

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO Court Address: 1437 Bannock Street Denver, CO 80202 Telephone: 303-606-2429</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Plaintiff: TUNG CHAN, Securities Commissioner for the State of Colorado, v. Defendants: GARY J. DRAGUL, GDA REAL ESTATE SERVICES, LLC, and GDA REAL ESTATE MANAGEMENT, LLC.</p>	
<p>Attorneys for Non-Party Creditors ACF Property Management, Inc., and Alan C. Fox: Lucas T. Ritchie, Atty. Reg. No. 35805 Eric B. Liebman, Atty. Reg. No. 27051 Joyce C. Williams, Atty. Reg. No. 52930 MOYE WHITE LLP 16 Market Square 6th Floor 1400 16th Street Denver, CO 80202 Telephone: 303-292-2900 Email: Luke.Ritchie@moyewwhite.com Eric.Liebman@moyewwhite.com Joyce.Williams@moyewwhite.com</p> <p style="text-align: center;">and</p> <p>Gary S. Lincenberg, <i>admitted pro hac vice</i> Sharon Ben-Shahar Mayer, <i>admitted pro hac vice</i> BIRD, MARELLA, BOXER, WOLPERT, NESSIM, DROOKS, LINCENBERG & RHOW, P.C. 1875 Century Park East, Twenty-Third Floor Los Angeles, CA 90067 Telephone: 310-201-2100 Email: glincenberg@birdmarella.com smayer@birdmarella.com</p>	<p>Case Number: 2018CV33011 Courtroom 424</p>
<p>NON-PARTY CREDITORS ACF PROPERTY MANAGEMENT, INC. AND ALAN C. FOX’S REPLY IN SUPPORT OF MOTION TO STRIKE, OR ALTERNATIVELY, FOR LEAVE TO FILE SURREPLY</p>	

Non-party creditors ACF Property Management, Inc. and Alan C. Fox (collectively, “ACF Creditors”), through counsel, submit this Reply in Support of their Motion to Strike, or Alternatively, for Leave to File Surreply (“Motion to Strike”).

The Receiver’s Response to the Motion to Strike (“Response”) doubles down on his casual indifference towards the Rules of Civil Procedure and irresponsible pattern of propagating serious accusations about the ACF Creditors and others drawn from his kneejerk take on incomplete and irrelevant evidence. Exemplifying the very conduct that necessitated the ACF Creditors’ Motion to Strike in the first place, the Response warrants only passing comment.

First, rather than responding to the substance of the ACF Creditor’s objections to his improper attempt to raise new evidence and new legal arguments in his Reply in Support of Motion for Turnover (“Reply), as well as to the immaterial and impertinent character of those improper arguments—the issues actually raised by Motion to Strike—the Receiver instead uses the Response to take another stab at advancing his improper evidence and arguments. *See* Resp. §§ II(A) and (B). The Receiver does not explain, for example, why he was unable to present the same new evidence and argument in the moving papers. Instead, he misleadingly argues that the Bedford transaction has always been part of his Motion because the Bedford entity was included in his document requests. But this argument is just a diversion. In his Reply, the Receiver discusses Bedford at length as though it somehow bears on the SSC 02 transaction. Nowhere in the moving papers did the Receiver raise this new evidence and argument, and it was improper for him to do so on reply. This, of course, is all the more reason why the ACF Creditors require, *at minimum*, a fair opportunity to substantively respond to such improper evidence and arguments through a surreply.

Second, the Receiver unapologetically concedes that his Reply, as well as the circumstances of its filing, suffer from multiple procedural defects and reveal Mr. Fox's protected health information and other nonparties' protected financial information. *See Resp.*, § II(C). Despite such concessions, the Receiver does not try to demonstrate excusable neglect for his violations of the Rules of Civil Procedure. Instead, the Receiver attacks the ACF Creditors for objecting to his violative conduct, claiming the Motion to Strike is a "transparent attempt" to distract the Court from the Turnover Motion. The Receiver's indifference about his violations and the resulting prejudice and damage caused to others should not be condoned.

In light of the foregoing and given the egregious circumstances detailed in the Motion to Strike, the Court should use its broad discretion under Rule 12(f) to strike Exhibits 6 through 24 and corresponding arguments at pages 5 through 15 of the Reply. At the very least, the Court should grant the ACF Creditors leave to file a surreply in order to prevent the prejudice they would otherwise suffer by having no opportunity to respond to the Receiver's evidence and legal arguments improperly raised for the first time in his Reply.

DATED: May 22, 2020

Respectfully submitted,

MOYE WHITE LLP

s/ Lucas T. Ritchie

Lucas T. Ritchie

Eric B. Liebman

Joyce C. Williams

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CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2020 a true and correct copy of the foregoing was electronically filed via CCEF and served on the following:

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