

<p>DISTRICT COURT, DENVER COUNTY STATE OF COLORADO</p> <p>1437 Bannock St. Denver, CO 80202 (720) 865-8612</p>	<p>DATE FILED: April 21, 2020 7:45 PM FILING ID: 50F103EC1CBD7 CASE NUMBER: 2018CV33011</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</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>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</p>	<p>Case No. 2018CV33011</p> <p>Courtroom: 424</p>
<p>DEFENDANT GARY DRAGUL’S RESPONSE TO DEFENDANT HERSHEY’S & PERFORMANCE HOLDINGS’ MOTION TO INTERVENE PURSUANT TO C.R.C.P. 24(b)</p>	

Defendant Gary J. Dragul responds to Defendants Marlin Hershey’s and Performance Holdings, Inc.’s (collectively “Hershey Defendants”) March 31, 2020 Motion to Intervene Pursuant to C.R.C.P. 24(b) (“Motion”) as follows:

The Motion seeks for the Court to allow the Hershey Defendants to intervene in this action to assert a claim for declaratory relief seeking a declaration that paragraph 13(s) in the Order Appointing Receiver (“Receivership Order”) in this action “was inadvertently or improvidently included in the Receivership Order and that the Receiver does not have authority

to pursue claims on behalf of investors/creditors of Defendants and/or entities affiliated with Defendants.” (Mot. ¶ 5.)

Though the Hershey Defendants never conferred regarding their Motion,¹ having now had an opportunity to review it, Mr. Dragul takes no position on the Motion.²

However, Mr. Dragul supports the ultimate relief sought in the Hershey Defendants’ proposed Claim for Declaratory Relief Pursuant to C.R.C.P. 57, attached as Exhibit A to the Motion. The Court should clarify that the Receivership Order does not vest the Receiver with standing he lacks as a matter of law. Rather than through a claim for declaratory relief, however, a more efficient way for the Court to address this issue may be to simply clarify the Receivership Order. Thus, concurrent with the filing of this Response, Mr. Dragul is filing a Motion for Clarification seeking for the Court to clarify that the Receivership Order does not create standing for the Receiver to assert claims of creditors.

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¹ The Commissioner and Receiver also failed to meet and confer about their April 17, 2020 motion to extend their deadline to respond to the Motion for Intervention. Mr. Dragul would not have opposed their motion for extension had they conferred and Mr. Dragul does not claim prejudice. However, Mr. Dragul requests that the Commissioner and Receiver meet and confer on motions going forward.

² However, it is unclear if the Hershey Defendants meet the standard for permissive intervention. After meeting the threshold requirement of a common question of law or fact, courts still consider other factors including whether the movant’s interests are adequately represented by existing parties. *E.g., Lower Arkansas Valley Water Conservancy Dist. v. United States*, 252 F.R.D. 687, 690–91 (D. Colo. 2008). Here, their interests are adequately represented by another party already in the case: Mr. Dragul. Indeed, in his motion to dismiss filed in the 2020 Action, Mr. Dragul asserted the same standing argument the Hershey Defendants now seek to assert through their claim for declaratory relief. And Mr. Dragul advances that same position in the Motion for Clarification it is concurrently filing in this action, as discussed below.

Respectfully submitted this 21st day of April, 2020.

JONES & KELLER, P.C.

/s/ Christopher S. Mills _____

Paul Vorndran, #22098

Christopher S. Mills, #42042

1999 Broadway, Suite 3150

Denver, CO 80202

Teleph: (303) 573-1600

Facsimile: (303) 573-8133

ATTORNEYS FOR DEFENDANT GARY DRAGUL

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DEFENDANT GARY DRAGUL'S RESPONSE TO DEFENDANT HERSHEY'S & PERFORMANCE HOLDINGS' MOTION TO INTERVENE PURSUANT TO C.R.C.P. 24(b)** was filed and served via the ICCES e-file system on this 21st day of April 2020 to all counsel of record for the parties to the action, including the following:

Patrick D. Vellone
Michael T. Gilbert
Rachel A. Sternlieb
Allen Vellone Wolf Helfrich & Factor P.C.
1600 Stout St., Suite 1100
Denver, Colorado 80202
Phone Number: (303) 534-4499
pvellone@allen-vellone.com
mgilbert@allen-vellone.com
rsternlieb@allen-vellone.com

Counsel for Receiver

Thomas E. Goodreid
Paul M. Grant
Goodreid and Grant LLC
1801 Broadway, Suite 1400
Denver, Colorado 80202
E-mail: t.goodreid@comcast.net
E-mail: pgrant@goodreidgrant.com

***Counsel for Performance Holdings, Inc.
and Marlin Hershey***

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

***Counsel for David S. Cheval, Acting
Securities Commissioner for the
State of Colorado***

/s/ Christopher S. Mills
Christopher S. Mills