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DISTRICT COURT, DENVER COUNTY
STATE OF COLORADO
Denver District Court
1437 Bannock St.
Denver, CO 80202

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

v.

Defendants: GARY J. DRAGUL, an individual; BENJAMIN KAHN, an individual; THE CONUNDRUM GROUP, LLP, a Colorado Limited Liability Company; SUSAN MARKUSCH, an individual; ALAN C. FOX, an individual; ACF PROPERTY MANAGEMENT, INC.; a California Corporation, MARLIN S. HERSHEY, an individual; and PERFORMANCE HOLDINGS, INC., a Florida Corporation; OLSON REAL ESTATE SERVICES, LLC, a Colorado Limited Liability Company; JUNIPER CONSULTING GROUP, LLC, a Colorado limited liability company; JOHN AND JANE DOES 1 – 10; and XYZ CORPORATIONS 1 – 10.

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Case No: 2020CV30255

Division/Courtroom: 414

FIRST AMENDED COMPLAINT

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Plaintiff, Harvey Sender, solely in his capacity as Receiver for the "Estate" described below (the "**Receiver**"), brings the following First Amended Complaint (the "**Amended Complaint**"):

I. INTRODUCTION

1. This case arises from a fraudulent commercial real estate scheme orchestrated by Gary Dragul in concert with Marlin Hershey, Alan Fox, Susan Markusch, and Benjamin Kahn, in which investors lost millions of dollars. Dragul, in concert with the other defendants solicited more than $52 million from hundreds of investors purportedly to purchase ownership interests in numerous single purpose entities ("**SPEs**").

2. Dragul and the other Defendants lured investors into investing millions under false and misleading pretenses. Adopting strategies he learned from his mentor and former business partner, Alan Fox, Dragul stole millions from investors who, in some instances, invested their entire savings to support his extravagant lifestyle.

3. Dragul, who has been indicted on fourteen counts of securities fraud, is the defendant in a pending civil enforcement action brought by the Securities Commissioner for the State of Colorado, and he consented to the appointment of the Receiver in that action.

4. Dragul was able to carry on this fraudulent scheme for more than 20 years as a direct result of the participation, assistance, and efforts of the other

Defendants in this action. Each defendant played a distinct and important role in carrying out Dragul's scheme.

5. Hershey – who is currently embroiled in civil litigation brought against him, his partner, and their various entities, by the Securities Exchange Commission (the "**SEC**"), for violating federal securities laws – solicited individual investors for Dragul by distributing solicitation materials containing material misrepresentations, and received substantial illegal and undisclosed commissions from each investment made in Dragul's fraudulent scheme originated by Hershey .

6. Alan Fox, Dragul's mentor and former business partner, has been sued by numerous investors in California for engaging in the same type of fraudulent conduct for which Dragul has been indicted. Fox prepared and distributed to Dragul's defrauded investors materially false and misleading solicitation materials for investments in the ACF Property Management, Inc. ("ACF") portfolio to solicit investments therein, in furtherance of Dragul's fraudulent scheme. Like Hershey, Fox and his company, ACF, received undisclosed and illegal commissions. Fox and Dragul also transferred investor properties between the two of them and improperly inflated transfer prices to obtain undisclosed and fraudulent commissions.

7. Markusch, Dragul's loyal and most trusted employee, effected the illegal and undisclosed comingling of millions of investor dollars. In addition to the handsome salary Dragul paid her, Markusch profited from undisclosed and illegal

real estate commissions through two of her wholly-owned companies, Olson Real Estate Services, LLC ("Olson") and Juniper Consulting Group, LLC ("Juniper").

8. Finally, Benjamin Kahn, Dragul's long-standing ally, co-conspirator and counsel for Dragul, GDA and the Fox Defendants, participated in and profited from Dragul's fraudulent scheme in his representation and counsel of Dragul, GDA the related SPEs, and Fox, in furtherance of the fraudulent scheme.

9. Demonstrating their unwavering loyalty to Dragul, like Dragul, Fox, Kahn, and Markusch also withheld documents and information from the Receiver and his team, while continuing to help Dragul conceal and purloin Estate assets, transferring ownership and management rights of Estate assets, and interfering with the Receiver's efforts to discover and liquidate Estate assets.

II. PARTIES

10. On August 30, 2018, the Court in *Chan v. Dragul, et al.* Case No. 2018CV33011, District Court, Denver, Colorado (the "**Receivership Court**") entered a Stipulated Order Appointing Receiver (the "**Receivership Order**") appointing Harvey Sender of Sender & Smiley, LLC, as receiver for Gary Dragul ("**Dragul**"), GDA Real Estate Services, LLC ("**GDA RES**"), GDA Real Estate Management, LLC ("**GDA REM**"), (GDA RES and GDA REM are collectively referred to as, "**GDA**"), and a number of related entities and single purpose entities (the "**GDA Entities**"), and their assets, interests, and management rights in related affiliated and subsidiary

businesses (the "**Receivership Estate**" or the "**Estate**"). *See* Receivership Order, previously attached to original Complaint as **Exhibit 1** ("**Compl. Ex. 1**").[1]

11. The Receivership Order grants the Receiver the authority to recover possession of Receivership Property from any persons who may wrongfully possess it and to prosecute claims premised on fraudulent transfer and similar theories. **Compl. Ex. 1**, at ¶ 13(o).

12. The Receivership Order also grants the Receiver the authority to prosecute claims and causes of action against third parties held by creditors of Dragul and the GDA Entitles, and any subsidiary entities for the benefit of creditors of the Estate, "in order to assure the equal treatment of all similarly situated creditors." **Compl. Ex. 1**, at ¶ 13(s).

13. The Receiver's principal place of business is at 600 17th Street, Suite 2800, Denver, CO 80202.

14. Defendant Gary Dragul is an individual who is a resident of the State of Colorado. His present address is unknown.

[1] **Exhibits 1 through 20** that were previously submitted with and attached to original Complaint filed on January 21, 2020 are not being re-submitted herewith with the exception of Exhibit 6 (Fox Defendants' Commission Summary), which is amended and substituted with this filing. References in this Amended Complaint to "Compl. Ex." shall mean and refer to those Exhibits 1 through 20 submitted with the Original Complaint.

15. Defendant Benjamin Kahn ("**Kahn**") is an individual who resides at 229 ½ F Street, Salida, Colorado 81201. At all relevant times, Kahn was general counsel for GDA REM and GDA RES, and the GDA Entities.

16. Defendant the Conundrum Group, LLP ("**CG**") is a Colorado Limited Liability Partnership with its principal place of business 229 1/2 F Street, Salida, CO 81201. Its registered agent is Megan Rae Kahn, at the same address. (Kahn and CG are referred to as the "**Kahn Defendants**"). At all relevant times, Kahn was an agent of Defendant CG.

17. Defendant Susan Markusch, ("**Markusch**") resides at 6321 South Geneva Circle, Englewood, CO 80111. At all relevant times, Markusch was the controller and chief financial officer of GDA RES, GDA REM, and the GDA Entities.

18. Defendant Olson Real Estate Services, LLC ("**Olson RES**") is a Colorado limited liability company with its principal place of business located at 6321 South Geneva Circle, Englewood, CO 80111. Olson RES's registered agent is Andrew Solomon, 10794 E Berry Ave., Englewood, Colorado 80111.

19. Defendant Juniper Consulting Services, LLC ("**Juniper**") was a Colorado limited liability company with its principal place of business located at 11425 Cimmaron Drive, Englewood, Colorado 80111. Juniper filed articles of dissolution with the Colorado Secretary of State on November 24, 2019. (Markusch, Olson RES and Juniper are referred to as the "**Markusch Defendants**").

20. Defendant Alan C. Fox ("**Fox**") is an individual who resides at 2081 Jeremy Lane, Escondido, California 92027-1159.

21. Defendant ACF Property Management, Inc. ("**ACF**") is a California corporation with its principal place of business located at 12411 Ventura Boulevard, Studio City, California, 91604. At all relevant times, ACF was registered to do business in the State of Colorado. ACF's registered agent is Moye White, LLP: Registered Agent Department, at 1400 16th Street, 6th Floor, Denver, Colorado, 80202. (Fox and ACF are referred to as the "**Fox Defendants**").

22. At all relevant times, Fox owned and controlled ACF, the entity through which he funneled commissions and other payments from Dragul and the GDA Entities.

23. At all relevant times herein, ACF utilized and shared the employees of GDA RES and GDA REM, including Defendant Markusch, to carry on the business of ACF without declaring such employees for taxation or other employment regulatory purposes.

24. Neither Fox nor ACF were licensed or registered brokers with the Financial Industry Regulatory Authority ("**FINRA**"), the State of Colorado or the SEC; nor were they affiliated or associated with a FINRA or SEC licensed or registered broker-dealer for any time period relevant to the allegations in this Complaint.

25. Defendant Marlin Hershey ("**Hershey**") is an individual who resides at 15514 Fisherman's Rest Ct., Cornelius, North Carolina 28031-7646.

26. Defendant Performance Holdings, Inc. ("**PHI**") is a Florida corporation with its principal place of business in Huntersville, North Carolina (Hershey and PHI are referred to as the "**Hershey Defendants**").

27. At all relevant times, Hershey owned and controlled PHI through which he funneled commissions from Dragul and the GDA Entities.

28. Neither Hershey nor PHI were licensed or registered brokers with FINRA, the State of Colorado or the SEC; nor were they affiliated or associated with a FINRA or SEC licensed broker-dealer for any time period relevant to the allegations in this Complaint.

29. Dragul, Kahn, CG, Markusch, Olson RES, Fox, ACF, Hershey, and PHI are collectively referred to as the "**Defendants**."

30. Upon information and belief, John and Jane Does 1 – 10 are individuals whose names and addresses are presently unknown.

31. Upon information and belief, XYZ Corporations 1 – 10 are corporations and other legal entities, the names and addresses of which are presently unknown.

III. JURISDICTION AND VENUE

32. Jurisdiction is proper under COLO. REV. STAT. § 13-1-124 and the Colorado Constitution, Article VI, Section 9, because, since 2007, Defendants have

had ongoing and systematic contacts with Dragul and the GDA Entities in Colorado in furtherance of a scheme to defraud innocent investors.

33. Venue is proper under C.R.C.P. 98(c), because the Receiver's principal place of business is in the City and County of Denver and service can be made on one or more of the Defendants in the City and County of Denver.

IV. GENERAL ALLEGATIONS

A. General Factual Background – Key Players in the Fraudulent Scheme

34. This action arises from a multi-million-dollar fraud and Ponzi scheme perpetrated by Dragul in concert with the other Defendants in violation of the Colorado Securities Act (the "**Act**").

35. From 1995 through 2018, Dragul as the President of GDA RES and GDA REM, operated a real estate investment business through the use of a variety of investment vehicles in which various persons and entities invested (the "**Sham Business**").

36. Since approximately 1996, Dragul's mentor and joint venture business partner, Fox, has operated ACF, a similar real estate investment business whose offices are in Ventura, California.

37. Upon information and belief since GDA was formed until approximately August 2018, ACF used GDA's employees to conduct ACF's business including all aspects of ACF's acquisitions process, leasing, property management, tenant relations, marketing and sale of properties, roll-over investments, and other matters.

38. Upon information and belief, while employees of GDA worked for ACF as de facto employees, the Fox Defendants did not report or otherwise declare these individuals of ACF employees for tax or other purposes.

39. For more than 20 years, Markusch worked with Dragul as GDA's controller and CFO. Markusch's duties as controller and CFO entailed oversight and management of all accounting, bookkeeping, banking, financial reporting and recordkeeping, taxes and the like, as well as office manager of the GDA Entities.

40. As controller and CFO of the GDA Entities, Markusch was a signatory and authorized user of all GDA and SPE bank accounts, and thus had full control, authority, and access to funds therein.

41. The Hershey Defendants furthered Dragul's fraudulent scheme by identifying and soliciting investors for the Sham Business.

42. For his successful solicitation efforts, Hershey received a percentage of the total investment made by each investor as an undisclosed and illegal finder's fee or commission.

43. Hershey was directly involved in, and in some instances, drafted false and misleading communications Dragul sent to investors, as more specifically described herein.

44. The Colorado Securities Commissioner and the Colorado Attorney General began to investigate Dragul and the GDA Entities in 2014 after receiving complaints from investors.

45. On April 12, 2018, Dragul was indicted by a Colorado State Grand Jury on nine counts of securities fraud (the "**First Indictment**"). The First Indictment is attached as **Exhibit 21.**

46. On March 1, 2019, Gary Dragul was indicted by a Colorado State Grand Jury on an additional five counts of securities fraud (the "**Second Indictment**"). The Second Indictment is attached as **Exhibit 22.**

47. In or about March 2018, one month before Dragul's First Indictment, Markusch began maintaining all accounting reconciliations for all GDA Entities in handwritten notes, as opposed to electronically, where it had previously been stored on the company's servers as had been GDA's practice before the indictments.

48. In or about April 2019, the Receiver executed a writ of assistance at Markusch's home, where 11 boxes of Estate documents and records were discovered, including over 100 pages of handwritten reconciliations for accounts in Dragul's and the GDA Entities' names.

49. Upon information and belief, Markusch removed the 11 boxes of documents from GDA and stored them at her home to conceal them from the Receiver and the Commissioner.

50. Kahn has served as outside general counsel to the GDA Entities and the SPEs for numerous years, and drafted solicitation documents, operating agreements, and other legal documents for Dragul and the GDA Entities, and for the SPEs, and in that capacity gained knowledge of the Sham Businesses.

51. Since the Receiver's appointment, Kahn has conspired with Dragul and Markusch to conceal documents and assets from the Receiver, and to transfer management rights and ownership interests in entities subject to the Receivership.

52. Without disclosure to investors, Kahn was also paid legal fees from the escrow of certain properties for work unrelated to the specific SPEs from which the funds were paid.

B. Dragul's Ponzi Scheme

53. Dragul, in active concert with the other Defendants (collectively, the "**Non-Dragul Defendants**"), solicited investors to purchase membership interests in various limited liability companies/SPEs that were engaged in the business of acquiring and managing commercial real estate, primarily retail shopping malls.

54. According to the Complaint for Injunctive and Other Relief filed on behalf of the Commissioner, from January 2008 until December 2015, Dragul, through GDA, sold more than $52 million worth of interests in 14 SPEs to approximately 175 investors (collectively referred to as, the "**GDA Entity Investors**"). **Compl. Ex. 2.**

55. The following is a list of the 14 SPEs included in the Commissioner's Complaint with the amount raised for each by Dragul from investors and the approximate date of the securities offerings:

Property	SPE Owner(s) of the Property	Bank Accounts Associated with Offering	Amount Raised	Approx. Date(s) of Offering
Broomfield	Broomfield Shopping Center 09 A, LLC	GDA Broomfield 09, LLC	$800,000	2009
Clearwater	Clearwater Collection 15 LLC; Clearwater Plainfield 15, LLC	Clearwater Collection 15, LLC; GDA Clearwater 15, LLC	$6,224,904	2015
Crosspointe	Crosspointe 08 A, LLC	Crosspointe 08 A, LLC	$4,519,667	2008
Fort Collins	Highlands Ranch Village Center II (HR II 05 A, LLC)	Fort Collins WF 02, LLC	$2,679,669[2]	2008-2009
	Southwest Commons 05 A, LLC			2008-2009
	Meadows Shopping Center 05 A, LLC			2008-2009
	Laveen Ranch Marketplace 12, LLC			2012
	Trophy Club 12, LLC			2012
Market at Southpark	Market at Southpark 09, LLC	GDA Market at Southpark LLC; Market at Southpark 09, LLC	$255,000	2010
Loggins Corners				2012
Trophy Club				2012
High Street Condos	2321 S High Street, LLC	2321 South High Street, LLC	$1,000,000	2014
	2329 S High Street, LLC	2329 South High Street, LLC		
PMG (Plaza Mall of Georgia North)	Plaza Mall North 08 B Junior, LLC	Plaza Mall North 08 A Junior, LLC; Plaza Mall North 08 B Junior, LLC	$9,025,765	2008 – 2016

[2] The total funds raised include at least $50,000 in "roll-over" investments, and as such, real funds were not put into the SPE or the property. Moreover, this amount also includes interests purportedly held by Dragul, and several Dragul insiders including is parents, his mother-in-law, two close personal friends, and Markusch. It is unlikely that these purported investors actually contributed real funds to the deal.

Property	SPE Owner(s) of the Property	Bank Accounts Associated with Offering	Amount Raised	Approx. Date(s) of Offering
Plainfield Commons	Plainfield 09 A, LLC	Plainfield 09 A, LLC	$2,598,750	2009 – 2013
Prospect Square	Prospect Square 07 A, LLC, Prospect Square 07 B, LLC, Prospect Square 07 C, LLC, Prospect Square 07 D, LLC, PS 16, LLC and PS 16 Member, LLC	Prospect Square 07 A, LLC; GDA PS Member LLC; GDA PS16 Member LLC; PS 16 LLC	$4,890,079	2007 and 2016
Rose	Rose, LLC	Rose, LLC /Rose, LLC (Not a duplicate - two different accounts)	$4,980,830	2011 – 2013
Syracuse	Syracuse Property 06, LLC	Syracuse Property 06, LLC	$2,625,000	2008 – 2009
Village Crossroads	Village Crossroads 09, LLC	GDA Village Crossroads LLC	$1,707,100	2009 – 2012
Walden	Walden 08 A, LLC	Walden 08 A, LLC; Walden 08 A, LLC; Walden 08 A, LLC (not duplicates - three different accounts)	$4,705,000	2008
Windsor	Windsor 15, LLC	GDA Windsor Member LLC; Windsor 15 LLC; Windsor 15 LLC (not a duplicate)	$6,478,715	2015
TOTAL AMOUNT RAISED			**$52,490,479**	

56. The above-listed SPEs and amounts raised therefor represent only a portion of the SPEs for which Dragul solicited and raised investor funds. Dragul and the GDA Entities solicited and raised substantial amounts from investors for SPE properties outside of the Commissioner's period of review.

57. These SPEs were Dragul's investment vehicles at the time of the Commissioner's Complaint. Before forming these SPEs, Dragul, in concert with Non-

Dragul Defendants, used multiple other SPE investment vehicles to defraud investors including the sale of promissory notes, and forced roll-over investments from one property to another.

C. The Financial Operations of GDA

58. Upon receiving investor funds at closing of real estate purchases made by the SPEs, Markusch, as CFO of the GDA Entities, typically transferred funds that should have been segregated in SPE accounts into GDA RES accounts and then into accounts held in Dragul's name, individually. The shortfalls were financed by mortgage loans. In some instances, the SPEs were unable to reduce even the principal amount of those mortgage loans, since the SPE's cash flows were insufficient to cover the operating expenses and fictitious profits paid to investors.

59. Beginning at least as early as 2008 and continuing through August 2018, Markusch would provide Dragul with daily account balances for his and his family's bank accounts as well as all of the GDA Entities' accounts, noting what the balances were on the bank's records, in GDA's records, and noting pending transactions that had not yet posted. Markusch advised Dragul how much total was needed to ensure that certain pending transactions would post and in return, Dragul would instruct Markusch which account(s) to transfer the funds from and to on any given day. Markusch completed each transaction, improperly comingling funds among and between the GDA Entities by moving money from account to account.

60. Over time, if a particular SPE was either suffering losses or was disposed of by Dragul for personal profit, rather than paying investors their pro rata share of profits, or allocating pro rata losses to them, Dragul would hold investors hostage in a deal and require them to "rollover" investors' equity positions into a newly formed SPE, and would induce investors to contribute additional funds for their new equity position in the rollover SPE. In this manner, Dragul sold more than 100% of the equity interests in at least one SPE, and perhaps more.

61. For example, from approximately 2009 through 2014, Dragul solicited and received investment funds in Plainfield 09 A, LLC ("**Plainfield 09**"), which owned the Plainfield Shopping Center in Indiana. Ultimately, Dragul sold over 194% of the membership interests in Plainfield 09 to approximately 30 investors (the "**Plainfield Investors**"), raising over $2.5 million, which includes over $1.5 million of new cash investments. *See* Plainfield Investor Summary Chart, attached as **Exhibit 23.** Without consent of the Plainfield Investors, on March 11, 2015, Dragul sold the Plainfield property for $5,563,500, for more than a $1.1 million profit. From escrow, GDA received an undisclosed $75,000 "consulting fee." *See* **Ex. 22 (**Second Indictment).

62. Again, without giving them the option, Dragul forced the Plainfield Investors to "roll-over" their investment into a new SPE, Clearwater Collection 15, LLC ("**Clearwater**") which owned property in Clearwater Florida, while also selling interests to new investors. On October 5, 2015, Dragul wrote to the Plainfield

Investors telling them that the Plainfield sales proceeds had been reinvested in the Clearwater property and enclosed Solicitation Materials that Dragul had prepared. Importantly, the solicitation materials, like those discussed below contained material misrepresentation and omissions, including inter alia, overstating the purchase price for the property by $900,000, and failing to disclose the unauthorized commissions in the amount of $187,100 and $100,000 that Dragul paid himself (through GDA) and ACF, respectively. *See* Oct. 5, 2010 Letter and Clearwater Solicitation Materials, attached as **Exhibit 24**.

63. Dragul also used promissory notes to further his fraudulent enterprise and Ponzi scheme. When he was unable to repay the promissory notes as they became due, he would either extend the notes or convert them to equity positions in SPEs without contributions of additional capital. This effectively diluted existing investors' interests without notice to them and without any benefit to the particular SPE.

64. For Example, as alleged in the First Indictment, Dragul's scheme also involved offering investors promissory notes with varying interest rates and durations (typically between three and eighteen months). From approximately 2007 through 2013, solicited by Hershey who had represented that Dragul and GDA were very successful and that Dragul was worth millions of dollars, Dragul sold $6.4 million worth of promissory notes, most of which were to be repaid over an eighteen-month period at an interest rate of 10%, with interest-only payments for the first six months followed by twelve monthly payments of principal and interest. Dragul did

not register these offerings with either the SEC or the Colorado Division of Securities and was never licensed to sell securities. Dragul defaulted on most of the notes during the interest only payment period, and when investors complained, Kahn stepped in to purportedly "handle it" by continuing to "gaslight" these investors.

65. By the end of 2012, Dragul owed more than $4 million to investors pursuant to promissory notes issued in 2007 and 2008. Notwithstanding, he offered and sold new promissory notes to 21 new investors, raising approximately $2.4 million more, without disclosing the unpaid notes presently in default. In some instances, Dragul would convert unpaid, due or past-due notes into membership interests in various SPEs as an alternative way to pay these investors, who Dragul and Kahn referred to as "friends of the house." *See* **Ex. 22** (Second Indictment), at 3-5.

66. Dragul also obtained personal loans from investors and secured them with real property owned by various SPEs. In some cases, this was done in violation of express provisions of the governing operating agreements and loan agreements. Dragul represented to investors who purchased promissory notes that their funds would be used for particular purposes related to SPE real estate assets, when in fact Dragul used those funds to support his extravagant lifestyle.

67. For example, one such loan is presently the subject of a pending lawsuit filed against Fox to invalidate a lien on property previously held by the Receivership Estate. *See GDA DU Student Housing A, LLC v. Alan C, Fox*, Case No. 2019CV32374

(Denver District Court) (the "**DU Litigation**"). In or about 2014, Dragul, with the assistance of Hershey, solicited and raised approximately $1 million[3] from seven (7) individual investors, R.L., C.L., M.R., S.L.P. Trust, E.S. K.S. and L. W.[4] (the "**High Street Investors**"), through the sale of membership interests in the High Street Condo Project, LLC ("**High Street**"). *See* High Street Investor Detail Chart, attached as **Exhibit 25.** Dragul and the Hershey Defendants misrepresented in the offering materials provided these investors that High Street would be developing residential condominiums and the investment proceeds would be invested in the acquisition and renovation of three parcels of identified real property. Upon information and belief Hershey knew these representations were false and misleading and were made to persuade individuals to invest in the project.

68. Unbeknownst to the High Street investors, in December 2017 and January 2018, Dragul sold the three parcels of real property as well as an Architect's contract for the project, to two newly formed Dragul controlled SPEs, GDA DU Student Housing 18 A, LLC ("**GDA DU A**"), and GDA DU Student Housing 18 B, LLC ("**GDA DU B**"). Dragul did not roll over the investors into the new SPEs and instead, continued paying distributions to investors at least through June 2018

[3] This amount includes a total of $150,000 that Dragul "rolled-over" from a prior, failed investment, Crosspointe, in which two of the investors E.S. and K.S. had previously invested.

[4] For the privacy and confidentiality of the GDA Entity Investors, initials are used in the complaint. The investor lists submitted as exhibits and filed as "protected" herewith contain the Investors' full names.

representing to the High Street Investors that these distributions were actual returns on their investments.

69. GDA DU A consisted of three members – GDA Student Housing Member, LLC (15.79%) (wholly owned by Dragul), and two entities comprised of Israeli investment funds – Hagshama Denver Colorado 2, LLC (56.61%) and Cofund 9, LLC (27.60%) (collectively, the "**Hagshama Members**"). GDA DU A was to be managed by another SPE, GDA DU Student Housing Management, LLC, which in turn, is managed by GDA REM. The December 28, 2017 GDA DU A operating agreement specifically prohibited the manager from encumbering the property unless certain, limited circumstances permitted it. However, on April 11, 2018 – one day before the First Indictment – Fox loaned Dragul $300,000 as evidenced by a promissory note and purportedly secured by a first deed of trust on one parcel of the three DU properties, both of which were signed by Dragul on behalf of the GDA DU entities. As alleged in the DU litigation, upon information and belief, Dragul and Fox fraudulently created the deed of trust predating the First Indictment. The deed of trust was not recorded, however, until June 11, 2018.

70. Then, on July 25, 2018, more than one month before the Receiver's appointment, Dragul again fraudulently encumbered the very same property. Fox again loaned Dragul another $600,000 as evidenced by a promissory note of the same date and executed a second deed of trust transferring that same property to the Public Trustee of Denver County Fox's benefit. The second deed of trust was not recorded

until July 26, 2018. Neither loan or deed of trust were disclosed to the Hagshama Members, and both were in violation of the GDA DU A operating agreement.

71. Of the $900,000 loaned by Fox in 2018, none actually went to or benefitted either of the DU SPEs, the properties, or otherwise benefitted the investment. Rather, all money was diverted to and used by Dragul for personal and other purposes. The July 25th $600,000 loan was deposited into the GDA RES Fortis bank account No. x3186 and thereafter, $575,000 was paid to Fox for his interest in HC Shoppes 18, LLC; $21,000 was transferred into Dragul's personal account, and $4,000 was transferred to various unrelated SPE accounts. Similarly, the May 14th $300,000 loan from Fox was first deposited directly into the GDA RES Chase bank acct no. x5225, and subsequently, $92,700 was paid as a distribution to Aaron Steinberg, a relative of Dragul's long-time friend and trusted ally, Marty Rosenberg; $65,000 was paid to Xin Nick Liu who had a lien on Dragul's residence as collateral for significant personal loans made to Dragul; $75,000 was paid to Chad Hurst, another long-time friend and investor of Dragul's who oftentimes extended personal loans when Dragul was in need; $33,800 was transferred to the Rose, LLC SPE bank account; $30,597.04 was comingled with other funds in the GDA RES Fortis account no. x3186 and ultimately used to make distribution payments to SPE investors; and $2,092.96 was used for GDA operations. As a result, the buyer of the Estate's interest in the DU entities now seeks to invalidate Fox's liens and have both declared fraudulent transfers. *See* DU Litigation.

72. Instead of treating the SPEs as separate legal entities, Dragul and Markusch, with the Kahn Defendants' knowledge and active assistance, routinely diverted money from SPE accounts to GDA RES accounts and from there to Dragul's personal account. Markusch effected the transfers. Dragul and Markush thus commingled SPE funds with other SPE accounts, Dragul's personal funds, and funds of Dragul's family members.

73. Dragul and Markusch routinely reversed the comingling process and transferred money from Dragul's personal account to GDA RES and then to SPE accounts at the end of financial reporting periods so they could falsely represent to investors the financial condition of the various SPEs. Immediately after such reporting, Dragul and Markusch transferred the funds once again, but this time, out of the SPE accounts, and would then begin the churning process anew.

74. This scheme resulted in investors not having their funds held or invested in the particular projects and properties where Dragul represented they would be held or invested. Dragul and Markusch used the GDA RES account and the SPE accounts as if they were interchangeable. This commingling of funds was one of the mechanisms Dragul and Markusch used to defraud investors. None of the investor funds transferred in to or out of any particular SPE can be identified substantially as an asset of any SPE, and as a result, the investor funds have lost their identity and have become untraceable. There was no legitimate business reason

for this comingling, which was undertaken to such an extent that it is impossible to know the true ownership of the commingled funds.

75. From GDA's inception in 1995, Dragul's investment scheme was insolvent, due to Dragul's pilfering of the SPEs and his unauthorized and undisclosed use of investor funds for his personal benefit, and for the benefit of his employees and family.

76. While Dragul created SPEs did generate cash flow, the cash flow was not sufficient to pay investors the promised returns. Dragul and Markusch diverted investor funds to Dragul and their family's personal use and to pay fictitious returns or redemptions to other investors.

77. Commencing at least by 2007 and continuing through 2018, Dragul was operating his entire business enterprise as a Ponzi scheme. Dragul and Markusch concealed this ongoing fraud in an effort to hinder, delay, and defraud other current and prospective investors and creditors from discovering the fraud. Money that Dragul received from investors was used to make distributions to, or payments on behalf of, earlier investors. Funds provided to Dragul as loans and for investment purposes were used to keep the operation afloat and enrich Dragul and others.

D. Solicitation of Investor Funds – Private Offerings

78. Dragul, together with the Fox and Hershey Defendants, solicited funds from investors for the stated purpose of purchasing and operating specific commercial properties, primarily retail shopping centers. Each SPE was purportedly a separate

legal entity in which investors were promised profits from the operation, leasing, and eventual sale of the property.

79. Upon information and belief, Fox, has orchestrated a virtually identical fraudulent scheme for many years. As a result, investors have filed numerous lawsuits against the Fox Defendants for the same deceitful and fraudulent conduct he taught Dragul and set forth herein, including, but not limited to the following:

a. *Fayne et al v. Fox et al*, San Francisco County Superior Court Case No. CGC-10-502073, filed on July 30, 2010 (settled and dismissed with prejudice on August 27, 2013);

b. *Konkel v. Fox et al.*, Los Angeles County Superior Court ("LASC"), Case No. BC 482 484, filed on April 6, 2012 (settled and dismissed with prejudice on February 4, 2013);

c. *Steve Belkin v. Fox*, Superior Court of Massachusetts, Case No. 1581CV1267, filed April 13, 2015, later removed to Federal Court (settled on appeal);

d. *Ross v. Fox*, LASC Case No. BC 576 879, filed on March 26, 2015. Ross, an investor in the Market at Southpark investment (discussed below), sued the Fox Defendants, Dragul, and several others for (i) Breach of Fiduciary Duty; (ii) Fraud; (iii) Securities Fraud; (iv) Elder Abuse (on behalf of Jerry only); and (v) Accounting. Ultimately, the jury returned a plaintiff's verdict for approximately $14 million, including $8 million

in punitive damages. On June 27, 2019, the Fox Defendants filed a motion for a new trial, which was ultimately granted on the grounds that the verdict was allegedly inconsistent because the jury found for the plaintiff on the fraud and breach of fiduciary duty claims, but not on the elder abuse claim. [5]

e. *Lockie v. Fox*, LASC Case No. 20STCV13841 filed on April 9, 2020 (pending);

f. *Gadi Maier, et al. v. Alan C. Fox, et al.,* LASC Case No. BC670829 (Settled);

g. *Blackford v. Fox*, LASC Case No. BC 679 692 (pending);

h. *Shofler v. Fox,* LASC Case No. BC 679 693 (pending);

i. *Positano v. Fox*, LASC Case No. BC 722 995 (pending)

j. *Kerner v. Fox*, LASC Case No. BC 723 521 (pending);

k. *Mokotoff v. Fox*, LASC Case No. 18STCV01178 (pending);

l. *Abrams v. Fox*, LASC Case No. 18STCV02200 (pending);

m. *Berman v. Fox*, LASC Case No. 18STCV05912 (pending);

n. *Burger v. Fox*, LASC Case No. 19STCV11976 (pending);

o. *Stewart v. Fox*, LASC Case No. 19STCV16404 (pending);

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[5] On June 27, 2019, the plaintiffs appealed the court's ruling granting Defendants' Motion for a New Trial which set aside the plaintiff's judgment, and on July 22, 2019, Fox cross-appealed. Plaintiffs' opening brief has been filed, the respondents' brief and cross-appellants' opening brief are due shortly. Oral arguments are likely to be scheduled for the end of 2020.

p. *Aepli v. Fox*, LASC Case No. 19STCV43821(pending);

q. *Gerzberg v. Fox*, LASC Case No. 19STCV44851(pending);

r. *Alon v. Fox*, LASC Case No. 19STCV45048 (pending);

s. *Menkes v. Fox*, LASC Case No. 19STCV45365 (pending); and

t. *Reker v. Fox*, LASC Case No. 20STCV00211 (pending).

80. On or about September 3, 2018 the Kahn Defendants sent a $30,000 invoice to ACF stating it was for the following service: "Reimbursable expense: August Retainer for Ross Judgment Appeal. Mitigation and Containment Advisement (approximately 100 hours)." The Kahn Defendants sent a second invoice for the month of September reflecting the same amount with an identical description of the work included in the invoice as the prior months. Copies of the invoices are collectively attached as **Exhibit 26.** The September 3rd invoice was sent four days after the Receiver was appointed.

81. Importantly, the Kahn Defendants never entered an appearance in the Ross matter on behalf of Dragul, the named GDA entities, the Fox Defendants, or any other Defendant. Notwithstanding this, upon information and belief, the Fox Defendants paid the Kahn Defendants for legal advice to mitigate and contain.

82. The SEC has instituted a civil enforcement action against Hershey, his business partner, Dana Bradley, PHI, and a number of their other joint venture entities for violations Section 17(a) of the Securities Exchange Act of 1993 [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. §78j(b)] and

Rule 10b-5 thereunder [17 C.F.R. §240.10b-5], and Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78(o)(a)(1)]. *See SEC v. Bradley, Hershey*, et al.; Case No. 3:19-cv-00490 (U.S. District Court, W.D. N.C., Charlotte Division). The conduct for which the Receiver asserts claims against the Hershey Defendants is substantially similar to the conduct is the basis of the claims asserted by the SEC: fraudulently solicitating investors and pocketing millions in undisclosed and illegal commissions.

83. To solicit investor funds, Dragul, in concert with the Fox and Hershey Defendants, sent prospective investors offering materials that contained executive summaries, financial projections, and other information (collectively, the "**Solicitation Materials**"), which purportedly provided investors with the material information needed to evaluate whether or not to invest in Dragul's Sham Business.

84. Generally, the Solicitation Materials sent to prospective investors were created by or at the direction of Dragul and his staff, and in some instances the Fox Defendants.

85. The Solicitation Materials contained information material to prospective investors, including historical information about the property, the cost of acquiring the property, the amount of the down payment, the amount to be borrowed, the anticipated closing costs, and the amount needed to be raised from investors for any particular offering. The financial projections included projections of acquisition costs and expenses.

86. The Solicitation Materials contained false and misleading information, including inflated purchase prices and inflated closing costs for the properties and in some instances misrepresented the structure of the investment.

87. As discussed in detail below, in soliciting investments, Dragul and the other Defendants, told prospective investors that the properties to be acquired cost substantially more than they actually did. These misrepresentations about purchase price were designed to allow Dragul, the Fox Defendants and the Hershey Defendants to pay themselves impermissible commissions and fees as set forth below:

Defendant	Total Commissions Received
Gary Dragul	$19,148,047.10
Markusch Defendants	$310,196.67
Kahn Defendants	$1,701,441.92
Fox Defendants	$10,200,304.81
Hershey Defendants	$3,175,655.54

Summary charts reflecting the above commissions are attached as **Compl. Exs. 3, 4, 5, 7,** and an updated version of the summary chart reflecting the Fox Defendants Commissions, is attached as **Amended Exhibit 6**.

88. In most instances, the properties had already been purchased when Dragul, and the Fox and Hershey Defendants distributed the Solicitation Materials to prospective investors, but the Solicitation Materials failed to disclose this material fact.

89. The undisclosed and illegal fees Dragul, the Markusch Defendants, the Kahn Defendants, the Fox Defendants and the Hershey Defendants received in

connection with this scheme were deducted as closing costs; some fees were charged during the ownership of the property, typically during refinancing; and some were charged in connection with the sale of certain properties as reflected in the following three examples:

i. The Market at Southpark
(7901-8051 S. Broadway, Littleton, CO)

90. On or about January 26, 2010, Fox sent Dragul Solicitation Materials prepared by ACF to solicit investment funds for a property known as the Market at Southpark.

91. The Executive Summary prepared by the Fox Defendants, and which the Fox Defendants knew would be and in fact were distributed to prospective investors by both Dragul and Hershey in 2010, stated that the purchase price for the property was $24,750,000, and that it would be necessary to raise $10,500,000 from investors. The Solicitation Materials the Fox Defendants prepared misrepresented and failed to disclose material information including the actual purchase price, estimated closing costs, and other material financial information. *See* **Compl. Ex. 8.**

92. Once received from Fox, Dragul forwarded the Market at Southpark Solicitation Materials to Hershey to distribute to prospective investors in or about April 2010.

93. Upon receipt in April 2010 and thereafter, Hershey distributed the Market at Southpark Solicitation Materials to prospective investors, who relied on them for their investment decision.

94. By distributing the Solicitation Materials to induce investors and prospective investors in 2010, Hershey deliberately withheld or failed to disclose material information to prospective investors concerning the Market at Southpark including the actual purchase price, estimated closing and other costs, material financial information, and that the Hershey Defendants stood to profit from any investment they would make in the SPE.

95. At or about the same time, and with the actual intent to induce investors to invest in the property, Dragul sent the Market at Southpark investors written financial projections misrepresenting that the purchase price of the Property was $24,750,000 and closing costs were estimated to be $300,000, and that he would establish an operating reserve of $950,000 with the funds raised from the offering *See* **Compl. Ex. 8**.

96. Upon information and belief, the Fox Defendants never maintained an operating reserve for the property. Instead, Fox, like Dragul, comingled the funds that should have been earmarked as reserved with funds from the rest of ACF's operations and when necessary, moved money from account to account.

97. In fact, the purchase price of Market at Southpark was $22,000,000, $2.75 million less than Dragul and the Fox and Hershey Defendants represented to investors. *See* **Compl. Ex. 9**.

98. On August 11, 2009, Market at Southpark 09, LLC, an entity owned and/or controlled by the Fox Defendants, purchased the Southpark property for

$22 million. At closing, ACF received a $950,000 "consulting fee," Dragul, through GDA received $300,000 as a "consideration fee," and through his SSC 02, LLC entity, another $50,000 in fees. *See* **Compl. Ex. 9**.

99. The "Financial Projections" contained in the Solicitation Materials, which Fox and Dragul knew were false and misleading, since at the time the purchase escrow had already closed and the real figures were available, failed to account for undisclosed and unauthorized commissions taken from escrow by Fox and Dragul.

100. The "commissions" taken from escrow on the property were used in furtherance of Dragul and Fox's overall scheme to defraud. On August 10, 2009, Fox informed Dragul the $350,000 in "fees" paid to Dragul from escrow on the property would be transferred into yet another SPE account for the September 2009 loan payment on an airplane owned by Dragul and Fox.

101. Between June and August 2010, several months after the property had been purchased, Dragul raised approximately $255,000 from six individual investors (the "**Southpark Investors**") from the sale of 100% of the membership interests in GDA Market at Southpark, LLC, which in turn, held a 6% interest in Market at Southpark 09, LLC, an entity formed and controlled by the Fox Defendants. *See* Southpark Investor Detail Chart, attached as **Exhibit 28.** The Southpark Investors reasonably relied on the statements and information contained in the Solicitation Materials and the statements made by the Hershey Defendants who distributed the Solicitation Materials.

102. The Market at Southpark Solicitation Materials that Dragul and the Hershey Defendants distributed to prospective investors failed to disclose that the membership interests being offered were interests in an SPE – GDA Market at Southpark, LLC – that was a member in yet another entity controlled by the Fox Defendants which owned the real estate. The misleading Solicitation Materials completely omitted any disclosure regarding the actual ownership structure of the investment (*i.e.* that they were investing in an entity which held a 6% interest in another entity that owned the property) and as such, Dragul and the Hershey Defendants' material misstatements led the Southpark Investors to believe that their investments were in the SPE directly owning the property.

103. Moreover, Fox offered and sold membership interests in Market at Southpark at different rates to different categories of investors (i.e., gave greater percentage interests for less money to close family and friends), effectively diluting the Southpark Investors membership interests. For instance, on July 20, 2009, Fox instructed his employee that ACF's total investment for 100% in Market at Southpark would be $8.5 million for some Fox family members and $9.5 million for others. In the Solicitation Materials provided to Southpark Investors, Fox and Dragul represented that a minimum investment of $52,500 would purchase a 0.500% membership interest, yet at least one of Fox's family members, Sara Fox purchased a 1.500% interest at the reduced price of $127,500 (a $30,000 discount). *See* 07/20/2009 Fox Email, attached as **Exhibit 27.**

104. These misstatements and omissions were designed by Dragul, Fox and Hershey to mislead prospective investors and induce them into investing in the Market at Southpark SPE.

105. On May 13, 2011, the Fox Defendants sent an update letter to the members of Market at Southpark 09, LLC, including to Dragul as the manager of GDA Market at Southpark, LLC, concerning a proposed sale of the property seeking approval by a majority of members to sell the property and roll over investments into an unidentified exchange property. In the letter, Fox makes false and misleading statements to obtain consent to the sale and exchange by a majority of the Members. For instance, the Fox Defendants represented that the total original investment in the property was $10.5 million in August 2009, suggesting that all membership interests offered were sold. Upon information and belief, the Fox Defendants did not sell all interests offered and an amount significantly less than that was raised and invested in the property.

106. Dragul did not provide his investors with any update or information concerning the prospective sale of the property in which they had invested, and instead, on May 17, 2011, as manager of GDA Market at Southpark, LLC, Dragul executed a ballot authorizing ACF to sell the property "for a net price of not less than $28,350,000.00 before paying off the loan."

107. The Fox Defendants sent another property update letter to the investors, which Dragul again received again as manager of GDA Market at

Southpark, LLC, concerning the still pending sale of the property. Enclosed with the letter was a "client summary report" for GDA Market at Southpark, LLC's investment reflecting that is now held a substantially reduced interest in Market at Southpark 09, LLC of 2.429%. Again Dragul never disclosed any of this information contained in the correspondence to the Southpark Investors.

108. As was common practice, Dragul and his staff sent periodic updates for investors that provided leasing and income information for each property. For properties for which Hershey solicited and raised investor funds, Dragul allowed and even invited Hershey to edit and comment on property updates before sending them to investors.

109. Both the August and November 2011 Market at Southpark property updates drafted by Dragul with input from Hershey that were sent to investors did not include any mention of a plan to market and sell the property or Dragul's decision to do so as manager of GDA Market at Southpark, LLC. *See* **Compl. 10A** and **10B**.

110. Both Dragul and Hershey knew of the plan to sell the property, as the transaction was pending when the November 2011 property update was prepared, but that information was not disclosed to investors, and Dragul continued to make distributions to them as fictitious profits on their Market at Southpark investment.

111. On November 15, 2011, five days after Dragul sent the November 2011 Property Update letter to Southpark Investors, Dragul and the Fox Defendants sold the Market at Southpark property for $30 million. At closing, ACF and Dragul

(through GDA) received commissions of $600,000.00 and $300,000, respectively. *See* **Compl. Exhibit 11**.

112. Notwithstanding the $13,038,594.47 net proceeds received at closing, Dragul and the Fox Defendants required the Market at Southpark investors to "roll over" their investments into two new properties rather than allowing them to cash out by collecting their pro rata share of the sales proceeds.

113. Dragul and the Fox Defendants received at least $2.2 million in undisclosed fees in connection with the acquisition and sale of the Market at Southpark, which were never disclosed to investors. The misrepresentations as to the purchase price of the property helped to further disguise these undisclosed fees and commissions from investors.

114. In March 2012, Dragul finally provided an investor update letter to the Southpark Investors telling them the property had been sold. In the letter, Dragul misrepresented that GDA Market at Southpark, LLC, which holds a 6.00% interest in Fox's SPE (and a 2.49% interest in the property), "was not in a position to control the outcome with respect to the sale and vote to exchange into another property." Dragul failed to disclose that he had executed a ballot approving the sale and voting for an exchange several months before.

115. Having received the GDA letter, disgruntled Southpark Investors began reaching out to Hershey demanding answers and expressing concern that they had not been informed about the sale and asking why their distributions had been

suspended for the past two months. Upon information and belief, the Hershey Defendants knew the property had been sold before the March 2011 letter was sent but failed to disclose it to the Southpark Investors.

116. On March 16, 2012, one of Dragul's employees, Elizabeth Freestone, responded to emails from D.H., one of the Southpark Investors demanding an explanation as to what happened and why he was not informed. Freestone, stated again that the Dragul-controlled entity GDA Market at Southpark, LLC held only a minority interest, and misrepresented that "the 1031 exchange of the proceeds into two new properties is now complete and investment information on both properties will be provided shortly. Combined distributions on the two properties will be 28% higher than distributions on Market at Southpark and will result in an 8.06% annual return on exchanged investment and a 10.57% annual return on your original investment."

117. Dragul required that he give his approval of all proposed investor correspondence in advance of his employees mailing or emailing same. Thus, the statements and representations made to the Southpark Investors, including the foregoing misrepresentations made to D.H. were expressly authorized by Dragul.

118. Upon information and belief, Fox did not obtain approval from a majority of members of Market at Southpark 09, LLC to sell the property and exchange the proceeds into new investments. Nonetheless, Fox sold the property and on February 1, 2012 told the investors, including Dragul on behalf of GDA Market at

Southpark, LLC, that the first of two exchange properties had been identified – Loggins Corners, a shopping center at 1681 Old Pendergrass Road, Jefferson Georgia ("**Loggins**"), which had been purchased on January 31, 2012.

119. As was customary, GDA's so-called "acquisition team" employees conducted the due diligence and identified the Loggins property for and on behalf of ACF.

120. A total of $1,937,500.00 was exchanged from the sale of Southpark into Loggins pursuant to Section 1031 of the Internal Revenue Code.

121. Fox's February 1, 2012 letter to the investors, including to Dragul as manager of GDA Market at Southpark, stated that GDA Market at Southpark, LLC would own 2.824% of the new property.

122. Enclosed with the February 1, 2012 investor letter from the Fox Defendants were Solicitation Materials for Loggins which stated that the purchase price for the property was $7,187,500. In fact, the property was purchased for $5.25 million – Fox and Dragul thus knowingly overstated the price by nearly $2 million. *See* 2/01/12 ACF Letter and Loggins Solicitation Materials, attached as **Exhibit 29,** at 2.

123. The Loggins Solicitation Materials also represented that $3.75 million in cash was required, factoring in the inflated purchase price of $7.817 million, loan and closing costs of $200,000, operating reserves of $300,000 less a new $3,937,500 loan. The purported "projections" omitted GDA's $150,000 commission taken from

escrow of the Loggins purchase on January 12, 2012, which was not authorized by or disclosed to the Southpark Investors. *Id.*

124. Moreover, upon information and belief, the Fox Defendants never maintained an operating reserve of $300,000 as represented in the Loggins Solicitation Materials. Rather, like Dragul, Fox comingled all of the funds from ACF's operations, including investment funds, in an account other than the designated SPE account. *See id,* at p. 2.

125. In February 2012, Fox and Dragul represented to Southpark Investors, through the distribution of the Loggins Solicitation Materials, that they could acquire a 1.000% interest in the property for a minimum investment of $37,500. Upon information and belief, as he did with Southpark, Fox offered and sold membership interests to insiders at an undisclosed reduced rate, thereby diluting the Southpark Investors' interests therein without commensurate consideration. *See id.*

126. On February 9, 2012, the Fox Defendants provided investors, including Dragul on behalf of GDA Market at Southpark, with information regarding the second exchange property for Market at Southpark had been recently acquired, Tower Plaza, a shopping center located at 3471-3511 North Salida Court, Aurora, Colorado ("**Tower Plaza**"). In the investor letter, Fox represented that GDA Market at Southpark, LLC would own 2.927% of the property, which would have an estimated cash flow of 8.06% and a projected annual return of 10.08%. *See* ACF Investor Letter and Tower Plaza Solicitation Materials, attached as **Exhibit 30,** at 2.

127. Enclosed with the February 9, 2012 investor letter from the Fox Defendants were the Solicitation Materials for Tower Plaza which stated that the purchase price for the property was $18.25 million when in fact,, the property had already been purchased for $17.025 million. *See id.*

128. In February 2012, Fox and Dragul represented to Southpark Investors, through the distribution of the Loggins Solicitation Materials, that they could acquire a 0.750% interest in the property for a minimum investment of $58,500. Upon information and belief, as he did with Southpark, Fox offered and sold membership interests in Tower Plaza to Fox insiders at an undisclosed reduced rate, thereby diluting the Southpark Investors' interests therein without consideration.

129. The Tower Plaza Solicitation Materials also represented that $7.8 million in cash was required, factoring in the inflated purchase price of $18.25 million, loan and closing costs of $250,000, operating reserves of $300,000 less the new $7.8 million loan. The purported "projections" omitted GDA's $180,000 commission and ACF's $545,000 commission taken from escrow of the Tower Plaza closing on February 9, 2012, neither of which were authorized or disclosed to the Southpark Investors. *See* **Ex. 30**, at 3.

130. Moreover, upon information and belief, the Fox Defendants never maintained an operating reserve of $300,000 as represented in the Solicitation Materials. Rather, upon information and belief, like Dragul, Fox comingled all of the

funds from ACF's operations, including investment funds, in an account other than the designated SPE account. *See id*.

131. In or about March 2012, Dragul provided the Loggins and Tower Plaza Solicitation Materials to the Southpark Investors. Because Dragul's employees were involved in all aspects of the acquisitions of both properties, he knew the Solicitation Materials contained materially false and misleading information about the investment and armed with such knowledge, he convinced the Southpark Investors to stay in the investment when they had the right to liquidate their interests.

132. Fox knew and expected Dragul would provide both the Loggins and Tower Plaza Solicitation Materials that he prepared to the Southpark Investors and that the investors would reasonably rely on the facts and material information contained therein.

133. On February 20, 2016, the Fox Defendants closed a refinance of the Loggins loan used to acquire the property in 2012. From the new $4.5 million loan, ACF received an undisclosed and unauthorized commission of $45,000, which represented equity in the property to which the Southpark Investors were entitled.

134. Dragul never disclosed the 2016 Loggins refinance, or ACF's commission taken therefrom to the Southpark Investors.

135. On April 23, 2018, shortly after Dragul's First Indictment, the Fox Defendants sold Loggins for $6.625 million.

136. From escrow of the sale, GDA received $99,371 in so-called fees, which were deposited in the GDA RES account and distributed as follows:

Amount	Description
$99,371.00	"GDA Fee" from escrow of Loggins sale
($57,000.00)	Gary Dragul (personal account)
($27,321.00)	Replenish negative balance on GDA RES Fortis account no. x2984 (Investor Note Payment account)
($7,500.00)	Ronen Sadeh Consulting
($7,500.00)	Transferred to various GDA SPE property accounts
($50.00)	Bank Fees
$0.00	**Total**

137. Upon information and belief, the Fox Defendants did not obtain approval from a majority of the members of the ACF controlled SPE that owned the Loggins property to sell it.

138. On June 25, 2018, the Fox Defendants reported to Dragul, as manager of GDA Market at Southpark, LLC, that the Loggins sale had closed and enclosed a check for $70,767.55 representing the GDA Market at Southpark, LLC's share of the sales proceeds. Fox knew or should have known that Dragul would not distribute those funds to the Southpark Investors, whose identities Fox knew because Dragul had given him the Membership Purchase Agreements. Despite that knowledge, Fox did nothing to ensure or confirm that Dragul's downstream Southpark Investors actually received their distributions.

139. Of the Loggins sales proceeds deposited on July 5, 2018, into the GDA RES Fortis bank account number x3186, Dragul, who did not own a membership interest in GDA Market at Southpark, LLC and was therefore not entitled to any of the proceeds, spent the money as follows:

Amount	Description
$70,767.55	GDA Market at Southpark, LLC's Loggins Corners Sale Proceeds
($56,981.12)	Transferred to GDA RES Fortis Acct. No. x 2984[6]
($6,500.00)	Transferred to GDA Client Trust Fortis Acct No. x3151[7]
($3,071.42)	Transferred to Gary Dragul's personal account
($2,200.00)	Cornerstar Wine & Liquor, LLC
($1,909.50)	Audrey Ahrendt (Dragul's mother-in-law)
($105.51)	Bank Fees
$0.00	**Total**

140. As of the date the Receiver was appointed, Dragul never disclosed to the Southpark Investors that Loggins had been sold or that he kept all of the proceeds owed to GDA Market at Southpark, LLC and the Southpark Investors. When, on November 18, 2018, the Receiver asked Dragul about the Loggins investment, Dragul misrepresented to the Receiver that had been sold in the summer of 2018 and that

[6] Of the $56,981.12 transferred into the GDA RES account, $50,071.63 was used to pay down an American Express credit card balance.

[7] The $6,500 transferred to the GDA Trust Account was eventually used, along with other improperly transferred funds, to make distributions to other Dragul investors, but not to pay the Southpark Investors.

distributions of $70,000 were to be made to investors, but were not because of the filing of the Enforcement action.

141. Only after the Receiver's comprehensive analysis of the GDA server, emails, and other document collections obtained from third parties was it uncovered that Dragul kept the Loggins sales proceeds for his personal use and benefit, and failed to pay them to the Southpark Investors.

142. Moreover, upon information and belief, Dragul and the Fox Defendants misappropriated more money from investors and the property than is represented on the settlement statements, through additional undisclosed fees and/or secret profits.

ii. Plaza Mall of Georgia North
(3410 & 3420 Buford Drive, Buford, Georgia, 30519)

143. Beginning in or about 2008 and continuing through 2016, Dragul provided prospective investors with at least three different versions of an Executive Summary and Financial Projections for a property in Buford, Georgia known as Plaza Mall of Georgia, North ("**PMG**") for the purpose of soliciting investments therein. *See* **Compl. Ex. 12** (PMG Solicitation Materials, V.1); the PMG Solicitation Materials, V.2 attached as **Exhibit 31**; PMG Solicitation Materials, V.3, attached as **Exhibit 32.**

144. The first version of the Executive Summary prepared by Dragul and distributed to prospective investors, upon information and belief from 2008 through 2012 represented that the purchase price for the property was $26,979,567.00, and that it would be necessary to raise $7,667,346.00 from investors with $100,000

minimum investments on which they could expect an 8% return. *See* **Compl. Ex. 12**, at 1.

145. On November 14, 2008, per Dragul's instructions, his staff forwarded the first version of the PMG Solicitation Materials to Hershey, for the express purpose of his distributing the Materials to prospective investors in PMG for which Hershey would receive a 10% commission from Dragul. *Id.*

146. At or about the same time, and with the actual intent to induce investors to invest in the property, Dragul sent prospective PMG investors written financial projections for the property misstating the $26,979,567 purchase price and representing that loan and closing costs were estimated at $300,000, and providing for an operating reserve of $950,000 and loans payable in the amount of $19,930,221. *See id,* at 2.

147. In fact, the purchase price of PMG was only $25.92 million, or $1,059,567 less than Dragul represented in the Solicitation Materials. *See* **Compl. Ex. 13**.

148. The subsequent versions of the PMG Solicitation materials also contained material misrepresentations as to the purchase price of the property, and contained varying figures for both the projected returns on the investment, and the minimum investment required. For instance, in a second version which, upon information and belief, Dragul and Hershey distributed to investors in 2013, represented that the purchase price for the property was $29,113,618 and for a

minimum investment of $100,000 investors would get a 7% return on their investment. *See* **Ex. 31.** In yet a third version Dragul and Hershey distributed to investors from 2014 to 2015, Dragul represented the purchase price was $28.47 million and for a minimum investment of $100,000, investors could expect an 8% return on their investment. *See* **Ex. 32.**

149. Based on the three versions of the PMG Solicitation Materials, Dragul raised $2,740,150 in new cash from 46 investors (the "**PMG Investors**") from 2008 through 2016. *See* PMG Investor Detail Chart, attached as **Exhibit 33**. Dragul "rolled over" approximately $2,449,850 from some of the 46 investors' prior investments in various failed GDA SPEs.

150. On December 24, 2008, Dragul, through Plaza Mall North 08 B Junior, LLC ("North 08 B"), purchased the PMG Property from Windward Star Associates, LLC ("Windward") for $25.92 million, $1.06 million less than the amount represented in the Solicitation Materials. *See* **Compl. Ex. 13**.

151. Dragul also created a separate entity, Plaza Mall North 08 A Junior, LLC ("North 08 A") which became a member of North 08 B, the owner of the Plaza Mall property. The operating agreement for North 08 B stated that North 08 A made an initial capital contribution of $4.766 million to the company; Windward, which also became of a member of North 08 A, and was credited with a contribution of $1.204 million, an amount reflecting $5.17 million in equity minus a distribution of $3.966 million. *See* **Compl Ex. 2**, at ¶ 14; *see also* **Compl Ex. 13**.

152. Upon completion of the transaction, North 08 A and Windward held 76.7% and 23.3% interests, respectively, in North 08 B, and thus, the property. *Id*.

153. Through the escrow for Dragul's purchase of PMG, ACF was paid a "consulting fee" of $500,000.00; GDA was paid a fee of $300,000.00 with Dragul's "SSC" entity receiving another $75,000 in fees. *See* **Compl Ex. 13**.

154. Of the $9,858,000 Dragul used to acquire North 08 A and, the 76.7% interest in North 08 B, Fox through his irrevocable trust (the "**Fox Trust**") loaned Dragul $5.2 million to complete the acquisition, with the understanding that Dragul would repay Fox with funds raised from investors. On December 4, 2008, Dragul told Fox that he could raise $1.25 million by December 31, 2008, $1 million by February 15, 2009, $1 million by March 31, 2009, $1.5 million by July 31, 2009 and $2.5 million by September 31, 2009. Ultimately, Dragul repaid Fox $990,000 in the months following the closing, making the Fox Trust's net investment in North 08 A $4.21 million.

155. In 2015, in reliance on the misleading third version of the PMG Solicitation Materials distributed by Dragul and the Hershey Defendants, Dragul induced several of the PMG Investors to "roll over" a total of $413,000 previously invested in other failed GDA SPEs, or converted from outstanding promissory notes sold by Dragul in prior years, to acquire ownership interests in the North 08 B entity. *See* **Ex. 33.**

156. To give these additional new "investors" their membership interests in North 08 B entity, Dragul diluted the interests of existing PMG Investors who had invested real money in the deal. Upon information and belief, Dragul did not disclose the dilution to the existing PMG Investors.

157. On April 1, 2016, the Fox Trust entered into an agreement to sell its entire interest in North 08 A to another newly-formed Dragul SPE, Plaza Mall North 16, LLC ("**North 16**") for $3.8 million. At that time, the Fox Trust held a 45.098% interest in North 08 A, which represented a 34.56% interest in the North 08 B entity and thus, the PMG property. *See* **Compl. Ex. 2**, at ¶ 18. The transaction was accomplished in two phases. The transaction was reflected in a Membership Interest Purchase Agreement dated February 17, 2016 and amended on March 30, 2016 in which the Fox Trust sold 45.098% of its interest in North 08 A to North 16.

158. The funding for North 16's purchase of the Fox Trust's interest in North 08 A came from Hagshama, an Israeli real estate investment company, which contributed capital through two SPEs: Hagshama Atlanta 19 Buford, LLC and CoFund 3, LLC. In exchange for Hagshama's payment of $4.6 million ($2,631,579 from Hagshama Atlanta and $2 million from CoFund 3), the Fox Trust transferred its 45.098% interest in North 08 A to North 16. As a result, Hagshama, through its interest in North 16, obtained a 34.59% ownership interest in North 08 B. The transaction closed on April 1, 2016, and from escrow, GDA received an "acquisition fee" of $100,000, a $24,600.00 "fee" was paid to CG despite $100,000 already paid in

legal fees to a different law firm, and a "consulting/loan assumption fee" of $25,400 was paid to Markusch. *See* **Compl. Ex. 14**; *see also* **Compl. Ex. 2**, at ¶ 18.

159. On April 27, 2017, Dragul, through North 08 B, sold the PMG property (*via* transfer of the entirety of North 08 B's interest in the property to an unrelated third-party buyer) for $32 million. At closing, GDA received a "fee" of $560,000, Windward was paid $1.204 million for its membership interest, and other expenses were deducted. The net sales proceeds were $9.867 million. *See* **Compl. Ex. 15.**

160. Of the $9.867 million in net sale proceeds, the two largest investors were paid first: CoFund 3 received $2.447 million and Hagshama Atlanta received $3.22 million. For its part, GDA received $4.191 million, an amount sufficient to repay less than half of what Dragul raised from and owed to his smaller, non-preferred investors. However, not only did Dragul fraudulently conceal that the PMG property had been sold, he continued to make monthly payments of fictitious profits to these smaller PMG Investors as though the Plaza Mall property were still owned by North 08 A.

161. From April through September 2018, one year after the sale of the Plaza Mall property, the Kahn Defendants incurred $25,045.64 in legal fees for work done in furtherance of Dragul's fraudulent Scheme. Knowing Dragul had not informed PMG Investors that the Plaza Mall property had been sold in April 2017, in his capacity as counsel for Dragul and the GDA Entities, Kahn provided consultation and legal advice to Dragul regarding purported "reconciliation" of investor distributions

from PMG sales proceeds, "Manager advisement," tax filings, post-tax filing reconciliations, retroactively remedying entity organizational gaps, winding down and dissolution of the entities, including "attendant risk, funding needs and liability mitigation." *See* 7/23/2018 CG PMG Invoice, attached as **Exhibit 34.**

162. In 2018, Kahn even assisted in drafting correspondence to the PMG Investors to be sent under Dragul's signature regarding PMG.

iii. Fort Collins WF 02, LLC Highlands Ranch, Meadows Shopping Center, Southwest Commons, Laveen Ranch and Tower Plaza

163. On October 15, 2002, Dragul formed and organized the SPE, Fort Collins WF 02, LLC ("**FC WF 02**") and on January 23, 2003, Dragul and Fox executed its operating agreement showing they owned 51% and 49% respectively.

164. Upon information and belief, FC WF 02 had originally owned a Whole Foods center at 2201 S. College Avenue, Fort Collins, Colorado, until it had been sold on or about May 6, 2005.

165. The proceeds from the Whole Foods sale were subsequently exchanged into three new properties, ultimately owned by Fox SPEs – (1) Highlands Ranch Village II Center, in Highlands Ranch Colorado ("**Highlands Ranch**"); (2) Meadows Shopping Center ("**Meadows**"), in Lone Tree Colorado; and (3) Southwest Commons ("**SW Commons**") in Denver Colorado.

166. On May 19, 2005, newly formed Fox SPE's purchased Highlands Ranch for a total purchase price of $29.125 million. From escrow, Dragul received $300,000 and ACF received $300,000 as "consideration."

167. The portion of proceeds rolled over and attributed to FC WF 02, a member in the Fox SPE that owned the property, was $750,000 for a 7.5% interest in the Fox SPE, which owned the Highlands Ranch property.

168. On June 9, 2005, newly created Fox SPE's purchased the second replacement investment property, Meadows, for a total purchase price of $33 million. Dragul received a $400,000 commission directly from escrow.

169. Upon information and belief, upon the acquisition of Meadows, FC WF 02 had an 8.264% interest in the real property, Meadows.

170. On August 18, 2005, the third and final replacement investment property, SW Commons, was purchased. But this one was first purchased by GDA RES for $55.821 million and on the very same day, in a separate transaction, GDA RES sold the property to newly formed Fox SPEs, Southwest Commons 05 A through I, LLC, for $59.5 million, a $3.69 million profit. FC WF 02 was the sole member of Southwest Commons 05 E, LLC, and owned a 5.5% interest in the real property, SW Commons.

171. Fox and Dragul each took undisclosed and unauthorized commissions from escrow in the second sale of SW Commons of $400,000 and $500,000, respectively.

172. Beginning in 2008, Dragul began sending solicitation materials to prospective investors fraudulently representing that their investment would be used for the three investment properties, Highlands Ranch, SW Commons and Meadows, when in fact, Dragul was soliciting funds to repay nearly $3.3 million Fox had loaned him for personal and business purposes unrelated to the FC WF 02 properties.

173. In addition to Dragul's solicitation efforts, in or about April 2008, Dragul provided Hershey with materials on the three properties in which FC WF 02 held an interest for the purpose of Hershey to solicit prospective investors to buy membership interests in those properties. Specifically, Dragul authorized Hershey to sell up to $650,000 in membership interests, for which Hershey would receive a 6% commission on each investment made.

174. On April 24, 2008, Dragul told Hershey that he should tell prospective investors that the return on their investments would be 7% and provided copies of the rent rolls for the properties assuming that these rent rolls would be of more value to prospective investors than formal Solicitation Materials.

175. In soliciting investors in 2008, neither Dragul nor Hershey provided material information to prospective investors for the three properties, that would allow them to make informed decisions, such as the purchase price of each property, the total amount being offered, financial projections, information on any of the three loans in place, the projected length of the investment, and the like.

176. As of March 22, 2009, Dragul had sold all of the membership interests in FC WF 02, LLC to approximately 40 investors who collectively invested $2.36 million in cash and $292,000 in "roll-overs" ($192,000 from Southlake 07 D, LLC and $100,000 from Walden 08, LLC) (the "**FC Investors**"). *See* FC Investor Detail Chart, attached as **Exhibit 35.**

177. On February 5, 2009 one of the FC Investors, R.G., whose investment had been solicited by Hershey, reached out to Hershey and asked what his options were to cash out his $100,000 investment in the FC WF 02, LLC deal due to financial strains. Hershey forwarded the email to Dragul for instruction, Dragul responded on June 9, 2009 but did not provide an option to cash out due to Dragul and GDA's own financial strains.

178. There is no provision in the October 15, 2002 FC WF 02 operating agreement, the Solicitation materials or the Membership Purchase Agreements that this investor executed and received from Dragul that limits how or when an investor such as R.G. could cash out of a deal. Nonetheless, Dragul held this investor – and others in the coming years – hostage, in the deal because the funds invested in this and all other deals were never actually held in the SPE for which they were intended, and Dragul's Ponzi Scheme left GDA with insufficient capital to satisfy its obligations, including complying with investors' cash-out requests.

179. At some point in 2009, Dragul diluted all FC Investors' membership interests in the SPE, upon information and belief, without their knowledge or

consent, in order to "gift" membership interests to "friends of the house," none of whom invested actual funds into the deal, but still received monthly distributions from 2009 through 2018. These additional FC Investors included Dragul's mother-in-law, Audrey Ahrendt (3.603%); Dragul (4.3132%); Dragul's parents, Paul Dragul (1.8022%) and Paulette Dragul (1.8022%); long-time friends of Dragul, Russel Becker (3.6034%) and Robert Kauffman through Prima Center 07, LLC (0.4491%); and Dragul's loyal employees, Defendant Markusch (1.8022%) and Kristen O'Donoghue (3.034%). *See* **Ex. 35.**

180. On November 20, 2011, Fox, with the assistance of Dragul and the GDA staff sold the Highlands Ranch property in which FC WF 02 held a 7.5% interest in the Fox SPE that ultimately owned the property, for $27,634,052 from which Fox and Dragul took $110,600 and $55,200 in commissions, respectively.

181. Neither Fox nor Dragul provided any notice of the sale to or obtained consent or approval of any of the FC Investors before the sale, which upon information and belief, was required by the governing Fox SPE operating agreement.

182. On December 13, 2011, the Fox Defendants sent an update letter to the investors in Highlands Ranch, including Dragul on behalf of and as manager of FC WF 02, advising that the property had been sold and the proceeds would be exchanged into a new property that had not yet been identified, but that the investors could expect a 20% increase in regular monthly distributions. While the proceeds were being held by the exchange company, Fox suspended all monthly distributions.

183. On January 11, 2012 Dragul informed the FC Investors of the sale and upon information and belief, fraudulently represented that a majority of the owners of HR II 05, LLC voted to sell the property and exchange it into another and the FC Investors "were not in a position to control the outcome." Dragul provided the FC Investors with three fictitious options: (1) maintain the investment in FC WF 02 and reinvest any proceeds from the sale of Highlands Ranch into an exchange property; (2) a Fox-owned SPE would purchase half of an investment if an FC Investor wished to cash out, but such payment would not be made until after closing on the exchange properties and the investor would not receive any distributions for the remaining half of their investment – essentially surrendering that half to Fox and Dragul; or (3) Fox would use "best efforts" to find a new investor to buy out those who wished to cash out, which according to Fox, would take approximately 45 days after the exchange was completed and would forego all monthly distributions.

184. Almost immediately after Dragul sent the January 11, 2012 "update" about the sale of Highlands Ranch, several angry FC Investors contacted both Hershey and Dragul expressing outrage that they were neither informed about the sale of the property nor given an opportunity to consent to its sale or exchange.

185. In January and February 2012, two different FC Investors S.L. and K.S., not only raised these same concerns about the sale but also questioned Dragul and Fox's representation that they could expect a 20% increase in monthly cash

distributions when, in the same letter, they also represented that a replacement property had not yet been identified.

186. As was common, instead of responding to these investor inquiries with information and explanation as to the topic at hand, Dragul instead responded to one of the two FC Investor's questions with a lengthy email pointing out all of the hard work and long hours he and his staff had been working on a bankruptcy filing for an unrelated SPE – Walden Park. Dragul disingenuously went on: "Education is power and I welcome you to come and get educated about what we are doing at GDA daily in favor of our investors." Ultimately, Dragul provided the investor with no material information and instead shifted blame to Fox whom he represented had not responded to his requests for the same information when in fact, Dragul and his GDA staff had been working directly with Fox and ACF to identify and close on two new replacement properties.

187. Both Dragul and Fox knew all details about the replacement properties but withheld that information from the Investors in order to avoid investor objections or questions about the new acquisitions. In fact, Dragul, on behalf of GDA RES executed the initial purchase and sale agreement for one of the two replacement properties (Laveen Ranch Marketplace) on January 12, 2012, and ultimately assigned it to Fox's SPE.

188. Upon information and belief, Dragul and Fox intentionally withheld material information about the two replacement properties from the FC Investors

when specifically asked until after escrow closed on both in order to ensure these Investors' funds could be used to acquire the new properties and to conceal the fraudulent transfers made to both Defendants from the closings.

189. In light of the flurry of angry investor calls and emails received by Hershey and Dragul, Hershey drafted an investor update letter to be sent by GDA under Dragul's signature, providing the same false and misleading, vague and unhelpful statements Dragul had previously provided to S.L and K.S.

190. On March 23, 2012 ACF sent investor update letters, including to Dragul as manager of FC WF 02, with information on the two newly acquired exchange properties the FC Investors' Highlands Ranch investments were exchanged into – Trophy Club Plaza in Trophy, Texas ("**Trophy Club**") and Laveen Ranch Marketplace in Phoenix, Arizona ("**Laveen**").

191. Enclosed in Fox's March 23, 2012 letter to the FC WF 02 Investors were the Trophy Club and Laveen Solicitation Materials, both of which were prepared by the Fox Defendants, which contained materially false and misleading statements and figures, and which were intended to and did in fact, induce the FC Investors to keep their money in the deal. *See* 3/23/12 ACF Letter encl Trophy Club and Laveen Solicitation Materials, attached as **Exhibit 36.**

192. The Trophy Club Solicitation Materials represented that the purchase price of the property was $16.9 million, when in fact it was purchased by Fox's newly formed SPE, Trophy Club 12, LLC, on March 15, 2012 for $14.9 million – inflating

the price by nearly $2 million. *See* **Ex. 36**, at 2; and 3/16/12 Trophy Club Settlement Statement, attached as **Exhibit 37.**

193. The Trophy Club Solicitation Materials also represented that $3.887 million in cash was required, factoring in the inflated purchase price of $16.9 million, loan and closing costs of $250,000, operating reserves of $500,000 less the new $13.736 million loan. The purported "projections" omitted ACF's $298,000 commission taken from escrow of the Trophy Club purchase on March 16, 2012, which was not authorized or disclosed to the investors. *Id.*

194. Moreover, upon information and belief, the Fox Defendants never maintained an operating reserve of $500,000 as represented in the Solicitation Materials. Rather, like Dragul, Fox comingled all of the funds from ACF's operations, including investment funds, in an account other than the designated SPE account. *See* **Ex. 36**, at 2.

195. Also enclosed in the March 23, 2012, ACF investor letter sent to Dragul for and on behalf of WF FC 02 were the solicitation materials for Laveen prepared by Fox, which contained false and misleading representations intended to induce the FC Investors to stay in the deal. *See id.*

196. The Laveen Solicitation Materials prepared and distributed by Fox to the FC Investors stated that the purchase price was $4.5 million, when it was actually purchased on March 14, 2012 for $3.88 million - $460,000 less than stated in the

Solicitation Materials. *See* **Ex. 36**, at 5-6; *see also* 03/14/12 Laveen Settlement Statement, attached as **Exhibit 38.**

197. The Laveen Solicitation Materials also represented that $2.234 million in cash was required, factoring in the inflated purchase price of $4.5 million, loan and closing costs of $150,000, operating reserves of $300,000, less the new $2.716 million loan. The purported "projections" omitted GDA's $50,000 and ACF's $75,992.99 commissions taken from escrow of the Laveen purchase on March 14, 2012 neither of which were authorized or disclosed to investors. *See id.*

198. Moreover, upon information and belief, the Fox Defendants never maintained an operating reserve of $300,000 as represented in the Solicitation Materials. Rather, like Dragul, Fox comingled all of the funds from ACF's operations, including investment funds, in an account other than the designated SPE account.

199. Upon information and belief, Fox offered and sold membership interests in Trophy Club and Laveen at different rates to different categories of investors (*i.e.*, gave greater percentage interests for less money to close family and friends), effectively diluting the FC Investors membership interests.

200. Months after the purchase of Laveen and Trophy Club, on April 27, 2012, Dragul informed the FC Investors that Fox had closed escrow on the two replacement properties for Highlands Ranch, Trophy Club and Laveen. Without any intention of locating investors to buy out those who wished to cash out, Dragul advised that none had been located yet but the efforts were ongoing. Dragul enclosed

the Trophy Club Solicitation Materials prepared and distributed by Fox with actual knowledge that the representations therein were false and misleading, including but not limited to those set forth in paragraphs 192 through 195 and 197 through 200, above.

201. On March 24, 2016, the Fox Defendants closed on a refinance of Laveen, for which Fox obtained a new $3.173 million loan from Morgan Stanley. As was customary for Fox and Dragul, Fox misappropriated $37,120 from the refinance as a purported "commission."

202. On March 20, 2016, Fox informed Laveen investors, including Dragul for and on behalf of FC WF 02 and its Investors, that he had closed on the refinance. However, Fox failed to disclose the unauthorized commission taken therefrom. Because the commission was paid from funds representing equity in the property, the FC Investors were entitled to their pro rata share which had been misappropriated by Fox.

203. Also, in the March 20, 2016 letter to investors, Fox represented that the net loan proceeds from the refinance were $861,196, which "will be reinvested to earn approximately 4% annually which will add more than $34,000 to annual income."

204. On September 13, 2018, shortly after the Receiver was appointed, Fox sent an update letter to the investors in Laveen, including to Dragul for and on behalf of FC WF 02 and the Investors therein, representing that he had executed a contract to sell Laveen and seeking investor approval for the sale and authorization to

exchange the investment proceeds into a new property. *See* 9/13/18 ACF Laveen Sale Letter, attached as **Exhibit 39.** In the September 13th letter, Fox represented to the FC Investors that a contract was in place to sell the property for $5.795 million, which Fox represented, would result in at least $3 million available to distribute to the investors or exchange into a new property.

205. To obtain the consent of investors to sell the property and exchange the proceeds into a new property, Fox misstated that $2.334 million in membership interests had been sold in March 2012 so he could represent an inflated return on the investment of 34%. In fact, Fox did not sell all membership interests in the project and as such, the investors' return was less than 34%. *Id.*

206. Also to induce the investors to consent to the sale and exchange, upon information and belief, Fox represented that "a large number of the investor accounts [were] negative as of December 31, 2017," but failed to include a statement of WF FC 02's investor account in the letter and did not advise as to the current balance. *Id*.

207. Fox asked investors to execute the ballot attached to the letter and return it no later than September 30, 2018. *Id.*

208. Neither Dragul nor Fox produced the September 13th Laveen sale letter or ballot to the Receiver – the only individual with the authority to execute the ballot approving the sale and exchange – until several months later.

209. On April 1, 2019, Dragul directed his employee to forward the September 13, 2018 ACF letter to the Receiver and to induce the Receiver to agree to

the sale and exchange, represented the sale would produce $71,913 in proceeds to FC WF 02. *See* 4/01/19 Email, attached as **Exhibit 40**.

210. In response, the Receiver requested asked for information about the investment, including financials, business organization documents and the like, but received nothing more. The Receiver did not execute the ballot and therefore did not consent to the sale of the property or the exchange.

211. Upon information and belief, Fox did not obtain consent from a majority of the investors in Laveen to sell the property. Nonetheless, on April 25, 2019 – only 24 days after the Receiver was first provided with the notice and ballot – Fox sold Laveen for $6.575 million - $780,000 more than he represented to investors and the Receiver in his September 30th letter. *See* Laveen Real Estate Transaction History Report, attached as **Exhibit 41.**

212. Fox still refuses to produce the governing organizational documents, syndication and investor records, financial records, purchase and sale documents, and other relevant materials the Receiver has requested concerning Laveen Ranch and the Estate's other ACF investments. Thus, is it unknown at this time what proceeds the Estate is entitled to from the sale of the Laveen property, how much Fox and Dragul misappropriated from escrow in "commissions," or other details about this investment.

213. Since the Receiver's appointment on August 30, 2018, through the present, the Fox Defendants have withheld monthly distributions of at least $26,248

for various projects, including Trophy Club, to which FC WF 02 is entitled. These distributions are property of the Receivership Estate and as such, the Receiver has been forced to file a turnover motion to recover the withheld distributions and obtain relevant documents, which remains pending in the Receivership Court.

214. Fox has claimed he is withholding distributions out of concern that they will not be paid to downstream investors (*i.e.*, the FC Investors). He expressed no such concern, however, in the years he made the distributions to Dragul for and on behalf of FC WF 02, LLC, with actual and/or constructive knowledge that Dragul was pocketing most of the funds for himself or diverting them elsewhere.

E. Real Estate Transfers Between Dragul and Fox – Prospect Square

215. The Fox Defendants and Dragul routinely transferred SPE properties to each other at inflated prices in order to pay themselves undisclosed fees at the expense of investors.

216. For example, in or about October 11, 2007, Dragul, through his newly created SPE, Prospect Square 07 A, LLC, purchased a shopping center located at 9690 Colerain Avenue, Cincinnati, Ohio known as Prospect Square (the "Prospect Property").

217. The purchase of the Prospect Property was financed with a $12.9 million loan from Royal Bank of Canada, evidenced by an October 10, 2007, promissory note, which was subsequently assigned and transferred three times before MSCI 2007-IQ16 Retail 9654, LLC (the "Prospect Lender") acquired it.

218. The Prospect Property was owned as tenants-in-common by five different SPEs – Prospect Square 07 A, LLC (57.35%), Prospect Square 07 B, LLC (2.21%), Prospect Square 07 C, LLC (5.54%), Prospect Square 07 D, LLC (4.16%), and Prospect Square 07 E, LLC (30.74%). The foregoing entities are referred to as the "Prospect SPE's").

219. In the Solicitation Materials prepared by Dragul and provided to prospective investors, he represented that the purchase price for the property was $18.33 million, when in fact he purchased the property for $16 million, $2.33 million less than represented to investors. **Compl. Ex. 16.**

220. In reliance upon the false and misleading Solicitation Materials distributed by Dragul and the Hershey Defendants in or about 2007, investors ultimately contributed approximately $5 million through their purchase of ownership interests in the SPE that owned the Prospect Property.

221. Hershey was paid $306,000 at the Prospect closing as an undisclosed and illegal "commissions." *See* **Compl. Ex. 17.**

222. On January 29, 2014, Dragul on behalf of the five Prospect SPEs filed petitions for bankruptcy under chapter 11 of the U.S. Bankruptcy Code (all five cases were consolidated into Case No. 14-10896-EEB, U.S. Bankruptcy Court, District of Colorado).

223. On October 1, 2014, the Prospect SPE debtors filed a motion seeking bankruptcy court approval of a purchase and sale agreement for the sale of the

Prospect Property to Park City Commercial Properties, LLC ("Park City") for $16.15 million (the "First Prospect PSA"). *See* Dkt. No. 171 (Case No. 14-10896-EEB, U.S. Bankr. Court, D. Colo).

224. In connection with the prospective sale of the Prospect Property, the Prospect SPE debtors entered into a stipulation and settlement agreement with the Prospect Lender whereby the Lender agreed to accept a reduced payoff on its loan, which was in default, provided it was paid by December 1, 2014. *See* Dkt. No. 174 (Case No. 14-10896-EEB, U.S. Bankr. Court, D. Colo), at ¶ 7.

225. Edward Delava, the managing member and signatory for the Park City purchaser in First Prospect PSA, had been Defendant ACF's CFO since the 1990's.

226. Neither the Prospect SPE debtors nor the prospective buyer disclosed the insider relationship among Delava, Fox, and ACF to either the bankruptcy court or the Prospect Lender.

227. The bankruptcy court approved both the settlement agreement with the Prospect Lender and the First Prospect PSA on October 21, 2014. *See* Dkt. No. 182 (Case No. 14-10896-EEB, U.S. Bankr. Court, D. Colo).

228. On January 5, 2015, the Prospect Lender filed a Motion for Relief from the Automatic Stay seeking to foreclose on the Prospect Property because the sale to Park City had not closed. The Prospect SPE debtors had not provided notice to the bankruptcy court of the failed sale. *See* Dkt. No. 196 (Case No. 14-10896-EEB, U.S. Bankr. Court, D. Colo).

229. In response to the Prospect Lender's foregoing motion, the Prospect SPE debtors objected to the motion for relief from stay citing extenuating circumstances beyond the debtors' control that had prevented the sale from closing:

> After entering into the settlement agreement and a third-party sale agreement that both depended on the current tenant make-up and rental income stream, the anchor tenant Kroger announced its intention to expand and relocate elsewhere. The result was immediate uncertainty as to the future tenant income stream, and the possibility that retail income from the property and associated valuations could drop precipitously. This dramatic turn of events spooked Debtors' buyer and the lending community in the immediate term and will require the Debtors to engage in rehabilitative leasing and tenant improvement efforts related to Kroger space. Until the Debtors have completed such transitional needs, the valuation, sale and financing opportunities for the property are compromised or worse.

See Dkt. No. 202 (Case No. 14-10896-EEB, U.S. Bankr. Court, D. Colo), at ¶ 9.

230. Upon information and belief, Dragul and his GDA employees, including Markusch, knew about Kroger's desire to expand and intention not to renew its lease upon its expiration in February 2018 at the time of the First Prospect PSA.

231. Notwithstanding this, Dragul, on behalf of the Prospect SPEs, represented to the bankruptcy court in the objection to the Lender's motion for relief from stay that he had no knowledge of this material fact when the settlement agreement with the Lender and the First Prospect PSA were executed. *See* Dkt. No. 202 (Case No. 14-10896-EEB, U.S. Bankr. Court, D. Colo), at ¶ 7.

232. Upon information and belief, the First Prospect PSA was a "stalking-horse" bid from a related party to the ultimate purchaser – the Fox Defendants – both of whom were intimately connected to Dragul and the GDA Entities.

233. The Prospect SPE Debtors contended that Kroger's decision not to renew its lease, which was set to expire in February 2018, resulted in a significant decrease in the fair market value of the Prospect Property and that finding a suitable replacement anchor tenant would take time and money. *See* Dkt. No. 202 (Case No. 14-10896-EEB, U.S. Bankr. Court, D. Colo), at ¶ 7.

234. In February 2015, the parties eventually reached an agreement pursuant to which the Prospect Lender was granted leave from the automatic stay to have a receiver appointed pursuant to its loan documents, among other terms. *See* Dkt. No. 204 (Case No. 14-10896-EEB, U.S. Bankr. Court, D. Colo).

235. On June 30, 2015, the Prospect Lender and the SPE debtors entered into a second settlement agreement, pursuant to which, the Lender agreed to accept a discounted amount of $12.2 million in satisfaction of the $12,418,135.53 outstanding balance on its loan. *See* Dkt. No. 230 (Case No. 14-10896-EEB, U.S. Bankr. Court, D. Colo), at ¶ 7.

236. On July 2, 2015, the Prospect SPE debtors filed a motion seeking bankruptcy court approval of a second purchase and sale agreement to sell the Prospect Property to ACF at a a significantly reduced price of $12.2 million, $3.95

million less than the First Prospect PSA (the "Second Prospect PSA"). *See* Dkt. No. 227 (Case No. 14-10896-EEB, U.S. Bankr. Court, D. Colo), at ¶ 7.

237. Under the terms of the Second Prospect PSA, the Prospect SPE debtors provided an $800,000 credit to the buyer (*i.e.* ACF), for "Seller's reasonable transaction costs," including *inter alia,* $350,0000 in attorney's fees to CG. This amount was deducted from the reduced payoff amount agreed to by the Lender. *Id*.

238. Nowhere in the motion seeking bankruptcy court approval of the Second Prospect PSA are the Fox Defendants' long-standing relationship and business dealings with Dragul and, thus, their status as Insiders as defined in the Bankruptcy Code, disclosed.

239. On July 31, 2015, following ACF's assignment of the purchase and sale agreement to Fox's newly created SPE, Prospect Square 15, LLC, the sale of the Prospect Property closed for $12.2 million. *See* **Compl. Ex. 18.**

240. A total of $818,645.61 for "additional charges" was paid at the closing of ACF's July 31, 2015 purchase of the Prospect Property from the chapter 11 bankruptcy estate:

PAYEE	CATEGORY	AMOUNT
Legal Fees from Escrow:		
Brownstein Hyatt Farber Schreck, LLP	Legal fees	$164,588.36
Seygarth Shaw LLP	Lender's legal fees	$26,200.00
Robins Calley Patterson & Tucker	Legal fees	$18,885.26
Kutner, Brinen, Garber P.C.	Debtors' (sellers) legal fees	$39,073.99
The Conundrum Group	Legal fees	$350,000.00
Strauss Troy Co.	Local legal opinion	$4,600.00
Keating Meuthing & Klekamp	Lender local legal fees	$1,663.00
Brownstein Hyatt Farber Schreck, LLP	Additional legal fee	$32,100.00
Legal fees from escrow sub-total		**$637,110.61**

PAYEE	CATEGORY	AMOUNT
Other Fees:		
Hanley Investment Group	Consulting services fee	$110,000.00
Indigo Consulting Services dba Indigo Management Services	Consulting services fee	$5,500.00
Transpacific Real Estate Consultants	Consulting services fee	$35,000.00
Global Realty Services Group	Environmental & Phase I Reports	$2,250.00
The Planning and Zoning Resource Company	Zoning Report	$985.00
Thomas Graham & Associates	Survey	$2,800.00
Park City Commercial Properties	Commission	$25,000.00
Other fees sub-total		**$181,535.00**
TOTAL ADDITIONAL CHARGES FROM ESCROW		**$818,645.61**

See **Compl. Ex. 18.**

241. Defendant CG received $350,000 from escrow for a purported "legal fee," notwithstanding that approximately $637,110.61 was taken from escrow to pay legal fees to at least five other law firms. *See* **Compl**. **Ex. 18**.

242. While the Prospect SPE debtors filed an application to employ the Kahn Defendants, there is no description or statement as to precisely what legal services Kahn would provide to the debtors – "The Debtors desire to employ the services of [the Kahn Defendants] to continue its non-bankruptcy legal services, including general corporate and business matters." *See* Dkt. No. 89 (Case No. 14-10896-EEB, U.S. Bankr. Court, D. Colo), at ¶ 10.

243. When the Prospect SPE debtors filed their bankruptcy petitions, the Kahn Defendants held a general unsecured claim of $27,277.83 for prior legal services. *Id* at ¶ 5.

244. Upon information and belief, the Kahn Defendants did no legal work in connection with the sale of the Prospect property for which legal fees would have been warranted or properly due and owing from the escrowed funds.

245. The initial stalking-horse buyer of the Prospect Property, Park City Commercial Properties, which was owned and managed by ACF's CFO Delava, received a "commission" of $25,000.00 at closing.

246. Upon information and belief, neither Park City nor Delava were licensed real estate agents entitled to receive such a commission, nor was such commission disclosed to the bankruptcy court.

247. The Prospect Square chapter 11 bankruptcy case was closed on November 4, 2015.

248. On January 22, 2016, nearly six months after the Fox Defendants' purchase of the Prospect Property, through a newly created SPE, PS 16, LLC, Dragul repurchased the Prospect Property for $13.8 million, giving the Fox Defendants a profit of approximately $1.6 million for holding the property for less than six months. *See* **Compl. Ex. 18**.

249. At the closing on Dragul's repurchase of the Prospect Property, GDA received $207,000.00, purportedly to reimburse its "due diligence" expenses and earnest money deposits, CG received $31,727, again, under the guise of legal fees, and Delava's entity, Park City, received another $25,0000 "commission." *Id.*

250. Dragul's repurchase of the Prospect Property was financed with a new $12.97 million loan, $4.335 million from Dragul's institutional investor, Hagshama and $481,675 in funds ultimately contributed by investors.

251. Even though Dragul's second purchase of the Prospect Property closed in January 2016, beginning in or about February 2016, Dragul and the GDA Entities sent Solicitation Materials to prospective investors seeking investments in GDA PS Member, LLC, a member in PS 16, LLC with 10% interest therein. *See* **Compl. Ex. 20**.

252. In these Prospect Solicitation Materials, Dragul made the following material misrepresentations to prospective investors:

> The 66,846 square foot Kroger store currently does extremely well with sales in excess of $700 per square foot which equates to well over $46,000,000 per year. Kroger is currently paying $7.75 per square foot and their lease expires February 28, 2018. We have received word that they plan to move to a much larger newly developed store across the intersection. The ownership welcomes the opportunity to have Kroger's space back as market rent for this space is upward of $13.75 per square foot. In fact, the ownership has already received an offer on the space. Furthering the strength of this property is the lack of available commercial land in the submarket limiting competition and allowing an investor to benefit from rising market rental rates.

Compl. Ex. 20, at 1. This was directly contrary to the representations made by Dragul to the Bankruptcy Court which attributed the decreased value of the Prospect to Kroger's departure and the difficulty of finding a replacement tenant. In fact, as of

the date of the Receiver's appointment, Dragul had not identified a replacement tenant or re-leased the Kroger space.

253. In reliance on this misrepresentation, four investors who had received the Prospect Solicitation Materials invested $555,000 in GDA PS Member, LLC (the "Prospect Investors"). In addition to these investors that contributed cash, Dragul also "gifted" interests in GDA PS Member, LLC to a friend and his three children, Charli, Samuel and Spencer Dragul, who did not actually put money into the deal. *See* Prospect Investor Detail Chart, attached as **Exhibit 42.**

254. Dragul informed the Prospect Lender in or about January 2018, that he would not be able to pay the $12.97 million loan he obtained to finance the purchase of the Property, which was due in February 2018.

255. As of the date of the Receiver's appointment, Kroger provided notice of its intent to terminate the lease early and paid $1.75 million to the Prospect Lender as an early termination fee, which was credited towards the defaulted loan balance.

256. Dragul and the Prospect lender executed a forbearance agreement on January 31, 2018, pursuant to which the lender agreed to forebear exercising its default remedies until May 1, 2018, to allow Dragul time to obtain refinancing.

257. Given his First Indictment, Dragul was unable to refinance the Property, and defaulted on the forbearance agreement by failing to make May, June, July, and August 2018 payments.

258. On November 29, 2018, the Prospect lender instituted a civil action in Ohio state court seeking to foreclose on the Property notwithstanding the stay provisions contained in the Receivership Order.

F. Dragul, Markusch, the Kahn and Fox Defendants' Conduct Designed to Thwart the Receiver's Efforts and Conceal or Impermissibly Transfer Receivership Estate Assets

259. The Receiver could not have discovered these above-detailed misrepresentations made to the GDA Entity Investors prior to August 30, 2018 through reasonable diligence because he did not have access to the GDA books and records, and Dragul refused to produce the SPE books and records to GDA Entity Investors for inspection despite periodic requests.

260. Even after the Receiver was appointed, Dragul and his staff, including Markusch, and the Kahn Defendants concealed documents and information from the Receiver and his counsel and thwarted such efforts to uncover the truth. When requested, Dragul and his staff provided inaccurate or incomplete information to the Receiver.

261. Since approximately 2004, Fox and Dragul owned a Rayethon-Hawker Beechjet 400XP (Serial No. RK-0504, Registration No. N202TT) (the "**Airplane**"). As of the date of the Receiver's appointment, the Airplane was owned by SSC Aviation 06, LLC ("**SSC A 06**"), which in turn was wholly-owned by SSC Aviation 04, LLC ("**SSC A 04**").

262. Pursuant SSC A 04's First Amended Operating Agreement dated April 1, 2011, Dragul and Fox are the sole members holding 66.67% and 33.3% of the membership interests therein, respectively.

263. Dragul was the sole manager of SSC A 06 pursuant to a June 2, 2007 transfer and assignment executed by the prior owner in favor of SS A 04 and Dragul as its sole member and manager.

264. In or about September 2018, shortly after the Receiver's appointment, at a time when the Receiver did not have access to any of the GDA server files, books or records, and was otherwise without access to information regarding this investment, Fox and Dragul represented to the Receiver that the Airplane's value was less than the debt it secured and Fox offered to assume the deficiency on the loan and dispose of the Airplane.

265. At the same time, in September 2018, Fox and Dragul were working with L&L International to market and sell the Airplane, but neither disclosed this to the Receiver.

266. Fox, Kahn and Markusch each had actual knowledge that Dragul was the sole manager of SSC A 06, and therefore, those management rights, and the 66.67% interest in the Airplane were property of the Receivership Estate. Notwithstanding this knowledge, Fox, Kahn and Markusch conspired to create false, back-dated organizational documents for both entities in order to vest control and management rights in Fox so that he could sell the Airplane without the consent or

Receivership Court approval and keep the profits from the sale beyond the reach of the Receiver.

267. Kahn realized in November 2018 that the SSC A 04 and SSC A 06 entities were missing key organizational documents that transferred management rights of SSC A 06 to Fox so he could sell the Airplane without the Receiver's knowledge.

268. In emails with the prospective buyer in November 2018, Kahn on behalf of Fox and Dragul, represented to the prospective buyer that Fox was the manager of SSC A 04 and therefore "ha[d] effective control." In these emails, on which Dragul, Fox and Markusch were copied, Kahn acknowledges that any gap in the organizational documents could normally be fixed with an amendment, but "in this particular instance we are precluded from doing so because of the existing receivership order – which is why Mr. Fox is acting as the Manager for SSC [A] 04."

269. Apparently satisfied with this explanation, the Airplane was sold for $1.5 million on December 12, 2018.

270. On December 21, 2018, Fox wired $30,000 to Shelly Dragul's (Dragul's wife), Chase bank account with a memo referencing "Sale of Beechjet." Fox knew the proceeds were property of the Receivership Estate but he conspired with Dragul and Kahn to pay them to Dragul instead of the Estate.

271. In January 2019, following the sale, Kahn, having recognized the entity organization gaps, fraudulently drafted new organizational documents purportedly

to address those gaps and ensure that the Fox Defendants could file a claim against the Receivership Estate for expenses incurred for the Airplane since the Receiver's appointment.

272. On January 23, 2019, Kahn with the assistance of Markusch, drafted and transmitted to Fox, Edward Delava, Eric Diamond (ACF's new CFO), and Dragul, the following SSC A 04 entity documents requesting their signatures:

a. A First Amended Operating Agreement, fraudulently back-dated to June 2, 2007, adding Fox as a manager of the entity, together with Dragul;

b. A Second Amended Operating Agreement, fraudulently back-dated to June 14, 2007 to bring the operating documents in conformance with the loan documents and subsequent Colorado Secretary of State filings; and

c. A Notice of Termination/Dissolution to the Members of SSC A 04 fraudulently back-dated to December 21, 2018, in an effort to resolve two pending lawsuits filed against the entity.

273. The same day, Kahn sent a second set of fraudulent drafted and back-dated organizational documents to the same recipients that addressed the entity organization gaps in SSC A 06:

a. A Second Amended Operating Agreement, fraudulently back-dated to August 1, 2018, to reflect a change in the Manager from Dragul to Fox.

b. A Notice of Capital Contributions fraudulently back-dated to August 1, 2018, which Kahn "designed as a forward thinking document" and instructed Fox to insert overestimated expenditures for the fictitious capital call. Kahn added: "This document will become the basis for any SSC [A] 04 equitable claims submission to the Receivership Estate;" and

c. A Notice of Termination/Dissolution to the Members of SSC A 06 fraudulently back-dated to December 31, 2018 with directions to dissolve the entity "once it resolves any capital contribution or equitable claims efforts, and once SSC 06 has closure."

274. Kahn fraudulently created and back-dated all of the foregoing entity organization documents for SSC A 04 and SSC A 06 for the express purpose of manufacturing a purported pre-receivership change in management and a capital call entitling the Fox Defendants to submit a false claim against the Receivership Estate for expenses he incurred for the Airplane.

275. Also after the Receiver's appointment, Fox has systematically refused to produce documents in response to the Receiver's numerous requests beginning in February 2019 and continuing through the present for documents and records concerning the Estate's interests in several Fox SPEs, in an effort to conceal Fox and Dragul's continuing and pervasive fraud in furtherance of Dragul's Scheme.

276. Upon information and belief, Fox refuses to provide basic, readily-available documents such as detailed financial statements, appraisals, and evidence

of the debt encumbering the properties held by the Fox Entities to further conceal his and Dragul's fraudulent conduct.

277. On June 4, 2019, the Receiver filed a Turnover Motion (the "Dragul Turnover Motion") with the Receivership Court demanding that Dragul turnover various Estate assets he had been concealing and withholding from the Receiver, including those held by SSC 02, LLC ("**SSC 02**") – an entity purportedly owned by Dragul's children and managed by his wife. The Dragul Turnover Motion asserted that SSC 02 was property of the Estate and that all of its assets must be turned over to the Receiver.

278. Dragul and his family members conceded as much and the Court approved a settlement agreement on December 17, 2019, that required all of SSC 02's assets to be turned over to the Receiver.

279. The Dragul Turnover Motion was served on Fox, his attorneys and ACF's CFO via email on June 4, 2019, because Fox and ACF are purported creditors of the Estate and are therefore entitled to notice of filings therein.

280. SSC 02's assets included membership interests in three Fox Entities – Kenwood Pavilion 14 A, LLC (0.581% interest), Fenton Commons (0.221%), and College Marketplace (0.115%). Both felony charges against Dragul and this Receivership put Dragul in financial distress. Pursuant to their long-standing relationship, Fox agreed to assist Dragul by diverting money owed to the Estate. Notwithstanding his actual notice of the June 4th Dragul Turnover Motion, which

asserted that SSC 02 was property of the Estate, in July 2019, Fox purchased SSC 02's interests in Kenwood, Fenton, and College Marketplace for $60,000.

281. On January 12, 2019, Dragul told Fox he was in desperate financial condition and asked him for $1 million as Fox had regularly made personal loans to Dragul disguised as investments for at least the previous 10 years. On April 9, 2019, the Receiver's counsel conferred with Dragul's counsel regarding SSC 02 stating:

> we have determined that SSC 02, LLC was funded with money from various accounts in which investor funds were deposited and comingled. . . . Considering this information, *the Receiver retracts any authority previously provided* ***to sell the storage unit or any other asset owned by SSC 02, LLC***. *Further, we need a full accounting of all* items in the storage facility as well as the *assets held by SSC 02, LLC,* ***including membership interests in any ACF owned entity as reflected by the attached check***.

See 01/12/19 Dragul and Fox Emails, attached as **Exhibit 43** (emphasis added). A copy of the check referred to in the above-referenced email (attached as **Exhibit 44**) specifically identifies SSC 02's interests in Kenwood, Fenton, and College Marketplace, the very interests Fox paid $60,000 for three-and-a-half months later.

282. Within minutes of Dragul learning the Receiver was onto SSC 02, Dragul forwarded the Receiver's April 9 email to Fox with the following note**: "*Alan, See below. Can we discuss.*"** *See* Email Forwarding Turnover Conferral, attached as **Exhibit 45** (emphasis added). Fox had actual knowledge ***on April 9th*** that the Receiver was seeking turnover of SSC 02's interests in Kenwood, Fenton, and College

Marketplace. Nevertheless, without the Receiver's knowledge or consent, and without Court approval, Fox paid Dragul $60,000 for these interests in July 2019.

283. In another transaction taking place in November 2018 and continuing through February 2019, designed to conceal payments to Dragul in violation of the Receivership Order, Fox surreptitiously purchased Dragul's interests in yet another Fox-owned SPE that was property of the Estate.

284. In 2015, Dragul acquired a 7.317% membership interest in the Shoppes at Bedford 15A, LLC (one of the Fox Entities), an interest purportedly then worth $654,871.50**.** On November 1, 2015, Dragul "gifted" 50% of his Bedford interest to his friend, lender, and frequent investor Marty Rosenbaum.

285. In November 2018, months after the Receiver was appointed, Rosenbaum agreed to a proposed transaction in which Dragul would secure a $200,000 loan from Fox with both his and Rosenbaum's 3.6585% Bedford interests. But that transaction apparently did not occur. Instead, Rosenbaum sold his Bedford interest to Fox for $100,000, which Rosenbaum then funneled to Dragul, and at the same time Fox paid Dragul an additional $25,000.

286. On November 9, 2018, Fox wired $25,000 to Dragul's wife Shelly "as a deposit re Bedford LLC Member Interest" with the intention of concealing the funds concealed from the Receiver.

287. On November 15, 2018, Rosenbaum transmitted an executed $100,000 "promissory note" and membership interest purchase agreement and confirmed in

the email that "**Once I receive the wire . . . I will turn around and wire to Shelly's account.**"

288. On November 16, 2019, Shelly Dragul received both the $25,000 wire from Fox in her personal Chase bank account, and the $100,000 wire from Rosenbaum.

289. Without disclosing the completed November 2018 Rosenbaum transaction to the Receiver, in February 2019, Dragul asked the Receiver to consent to Dragul selling his 3.6585% Bedford interest to Fox for $20,000, one-fifth what Fox paid Rosenbaum a few months before. GDA's February 13, 2019, email stated "to get this [Dragul's Bedford interest] out of the receivership estate, Alan is willing to purchase Gary's beneficial interest for $20,000, payable immediately to the estate." Fox confirmed the offer with the Receiver on March 12, 2019.

290. In March 2019, the Receiver asked Fox for various documents, including tax returns, necessary to value the Estate's interest in Bedford, and assess the potential tax implications of the proposed purchase to determine whether the transaction was in the Estate's best interest.

291. The Receiver also had periodic communications with Fox's CFO on various issues. Fox had actual knowledge that Dragul's interest in Bedford was property of the Estate and understood that the Receiver needed to approve its sale.

292. Less than one hour after Fox and Dragul once again asked the Receiver to approve Fox's purchase of Dragul's Bedford interest, Dragul forwarded Fox a copy

of the Receiver's April 9, 2019, email demanding that SSC 02's interests in Kenwood, Fenton, and College Marketplace be turned over to the Estate. Just like Bedford, Fox knew he could not lawfully purchase the SSC 02 interest without the Receiver's consent and Court approval, but he went ahead and did so anyway.

G. Payment of Unauthorized Commissions

293. According to Dragul's records, from 2003 through August 2018, Dragul, in active concert with the other Defendants, stole over $20.2 million from investors which was used, *inter alia*, to pay almost $9 million in personal gambling debts, to impermissibly pay millions to Dragul's family members and the Non-Dragul Defendants, and to fund the extravagant lifestyles of Dragul, his family, coworkers and those Dragul designated as "friends of the house."

294. Various SPEs were used to fraudulently transfer funds to Defendants, including, but not limited to, AP Plaza 07 A, LLC, Fort Collins WF 02, LLC, GDA Clearwater 15, LLC, Crosspointe 08 A, LLC, GDA Hickory 17, LLC, GDA Housing, LLC, GDA PS Member, LLC, GDA Windsor Member, LLC, Grandview 06 A, LLC, HC Shoppes 18 A, LLC, Market at Southpark 09, LLC, Plainfield 09 A, LLC, Plaza Mall North 08 A Junior, LLC, Plaza Mall North 08 B, LLC, Prospect Square 07 A, LLC, Rose, LLC, Southlake 07 A, LLC SSC 02, LLC, Standley Lake 07 A, LLC, Syracuse Property 06 A, LLC, Summit 06, A, LLC, Village Crossroads 09, LLC, Walden 08 A, LLC, West Creek 06 A, LLC, Yale & Monaco 02, LLC and YM Retail 07

A, LLC. These SPEs were funded with money Defendants obtained by defrauding investors.

295. The Receiver's forensic analysis has been hampered by Dragul's concealment of records, his use of SPEs to channel funds under the guise of purported "commissions" and other fees to the Defendants, and the vast commingling among the various Dragul accounts. The Receiver reserves the right to recover additional commissions that may be uncovered in discovery and proven at trial.

296. All of the commissions set forth below represent the transfer of funds Defendants obtained by fraud from investors who invested money by purchasing ownership interests in SPEs. These investment vehicles were used to fraudulently transfer funds masked as illegal and undisclosed "commissions" to Dragul, the Kahn Defendants, Markusch, and the Fox and Hershey Defendants.

297. Dragul and the Non-Dragul Defendants paid each other millions of dollars in unauthorized, undisclosed and illegal commissions from the escrow of real estate closings and from the SPE accounts as follows (collectively, the "Commissions"):

Defendant	Commissions from Escrow	Commissions from GDA Entities	Total Commissions Received
Gary Dragul	$18,822,421.55	$325,625.55	$19,148,047.10
Markusch Defendants	$212,796.67	$97,300.00	$310,196.67
Kahn Defendants	$661,026.87	$1,040,415.05	$1,701,441.92
Fox Defendants	$9,714,804.81	$485,500.00	$10,200,304.81
Hershey Defendants	$578,500.00	$2,597,155.54	$3,175,655.54

See **Compl. Exs. 3**, **4**, **5**, **6 (as amended)**, and **7**.

i. The Dragul and Fox Commissions

298. As detailed and set forth in the chart above, Dragul took millions of dollars in unauthorized, undisclosed, and illegal commissions from the closing and refinance of numerous properties (the "Dragul Commissions"). *See* **Compl. Ex. 3.** Exhibit 3, which is incorporated herein by reference, sets forth the date, payee, property and amount of each Dragul Commission.

299. From 2002 to 2018, Dragul took approximately $18.6 million from the escrow of real estate closings (both purchases and sales) of various SPE associated properties both in GDA and ACF's portfolios, to which neither he nor any GDA Entity was entitled. *See* **Compl. Ex. 3.**

300. Not only did Dragul fail to disclose these unlawful and unauthorized commissions to investors in the Solicitation Materials, he also failed to disclose, and actually concealed them in the information provided to investors regarding the sale of at least one SPE associated property in which they had invested – PMG.

301. Dragul likewise paid the Fox Defendants over $9.7 million in "commissions" at the closing on various Dragul properties, and another $485,500 for purported commissions from the GDA Entities' bank accounts (the "Fox Commissions"). *See* **Amd**. **Ex. 6.** Amended Exhibit 6, which is incorporated herein by reference, sets forth the date, payee, property and amount of each Fox Commission.

302. The Dragul and Fox Commissions were illegal because neither Fox nor Dragul was a licensed real estate agent entitled to receive them.

ii. The Markusch Commissions

303. For her role as CFO and controller of GDA, Markusch received a sizeable salary, not including bonuses and benefits.

304. In addition to her sizeable salary and benefits, the Markush Defendants also received undisclosed and illegal commissions from the closing on both commercial and residential properties through Juniper and Olson RES, which is the sole member (the "Markusch Commissions"). *See* **Compl. Ex. 4.** Exhibit 4, which is incorporated herein by reference, sets forth the date, property and amount of each Markusch Commission.

305. From 2014 through 2018, the Markusch Defendants received approximately $284,796.67 in undisclosed and unlawful commissions from GDA and the SPE entities. *See* **Ex. 4.**

306. In at least four instances, the Markusch Defendants' commissions were taken from the closing of various properties in which defrauded investors made investments in reliance on the Solicitation Materials – Rose, LLC, Upper High Street 15, LLC, AP Plaza 07 A, LLC and Summit 06 A, LLC. *See* **Ex. 4.**

307. Like the Dragul and Fox Commissions, the Markusch Commissions were never disclosed to prospective investors.

308. The Markusch Defendants were not licensed or registered brokers with FINRA, the State of Colorado or the SEC, nor associated with a FINRA or Commission-registered broker-dealer at any time relevant herein.

309. Likewise, upon information and belief the Markusch Defendants are not and have never been a licensed real estate agents in Colorado or any state entitling her to receive commissions from the closing of real estate transactions.

iii. The Hershey Commissions

310. Rather than taking "commissions" from the property closings, the Hershey Defendants received commissions from Dragul separately, all based on an agreed percentage of the funds Dragul received from investors solicited by Hershey.

311. As set forth in the table above, from 2001 to 2014 the Hershey Defendants received approximately $2,891,155.54 in commissions for funds solicited by Hershey from investors. *See* **Compl. Ex. 7.** Exhibit 7, which is incorporated herein by reference, sets forth the date, payee, property, and amount of each Hershey Commission.

312. In addition to these commissions, Dragul paid the Hershey Defendants $194,000 in "commissions" from the sales of properties owned by AP Plaza 07 A, LLC and Grandview 06 A, LLC (collectively referred to as the "Hershey Commissions"). *See* **Compl. Ex. 7.**

313. The Hershey Defendants were not licensed or registered brokers with FINRA, the State of Colorado or the SEC, nor associated with a FINRA or Commission-registered broker-dealer at any time relevant herein.

V. FIRST CLAIM FOR RELIEF: Violations of the Colorado Securities Act Colo. Rev. Stat. §§ 11-51-501 and 11-51-604(1), (2)(A), (3), and (5)

314. The Receiver realleges and incorporates the previous allegations of the Amended Complaint as if fully set forth herein.

315. The Receiver has standing to prosecute this claim both on behalf of the SPEs and the GDA Entity investors, all of whom are creditors of the Receivership Estate. *See* **Compl. Ex. 1,** at ¶ 13(s).

A. Securities Registration Violations, C.R.S. §§ 11-51-604(1) and 11-51-301 (Against Dragul and the Fox Defendants)

316. As set forth in the preceding paragraphs of this Amended Complaint, Dragul and the Fox Defendants sold securities in this State in violation of C.R.S. § 11-51-301, because between 2003 through August 2018, Dragul and Fox sold securities that were not registered under Article 51 of the Colorado Revised Statutes. C.R.S. § 11-51-604(1).

317. Specifically, Fox's solicitation of and sale to the Southpark Investors from 2009-2010 and to the FC Investors from 2008 through 2019, of membership interests in the specific SPE whose sole asset was real property and whose sole purpose was to own and manage the property, required registration of the securities being sold and Fox failed to do so.

318. Likewise, Dragul's solicitation and sale to the GDA Entity Investors from 2003 through August 2018 of both membership interests in the GDA Entities and of promissory notes (the "Investment Contracts") required that he register the securities being sold, but he failed to do so.

319. Neither the Receiver nor the GDA Entity Investors could have discovered the above-detailed conduct and transactions prior to August 30, 2018, at the earliest, through reasonable diligence because (1) the Receiver did not have access to the GDA books and records before that date as Dragul and GDA were not yet subject to a receivership, (b) Dragul and the Fox Defendants refused to produce the SPE books to the GDA Entity Investors on numerous occasions; and (c) the manner in which Dragul conducted GDA's business was designed to conceal or hide the facts of his fraud, theft, and material misrepresentations and omissions. Moreover, upon information and belief, Dragul destroyed or deleted data, information, documents, and other electronically stored information prior to the Receiver's appointment.

320. The Receiver is therefore entitled to recover damages, interest, costs, and attorneys' fees pursuant to C.R.S. § 11-51-604(1).

B. Licensing and Notice Filing Violations, C.R.S. §§ 11-51-604(2)(a) and 11-51-401 (Against Dragul and the Fox and Hershey Defendants)

321. Dragul and the Hershey Defendants acted as "broker-dealers" as defined in C.R.S. § 11-51-201((2) in the following respects:

a. Dragul and the Hershey Defendants' solicited and sold of membership interests in Fox-formed SPEs that owned and operated property

including but not limited to Market at Southpark, Loggins Corners, Tower Plaza, Highlands Ranch, Southwest Commons, Meadows Shopping Center, Laveen Ranch and Trophy Club to the GDA Entity Investors from 2009 through 2018 (*See* ¶¶ 5, 41-43, 67, 78, 83, 87-95, 101-102, 145, 148, 145, and 173-175, *supra*);

b. Dragul and the Hershey Defendants' solicited and sold promissory notes (Investment Contracts) to the Note Investors from 2008 through August 2013 (*See* ¶¶ 5, 27-28, 64, *supra*).

322. Neither Dragul nor the Hershey Defendants were licensed or exempt from licensure, as either "broker-dealers" or "sales representatives," nor were they registered in any capacity with the Commissioner as required by C.R.S. §§ 11-51-401 and 402 in violation of C.R.S. § 11-51-401(1). *See* ¶¶ 5, 27-28, and 64, *supra*.

323. Moreover, the Fox Defendants are considered "issuers" under C.R.S. § 11-51-201(10) because they issued securities in the form of SPE membership or joint venture interests in Market at Southpark 09, LLC, Tower Plaza 12, LLC, Loggins Corners 12, LLC, HR 05 A, LLC, Meadows Shopping Center 05 A, LLC, Southwest Commons 05, A, LLC, Laveen Ranch 12, LLC, and Trophy Club 12, LLC to the GDA Entity Investors in this State. *See* ¶¶ 6, 55, 78, 83, 90-142, and 163 – 214, *supra*.

324. The Fox Defendants employed or otherwise engaged Dragul, an unlicensed sales agent to act as sales representative in Colorado in violation of C.R.S. § 11-51-604(2). *See id.*

325. Neither the Receiver nor the GDA Entity Investors could have discovered the above-detailed conduct and transactions prior to August 30, 2018, at the earliest, through reasonable diligence because (a) the Receiver did not have access to the GDA books and records before that date as Dragul and GDA were not yet subject to a receivership, (b) Dragul and the Fox Defendants refused to produce the SPE books to the GDA Entity Investors on numerous occasions; and (c) the manner in which Dragul conducted GDA's business was designed to conceal or hide the facts of his fraud, theft, and material misrepresentations and omissions. Moreover, upon information and belief, Dragul destroyed or deleted data, information, documents, and other electronically stored information prior to the Receiver's appointment.

326. As such, the Receiver, on behalf of the defrauded GDA Entity Investors and the Estate, is entitled to an award of damages, interest, costs, and attorneys' fees pursuant to C.R.S. § 11-51-604(2).

C. Securities Fraud in Violation of C.R.S. §§ 11-51-604(3) - (4) and 11-51-501(1)(a)-(c) (against Dragul and the Fox Defendants).

327. Dragul and the Fox Defendants, in connection with the offer, sale, or purchase of securities, directly or indirectly, operated and employed the Sham Business Scheme or artifice to defraud the Southpark Investors, the PMG Investors, the Prospect Investors, the FC Investors, and the other GDA Entity Investors from 2003 through August 2018 (the "Scheme"). C.R.S. § 11-51-501(a). *See*

328. The Scheme effectively defrauded GDA Entity investors and prospective investors by making false and misleading material misrepresentations to induce the

purchase of purported ownership interests in SPEs or joint ventures established by Dragul and the Fox Defendants, which constitute securities under C.R.S. § 11-51-201(17). The GDA Entity investors relied on the representations made both in the Solicitation Materials and directly by Dragul and the Fox and Hershey Defendants in soliciting their investments. The funds ultimately invested by the GDA Entity investors in reliance on Dragul and the Fox and Hershey Defendants' representations were either transferred into Dragul's personal accounts, used to pay undisclosed and illegal commissions, and/or to pay off old debts, without the authority or knowledge of those investors. *See* ¶¶ 1-8, 34-44, 53-78, 83-89, 90-142, 143-163, 163-124, and 216-258 *supra.*

329. Dragul and the Hershey and Fox Defendants perpetuated this fraud by soliciting investors to purchase membership interests in various SPEs for the stated purpose of purchasing and operating commercial properties. However, Dragul and the Fox and Hershey Defendants did not invest funds where represented, but instead used those funds to pay down other debt and for these Defendants' own personal benefit. *See id*.

330. The above-detailed Scheme was carried out by Dragul and the Fox Defendants from approximately 2003 through August 2018.

331. In connection with the offer, purchase, and sale of securities, including North 08, GDA Market at Southpark, LLC, Fort Collins WF 02, LLC, PS 16, LLC and others, Dragul, and the Fox Defendants, either directly or indirectly, made untrue

statements of material fact or failed to disclose to investors material facts which were necessary to make the statements made to investors, under the circumstances in which they were made, not misleading in violation of C.R.S. § 11-51-501(b) and (c). The omitted and untrue statements of material fact that investors did not know and could not have known included, but were not limited to the following:

a. Dragul failed to disclose to the GDA Entity Investors that he would sell/assign over 194% of the total membership interests in Plainfield 09 A, LLC and the Plainfield Commons Shopping Center. *See* **Ex. 22,** at 3; and ¶¶ 60-62 *supra*.

b. Dragul failed to disclose the actual risk associated with the investments in the GDA Entities and in the Fox-owned SPEs. *See* **Ex. 22,** at 3; *see also* ¶¶78, 83-89, 90-142, 143-163, 163-214, and 216-258, *supra.*

c. Dragul and the Fox Defendants failed to disclose to the GDA Entity Investors from 2008 through August 2018 the actual financial condition and substantial debt of GDA and Dragul which Fox had actual knowledge by virtue of his demand for periodic budgets and financial information (both personal and SPE) from Dragul. *See* **Ex. 22,** at 3; *see also* ¶¶78, 83-89, 90-142, 143-163, 163-214, and 216-258, *supra.*

d. Dragul and the Fox Defendants failed to disclose to the FC Investors that they would sell membership interests to family members and insiders at reduced costs and gift membership interests to Dragul

insiders, effectively diluting FC Investor membership interests. *See* ¶¶ 163-214. *supra*

e. Dragul and the Fox Defendants made untrue statements that that the properties constituting the sole asset of the SPEs in which the investors purchased interests, would be operated with profits derived therefrom being distributed to investors on a monthly basis, when in fact, the GDA Entity Investors distributions were not based on actual performance of the investment, but rather Dragul and the Fox Defendants paid varying amounts of distributions not from the profits, but from extensively comingled funds from other investors, other loans and/or the operations of GDA and ACF, respectively. *See* Second Indictment; and ¶¶ 59, 71-77, 96, 124, 130, 194, and 198, *supra*

f. Dragul and the Fox Defendants made untrue statements that the GDA Entity Investors' investments and the amount of operating reserves represented in the financial projections included in the Solicitation Materials for Market at Southpark, Loggins Corners, Trophy Club, PMG, Shoppes at the Meadows, Southwest Commons, Laveen Ranch, and Trophy Club were not actually held in the specific Fox SPE or GDA Entity associated bank accounts, but rather were comingled with the funds from all operations of GDA and ACF. *See* **Compl. Exs. 8, 12, 16,**

20 (attached to Original Complaint), and **Exs. 24, 29, 30, 31, 35**; ¶¶ 78, 83-89, 90-142, 143-163, and 163-214, *supra*

g. Dragul and the Fox Defendants made untrue statements that the proceeds from any sale would be distributed to the GDA Entity Investors in accordance with their *pro rata* share membership interests, when in truth, they failed to disclose to individual investors the sale of various properties before they were sold including the properties associated Highlands Ranch and Market at Southpark in 2011, Loggins Corners in 2018, and Laveen Ranch in 2019, and instead, forced the investors to roll-over their investments into new properties, and in one case, failed to disclose the sale of the PMG property in April 2017 to the PMG Investors and failed to return the PMG Investors' capital consistent with the governing documents. *See* ¶¶ 53-56, 104-113, 118 -140159-161, 180-183, 187-200, 204-211, *supra*

h. Dragul's and the Fox Defendants made untrue statements that the funds invested by the GDA Entity Investors in the Market at Southpark from 2009-2010, PMG from 2008-2016, FC WF 02 from 2008-2012, Prospect Square 2007-2016, and other SPE-owned properties would not be comingled with the funds of other investors in unrelated ventures and/or with Dragul's own personal funds, when in truth they were commingled and treated as fungible rather than being used for the

purpose that Dragul and Fox represented they would be used in the Solicitation Materials as set forth in **Exhibits, 8, 12, 16, 20** (attached to Original Complaint), and **Exhibits 24, 29, 30, 31, 32, 36, 39,** and (attached hereto), and in paragraphs ¶¶ 78, 83-89, 90-142, 143-163, and 163-214, above.

i. The Fox Defendants made untrue statements that the GDA Entity Investor funds invested the Market at Southpark from 2009-2020, FC WF 02 from 2008-2020, and other SPE-owned properties would not be comingled with the funds of other investors in unrelated ACF ventures and/or with the funds of other investors in unrelated ventures and/or with Dragul's own personal funds, when in truth they were commingled and treated as fungible rather than being used for the purpose that Dragul and Fox represented they would be used in the Solicitation Materials as set forth in **Exhibits 8, 12, 16, 20** (attached to Original Complaint), and **Exhibits 29, 30, 36, and 39** (attached hereto), and in paragraphs 78, 90-142, and 163-214, above;

j. Dragul and the Fox Defendants failed to disclose that they offered and sold interests in the SPEs which owned the property at a reduced rate or in some instances, for no consideration, thereby diluting the GDA Entity Investor's investments as set forth in paragraphs 63, 103, 125, 128, 156, and 179, above.

k. Dragul and the Fox Defendants failed to disclose to the Southpark Investors, the FC Investors, the PMG Investors, the Prospect Investors, and other GDA Entity Investors that the investment funds contributed in reliance on the Solicitation Materials prepared and distributed by Dragul and the Fox and Hershey Defendants between 2009 through 2018 would be used to improperly pay commissions to these Defendants and other Non-Dragul Defendants in the amounts and on the dates set forth in Compl. Ex. 3, 4, 5, 6 (as amended), and 7. *See also* ¶¶ 5-7, 22, 27, 42, 62, 82, 87, 89, 98-100, 111, 113, 121-123, 127-129, 131-137, 143-145, 168, 170-171, 173-175, 180, 191-193, 201-203, 211-213 ,293-313;

l. Dragul and the Fox Defendants made untrue statements from 2008 through 2018 to the Southpark Investors, the FC Investors, the PMG Investors, the Prospect Investors, and other GDA Entity Investors concerning the purchase price of various properties, their closing costs, and the financial projections in the Solicitation Materials for the investments, including but not limited to those detailed in paragraphs 62, 83-89, 90-100, 104, 121-132, 143-150, 155-156, 172-175, 190-211, 219-221, 251-253, 299-300, *supra*, on the dates stated therein;

m. Dragul and the Fox Defendants made untrue statements in the Loggins Corners, Tower Plaza, Trophy Club, and Laveen Ranch Solicitation Materials following the unauthorized sale of the real estate owned by

the SPEs including but not limited to those set forth and described in detail in paragraphs 53-56, 104-113, 118 -140159-161, 180-183, 187-200, and 204-211, above, in order to induce their consent to sell the sole asset of the SPE in which they invested and to induce roll-over investments into the replacement properties;

n. The Fox Defendants' failed to disclose that Fox would misappropriate a substantial amount of property equity from escrow of Laveen Ranch and Loggins Corners when he refinanced those properties in 2016, which was money that he represented would be, and which should have been, paid to the Southpark Investors. *See* ¶¶ 133-134 and 201-203 *supra.*

o. Dragul and the Fox Defendants' made untrue statements to the Southpark Investors, FC Investors, Prospect Investors, and other GDA Entity Investors between 2009 through 2018 that that they could not cash out their investments including but not limited to those set forth in paragraphs 60-62, 177-178, 183-189, and 200, above, when the respective Solicitation Materials, Membership Interest Purchase Agreements, or the governing entity documents did not require the investments to be held for any specific number of years. *See id.*

p. Dragul and the Fox Defendants failed to disclose that they would engage in a course of business which diluted the value of membership interests including Dragul's gifting of membership interests in FC WF 02 in or

about 2008 to insiders and Fox's sale of Market at Southpark interests at varying prices to members of his family in 2009. *See* Second Indictment; and ¶¶ 63, 103, 125, 128, 156, and 179, *supra*

332. The Scheme was also employed through Dragul's offering of promissory notes (Investment Contracts) from 2007 through 2013 pursuant to which he raised $6.4 million from more than thirty-one individual investors all of whom are identified in the First Indictment (the "Note Investors"). *See* First Indictment; and ¶¶ 57, 63-65, and 155-156, *supra.*

333. The promissory notes issued by Dragul constitute securities pursuant to C.R.S. § 11-51-201(17).

334. In soliciting the promissory notes (Investment Contracts), Dragul made material, untrue statements and omissions of material facts, including but not limited to:

a. Failing to disclose the actual risk associated with the investments;

b. Failing to disclose to the Note Investors that GDA had negative equity of over $8.5 million, including over $4 million in unpaid, overdue promissory notes issued in 2007 and 2008;

c. Failing to disclose to the Note Investors that Dragul and GDA were named as defendants in numerous civil lawsuits brought by Note Investors for failing to timely repay promissory notes issued prior to 2013.

d. Failing to disclose to the Note Investors that Dragul was using the funds from the notes to pay personal expenses, including but not limited to repayment of personal loans to Fox, millions of dollars in payments to Las Vegas Casinos, maintenance and upkeep costs for the Airplane owned by Dragul and Fox, renovations on his former home, payments to credit card companies, and liquor stores that he and his wife purportedly owned; and

e. Failing to disclose that he would selectively repay the Note Investors - paying insiders and "friends of the house" or rolling their unpaid notes (Investment Contracts) into an SPE investment while defaulting on all others.

See **Ex. 22.**

335. Dragul and Fox recklessly, knowingly, and with the intent to defraud employed the Scheme from 2003 through August 2018.

336. Neither the Receiver nor the GDA Entity Investors could have discovered the above-detailed material misrepresentations and omissions made to the GDA Entity Investors prior to August 30, 2018, at the earliest, through reasonable diligence because (a) the Receiver did not have access to the GDA books and records before that date as Dragul and GDA were not yet subject to a receivership, (b) Dragul and the Fox Defendants refused to produce the SPE books to the GDA Entity Investors on numerous occasions; and (c) the manner in which Dragul conducted

GDA's business was designed to conceal or hide the facts of his fraud, theft, and material misrepresentations and omissions. Moreover, upon information and belief, Dragul destroyed or deleted data, information, documents, and other electronically stored information prior to the Receiver's appointment.

337. The GDA Entity Investors reasonably relied on the above-detailed material misrepresentations and omissions made by Dragul and the Fox Defendants, who knew or should have known of their reliance, to their detriment.

338. As a direct and proximate result of Dragul and the Fox Defendants' Scheme from 2003 through August 2018 in violation of C.R.S. §§ 11-51-501 and 11-51-604(3) and (4), the GDA Entity Investors and the Estate, on whose behalf the Receiver asserts these claims, have been damaged in an amount to be shown at trial.

D. Control Person Liability, C.R.S. § 11-51-604(5)(a) and (b) (against Dragul and Fox)

339. In carrying out the Scheme as set forth herein, Dragul acted as a direct control person of the Non-Dragul Defendants and Fox as a control person of Dragul within the meaning to C.R.S. § 11-51-604(5)(a).

340. At all times relevant herein, both Fox and Dragul are considered issuers as defined in C.R.S. § 11-51-201(10).

341. By virtue of his ownership of, high level position in, and participation in and/or awareness of the operations of GDA RES, GDA REM, and the GDA Entities on whose behalf Hershey acted as a contract consultant in soliciting investments, Markusch who served as CFO of GDA RES, and Kahn who served as outside general

Counsel for GDA RES, GDA REM and the GDA Entities, Dragul had the power to influence the control and did influence the control, directly or indirectly, the decision-making of the Hershey and Kahn Defendants and Markusch including the distribution and making of false and misleading statements and in the material omissions contained in the Solicitation Materials and in untrue statements.

342. Likewise, by virtue of his role as Dragul's mentor, business partner-lender, use of the GDA employees for ACF operations, and his, participation in and/or awareness of the daily operations of GDA RES, GDA REM, and the GDA Entities, Fox had the power to influence and control and did influence and control, directly or indirectly, over the decision-making of Dragul, including the distribution and making of false and misleading statements to prospective investors and in the material omissions contained in the Solicitation Materials.

343. Both Dragul and Fox had direct and supervisory involvement in the day-to-day operations of GDA RES, GDA REM and the GDA Entities, and therefore, are presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein and exercised same.

344. As such, Fox and Dragul are jointly and severally liable pursuant to C.R.S. § 11-51-604(5)(a) and (b).

E. Substantial Assistance Claims, C.R.S. § 11-51-604(5)(c) (Against the Kahn Defendants, the Fox Defendants, the Hershey Defendants, Markusch)

345. As alleged in the preceding paragraphs, Dragul and the Fox Defendants recklessly, knowingly, and/or with the intent to defraud the GDA Entity Investors and the Note Investors, sold securities – *i.e.,* the membership interests in Dragul and Fox-formed SPEs or joint ventures and promissory notes, in violation of C.R.S. § 11-51-501. *See* § V.C, *supra.*

346. Dragul and the Fox Defendants offered and sold securities by means of untrue statements of material fact or omissions to state material facts necessary in order to make statements, in light of the circumstances under which they were made, not misleading (the Investors not knowing of the untruths or omissions). *Id.*

347. Markusch, and the Kahn and Hershey Defendants knew or had reason to know that Dragul and the Fox Defendants, engaged in conduct which constituted violations of C.R.S. § 11-51-604(3) and (4) through the operation of the Scheme, pursuant to which all Defendants received substantial unauthorized and undisclosed commissions both from escrow of the properties owned by the various SPEs, and from their respective bank accounts in which investor funds and reserves were to be held and maintained for the benefit of the GDA Entity Investors.

348. The Hershey Defendants' provided substantial assistant to the illegal conduct of Dragul pursuant to C.R.S. § 11-51-604(3) and (4) through:

a. The solicitation of investors in the GDA Entities since approximately 2001;

b. Their receipt of unauthorized and undisclosed commissions in the amount of $3,175,655.54 for each investment successfully solicited and promissory note sold on Dragul's behalf from 2001-2013; and

c. Other acts which may be shown at trial.

349. The Fox Defendants' provided substantial assistance to the illegal conduct of Dragul pursuant to C.R.S. § 11-51-604(3) and (4) through:

a. The sharing in misappropriated investor funds from the purchase, refinance, and sale of properties in which the GDA Entity Investors were members;

b. Making material misstatements to the GDA Entity Investors to induce their investment in both Fox and Dragul formed and controlled SPEs;

c. Their receipt of unauthorized and undisclosed commissions in the amount of $10,200,304.81 from both the escrow of properties purchased and sold by the Fox SPEs and the GDA Entities from 2002-2018; and

d. Other acts which may be shown at trial.

350. The Kahn Defendants provided substantial assistance to the illegal conduct of Dragul and the Fox Defendants pursuant to C.R.S. § 11-51-604(3) and (4) by:

a. Providing counsel and advice to Dragul with respect to the unauthorized and undisclosed sale of PMG and concealment from the PMG Investors in or about 2017 and 2018;

b. Aiding and facilitating Dragul's and the Fox Defendants' violations of the Receivership Order to transfer and sell Estate Assets without the Receiver's knowledge and consent from August 2018 through the present;

c. Their receipt of $1,701,441.92 in unauthorized and undisclosed commissions from both the escrow of properties purchased and sold by the Fox SPEs and the GDA Entities from 2012-2018; and

d. Other acts which may be shown at trial.

351. Markusch provided substantial assistance to the illegal conduct of Dragul pursuant to C.R.S. § 11-51-604(3) and (4) through:

a. Her actions undertaken in her capacity as CFO of GDA, specifically the extensive comingling of funds that were required to be held in particular GDA Entity accounts in order to perpetrate Dragul's Ponzi Scheme and prevent its detection;

b. Her receipt of $310,196.67 in unauthorized and undisclosed commissions from both the escrow of properties purchased and sold by the Fox SPEs and the GDA Entities from 2014-2018; and

c. Other acts which may be shown at trial.

352. The acts, actions, practices and omissions of all Defendants as set forth in this claim for relief substantially harmed the GDA Entity Investors and the Estate.

353. Neither the Receiver nor the GDA Entity Investors could have discovered these material misstatements and omissions made in connection with the sale of securities prior to August 30, 2018, at the earliest, through reasonable diligence because (a) the Receiver did not have access to the GDA books and records before that date as Dragul and GDA were not yet subject to a receivership, (b) Dragul and the Fox Defendants refused to produce the SPE books to the GDA Entity Investors on numerous occasions; and (c) the manner in which Dragul conducted GDA's business was designed to conceal or hide the facts of his fraud, theft, and material misrepresentations and omissions. Moreover, upon information and belief, Dragul destroyed or deleted data, information, documents, and other electronically stored information prior to the Receiver's appointment.

354. Accordingly, Markusch, and the Kahn and Hershey Defendants are therefore jointly and severally liable to the same extent as Dragul and the Fox Defendants to the Receiver, who pursues these claims on behalf of and for the GDA Entity Investors and the Estate, pursuant to C.R.S. § 11-51-604(5)(c).

VI. SECOND CLAIM FOR RELIEF: Negligence *(against Dragul and the Fox and Hershey Defendants)*

355. The Receiver incorporates the previous allegations of the Complaint as if fully set forth herein.

356. The Receiver has standing to prosecute these claims both on behalf of the SPEs and on behalf of the GDA Entity investors, all of whom are creditors of the Receivership Estate. *See* **Compl. Ex. 1,** at ¶ 13(s).

357. Dragul, the Fox and the Hershey Defendants each owed a duty of care to investors and prospective investors.

358. These defendants failed to exercise reasonable care or competence in preparing and distributing Solicitation Materials to prospective GDA Entity investors and in making representations to investors.

359. These defendants' negligence was a cause of Plaintiff's injuries and injuries to investors.

VII. THIRD CLAIM FOR RELIEF: Negligent Misrepresentation *(Against Dragul and the Fox and Hershey Defendants)*

360. The Receiver realleges and incorporates the previous allegations of the Amended Complaint as if fully set forth herein.

361. The Receiver has standing to prosecute these claims on behalf of the GDA Entity investors, the latter of which are creditors of the Receivership Estate. *See* **Compl. Ex. 1,** at ¶ 13(s).

362. Through Dragul's fraudulent Scheme, Dragul and the Fox and Hershey Defendants negligently induced the GDA Entity investors to invest and/or to continue to invest (through roll-overs of prior investment) significant sums of money in various

SPE Entities by making misrepresentations of material fact concerning the investments.

363. More specifically, Dragul, and the Fox and Hershey Defendants made false and misleading material misrepresentations concerning the source and use of funds to induce investors and prospective investors to purchase purported ownership interests in SPEs, including but not limited to those set forth in ¶¶ 53-56, 59, 62, 71-77, 78, 83-89, 90-100, 104, 121-132, 143-150, 155-156, 172-175, 190-211, 219-221, 251-253, 299-300, above.

364. These Defendants gave such information to investors in the course of their business and in connection with transactions in which they had a financial interest.

365. These Defendants gave the false and misleading information to investors for the investors' use in business transactions, and these Defendants were negligent in obtaining or communicating the information.

366. The GDA Entity investors relied on the representations made both in the Solicitation Materials and directly by Dragul and the Fox and Hershey Defendants in soliciting their investments. The funds ultimately invested by the GDA Entity investors in reliance on these Defendants' representations were either transferred into Dragul's personal accounts, used to pay undisclosed and illegal commissions, and/or to pay off old debts, without the authority or knowledge of those investors. *See* **Compl. Exs. 3, 4, 5, 6 (as amended),** and **7***; see also* ¶¶ 5-7, 22, 27,

42, 59, 62, 71-77, 82, 87, 89-142, 143-149, 155-156, 168, 170-171, 173-175, 180, 191-194, 198, 201-203, 211-213, and 293-313, *supra.*

367. The negligent misrepresentations made by Dragul and the Fox and Hershey Defendants were material and were made without reasonable care for the guidance of others, namely the GDA Entity investors.

368. Dragul and the Fox and Hershey Defendants provided materially misleading information or omitted disclosure of material information, intending or knowing GDA investors would reasonably rely upon those negligent misrepresentations in investing in the SPE entities. *See* ¶¶ 5-7, 22, 27, 42, 53-56, 59, 62, 71- 77, 78, 83-142, 143-150, 155-156, 168, 170-171, 172-178, 181-211, 190-211, 219-221, 251-253, 299-300, *supra.*

369. GDA Entity investors reasonably and justifiably relied upon the negligent misrepresentations of Dragul, and the Hershey and Fox Defendants in making their decision to invest in the GDA Entities.

370. As a direct and proximate cause of their reliance on Dragul and the Fox and Hershey Defendants' negligent misrepresentations, the GDA Entity investors sustained substantial damages and losses.

VIII. FOURTH CLAIM FOR RELIEF: Civil Theft -- Colo. Rev. Stat. § 18-4-401 *(Against All Defendants)*

371. The Receiver realleges and incorporates the previous allegations of the Amended Complaint as if fully set forth herein.

372. The Receiver has standing to prosecute these claims on behalf of the Estate, the SPEs, and on behalf of the GDA Entity Investors, the latter of which are creditors of the Receivership Estate. *See* **Compl. Ex. 1,** at ¶ 13(s).

373. Defendants knowingly exercised control over GDA Entity investors' funds.

374. Without investors' knowledge or authorization, Defendants exploited their control over those funds by causing them to be used for Defendants' personal benefit. *See* ¶¶ 1-4, 1-8, 34-44, 47-49, 50-78, 87, 89, 96, 124, 130, 194, 198, 220, and 293-313, *supra.*

375. Defendants intended to permanently deprive investors of their investments.

376. GDA Entity investors were in fact permanently deprived of their funds.

377. GDA Entity investors have been damaged by Defendants' theft in an amount to be proven at trial and are therefore entitled to treble damages, costs, and reasonable attorney's fees.

IX. FIFTH CLAIM FOR RELIEF: Violations of the Colorado Organized Crime Control Act ("COCCA") Colo. Rev. Stat. § 18-17-101, *et seq.* *(Dragul, the Fox Defendants, and the Hershey Defendants)*

378. The Receiver realleges and incorporates the previous allegations of the Amended Complaint as if fully set forth herein.

379. The Receiver has standing to prosecute these claims both on behalf of Estate, the SPEs, and on behalf of the GDA Entity Investors, the latter of which creditors of the Receivership Estate. *See* Compl. **Ex. 1,** at ¶ 13(s).

380. At all relevant times, Dragul, the Fox and the Hershey Defendants were considered "persons" within the meaning of the Colorado Organized Crime Control Act ("COCCA"), C.R.S. § 18-17-103(4).

381. At all relevant times, the Estate, SPEs, and GDA Entity Investors were considered "persons" aggrieved or injured within the meaning of COCCA, C.R.S. §§ 18-17-106(6) and (7).

382. At all relevant times, Dragul, the Fox and Hershey Defendants, formed an association-in-fact for the purpose of defrauding the Estate and GDA Entity Investors and prospective investors. *See* ¶¶ 1-4, 34-44, 47-52, 53-78, 83-89, 90-142, 143-163, 163-214, 216-258, 261-247, 277-291, and 303-309, *supra*.

383. As described in detail in this Amended Complaint, Dragul and Fox employed a sham business, the Scheme, with the substantial assistance of Hershey, Kahn and Markusch, which included distribution of Solicitation Materials containing false and misleading statements and material omissions in order to solicit investors to purchase membership interests in various SPEs and in Dragul's sale of promissory notes. Hershey directly assisted in this Scheme by soliciting numerous investors to purchase both SPE membership interests as well as promissory notes. For each investment made that Hershey solicited, Dragul would pay him a percentage, usually

equal to 10%. Contrary to the representations made to convince investors to buy into any given deal, Dragul and Fox did not, invest those funds where the investors intended them to be invested and instead used those funds to pay down other debt, to pay distributions to other investors in other Dragul or Fox deals, and/or for Dragul and Fox's own personal benefit. Dragul and Fox trapped investors in deals in which they had the right to cash out, in order to keep their operation and Scheme running from 2002 through August 2018 as set forth in detail ¶¶ 1-4, 34-44, 47-52, 53-78, 83-89, 90-142, 143-163, 163-214, 216-258, 261-247, 277-291, and 303-313, above.

384. This association-in-fact of Dragul, Fox, Hershey in carrying out the Scheme set forth in detail herein constitutes an "enterprise" within the meaning of COCCA, C.R.S. § 18-17-103(2).

385. Dragul, and the Fox and Hershey Defendants conducted or participated, directly or indirectly, in the conduct of the enterprise's affairs through a "pattern of racketeering activity" within the meaning of COCCA, C.R.S. § 18-17-103(3), in violation of COCCA, C.R.S. § 18-17-104(3) to further their Scheme and plans related thereto, and where all such schemes, devices, and actions were related to the conduct and in furtherance of their enterprise.

386. Specifically, as alleged herein, these Defendants committed at least two, related predicate acts of as set forth below in accordance with C.R.S. § 18-17-103:

a. Violations of the Colorado Securities Act, under C.R.S. § 11-51-401 (Dragul and the Hershey Defendants); C.R.S. § 11-51-301 (Dragul and

the Fox Defendants); C.R.S. § 11-51-501(1) (Dragul and the Fox Defendants). *See* C.R.S. § 18-17-103(b)(XIII).

b. Wire fraud, under 18 U.S.C. § 1343; civil theft under C.R.S. § 18-4-401; and/or at least two predicate acts of bankruptcy fraud under 18 U.S.C. § 157. Each of these crimes are incorporated into COCCA by C.R.S. § 18-17-103(5). *See* C.R.S. § 18-17-103(a).

387. As stated in the preceding allegations of this Amended Complaint, the Dragul, and the Fox, Hershey Defendants directly participated in the affairs of the enterprise and committed a pattern of racketeering in the following non-exclusive respects:

a. Dragul and the Fox Defendants violated the Colorado Securities Act when from 2006 through 2018, in connection with the offer, sale, or purchase of securities, they employed a devise, scheme, or artifice to defraud the GDA Entity investors, the Estate's creditors and other parties in interest. As set forth above, Dragul, the Hershey and the Fox Defendants provided false and misleading Solicitation Materials to prospective investors to induce investments in SPEs owned and controlled by Dragul and/or the Fox Defendants. Additionally, all Defendants received illegal and undisclosed commissions from the sales of properties and/or the SPE accounts. The Scheme involved the investment of money in a common enterprise with profits that were

wrongfully derived from GDA Entity investors, the Estate's creditors and other parties in interest. C.R.S. §§ 11-21-501(1) and 11-51-604. *See* § V. A. – E., First Claim for Relief, at ¶¶314-354, *supra.*

b. Dragul, the Fox and Hershey Defendants committed wire fraud under 18 U.S.C. § 1343 from 2006 through 2018, when they knowingly devised or intended to devise a Scheme to defraud and to obtain money from investors under false pretenses, representations and promises, including material misrepresentations and omissions in the Solicitation Materials concerning the investment, payment of illegal and undisclosed commissions, and improper comingling and misappropriation of GDA Entity Investor funds. Defendants used interstate or foreign wire communications to carry out the Scheme with the intent to defraud and obtain money through false pretenses, misrepresentations or promises, which in fact deprived innocent investors of their money. This Scheme was reasonably calculated to deceive persons of ordinary prudence or comprehension. *See* **Compl. Exs. 3, 4, 5, 6 (as amended), 7, 8, 16, 20, 24, 29, 30,31, 32, 36,** and **39**; *see also* ¶¶ 5-7, 22, 27, 42, 59, 62, 71-77, 82, 87, 89-142, 143-149, 155-156, 168, 170-171, 173-175, 180, 191-194, 198, 201-203, 211-213, and 293-313, *supra.*

c. Dragul, the Fox and Hershey Defendants committed theft under C.R.S. § 18-4-401, and thus engaged in racketeering activity from 2006 through 2018 when each of them knowingly and without authorization took illegal and undisclosed commissions from escrow upon the purchase or sale of various SPE properties and the comingled GDA Entity bank accounts, through deceptive and material misstatements. Defendants intended to permanently deprive the GDA Entity investors of such funds, notwithstanding that such funds were property of the GDA Entity investors. *See* **Compl. Exs. 3, 4, 5,** 6 (as amended), and **7**; *see also* ¶¶ 5-7, 22, 27, 42, 62, 82, 87, 89, 98-100, 111, 113, 121-123, 127-129, 131-137, 143-145, 168, 170-171, 173-175, 180, 191-193, 201-203, 211-213, and 293-313, *supra*.

d. Dragul and the Fox Defendants committed bankruptcy fraud under 18 U.S.C. § 152(5) and (8), and thus, engaged in racketeering activity. First, the Fox Defendants knowingly received a material amount of property from the Prospect Debtor after the petition date with the intent to defeat the provisions of title 11. Next, by intentionally devising a scheme or plan to defraud the Prospect SPEs' creditors through false and misleading representations and omissions to the bankruptcy court and the Prospect SPEs' creditors regarding the sale of the Prospect Property. Next, Dragul knowingly and fraudulently concealed, destroyed,

falsified, and/or made false entries in recorded information, including the Prospect Debtor's books, documents, records, and papers relating to the property and financial affairs of the Debtor. The Prospect Debtors' declaration of bankruptcy served as the tool to execute a fraudulent scheme that was designed to and did defraud innocent GDA Entity Investors. *See* ¶¶ 216-258, *supra*.

388. These acts of racketeering, which occurred within ten years of each another, are related and constitute a "pattern of racketeering activity" per C.R.S. § 18-17-103(3).

389. The above acts committed as part of the scheme to defraud investors, the Estate's creditors and interested parties, were related to each other by virtue of common participants, a common class of victims, a common method of commission (solicitation of investments based on false representations), and the common purpose and common result was to defraud GDA Entity investors, to the benefit of Defendants.

390. It is unlawful for any person employed by or associated with an enterprise to conduct the affairs of an enterprise through a pattern of racketeering, or for any person to conspire or endeavor to commit a violation of COCCA, C.R.S. §§ 18-17-104(3) and (4).

391. As a direct and proximate result of Defendants' COCCA violations, Defendants pilfered the SPEs thereby damaging the GDA Entities, their investors,

the Estate and its creditors, who are entitled to treble damages, costs, and reasonable attorney's fees pursuant to C.R.S. § 18-17-106(7).

X. SIXTH CLAIM FOR RELIEF: Aiding and Abetting Violations of COCCA Colo. Rev. Stat. § 18-17-101 *et seq*. *(Against Markusch, and the Kahn, Fox, and Hershey Defendants)*

392. The Receiver realleges and incorporates by reference the previous allegations of the Amended Complaint as if fully set forth herein.

393. The Receiver has standing to prosecute these claims both on behalf of the Estate, the GDA Entities, and on behalf of the GDA Entity investors, the latter of which are creditors of the Receivership Estate. *See* **Compl. Ex. 1,** at ¶ 13(s).

394. At all relevant times, the Non-Dragul Defendants were "persons" within the meaning COCCA, C.R.S. §§ 18-17-103(4).

395. At all relevant times, the GDA Entity Investors, the Receivership Estate's creditors and parties in interest, were considered "persons" aggrieved or injured within the meaning of COCCA, C.R.S. §§ 18-17-106(6) and (7).

396. At all relevant times, Non-Dragul Defendants knowingly participated in the enterprise which was an association-in-fact designed to defraud GDA Entity Investors, the Estate's creditors and other parties in interest, while enriching all Defendants as evidenced by the following:

a. All Defendants' receipt of undisclosed and unauthorized commissions from escrow of the properties owned by the associated SPE in which investors purchased membership interests. *See* **Compl. Exs. 3, 4, 5, 6**

(as amended), and **7;** *see also* ¶¶ 5-7, 22, 27, 42, 62, 82, 87, 89, 98-100, 111, 113, 121-123, 127-129, 131-137, 143-145, 168, 170-171, 173-175, 180, 191-193, 201-203, 211-213, and 293-313, *supra*.

b. The Fox Defendants' actual knowledge of and participation in the Scheme as Dragul's mentor and business partner, purchasing Estate assets without the Receiver's knowledge or consent in violation of the Receivership Order, improperly withholding GDA Entity Investor distributions and entity organizational documents; falsifying organizational documents to transfer control and management rights post-receivership in order to sell the Airplane, Fox's dilution of the GDA Entities' purchased membership interests, Fox's payment of funds to Dragul for the Estate's membership interest in Fox Entities held through SSC 02, and other conduct as alleged herein. *See* ¶¶ 6, 22-23, 36-38, 59, 63, 71-77, 87, 89, 96, 103, 124-125, 128, 130, 156, 179, 194, 198, 212-214, 261-247, 275-284, 285-291, and 298-302, *supra.*

397. This association-in-fact was an "enterprise" within the meaning of COCCA, C.R.S. § 18-17-103(2). *See* ¶¶ 1-4, 34-44, 47-52, 53-78, 83-89, 90-142, 143-163, 163-214, 216-258, 261-247, 277-291, and 303-313, *supra*.

398. The Non-Dragul Defendants conducted or participated, directly or indirectly, in the conduct of the enterprise's affairs through a "pattern of racketeering activity" within the meaning of COCCA, C.R.S. § 18-17-103(3), in violation of COCCA,

C.R.S. § 18-17-104(3) to further the fraudulent scheme set forth herein and plans related thereto, and where all such schemes, devices, and actions were related to the conduct and in furtherance of their enterprise. *See id*.

399. Specifically, at all relevant times, the Non-Dragul Defendants, through aiding and abetting and the provision of substantial assistance to Dragul, engaged in racketeering within the meaning of C.R.S. § 18-17-103(5), when they conspired to commit and did commit violations of the Colorado Securities Act, under C.R.S. §§ 11-21-501(1) and 11-51-604; wire fraud, under 18 U.S.C. § 1343; theft under C.R.S. § 18-4-401; and/or bankruptcy fraud under 18 U.S.C. § 157.

400. The Non-Dragul Defendants participated in the affairs of the enterprise and committed a pattern of racketeering including but not limited to those set forth in ¶¶ 1-4, 34-44, 47-52, 53-78, 83-89, 90-142, 143-163, 163-214, 216-258, 261-247, 277-291, and 303-313, above., above.

401. These detailed acts of racketeering occurred within ten years of one another and constitute a pattern of racketeering activity within the meaning of C.R.S. § 18-17-103(3).

402. The above-detailed acts committed as part of Dragul's fraudulent scheme were related to each other by virtue of common participants, a common class of victims (*i.e.*, the GDA Entity investors, the Estate's creditors and other parties in interest), a common method of commission (several years' worth of unauthorized transfers of investor funds for Non-Dragul Defendants' Defendants' use and benefit),

and the common purpose and common result was to defraud the GDA Entity investors, and the Estate's creditors, to the benefit of Defendants.

403. It is unlawful for any person employed by or associated with an enterprise to conduct the affairs of an enterprise through a pattern of racketeering, or for any person to conspire or endeavor to commit a violation of COCCA, C.R.S. §§ 18-17-104(3) and (4).

404. In violation of C.R.S. § 18-17-104(3), the Non-Dragul Defendants conspired with and endeavored to violate the provisions of COCCA, C.R.S. § 18-17-104(3), by aiding and abetting Dragul as described in ¶¶ 1-4, 34-44, 47-52, 53-78, 83-89, 90-142, 143-163, 163-214, 216-258, 261-247, 277-291, and 303-313, above.

405. As set forth above, the Non-Dragul Defendants and Dragul conspired with the common purpose of fraudulently, illegally, and without authorization, misappropriating funds through a series of fraudulent representations, inducements, transactions, and wire transfers among and between the GDA Entity bank accounts, the Non-Dragul Defendants' personal bank accounts, and title company escrow accounts. *Id*.

406. Through their fraudulent Scheme, the Non-Dragul Defendants and Dragul pilfered the SPEs for their own benefit and thus, have injured the GDA Entity investors and the Receivership Estate, including its creditors and parties in interest.

407. As a direct and proximate result of the Non-Dragul Defendants' aiding and abetting, participating in, and conspiring with Dragul to violate COCCA, C.R.S.

§ 18-17-104(3), the SPEs and thus, the GDA Entity investors and the Estate, including its creditors and parties in interest, have been damaged and are therefore entitled to treble damages, costs, and reasonable attorney's fees to C.R.S. § 18-17-106(7).

XI. SEVENTH CLAIM FOR RELIEF: Breach of Fiduciary Duty *(Against Dragul)*

408. The Receiver realleges and incorporates the previous allegations of the Amended Complaint as if fully set forth herein.

409. As manager of the GDA Entities, Dragul a fiduciary duty to the GDA Entities and their member investors, which required him to use reasonable care and skill in managing the properties and associated SPEs.

410. Dragul also owed a fiduciary duty to the GDA Entity investors to ensure the truth and accuracy of the representations made prior to and during the GDA Entities' ownership of the associated properties and to ensure that those representations remained true throughout the ownership of the properties.

411. Dragul breached his fiduciary duties as set forth above, and in the following non-exclusive respects, as set forth in ¶¶ 104, 33-44, 53-78, 83-89, 91-95, 97-102, 104, 106-142, 143-160, 171-214, 215-258, 259-260, 293-313, above:

412. Failing to provide honest and accurate material information to the investors prior to and during ownership of the associated properties;

413. Failing to disclose that he and the Non-Dragul Defendants received illegal and unauthorized Commissions from escrow of the sale of SPE properties and from the SPE accounts;

414. Receiving undisclosed and unearned commissions and/or payments from escrow of closing on the sale of certain SPE properties and from the SPE accounts;

415. Placing his own and the Non-Dragul Defendants' financial interests above the GDA Entities and their investors;

416. Failing to act in the best interest of the GDA Entities and instead placing his own interests and the Non-Dragul Defendants' interests above those of the GDA Entities; and

417. Other acts or omissions which may be identified through discovery and shown at trial.

418. Dragul's acts or omissions as described in the allegations and claims for relief set forth herein constituted breaches of the fiduciary duties he owed to the GDA Entities and their member investors, and were intentional, willful, and wanton.

419. Dragul's actions or omissions were intentionally designed to enrich himself to the detriment of the GDA Entities and their member investors, and were intentionally designed to conceal material information from the GDA Entity investors, all to their detriment.

420. As a proximate cause of the Dragul's breaches of his fiduciary duties, the Estate suffered damages and losses.

XII. EIGHTH CLAIM FOR RELIEF:
Aiding and Abetting Dragul's Breach of Fiduciary Duties
(Against the Kahn Defendants)

421. The Receiver realleges and incorporates by reference the previous allegations of the Amended Complaint as if fully set forth herein.

422. The Receiver has standing to prosecute these claims both on behalf of the Estate, the GDA Entities, and on behalf of the GDA Entity investors, the latter of which are creditors of the Receivership Estate. *See* **Compl. Ex. 1,** at ¶ 13(s).

423. The Kahn Defendants, in their capacity as counsel for the GDA Entities, aided and abetted Dragul's breach of the fiduciary duties he owed to the GDA Entities and their member investors for the purpose of advancing their own interests over those of the GDA Entities and their investors.

424. As set forth above, the Kahn Defendants obtained direct financial benefits from colluding in or aiding and abetting Dragul's breaches.

425. As a direct and proximate result of the Kahn Defendants' aiding and abetting, participating in, and conspiring with Dragul to breach the fiduciary duties that he owed to the GDA Entities and their member investors, the SPEs and thus, the GDA Entity investors and the Estate, including its creditors and parties in interest, have been damaged.

XIII. NINTH CLAIM FOR RELIEF:
Negligence
(Against the Kahn Defendants)

426. The Receiver realleges and incorporates the previous allegations of the Amended Complaint as if fully set forth herein.

427. The Receiver has standing to prosecute these claims on behalf of the SPEs all of whom are creditors of the Receivership Estate. *See* **Compl. Ex. 1,** at ¶ 13(s).

428. The Kahn Defendants represented the GDA Entities, which included handling general representation and litigation matters for each of the GDA Entities.

429. In doing so, the Kahn Defendants owed the GDA Entities a duty to employ that degree of knowledge, skill, and judgment ordinarily possessed by members of the legal profession in carrying out services for their clients.

430. The Kahn Defendants were negligent in the following non-exclusive respects, as set forth in ¶¶ 8, 50-52, 80-81, 59, 71- 77, 96, 124, 130, 161-162, 194, 198, and 261-247, above:

a. Negligently providing legal advice to Dragul as to the impermissible and undisclosed comingling of investor dollars and the formation and management of the SPEs;

b. Negligently providing legal advice to Dragul upon the sale of PMG concerning the failure to pay distributions to investors and concealing from investors that the property had been sold but instead of

distributing funds to investors, Dragul kept those proceeds for his own use;

c. Negligently preparing or assisting in the preparation of false and misleading updates to investors;

d. Negligently preparing and back-dating fraudulent entity organizational documents in concert with Dragul, Markusch and Fox, to transfer assets of the Estate without the consent or knowledge of the Receiver;

e. Negligently advising, assisting, and otherwise providing legal services to Dragul and his staff, including Markusch, and Fox regarding their continued violations of the Receivership Order, and

f. All other acts which may be uncovered through discovery and which may be shown at trial.

431. The Kahn Defendants' failure to exercise the requisite due care in representing the GDA Entities, including providing legal advice and assisting to effect Dragul's fraudulent scheme and taking undisclosed and illegal commissions, was a proximate cause of the Estate damages and losses.

XIV. TENTH CLAIM FOR RELIEF: Breach of Fiduciary Duty *(against the Kahn Defendants)*

432. The Receiver realleges and incorporates the previous allegation ns of the Amended Complaint as if fully set forth herein.

433. The Kahn Defendants represented the GDA Entities, which included handling general representation and litigation matters for them.

434. The Kahn Defendants owed the GDA Entities fiduciary duties of loyalty and due care.

435. The fiduciary duty of loyalty required the Kahn Defendants to place the interests of the clients – *i.e.*, the GDA Entities, including their investors– over the interests of themselves, Dragul, or Fox, and further required the Kahn Defendants to communicate honestly and truthfully with the GDA Entity investors.

436. The Kahn Defendants' duty of loyalty and duty to provide conflict-free representation, required them to exercise independent professional judgment on behalf of the GDA Entities to determine if Dragul's decisions or instructions were adverse to, or not in the best interest of the GDA Entities and the investors.

437. In addition to the fiduciary duty of loyalty and duty to provide conflict-free representation the Kahn Defendants owed fiduciary duties of utmost candor, communication, and utmost honesty.

438. The Kahn Defendants breached their fiduciary duties as set forth above, and in the following non-exclusive respects, as set forth in **Comp. Ex. 5,** and in ¶¶ 8, 50-52, 80-81, 59, 71- 77, 96, 124, 130, 161-162, 194, 198, and 261-247, above:

a. Failing to disclose their receipt of unearned and undisclosed commissions and/or payment on fees from escrow of the sale of SPE Properties, including PMG, the Prospect Property, Grandview

Marketplace, AP Plaza, and Standley Lake, and from the SPE associated accounts;

b. Failing to disclose that they also represented Fox and ACF at the same time they represented the GDA Entities, and in connection with their representation of Fox and ACF, that they took action that was harmful to the GDA Entities.

c. Failing to advise the GDA Entities that Dragul and Fox's interests were adverse to those of the Entities;

d. Placing their own, Dragul and Fox's financial interests above the GDA Entities and their Investors;

e. Failing to act in the best interest of the GDA Entities and instead placing the Kahn and Fox Defendants' interests and Dragul's interests above those of the GDA Entities; and

f. Other acts or omissions which may be identified through discovery and shown at trial.

439. The Kahn Defendants' acts or omissions as described in this claim for relief were breaches of the fiduciary duties described above that they owed to the GDA Entity investors and were intentional as well as willful and wanton.

440. The Kahn Defendants' actions or omissions were intentionally designed to enrich themselves to the detriment of the GDA Entity investors and were

intentionally designed to conceal material information from the GDA Entity investors, all to their detriment.

441. As a proximate cause of the Kahn Defendants' breaches of their fiduciary duties, the Estate suffered damages and losses.

XV. ELEVENTH CLAIM FOR RELIEF: Fraudulent Transfer – Colo. Rev. Stat. § 38-8-105(1)(A) *(against all Defendants)*

442. The Receiver realleges and incorporates the previous allegations of the Amended Complaint as if fully set forth herein.

443. At all times relevant hereto, and with respect to the illegal and undisclosed Commissions, there existed one or more creditors whose claims arose either before or after their payment.

444. The Commissions identified with particularly on Exhibits **Compl. Exs. 3, 4, 5, 6 (as amended), and 7** were transfers made in furtherance of Dragul's Ponzi Scheme with the actual intent to hinder, delay, and defraud creditors. *See* ¶¶ 5-7, 22, 27, 42, 62, 82, 87, 89, 98-100, 111, 113, 121-123, 127-129, 131-137, 143-145, 168, 170-171, 173-175, 180, 191-193, 201-203, 211-213, and 293-313, *supra*.

445. Pursuant to C.R.S. § 38-8-110(1)(a), the Receiver is entitled to recover the entire amount of the illegal and undisclosed Commissions.

446. Pursuant to C.R.S. §§ 38-8-108(1)(a) and 38-8-109(2), the Receiver is entitled to a judgment avoiding the payment of all Commissions to Defendants,

directing the Commissions be set aside, and recovering the Commissions, or the value thereof, from Defendants for the benefit of the Estate.

XVI. TWELFTH CLAIM FOR RELIEF: Unjust Enrichment *(against all Defendants)*

447. The Receiver realleges incorporates the previous allegations of the Amended Complaint as if fully set forth herein.

448. By virtue of the Commissions and other payments, Defendants have each received benefits at the Estate's expense and at the expense of other creditors that would make it unjust for them to retain those benefits without paying the Estate the value thereof.

PRAYER FOR RELIEF

The Receiver requests that judgment enter in his favor and against Defendants for:

A. Compensatory damages in an amount to be proven at trial;

B. Awarding treble damages pursuant to COCCA, C.R.S. § 18-17-106(7) and C.R.S. § 18-4-405;

C. Pre- and post-judgment interest as allowed by law; and

D. Costs and attorney's fees as allowed by law; and

E. For such other relief as may be just and proper in the circumstances.

Dated: June 1, 2020.

ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.

By: /s/ *Patrick D. Vellone*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 1st day of June, 2020 a true and correct copy of **the First Amended Complaint** was filed and served *via* the Colorado Courts E-Filing system to the following:

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In accordance with C.R.C.P. 121 § 1-26(7), a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the Court upon request.