

<p>DISTRICT COURT, DENVER COUNTY, COLORADO</p> <p>1437 Bannock Street Denver, CO 80202</p> <hr/> <p>TUNG CHAN, Securities Commissioner for the State of Colorado,</p> <p>Plaintiff,</p> <p>v.</p> <p>GARY DRAGUL, GDA REAL ESTATE SERVICES, LLC, and GDA REAL ESTATE MANAGEMENT, LLC,</p> <p>Defendants.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>PHILIP J. WEISER, Attorney General ROBERT W. FINKE, 40756* First Assistant Attorney General JANNA K. FISCHER, 44952* Assistant Attorney General Ralph L. Carr Judicial Building 1300 Broadway, 8th Floor Denver, CO 80203 Tel: (720) 508-6000 robert.finke@coag.gov janna.fischer@coag.gov *Counsel of Record</p>	<p>Case No.: 2018CV33011</p> <p>Courtroom: 424</p>
<p>RESPONSE OF THE SECURITIES COMMISSIONER IN OPPOSITION TO MOTION TO INTERVENE</p>	

Plaintiff, Tung Chan, Securities Commissioner for the State of Colorado, hereby opposes the Motion to Intervene (“Motion”), filed March 31, 2020 by Marlin Hershey (“Hershey”) and Performance Holdings, Inc. (“PHI”) (collectively, “Movants”).

I. Introduction

Movants seek to use this case to improve their position in a related case filed by the appointed receiver in this case, Harvey Sender (“Receiver”).¹ Movants are not entitled to permissive intervention under C.R.C.P. 24(b), which they seek for the purpose of asking this Court for a declaratory judgment revoking a paragraph in the Order appointing the Receiver. *Stipulated Order Appointing Receiver* (Aug. 30, 2018) (“Receivership Order”).

Movants are defendants in *Sender v. Dragul et al.*, No. 2020CV30255, before Division 414 (The Honorable Robert L. McGahey Jr.) (“Insider Case”). In the Insider Case, the Receiver brings fourteen claims including securities fraud, breach of fiduciary duty, and fraudulent transfer under § 38-8-105(1), C.R.S. In addition to Movants, the Insider Case names as defendants Gary Dragul (“Dragul”), who is a Defendant in this case; Benjamin Kahn; the Conundrum Group; Susan Markusch; Alan C. Fox; and ACF Property Management (collectively, “Insider Case Defendants”). The Commissioner takes no position in this filing on the merits of the Complaint in the Insider Case.

The Insider Case Defendants all assisted with or benefited from the multimillion-dollar Ponzi scheme operated by Dragul and his businesses, GDA Real Estate Services, LLC and GDA Real Estate Management, Inc. (collectively, “GDA”). The Commissioner in 2018 filed a Complaint for Injunctive and Other Relief after receiving customer complaints and investigating Dragul and GDA’s investment

¹ The Receiver also opposes the Motion and files a separate Opposition.

offerings. *Complaint* (Aug. 15, 2018). Dragul and GDA stipulated to the appointment of the Receiver in this case, and this Court issued the Receivership Order.

With respect to the Movants, the complaint in the Insider Case alleges that Hershey, through PHI, funneled to himself commissions he received from Dragul and GDA after recruiting investors to the GDA Ponzi scheme. Hershey received a percentage of each investor's investment as an undisclosed commission. The U.S. Securities and Exchange Commission (SEC) has instituted an enforcement action against Hershey. *See SEC v. Bradley, Hershey, et al.*, Case No. 3:19-cv-00490 (W.D.N.C.).

The Receivership Order gives the Receiver the power to recover possession of Receivership Property² and to prosecute claims based on fraudulent transfer and similar theories. Receivership Order ¶ 13(o). It also gives the Receiver the power to prosecute claims and causes of action against third parties held by creditors of Dragul and GDA, and “any subsidiary entities for the benefit of Creditors, in order to assure the equal treatment of all similarly situated Creditors.” *Id.* ¶ 13(s).

Movants seek to intervene in this case because they want to request declaratory relief pursuant to C.R.C.P. 57 that would effectively nullify paragraph 13(s) of the Receivership Order. They contend that this Court erred by issuing the Receivership Order because the Receiver does not in fact have the power the

² Receivership Property is defined in the Receivership Order as assets “of any kind or of any nature whatsoever related in any manner, or directly or indirectly derived, from investor funds from the solicitation or sale of securities as described in the Complaint, or derived indirectly or indirectly from investor funds.” Receivership Order ¶ 9.

Receivership Order expressly grants him. A receiver’s power, however, “is derived from the scope of the court’s order of appointment.” *Francis v. Camel Point Ranch, Inc.*, --- P.3d ---, 2019 COA 108M, ¶ 8, *as modified on denial of reh’g* (Sept. 19, 2019) (citing *NationsBank of Ga. v. Conifer Asset Mgmt. Ltd.*, 928 P.2d 760, 764 (Colo. App. 1996)). Because they do not agree with the Receiver’s powers derived from the Receivership Order, Movants want to change the scope of this Court’s order of appointment more than a year and a half after it was issued. Movants’ application is essentially an untimely motion for reconsideration that should be denied.

II. Argument

A. Movants Are Not Entitled to Permissive Intervention.³

1. No statute allows for intervention and it is at the Court’s discretion to allow intervention here.

There is no dispute that no statute allows for permissive intervention here under C.R.C.P. 24(b)(1). Movants thus seek intervention under C.R.C.P. 24(b)(2). C.R.C.P. 24(b)(2) gives the Court discretion to allow intervention “when an applicant’s claim or defense and the main action have a question of law or fact in common . . . the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” C.R.C.P. 24(b)(2) is a discretionary rule. “The denial of a motion for permissive intervention will seldom constitute an abuse of discretion.” *In re K.L.O-V.*, 151 P.3d 637, 642 (Colo. App. 2006) (dismissing appeal of decision denying grandparent’s motion to intervene in custody case). “The

³ Movants only request permissive intervention under C.R.C.P. 24(b), not intervention as of right under C.R.C.P. 24(a).

legal concept of intervention is based upon the natural right of a litigant to protect himself from the consequences of an action against one in whose cause he has an interest, or by the result of which he may be bound.” *Mauro ex rel. Mauro v. State Farm Mut. Auto. Ins. Co.*, 410 P.3d 495, 500 (Colo. App. 2013) (quoting *Grijalva v. Elkins*, 132 Colo. 315, 318, 287 P.2d 970, 972 (1955)). Here, the Movants will not be bound by the result of this case, in which the Defendants have stipulated to liability and the Receiver is determining the distribution of the Receivership Estate (as defined in the Receivership Order). Their entire remedy lies in the Insider Case, and this Court should not exercise its discretion to allow intervention here.

2. Other courts and this Court have denied intervention in cases brought by the Securities Commissioner.

The Colorado Supreme Court has ruled that investors and creditors do not have a right to intervene in a securities case where the Securities Commissioner can adequately protect their interests. *Feigin v. Alexa Grp., Ltd.*, 19 P.3d 23, 30 (Colo. 2001). Although Movants do not seek intervention as of right here and are not investors or creditors, *Alexa* still shows that third-party intervention in a case brought by the Colorado Securities Commissioner is disfavored.

The Securities Commissioner has successfully opposed non-party intervention in other securities enforcement actions.⁴ Indeed, this Court denied two motions from parties who sought to intervene in this case. *See Order Vacating Order Granting*

⁴ *See, e.g.*, Order Denying Schott’s Motion to Intervene for an Order Securing Funds, *Joseph v. Providence Fin. Servs., Inc.*, No. 2013 CV 31667 (Denver Dist. Ct. Jan. 9, 2014) (Exhibit 1); Order Regarding Motion to Intervene of Applicants, *Joseph v. Mueller*, No. 2010 CV 3280 (Denver Dist. Ct. Nov. 23, 2010) (Exhibit 2).

Motion to Intervene (Jan. 15, 2019) (vacating order granting creditor’s motion to intervene, which was erroneously filed as unopposed); *Order Denying Motion by Aaron Metz to Intervene and to Lift Stay for Limited Purposes* (Jan. 20, 2020) (denying motion to intervene filed by a co-defendant in an unrelated action).

3. This Court should not allow intervention because doing so would unduly prejudice the original parties.

Permissive intervention under C.R.C.P 24(b)(2) is appropriate when “an applicant’s claim and the original cause of action present common questions of law or fact, so long as the intervention will not unduly delay or prejudice the rights of the original parties.” *In re Marriage of Paul*, 978 P.2d 136, 139 (Colo. App. 1998); *K.L.O-V.*, 151 P.3d at 642. Here, intervention will delay this matter and prejudice the adjudication of the rights of the original parties. Movants ask the Court to revisit the Receivership Order entered over a year and a half ago, to which Defendants (who are also Insider Case Defendants) agreed.⁵ The Receiver has been working on this matter since late 2018, expending a great deal of resources to seek value in the Receivership Estate for the benefit of creditors and investors. Revisiting the Receivership Order now will delay investors’ and creditors’ recovery.

The issue of whether the Receiver stated a claim that withstands a motion to dismiss in the Insider Case is best determined in that case, not this one. Movants seek to use this Court to bolster their argument in the Insider Case that the complaint in that case should be dismissed because this Court somehow ignored or

⁵ The Commissioner also opposes Dragul’s Motion for Clarification of Order Appointing Receiver and will file a separate response in opposition.

misunderstood paragraph 13(s) of the Receivership Order when the Court issued it. *See* Motion of Hershey Defendants to Stay Response to Complaint, No. 2020CV30255 (Denver Dist. Ct. Mar. 31, 2020) (Exhibit 3) (speculating that the Receivership Order “may not have received much scrutiny from Judge Egelhoff prior to issuance of the order”). If granted permission to intervene, Movants will seek relief through a request for declaratory judgment under C.R.C.P. 57 that effectively is a belated motion to reconsider the Receivership Order. Motions to reconsider a non-final order are “disfavored” and must be filed within fourteen days of the order. C.R.C.P. 121 § 1-15(11). Movants should not be able to intervene in this case to make a late collateral attack on the Receivership Order.

B. The Receiver’s powers are defined by the Receivership Order issued by the Court and consistent with a receiver’s powers generally.

1. Receivers typically have the power granted to them by the Court

“The measure of a receiver’s power is derived from the scope of the court’s order of appointment.” *Camel Point Ranch*, 2019 COA 108M, ¶ 8. “The receiver’s function is to collect the assets, obey the court's order, and in general to maintain and protect the property and the rights of the various parties.” *Zeligman v. Juergens*, 762 P.2d 783, 785 (Colo. App. 1988); *see also Hart v. Ed-Ley*, 482 P.2d 421, 425 (Colo. App. 1971) (a receiver’s “responsibility is to the court to carry out the duties conferred upon him by that court”). The Receiver, by filing the Insider Case, is acting within the scope of the Receivership Order and consistent with his duty to protect the property and the rights of the various parties.

The powers in the Receivership Order are consistent with those typically held by receivers. Courts appoint receivers to protect the rights of parties to an underlying action. *Camel Point Ranch*, 2019 COA 108M, ¶ 7; *Zeligman*, 762 P.2d at 785. The supervision and disposition of the receivership estate lies within the appointing court’s jurisdiction. *Midland Bank v. Galley Co.*, 971 P.2d 273, 276-77 (Colo. App. 1998). The goal of a receivership is to safeguard estate assets and assist the court in achieving an equitable distribution of funds. *S.E.C. v. Vescor Capital Corp.*, 599 F.3d 1189, 1194 (10th Cir. 2009).

Movants cite case law that does not support their position that paragraph 13(s) of the Receivership Order grants the Receiver power the Receiver should not have. The lone Colorado case cited analyzes a specific statutory provision, not applicable here, that authorized the receiver to collect Medicaid payments due a health care facility. *Good Shepherd Health Facilities of Colo., Inc. v. Dep’t of Health*, 789 P.2d 423, 425 (Colo. App. 1989). The single quote Movant lifted — “generally a receiver stands in the shoes of the entity in receivership and may assert no greater rights than the entity whose property the receiver was appointed to preserve” — is closely followed by the Court of Appeals’ explanation that in that case, the receiver could retain funds that the entity could not. *Id.* Movants also cite a 30-year-old federal case that, in agreement with Colorado authority, calls it “axiomatic that [a receiver’s] power is derived from and limited by the order of the court appointing him.” *Fleming v. Lind-Waldock & Co.*, 922 F.2d 20, 25 (1st Cir. 1990) (addressing powers in a particular court’s receivership order and denying motion to intervene). Later federal

cases that distinguish *Fleming* point out that a receiver “representing a corporate entity used to perpetrate a Ponzi scheme has standing to bring claims against third-party recipients of the entity’s assets that were wrongfully transferred by the Ponzi scheme’s principal.” *Ashmore for Wilson v. Dodds*, 262 F. Supp. 3d 341, 349 (D.S.C. 2017); *Quilling v. Grand St. Tr.*, No. 3:04 CV 251, 2005 WL 1983879, at *5 (W.D.N.C. Aug. 12, 2005) (receiver had standing to bring claims on behalf of entities for the benefit of investors).

Here, the Court in the Receivership Order granted the receiver the power to pursue claims for the benefit of creditors on behalf of the Receivership Estate. Movants seek to collaterally attack this Court’s order and remove that power, which would harm the parties to this case and the defrauded investors here.

2. The Receivership Order is consistent with other orders issued by Denver District Courts

The Receivership Order is consistent with receivership orders issued by other courts in this District in securities cases brought by the Commissioner. Although the language is not identical, recent receivership orders grant the receiver the power to pursue claims on behalf of the estate for the benefit of investors and creditors.

Paragraph 13(s) of the Receivership Order reads:

To prosecute claims and causes of actions held by Creditors of Dragul, GDARES and GDAREM, and any subsidiary entities for the benefit of Creditors, in order to assure the equal treatment of all similarly situated Creditors;

Paragraphs from other receivership orders entered in securities cases brought by the Commissioner also grant the receiver power to bring legal actions the receiver deems necessary to enforce the receivership order and protect the receivership estate. In

the order appointing a receiver in *Myklebust v. Johnson et al.*, No. 2019 CV 33036 (Denver Dist. Ct. Aug. 15, 2019) (Exhibit 4), the Denver District Court granted the receiver the powers to

institute, prosecute, and continue the prosecution of such legal actions as the Receiver deems reasonably necessary, including actions necessary to enforce this Order, to collect accounts and debts, enforce agreements relating to the Estate, to protect the Estate, and to recover possession of the Estate and Estate Property from persons who may now or in the future be wrongfully possessing or occupying the Estate or Estate Property . . .

Id. at ¶ 10(u). Similarly, other courts in this District have granted receivers the power to

institute, prosecute, and continue the prosecution of such legal actions as the Receiver deems reasonably necessary, including actions necessary to enforce this Order, to collect accounts and debts, enforce agreements relating to the Estate, to protect the Estate, and to recover possession of the Estate from persons who may now or in the future be wrongfully possessing or occupying the Estate . . .

Order Appointing Receiver, ¶ 5(v), *Cheval v. Ray et al.*, No. 2019CV33770 (Denver Dist. Ct. Sept. 30, 2019) (Exhibit 5); *see also* Amended Order Appointing Receiver, ¶ 5(v), *Rome v. Ryan et al.*, No. 2017CV34027 (Denver Dist. Ct. Nov. 13, 2017) (identical paragraph) (Exhibit 6).

Here, the Receivership Order in this case similarly grants the Receiver the power to pursue claims for the benefit of creditors on behalf of the estate. The Receivership Order is consistent with other receivership orders granted in other securities cases in this District.

III. Conclusion

For the reasons stated above, the Court should deny the Motion to Intervene. If granted, the motion would allow Movants to collaterally attack the Receivership Order that has been in place for more than a year and a half and would harm the interests of the parties to this case and the investors.

Dated: April 27, 2020.

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s/ Janna K. Fischer

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CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2020, I served a true and correct copy of the foregoing **RESPONSE OF THE SECURITIES COMMISSIONER IN OPPOSITION TO MOTION TO INTERVENE with EXHIBITS 1-6** via CCE or first-class mail, postage prepaid, to the following:

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**RESPONSE OF THE SECURITIES COMMISSIONER
IN OPPOSITION TO MOTION TO INTERVENE**

Exhibit 1

DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO 1437 Bannock Street, Denver, CO 80202	
Plaintiff: FRED J. JOSEPH, Securities Commissioner for the State of Colorado v. Defendant: PROVIDENCE FINANCIAL SERVICES, INC., et al.,	DATE FILED: January 9, 2014 CASE NUMBER: 2013CV31667 COURT USE ONLY ▲ <hr/> Case No: 13CV31667 Courtroom: 269
ORDER RE: JEAN A. SCHOTT’S MOTION TO INTERVENE FOR AN ORDER SECURING FUNDS AND OPPOSITION TO PLAINTIFF’S MOTION TO APPROVE SETTLEMENT AND LIFT FREEZE ORDER	

THIS MATTER is before the Court on Jean A. Schott’s Motion to Intervene for an Order Securing Funds and Opposition to Plaintiff’s Motion to Approve Settlement and Lift Freeze Order filed on December 10, 2013. The Court, having reviewed all of the briefing filed in connection with Schott’s Motion, and being fully advised, hereby enters the following findings and order:

Schott’s Motion is **DENIED**. A receiver will be appointed, Schott’s litigation will be stayed, Schott may not secure her funds, and Schott has no right to intervene in the pending action.

I. BACKGROUND

Perry Sawano (“Defendant”) is an investment adviser accused of misusing funds from approximately twenty-six clients. (Complaint at 2). The Securities Commissioner alleges that Sawano used his firm, Providence Financial Services, d/b/a Integrity Financial Consulting, to purportedly invest a total of \$2.7 million dollars in “alternative investments” mostly unbeknownst to his clients. (Complaint at 2). The Commissioner alleges that Defendant was engaging in a classic Ponzi strategy of using new clients’ money to pay off or pay back previous clients. (Complaint at 2).

Jean A. Schott (“Schott”) was one of the investors whose \$500,000 was allegedly misappropriated by Defendant. (Schott’s Motion to Intervene at 2). While most of the other clients’ funds have been completely commingled, Schott’s funds are at least partially traceable. (Schott’s Motion to Intervene at 2).

On November 21, 2013, this Court approved the settlement agreements between Defendant and Plaintiff and lifted the freeze order on Defendant’s accounts. Schott filed a motion to intervene for an order securing funds and to oppose the appointment of a receiver.

II. DISCUSSION

Schott asserts that she should be able to prevent a receiver from being appointed, secure her funds, and to intervene in this case. The Court disagrees.

A. Appointing a receiver and staying litigation

Schott objects to the appointment of a receiver and the staying of her current lawsuits against the Defendant and the other investors. (Schott's Opposition at 4). However the Court finds that a receiver is warranted in this case. Whether to appoint a receiver is within the discretion of the trial court, and the decision will not be overturned unless the trial court's actions were manifestly arbitrary, unreasonable or unfair. *Premier Farm Credit, PCA v. W-Cattle, LLC*, 155 P.3d 504, 512 (Colo. App. 2006). A court may appoint a receiver at any time after one party:

[E]stablishes a prima facie right to the property, or to an interest therein, which is the subject of the action and is in possession of an adverse party and such property, or its rents, issues, and profits are in danger of being lost, removed beyond the jurisdiction of the court, or materially injured or impaired.
C.R.C.P. 66(a)(1).

Appointing a receiver is a drastic measure and should only be undertaken when a receiver is integral to protecting property rights. *Eureka Coal Co. v. McGowan*, 212 P. 521, 521 (Colo. 1922). A receiver is warranted in cases of fraudulent conduct or when the assets are in danger of dissipation or loss. *Savageau v. J. & R. A. Savageau, Inc.*, 285 P.2d 810, 813 (1955). When determining whether to appoint a receiver, the court should consider the totality of the circumstances including: (1) the existence of a valid claim by the moving party; (2) the probability that fraudulent conduct has occurred or will occur to frustrate the claim; (3) imminent danger that property will be lost, concealed, or diminished in value; (4) inadequacy of available legal remedies; (5) lack of a less drastic equitable remedy; and (6) the likelihood that appointment of a receiver will do more harm than good. *Waag v. Hamm*, 10 F. Supp. 2d 1191, 1193 (D. Colo. 1998); *Premier Farm Credit, PCA v. W-Cattle, LLC*, 155 P.3d 504, 520 (Colo. App. 2006).

Defendant's pattern of fraudulent conduct and pending litigation create a substantial danger, here, that the funds will be dissipated or lost. Schott does not dispute the existence of a valid claim by the moving party, or the probability that fraudulent conduct occurred. Rather, Schott asserts her right to reclaim her own assets, thereby diminishing the funds and contributing to the need for a receiver. Schott argues that the appointment of a receiver may diminish the amount of her eventual recovery, not that a receiver would do more harm than good for the investors, generally. Considering the totality of the circumstances, the Court finds that a receiver should be appointed, and Schott's litigation stayed.

B. Right of Intervention

Schott claims to have the right to intervene in this case to protect her interests. (Schott's Motion to Intervene at 7). The Court disagrees.

An individual has a right to intervene:

[W]hen the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

C.R.C.P. 24

A party's interest is impaired when the resolution of the pending action will prevent the party from pursuing the party's interest in the future and when the party's interests are not adequately represented in the pending action. *Feigin v. Alexa Group, Ltd.*, 19 P.3d 23, 30-1 (Colo. 2001). In actions by the State Securities Commissioner against fraudulent brokers, investors' interests are considered adequately represented by the Commissioner, who has a duty to protect investors from fraud in the securities market. *Feigin*, 19 P.3d 23 at 31-2. When a Commissioner is representing the investors, parties must make a compelling showing to the court to demonstrate that the party's interests are not being protected. *Feigin*, 19 P.3d 23 at 31-2.

In *Feigin*, the Colorado Supreme Court held that "investors are not entitled to intervene as a matter of right under Rule 24(a)(2) in the commissioner's civil enforcement action." *Feigin*, 19 P.3d 23 at 32. In that case, defrauded investors who objected to a provision of the Colorado Securities Commissioner's settlement plan tried to intervene. *Feigin*, 19 P.3d 23 at 30-32. The Court found that because the investors were not forced to participate in the plan but, rather, retained the ability to bring independent causes of action, the investors' rights were neither impaired nor impeded and the investors had no right to intervene. *Feigin*, 19 P.3d 23 at 30-32.

Here, Schott states her interests are not shared by the Commissioner because a Commissioner may seek to combine Schott's funds into the general pool and later disburse them equally among the investors. (Schott's Motion to Intervene at 7). The pending action does not preclude Schott from objecting to the receiver's plan later in the proceedings. Moreover, Schott retains the right to file an independent cause of action. Nowhere in Schott's briefs on this matter does Schott differentiate her situation from that of the investors in *Feigin*. Accordingly, the Court finds that Schott has failed to make a compelling showing that her interests are not adequately represented by the Commissioner and, therefore, Schott has no right to intervene in the present case.

C. Securing Funds

Schott asserts that because her money is still traceable, it has not been fully commingled with the assets of Defendant's other victims, and, therefore, she should be entitled to recover such identifiable funds before a receiver is appointed. (Schott's Motion to Intervene). The Court disagrees.

Schott has cited no case law for her position. (Schott's Motion to Intervene at 1-7). Instead, Schott states that because her funds were stolen and traceable, she should be allowed to recover her assets directly. (Schott's Motion to Intervene at 2-7). Schott asserts that her funds are traceable even though the Defendant deposited Schott's funds into accounts that contained other funds. (Schott's Motion to Intervene at 5-6).

It is inequitable to allow one investor to secure her funds once they have been commingled with the funds of others. While there is little Colorado case law on the subject of

receiverships and pro rata distribution, the Court finds federal case law to be persuasive. In a receivership case such as this one, where the investors were the victims of a Ponzi scheme, pro rata distribution is the favored and fairest way to distribute the funds. *S.E.C. v. Byers*, 637 F. Supp. 2d 166, 176-77 (S.D.N.Y. 2009). The goal of a receivership is to safeguard the assets, and assist the court in achieving an equitable distribution of the funds. *S.E.C. v. Vescor Capital Corp.*, 599 F.3d 1189, 1194 (10th Cir. 2009). Investors who object to the receiver's plan for distribution may object after the plan's formulation and before the assets are distributed. *Vescor.*, 599 F.3d 1189 at 1194-5. A plan may be equitable, even if it does not provide for all of the investors to recover all of their funds. *Vescor.*, 599 F.3d 1189 at 1195.


In Schott's case, while some of her funds may be traceable, they are commingled. (Schott's Motion to Intervene at 5-6). Any commingling of funds is enough that courts should treat the entire fund as tainted. *Byers*, 637 F. Supp. 2d 166 at 177. In the interests of providing an equitable remedy for all of the investors regardless of when they began investing with Defendant, this Court holds that Schott may not secure her commingled funds separately from those of other investors.

III. CONCLUSION

Schott's Motion is DENIED. A receiver will be appointed, Schott's litigation will be stayed, Schott may not secure her funds, and Schott has no right to intervene in the pending action.

SO ORDERED this 9th day of January 2014.

BY THE COURT:



ANN B. FRICK
DISTRICT JUDGE

**RESPONSE OF THE SECURITIES COMMISSIONER
IN OPPOSITION TO MOTION TO INTERVENE**

Exhibit 2



DENIED

Movant shall serve copies of this ORDER on any pro se parties, pursuant to CRCP 5, and file a certificate of service with the Court within 10 days.

Dated: Nov 23, 2010

Brian Whitney
District Court Judge

DATE OF ORDER INDICATED ON ATTACHMENT

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202 (720) 865-8301	<p style="text-align: center;">↑ COURT USE ONLY ↑</p>
<p>IN RE APPLICATION FOR INTERVENTION:</p> <p>Applicants: JOHN ELWAY and MITCHELL D. PIERCE</p> <p>Applicants for Intervention</p> <p>Plaintiff: FRED J. JOSEPH, Securities Commissioner for the State of Colorado,</p> <p>v.</p> <p>Defendants:</p> <p>SEAN MICHAEL MUELLER, MUELLER CAPITAL MANAGEMENT, LLC, and MUELLER OVER UNDER FUND, LP.</p>	
<p>ORDER REGARDING MOTION TO INTERVENE OF APPLICANTS</p>	

Applicants for Intervention, John Elway (“Elway”) and Mitchell D. Pierce (“Pierce”) (collectively “Applicants”), having filed their Motion to Intervene, and the Court having considered the same and being duly advised in the premises, hereby FINDS that the Motion is meritorious and should therefore be GRANTED:

IT IS THEREFORE ORDERED that Applicants are now a party to this action, and shall formally file and serve their Complaint in this matter within ten (10) days of this Order.

DONE this ____ day of October, 2010.

BY THE COURT:

District Court Judge

This document constitutes a ruling of the court and should be treated as such.

Court Authorizer
Comments:

Movants have failed to demonstrate how their interests are not sufficiently protected by the Court ordered receiver and its process of review. Each argument made concerning priority rights can be sufficiently addressed in the claims process. If an equitable trust exists, the Receiver, as an extension of the Court, can take that into consideration in its processing and evaluating duties. Further, movants seem to rely on what information was given to them at the time of their investment rather than what actually occurred. The Receiver, in its objection, informs the Court that the priority of claims is belied by the actual use of the proceeds. While the Court is not making this as a finding of fact, it is sufficient cause to deny intervention at this juncture.

**RESPONSE OF THE SECURITIES COMMISSIONER
IN OPPOSITION TO MOTION TO INTERVENE**

Exhibit 3

DISTRICT COURT, DENVER COUNTY,
STATE OF COLORADO

Court Address:
1437 Bannock Street
Denver, CO 80202

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

vs.

Defendants: GARY 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

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CASE NUMBER: 2020CV30255

▲ COURT USE ONLY ▲

Case Number: 20CV30255

Courtroom: 414

MOTION OF HERSHEY DEFENDANTS TO STAY RESPONSE TO COMPLAINT

Defendants Performance Holdings, Inc., and Marlin Hershey (collectively the “Hershey

Defendants”), through counsel, move for a stay¹ of their response to the Complaint, pending resolution of the Hershey Defendants’ Motion to Intervene in the related case² of Rome v. Dragul, et. al., Denver District Court Case No. 18CV33011, Division 424 (“Receivership Case”). In support of this Motion, the Hershey Defendants state as follows.

1. This action was filed on 21 January 2020. The Hershey Defendants were served with summonses and copies of the Complaint on 4 February 2020. By order of this Court dated 11 March 2020, the Hershey Defendants were given until 31 March 2020 to file a response to the Complaint.

2. Various co-Defendants have filed motions to dismiss the Complaint. As relevant here, co-Defendants Fox and Dragul have argued that the Complaint must be dismissed because the Plaintiff, Harvey Sender, as a receiver for Mr. Dragul and related corporate entities, lacks standing to pursue claims on behalf of creditors against Dragul and against Fox. Pointedly, Fox and Dragul contend that the law does not permit a receiver to be granted such authority. Their argument applies with equal force to the Hershey Defendants.

3. However, the lack of authority at common law for a receiver to pursue claims of creditors notwithstanding, there nonetheless is an extant Order from Courtroom 424 (“424 Order”) in the Receivership Case that states to the contrary (Exhibit A). To wit, paragraph 13(s) of the 424 Order states that:

[t]he Receiver shall have all the powers and authority usually held by equity receivers and reasonably necessary to accomplish the purposes stated herein, including, but not limited to, the following powers which the Receiver may execute without further order of this Court, except as expressly provided herein:
... (s) To prosecute claims and causes of actions held by Creditors of Dragul, GDARES and GDAREM, and any subsidiary entities for the benefit of Creditors, in order to assure the equal treatment of all similarly situated Creditors;

4. This language is a small part of a 22 page order that had been stipulated to by the parties in the Receivership Case and therefore that may not have received much scrutiny from Judge Egelhoff prior to issuance of the order. Nonetheless, paragraph 13(s) (“The Paragraph”) stands as part of an Order from Courtroom 424. Plaintiff in this matter presumably will rely upon The Paragraph to rebut the arguments of Dragul and Fox that the Receiver has no standing to bring claims against them on behalf of creditors.

5. In their respective motions to dismiss, Fox and Dragul acknowledge the existence of the 424 Order but ask this Court to ignore the Order, contending, in effect, that the Order unlawfully confers standing (*i.e.*, subject matter jurisdiction) upon the Receiver, an act which was outside the authority of Judge Egelhoff. For their part, the Hershey defendants are uncomfortable with simply asking this Court to ignore the 424 Order, particularly in light of the Colorado Supreme Court’s ruling in State for Use of Dep’t of Corr. v. Pena, 911 P.2d 48 (Colo. 1996). Therein, this State’s High Court held that “[a] district court may not assume the authority or

¹ In conformity with C.R.C.P. 121 § 1-15(8), Mr. Grant co-counsel for the Hershey Defendants conferred regarding this Motion with Plaintiff’s counsel, who advised that the Plaintiff’s oppose the relief requested herein.

² Please see Plaintiff’s 22 January 2020 Notice of Related Case for additional details.

power to superintend or review the propriety of or supervise the judgment of another district court. . . ***Thus, even if a court enters an erroneous judgment, that judgment is not subject to collateral attack by another court of coordinate jurisdiction.***” *Id.* at 57. (emphasis added).

6. Fox and Dragul may contend that Pena is distinguishable and does not apply to the situation at hand. Nonetheless, to the extent that Pena does control the question of this Court’s stance on the 424 Order, this Court is powerless to ignore or override same. Moreover, even to the extent that Pena does not apply here, this Court nonetheless would be placed in the awkward position of reviewing the efficacy or validity of an Order issued by a fellow member of this same Court.

7. As such, the Hershey Defendants believe that the only sensible approach to this matter is to ask Judge Egelhoff to consider, with the benefit of full briefing this time around, the question of the legitimacy of a receiver’s standing to pursue claims of creditors of the receivership estate. To that end, the Hershey Defendants have filed earlier today a motion to intervene in The Receivership Case for the express purpose of challenging the efficacy of The Paragraph. If intervention by the Hershey Defendants is granted and the challenge to The Paragraph is successful, then Plaintiff’s standing to bring the claims in this case will be eliminated and dismissal of this action against at least the Hershey Defendants, Fox, and Dragul will be warranted. On the other hand, if the Hershey Defendants do not prevail on their challenge to The Paragraph in front of Judge Egelhoff, the Hershey Defendants can otherwise respond to the Complaint in this case.

8. Accordingly, the Hershey Defendants ask for a stay³ of their response to the Complaint until their motion to intervene and, if granted, their attack on The Paragraph, are resolved by Judge Egelhoff in the Receivership Case. The Hershey Defendants SO MOVE.

Dated this 31st day of March 2020.

Respectfully Submitted

S/Thomas E. Goodreid
Thomas E. Goodreid

³ If this Court should deny this request for stay, the Hershey Defendants respectfully request ten days from the date of the denial to file a response to the Complaint.


CERTIFICATE OF ELECTRONIC FILING

Pursuant to Colorado Rule of Civil Procedure 121 sec. 1-26(7), I hereby certify that an original of this **MOTION OF HERSHEY DEFENDANTS TO STAY RESPONSE TO COMPLAINT** (with original signatures), which was e-filed, is maintained by my office and is available for inspection by other parties or the Court upon request.

S/Thomas E. Goodreid
Thomas E. Goodreid

**RESPONSE OF THE SECURITIES COMMISSIONER
IN OPPOSITION TO MOTION TO INTERVENE**

Exhibit 4

<p>DISTRICT COURT, DENVER COUNTY, COLORADO</p> <p>1437 Bannock Street Denver, CO 80202</p> <hr/> <p>CHRIS MYKLEBUST, Securities Commissioner for the State of Colorado,</p> <p>Plaintiff,</p> <p>v.</p> <p>LEONARD R. JOHNSON; MICHAEL HOLSTEAD; TRACI SALASKY; THOMAS C. SALASKY; ASPEN STREET, LLC, LRJ & COMPANY, LLC; CADILLAC DRIVE, LLC a/k/a ASPEN INVESTORS; and SAPLINGS, LLC;</p> <p>Defendants.</p>	<p style="text-align: center;">GRANTED BY COURT</p> <p style="text-align: center;">08/15/2019</p> <p>DATE FILED: August 15, 2019 CASE NUMBER: 2019CV33036</p>  <p style="text-align: center;">David Goldberg Judge</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
	<p>Case No.: 2019 CV 33036</p> <p>Courtroom: 269</p>
<p>ORDER APPOINTING RECEIVER</p>	

THIS MATTER is before the Court on the Stipulated Motion for Appointment of Receiver (the “Motion”), filed by Plaintiff Chris Myklebust, Securities Commissioner for the State of Colorado (the “Commissioner”). The Court has reviewed the parties’ Stipulated Motion and the file and is otherwise advised. The Court finds and concludes:

- A. The Court has jurisdiction over the subject matter of this case and jurisdiction over the parties.
- B. Venue is proper in this Court.

C. Pursuant to applicable law and this Court's equity jurisdiction, the Commissioner is entitled to request the appointment of a receiver for Leonard R. Johnson, Aspen Street, LLC, LRJ & Company, LLC, Cadillac Drive, LLC a/k/a Aspen Investors, and Saplings, LLC (the "Aspen Street Defendants"), including, except as provided herein, without limitation all of their assets of any kind or nature whatsoever related in any manner to their businesses as further described in the Complaint (the "Estate"). The assets of the Estate include, except as provided herein, without limitation all cash, bank and deposit accounts, accounts receivable, notes receivable, and other receivables, business investments and interests, whether legal or equitable, direct or indirect, in other business enterprises, tangible personal property, general intangibles, inventory, investment property, payment intangibles, real property, claims, causes of action, and choses in action of any kind or nature, instruments, documents, chattel paper, intellectual property, and letter-of-credit rights, together with: (i) all substitutions and replacements for and products of the foregoing; (ii) proceeds of any and all of the foregoing; (iii) all tangible goods and all accessions; (iv) all accessories, attachments, parts, equipment and repairs now or hereafter attached or affixed to or used in connection with any tangible goods whether now owned or hereafter acquired; and (v) all other things of value owned by the Aspen Street Defendants, including the books, records and other papers of any business or entity owned and operated by and through the Aspen Street Defendants (collectively, the "Estate Property"). The Estate Property does not include, however, assets of Defendants

Leonard R. Johnson and LRJ & Company, LLC (together, the “Johnson Defendants”), that are unrelated to the investment businesses described in the Complaint or not otherwise derived from Estate Property, including but not limited to: (i) assets acquired by the Johnson Defendants before January 1, 2015; and (ii) payments received by the Johnson Defendants from Takoda Properties, Inc. related to that certain Construction Declaration recorded on October 3, 2014 with the Clerk and Recorder of Boulder County, Colorado at Reception No. 3406324, or that certain Partial Assignment of Construction Declaration recorded on December 4, 2017 with the Clerk and Recorder of Boulder County, Colorado at Reception No. 3628827 (the “Takoda Declaration”). Also excluded from the Estate Property are any books, records and other papers protected under the attorney-client privilege or work-product doctrine, except as otherwise ordered by the Court under applicable law.

D. Randel Lewis, whose address is 1600 Wynkoop Street, Suite 200, Denver, Colorado, and is an experienced and suitable party to be appointed as receiver for the Estate.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

1. Randel Lewis is appointed as receiver for the Estate (hereinafter referred to as the “Receiver”).

2. The Receiver shall forthwith file his oath and post a receiver’s bond of \$10,000.00. The bonds set forth herein shall be maintained until further order of this Court.

3. Notwithstanding the provisions of this Order, any and all claims that the Receiver or the Estate has or may have against Leonard R. Johnson, in his individual capacity, and Cadillac Drive, LLC a/k/a Aspen Investors under this Order and applicable law, shall be, and hereby are temporarily stayed, pending further order of the Court, provided that Leonard R. Johnson is not in default of his payment obligations to the Receiver, on behalf of the Commissioner under paragraph 4 of the Order of Permanent Injunction and Other Relief Concerning Aspen Street, LLC, LRJ & Company, LLC, Cadillac Drive, LLC a/k/a Aspen Investors, and Leonard R. Johnson (the “Stipulation for PI”), filed contemporaneously with this Order.

4. The Receiver shall forebear from exercising any rights, powers, and claims under this Order against either Leonard R. Johnson or Cadillac Drive, LLC a/k/a Aspen Investors pending further order of the Court, provided that Leonard R. Johnson is not in default of his payment obligations under paragraph 4 of the Stipulation for PI.

5. Upon Leonard R. Johnson’s payment in full of payment obligations under the Stipulation for PI, and upon the Receiver’s certification to this Court of the same and entry of a Court order, any rights of the Estate in or to the remaining assets of Leonard R Johnson shall be deemed abandoned and terminated, such remaining assets shall no longer constitute Estate Property. For the avoidance of doubt, to the extent of any default under the Stipulation for PI, and entry of judgment in accordance with Paragraph 5 of the Stipulation for PI, the Receiver

may enforce such judgment against Leonard R. Johnson, Aspen Street, LLC, LRJ & Company, LLC, and Cadillac Drive, LLC a/k/a Aspen Investors, any and all their respective assets and property, under applicable law, regardless of whether or not their assets or property are deemed Estate Property as provided in this Order.

6. The Receiver is hereby directed and empowered to take immediate control and possession of the Estate, and to hold the Estate Property for this Court *in custodia legis*. The Receiver shall operate, manage, maintain, protect, and preserve the Estate and Estate Property, subject to the supervision and exclusive control of this Court, for the benefit of creditors of the Estate and any owners of the Estate Property.

7. The Aspen Street Defendants and individual defendants Michael Holstead, Traci Salasky and Thomas C. Salasky (the “Individual Defendants”), and all persons in active concert and participation with the Aspen Street Defendants and the Individual Defendants, including, without limitation, their current and former officers, directors, managers, governors, employees, shareholders, agents, representatives, members, attorneys, accountants, banks, contractors, subcontractors and all who claim under them, be, and the same hereby are, ordered to deliver immediately over to the Receiver all of the Estate Property.

8. With respect to any claims against Leonard R. Johnson or Cadillac Drive, LLC a/k/a Aspen Investors that are or may be temporarily stayed by this Order, any and all statutes of limitation, statutes of repose, or any other time bars under applicable law shall be, and hereby are, expressly tolled until entry of

further Court order terminating the stay. Defendant Leonard R. Johnson, Cadillac Drive, LLC a/k/a Aspen Investors, or the Receiver may apply to the Court for further determinations as to the scope of the stay and tolling provisions under this Order, during the time that Leonard R. Johnson's payment obligations under paragraph 4 of the Stipulation for PI remain outstanding.

9. Any and all sales of assets of Cadillac Drive, LLC a/k/a Aspen Investors shall be subject to the Receiver's prior review and approval, or entry of a Court order. Any and all proceeds from the sale of assets of Cadillac Drive, LLC a/k/a Aspen Investors paid over to the Receiver shall be applied to reduce defendant Leonard R. Johnson's payment obligations under paragraph 4 of the Stipulation for PI. During such time that defendant Leonard R. Johnson's payment obligations under paragraph 4 of the Stipulation for PI remain outstanding, defendant Leonard R. Johnson shall cooperate with the Receiver in the administration of the Estate, shall perform or refrain from taking actions under Paragraphs 15 and 16 of this Order as reasonably requested by the Receiver, and shall report to the Receiver no less frequently than each calendar quarter as to disbursements made or received on account of Leonard R. Johnson's individual interests under the Takoda Declaration, and as to the remaining assets and liabilities of Cadillac Drive, LLC a/k/a Aspen Investors.

10. The Receiver is hereby given the powers and authority usually held by receivers and reasonably necessary to accomplish the purpose of this receivership including, without limitation, the specific power to:

a. take from the Aspen Street Defendants, and from any others in control of the Estate Property, immediate control of the Estate and Estate Property, to the exclusion of all others;

b. take control of the Estate and Estate Property, to operate, manage, maintain, protect, and preserve the Estate and Estate Property as reasonably necessary to maximize the value and prevent diminution of its value; take possession of all bank and other deposit accounts of the Estate and all funds therein; and open, transfer and change all bank and trade accounts relating to the Estate, so that all such accounts are in the name of the Receiver;

c. close bank accounts in the name of the Aspen Street Defendants and transfer the funds to one or more bank accounts at a bank or banks, financial institutions, mutual fund, brokerage institution or other commercial depositories in the Denver, Colorado metropolitan area selected by the Receiver, in the name of the Receiver on behalf of the Estate;

d. collect rents and revenues, income, profits, and other benefits from the operation and management of the Estate and Estate Property;

e. collect all accounts, accounts receivable, notes receivable, income, profits and proceeds that are part of the Estate or represent proceeds of the Estate and Estate Property; including, as necessary, negotiate and deposit checks made payable to the Estate into accounts maintained by the Receiver, and, as necessary to collect and review mail directed to the Estate in order to collect incoming accounts receivable;

f. invest funds of the Estate, without further permission of the Court, in savings accounts or in securities backed by the full faith and credit of the United States including mutual funds;

g. change any and all locks on any and all physical property of the Estate and Estate Property and limit access thereto;

h. operate, manage, maintain, protect, and preserve the Estate and Estate Property, including, to the extent the Receiver deems appropriate, the going concern value of any business operated by the Estate;

i. investigate the assets and liabilities of the Estate, and report to this Court, within ninety (90) days after entry of this Order, regarding the nature of the assets and liabilities of the Estate and Estate Property, including recommendations to the Court regarding the further disposition of the Estate and Estate Property for the benefit of those claiming an interest therein;

j. with prior Court approval, sell or otherwise dispose of the Estate and Estate Property; provided, however, that the Receiver need not obtain prior Court approval to sell or otherwise dispose of any tangible personal property having a depreciated aggregate value, as reflected on the Estate's books and in the Receiver's business judgment, of less than \$10,000;

k. abandon, upon prior court approval, any Estate Property of inconsequential value and benefit, or any Estate Property that may be burdensome to the Estate;

l. investigate, prosecute, and compromise or settle (as appropriate and with prior Court approval), any claims and causes of action of the Estate against third parties, including against any of the Individual Defendants and/or Leonard R. Johnson, subject to the express limitations of this Order;

m. incur and pay, in the ordinary course of business, all reasonable expenses of administration of the Estate and Estate Property, including, but not limited to, the authority to:

i. pay taxes, insurance, utility charges and other expenses and costs reasonably incurred in managing, preserving, and liquidating the Estate;

ii. hire as an expense of the Estate, on a contract basis wherever possible, or as employees where required by applicable law, the personnel necessary to manage, preserve and liquidate the Estate and Estate Property, including, as the Receiver deems appropriate, personnel previously employed by the Estate or the Aspen Street Defendants;

iii. hire as an expense of the Estate, on a contract basis as needed and determined in the Receiver's business judgment, the personnel necessary to maintain a complete and accurate accounting of the income and expenses of the Estate, including, in the Receiver's discretion, the retention of personnel of individuals hired by the Estate to maintain such accounting, and to pay the reasonable value for the services rendered;

iv. hire as an expense of the Estate such employees, accountants, consultants, attorneys and other professionals, as his counsel, as is

necessary and proper for the administration of the Estate. The employment of such attorney or accountant shall first be approved by the Commissioner with a notice filed reflecting such employment. The Receiver shall make an application of the Court for payment of reasonable and necessary fees, costs and expenses incurred as Receiver, including but not limited to, disbursement of professional fees and expenses to himself, his counsel, and accountants, and shall be entitled to payment of said fees and expenses as hereinafter provided. Copies of the application to the Court shall be provided to counsel for the Commissioner and the parties of record. Such parties shall have fourteen (14) days following the filing of such application to file any objections with the Court. Objections will not be general in nature, but are to be specific, stating all amounts objected to on an item-by-item basis and stating the amount, in detail, if any, which is not objected to by the objector. If no objections are filed with the Court within fourteen (14) days, the Receiver may thereupon draw funds sufficient to pay such professional fees, disbursements and expenses without further order of the Court. If any objections are filed, the Receiver may draw funds sufficient to pay any undisputed amounts, and the Court will conduct a hearing on any objections as the Court's calendar will allow. At such hearing, the compensation of the Receiver or other professional, as well as allowable disbursements and expenses, will be determined by the Court.

v. hire as an expense of the Estate, on a contract basis, attorneys, accountants, consultants and other professionals previously utilized by

the Estate or the Aspen Street Defendants to provide such services as the Receiver may direct;

vi. contract and pay for and obtain such services, utilities, supplies, equipment, and goods as are reasonably necessary to manage, preserve, and liquidate the Estate as the Receiver may reasonably deem necessary, *provided however*, that no contract shall extend beyond the termination of the Receivership without the permission of the Court.

n. to pay expenses of the operation of the Estate that arose pre-receivership, as determined by the Receiver to be necessary for the preservation of value of the Estate;

o. negotiate and enter into such leases (including equipment leases), contracts and other agreements as the Receiver may reasonably deem appropriate to manage, preserve and liquidate the Estate, *provided however*, that no such lease, contract, or agreement shall extend beyond the termination of the Receivership without the permission of the Court;

p. reject, assume, or decline to assume any leases or unexpired contracts of the Estate that are burdensome, upon Court approval;

q. exercise all rights of the Estate as a shareholder, member, equity owner, or trustee or beneficiary of any voting trust, of any other business enterprise, including, but not limited to, the right to vote on any issues requiring the approval of equity owners, and the right to receive distributions on account of the equity interests;

r. obtain and renew all insurance policies that the Receiver deems reasonably necessary to manage and preserve the Estate and the interest of the Receiver and the parties to this action; and notify any insurers of the Estate of the pendency of these proceedings and that, subject to the prior rights of any person possessing a lien on the Estate, any proceeds paid under such policies shall be paid to the Receiver;

s. upon prior Court approval, borrow from third parties on such reasonable terms as may be acceptable to the Receiver, funds to meet the needs of the Estate in excess of the income of the Estate, and issue Receiver's Certificates, bearing interest not to exceed the rate of 15% per annum, in exchange for funds so advanced, with all such Receiver's Certificates, collectively, to hold a first and prior lien and a preference claim upon Estate Property, or a portion of it at the Receiver's election;

t. apply for, obtain, maintain, and renew as reasonably necessary all trademarks, copyrights, patents, licenses, permits and other intellectual property rights required for the preservation of the Estate;

u. institute, prosecute, and continue the prosecution of such legal actions as the Receiver deems reasonably necessary, including actions necessary to enforce this Order, to collect accounts and debts, enforce agreements relating to the Estate, to protect the Estate, and to recover possession of the Estate and Estate Property from persons who may now or in the future be wrongfully possessing or occupying the Estate or Estate Property, or any part thereof, and bring such

actions as may be necessary, in the judgment of the Receiver, to set aside any transfer, conveyance, encumbrance or lien affecting all or any portion of the Estate or Estate Property, including, but not limited to, any transfer of the Estate or any Estate Property avoidable under applicable law, in this and other jurisdictions, and to settle or compromise any such proceedings, and to appeal or seek judicial review in respect of any order or judgment entered in any such proceeding, and expressly including the filing, assertion, prosecution, settlement and compromise of any claims of the Estate or the Aspen Street Defendants in the receivership case of Global Credit Recovery, LLC et al., captioned as *S.E.C. v. Kevin B. Merrill et al.*, Case No. 18-CV-2844-RDB, pending in the United States District Court for the District of Maryland;

v. issue such subpoenas or subpoenas duces tecum, interrogatories, and/or requests for production of documents as necessary and appropriate under Rules 26 and 28 through 34, C.R.C.P.;

w. file, assert, prosecute, settle and compromise claims and causes of action that belong to the Estate against the Aspen Street Defendants and/or the Individual Defendants;

x. with prior Court approval, solicit the filing and submission of claims of investors and creditors of the Estate, for any claims that may be asserted against the Estate or Estate Property, and establish a claims bar date and claims administration process; and

y. do such other lawful acts not inconsistent with this Order as the Receiver reasonably deems necessary to manage and preserve the Estate and to perform such other functions and duties as may from time to time be required and authorized by this Court, by the laws of the State of Colorado or by the laws of the United States of America.

11. In addition to the powers and authority granted the Receiver set forth in this Order, the Receiver shall have the right and the sole authority to exercise all of the powers of the Aspen Street, LLC, LRJ & Company, LLC, Cadillac Drive, LLC a/k/a Aspen Investors, and Saplings, LLC (“Entity Aspen Street Defendants”), through or in place of their boards of directors, boards of governors, managers, members, and officers, to the same extent as those entities are included as part of the Estate, and their respective assets as Estate Property, and to the extent necessary to manage the affairs of each of the Entity Aspen Street Defendants in the best interests of their creditors and members. Such corporate governance powers and authority shall include, without limitation, the authority to petition for protection under the Bankruptcy Code, 11 U.S.C. § 101 et seq. (the “Bankruptcy Code”), for one or more of the Entity Aspen Street Defendants, and in connection therewith be deemed a debtor-in-possession for any of the Entity Aspen Street Defendants in proceedings under Chapter 11 of the Bankruptcy Code, and prosecute such adversary proceedings and other matters as may be permitted under the Bankruptcy Code and applicable law. Upon and concurrent with the filing of bankruptcy petitions for any of the Entity Aspen Street Defendants as

authorized by this Order, the receivership as ordered hereby pending in this Court shall be suspended as to such entity, and all further actions concerning the receivership Estate in this Court shall be stayed as to such entity. The corporate governance powers and authority vested in the Receiver pursuant to this Order are in addition to, and not derivative of, the usual and customary receivership powers vested in the Receiver under applicable law.

12. The Receiver is hereby authorized to apply the proceeds of the Estate and Estate Property in the following order of priority:

- a. first, to pay the cost of the Receiver's bond;
- b. second, to pay the Receiver's fees incurred in connection with this Receivership, and to prepay or reimburse the out-of-pocket expenses of the Receiver, and to pay the Receiver's professional fees, including attorneys' fees, accountant's fees, and consultant's fees;
- c. third, to pay the necessary and reasonable administrative costs of managing and preserving the Estate; and
- d. fourth, to repay any Receiver's Certificates, with interest as provided for therein. All funds in possession of the Receiver after satisfaction of the foregoing obligations shall be maintained by the Receiver pending further order of this Court.

13. The Receiver shall be compensated at the hourly rate of \$400.00 for his services hereunder. The Receiver's compensation for services under this Order and the Receiver's reasonable out-of-pocket expenses shall be paid monthly. The

Receiver shall submit to the Court and counsel for any party to this proceeding itemized monthly billing statements for his professional services and other professional and administrative expenses, and shall submit to the Court and counsel for any party to this proceeding itemized monthly billing statements for services performed by the Receiver's attorneys, accountants, and consultants.

14. Within thirty (30) days of the date of this Order, the Receiver shall notify all known investors and creditors with the Estate, or their successors, of the appointment of a receiver in this action. Within thirty (30) days of the date of this Order, the Receiver shall also notify the Internal Revenue Service and the Colorado Department of Revenue of the appointment of a receiver in this action. The Receiver shall file with the Court and serve upon the parties, within ninety (90) days after entry of this Order, a preliminary report setting out the identity, location and value of the receivership Estate assets, and any liabilities pertaining thereto. The Receiver shall make and file with the Court, and provide copies to the parties to this action, and any investors, quarterly reports of the condition of the Estate on the last day of the month after the end of each quarter, for each prior quarter. Upon prior notice in a Receiver's report, the Receiver may report less frequently. The Receiver shall not be required to, but as reasonably necessary may, follow generally accepted accounting principles, or use auditors or accountants in the preparation of his reports to the Court. Quarterly reports shall include summary of all Estate Property, the current status or proposed disposition or liquidation thereof, claims by and against the Estate, receipts, disbursements,

debts and obligations contracted and expenditures made. The Receiver shall keep the Court and all parties to this proceeding apprised of all material developments concerning the operation of the receivership, and subject to preservation of any and all privileges, including the attorney-client and attorney work product privileges, shall provide to all parties to this proceeding upon request any documents or information under the control of the Receiver.

15. Except as may be expressly authorized by this Court upon notice and a hearing, the Aspen Street Defendants and Individual Defendants and their respective officers, managers, members, board of governors and those acting by and on their behalf are enjoined from:

- a. collecting the Estate and Estate Property, or any proceeds, revenues, accounts, issues, profits or other revenues thereof;
- b. withdrawing funds from any bank or other depository account belonging to the Estate;
- c. terminating or causing to be terminated any license, permit, lease contract or agreement relating to the Estate;
- d. altering, erasing, or destroying any documents or electronic records that belong to the Estate or are Estate Property without the prior written consent of the Receiver; and
- e. otherwise interfering with the operation of the Estate or the Receiver's exercise of any power hereunder or the Receiver's discharge of his duties.

f. Upon receipt of a copy of this Order, or upon actual knowledge of the entry of this Order, any other person or business entity shall also be bound by this Order unless otherwise ordered by the Court.

16. The Aspen Street Defendants and the Individual Defendants shall promptly:

a. advise the Receiver of the existence of any Estate Property in such party's possession and deliver immediately over to the Receiver or his agents all collections of proceeds of the Estate, including accounts receivable, properly endorsed to the Receiver when necessary;

b. advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the Estate or the business or affairs of the Estate, and any computer programs, computer tapes, computer disks, or other electronic data and storage media containing any such information in such party's possession or control;

c. provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto; and provide assistance to the Receiver in gaining immediate access to the information in any records as the Receiver may in its discretion require, including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account

numbers that may be required to gain access to the information, provided however, that nothing in this paragraph shall require the delivery of documents or electronic records, or the granting of access to Records, consisting of the personal property of the party in possession thereof, and not the Estate, which may be subject to any attorney-client privilege or any other applicable privilege;

d. continue to deliver immediately to the Receiver all collections of proceeds of the Estate, including accounts receivable, other collections, books and other records relating to the operation, maintenance and management of the Estate, and to permit the Receiver to carry out his duties hereunder without interference; and

e. when necessary or when requested by the Receiver, explain matters affecting or related to the operation, maintenance, preservation, and/or liquidation of the Estate and Estate Property to the Receiver or his agents.

17. Except as may be expressly authorized by the Receiver or by application to this Court, no person may buy, sell, or otherwise transfer any portion of the Estate or Estate Property that is not in the control of the Receiver.

18. Any provision of law or terms of this Order to the contrary notwithstanding, except as limited by the terms of this Order as to the property of Leonard R. Johnson and Cadillac Drive, LLC a/k/a Aspen Investors, the Receiver controls the Estate and Estate Property until further order of this Court.

19. All claims and demands against the Estate, Estate Property or the Receiver shall be brought in this Court. No equitable proceeding or enforcement

process in any court or tribunal shall be commenced or continued against the Receiver except with the written consent of the Receiver or upon order of this Court. All actions whether legal or equitable in nature or which purport to seek legal or equitable relief against the Estate, Estate Property or the Receiver or the Aspen Street Defendants, are hereby stayed pending further action of this Court. No actions, whether legal or equitable in nature, shall be further prosecuted or brought against the Estate, Estate Property, the Receiver or the Aspen Street Defendants without permission of this Court.

20. After notice and an opportunity to be heard to all known and potential claimants as provided in this Paragraph 20, any parties holding claims against the Estate, Estate Property, the Receiver, the Aspen Street Defendants or the Individual Defendants, to the extent those claims are related to the investment businesses described in the Complaint, shall not be entitled to distributions from the Estate, unless such parties: (I) file a claim complying with a separate claims administration process to be approved by this Court; (II) agree in connection with the filing of such claims that they will not file or prosecute claims such parties may have (a) on insurance policies and surety bonds issued in connection with the investment businesses described in the Complaint, or (b) against the Aspen Street Defendants or the Individual Defendants, absent further order of this Court, to the extent those claims are related to the investment businesses described in the Complaint; and (III) promptly stay any lawsuits or other proceedings currently pending, and give notice in those proceedings of the entry of this Order. No later

than three (3) business days following entry of this Order, the Receiver and the Aspen Street Defendants shall mail notice of this Order to all known and potential claimants, with an opportunity to object to this Order and specifically the terms of this Paragraph 20 within fourteen (14) days of the mailing of such notice. Except as to the Estate and Estate Property, the Receiver has no affirmative obligation to enforce the provisions of this Paragraph 20 against any claims or potential claims asserted or raised against the Aspen Street Defendants, and the Receiver shall report and make recommendations to the Court to the extent that the Aspen Street Defendants or the Commissioner seek to enforce the terms of this Paragraph 20 against any potential claimant or creditor. If no objections or requests for hearing are received or filed within fourteen (14) days of the mailing of the notice provided herein, the terms of this Paragraph 20 shall be in full force and effect, and otherwise enforceable by the Aspen Street Defendants and/or the Commissioner upon application to this Court.

21. All persons having notice of this Order, and having oral or written agreements with the Estate, or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, utility or other services to the Estate are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver; and the Receiver shall be entitled to the continued use of the Estate's

current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the entry of this Order shall be paid by the Receiver in accordance with the ordinary course of business of the Estate and such supplier, or such other practices as may be agreed upon by the Receiver and the supplier, or as may be ordered by this Court.

22. Sheriff or marshal assistance to enforce the terms of this Order in the form of peace-keeping duties is hereby authorized.

23. All real and personal property lessors to the Entity Aspen Street Defendants are hereby enjoined from seizing, or preventing the Receiver from taking possession of any Estate Property, subject to further Court order authorizing relief from this Order. Service of a copy of this Order on any such lessor shall serve as formal notice of this Order and the lessor's obligations under this paragraph.

24. All who are acting, or have acted, on behalf of the Receiver at the request of the Receiver, including his attorneys and accountants, are protected and privileged with the same protections of this Court as that of the Receiver. In order to avail the agents of the Receiver with these protections and privileges, the Receiver should file a notice of the agency with this Court.

25. The Receiver shall file and serve any request for relief or approval of any action required by this Order on any party filing an entry of appearance in this proceeding. Unless an objection to such motion, application, or request for relief is

filed with the Court within fourteen (14) calendar days after service thereof, approval of the Court shall be deemed granted and the Receiver shall be authorized to take such action. As appropriate, the Receiver may nevertheless request entry of a Court order granting such motion, application, or request. If an objection to the motion is filed with the Court, the Court shall promptly hold a hearing on the motion as its calendar will allow.

26. The bond and the Oath of Receiver may be filed by facsimile transmission or other electronic means and this Order shall become effective upon the Court's receipt of such transmission.

27. The Receiver may from time to time request that the Court enter additional orders to supplement, clarify or amend this Order, upon notice in accordance with this Order. Upon motion by the Receiver and notice to parties for no less than fourteen (14) days, and provided no objections or requests for hearing have been filed within fourteen (14) days of filing the motion, the Receiver may take action as requested in such motion in his reasonable business judgment, whether or not the Court has entered a separate order expressly authorizing the same.

28. Any notice required hereunder shall be deemed served on the date it is deposited in the United States mail, first class postage prepaid, to counsel of record for any party, or directly to any party not represented by counsel, and any computation of time for purposes of this Order shall be governed by the provisions of Rule 6, C.R.C.P.

29. The Receiver shall forthwith provide a copy of this Order to any other persons in possession of any Estate Property or any other persons otherwise affected by this Order.

30. Notwithstanding anything to the contrary contained in this Order, the Receiver shall not take any action with regard to ownership, operation, control, storage, generation, or disposal of: (a) any substance deemed a “hazardous substance”, “pollutant”, “contaminant”, or similar substance under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675, the Conservation and Recovery Act of 1976, the Solid Waste Amendments of 1984, the Superfund Amendments and Reauthorization Act of 1986, and any other amendments; or (b) any other chemical, toxin, pollutant or substance defined as hazardous or dangerous to human health under any other federal, state or local law, regulation, rule or ordinance, including, without limitation thereto, petroleum, crude oil, or any fraction thereof (all collectively referred to herein as “Hazardous Substances”), without first applying for an obtaining an Order of this Court specifically setting forth the action or actions proposed to be taken by Receiver. Without first applying for and obtaining such an Order of this Court, the Receiver shall have no ownership, control, authority or power (neither shall receiver have any obligation to exercise ownership, control, authorize or power) over the operation, storage, generation or disposal of any Hazardous Substance. All decisions relating to the ownership, operation, control, storage, generation and disposal of any Hazardous Substances

shall be resolved by this Court.

31. The Receiver serves herein, and discharges all his duties under this Order, as an officer of this Court, solely in a representative capacity, and not in an individual capacity, and does not, in being appointed as Receiver or by acting in good faith as Receiver consistent with this Order hereunder, thereby become personally liable to any person or governmental entity under any law, statute, regulation or other doctrine of law or equity.

32. The Receiver shall continue in possession of the Estate and Estate Property until discharged by the Court. The Receiver shall endeavor to wind up the Receivership expeditiously or otherwise at the direction of the Court, and to submit a final report and motion for discharge no later than forty-five (45) days after all the Estate has been administered. If no objections to the final report and motion for discharge have been delivered to the Court, the Receiver, and other parties having entered their appearance in this proceeding, by first-class mail to such address as is reflected in the Court records, within fourteen (14) calendar days after the final report and motion for discharge are filed with the Court, the final report will be accepted by the Court, and the Court will enter an order terminating the receivership and discharging the Receiver. The Receiver's bond shall be dismissed following the approval of the final report and entry of the discharge order.

Dated this ____ day of _____ 2019.

Honorable District Court Judge

**RESPONSE OF THE SECURITIES COMMISSIONER
IN OPPOSITION TO MOTION TO INTERVENE**

Exhibit 5

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202</p> <hr/> <p>DAVID S. CHEVAL, Acting Securities Commissioner for the State of Colorado,</p> <p>Plaintiff,</p> <p>v.</p> <p>MARK RAY; REVA STACHNIW; CUSTOM CONSULTING & PRODUCT SERVICES, LLC; RM FARM & LIVESTOCK, LLC; MR CATTLE PRODUCTION SERVICES, LLC; SUNSHINE ENTERPRISES; UNIVERSAL HERBS, LLC; DBC LIMITED, LLC,</p> <p>Defendants.</p>	<p>DATE FILED: September 30, 2019 10:00 PM CASE NUMBER: 2019CV33770</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
	<p>Case No.: 19CV33770</p> <p>Courtroom: 209</p>
<p>ORDER APPOINTING RECEIVER</p>	

THIS MATTER is before the Court on the Stipulated Motion for Appointment of Receiver (the "Motion") filed by David S. Cheval, Acting Securities Commissioner for the State of Colorado ("Commissioner") and being otherwise fully advised in the matter, and good cause having been shown, the Court hereby FINDS:

1. Jurisdiction and venue are proper.
2. The allegations set forth in the Complaint for Injunctive and Other Relief ("Complaint") establish a right to the appointment of a Receiver and the Stipulating Defendants have agreed to the appointment of a Receiver.
3. Pursuant to applicable law, the Commissioner is entitled to request the appointment of a receiver for all of Mark Ray; Custom Consulting & Product Services, LLC ("Custom Consulting"); MR Cattle Production Services, LLC; Universal Herbs, LLC, a marijuana business with two licensed retail locations in Denver and a separate licensed marijuana production facility; and DBC Limited, LLC (collectively "Stipulating Defendants") assets of any kind or nature whatsoever related in any

manner to Ray's direct or indirect solicitation or sale of the securities of Custom Consulting; MR Cattle Production Services, LLC; Universal Herbs, LLC; or DBC Limited, LLC and as further described in the Complaint for Injunctive Relief, including, without limitation, all of Stipulating Defendants' cash, bank and deposit accounts; investment accounts, accounts receivable, notes receivable, and other receivables; business investments and interests, whether legal or equitable, direct or indirect, in other business enterprises; tangible personal property; general intangibles; inventory; investment property; payment intangibles; real property; claims, causes of action, and choses of action of any kind or nature; instruments, documents, chattel paper, intellectual property, and letter-of-credit rights; together with: (i) all substitutions and replacements for and products of any of the foregoing; (ii) proceeds of any and all of the foregoing; (iii) in the case of all tangible goods, all accessions; (iv) all accessories, attachments, parts, equipment and repairs now or hereafter attached or affixed to or used in connection with any tangible goods whether now owned or hereafter acquired, and (v) all other things of value owned by Stipulating Defendants including without limitation the books, records and other papers of any business or entity operated by Stipulating Defendants (collectively, the "Estate"). Notwithstanding the foregoing, the amount of Fifteen Thousand Dollars (\$15,000.00) in personal assets of Mark Ray is excluded from the Estate. The Parties anticipate that the Estate will include further assets, and this Order does not preclude the addition of new assets to the Estate.

4. Gary Schwartz, whose address is 633 Seventeenth Street, Suite 1640, Denver Colorado, 80202, is an experienced and suitable party to be appointed Receiver for the Estate.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

1. Gary Schwartz is appointed as Receiver for the Estate (hereinafter referred to as the "Receiver").

2. The Receiver shall post a bond in the amount of \$10,000 with the Court within five court days hereof, the expense of which shall be charged as an expense of this Receivership proceeding; and shall forthwith file his oath of Receiver. The Bond shall be maintained until further order of this Court.

3. The Receiver is hereby directed and empowered to take immediate control and possession of the Estate, and to hold the Estate for this Court *in custodia legis*. The Receiver shall operate, manage, maintain, protect, and preserve the Estate, subject to the supervision and exclusive control of this Court, for the benefit of creditors and owners of the Estate.

4. Stipulating Defendants, and all persons in active concert and participation with them, including, without limitation, their current and former

employees, shareholders, agents, representatives, managers, members, attorneys, accountants, banks, contractors, subcontractors and all who claim under them, be, and the same hereby are, ordered to deliver immediately over to the Receiver all of the Estate.

5. The Receiver is hereby given the powers and authority usually held by receivers and reasonably necessary to accomplish the purpose of this Receivership including, without limitation, the specific power to:

a. take from Ray or any others in control of the Estate, immediate control of the Estate, to the exclusion of all others;

b. take control of the Estate and operate, manage, maintain, protect, and preserve the Estate as reasonably necessary to maximize the value and prevent diminution of its value; take possession of all investment accounts, and bank and other deposit accounts of the Estate and all funds therein; and open, transfer and change all bank, investment, and trade accounts relating to the Estate, so that all such accounts are in the name of the Receiver;

c. close bank accounts in the name of the Estate and transfer the funds to one or more bank accounts at a bank or banks, financial institutions, mutual fund, brokerage institution or other commercial depositories in the Denver, Colorado metropolitan area selected by the Receiver, in the name of the Receiver;

d. collect rents and revenues, income, profits, and other benefits from the operation and management of the Estate;

e. collect all accounts, accounts receivable, notes receivable, income, profits and proceeds that are part of the Estate or represent proceeds of the Estate; including, as necessary, negotiate and deposit checks made payable to the Estate into accounts maintained by the Receiver, and, as necessary to collect and review mail directed to the Estate in order to collect incoming accounts receivable;

f. invest funds of the Estate, without further permission of the Court, in savings accounts or in securities backed by the full faith and credit of the United States including mutual funds;

g. change any and all locks on any and all physical property of the Estate and limit access thereto;

- h. operate, manage, maintain, protect, and preserve the Estate, including, to the extent the Receiver deems appropriate, the going concern value of any business operated by the Estate;
- i. investigate the assets and liabilities of the Estate, and report to this Court, within one hundred and twenty (120) days after entry of this Order, regarding the nature of the assets and liabilities of the Estate, including recommendations to the Court regarding the further disposition of the Estate for the benefit of those claiming an interest therein;
- j. with prior Court approval, sell or otherwise dispose of any portion of the Estate; provided, however, that the Receiver need not obtain prior Court approval to sell or otherwise dispose of any tangible personal property having a depreciated aggregate value, as reflected on the Estate's books; less than \$20,000;
- k. abandon, upon prior court approval, any property of the Estate of inconsequential value and benefit, or any property of the Estate that may be burdensome to the Estate;
- l. establish, with prior court approval, a claims administration procedure for the assertion and resolution of Claims affecting the Estate;
- m. investigate and prosecute, as appropriate, claims and causes of action of the Estate against third parties;
- n. incur and pay, in the ordinary course of business, all reasonable expenses of administration of the Estate, including, but not limited to, the authority to:
 - i. pay taxes, insurance, utility charges and other expenses and costs reasonably incurred in managing, preserving, and liquidating the Estate;
 - ii. hire as an expense of the Estate, on a contract basis wherever possible, or as employees where required by applicable federal law, the personnel necessary to manage, preserve and liquidate the Estate, including, as the Receiver deems appropriate, personnel previously employed by the Estate;
 - iii. hire as an expense of the Estate, on such basis as determined by the Receiver,, the personnel necessary to perform a historical accounting of the Estate for such time period as may be determined by the Receiver and to maintain a complete and accurate

accounting of the income and expenses of the Estate, including, in the Receiver's discretion, the retention of personnel of individuals hired by the Estate to maintain such accounting, and to pay the reasonable value for the services rendered;

iv. hire as an expense of the Estate such employees, accountants, consultants, attorneys and other professionals, as his counsel, as is necessary and proper for the administration of the Estate. The Receiver shall make an application of the Court for payment of reasonable and necessary fees, costs and expenses incurred as Receiver, including but not limited to, disbursement of professional fees and expenses to himself, his counsel, or accountant, and shall be entitled to payment of said fees and expenses as hereinafter provided. Copies of the application to the Court shall be provided to counsel for the parties and to the Commissioner. Such parties shall have ten (10) calendar days following the filing of such application to file any objections with the Court. Objections will not be general in nature, but are to be specific, stating all amounts objected to on an item-by-item basis and stating the amount, in detail, if any, which is not objected to by the objector. If no objections are filed with the Court within ten (10) calendar days, the Receiver may thereupon draw funds from his trust account sufficient to pay such fees, disbursements and expenses without further order of the Court. If any objections are filed, the Receiver may draw funds from his trust account sufficient to pay the amount not objected to, and the Court will conduct a hearing on any objections within twenty (20) days from the filing of the objection. At such hearing, the compensation of the Receiver or other professional as well as allowable disbursements and expenses will be determined by the Court.

v. hire as an expense of the Estate, on a contract basis, attorneys, accountants, consultants and other professionals previously utilized by the Estate to provide such services as the Receiver may direct;

vi. contract and pay for and obtain such services, utilities, supplies, equipment, and goods as are reasonably necessary to manage, preserve, and liquidate the Estate as the Receiver may reasonably deem necessary; provided that no contract shall extend beyond the termination of the Receivership without the permission of the Court.

o. to pay expenses of the operation of the Estate that arose pre-receivership, as determined by the Receiver to be necessary for the preservation of value of the Estate;

p. negotiate and enter into such leases (including equipment leases), contracts and other agreements as the Receiver may reasonably deem appropriate to manage, preserve and liquidate the Estate; provided that no such lease, contract, or agreement shall extend beyond the termination of the Receivership without the permission of the Court;

q. reject, assume, or decline to assume any leases or unexpired contracts of the Estate that are burdensome, upon Court approval;

r. exercise all rights of the Estate as a shareholder, member, equity owner, or Trustee or beneficiary of any Voting Trust, of any other business enterprise, including, but not limited to, the right to vote on any issues requiring the approval of equity owners, and the right to receive distributions on account of the equity interests;

s. obtain and renew all insurance policies that the Receiver deems reasonably necessary to manage and preserve the Estate and the interest of the Receiver and the parties to this action; and notify any insurers of the Estate of the pendency of these proceedings and that, subject to the prior rights of any person possessing a lien on the Estate, any proceeds paid under such policies shall be paid to the Receiver;

t. upon prior Court approval, borrow from third parties on such reasonable terms as may be acceptable to the Receiver, funds to meet the needs of the Estate in excess of the income of the Estate, and issue Receiver's Certificates, bearing interest not to exceed the rate of 15% per annum, in exchange for funds so advanced, with all such Receiver's Certificates, collectively, to hold a first and prior lien and a preference claim upon the property of the Estate, or a portion of it at the Receiver's election;

u. apply for, obtain, maintain, and renew as reasonably necessary all trademarks, copyrights, patents, licenses, permits and other intellectual property rights required for the preservation of the Estate;

v. institute, prosecute, and continue the prosecution of such legal actions as the Receiver deems reasonably necessary, including actions necessary to enforce this Order, to collect accounts and debts, enforce agreements relating to the Estate, to protect the Estate, and to recover possession of the Estate from persons who may now or in the future be wrongfully possessing or occupying the Estate, or any part thereof, and bring such actions as may be necessary, in the judgment of the Receiver, to set aside any transfer, conveyance, encumbrance or lien affecting all or any portion of the Estate, including, but not limited to, any transfer of an asset of the Estate

avoidable under applicable law, in this and other jurisdictions, and to settle or compromise any such proceedings, and to appeal or seek judicial review in respect of any order or judgment entered in any such proceeding;

w. issue such subpoenas or subpoenas duces tecum, interrogatories, and/or requests for production of documents as necessary and appropriate under Rules 26 and 28 through 34, C.R.C.P.

x. do such other lawful acts not inconsistent with this Order as the Receiver reasonably deems necessary to manage and preserve the Estate and to perform such other functions and duties as may from time to time be required and authorized by this Court, by the laws of the State of Colorado or by the laws of the United States of America.

6. In addition to the powers and authority granted the Receiver in paragraph 5 of this Order, the Receiver shall have the right and the sole authority to exercise all of the powers of the Estate entities, through or in place of their boards of directors, managers, members, and officers, to the extent necessary to manage the affairs of each of the Stipulating Defendants in the best interests of its shareholders and creditors. Such corporate governance powers and authority shall include, without limitation, the authority to petition for protection under the Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (the "Code"), for Stipulating Defendants and in connection therewith be and be deemed a debtor-in-possession for the Stipulating Defendants in proceedings under Chapter 11 of the Code, and prosecute such adversary proceedings and other matters as may be permitted under the Code and/or applicable law. Upon and concurrent with the filing of bankruptcy petitions for the Defendants as authorized by this paragraph, the Receivership Case pending in this Court shall be suspended as to the Stipulating Defendants, and all further action concerning the Receivership estate in this Court shall be stayed. The corporate governance powers and authority vested in the Receiver pursuant to this paragraph are in addition to, and not derivative of, the usual and customary receivership powers vested in the Receiver pursuant to Paragraph 5 of this Order.

7. The Receiver is hereby authorized to apply the proceeds of the Estate in the following order of priority:

a. first, to pay the cost of the bond;

b. second, to pay the Receiver's fees incurred in connection with this Receivership, and to prepay or reimburse the out-of-pocket expenses of the Receiver, and to pay the Receiver's professional fees, including attorneys' fees, accountant's fees, and consultant's fees;

c. third, to pay the necessary and reasonable administrative costs of managing and preserving the Estate; and

d. fourth, to repay any Receiver's Certificates, with interest as provided for therein.

All funds in possession of the Receiver after satisfaction of the foregoing obligations shall be maintained by the Receiver pending further order of this Court.

8. The Receiver shall be compensated at the hourly rate of 400 per hour for his services hereunder. The Receiver's compensation for services under this Order and the Receiver's reasonable out-of-pocket expenses shall be paid on a monthly basis. The Receiver shall submit to the Commissioner and counsel for any party to this proceeding itemized monthly billing statements for his professional services and other expenses and shall submit to the Commissioner and counsel for any party to this proceeding itemized monthly billing statements for services performed by the Receiver's attorneys, accountants, and consultants.

9. Within 30 days of the date of this Order, the Receiver shall notify all known investors and creditors with the Estate, or their successors, of the appointment of a receiver in this action. Within 30 days of the date of this Order, the Receiver shall also notify the Internal Revenue Service, the Colorado Department of Revenue, and the Colorado Division of Marijuana of the appointment of a receiver in this action. The Receiver shall file with the Court and serve upon the parties, within 60 days after entry of this Order, a preliminary report setting out the identity, location and value of the Receivership Assets, and any liabilities pertaining thereto. The Receiver shall make and file with the court, and provide copies to the Commissioner, the parties to this action, and the investors, quarterly reports of the condition of the Estate on the last day of the month after the end of each quarter, for each prior quarter. Upon prior notice in a Receiver's Report, the Receiver may report less frequently. The Receiver shall not be required to, but as reasonably necessary may, follow generally accepted accounting principles, or use auditors or accountants in the preparation of his reports to the Court. The quarterly reports shall include an inventory of all Property of the Estate, the current status or liquidation thereof, Claims against the Estate, receipts, disbursements, debts and obligations contracted and expenditures made. The Receiver shall keep the court and all parties to this proceeding apprised of all material developments concerning the operation of the receivership, and subject to preservation of any and all privileges, including the attorney-client and attorney work product privileges, shall provide to all parties to this

proceeding upon request any documents or information under the control of the Receiver.

10. Except as may be expressly authorized by this Court upon notice and a hearing, the Stipulating Defendants are enjoined from:

- a. collecting the Estate, or any proceeds, revenues, accounts, issues, profits or other revenues thereof;
- b. withdrawing funds from any bank or other depository account belonging to the Estate;
- c. terminating or causing to be terminated any license, permit, lease contract or agreement relating to the Estate;
- d. altering, erasing, or destroying any Records, as defined in Paragraph 11(b) below, without the prior written consent of the Receiver; and
- e. otherwise interfering with the operation of the Estate or the Receiver's exercise of any power hereunder or the Receiver's discharge of his duties.

Upon receipt of a copy of this Order, or upon actual knowledge of the entry of this Order, any other person or business enterprise shall also be bound by this Paragraph 10.

11. Stipulating Defendants shall:

- a. advise the Receiver of the existence of any property of the Estate in such party's possession and deliver immediately over to the Receiver or his agents all collections of proceeds of the Estate, including accounts receivable, properly endorsed to the Receiver when necessary;
- b. advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the Estate or the business or affairs of the Estate, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (collectively, the "Records") in such party's possession or control; provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto; and provide

assistance to the Receiver in gaining immediate access to the information in the Records as the Receiver may in its discretion require, including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information; provided however that nothing in this paragraph shall require the delivery of Records, or the granting of access to Records, consisting of the personal property of the party in possession thereof, and not the Estate, which may be subject to any attorney-client privilege;

c. continue to deliver immediately to the Receiver all collections of proceeds of the Estate, including accounts receivable, other collections, books and other records relating to the operation, maintenance and management of the Estate, and to permit the Receiver to carry out his duties hereunder without interference; and

d. when necessary or when requested by the Receiver, explain the operation, maintenance, preservation, and liquidation of Stipulating Defendants' assets to the Receiver or his agents.

12. Nothing in this Order, the Stipulated Motion for Appointment of Receiver, and the Stipulation for Permanent Injunction and Other Relief Concerning Defendants Mark Ray, Custom Consulting and Product Services, LLC; MR Cattle Production Services, LLC; Universal Herbs, LLC; and DBC Limited, LLC shall be construed as a waiver of any Fifth Amendment right against self-incrimination by Mark Ray or as compelling him to waive any such rights in his dealings with the Receiver.

13. Except as may be expressly authorized by the Receiver or by application to this Court, no person may buy, sell, or otherwise transfer any portion of the Estate not in the control of the Receiver.

14. Any provision of law to the contrary notwithstanding, the Receiver controls the assets and documents of the Estate until further order of this Court.

15. All claims and demands against the Estate, the Receiver, or the Estate shall be brought in this Court. No equitable proceeding or enforcement process in any court or tribunal in this Jurisdiction shall be commenced or continued against the Receiver except with the written consent of the Receiver or upon order of this Court. All actions within this Jurisdiction whether legal or equitable in nature or which purport to seek equitable relief against the Receiver, the Stipulating Defendants, or the Estate are hereby stayed pending

further action of this Court. No new actions, whether legal or equitable in nature, shall be brought against the Receiver, the Stipulating Defendants and/or the Estate without the party seeking to bring such action first obtaining permission of this Court.

16. All persons having notice of this Order, and having oral or written agreements with the Estate, or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, utility or other services to the Estate are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver; and the Receiver shall be entitled to the continued use of the Estate's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the entry of this Order shall be paid by the Receiver in accordance with the ordinary course of business of the Estate and such supplier, or such other practices as may be agreed upon by the Receiver and the supplier, or as may be ordered by this Court.

17. Sheriff's assistance to enforce the terms of this Order in the form of peace-keeping duties is hereby authorized.

18. All real and personal property lessors to the Estate are hereby enjoined, for a period not to exceed thirty days from entry of this Order, from seizing, or preventing the Receiver from taking possession of the Estate, or any portion thereof. Delivery of a copy of this Order on any such lessor shall serve as formal notice of this Order and the lessor's obligations under this paragraph.

19. All who are acting, or have acted, on behalf of the Receiver at the request of the Receiver, including his attorneys and accountants, are protected and privileged with the same protections of this Court as that of the Receiver. In order to avail the agents of the Receiver with these protections and privileges, the Receiver should file a notice of the agency with this Court.

20. The Receiver shall serve any request for relief or approval of any action required by this Order on the Commissioner, his counsel, and any other party filing an entry of appearance in this proceeding. Unless an objection to the motion is filed with the Court within ten (10) calendar days after service thereof, approval of the Court shall be deemed granted and the Receiver shall be authorized to take such action. As appropriate, the Receiver may nevertheless request entry of a Court order granting such motion. If an

objection to the motion is filed with the Court, the Court shall promptly hold a hearing on the motion, on at least three (3) days' notice to all objecting.

21. The Receiver's Bond and the Oath of Receiver may be filed by facsimile transmission or other electronic means and this Order shall become effective upon the Court's receipt of such transmission provided, however, that the Receiver replace the facsimiles with originals within seven days of filing.

22. The Receiver may from time to time request that the Court enter additional orders to supplement, clarify or amend this Order, upon notice in accordance with this Order.

23. Any notice required hereunder to any of counsel of record shall be deemed served on the date of service, if served through ICCES, and if served otherwise, on the date of receipt of such notice by counsel of record. Any notice required hereunder to be served on any party not represented by counsel in this action shall be deemed served on the date three (3) business days after it is deposited in the United States mail, first class postage prepaid, directed to such party not represented by counsel. Any computation of time for purposes of this Order shall be governed by the provisions of Colorado Rules of Civil Procedure, Rule 6.

24. The Receiver shall forthwith provide a copy of this order to any other persons in possession of any portion of the Estate or any other persons otherwise affected by this order.

25. Except with respect to the operation of the business of Universal Herbs, LLC, and notwithstanding anything to the contrary contained in this Order, the Receiver shall not take any action with regard to ownership, operation, control, storage, generation, or disposal of: (a) any substance deemed a "hazardous substance", "pollutant", "contaminant", or similar substance under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675, the Conservation and Recovery Act of 1976, the Solid Waste Amendments of 1984, the Superfund Amendments and Reauthorization Act of 1986, and any other amendments; or (b) any other chemical, toxin, pollutant or substance defined as hazardous or dangerous to human health under any other federal, state or local law, regulation, rule or ordinance, including, without limitation thereto, petroleum, crude oil, or any fraction thereof (all collectively referred to herein as "Hazardous Substances"), without first applying for an obtaining an Order of this Court specifically setting forth the action or actions proposed to be taken by Receiver. Without first applying for and obtaining such an Order of this Court, the Receiver shall have no ownership, control, authority or power (neither shall receiver have any obligation to exercise ownership, control,

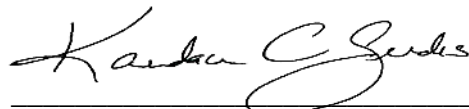
authorize or power) over the operation, storage, generation or disposal of any Hazardous Substance. All decisions relating to the ownership, operation, control, storage, generation and disposal of any Hazardous Substances shall be resolved by this Court.

26. The Receiver serves herein, and discharges all his duties under this Order, as an officer of this Court, solely in a representative capacity, and not in an individual capacity, and does not, in being appointed as Receiver or by acting as Receiver consistent with this Order hereunder, thereby become personally liable to any person or governmental entity under any law, statute, regulation or other doctrine of law or equity.

27. The Receiver shall continue in possession of the Estate until discharged by the Court. The Receiver shall endeavor to wind up the Receivership expeditiously or otherwise at the direction of the Court, and to submit a final report and motion for discharge no later than forty-five (45) days after all the Estate has been collected, sold, liquidated, disposed of or abandoned by the Receiver, and all proceeds thereof have been distributed in accordance with this Order and subsequent orders of this Court. If no objections to the final report and motion for discharge have been delivered to the Court, the Receiver, and other parties having entered their appearance in this proceeding, by first-class mail to such address as is reflected in the Court records, within fifteen (15) days after the final report and motion for discharge are filed with the Court, the final report will be accepted by the Court, and the Court will enter an order terminating the Receivership and discharging the Receiver. The Receiver's bond shall be dismissed following the approval of the final report and entry of the discharge order.

SO ORDERED this 30th day of September, 2019.

BY THE COURT:



Kandace C. Gerdes
District Court Judge

**RESPONSE OF THE SECURITIES COMMISSIONER
IN OPPOSITION TO MOTION TO INTERVENE**

Exhibit 6

DISTRICT COURT, DENVER COUNTY, COLORADO	
Court Address: 1437 Bannock Street, Rm 256, Denver, CO, 80202	
Plaintiff(s) GERALD ROME SECURITIES COMMISSIONER v. Defendant(s) JOSEPH DAVID RYAN et al.	DATE FILED: November 13, 2017 9:59 AM CASE NUMBER: 2017CV34027 <p style="text-align: center;">△ COURT USE ONLY △</p> Case Number: 2017CV34027 Division: 215 Courtroom:
Amended Order Appointing Receiver (includes attachment)	

The motion/proposed order attached hereto: SO ORDERED.

Issue Date: 11/13/2017



J ERIC ELLIFF
District Court Judge

<p>DISTRICT COURT, DENVER COUNTY, COLORADO</p> <p>1437 Bannock Street Denver, CO 80202</p>	<p style="text-align: center;">COURT USE ONLY</p>
<p>GERALD ROME, Securities Commissioner for the State of Colorado,</p> <p>Plaintiff,</p> <p>v.</p> <p>JOSEPH DAVID RYAN, MADYSON CAPITAL MANAGEMENT, LLC, MADYSON EQUITY GROUP, LP, MADYSON HOLDINGS, INC. MADYSON REALTY FUND I, LLLP, and MADYSON REALTY PARTNERS, LLC,</p> <p>Defendants, and</p> <p>GABRIELLE DEMEO, and AMANDA ROSE RIZARRI aka AMANDA ROSE RIZARI,</p> <p>Relief Defendants.</p>	
<p>BY THE COURT:</p>	
<p>ORDER APPOINTING RECEIVER</p>	

THIS MATTER is before the Court on the Verified Motion for Order Appointing Receiver and Request for Forthwith Ruling/Hearing with Supporting Legal Authority (the "Motion") filed by Gerald Rome, Securities Commissioner for the State of Colorado ("Commissioner") and being otherwise fully advised in the matter, and good cause having been shown, the Court hereby FINDS:

1. Jurisdiction and venue are proper.
2. The allegations set forth in the Complaint for Injunctive and Other Relief ("Complaint") and the Motion establish a right to the appointment of a Receiver.

3. Pursuant to applicable law, the Commissioner is entitled to request the appointment of a receiver for all of Joseph David Ryan ("Ryan"), Madyson Capital Management, LLC, Madyson Equity Group, LP, Madyson Holdings, Inc., Madyson Realty Fund I, LLLP, and Madyson Realty Partners, LLC (collectively "Ryan and the Madyson Entities") assets of any kind or nature whatsoever related in any manner to Ryan's, direct or indirect, solicitation or sale of the securities of Madyson Capital Management, LLC, Madyson Equity Group, LP, Madyson Holdings, Inc., Madyson Realty Fund I, LLLP, and Madyson Realty Partners, LLC and as further described in the Complaint for Injunctive Relief, including, without limitation, all of Ryan and the Madyson Entities' cash, bank and deposit accounts; investment accounts, accounts receivable, notes receivable, and other receivables; business investments and interests, whether legal or equitable, direct or indirect, in other business enterprises; tangible personal property; general intangibles; inventory; investment property; payment intangibles; real property (including, but not limited to, the real property listed on Exhibit A); claims, causes of action, and choses of action of any kind or nature; instruments, documents, chattel paper, intellectual property, and letter-of-credit rights; together with: (i) all substitutions and replacements for and products of any of the foregoing; (ii) proceeds of any and all of the foregoing; (iii) in the case of all tangible goods, all accessions; (iv) all accessories, attachments, parts, equipment and repairs now or hereafter attached or affixed to or used in connection with any tangible goods whether now owned or hereafter acquired, and (v) all other things of value owned by Ryan and the Madyson Entities, including without limitation the books, records and other papers of any business or entity operated by Ryan and the Madyson Entities (collectively, the "Estate").

4. John C. Smiley, whose address is 600 17th Street, Suite 1800 South, Denver, CO, 80202, and is an experienced and suitable party to be appointed Receiver for the Estate.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

1. John C. Smiley is appointed as Receiver for the Estate (hereinafter referred to as the "Receiver").

2. The Receiver shall post a bond in the amount of \$10,000 with the Court within five court days hereof, the expense of which shall be charged as an expense of this Receivership proceeding; and shall forthwith file his oath of Receiver. The Bond shall be maintained until further order of this Court.

3. The Receiver is hereby directed and empowered to take immediate control and possession of the Estate, and to hold the Estate for this Court in custodia legis . The Receiver shall operate, manage, maintain, protect, and

preserve the Estate, subject to the supervision and exclusive control of this Court, for the benefit of creditors and owners of the Estate.

4. Ryan and the Madyson Entities, and all persons in active concert and participation with them, including, without limitation, their current and former employees, shareholders, agents, representatives, managers, members, attorneys, accountants, banks, contractors, subcontractors and all who claim under them, be, and the same hereby are, ordered to deliver immediately over to the Receiver all of the Estate.

5. The Receiver is hereby given the powers and authority usually held by receivers and reasonably necessary to accomplish the purpose of this Receivership including, without limitation, the specific power to:

- a. take from Ryan, or any others in control of the Estate, immediate control of the Estate, to the exclusion of all others;
- b. take control of the Estate and operate, manage, maintain, protect, and preserve the Estate as reasonably necessary to maximize the value and prevent diminution of its value; take possession of all investment accounts, and bank and other deposit accounts of the Estate and all funds therein; and open, transfer and change all bank, investment, and trade accounts relating to the Estate, so that all such accounts are in the name of the Receiver;
- c. close bank accounts in the name of the Estate and transfer the funds to one or more bank accounts at a bank or banks, financial institutions, mutual fund, brokerage institution or other commercial depositories in the Denver, Colorado metropolitan area selected by the Receiver, in the name of the Receiver;
- d. collect rents and revenues, income, profits, and other benefits from the operation and management of the Estate;
- e. collect all accounts, accounts receivable, notes receivable, income, profits and proceeds that are part of the Estate or represent proceeds of the Estate; including, as necessary, negotiate and deposit checks made payable to the Estate into accounts maintained by the Receiver, and, as necessary to collect and review mail directed to the Estate in order to collect incoming accounts receivable;
- f. invest funds of the Estate, without further permission of the Court, in savings accounts or in securities backed by the full faith and credit of the United States including mutual funds;

g. change any and all locks on any and all physical property of the Estate and limit access thereto;

h. operate, manage, maintain, protect, and preserve the Estate, including, to the extent the Receiver deems appropriate, the going concern value of any business operated by the Estate;

i. investigate the assets and liabilities of the Estate, and report to this Court, within one hundred and twenty (120) days after entry of this Order, regarding the nature of the assets and liabilities of the Estate, including recommendations to the Court regarding the further disposition of the Estate for the benefit of those claiming an interest therein;

j. with prior Court approval, sell or otherwise dispose of the Estate; provided, however, that the Receiver need not obtain prior Court approval to sell or otherwise dispose of any tangible personal property having a depreciated aggregate value, as reflected on the Estate's books; less than \$20,000;

k. abandon, upon prior court approval, any property of the Estate of inconsequential value and benefit, or any property of the Estate that may be burdensome to the Estate;

l. establish, with prior court approval, a claims administration procedure for the assertion and resolution of Claims affecting the Estate;

m. investigate and prosecute, as appropriate, claims and causes of action of the Estate against third parties;

n. incur and pay, in the ordinary course of business, all reasonable expenses of administration of the Estate, including, but not limited to, the authority to:

i. pay taxes, insurance, utility charges and other expenses and costs reasonably incurred in managing, preserving, and liquidating the Estate;

ii. hire as an expense of the Estate, on a contract basis wherever possible, or as employees where required by applicable federal law, the personnel necessary to manage, preserve and liquidate the Estate, including, as the Receiver deems appropriate, personnel previously employed by the Estate;

iii. hire as an expense of the Estate, on a contract basis, the personnel necessary to maintain a complete and accurate accounting of the income and expenses of the Estate, including, in the Receiver's discretion, the retention of personnel of individuals hired by the Estate to maintain such accounting, and to pay the reasonable value for the services rendered;

iv. hire as an expense of the Estate such employees, accountants, consultants, attorneys and other professionals, as his counsel, as is necessary and proper for the administration of the Estate. The employment of such attorney or accountant shall first be approved by the Commissioner. The Receiver shall make an application of the Court for payment of reasonable and necessary fees, costs and expenses incurred as Receiver, including but not limited to, disbursement of professional fees and expenses to himself, his counsel, or accountant, and shall be entitled to payment of said fees and expenses as hereinafter provided. Copies of the application to the Court shall be provided to counsel for the parties and to the Commissioner. Such parties shall have ten (10) calendar days following the filing of such application to file any objections with the Court. Objections will not be general in nature, but are to be specific, stating all amounts objected to on an item-by-item basis and stating the amount, in detail, if any, which is not objected to by the objector. If no objections are filed with the Court within ten (10) calendar days, the Receiver may thereupon draw funds from his trust account sufficient to pay such fees, disbursements and expenses without further order of the Court. If any objections are filed, the Receiver may draw funds from his trust account sufficient to pay the amount not objected to, and the Court will conduct a hearing on any objections within twenty (20) days from the filing of the objection. At such hearing, the compensation of the Receiver or other professional as well as allowable disbursements and expenses will be determined by the Court.

v. hire as an expense of the Estate, on a contract basis, attorneys, accountants, consultants and other professionals previously utilized by the Estate to provide such services as the Receiver may direct;

vi. contract and pay for and obtain such services, utilities, supplies, equipment, and goods as are reasonably necessary to manage, preserve, and liquidate the Estate as the Receiver may reasonably deem necessary; provided that no contract shall extend

beyond the termination of the Receivership without the permission of the Court.

o. to pay expenses of the operation of the Estate that arose pre-receivership, as determined by the Receiver to be necessary for the preservation of value of the Estate;

p. negotiate and enter into such leases (including equipment leases), contracts and other agreements as the Receiver may reasonably deem appropriate to manage, preserve and liquidate the Estate; provided that no such lease, contract, or agreement shall extend beyond the termination of the Receivership without the permission of the Court;

q. reject, assume, or decline to assume any leases or unexpired contracts of the Estate that are burdensome, upon Court approval;

r. exercise all rights of the Estate as a shareholder, member, equity owner, or Trustee or beneficiary of any Voting Trust, of any other business enterprise, including, but not limited to, the right to vote on any issues requiring the approval of equity owners, and the right to receive distributions on account of the equity interests;

s. obtain and renew all insurance policies that the Receiver deems reasonably necessary to manage and preserve the Estate and the interest of the Receiver and the parties to this action; and notify any insurers of the Estate of the pendency of these proceedings and that, subject to the prior rights of any person possessing a lien on the Estate, any proceeds paid under such policies shall be paid to the Receiver;

t. upon prior Court approval, borrow from third parties on such reasonable terms as may be acceptable to the Receiver, funds to meet the needs of the Estate in excess of the income of the Estate, and issue Receiver's Certificates, bearing interest not to exceed the rate of 15% per annum, in exchange for funds so advanced, with all such Receiver's Certificates, collectively, to hold a first and prior lien and a preference claim upon the property of the Estate, or a portion of it at the Receiver's election;

u. apply for, obtain, maintain, and renew as reasonably necessary all trademarks, copyrights, patents, licenses, permits and other intellectual property rights required for the preservation of the Estate;

v. institute, prosecute, and continue the prosecution of such legal actions as the Receiver deems reasonably necessary, including actions necessary to enforce this Order, to collect accounts and debts, enforce

agreements relating to the Estate, to protect the Estate, and to recover possession of the Estate from persons who may now or in the future be wrongfully possessing or occupying the Estate, or any part thereof, and bring such actions as may be necessary, in the judgment of the Receiver, to set aside any transfer, conveyance, encumbrance or lien affecting all or any portion of the Estate, including, but not limited to, any transfer of an asset of the Estate avoidable under applicable law, in this and other jurisdictions, and to settle or compromise any such proceedings, and to appeal or seek judicial review in respect of any order or judgment entered in any such proceeding;

w. issue such subpoenas or subpoenas duces tecum, interrogatories, and/or requests for production of documents as necessary and appropriate under Rules 26 and 28 through 34, C.R.C.P.

x. do such other lawful acts not inconsistent with this Order as the Receiver reasonably deems necessary to manage and preserve the Estate and to perform such other functions and duties as may from time to time be required and authorized by this Court, by the laws of the State of Colorado or by the laws of the United States of America.

6. In addition to the powers and authority granted the Receiver in paragraph 5 of this Order, the Receiver shall have the right and the sole authority to exercise all of the powers of the Estate entities, through or in place of their boards of directors, managers, members, and officers, to the extent necessary to manage the affairs of each of Ryan and the Madyson Entities in the best interests of its shareholders and creditors. Such corporate governance powers and authority shall include, without limitation, the authority to petition for protection under the Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (the "Code"), for Ryan and/or the Madyson Entities and in connection therewith be and be deemed a debtor-in-possession for Ryan and/or the Madyson Entities in proceedings under Chapter 11 of the Code, and prosecute such adversary proceedings and other matters as may be permitted under the Code and/or applicable law. Upon and concurrent with the filing of bankruptcy petitions for Ryan and/or the Madyson Entities as authorized by this paragraph, the Receivership Case pending in this Court shall be suspended, and all further action concerning the Receivership estate in this Court shall be stayed. The corporate governance powers and authority vested in the Receiver pursuant to this paragraph are in addition to, and not derivative of, the usual and customary receivership powers vested in the Receiver pursuant to Paragraph 5 of this Order.

7. The Receiver is hereby authorized to apply the proceeds of the Estate in the following order of priority:

a. first, to pay the cost of the bond;

b. second, to pay the Receiver's fees incurred in connection with this Receivership, and to prepay or reimburse the out-of-pocket expenses of the Receiver, and to pay the Receiver's professional fees, including attorneys' fees, accountant's fees, and consultant's fees;

c. third, to pay the necessary and reasonable administrative costs of managing and preserving the Estate; and

d. fourth, to repay any Receiver's Certificates, with interest as provided for therein.

All funds in possession of the Receiver after satisfaction of the foregoing obligations shall be maintained by the Receiver pending further order of this Court.

8. The Receiver shall be compensated at the hourly rate of \$375.00 for his services hereunder. The Receiver's compensation for services under this Order and the Receiver's reasonable out-of-pocket expenses shall be paid on a monthly basis. The Receiver shall submit to the Commissioner and counsel for any party to this proceeding itemized monthly billing statements for his professional services and other expenses, and shall submit to the Commissioner and counsel for any party to this proceeding, itemized monthly billing statements for services performed by the Receiver's attorneys, accountants, and consultants.

9. Within 30 days of the date of this Order, the Receiver shall notify all known investors and creditors with the Estate, or their successors, of the appointment of a receiver in this action. Within 30 days of the date of this Order, the Receiver shall also notify the Internal Revenue Service and the Colorado Department of Revenue of the appointment of a receiver in this action. The Receiver shall file with the Court and serve upon the parties, within 60 days after entry of this Order, a preliminary report setting out the identity, location and value of the Receivership Assets, and any liabilities pertaining thereto. The Receiver shall make and file with the court, and provide copies to the Commissioner, the parties to this action, and the investors, quarterly reports of the condition of the Estate on the last day of the month after the end of each quarter, for each prior quarter. Upon prior notice in a Receiver's Report, the Receiver may report less frequently. The Receiver shall not be required to, but as reasonably necessary may, follow generally accepted accounting principles, or use auditors or accountants in the preparation of his reports to the Court. The quarterly reports shall include an inventory of all Property of the Estate, the current status or liquidation thereof, Claims against the Estate, receipts, disbursements, debts and obligations contracted and expenditures made.

The Receiver shall keep the court and all parties to this proceeding apprised of all material developments concerning the operation of the receivership, and subject to preservation of any and all privileges, including the attorney-client and attorney work product privileges, shall provide to all parties to this proceeding upon request any documents or information under the control of the Receiver.

10. Except as may be expressly authorized by this Court upon notice and a hearing, Ryan and the Madyson Entities are enjoined from:

- a. collecting the Estate, or any proceeds, revenues, accounts, issues, profits or other revenues thereof;
- b. withdrawing funds from any bank or other depository account belonging to the Estate;
- c. terminating or causing to be terminated any license, permit, lease contract or agreement relating to the Estate;
- d. altering, erasing, or destroying any Records, as defined in Paragraph 10(b) below, without the prior written consent of the Receiver; and
- e. otherwise interfering with the operation of the Estate or the Receiver's exercise of any power hereunder or the Receiver's discharge of his duties.

Upon receipt of a copy of this Order, or upon actual knowledge of the entry of this Order, any other person or business enterprise shall also be bound by this Paragraph 9.

11. Ryan and the Madyson Entities shall:

- a. advise the Receiver of the existence of any property of the Estate in such party's possession and deliver immediately over to the Receiver or his agents all collections of proceeds of the Estate, including accounts receivable, properly endorsed to the Receiver when necessary;
- b. advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the Estate or the business or affairs of the Estate, and any computer programs, computer tapes, computer disks, or other data

storage media containing any such information (collectively, the "Records") in such party's possession or control; provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto; and provide assistance to the Receiver in gaining immediate access to the information in the Records as the Receiver may in its discretion require, including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information; provided however that nothing in this paragraph shall require the delivery of Records, or the granting of access to Records, consisting of the personal property of the party in possession thereof, and not the Estate, which may be subject to any attorney-client privilege;

c. continue to deliver immediately to the Receiver all collections of proceeds of the Estate, including accounts receivable, other collections, books and other records relating to the operation, maintenance and management of the Estate, and to permit the Receiver to carry out his duties hereunder without interference; and

d. when necessary or when requested by the Receiver, explain the operation, maintenance, preservation, and liquidation of Ryan and the Madyson Entities assets to the Receiver or his agents.

12. Except as may be expressly authorized by the Receiver or by application to this Court, no person may buy, sell, or otherwise transfer any portion of the Estate not in the control of the Receiver.

13. Any provision of law to the contrary notwithstanding, the Receiver controls the assets and documents of the Estate until further order of this Court.

14. All claims and demands against the Estate, the Receiver, or the Estate shall be brought in this Court. No equitable proceeding or enforcement process in any court or tribunal in this Jurisdiction shall be commenced or continued against the Receiver except with the written consent of the Receiver or upon order of this Court. All actions within this Jurisdiction whether legal or equitable in nature or which purport to seek equitable relief against the Receiver, Ryan and the Madyson Entities, or the Estate are hereby stayed pending further action of this Court. No new actions, whether legal or equitable in nature, shall be brought against the

Receiver, Ryan and the Madyson Entities and/or the Estate without the party seeking to bring such action first obtaining permission of this Court.

15. All persons having notice of this Order, and having oral or written agreements with the Estate, or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, utility or other services to the Estate are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver; and the Receiver shall be entitled to the continued use of the Estate's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the entry of this Order shall be paid by the Receiver in accordance with the ordinary course of business of the Estate and such supplier, or such other practices as may be agreed upon by the Receiver and the supplier, or as may be ordered by this Court.

16. Sheriff's assistance to enforce the terms of this Order in the form of peace-keeping duties is hereby authorized.

17. All real and personal property lessors to the Estate are hereby enjoined, for a period not to exceed thirty days from entry of this Order, from seizing, or preventing the Receiver from taking possession of the Estate, or any portion thereof. Delivery of a copy of this Order on any such lessor shall serve as formal notice of this Order and the lessor's obligations under this paragraph.

18. All who are acting, or have acted, on behalf of the Receiver at the request of the Receiver, including his attorneys and accountants, are protected and privileged with the same protections of this Court as that of the Receiver. In order to avail the agents of the Receiver with these protections and privileges, the Receiver should file a notice of the agency with this Court.

19. The Receiver shall serve any request for relief or approval of any action required by this Order on the Commissioner, his counsel, and any other party filing an entry of appearance in this proceeding. Unless an objection to the motion is filed with the Court within ten (10) calendar days after service thereof, approval of the Court shall be deemed granted and the Receiver shall be authorized to take such action. As appropriate, the Receiver may nevertheless request entry of a Court order granting such motion. If an objection to the motion is filed with the Court, the Court shall

promptly hold a hearing on the motion, on at least three (3) days' notice to all objecting.

20. The Receiver's Bond and the Oath of Receiver may be filed by facsimile transmission or other electronic means and this Order shall become effective upon the Court's receipt of such transmission provided, however, that the Receiver replace the facsimiles with originals within seven days of filing.

21. The Receiver may from time to time request that the Court enter additional orders to supplement, clarify or amend this Order, upon notice in accordance with this Order.

22. Any notice required hereunder shall be deemed served on the date it is deposited in the United States mail, first class postage prepaid, to counsel of record for any party, or directly to any party not represented by counsel, and any computation of time for purposes of this Order shall be governed by the provisions of Colorado Rules of Civil Procedure, Rule 6.

23. The Receiver shall forthwith provide a copy of this order to any other persons in possession of any portion of the Estate or any other persons otherwise affected by this order.

24. Notwithstanding anything to the contrary contained in this Order, the Receiver shall not take any action with regard to ownership, operation, control, storage, generation, or disposal of: (a) any substance deemed a "hazardous substance", "pollutant", "contaminant", or similar substance under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675, the Conservation and Recovery Act of 1976, the Solid Waste Amendments of 1984, the Superfund Amendments and Reauthorization Act of 1986, and any other amendments; or (b) any other chemical, toxin, pollutant or substance defined as hazardous or dangerous to human health under any other federal, state or local law, regulation, rule or ordinance, including, without limitation thereto, petroleum, crude oil, or any fraction thereof (all collectively referred to herein as "Hazardous Substances"), without first applying for an obtaining an Order of this Court specifically setting forth the action or actions proposed to be taken by Receiver. Without first applying for and obtaining such an Order of this Court, the Receiver shall have no ownership, control, authority or power (neither shall receiver have any obligation to exercise ownership, control, authorize or power) over the operation, storage, generation or disposal of any Hazardous Substance. All decisions relating to the ownership, operation, control,

storage, generation and disposal of any Hazardous Substances shall be resolved by this Court.

25. The Receiver serves herein, and discharges all his duties under this Order, as an officer of this Court, solely in a representative capacity, and not in an individual capacity, and does not, in being appointed as Receiver or by acting as Receiver consistent with this Order hereunder, thereby become personally liable to any person or governmental entity under any law, statute, regulation or other doctrine of law or equity.

26. The Receiver shall continue in possession of the Estate until discharged by the Court. The Receiver shall endeavor to wind up the Receivership expeditiously or otherwise at the direction of the Court, and to submit a final report and motion for discharge no later than forty-five (45) days after all the Estate has been collected, sold, liquidated, disposed of or abandoned by the Receiver, and all proceeds thereof have been distributed in accordance with this Order and subsequent orders of this Court. If no objections to the final report and motion for discharge have been delivered to the Court, the Receiver, and other parties having entered their appearance in this proceeding, by first-class mail to such address as is reflected in the Court records, within fifteen (15) days after the final report and motion for discharge are filed with the Court, the final report will be accepted by the Court, and the Court will enter an order terminating the Receivership and discharging the Receiver. The Receiver's bond shall be dismissed following the approval of the final report and entry of the discharge order.

BY THE COURT THIS ___ DAY OF _____, 2017

District Court Judge

EXHIBIT A: LIST OF REAL PROPERTY

DATE FILED: November 3, 2017 3:56 PM

1. 6250 Northwind Dr., Colorado Springs, CO (titled in the name of Madyson Equity Group, LP);
2. 3820 E Pikes Peak Ave, Colorado Springs, CO (titled in the name of Madyson Equity Group, LP);
3. 3812 E Pikes Peak Ave, Colorado Springs, CO (titled in the name of Madyson Equity Group, LP);
4. 7615 Julynn Rd, Colorado Springs, CO (titled in the name of Madyson Equity Group, LP);
5. 217 N 9th St, Las Vegas, NV (titled in the name of Madyson Capital Management, LLC);
6. 2304 Sunrise Ave, Las Vegas, NV (titled in the name of Madyson Equity Group, LP);
7. 2300 Sunrise Ave, Las Vegas, NV (titled in the name of Madyson Equity Group, LP);
8. 2412 Clifford Ave, Las Vegas, NV (titled in the name of Madyson Capital Management, LLC);
9. 1116 S 3rd St, Las Vegas, NV (titled in the name of Madyson Capital Management, LLC);
10. 10881 Pentland Downs St, Enterprise, NV (titled in the name of Madyson Capital Management, LLC);
11. 782 Vortex Ave, Henderson, NV (originally titled in the name of Madyson Capital Management, LLC and transferred to Relief Defendant Amanda Rizarri);
12. 11992 Whitehills St, Las Vegas, NV (titled in the name of Madyson Realty Partners, LLC); and
13. 3725 Camel Grv, Colorado Springs, CO (titled in the name of Defendant Ryan).