned counsel are concurrently serving a copy of this Motion upon their clients.

3. Pursuant to C.R.S. § 13-21-111.5(3)(b), Defendants must file their nonparty at fault designations “within ninety days following commencement of the action unless the court determines that a longer period is necessary.”

4. Here, the Complaint was filed on January 21, 2020, meaning Defendants’ nonparty at fault designations must be filed no later than April 20, 2020.

5. Mr. Dragul, and Mr. Fox and ACF Management, filed motions to dismiss Plaintiff’s Complaint on March 17, 2020. Those two motions to dismiss are still pending. Mr. Kahn and Conundrum Group filed a motion for more definite statement and counterclaims against the Plaintiff on March 17, 2020. The Plaintiff moved to dismiss the counterclaims on April 7, 2020, which remains pending. Ms. Markusch filed a motion to dismiss Plaintiff’s Complaint on March 19, 2020, which remains pending. On March 31, 2020, Mr. Hershey and Performance Holdings filed a motion to stay their response to the Complaint. The Court granted that motion to stay on April 7, 2020.

6. On April 6, 2020, Plaintiff filed an unopposed motion for enlargement of time to respond to the three pending motions to dismiss and to the motion for more definitive statement.

Plaintiff's motion for enlargement confirmed that he "intends to file an Amended Complaint.... That will render moot the pending motions to dismiss and motion for more definitive statement." (Pl.'s Mot. for Enlargement, ¶ 8.) On April 7, 2020, the Court granted that motion, meaning Plaintiff now has "up to and including May 1, 2020 to respond to Defendants' pending motions and to file any Amended Complaint." (Order at 1.)

7. In light of the foregoing, Plaintiff's factual allegations and claims for relief are certain to be substantially modified – likely, through some combination of Plaintiff's amending his complaint and the determination of one or more of Defendants' pending motions – in the weeks *after* Defendants' present April 20th deadline for designating nonparties at fault. Additionally, Mr. Hershey's and Performance Holding's deadline to respond to the Complaint is currently stayed, and their response, whenever filed, may result in even further modification of Plaintiff's factual allegations and claims for relief.

8. Since the identity of nonparties who may be at fault depends on the claims alleged and the facts relating to those claims, the nonparties who are at fault in this case could change significantly between the current April 20, 2020 deadline to file nonparty at fault designations and when the case is at issue.

9. Consequently, Defendants seek an extension up to and including thirty (30) days after the case is deemed at issue under C.R.C.P. 16(b)(1), to file their nonparty at fault designations.

10. Pursuant to C.R.S. § 13-21-111.5(3)(b), the Court may extend the deadline to file nonparty at fault designations if "the court determines that a longer period is necessary." Here, a longer period is necessary and good cause exists to grant this extension. Until Defendants know

what claims are at issue and the facts surrounding those claims, Defendants lack sufficient information to determine who are the nonparties at fault, if any.

11. No party will be prejudiced by the requested extension. All Defendants join in this motion and the Plaintiff does not oppose. Additionally, any persons or entities who would be designated if the current deadline remains in place might be prejudiced by being identified in a public filing when, due to dismissal or a change in the claims or allegations asserted, they might ultimately not be designated.

12. None of the Defendants have previously sought an extension of the nonparty at fault designation deadline. No case management order has been entered in this case, and trial has not yet been set. Thus, the requested extension will not affect the timing of any other deadlines in the case. Even if a case management order had been entered and trial set, there is no reason the requested extension would affect any other deadlines or dates.

13. A Proposed Order is attached.

WHEREFORE, Defendants respectfully request that the deadline to file nonparty at fault designations be extended up to and including thirty (30) days after the case is deemed at issue.

Dated this 14th day of April, 2020.

JONES & KELLER, P.C.

s/ Christopher S. Mills
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Attorneys for Alan C. Fox and ACF
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GOODREID & GRANT, LLC

s/ Paul M. Grant

Attorneys for Marlin Hershey and
Performance Holdings, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of April, 2020, a true and correct copy of the foregoing **DEFENDANTS' UNOPPOSED JOINT MOTION FOR EXTENSION OF TIME TO FILE NONPARTY AT FAULT DESIGNATIONS** was filed and served via the Colorado Courts E-filing system to the following:

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